

REVOCATION OR SUSPENSION OF TEACHING CERTIFICATES

by

MICHELLE MOORE

DAVID DAGLEY, COMMITTEE CHAIR
ROXANNE MITCHELL
STEPHEN TOMLINSON
ALAN WEBB
PHILLIP WESTBROOK

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ABSTRACT

This was a purposeful, qualitative, historical and document-based research study that investigated the trends, issues, and outcomes of the legal issues relating to the revocation or suspension of a teacher's teaching certificate. The data produced 81 cases; however, there were 5 cases that included more than one plaintiff bringing the total number in the study to 88. The study included cases spanning from 1853-2015. Federal and state level law cases were researched to determine the ruling of courts as they applied the law and state statutes. Twelve guiding principles were developed for school leaders to consider when confronted with teacher misconduct issues which involved the revocation or suspension of teaching certificates.

The review of the literature provides affirmation that the revocation or suspension of a teacher's certificate is an area of extreme concern for school administrators. A vast amount of researchers was provided to explain the trends and patterns that have developed through case law and court decisions concerning the suspension and revocation of teachers' certificates. While the revocation and suspension of teaching certificates has been a process practiced for over a century, the court decisions and judicial opinions continue to reshape the reasons certificates may be legally revoked or suspended.

In this study, nine categories emerged as a result of the analysis. The categories included: immorality/moral turpitude, unprofessional/unbecoming conduct, unfitness to teach, certification issues, unlawful acts, just cause, incompetence, insubordination, and religious dress. Of these nine categories, six categories immorality/moral turpitude, unprofessional/unbecoming conduct,

unfitness to teach, certification issues, unlawful acts, and just cause emerged as main categories and are discussed in detail in the analysis.

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CHAPTER I:
INTRODUCTION

Introduction

Teacher misconduct has been a topic of debate for over a century. School administrators must be aware of teacher conduct and how the teacher's conduct impacts student learning. When a teacher fails to maintain proper conduct and exhibits conduct that is judged as unethical, unbecoming, unfit, immoral, insubordinate, incompetent, or unlawful, the community expects school administrators to reprimand the teacher immediately. This often includes the process of having one's teaching certificate revoked or suspended. When this occurs, the appeals and legal battles often follow. The legal fallout often lingers well after the initial impact is felt. School administrators must be observant of teacher behaviors and identify potential teacher misconduct before the misconduct escalates to the point of student harm and certificate revocation or suspension. By identifying past legal issues involving teacher certificate revocation or suspension, a school administrator may improve his/her ability to identify potential issues and therefore intervene before irreparable damage is done to students, teachers, and others.

Teachers have had their teaching certificates revoked or suspended for reasons including insubordination, incompetency, moral turpitude, criminal conduct, unfitness, and other just and good causes as decided by courts across the United States. From the inception of public schools into American society, proper teacher conduct has been debated (Grant, 2007). The teacher's behavior in and out of school is a concern for school administrators. In the eyes of American society, teachers are often held to a higher level of expectations than others (Essex, 1999).

Teaching has become more and more complex (Grant, 2007; McLaren, 2007) and so has the school administrator's ability to provide leadership in this more complex learning environment. According to Hattie (2009), teachers have the most impact on learning; therefore, the focus of school administrators has been reshaped in order to provide teacher support and increase student learning through this support. In recent times, school administrators have focused on teacher behaviors and conduct and how this improves student achievement. Improved learning occurs when positive teacher conduct is exhibited in the classroom because how a teacher teaches and acts determines the level of success in the classroom (Hattie, 2009). A school's success is dependent upon the quality of the teachers (Whitaker, 2003). School administrators must aim to keep teachers focused on the educational needs of the students they serve by practicing good conduct and being role models for students in and outside of the classroom. By researching cases surrounding the revocation or suspension of a teacher's certificate, a school administrator is equipped with the knowledge to be a stronger school leader (Zirkel, 2015).

The health, safety, and general welfare of students is of the utmost importance for school administrators. The school administrator has the responsibility of protecting his/her students and minimizing distractions so that learning can take place. Administrators, teachers, board members, district superintendents, state boards, and state superintendents are required to take the protection and education of children seriously. This includes protecting students from teachers who may not have the student's best interest in mind or may not be focused on educating students. Parents and stakeholders have the expectation that students will be kept safe and provided a high quality education by caring, dedicated, respectable, ethical, competent, law abiding, and certified professionals. They expect that teachers will impose positive character traits on the lives of young and impressionable students (Essex, 1999). This conduct is expected

to be maintained not only within the confines of the school building but during personal time when school is not in session (Hooker, 1994). Dewey (1903, p. 7) argued:

There cannot be two sets of ethical principles, one for life in the school, and the other for life outside of the school. As conduct is one, so also the principles of conduct are one. The tendency to discuss the morals of the school as if the school were an institution by itself is highly unfortunate. The moral responsibility of the school, and of those who conduct, is to society. The school is fundamentally an institution erected by society to do a certain specific work,--to exercise a certain specific function in maintaining the life and advancing the welfare of society. The educational system which does not recognize that this fact entails upon it an ethical responsibility is derelict and a defaulter. It is not doing what it was called into existence to do, and what it pretends to do.

At the very least, teachers should be highly trustworthy and ethical. Bolman and Deal (2003) described how ethics played a large role in establishing trust within any organization and how trust drives organizations in their efforts to be successful. Because teachers are role models for students, teachers are expected to conduct themselves in a manner that is considered culturally and morally accepted and establish trust with students, parents, administrators, coworkers, and stakeholders.

Much controversy often lies within the interpretations of the laws, policies, procedures, codes, and statutes, and the high expectations to which teachers are held. Many consider the vagueness of statutes, codes, and laws to be the problem. While others believe that teachers often suffer much harsher penalties because of their work with society's most vulnerable members, our children.

Case law about teacher certification and teacher misconduct has developed for over a century. This case law has shaped the way that teachers have been found guilty of various offenses which have caused the revocation or suspension of teaching certificates across the United States. Many times, the conduct is criminal and the criminal justice system is required to punish the teacher as the law allows. Other times, the local and state boards of education have

been charged with interpreting and enforcing policies and procedures, and in determining the proper findings and recommendations. These findings and recommendations vary from one board to another, one community to another, and one state to another (Essex, 1999). Many biases may be factored in when determining what defines improper conduct and justifies suspended certificates or revoked licenses. There is a battle to establish a delicate balance of a teacher's right to privacy and the school board's right to employ and demand outstanding teachers. When findings and recommendations are made, the state boards are often required to investigate and hold hearings to determine whether a teacher has displayed inappropriate conduct or violated the law in such a way that requires or supports the revocation or suspension of a teacher's certificate.

During the last two decades, with the explosion of social media and the increase in the complexity of teaching and leadership, teacher conduct and the school leadership responses to this conduct, has been a hotly debated topic. The public demands that school administrators be prepared to recognize teacher misconduct, correct this misconduct, or dismiss teachers who do not exhibit proper conduct. This may include starting the process of revoking or suspending a teacher's certificate when necessary. With the exposure of teachers who have participated in conduct that is deemed unlawful or inappropriate, it is no longer suitable for teachers to be allowed to quietly resign their positions and slither away to another school district in order to avoid public degradation.

What was once deemed as a teacher being unethical, unbecoming, unfit, immoral, insubordinate, incompetent, or unlawful has historically changed over the last few decades (Essex, 1999). With the changing policies, procedures, and laws in education involving teacher conduct and the revocation or suspension of teachers' certificates, school administrators are wise to stay abreast of these cases in order to effectively lead in the public school setting. This

research attempts to expose these changes in order to assist school administrators to better lead and support teachers in public schools.

Statement of the Problem

School administrators are not informed about why teachers have their teaching certificates revoked or suspended. Because of this lack of information, public school administrators are not prepared to deal with the increasing number of teachers who have their teaching certificate revoked or suspended. It is imperative that school administrators understand why teachers have their teaching certificates revoked or suspended in order to protect students, improve student learning, and support teacher development.

Significance of the Problem

Schools are expected to perform at a high level and have a lot of pressure to do so (Hattie, 2009; Grant, 2007). School administrators deal with a variety of complex issues in schools. Increasingly, the revocation or suspension of teachers' certificates has become one of these issues. Public school administrators are not prepared to deal with the increasing number of teachers who have their teaching certificate revoked or suspended because they lack the knowledge and understanding about why certificates are most often revoked or suspended.

School administrators who are armed with the knowledge about what causes teaching certificates to be revoked or suspended may help reduce the number of future revocations or suspensions. School administrators who are not knowledgeable about what causes a teacher's certificate to be revoked or suspended may fail to identify teachers who do not maintain proper conduct on a professional and personal level. It is important for school administrators to be knowledgeable about legal issues pertaining to the revocation or suspension of teaching certificates (Essex, 1999; Holben & Zirkel, 2011).

Purpose

The purpose of this research was to investigate law cases in an effort to identify trends, issues, and outcomes in court decisions involving revocation or suspension of teachers' certificates. By doing this, the researcher hoped to promote the understanding and knowledge base of school administrators about why courts revoke or suspend teachers' certificates in K-12 public schools. It is important for school administrators to be knowledgeable about what case law shows to be factors when determining what will cause a teacher's certificate to be revoked or suspended (Essex, 1999). School administrators need a working knowledge of what constitutes conduct that is considered unethical, unbecoming, unfit, immoral, unlawful, incompetent, insubordinate, moral turpitude, or other just causes in order to effectively lead teachers and promote student learning (Essex, 1999; Holben & Zirkel, 2011).

Research Questions

1. What are the issues in court cases involving the revocation or suspension of a teacher's certificate in education?
2. What are the outcomes in court cases when a teacher has had his/her teaching certificate revoked or suspended?
3. What are the trends in court cases involving the revocation or suspension of a teacher's certificate?
4. What legal principles for educators may be distinguished from a study of court cases involving the revocation or suspension of teacher's certificate?

Limitations

The following limitations were relevant to this study:

1. The cases in this study were limited to those listed in the West's Key Numbering System under the key number 141E (Education) under the subheading (Revocation or Suspension).
2. The court cases used by the researcher were limited between the years of 1853-2015.
3. The selection of court cases was limited to only court cases involving the revocation or suspension of teachers' certificates.
4. The research and analysis of the documents were left to the interpretation of the researcher, who is an educator, not a legal expert.
5. Complete and/or partial access to case documents are limited to those reported in West's National Reporter System.

Assumptions

The study was based on the following assumptions:

1. The number of court cases used provided sufficient affirmation to fulfill a qualitative analysis about the causes of teachers' certificate being revoked or suspended.
2. The court cases were determined by applying local, state, and federal laws.
3. The relevant cases were reported in West's National Reporter System.
4. The cases briefed and analyzed related to the revocation or suspension of a teacher's teaching certificate or teaching license from 1853-2015.
5. The case brief method of analysis used in this study provided a methodology that reduced court documents to data for analysis.
6. The cases provided sufficient information to answer the stated research questions.

Definition of Terms

Appeal: “An application to a higher court to amend or rectify a lower court’s decision” (Essex, 1999, p. 223).

Appellant: “One who cause an appeal to a higher court. The appellant may be the plaintiff or the defendant” (Essex, 1999, p. 223).

Appellate Court: “A higher court that hears a case on appeal from a lower court” (Essex, 1999, p. 223).

Appellee: “A person or party against whom an appeal is brought” (Essex, 1999, p. 223).

Breach: “Failure to execute a legal duty” (Essex, 1999, p. 223).

Brief: “A written statement setting out the legal contentions of a party in litigation, esp. an appeal; a document prepared by counsel as a basis for arguing a case, consisting of legal and factual arguments and the authorities in support of them” (Black, 2005, p. 159).

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, 2005, p. 177-178).

Certificate: “The official document issued by the Alabama Department of Education to an applicant who has been deemed to meet all requirements for the issuance of the document” (<http://www.alabamaadministrativecode.state.al.us/docs/ed/290-3-2.pdf>).

Certiorari: “An extraordinary writ issued by an appellate court, at its discretion, directing a lower court to deliver the record in the case for review. The U. S. Supreme Court uses certiorari to review most of the cases it decides to hear” (Black, 2005, p. 187).

Circuit court: “A court usually having jurisdiction over several counties, districts, or states, and holding sessions in all those areas” (Black, 2005, p. 302).

Contract: “A legal agreement between parties involving an offer and acceptance to perform certain duties that are enforceable by courts of law” (Essex, 1999, p. 223-224).

Damages: Compensation or indemnity claimed by the plaintiff or ordered by the courts for injuries sustained resulting from wrongful acts of the defendant” (Essex, 1999, p. 224).

de facto: “Actual; existing in fact; having effect even though not formally or legally recognized” (Black, 2005, p. 352).

Defendant: “A person sued in a civil proceeding or accused in a criminal proceeding” (Black, 2005, p. 356).

Demurrer: “A pleading stating that although the facts alleged in a complaint may be true, they are insufficient for the plaintiff to state a claim for relief and for the defendant to frame an answer:” (Black, 2005, p. 366).

Disposition: “A final settlement or determination” (Black, 2005, p. 398).

Due process: “The conduct of legal proceedings according to established rules and principles for the protections and enforcement of private rights, including notice and the rights to a fair hearing before a tribunal with the power to decide the case” (Black, 2005, p. 424).

Ethics: “A set of moral principles; the discipline dealing with what is good and bad with moral duty and obligations; the principles of conduct governing an individual or a group” (Merriam-Webster, 1969, p. 285).

Federal Court: “A court having federal jurisdiction, including the U. S. Supreme Court, circuit court of appeals, district courts, bankruptcy courts, and tax courts” (Black, 2005, p. 304).

Holding: “A court’s determination of a matter of law pivotal to its decision; a principle drawn from such decision; a ruling on evidence or other questions presented at trial” (Black, 2005, p. 608).

Incompetency: “Disqualification, inability, or incapacity to fulfill necessary teaching duties”
(Alabama Code 1975, 16-24-8).

Initial Certificate: “The first certificate in a specific teaching field or area of instructional support issued to a prospective teacher”
(<http://www.alabamaadministrativecode.state.al.us/docs/ed/290-3-2.pdf>).

Insubordination: “A willful disregard or an employer’s instructions, especially behavior that gives the employer cause to terminate a worker’s employment” (Black, 2005, p. 659).

Intemperance: “A lack of moderation or temperance” (Black, 2005, p. 669).

Issuing Authority: “The official state agency responsible for awarding educator credentials for grades P-12, or DoDEA”
(<http://www.alabamaadministrativecode.state.al.us/docs/ed/290-3-2.pdf>).

Just cause: “A legally sufficient reason. The term is often used in employment-termination cases” (Black, 2005, p. 182).

Litigation: “The process of carrying on a lawsuit” (Black, 2004, p. 952).

Mandamus: “A writ issued by a superior court to compel a lower court or a government officer to perform mandatory or purely ministerial duties correctly” (Black, 2005, p. 802).

Mandate: “An order from an appellate court directing a lower court to take a specified action” (Black, 2004, p. 980).

Ministerial: “Acts required usually by public officials in which there is no discretion” (Essex, 1999, p. 224).

Misconduct: “A dereliction of duty, unlawful or improper behavior” (Black, 2005, p. 836).

Moral Turpitude: “Conduct that is contrary to justice, honesty, or morality” (Black, 2005, p. 846).

Neglect: “The omission of proper attention to a person or thing, whether inadvertent, negligent, or willful; the act or condition of disregarding” (Black, 2005, p. 871).

Opinion: “A court’s written statement explaining its decision in a given case, including the statement of facts, points of law, and rationale” (Black, 2005, p. 922).

Per se: “Of, in, or by itself; standing along, without reference to additional facts” (Black, 2004, p. 1178).

Per Curium: “An opinion rendered by an entire court rather than by any one of several justices” (Essex, 1999, p. 224).

Plaintiff: “The party who brings a civil suit in a court of law” (Black, 2005, p. 966).

Prima Facie: “At first view; a fact presumed to be true if not rebutted or proven untrue” (Essex, 1999, p. 225).

Remand: “The act or an instance of sending something (such as a case, claim, or person) back for further action” (Black, 2005, p. 1070).

Renewal: “The continuation of a valid certificate with a new valid period or the reinstatement of an expired certificate with a new valid period”

(<http://www.alabamaadministrativecode.state.al.us/docs/ed/290-3-2.pdf>).

Respondent: “The party against whom an appeal is taken; the defendant” (Essex, 1999, p. 225).

Revocation: “The process of taking adverse action against a certificate, substitute teacher license, or other license” (<http://www.alabamaadministrativecode.state.al.us/docs/ed/290-3-2.pdf>).

State Court: “A court of the state judicial system, as opposed to a federal court” (Black, 2005, p. 306).

Statute: “An act of the state or federal legislative body; a law” (Essex, 1999, p. 224).

Summary Judgment: “A court’s decision to settle a dispute or dispose of a case promptly without conducting full legal proceedings” (Essex, 1999, p. 225).

Tenure: A security measure for those who successfully perform duties and meet statutory or contractual requirements; a continuous service contract” Essex, 1999, p. 225).

Unbecoming conduct: “Incompetent, unethical, unprofessional or dishonorable conduct which violates those standards which have become accepted as obligations reasonably necessary for the protection of the public interest and for professional accountability” (<http://www.alabamaadministrativecode.state.al.us/docs/phy/3PHY.htm>).

Unfit: “Unsuitable, not adapted, or qualified for a particular use of service” (Black, 2005, p. 1277).

Willful and Wanton Misconduct: Conduct committed with an intentional or reckless disregard for the safety of others, as by failing to exercise ordinary care to prevent a known danger or to discover a danger (Black, 2004, p. 1020).

Without Prejudice: Without loss of any rights; in a way that does not harm or cancel the legal rights or privileges of a party (Black, 2004, p. 1632).

Writ of Error: A writ issued by an appellate court directing a lower court to deliver the record in the case for review (Black, 2004, p. 1642).

Organization of Chapters

This qualitative study is composed of five chapters. The first chapter of the research is dedicated to the introduction of the study. This chapter includes the statement of the problem,

significance of the problem, statement of purpose, research questions, assumptions, limitations, definitions, and delimitations. Chapter II includes a comprehensive review of the literature pertaining to the revocation or suspension of certified teachers' teaching license. Chapter III is encompassed the methodology and research design of the study. The analysis process is also included in Chapter III. In Chapter IV, a summary of all the case briefs, the interpretations of the case briefs, and an analysis of the research is completed. Chapter V is the final chapter of this research. Chapter V includes answers to the research questions, offers the summary, conclusions, and further recommendations for future research.

CHAPTER II:
REVIEW OF THE LITERATURE

Introduction

According to the National Center for Education Statistics (2015), over 50 million children enrolled in public schools for the 2015-2016 school year. Pre-K through eighth grade students accounted for approximately 35 million of these students, and an estimated 15 million students entered high school. Teaching these 50 million children are approximately 3.1 million certified public school teachers who are entrusted to protect and educate them. Leading these certified teachers and students included over 90,000 public school administrators who play a key role in monitoring teacher behavior and conduct.

Researchers have determined that teacher support by school administrators is important in student achievement and that administrators must monitor and evaluate teachers routinely (Baker & Cooper 2005; Branch, Hanushek, & Rivkin 2013). Even with administrative support and direction, there are teachers who will violate the trust of students, administrators, and community stakeholders by engaging in misconduct or unlawful actions for reasons including insubordination, incompetency, moral turpitude, criminal conduct, unfitness, and for other just and good causes (Essex, 1999). When this occurs, teaching certificates may be revoked or suspended and litigation may follow (Essex, 2012). Gajda (2008) described how school administrators have never been trained in school law and the negative impact this has on so many school districts across the United States. “Teachers, principals, and superintendents could all face law suits as a result of their conduct on the job” (Johnson & Duffett, 2003, p. 8).

The evolution of public school law has changed with over a century of case law (Zirkel, 2015). What is declared at one point in time as ethical and acceptable may change over a period of decades. The pattern of this change shows a clear expansion of the increased involvement of the courts (Zirkel, 2002). Legal battles are one of the necessary evils that surround schools in order to protect children and teachers alike (Johnson & Duffett, 2003). These legal battles may cause school systems a great deal of financial burden and anguish (Barrios, Jones, & Gallagher, 2007). School administrators need to be knowledgeable about these trends and patterns in order to supervise and support teachers (Essex, 1999).

Historical Overview

The way that we look at the past determines how the future is shaped and the choices we make (Tyack, 1974). In the beginning, schools were more “community controlled” (Tyack, 1974). Teachers had very little training and it was common for most students to be related to the teacher and to one another (Gagnon, 1989). These teachers often lacked any type of certification or advanced formal education, and over 50% were under the age of 21 in the mid-1850s (Zirkel, 2015). Many teachers and public school leaders were charged with trying to impose their ideologies and beliefs upon the children they taught (Gagnon, 1989; Tyack, 1974). Teachers were considered role models and expected to have exemplary conduct at all times (Hooker, 1994).

During the 19th century, American schools had few law suits settled in the courts (Tyack & Benavot, 1985). Teachers could be dismissed for almost any reason and had very little, if any, legal recourse (Tyack, 1974). This was especially true for women. Most teachers were white males who also held other jobs within the community during the off season of their teaching

assignment (Tyack, 1974). The Virginia Gazette posted this notice in the local paper advertising for a school teacher on August 20, 1772:

Wanted Immediately: A Sober diligent Schoolmaster capable of teaching READING, WRITING, ARITHMETICK, and the Latin TONGUE... Any Person qualified as above, and well recommended, will be put into immediate Possession of the School, on applying to the Minister of Charles Parish, York County.

As more and more students attended public schools, more and more teachers were needed to teach (Katz, 1976). Communities that had 100 or more established homes were required to employ a teacher or face being charged a yearly fine (Katz, 1976). In the mid-1800s, women became more sought after to teach (Frazier, 1938). This was especially true for children under the age of fourteen. One Littleton School Committee Member wrote this in Littleton, Massachusetts in 1849:

God seems to have made woman peculiarly suited to guide and develop the infant mind, and it seems . . . very poor policy to pay a man 20 or 22 dollars a month, for teaching children the ABCs, when a female could do the work more successfully at one third of the price.

Men like Harris, Dewey, and Mann helped to “modernize” and organize education and make schools more democratic, universal, and non-sectarian (Resse, 2000). These common school developers geared organization of schools to reduce poverty, control crime, teach American citizenship, and create a common ground for society (Thattai, 2001). When these more “modernized” public schools were first introduced into society, there was a higher expectation that exemplary teachers would teach students in a variety of subject matter (Allen, 1990; Gagnon, 1989; Hooker, 1994). The teachers were expected to be knowledgeable, ethical, and model citizens to help mold students into outstanding Americans (Angus, 2001; Lockwood, 2009; Tyack, 1974; Vacca, 2005). Even in the very early establishment of schools, a teacher’s personal life was meticulously scrutinized by the community and school administrators were

expected to monitor teacher conduct and report to the school board or education agencies any misconduct (Tyack, 1974). This conduct was loosely outlined from one place to another and was dictated by gender. As times changed, the schools became more bureaucratic and political and the expectations for teachers became more developed (DeMitchell & DeMitchell, 1990).

As the teacher's right to privacy and right to due process emerged, versus the students' rights to a safe and high quality education, more litigation became prevalent. Reglin (1992) described how, "The lawsuit is the major weapon in the arsenal of those who wish to change American public schools" (p. 26). As these lawsuits have given way to changing laws, policies, and procedures, it is difficult for the school administrator to keep a firm grasp on what causes a teacher to have his/her teaching certificate revoked. The administrator may become lost in the sea of litigation information (Zirkel, 2015).

History of the Teaching Certificate

Issuing a license to a teacher is not a new practice. There have been traces of this practice since Roman times (Angus, 2001). In Colonial times, requirements and teacher certification loosely existed through the town clergy; however, there was no standard or formal teacher certification process in most states until the late 1800s (Elsbree, 1939). These requirements varied greatly from state to state and from county to city schools within the same state (Essex, 2009; Labue, 1960).

Public school teachers employed in the United States are required to hold some type of certification in order to prove their ability to serve as an educator (Zirkel, 2015). According to Labue (1960), "The history of teacher certification in the United States--the legal authority for a person to teach in the public schools--since Colonial times, has been characterized by vast differences in regulations, practices, and standards" (p. 147). Until the mid-1800s, most teachers

were issued a teaching certificate by local ministers or local agencies based on a score from an oral or written examination and no prior education was required (Angus, 2001). This was often due to the scarcity of available teachers who were educated enough and available to teach students (Elsbree, 1939). Although there were general criteria like: the “capacity to govern a school, moral character, and academic attainments” (Kinney, 1964, p. 40), practices varied widely across states, and selection standards were not rigorous. In 1919, Vermont was the first state to require that a teacher have professional training in order to be issued a teaching certificate and abandoned the practice of issuing certificates based on a score on an examination (Angus, 2001). Soon after, most states followed and required college transcripts and degrees for certification (Kinney, 1964).

Labue (1960) classified four periods as a timeframe for the evolution of the teaching certificates. The first period was the Colonial period-1789 when there was first an interest in considering a certification for teachers; however, very little concerning the education of the teacher was developed during this time. Schools were almost exclusively organized and ran by community religious leaders, local boards, or local government officials (Spring, 1994). The next time period, 1789-1860, was classified as a period of a more formalized interest in teacher certification. The involvement of the state government in the certification process emerged during this time. From 1860-1910, formal teaching colleges, liberal arts colleges, and universities began to educate teachers. During the late nineteenth century, a shift started to emerge with states issuing teaching certificates with New York, Rhode Island, and Arizona leading the way. In 1899, New York was the first state to have a certification process that was uniformed and under the control of the state (Angus, 2001). The last period emerged around 1910. By 1930, 38

states required some type of teaching certification in order to teach in a public school setting (Angus, 2001). These requirements were outlined at the county and state levels.

Revocation or Suspension

The literature on the revocation or suspension of teaching certificates is limited (Zirkel, 2015). Each state has laws pertaining to its education agencies and the revocation or suspension of certificates. “A certificate to teach is not a contract between the teacher and the state. It is held subject to the laws governing its issuance providing for its forfeiture” (Frazier, 1938, p. 141). By following statute, any state has the authority to revoke or suspend a certificate it has issued (Essex, 2012). Having a teaching certificate revoked is an egregious act and is a very serious matter for the teacher, school administrators, local school board, and state board of education (Zirkel, 2015).

It has been established that the states have the right to revoke or suspend a teacher’s certificate. In the past, the debate was who was entitled to revoke or suspend the teaching certificate (Cook, 1927; Essex, 1999; Frazier, 1938; Newton, 1933). The first revocations were done by local school boards (Frazier, 1938). The state authorized local superintendents and officers to revoke teaching certificates (Cook, 1927). In two early cases from the late 1800s, *Superintendent of Common School of Daviess County v. Taylor* (1899) and *Lee v. Huff* (1896) were argued in order to determine who in fact had the legal authority to revoke a teacher’s teaching certificate (Cook, 1927; Essex, 1999).

In many cases, teachers have argued that the revocation or suspension of their teaching certificate were due to personal, arbitrary, or capricious reasons, were unconstitutional, or lacked substantial evidence to prove the charges (Zirkel, 2015). This was especially concerning for teachers when the school boards had the authority to simply revoke a certificate for causes that

very well may have been due to personal, arbitrary, or capricious reasons (Newton, 1933).

During the last 30 years, much case law has developed and changed the process of revocation or suspension of teaching certificates in all 50 states (Zirkel, 2015).

Between the years of 1870-1900, the county superintendents were charged with issuing teaching certificates and the revocation or suspension of teacher's certificates (Cook, 1927).

Around the turn of the century, the states started to make the issuance of certificates, revocation of certificates, or the suspension of certificates more centralized and the states slowly became that authority (Newton, 1933).

In 1927, Cook completed a study that showed only 12 states still legally authorized a county superintendent to revoke or suspend a teacher's certificate. All other states had centralized this authority to the state level (Newton, 1933). Soon after 1927, most states followed and the revocation of a teacher's certificate was only done at the state level.

Causes of the Revocation or Suspension of Certificates

In the past, teachers had their teaching certificates revoked or suspended for many reasons (Essex, 1999). Many times, the reasons have been very obvious and the teacher did not fight the revocation or suspension; yet, in many other instances, the teacher has sought to have the revocation or suspension legally reversed (Essex, 2012). Zirkel (2015) completed an empirical study of 127 cases, between the years of 1985-2014, found that more teachers have their certificates revoked for "criminal-like" conduct than any other reasons. Following closely included "performance" issues followed by ethics violations.

According to Beezer (1990), criminal conduct, immorality, insubordination, homosexuality, moral turpitude, incompetency, unfitness, unprofessional conduct, sexual contact with students, and other just and good causes make up the majority of the reasons teachers have

had their certificates revoked or suspended. It is important for administrators to be knowledgeable about the reasons teaching certificates are revoked or suspended in order to be able to react in a swift and legal manner if a teacher's misconduct requires the administrator to do so (Essex, 2015). This understanding may help to protect the students, teachers, and the administrator when necessary.

Incompetency

Incompetency is one of the most widely used reasons to dismiss a tenured teacher. "Incompetency is considered a vague term in many respects" (Essex, 1999, p. 182). Courts have ruled that a teaching certificate is as prima facie proof that a teacher is competent. Because of this, the dismissing board has the burden to prove incompetency.

Incompetency is often used to describe teachers who exhibit a lack of knowledge of the subject matter, who are unwilling to teach the subject matter as required, have an inability to work with parents, students, administrators, or coworkers in an appropriate manner, exhibit weak disciplinary practices, have low classroom management skills, or have attitudinal deficiencies. Many cases of incompetency have been proven in the court systems. In order to prove that a teacher is truly incompetent teachers may be evaluated. Documentation must be presented of evidence that the teacher is incompetent and procedural guideline must be followed on a consistent basis (Fischer, Schimmel, & Stellman, 2007).

Insubordination

Essex (1999) defined insubordination as "The willful failure or inability to obey a reasonable and valid administrative directive" (p, 183). Knowing if a teacher will be insubordinate before the teacher is offered a contract is almost impossible to predict. Administrators and boards charged with hiring qualified teachers depend on measureable traits

including academic degrees, experience, and references. It is impossible to measure ethical traits like work habits and the attitude of a teacher before the teacher is hired. In most cases of insubordination, the teacher has a long history of not doing what is asked of him or her. Most of the time these insubordinate traits surface after the teacher has been tenured. In other cases, it could be that one particular very serious issue happened one time that resulted in a charge of insubordination. Usually, a teacher has been given many verbal and written warnings before insubordination charges are brought against the teacher. Insubordination cases involving the revocation or suspension of a teacher's teaching certificate must be a serious case of insubordination with dated documentation of the misconduct. The insubordination charges must be reasonable and unbiased against the teacher. In most cases, a pattern must be established that the insubordination was evident and that the teacher refused to comply with a reasonable and unbiased administrative request. If not, the charges are often hard to prove.

Immorality/Unfitness

Immorality is a subjective term that has been given a number of definitions (Reutter, 1994). When a teacher's misconduct violates the ethics within a given school community it is often labeled as immoral (Delon, 1978). In many states, the terms immorality and "unfitness to teach" are used interchangeably (Fulmer, 2002).

Immorality is also defined as not having integrity, conduct unbecoming of a teacher, unprofessionalism, sexual contact with a student, moral turpitude, homosexuality, or other acts that may impede on the teacher's ability to be effective in the classroom setting (Essex, 1999). The most highly used definition was defined by the Supreme Court of Pennsylvania in the case of *Horosko v. Mount Pleasant Troop School District*, (1939) "Immorality is a course of conduct as offends the moral of the community and is a bad example to the youth whose ideals a teacher

is supposed to foster and elevate.” Although immorality accounts for a large majority of dismissals, teachers and administrators are often confused about what actually constitutes immorality in the eyes of the law (Fulmer, 2002).

Immorality was once used to revoke the teaching license of teachers for violating any community value or not having certain morals as appreciated by a given community (Frazier, 1938; Freeman, 2000; Fulmer, 2002). The moral exemplar test was most often applied when terminating a teaching contract, or revoking or suspending a teaching certificate (DeMitchell, 1993). After the Morrison case in 1969, “A new theory of causation was born --nexus” (DeMitchell, 1993). Courts are now finding that immoral behaviors and being unfit to teach must meet the “nexus test” before it can be used to revoke or suspend the license of a teacher. If a nexus cannot be shown between the behavior and the teacher’s ability to teach, courts may deny revoking the teacher’s teaching certificate and inherent property right (Bradley, 2005).

Although the nexus test appears more often in findings of the courts (DeMitchell, 1993), the nexus test did not take the place of the moral exemplar test; it was layered on top. “Two theories of causation regard the problem of what role a teacher’s private life plays in the employment decisions have been advanced by two parties competing for ownership of the problem” (DeMitchell, 1993). DeMitchell described these as theory of the community’s beliefs, which is the theory of moral exemplar involving the community and the theory of nexus or the profession. Because immorality holds a vast array of definitions, caution is suggested when using immorality as the grounds for revoking a teacher’s certificate (Delon, 1978).

Almost all states have statutory laws that allow for a revocation of a teacher’s certificate based on immorality and moral turpitude. The states that do not have specific laws regarding

immorality use statutory grounds of unfit, unprofessional, or good and just cause in place of the term immorality.

Homosexuality

Homosexuality was once an automatic reason to revoke a teacher's certificate. The act of homosexuality was seen as a direct conflict with one's ability to work with young and impressionable children. Homosexuality was judged as unprofessional and immoral behavior that made one unfit to teach. Many court cases have evolved from the fact that a teacher admitted or openly practiced a homosexual lifestyle. *Morrison v. State Board of Education* (1969) has been used as a landmark case about homosexuality (Essex, 1999).

For several decades the courts have ruled inconsistently about the rights of homosexuals to hold a teaching certificate. During the past two decades, the courts have found more and more that a nexus must exist between the alleged misconduct of homosexuality and claims of unfitness to teach and immorality (Underwood & Webb, 2006). However, in some states the laws still define homosexuality as illegal and immoral when discussed in the classroom setting. In Alabama, "Classes must emphasize, in a factual manner and from a public health perspective, that homosexuality is not a lifestyle acceptable to the general public and that homosexual conduct is a criminal offense under the laws of the state." Alabama State Code § 16-40A-2(c)(8). In South Carolina, "the program of instruction provided for in this section may not include a discussion of alternate sexual lifestyles from heterosexual relationships including, but not limited to, homosexual relationships except in the context of instruction concerning sexually transmitted diseases." S.C. Stat. § 59-32-30(5). Arizona mandates that "no district shall include in its course of study instruction which . . . (1) promotes a homosexual life-style . . . (2) portrays homosexuality as a positive alternative life-style . . . (3) suggests that some methods of sex are

safe methods of homosexual sex.” AZ Rev. Stat. § 15-716(c). These laws have created issues for teachers who are homosexual, and the laws vary greatly from one state to the next.

Unprofessional Conduct

Because of the role a school teacher plays in teaching students what proper conduct is, how to show integrity, and exhibit the morals and values of the community, it is expected that a teacher’s personal conduct should be elevated to a higher standard than that of other professions (Lockwood, 2009). Since the beginning of the role that the teacher played in the community, it was expected that the teacher would serve as a role model for the students he/she taught (Valente & Valente, 2001). A teacher’s conduct is being judged by students at school and in the community where a teacher may be after school hours. Fulmer (2002) described how courts dissect the employer’s intrusion into a teacher’s privacy and determine whether the intrusion was reasonable. As lifestyles have changed, and community norms have changed, so have the expectations of the role of the teacher. Because there are so many different accepted norms between one community to the next and one state to another, court cases involving teacher unprofessional conduct have been inconsistent through time (Lockwood, 2009).

School boards have the responsibility to make sure that students are safe and educated (Imber, 2001). In the past two decades, more freedoms and community acceptance seems to be the trend with accepting teacher conduct that at one time was considered unprofessional and local boards and education agencies would have sought the revocation or suspension of a teacher’s certificate (Zirkel, 2002). The courts are finding that a nexus must be present in order to revoke a teacher’s certificate for unprofessional conduct (Weldon, 2003; Zirkel 2002). If a nexus cannot be explained between the teacher’s alleged unprofessional conduct and the

teacher's ability to perform his/her duties, the teacher's certificate cannot legally be revoked (Hooker, 1994).

Criminal Activity

“Charges of criminal activity committed by public school teacher will normally result in dismissal, based on general unfitness, immorality, and unprofessional conduct” (Essex, 1999, p. 189). When the criminal act is severe, the revocation of the teacher's certificate(s) is generally sought (Beezer, 1990). The mere act of the criminal conduct may result in the revocation of the certificate even when the courts may have found the teacher not guilty. This is because many courts have decided that the criminal act is what justifies the revocation of the certificate, not a conviction. Depending upon the state who issued the certificate, a teacher who is convicted of a felony offense or a crime involving moral turpitude will result in a revocation by law. In other states, a string of misdemeanors will be enough substantial evidence to revoke the teacher's certificate.

Teachers have had their teaching certificate revoked for sexual acts that have been deemed as immoral or unfit to teach. Drug possession charges is an area that has lawfully allowed for a teacher's teaching certificate to be revoked. The teacher may be acquitted for all legal purposes, but school boards may continue the process of seeking to revoke the teacher's license based on the facts by charging the teacher with unprofessional conduct or unfitness to teach because a nexus does exist between the conduct and the effectiveness of the teacher as in the (Bradley, 2005). There have been many cases where a teacher was cleared of criminal charges or served time for a conviction and the local school board allowed the teacher the opportunity to come back to work, but the state superintendent revoked the teacher's license in order to protect the welfare of students in the state. There is a very delicate balance between the

individual rights of the school teacher and the best interest of the state. Equal protection was not a defense under the statute because teachers who are entrusted with the well-being of children, are at different level of expected professionalism.

Sexual Contact with Students

“Many state statutes include provisions that require teachers to impress upon the minds of their students, principles of truth, morality, temperance, and humanity” (Essex, 1999, p. 191). The courts have a history of being firm with teachers who violate students with sexual offenses (Imber, 2001). According to the National Center for Education Statistics (2015), from 2001 - 2005 there were 2,500 instances of teachers being accused of sexual misconduct. Of those, 69% of the cases involved children. Most of the reported abuse (90%) involved men as the perpetrator. In a majority of the reported cases, the teacher resigned or was dismissed to avoid litigation.

The Associated Press found that there were an estimated 2,500 cases of sexual misconduct involving school teachers (Stover & Cook, 2009). All of these cases resulted in the teachers’ certificate being revoked. School boards have listed sexual misconduct by a teacher as one of the top 10 concerns (Stover & Cook, 2009). School systems are requiring professional development training in the areas of sexual harassment and prohibited sexual contact with students. Sexual misconduct by teachers has been the most clearly defined by courts. It is simply not tolerated.

Many of the sexual misconduct cases against educators have been proven by forms of technology that has invaded the United States during the past two decades (Maxwell & Holovach, 2007). Teachers have sent text messages, taken pictures, and emailed students pertaining to personal matters. When the sexual relationship is exposed or the student notifies

school personal or authorities, the simple search of a cell phone and email records will often verify the allegations made by the student (Maxwell & Holovach, 2007).

Good or Just Cause

“Just cause is designed to provide the district broader latitude when dismissing teachers for causes not specifically identified in state statutes” (Essex, 1999, p. 196). Teachers are still given due process rights when required. This means that a teacher is being charged with misconduct that may not fall under a specific statute; however, the revocation cannot be related to personal, arbitrary, or capricious reason.

The burden of proof lies directly with the school board and evidence must be presented to show that the performance and effectiveness of the teacher must have been compromised (Bradley, 2005). Good or just cause is often seen as a vague charge and has been challenged in the courts more often than not (Valente & Valente, 2001).

The Teacher as a Role Model

Parents and community leaders have always held an interest in the moral character of teachers (Angus, 2001; Katz, 1976; Spring, 1994). In Colonial times, most communities required that the local minister approve and appoint the teachers who were allowed to guide, direct, and teach its children (Angus, 2001; Elsbree, 1939). As late as the 1930s, over two-thirds of the states required teachers to be of good moral character and superior role models for children and listed this as a requirement in policy (Fuller, 1982).

Teachers have alleged that their lifestyle choices should not be tied to their ability to effectively educate students (Reutter, 1994). The burden of proof is directly placed in the laps of the school officials to determine if the lifestyle choices directly impact the teacher’s performance in the classroom and constitutes the revocation or suspension of a teacher’s certificate. School

officials often consider the teacher's past teaching history and conduct as a grounds to dismiss the teacher and start the proceeding to have a teacher's certificate revoked. If the teacher has an exemplary teaching record obtained over a period of years, the teacher may be allowed to maintain his/her teaching certificate even if the board dismisses the teacher depending upon the level of severity of the charge.

A person's lifestyle choices were seen as ethical or unethical depending on how the community believed (Pinker, 2008). This caused conflict and debate in the community (Fuller, 1982). Teachers would have their certificates revoked or suspended by the local school board when the school board found the teacher guilty of a variety of offenses they labeled as not being a role model for the students he/she taught. In many cases, this revocation or suspension was argued as being unjustified by the teacher and legal action occurred because the definition of being a role model was considered vague (Zirkel, 2015).

Many teachers who have had their certificates revoked or suspended fought back stating that the "role model" view of teachers is dying out or becoming obsolete (Hooker, 1994). This first became prominent in the case of *Morrison v. Board of Education* (1969) when the Supreme Court of California reversed the decision of the California Board of Education to revoke Morrison's teaching certificate for immorality, exhibiting unprofessional conduct, and moral turpitude (Essex, 2013). This same court laid out guidelines that would be used from 1969 until the present day. These included the following:

1. Likelihood that the conduct may have adversely affected students or fellow teachers;
2. The degree of such adversity anticipated;
3. The proximity or remoteness in time of the conduct;
4. The type of teaching certificate held by the party involved;
5. The extenuating or aggravating circumstance, if any, surrounding the conduct;
6. The praiseworthiness or blameworthiness of the motives resulting in the conduct;
7. The likelihood of the recurrence of the conduct;

8. The extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the teacher involved, or other teachers.

The case of *Morrison v. Board of Education* (1969) is in direct contrast of the case of *McLellan v. Board of the St. Louis Public Schools* (1885) where the Missouri Court of Appeals found that,

The cross-bill alleges various acts of adultery by plaintiff in St. Louis and elsewhere, with various women during the years 1865, 1875 and 1876, and other gross indignities from plaintiff to his wife in 1875 and 1876. There may be causes for the removal of a teacher affecting the discipline of the school over which he presides, entirely outside of any question of his learning, ability, power of enforcing discipline, or moral qualities, and outside of his own acts, as in the present instance. It was not for the board of directors to prejudge, or even to examine, the charges brought against this teacher by his wife; but the mere fact that charges of this character were brought against him, and that the fact had become notorious, rendered it highly inexpedient that he should remain as a teacher of higher classes frequented by youths between the ages of 14 and 20. It is unnecessary to dwell upon this. Such would be the common sense of all fathers and mothers having a parental regard for the morals of their children.

This shows the historical changes that have amended the views of the courts on issues dealing with the revocation of a teacher's certificate and introduced the "substantial nexus" finding (Hooker, 1994). The two-pronged test was born from the "substantial nexus" finding. In order to deny the nexus claim, the court asked two questions: (1) Has damage been done to the students, faculty, or school? and (2) Could the conduct resulting in that damage have been corrected had the teacher's superiors warned him? "Typically, the nexus will not be found unless (1) the incident involved the student population or youth of a similar age; (2) the incident was widely publicized; (3) the incident occurred in a "public place" and thus the teacher forfeited his right to privacy; or (4) the incident was just part of a larger, irremediable, chronic "problem" or behavior pattern" (Hooker, 1994).

Tyack and Benavot (1985) argued that the "law (is) responsive to powerful social changes and (is) an index of power . . . (we) suggest a connection/s between litigation and the

changing character of authority and power in public education” (p. 347). Teachers make unintelligent choices or simply lack the legal knowledge to protect themselves from litigation (Essex, 1999; Reglin, 1992). Studies show that many school employees report that they have been threatened with a law suit on at least one occasion. Because of this, teachers, administrators, and superintendents must understand how school law impacts their lives each day as they enter the school building (Essex, 1999; Johnson & Duffett, 2003; Reglin, 1992; Tyack & Benavot, 1985).

School district may incur large amounts of financial burden as a result of law suits with increased insurance premiums, legal fees, and settlement awards when litigation is brought against teachers (Barrios, Jones, & Gallagher, 2007). If teachers understood the law and how to protect their teaching certificate, many of these cases could have been avoided (Rich, 1987).

Due Process

“According to many teachers and school leaders, litigation and due process requirements often allow unreasonable people a way to “get their way” even when their demands are unwarranted” (Johnson & Duffett, 2003, p. 3). In some instances, teachers cry out that their due process rights have been violated when their teaching certificate is revoked or suspended when in fact that they have not been, and it is up to the courts to justify the revocation or suspension of a teacher’s certificate (*M. T. v. Department of Education*, 2010). Reviewing cases involving civil rights issues and segregation issues, it seems feasible that many law suits are warranted (Johnson & Duffett, 2003, p. 13).

Equal protection under the law and due process of law are rights under the United States Constitution (Reutter, 1994). When teachers are denied their due process rights, the courts

historically have reversed the dismissal of the teacher or the revocation or suspension of the teacher's certificate.

Tenure

When a teacher is tenured, the revocation or suspension of a teacher's certificate may be more complicated. Tenure or continuing service status is established by state statute and is a way to protect good teachers from arbitrary and capricious dismissal by school boards and school authorities (Essex, 1999). Establishing tenure is also considered establishing a property right. A teacher can lose tenure under certain circumstances. In most cases, a tenured teacher should receive due process rights before being dismissed. Customarily, tenure is obtained after a period of three consecutive years of service and being contracted for the fourth year. School systems can get tangled in serious legal issues if tenure is denied to a teacher who has earned it. The three years before tenure is considered a probationary period. During this probationary period, a teacher can be dismissed without due process. There are instances when a probationary teacher is allowed due process. A teacher's due process rights could be exercised during this probationary period when a teacher has been dismissed arbitrarily or in a capricious manner, when the teacher's constitutional rights have been violated, if a teacher is able to demonstrate that s/he was dismissed for personal or political issues, or if a teacher is dismissed before the current contract has expired.

Probationary teachers must receive a timely notice of nonrenewal and all policies and procedures must be in place. In some cases, teachers did not receive a timely notice or procedures and policies were not followed and by default, the teacher received tenured status. When this happens, the teacher is legally tenured. A teacher who is on a probationary status is considered to have limited property interest. This is the reason that due process rights are denied

to probationary school teachers. After the contract ends, the teacher and the district are no longer in a legally binding contract and the teacher loses the inherent property right (Essex, 1999). If there is no contract, a property interest is dissolved.

Summary

The review of the literature provides affirmation that the revocation or suspension of a teacher's certificate is an area of extreme concern for school administrators. A vast amount of researchers were provided to explain the trends and patterns that have developed through case law and court decisions concerning the suspension and revocation of teachers' certificates. While the revocation and suspension of teaching certificates has been a process practiced for over a century, the court decisions and judicial opinions continue to reshape the reasons certificates may be legally revoked or suspended.

Courts are now finding that a nexus must be present in order to revoke or suspend a teacher's teaching certificate. The watershed case for the nexus test was in 1969 in the Morrison ruling. The Morrison standard is still used today and is geared more toward immorality and moral turpitude and less in cases involving insubordination or incompetency (Hooker, 1994). The Morrison standard is used in cases seeking termination or dismissal of a teacher and in cases involving the revocation or suspension of a teaching certificates across the United States.

School administrators and teachers often worry about being sued and having the certificate(s) that they have worked so hard for revoked or suspended because, "Litigation and the threat of litigation often take a personal toll on professionals in education. An unwarranted charge and the prospect of dealing with litigation can create enormous anxiety and anguish, sometimes enough to derail a career" (Johnson & Duffett, 2003, p. 189). Many school

administrators report that this threat is always on their mind and their lack of knowledge concerning school law is a barrier to being a strong and confident public school administrator.

School districts win more court cases than not; however, the financial burden and ongoing threat of litigation creates a school environment of fear and uncertainty for school administrators and educators (Zirkel, 2006). Kallio and Valadez (2002) described how school districts are reactive to litigations instead of being proactive when it comes to training school administrators in matters involving public school laws. School administrators need to have a working knowledge of school law involving the process, reasons, and patterns that teachers have their teaching certificates revoked. With this knowledge, a school administrator is better able to direct and lead teachers.

CHAPTER III:
METHODOLOGY AND PROCEDURES

Introduction

This study was a purposeful, qualitative, document-based inquiry that is focused on case law. The particular interest of the study was to investigate law cases in an effort to identify trends, patterns, and outcomes in court decisions involving the revocation or suspension of teachers' certificates. A period of time from 1853-2015 was investigated in order to develop and analyze an expansive range of the results. Through the strategic collection, examination, and review of relevant court cases, insights gained from the results may be used for public school administrators and school districts in the K-12 setting to protect school districts from litigation and assist teachers in maintaining their certification, avoiding litigation, and provide insight into the future of educational legal issues. Both primary sources and secondary sources were reviewed to provide a substantive background for this analytical and interpretive study.

Research Design

The researcher in this study served as the participant observer. The methodology utilized in this study was document-based in order to explain, understand, validate, and evaluate the data. The research is geared towards records or documents, court cases, and compels the researcher to be the key instrument of data collection and analysis.

The research design is intended to be both qualitative and descriptive. State and federal court cases were used involving the revocation or suspension of teachers' certificates from the West Digest System to study the issues, principles, relationships, trends, and outcomes.

Research Materials

The materials used in this study included court cases decided by the United States Supreme Court, the United States Courts of Appeal, the United States Federal District Courts, and state appellate courts. Cases in this research were selected from West Education Law Reporter, located through key number 141E (Education) with the subcategory defined as 452 (Revocation or Suspension). The West Digest System is one of the most extensive resources in legal research. All cases pertaining to the revocation or suspension of teaching certificates in K-12 schools were identified, reviewed, and analyzed, resulting in a large quantity of raw data.

Research Questions

1. What are the issues in court cases involving the revocation or suspension of a teacher's certificate in education?
2. What are the outcomes in court cases when a teacher has had his/her teaching certificate revoked or suspended?
3. What are the trends in court cases involving the revocation or suspension of a teacher's certificate?
4. What legal principles for educators may be distinguished from a study of court cases involving the revocation or suspension of teacher's certificate?

Methodology

The purpose of this research was to investigate issues, outcomes, and trends in cases pertaining to revocation or suspension of a teacher's certification. A document-based research methodology was selected for the purpose of this study and was selected in order to explain, understand, validate, and evaluate the data. This qualitative study was geared towards court cases decided by the United States Supreme Court, the United States Courts of Appeal, the United

States Federal District Courts, and state appellate courts. This research is historical in nature, as the court decisions span the years 1853-2015.

Merriam (2001) described that case studies can be distinguished as being particularistic, descriptive, and heuristic. Because the intention of this study is to determine issues, principles, trends, and outcomes among cases, a qualitative research approach was conducted. By studying court cases, researchers and others are better able to determine outcomes for similar situations in the future which may serve as guidelines for settling like conflicts (Kunz, Schmedemann, Downs, & Bateson, 2000). According to Cresswell (2007) there is no one particular way to develop a qualitative study; however, there is a basic framework that certainly should be adhered to as researchers determine a qualitative approach.

According to Merriam (1998) there are three significant types of documents most often utilized in qualitative research. The three types include public records, personal documents, and physical materials sometimes referred to as artifacts. The framework of a qualitative study is designed around identifying a problem for a study, gathering a sample, collecting and analyzing the data, and finally, organizing, summarizing, and interpreting the data in written form (Merriam, 2002).

According to McMillan (2008), a true in-depth analysis demands that the researcher follows three steps when analyzing documents: data organization, data summarization, and data interpretation (p. 283).

Document analysis includes studying excerpts, quotations, or entire passages from organization, clinical, or program recorded, memoranda and correspondence, official publications and reports; personal diaries; and open-ended written responses to questionnaires and surveys. The themes, patterns, understandings, and insights that emerge from fieldwork and subsequent analysis are the fruit of qualitative inquiry. (Patton, 1990, pp. 4-5)

A research method is chosen based on the topic being investigated (Silverman & Marvasti, 2008). Qualitative research does not focus on statistics (Maxwell, 2005). Qualitative research strives to explain major trends and themes that rise to the surface from analyzing the gathered data (Schreier, 2012). Qualitative research allows the researcher to focus on the study in greater detail and with greater precision (Patton, 1990).

This study took a grounded theory approach. Grounded theory was first defined by Glaser and Strauss in 1967. Grounded theory seeks to compare data as categories are emerging and theoretical sampling of varied groups in order to compare and contrast the collected data (Cresswell, 2003). According to Merriam (2009), data collected in a grounded theory study may consist of interviews, observations, and documents that are used to explain the study. Grounded theory seeks to develop and saturate the concepts until an explanation of the phenomenon is reached (Glaser & Strauss, 1967).

In historical research, documents may be the only forms of data that a researcher has available. Merriam (1998) explained that documents may be viewed the same way as using notes from an interview. The information on the document is read much the same as reading interview notes or other forms of written data that has been gathered. This type of qualitative study is a way of examining the written data and forming relationships between the data.

Berg (1998) identified five areas of significance for conducting historically based research: (1) to uncover the unknown, (2) to answer questions, (3) to identify the relationship that the past has to the present, (4) to record and evaluate the accomplishments of individuals, agencies, or institutions, and (5) to aid in our understanding of the culture in which we live.

Investigating and compiling historical data includes steps that are intertwined:

1. Identify the topic, research problem, or question
2. Collect data or review literature
3. Evaluate materials
4. Data analysis
5. Preparation of narrative report. (Johnson, & Christensen, 2008)

Public records functioned as the predominant data source for this study and consist of court cases. Court opinions are public records and these opinions provide an abundance of information for the study. This qualitative study investigated the written opinions of the court in an attempt to gain new knowledge about the revocation or suspension of a teacher's certificate. The findings in this study will be useful in the development of policies and guidelines for school administrators. School administrators may use this study to become more knowledgeable about the issues, trends, patterns, and outcomes involving the revocation or suspension of teaching certificates in order to become better leaders and aid teachers.

Data Collection

Data were collected using relevant court cases pertaining to the revocation or suspension of a teacher's certificate. Garner (1999) described a case brief as being a written statement setting out the legal contentions of a party in litigation, esp. on appeal; a document prepared by counsel as the basis for arguing a case, consisting of legal and factual arguments and the authorities in support of them (p. 186).

According to Cresswell (2007), data collection must be broad and extensive when a research study is completed in order for the study to be considered valid and reliable. Most of the data collected for this study was derived from the Westlaw online database.

The West Digest System is the most comprehensive system for researching law cases in the United States and consists of hundreds of topics alphabetized according to area of law. For the purpose of this study, the researcher examined the West Education Law Digest Key Number System and determined the appropriate key number to be 141E (Education) with the subcategory defined as k452 (Revocation or Suspension). The exact search included The Key Numbers, 141E Education, II. Public Primary and Secondary Schools, k10-k909, (D) Teachers and Education Professionals k440-k649, 448 Certificate or License, then, 452 - Revocation or Suspension (1) In general; grounds. The jurisdiction included all State and Federal cases. Of the 180 cases listed, many were listed multiple times due to appeals. Other cases were not related to the specific area of revocation or suspension of a teaching certificate. The review of the West Digest System resulted in 180 cases involving the revocation or suspension of teachers' teaching certificates between the years of 1853-2015. The researcher evaluated each case and only included cases that involved the revocation or suspension of a certified teacher's teaching certificate or license in the K-12 public school setting. This study encompassed a total of 81 of those cases; of the 180 cases, many were the same case repeated on appeals, while other cases did not relate to the research questions in this study and were eliminated. Eliminated cases included cases that involved teachers who were being terminated or dismissed from their position due to a variety of issues including past criminal convictions, teachers arguing a violation of their First and Fourteenth Amendments, cases involving substitute teachers who did not hold a license or certification, support staff, administrative rulings, a retirement case, teacher union cases, proper certification to hold the office of superintendent, cases involving authority to reexamine teachers, and cases involving who had the authority to revoke a teacher's license.

After screening cases and determining which cases were most relevant for the researcher, the cases were arranged in numeric order from the oldest to most recent. Using the Westlaw online database, each case was printed, reviewed several times to gain understanding, and finally, briefed and analyzed for the purpose of the study. These cases were the primary source of data used for this study.

Statsky and Wernet (1995) provided a framework for outlining case briefing. Each case used in the research was analyzed using this framework:

1. Citation--identifying information that will enable an individual 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)

State statutes may differ from one state to the next; however, all 50 states have statutes in place concerning the revocation or suspension of teaching certificates. For example, almost all states have statutory laws that allow for a revocation of a teacher's certificate based on immorality and moral turpitude. The states that do not have specific laws regarding immorality use statutory grounds of unfit, unprofessional, or good and just cause in place of the word immorality. In order to better help distinguish the difference in the statutory differences, the researcher gathered data in regard to each state's statutes on causes that result in a teacher having his/her teaching certificate revoked or suspended. The researcher strategically combed through each state department's website in order to locate the causes that result in a certificate being revoked or suspended, or the researcher did a Google search including the state name and the words "state statute for revocation or suspension of teaching certificates" in order to search for

the causes in each states. The researcher then chose the parts of the statute that identified the cause. This was done in order to avoid using the entire statute word-for-word. After the completed table was compiled, the result was a state-by-state table of the causes of the revocation or suspension of teaching certificates (see Table 1).

Table 1

State-by-State Causes of Revocation or Suspension

State	Revocation or Suspension Causes
Alabama	Teacher's certificate may be revoked or suspended for immoral conduct, unbecoming, indecent behavior, just cause, alteration of a certificate, or if a teacher's certificate has been revoked or suspended in another state.
Alaska	Teacher's certificate may be revoked or suspended for moral turpitude, noncompliance with school laws or regulations, violations of professional code of ethics or standards, or violations of contractual obligations.
Arizona	Teacher's certificate may be revoked or suspended for immoral or unprofessional conduct, evidence of unfitness to teach, failure to comply with various state statutory requirements, failure to comply with student disciplinary procedures, teaching sectarian books or doctrine, or conducting religious exercises.
Arkansas	Teacher's certificate may be revoked or suspended in violations of professional code of ethics or standards for cause that is not arbitrary, capricious, or discriminatory as allowed.
California	Teachers may have a certificate revoked or suspended for immoral or unprofessional conduct, or for persistent defiance of, and refusal to obey, the laws regulating the duties of persons serving in the public school system, or for any cause that would have warranted the denial of an application for a credential or the renewal thereof, or for evident unfitness for service. This includes dishonesty, incompetence, one who has been found to be insane by a federal or state court, who has been judicially determined to be a mentally disordered sex offender under the law, one who has been convicted of any narcotics offense alcoholism, or breach of contract.
Colorado	Teacher's certificate may be revoked, or suspended if certificate has been obtained through fraud or misrepresentation; teacher is mentally incompetent; teacher violates statutes or regulations regarding unlawful sexual behavior, use of controlled substances, or other violations.
Connecticut	Teacher's certificate may be revoked or suspended if certificate has been obtained through fraud or misrepresentation; teacher has neglected duties or been convicted of a crime involving moral turpitude; teacher has been neglectful of duties; or other due and sufficient cause exists.

(table continues)

State	Revocation or Suspension Causes
Delaware	Teacher's certificate may be revoked or suspended for fraudulent means to obtain a teaching certificate; falsified official school records, violating Student Testing Program; convicted of crime against a child constituting a misdemeanor; conviction of a felony, possession of a controlled substance; immorality, incompetence, misconduct in office, willful neglect of duty, disloyalty or misconduct; had a license or certificate revoked or voluntarily surrendered in another jurisdiction for cause which would be grounds for revocation; failure to comply with any of the statutory or regulatory requirements for maintaining a license; crime constituting a felony sexual offense; or a crime constituting a felony offense against public administration involving bribery, improper influence or abuse of office.
Florida	Teacher's certificate may be revoked or suspended for obtaining a certificate by fraud, failing to report actual or suspected child abuse, incompetence, gross immorality or an act involving moral turpitude, has had a certificate sanctioned by revocation, suspension, or surrender in another state, conviction of a crime other than a minor traffic violation, breach of teaching contract, delinquency in child support obligations, has been found guilty of personal conduct that seriously reduces that person's effectiveness as an employee of the district school board, has violated the Principles of Professional Conduct for the Education Profession, or has violated any order of the Education Practices Commission.
Georgia	Teachers may have their certificates revoked or suspended for misrepresentation or falsification, improper remunerative conduct, abuse of students, failure to report as required, alcohol or drugs use, criminal acts, public funds and property, abandonment of contract, action against out-of-state certificate, unprofessional conduct, incompetence, insubordination, willful neglect of duties, immorality, and any other good and sufficient cause.
Hawaii	Teacher's certificate may be revoked or suspended for conviction of crime other than traffic offense or if the employer finds that teacher poses a risk to the health, safety, well-being of children, inefficiency, immorality, willful violations of policies and regulations, or other good and just cause.
Idaho	Teacher's certificate may be revoked or suspended for gross neglect of duty, incompetence, breach of contract, making a false statement on application for certificate, conviction of a crime involving moral turpitude, drug use, or a felony offense involving children.
Illinois	Teacher's certificate may be revoked or suspended for immorality, health condition detrimental to students, incompetence, unprofessional conduct, neglect of duty, willful failure to report child abuse, conviction of certain sex or narcotics offenses, or other just cause.
Indiana	Teacher's certificate may be revoked or suspended for immorality, misconduct in office, incompetence, insubordination, improper cancellation of a contract, neglect of duty, a conviction of an offense listed in I.C. 20-28-5-8I, or other good or just cause.

(table continues)

State	Revocation or Suspension Causes
Iowa	Teacher's certificate may be revoked or suspended for any cause that would have permitted refusal to grant the certificate.
Kansas	Teacher's certificate may be revoked or suspended for misconduct or other just cause, including any of the following: conviction of any crime punishable as a felony; conviction of any crime involving a minor; conviction of any misdemeanor involving theft; conviction of any misdemeanor involving drug-related conduct; conviction of any act defined in any section of article 36 of chapter 21 of the Kansas statutes annotated; conviction of an attempt under K.S.A. 21-3301, and amendments thereto, to commit any act specified in this subsection; commission or omission of any act that injures the health or welfare of a minor through physical or sexual abuse or exploitation; engaging in any sexual activity with a student; breach of an employment contract with an education agency by abandonment of the position; conduct resulting in a finding of contempt of court in a child support proceeding; entry into a criminal diversion agreement after being charged with any offense or act described in this subsection; obtaining, or attempting to obtain, a license by fraudulent means or through misrepresentation of material facts; or denial, revocation, cancellation, or suspension of a license in another state.
Kentucky	Teacher's certificate may be revoked or suspended for immorality, misconduct in office, incompetence, willful neglect of duty, or submission of false information.
Louisiana	Permanent teachers may have their certificate revoked or suspended for criminal offenses, submission of fraudulent documentation, incompetence, dishonesty, willful neglect of duty, or membership or contribution to an unlawful organization.
Maine	Teacher's certificate may be revoked for evidence of child abuse, gross incompetence, or fraud.
Maryland	Teachers may be dismissed or suspended for immorality, misconduct in office, insubordination, incompetence, breach of contract, or willful neglect of duty.
Massachusetts	Teacher's certificate may be revoked or suspended for inefficiency, incapacity, conduct unbecoming of a teacher, insubordination, unfit to perform the duties, failure to satisfy teacher performance standards, other just cause, the license was obtained through fraud, conviction of a crime involving moral turpitude, gross misconduct or negligence in the conduct of the license holder's professional duties and obligations, commitment of an offense against any law of the Commonwealth related to the license holder's professional duties and responsibilities, willful action in violation of Board regulations or Department orders, or dismissal for just cause from a position in a school or child care facility.

(table continues)

State	Revocation or Suspension Causes
Michigan	Teacher's certificate may be revoked or suspended for conviction of sex offenses and crimes involving children. Teachers may be dismissed for reasonable and just causes or failure to comply with school law.
Minnesota	Teacher's certificate may be revoked or suspended for immoral character or conduct; failure, without justifiable cause, to teach for the term of the teacher's contract; gross inefficiency or willful neglect of duty; failure to meet licensure requirements; or fraud or misrepresentation in obtaining a license.
Mississippi	Teachers may be dismissed or suspended for conviction of any felony; conviction of any sex offense; obtaining a license by fraudulent means; knowingly committing any of the acts affecting the validity of mandatory uniform test results; incompetency; neglect of duty; immoral conduct; intemperance; brutal treatment of a pupil; other good cause; any offense committed or attempted in any other state shall result in the same penalty.
Missouri	Teacher's certificate may be revoked or suspended if he/she pleaded to or has been found guilty of a felony or crime involving moral turpitude under the laws of this state, any other state, of the United States, or any other country, whether or not sentence is imposed; The certification was obtained through use of fraud, deception, misrepresentation or bribery; There is evidence of incompetence, immorality, or neglect of duty by the certificate holder; A certificate holder has been subject to disciplinary action relating to certification issued by another state, territory, federal agency, or country upon grounds for which discipline is authorized in this section; or If charges are filed by the local board of education, based upon the annulling of a written contract with the local board of education, for reasons other than election to the general assembly, without the consent of the majority of the members of the board that is a party to the contract.
Montana	Teacher's certificate may be revoked or suspended for making any statement of material fact in applying for a certificate that is false; incompetency; gross neglect of duty; conviction of a criminal offense involving moral turpitude in this state or any other state or country; immoral conduct related to the teaching profession; substantial and material nonperformance of the employment contract between the teacher, administrator, or specialist and the trustees of a school or school district without good cause or the written consent of the trustees; or denial, revocation, suspension, or surrender of a teacher, administrator, or specialist certificate in another state for any reason constituting grounds for similar action.
Nebraska	Teacher's certificate may be revoked or suspended for just cause, including incompetence immorality, intemperance, cruelty, certain crimes, neglect of duty, unprofessional conduct, physical or mental incapacity, or breach of contract. Teachers may be dismissed for just cause, as defined by statute.

(table continues)

State	Revocation or Suspension Causes
Nevada	Teacher's certificate may be revoked or suspended for immoral or unprofessional conduct; evident unfitness for service; physical or mental incapacity; conviction of a felony or crime involving moral turpitude; conviction of a sex offense involving a child; knowingly advocating the overthrow of the Federal Government or of the State of Nevada; persistent defiance of or refusal to obey the regulations of the State Board, the Commission or the Superintendent of Public Instruction, defining and governing the duties of teachers, administrators and other licensed employees; breaches in the security or confidentiality of the questions and answers of the examinations that are administered; intentional failure to observe and carry out the requirements of a plan to ensure the security of examinations and assessments adopted; an intentional violation of NRS 388.497 or 388.499.
New Hampshire	Teachers may be dismissed for immorality, incompetence, failure to conform to regulations, or conviction of certain crimes.
New Jersey	Teacher's certificate may be revoked or suspended on the basis demonstrated inefficiency, incapacity, conduct unbecoming a teacher, or other just cause.
New Mexico	Teacher's certificate may be revoked or suspended for incompetence, immorality, or any other good and just cause. Teachers may be dismissed for good cause.
New York	Teacher's certificate may be revoked or suspended if teacher is unfit to teach due to moral character or if teacher fails to complete a school term without good cause.
North Carolina	Teachers may have their certificate revoked or suspended if an individual engaged in fraud, material misrepresentation, or concealment on the application or license, convictions or illegal conduct, immorality or diminished capacity, resignation without notice, revocation by another state, failure to report revocable conduct, or other just cause.
North Dakota	Teacher's certificate may be revoked or suspended for a license obtained by means of fraud, misrepresentation, or concealment of facts, incompetency, immorality, intemperance, or cruelty; conviction of an offense deemed by the board to have a direct bearing upon an individual's ability to serve as a teacher or an administrator; refusal to perform the duties of a teacher or an administrator; breach of a contract; individual has violated any rule adopted by the board.
Ohio	Teacher's certificate may be revoked or suspended for intemperance, immorality, incompetence, negligence, or other conduct unbecoming of the position. Teachers may be dismissed on similar grounds, including assisting a student to cheat on an achievement, ability, or proficiency test.
Oklahoma	Teachers may have their certificate suspended or revoked for immorality, willful neglect of duty, cruelty, incompetence, and teaching disloyalty to the U. S. government, moral turpitude, or criminal sexual activity

(table continues)

State	Revocation or Suspension Causes
Oregon	Teacher's certificate may be revoked or suspended for conviction of certain crimes (including sale or possession of a controlled substance), gross neglect of duty, gross unfitness, or wearing religious dress at school.
Pennsylvania	Teacher's certificate may be revoked for incompetence, cruelty, negligence, immorality, intemperance, or just cause.
Rhode Island	Teacher's certificate may be revoked, or teacher may be dismissed, for good and just cause.
South Carolina	Teacher's certificate may be revoked or suspended for just cause, including incompetence, neglect of duty, violation of the rules and regulations of the State Board of Education, unprofessional conduct, drunkenness, cruelty, crime against the law of this State or the United States, immorality or crime of moral turpitude, dishonesty, unfitness for position, or sale or possession of narcotics.
South Dakota	Teacher's certificate may be revoked or suspended for any cause that would have permitted issue of the certificate, violation of teacher's contract, gross immorality, incompetence, flagrant neglect of duty; or conviction of a crime involving moral turpitude.
Tennessee	Teacher's certificate may be revoked or suspended for conviction of a felony, possession of narcotics, being on school premises or at a school-related activity involving students while documented as being under the influence of, possessing or consuming alcohol or illegal drugs, falsification or alteration of a license or documentation required for licensure, denial, suspension or revocation of a license or certificate in another jurisdiction for reasons which would justify denial, suspension or revocation under this rule, or other good cause.
Texas	Teacher's certificate may be revoked or suspended if teacher's activities are in violation of the law, the teacher is unworthy to instruct the youth of the state, the teacher abandons his or her contract, or the teacher is convicted of a crime.
Utah	Teacher's certificate may be revoked or suspended for immoral or incompetent conduct, or evidence of unfitness for teaching. Teachers may be dismissed for cause.
Vermont	Teacher's certificate may be revoked for cause. Teachers may be dismissed for just and sufficient cause. Teachers may be suspended for incompetence, conduct unbecoming of a teacher, failure to attend to duties, or failure to carry out reasonable orders and directions of superintendent or board.

(table continues)

State	Revocation or Suspension Causes
Virginia	Teachers may have their certificate revoked or suspended for obtaining or attempting to obtain such license by fraudulent means or through misrepresentation of material facts; Falsification of school records, documents, statistics, or reports; Conviction of any felony; Conviction of any misdemeanor involving moral turpitude; Conduct with direct and detrimental effect on the health, welfare, discipline, or morale of students; Misapplication of or failure to account for school funds or other school properties with which the licensee has been entrusted; Acts related to secure mandatory; Knowingly and willfully with the intent to compromise the outcome of an athletic competition procures, sells, or administers anabolic steroids or causes such drugs to be procured, sold, or administered to a student who is a member of a school athletic team, or fails to report the use of such drugs by a student to the school principal and division superintendent as required; Other just cause.
Washington	Teacher's certificate may be revoked for immorality, violation of written contract, unprofessional conduct, intemperance, crime against the law of the state, or sufficient cause.
West Virginia	Teacher's certificate may be revoked for intemperance, untruthfulness, cruelty, immorality, the conviction of a felony or a guilty plea or a plea of no contest to a felony charge, the conviction, guilty plea or plea of no contest to any charge involving sexual misconduct with a minor or a student, or for using fraudulent, unapproved, or insufficient credit to obtain the certificates.
Wisconsin	Teacher's certificate may be revoked for incompetence, immoral conduct, conviction of certain felonies, failure to pay delinquent tax as certified by the department of revenue, failure to pay court-ordered payments of child/family, or revocation of a license in another state.
Wyoming	Teacher's certificate may be revoked or suspended for incompetence, immorality, other misconduct, or gross neglect of duty.

Data Analysis

As noted by many scholars, (Berg, 1998; Cresswell, 2003; & Merriam, 1998) there is no one best way to analyze data. These same scholars noted the importance of identifying trends, patterns, and themes that rise to the surface as the research progresses. As the research developed in this study, the researcher recognized the trends, patterns, and themes that developed and used this knowledge to help answer the research questions.

The findings of a qualitative study are developed by the gathering of data and the analysis that happens during the entire study (Merriam, 2009). The analyzed data is used to identify

trends and patterns within and between the cases (Wesley, 2010). As suggested by Statsky and Wernet (1995), the researcher organized and compiled the data according to the litigation. By doing this, the researcher was able to identify the trends and patterns more easily.

Qualitative data consist of empirical data that includes such items as case studies; personal experiences; interviews; artifacts; cultural texts and productions; and historical, observational, interactional, and visual text (Denzin & Lincoln, 2005). With the required amount of data collection qualitative research entails, the researcher planned a system of organization before starting this endeavor. Stake (1995) suggested researchers take the data gathered and organize the data into like categories in order to make meaning of the collected data and answer research questions. The researcher worked diligently to do just as Stake suggested in order to maintain a firm hand on the abundance of material involved in the data analyze. Merriam (2009) explained the importance of the data being organized early on in the research process. This was the intention of the researcher from the first piece of data that was collected. This gave the researcher more control over the data. When the researcher determined certain data was not useable, it was set aside immediately in order to maintain control of the important data.

The researcher hopes this study will serve as a guide for other educators to understand the reasons teacher certificates are most often revoked or suspended and aid others in avoiding these situations. Teachers and administrators alike must consider the reasons teacher certificates are revoked or suspended and work to avoid the negative ramifications that results from this. By understanding previous court rulings and current trends surrounding teacher revocation or suspension of certification, litigation and legal involvement may be avoided altogether.

Summary

This chapter explained the methodology for a qualitative study as related to teacher revocation or suspension of a teaching certificate. The methodology of this case study encompassed analyzing cases from 1853-2015.

The researcher of this study was interested in researching revocation or suspension of a teacher's certificate in order to gain the knowledge needed as a K-12 public school administrator to help new and veteran teachers maintain their certification and remain clear of legal litigation. School administrators must be aware of teacher conduct and how the teacher's conduct impacts student learning (Essex, 1999). The more knowledge one has, the greater defense an educator will have as he/she works to educate students inside the walls of a school building. This researcher believes that knowledge is the true power needed to ultimately help shape policy and practice and guide others. By researching cases surrounding the revocation or suspension of a teacher's certificate, a school administrator is equipped with the knowledge to be a stronger school leader (Zirkel, 2015).

Maintaining high standards and adhering to those high standards for all educators is an important issue. The goal of this study is to identify issues that cause teachers to have their certification revoked or suspended and work to improve practices that may aid this through the eyes of a school administrator. Court decision impact school governance and school administrators should remain abreast of these rulings (Zirkel, 2015). By analyzing court cases related to revocation or suspension of teachers' certificates, the researcher hopes to contribute to the current knowledge and understanding of this issue.

In the next chapter, the researcher produces the case briefs, reduces data from the briefs, analyzes the data, and then answers the research questions to deepen the understanding of the issue of teacher revocation or suspension of teaching certificates.

CHAPTER IV:
DATA PRODUCTION AND ANALYSIS

Introduction

Chapter IV encompasses briefings of 86 court cases involving revocation or suspension of a teacher's teaching certificate. Data from all 86 cases were analyzed according to the key facts, holdings, and dispositions of the courts. The cases are listed in sequential order and provided a chronological framework for establishing trends and patterns. Each case brief includes a citation, key facts, issue(s), holding(s), reasoning, and disposition.

Case Briefs

1853

Citation: *People ex rel. McIver v. Board of Education of New York*, 17 Barb. 299 (N.Y. 1853).

Key Facts: McIver was a teacher in the state of New York in New York City. A complaint was filed against McIver for immorality by the superintendent. McIver was given a 10-day notice that his teaching certificate was going to be revoked. After 10 days, McIver's certification was revoked. McIver asked for a writ of mandamus to force the board of education to pay his salary and argued that the superintendent did not have the legal authority to revoke his teaching certificate. McIver based his argument on the fact that the city superintendent did not have the legal complaint was filed against McIver for immorality by the superintendent. McIver was given a 10-day notice that his teaching certificate was going to be revoked. After 10 days, McIver's certification was revoked. McIver asked for a writ of mandamus to force the

board of education to pay his salary and argued that the superintendent did not have the legal authority to revoke his teaching certificate. McIver based his argument on the fact that the city superintendent did not have the legal authority to revoke his certificate. The board refused to pay McIver for the remainder of his contract. McIver appealed the revocation of his certificate from the city superintendent to the New York State Superintendent of Public Instructions. The state superintendent upheld the revocation. McIver appealed to the courts.

Issue(s): Was the revocation of McIver's teaching certificate lawful because it had been revoked by the city superintendent? Was McIver entitled to his full salary under his contract?

Holding(s): The revocation of McIver's teaching certificate was lawful. McIver was not entitled to the remaining salary in his contract.

Reasoning: The court ruled that McIver was not entitled to an appeal beyond the state superintendent unless the revocation was arbitrary or illegal. Because McIver's revocation was legally obtained, he was not entitled to the remainder of the contract salary.

Disposition: The New York Supreme Court ruled in favor of the city superintendent and upheld the revocation of McIver's certificate.

1883

Citation: *Arnold v. School Dist.*, 78 Mo. 226 (Mont. 1883).

Key Facts: Arnold was a schoolteacher in Missouri. The Board of Trustees of the school district in which he was teaching demanded Arnold resign his position. Arnold was accused of hitting a student with a billet of wood, stomping on another male student, and using vulgar language while doing so. Arnold made no attempt to resign his position. The directors of the school locked the school doors and sent a written notice to Arnold that he was discharged from his teaching duties. The Board of Directors claimed that Arnold was unprofessional and

exhibited conduct unbecoming of a teacher. Arnold argued this fact and stated that the board of directors did not hold authority to revoke his teaching certificate.

Issue(s): Did the school board's directors have the lawful authority to revoke and dismiss Arnold from his teaching duties?

Holding(s): The board of directors did not have the lawful authority to revoke Arnold's teaching certificate and dismiss him from his teaching duties.

Reasoning: The court found that the board of directors was not legally authorized to revoke a teacher's license for being cruel to students are using abusive language towards the students. The Commissioner of the county had the power to revoke a certificate for incompetence or immorality not the board of directors. The judge argued that all though the case of *School Dist. of Ft. Smith v. Maury* found that the local board did have the authority to revoke and dismiss a teacher from his duty, he did not agree with the decision made by the Arkansas State Supreme Court.

Disposition: The Supreme Court of Missouri reversed the decision of the Arkansas State Supreme Court.

1890

Citation: *School Dist. of Ft. Smith v. Maury*, 53 Ark. 471 (Ark. 1890).

Key Facts: W. P. Maury was a teacher in the Fort Smith School District in the state of Arkansas. Maury sued the Fort Smith School District for breach of his employment contract. He argued he was wrongfully discharged by the board of directors. The Fort Smith School District argued that Maury had been dismissed early from his contract due to immorality and incompetency. The school system argued that Maury was addicted to immoral habits and was incompetent. Maury argued that the school board was not allowed to dismiss him while he was

under contract and then tried to make claims he was immoral and incompetent when he filed suit. The Sebastian Circuit Court, Fort Smith District heard the case and ruled in favor of Maury. The Fort Smith School District appealed to the Arkansas State Supreme Court.

Issue(s): Did the Sebastian Circuit Court, Fort Smith District err in excluding evidence that was submitted to prove immorality and incompetency? Did the Fort Smith School District have the lawful right to break the contract entered in between Maury and the school system because it deemed that he had exhibited immoral conduct while employed as a teacher and was deemed incompetent?

Holding(s): The Sebastian Circuit Court, Fort Smith District did err in excluding evidence that was submitted to prove immorality and incompetency. The court also failed to recognize that the school system had the authority to dismiss a teacher who was deemed incompetent or immoral to teach the students as their duty instructs they should be.

Reasoning: The board of directors has a right to dismiss Maury for incompetency and immorality that they believe was displayed during the time Maury was under contract as a teacher with the Fort Smith School District. The Sebastian Circuit Court, Fort Smith erred when the school district was not allowed to present evidence of proof of immorality and incompetency. The court found that it is the duty of the board to assure that the students are being properly instructed and disciplined. The board should observe the teacher while instructing the students. If the teacher is not instructing properly or exhibiting conduct that would not be considered moral, the teacher may be discharged. The teacher is charged with the duty to advance students and exhibit character that would require the students to hold the teacher in high regards and be able to respect him. If this does not happen, a breach in the contract has occurred. If the board

determines that a breach in contract has occurred, the process of dismissing the teacher should occur immediately.

Disposition: The decision of the Circuit Court, Sebastian County, was reversed and cause remanded by the Supreme Court of Arkansas.

1899

Citation: *Superintendent of Common Schools of Daviess County v. Taylor*, 20 Ky.L.Rptr. 1241 (Ky. 1899).

Key Facts: S. W. Taylor was employed for a period of four years to teach in Common Schools in Daviess County Kentucky. Taylor was charged with helping a fellow teacher cheat on a test by the Office of the Superintendent of Common Schools in Daviess County. Taylor was charged with giving unlawful assistance to W. C. Gordon during the arithmetic section of the teacher's examination administered on June 17th and 18th of 1889. Taylor was instructed to appear before the superintendent in July 1889 and present evidence as to why his teaching license should not be revoked for assisting Gordon. Circuit Court, Daviess County, ruled in favor of Taylor. School system appealed to the Kentucky Supreme Court.

Issue(s): Was the superintendent empowered under the law to revoke Taylor's teaching certificate based on the charges that Taylor assisted Gordon during a teaching evaluation? Did the superintendent present enough evidence to constitute the revocation of Taylor's license?

Holding(s): The superintendent does have the legal power to revoke a teaching license; however, not under the circumstances that Taylor was charged.

Reasoning: Although the superintendent may have the legal power to revoke a teaching license under certain circumstances and when constituted, the judge ruled that only the board of examiners has the right to revoke a certificate for a teaching candidate who is deemed receiving

assistance on a teacher's examination. Because Taylor already held a certificate, he could not have his teaching certificate revoked by the examiner board. He also explained that there was not enough evidence presented to justify the revocation of Taylor's teaching license even if the superintendent had the lawful authority to do so. Even if there had been evidence to justify that Taylor assisted Gordon on one arithmetic section of the test that would not have made a difference in the outcome of the test and would not have constituted the revocation of Taylor's license making him immoral or incompetent to teach.

Disposition: The Kentucky Supreme Court affirmed the decision Circuit Court, Daviess County.

Citation: *Browne v. Gear*, 21 Wash. 147 (Wash. 1899).

Key Facts: Elizabeth Gear was a teacher in Washington. In October 1897, the state superintendent brought a motion to have Gear's certification revoked claiming irregularities during the teacher's examination which he believed constituted unprofessional conduct. The irregularities were reported as not arriving at the beginning of the testing session, the test was distributed by subject matter and no recess is allowed until the test in the particular subject had been collected, attempting to gain a first grade certificate not following legal means, using political power in her favor to secure a teaching certificate, and attempting to gain access to the questions before the test was administered. Because of the claims, a hearing was held by the superintendent of Pierce County to determine if Gear's conduct was in fact unprofessional conduct and constituted revocation of her teacher's certificate. The superintendent found that Gear's conduct was considered unprofessional conduct. The two common school certificates held by Gear were revoked. Gear appealed to the superior court of Pierce County for a writ of review. She received this. At trial, Gear was given favor judgment and the superintendent of

instruction was prohibited from canceling her certificates. From the judgment of the superior court, the superintendent of public instruction appealed to the Washington State Supreme Court.

Issue(s): Did the court hold the power to review the facts of the case after the superintendent revoked the certificates of Gear? Did the court err in adjudging that the facts did not show cause for the cancellation of the certificates?

Holding(s): The court held the power to review the facts of the case after the superintendent revoked the certificates of Gear. The court did not err in adjudging that the facts did not show cause for the revocation of the Gear's certificates.

Reasoning: The court did hold the power to review decisions made by the county superintendent and may reverse the decision if it's considered illegal or unjustified. Gear held two certificates. The certificates issued were not issued under fraudulent circumstances. The first certificate issued was issued well in advance of the claims. The court found that there was not enough evidence to support the claim although there may have been inconsiderate language or mild impropriety of conduct. Most of the conversations Gear had with others about getting information about the test or implying that she would receive her first grade certificate due to political favor, was considered more opinion and topic of conversation. It was not considered fraud. The court also found that the claim of misconduct would need to impact her ability to teach in order for the revocation to be proper and legal.

Disposition: The judgment from Superior Court, Pierce County Supreme Court of Washington, was affirmed by the Supreme Court of Washington, and Gear's certificate could not be revoked for misconduct in this case.

1907

Citation: *Stone v. Fritts*, 169 Ind. 36 (Ind.1907).

Key Facts: Harry Fritts was a teacher in Owen County Indiana. Fritts had over two decades of teaching experience when he had a complaint filed against him from the superintendent of Owen County, W. H. Stone. The superintendent wanted to have Fritts's teaching license revoked in the state of Indiana. The superintendent complained that Fritts refused to Board within the area the school was located. By not doing so, school did not begin at a reasonable time each day. He also charged that Fritts did not attend the preliminary institute or monthly township institute, did not regularly attend the Owen County Teachers' monthly institute, and failed to plan for daily instruction with his students. Fritts argued that he had been rated highly with a 92% teaching rating at the end of the school-term. He also argued that the superintendent's charges against him were false, and the superintendent did not have the legal authority to revoke his certificate. A lower court, Owen County Circuit Court, ruled in favor of Fritts. The case was appealed to the Indiana Supreme Court.

Issue(s): Did the county superintendent have the authority to hear and determine the revocation of Fritts's teaching license? Was there just cause to revoke the teaching license of Fritts?

Holding(s): The county superintendent has the authority to revoke a teacher's teaching certificate under set guidelines. Just cause was given to revoke Fritts's teaching license by Superintendent Stone.

Reasoning: Revoking a teaching license does not require judicial power. When a teacher accepts a contract to teach, he is bound by all of the stipulations that are set in the contract. If the teacher does not abide by these stipulations, the county superintendent has the right to revoke the teacher's license and breach the contract entered into. The teacher is expected to attend to the general business of the school. This includes attending required institutes as pay is provided for

these. When a teacher does not attend the institutes, this signifies a lack of interest in the business of the school and causes the interest of the school and its students to suffer.

Disposition: The judgment of the Owen Circuit Court was reversed with direction by the Indiana Supreme Court.

1908

Citation: *Barthel v. Board of Ed. of City of San Jose*, 153 Cal. 376 (Cal. 1908).

Key Facts: F. K. Barthel claimed that in July 1902, he was employed as a teacher in the San José School Department. Soon after, Barthel was appointed as principal of Washington School. Reports from the community surfaced that Barthel was not morally fit for the position which he was granted. Due to this, the Board would not allow Barthel to continue in his position. The claim was made that Barthel was dishonest when he claimed he was high in moral conduct suitable for the position as was required. Barthel's certificate was revoked well before the school year was over. In November 1902, Barthel applied to the Superior Court of Santa Clara County for a writ of mandate requiring the board of education of the city of San José and its members to admit him to the position of principal of the Washington School, or an equivalent position, and to draw its order upon the proper officer directing the payment to plaintiff of three months' salary as such teacher. This was so awarded. The defendants appeal from the judgment.

Issue(s): Was Barthel entitled to the writ directing the payment of his salary? Did substantial evidence exist to revoke Barthel's teaching license?

Holding(s): Barthel was entitled to the writ directing the payment of his salary and the reinstatement of his role as principal.

Reasoning: Barthel's license was not revoked because there was not substantial evidence proving his moral character was bad. His licenses cannot be revoked

Disposition: Supreme Court of California affirmed the decision of the Superior Court, Santa Clara County.

1911

Citation: *School Dist. No. 2, Fremont County v. Shuck*, 49 Colo. 526 (Colo. 1911).

Key Facts: In May 1905, M. E. Shuck was hired by Florence Public Schools to be the principal at Florence High School. This contract was for a 1-year term at a rate of \$ 100.00 per month. In February 1906, Shuck's certificate was revoked. The board of directors meet on February 14, 1906, the board of directors notified Shuck that his certificate had been revoked the previous day. At that point, given he had no certificate to teach, Shuck was instructed not to return to his job. Shuck was given no notice that his certificate was being revoked. He was also denied the opportunity for a hearing or to refute the revocation. The board of directors claimed the Shuck deceived them when he said his moral character was good. They now believed his moral character was bad and therefore, Shuck was considered fraudulent as to how he had represented himself to the board of directors. The board argued that they had heard rumors and had investigated the rumors about Shuck's bad moral character within the community. They gave Shuck 30 days leave to correct the issues. The board of directors argued that Shuck had failed to correct the behavior in question. Due to this, his certificate was revoked by the board of directors. Shuck sued the Florence County Public School Board of Directors and the District Court of Fremont County heard the case and ruled in favor of Shuck. The board of directors appealed to the Supreme Court of Colorado.

Issue(s): Did the Florence County Public School Board of Directors have the legal authority to revoke Shuck's certificate? Was there substantial evidence to support the fraud claim made by the board of directors to revoke the certificate in question?

Holding(s): The Florence County Public School Board of Directors did not have the legal authority to revoke Shuck's certificate. There was not substantial evidence to support the fraud claim made by the board of directors to revoke the certificate in question.

Reasoning: All of the charges brought forth by the board of directors were presented ex parte. A teacher cannot lose his teaching certificate for fraud because he states he has good character and another person believes this to be false. A teacher cannot be dismissed from his position without just cause, a notice of the accusations against him, and a hearing to dispute the charges. Simply saying that a teacher has bad character is not enough to dismiss and revoke a teacher's license. Strong and irrefutable evidence must be presented in order justify revocation of a teacher's license for bad character. Rumors circulating in the community of a teacher's bad character is not enough evidence to support revocation. A teacher can only be dismissed for good cause following statute. The school board does not have the authority to dismiss without warrant. A school board does not have the power to revoke a teacher's certificate. This authority is given to the county superintendent.

Disposition: The Supreme Court of Colorado affirmed the District Court of Fremont County's judgment.

1925

Citation: *Marrs v. Matthews*, 270 S.W. 586 (Tex. 1925).

Key Facts: F. W. Matthews was a teacher in the public schools of Hopkins County Texas. The state superintendent, S. M. N. Marrs, revoked Matthews teaching certificate arguing that he had participated in fraud at the county examination for issuing teacher's certificate. Matthews appealed the decision to the District Court of Hopkins County. The state superintendent claimed that Matthews was unworthy to teach in the state of Texas. The District Court issued a temporary

writ of injunction so that the state superintendent could not lawfully revoke Matthews's certificate. Matthews argued that state statute on which the state superintendent attempted to revoke his certificate was too vague and that the state superintendent was attempting to use judicial power in which he was not lawfully authorized to do. The state superintendent appealed the decision to the Texas Court of Civil Appeals. He requested that the writ of injunction be lifted.

Issue(s): Did the state superintendent have the legal authority to revoke Matthews's teaching license for assisting in fraudulent issuance of teaching certificates? Was Matthews entitled to due process rights before his contract could be canceled?

Holding(s): The state superintendent did have the legal authority to revoke Matthews teaching license for assisting in fraudulent issuance of teaching certificates. Matthews was not entitled to due process rights.

Reasoning: The Texas Court of Civil Appeals found that the state superintendent had the right to revoke Matthews's certificate, and a teaching contract was not protected under the due process clause. The Texas Court of Civil Appeals found that a teaching certificate in public schools was revocable by the state as it sees fit. The court held that a teacher who accepted a teaching certificate in the state of Texas was essentially agreeing to the way that the state determined fitness of a teacher. The court also found that the teacher should be morally and mentally be it in order to hold a teaching license.

Disposition: The Court of Civil Appeals of Texas, Texarkana reversed the judgment of the Hopkins County District Court.

1942

Citation: *Smith v. State Bd. of Educ.*, 190 Okla. 556 (Okla. 1942).

Key Facts: Joseph Smith was a teacher in Oklahoma, and he held a lifetime teaching certificate. In May 1941, Smith was notified to appear before the board to show just cause why his certificate should not be revoked. The board argued that this was due to a law violation by Smith. In July 1941, a writ of prohibition was instituted against the State Board of Education. Writ denied by the District Court of Oklahoma County, and plaintiff appealed to the Supreme Court of Oklahoma.

Issue(s): Did the board have the statutory authority to revoke Smith's teaching certificate?

Holding(s): The Oklahoma State Board of Education is empowered to revoke teachers' certificates issued by it if violations occur as deemed appropriate.

Reasoning: Under certain conditions, the state may revoke teaching certificates.

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

1950

Citation: *Shirer v. Anderson*, 88 F.Supp. 858 (S.C. 1950).

Key Facts: Pearl Shirer was a teacher in School District No. 20 in Charleston, South Carolina. She sued Jesse Anderson, the South Carolina State Superintendent, and the South Carolina State Board of Education on an individual basis and on behalf of other teachers and principals for a state statute that she believed to be unconstitutional. Shirer had her teaching certificate revoked by the State Board of Education for cheating on a teacher's examination, the National Teacher's Examination, given by the State Board of Education. Teachers were given a yearly recertification test. Teachers who scored high enough on the examination were eligible to increase their pay. After the test was administered to Shirer and other educators, it was determined by the National Teacher's Examiners that cheating had occurred. A test key had been

found on the person of a teacher. The tests were compared to the test key that was found. Of the 2,500 teachers who had taken the examination, 801 were determined to be so closely related to the test key that cheating was determined to be fact. After a hearing, most of the 801 educators who were determined to be guilty of cheating, had their teaching license revoked. Shirer was one of those teachers. The test participants were given the opportunity to admit guilt. If they admitted guilt, they were given temporary certificates and allowed to continue teaching. When Shirer's examination was compared to the key, she was found to have gotten the first set of questions identical to the test key. The sets of questions that were not part of the cheat test key, Shirer had missed almost all of them. Shirer, along with many of the other educators, argued that the revocation was arbitrary, far too harsh, and denied due process rights. Shirer argued that she was also being discriminated against due to her race. She argued that most of the educators who had their certificates revoked were black. The superintendent and the South Carolina Board of Education argued that there was no way for the National Teacher's Examiners Board to know the race of the teacher until after the test had been discovered as being one of the exams that was being targeted for dishonesty.

Issue(s): Was the South Carolina State Superintendent and South Carolina Board of Education arbitrary in their revocation of Shirer's teaching certificate? Was Shirer denied her due process rights and was this a civil rights violation?

Holding(s): The South Carolina State Superintendent and the South Carolina Board of Education were not arbitrary or unreasonable in the revocation of Shirer's certificate or the others represented. Shirer was not denied her due process rights. This case was not a civil rights violation.

Reasoning: The teachers, including Shirer, had the opportunity to refute the dishonesty charges at a given place and time. The charges Shirer was making against the State Board of Education and the superintendent were considered frivolous.

Disposition: The United States District Court E.D. South Carolina found that the South Carolina State Board of Educations had enough evidence and affirmed the decision.

1952

Citation: *Hodge v. Stegall*, 206 Okla. 161 (Okla. 1952).

Key Facts: L. R. Stegall was a teacher in the Burbank School District in Osage County in Oklahoma. Burbank School District filed 20 complaints against Stegall with the Oklahoma State Board of Education. The board sent Stegall a copy of the charges against him and notified Stegall of the date and time of the hearing. Stegall was notified that he would be allowed to refute the charges. Stegall was given a copy of the charge against him and notice of a hearing. He admitted he had received the notification. Stegall protested the hearing. The hearing was scheduled to move forward. He requested a transcription of the hearing. The board refused to give him a transcription because this was not common practice for the hearings to be transcribed by the board. Stegall was invited to shorthand the hearing himself. He argued that the charges against him were not justified and that he should not be indicted for those charges without a legal trial. His teaching certificate was revoked for willfully violating Oklahoma State Law referencing school matters. Stegall appealed the decision stating the decision was arbitrary, capricious, and unlawfully carried out. The District Court of Oklahoma County ruled in favor of Stegall. The court granted an injunction to reinstate Stegall's teaching certificate. The Oklahoma State Board of Education appealed the lower court's decision to the Oklahoma State Supreme Court.

Issue(s): Did the Oklahoma State Board of Education act in an arbitrary or capricious manner and have the legal authority to revoke Stegall's teaching certificate for violating Oklahoma State Law?

Holding(s): The Oklahoma State Board of Education had the legal authority to revoke Stegall's teaching certificate for violating Oklahoma State Law and was not done in an arbitrary or capricious manner.

Reasoning: The Oklahoma State Supreme Court ruled that the Oklahoma State Board of Education has the legal authority to revoke a teacher's certificate because the statutory requirements of a "sufficient cause hearing" was held by the board. The board has the ability to establish rules and regulations to govern the state's schools which also includes the authority to revoke a teacher's certificate. Stegall was given a notice of the charges by the board, a notice of the hearing, and allowed the opportunity to respond and refute the charges.

Disposition: The Oklahoma State Supreme Court reversed and remanded the decision of the District Court of Oklahoma City with directions to enter judgment for the defendants denying the injunction.

1958

Citation: *Fountain v. State Bd. of Ed.*, 157 Cal.App.2d 463 (Cal. 1958).

Key Facts: In 1951, George S. Fountain applied for an elementary teaching certificate in the state of California. Fountain was then employed as a teacher in the West Covina School District. In the 3 years that followed, Fountain was given additional contracts for employment. In 1954, Fountain became a permanent teacher. Later in 1954, the state of California notified Fountain that his teaching certificate was being revoked under the provisions of the California Education Code. The California State Board of Education moved to revoke Fountain's certificate

based on a lewd vagrancy conviction in the Los Angeles California Municipal Court in 1948. Fountain had pled not guilty and demanded a jury trial. In the subsequent weeks that followed, he withdrew his demand for the jury trial. The California Municipal Court of Los Angeles found Fountain guilty of being a lewd vagrant. Fountain paid a \$50 fine and was granted probation. After the State Board of Education of California sent a written request for its intent to revoke Fountain's teaching certificate. Fountain made a written request for a hearing before the California State Board of Education. The hearing was denied based on the fact the revocation of his certificate was mandatory under the Education Code. Fountain's teaching certificate was revoked. Fountain argued that the California State Board of Education had acted unlawfully in revoking his certificate without a hearing. He argued that under the state code, he was not convicted of a sex offense under the statute's meaning and that the Education Code was unconstitutional in revoking his credentials without a hearing. The California State Board of Education denied Fountain's argument and clarified that it had based its findings and actions solely from the opinion of the California Attorney General. The California Attorney General had written an opinion that the code was applicable to any sex offense prior to the statute effective date. Being said, The California State Board of Education argued that Fountain was not entitled to a hearing. Fountain appealed the decision to the Superior Court of Los Angeles County. The Superior Court of Los Angeles County found that the State Code was inapplicable to Fountain's conviction. The court stated that his credentials were revoked in an unlawful manner and that he had the right to have his teaching credentials renewed. He also was entitled to have his job status with the West Covina School District reinstated. The court found that the California State Board of Education could not refuse to renew his teaching certificate because he had not been convicted

of a sex offense. The California State Board of Education appealed the decision to the District Court of Appeal, Second District, Division 3, California.

Issue(s): Did the California State Board of Education have the legal authority to revoke Fountain's teaching certificate due to a past conviction of lewd vagrancy? Did the California State Board of Education have the right to revoke Fountain's permanent teaching status retroactively based on a past sex conviction?

Holding(s): The California State Board of Education had the legal authority to revoke Fountain teaching certificate due to a past conviction of lewd vagrancy. The California State Board of Education had the right to revoke Fountain's permanent teaching status retroactively based on a past sex conviction.

Reasoning: The higher court agreed with the California State Board of Education that Fountain was in fact convicted of a sex offense. Fountain had paid a fine and was prosecuted for sex offense. The higher court also explained that the state code was not to be given a retrospective operation unless that was the clear intent of the California District Attorney. The court also found that one can be dismissed and excluded from the education profession if, somewhere in the past, one had been convicted of a crime that was considered a sex offense.

Disposition: The decision of the lower court was reversed by the Superior Court to the District Court of Appeal, Second District, Division 3, California. The higher court affirmed the California State Board of Education's decision to revoke Fountain's teaching certificate.

Citation: *Vogulkin v. State Bd. of Ed.*, 194 Cal.App.2d 424 (Cal. 1961).

Key Facts: Nicholas C. Vogulkin held teaching credentials in California from January 1, 1939-1958. He was employed by the San Francisco Unified School District. In March 1958, Vogulkin was arrested and charged with a violation of the Education Code. After a hearing,

Vogulkin went to trial. In June 1958, Vogulkin pled guilty to the charges and was sentenced to probation. Vogulkin requested a voluntary revocation of his teaching credentials in May 1958. In November 1959, upon a motion from Vogulkin, the Superior Court of the City, and County of San Francisco terminated the probation, set aside his guilty plea and ordered the information dismissed. Vogulkin filed with education commission of credentials an application 'for reinstatement, reissuance or issuance' to him of his teaching credential. This was denied and Vogulkin appealed.

Issue(s): Was it constitutionally incompetent for the legislature to base a classification of the capacity or incapacity for rehabilitations of convicted persons upon those crimes set forth in the Education Code sections? Were Vogulkin's due process rights violated and was he denied equal protection under the law?

Holding(s): The classification of crimes set forth in Education Code provisions, requiring revocation and prohibiting issuance of teaching credential to one who has been convicted of a sex crime is not so unreasonable or arbitrary as to deny equal protection of the laws or otherwise violate either state or federal Constitution.

Reasoning: The state board of education is not a lawmaking body and does not have the power to disregard, amend or repeal the Education Code. The provisions were mandatory in form leaving nothing upon which either the commission of credentials or defendant state board of education could act.

Disposition: District Court of Appeal, First District, Division 2, California affirmed.

1963

Citation: *Glass v. Board of Ed. of City of New York*, 39 Misc.2d 761 (N.Y. 1963).

Key Facts: Virginia Glass was originally hired by the Board of Education of the City of New York as a substitute teacher in 1954. Glass received a license to teach based on an examination even though she did not hold the required course work to teach. When she was hired, it was with the understanding that she was required to complete the remaining courses in order to continue as a teacher. In October 1960, Glass completed her probationary period and was tenured. In January 1963, Glass was terminated and her tenure status was annulled without a hearing. Glass was charged with failure to show proof that she had completed two required courses of two semester hours each. Glass appealed the decision of the Board of Education of the City of New York. The Supreme Court, Kings County, affirmed the decision of the Board of Education of the City of New York. Glass then appealed the decision to the Appellate Division of the Supreme Court of New York, Second Department.

Issue(s): Was it legal to dismiss a tenured teacher without a hearing?

Holding(s): It is not lawful to dismiss a teacher who is tenured without a hearing and notice of charges.

Reasoning: The court stated that a tenured teacher cannot be dismissed without a hearing. When this is done, a teacher's due process rights are violated. Because of this, the court awarded Glass costs and ordered that she be reinstated to her position as a tenured teacher.

Disposition: The Supreme Court, Kings County, decision was reversed on law by the Appellate Division of the Supreme Court of New York, Second Department.

1964

Citation: *Mack v. State Bd. of Ed.*, 24 Cal.App.2d 370 (Cal. 1964).

Key Facts: Rita Judd Mack and William Noble Mack were husband and wife and both licensed teachers in the state of California. The charges against them were that they had sworn

falsely to the loyalty oath also known as the Levering Act. The couple was charged with being members in the Communist Party of the United States within the 5 years before taking the oath in 1958. A hearing officer was assigned to hear the case. The hearing officer found that enough evidence was presented to show that the Mack's were members of the Communist Party of the United States within the past five-year period which violated the loyalty oath that the couple had previously taken. The Mack's testified that they had not participated in any violent actions and that in fact had never seen any violent act take place as a result of their membership in the group. The hearing officer found that this group had been known to advocate overthrowing the United States Government and therefore was against the state of California. The Board accepted the hearing officer's finding and revoked the certification of the Mack's. Petitioners thereupon applied for and obtained an alternative writ of mandate issued by the superior court, ordering said board to restore the credentials or show cause why it should not to do. Following the judicial review, the superior court ordered the alternative writ dissolved and the petition for a peremptory writ of mandate denied. Petitioners have appealed from the ensuing judgment.

Issue(s): Did the California State Board of Education have the right to revoke the certificates of the Mack's because they had previously made an oath to the Communist party? The issues that are vital herein are (1) whether the American Communist Party advocated the forceful overthrow of the government during the period from 1953 to 1957 and (2) whether, assuming such advocacy, the Mack's knew of this at the time they signed the oath.

Holding(s): The court held that the judicial notice of alleged fact that Communist party was from 1953 to 1957 an organization advocating overthrow of federal or state government by force and violence was improperly taken, and that petitioners were entitled to a reconsideration of the question.

Reasoning: There is no evidence that either petitioner ever personally advocated the use of any force or violence.

Disposition: Court of Appeals of California, First District, Division Two, reversed and the cause is remanded to the superior court with instructions.

1967

Citation: *Sarac v. State Bd. of Ed.*, 249 Cal.App.2d 58 (Cal. 1967).

Key Facts: Thomas Sarac, Jr. was a high school teacher in California. Sarac was arrested for having inappropriately touched another man, L. A. Bowers, on a beach in the City of Long Beach, California. Bowers was actually a police officer. Bowers reported that Sarac had touched him in an inappropriate manner trying to get him to engage in a homosexual act. Sarac was charged with having immoral and unprofessional conduct within the meaning of Education Code. Bowers also reported that Sarac had stated he had sex with other men on at least two occasions in the past and had homosexual feelings since he was 20 years old. After his arrest, Sarac pled guilty to the charges in Long Beach Municipal Court. Because of his guilty plea and the reported conduct, the California Board of Education moved to have Sarac's teaching licenses revoked. A hearing officer was assigned to the case. The hearing officer found that all the reported charges were true and recommended that Sarac's teaching license be revoked. The California State Board of Education accepted the recommendation of the hearing officer and revoked Sarac's teaching license. Sarac appealed the decision to the trial court and requested a writ of mandate to rescind the revocation of his teaching certificate. The trial court found that the facts in the case were accurate, and Sarac had committed "a homosexual act involving moral turpitude" and was unfit to teach. The writ of mandate was denied. Sarac stated that he had never told Bowers about past homosexual encounters and that one confrontation on the beach should

not make him unfit to teach. Sarac argued that his due process rights had been violated. The court found that Sarac was never denied his due process rights. Sarac argued that his guilty plea and his teaching ability were not related because a rational connection could not be made. Sarac argued that he should not be declared unfit as a teacher because of what took place in the Long Beach Municipal Court proceedings. Sarac again appealed the decision to a higher court, the California Court of Appeals, Second Dist., Div. Three, claiming that his constitutional rights had been violated and he was not allowed due process.

Issue(s): Were the findings of the trial court unconstitutional? Was Sarac denied his due process rights?

Holding(s): The findings of the court were not unconstitutional. Sarac was not denied his due process rights.

Reasoning: The court found that Sarac had plead guilty to the charges against him and that Police Officer Bowers was a believable and reliable witness. The court found that immoral conduct within the meaning of Education Code was proven and that the statutory grounds of immoral conduct and unfitness was justified. The court held that California had a high standard of moral and ethical behaviors for people who worked with young and impressionable students, and Sarac's conduct was in conflict with these expectations. The court also found that Sarac was never denied his constitutional or due process rights at any time during the proceedings.

Disposition: The trial court's judgment was affirmed by the Court of Appeal, Second District, Division 3, California.

1969

Citation: *Morrison v. Board of Educ.*, 1 Cal.3d 214 (Cal. 1969).

Key Facts: Marc Morrison was a public high school teacher in Lowell Joint School District in California. He had been employed for many years and received satisfactory and above ratings on his teaching abilities. He was well received by students, parents, coworkers, and the community. In 1963, Morrison and another male teacher had a physical relationship. The other teacher reported the sexual encounter to the principal of the school and resigned his position on or about one-year after the encounter occurred. After the report to the superintendent, Morrison resigned his position as a teacher. In 1965, approximately a year and a half later, the California Board of Education motioned to revoke Morrison's teaching certificates. In 1966, the California Board of Education assigned a hearing examiner to hear the evidence. The hearing examiner recommended that the certificates that Morrison held to be revoked due to immoral and unprofessional conduct and moral turpitude under the California Education Code. The California Board of Education accepted the recommendation of the hearing examiner and revoked Morrison's teaching certificates. Morrison immediately filed a petition for writ of mandamus to review the determination of the California State Board of Education. The Superior Court of Los Angeles County, denied the writ of mandamus. Morrison appealed the decision to the Supreme Court of California, *in banc*.

Issue(s): Did the Morrison's homosexual relationship constitute "immoral conduct", "unprofessional conduct" or "moral turpitude" and justify the revocation of his teaching certificates?

Holding(s): Morrison's homosexual relationship did not constitute "immoral conduct", "unprofessional conduct" or "moral turpitude" and the revocation of Morrison's teaching certificates was not lawful.

Reasoning: The Supreme Court of California, *in banc* found that Morrison could not be legally disciplined under a statute allowing for the revocation of his teaching certificate for immoral conduct, unprofessional conduct, or moral turpitude because of a lack of any evidence that his conduct proved him unfit to teach. A nexus did not exist between his sexual encounter with a male teacher and his ability to perform his teaching assignment.

Disposition: Supreme Court of California, *in banc*, reversed and remanded the judgment of the Superior Court. The writ of mandamus was reversed, and the case was remanded to the Superior Court for proceedings consistent with the decision of the Supreme Court of California, *in banc*.

Citation: *Henderson v. School Dist. of Scottsbluff, In Scottsbluff County*. 184 Neb. 858 (Neb.1969).

Key Facts: Sidney R. Henderson was a public school teacher in Scottsbluff, Nebraska. He was under contract for the 1967-1968 school year. In August 1967, Henderson resigned his teaching position. The school board filed a complaint with the Nebraska State Board of Education. They stated that Henderson had violated his contract agreement. A hearing was held and Henderson's teaching certificate was suspended for 1-year. Henderson appealed, but he never made an attempt to supersede the order or request an immediate hearing. He argued that although he was not denying that he had broken his contract, he did not agree with the 1-year suspension. The case was heard by the district court in December 1968. By the time the case was heard, Henderson's suspension had already been served. The district court argued that the

suspension had already taken place and was impossible for them to undo because the time had already elapsed. Henderson argued that he still wanted the court to hear the case because he felt he would suffer in pursuing future job opportunities if the suspension was upheld. He wanted the suspension removed. The case was dismissed as moot. The case was then appealed to the Nebraska Supreme Court.

Issue(s): Was the suspension of Henderson's teaching certificate warranted, and was Henderson legally entitled to a determination despite the fact the 1-year suspension had passed?

Holding(s): The suspension was warranted, and the court did not err in not making a determination of a case that was considered moot and order was not thereafter reviewable, notwithstanding that teacher's future opportunities might have been adversely affected by fact that he had been suspended.

Reasoning: Henderson admitted he violated his contract agreement to the Nebraska Board of Education. The reason he violated his contract was not a legal or lawful reason that would constitute breaking a contract. Because he violated his contract, the 1-year suspension was warranted. Henderson did not attempt to have the order overturned or request an immediate hearing in the district court. Because of this, the district court found the case moot.

Disposition: The Supreme Court of Nebraska affirmed the 1-year suspension of the judgment of the district court.

1970

Citation: *Alford v. Department of Education*, 13 Cal.App.3d 884 (Cal. 1970).

Key Facts: From 1951-1965, Ruth Greene Alford was a tenured elementary school teacher in the Los Angeles School District. Alford had taken two sick leaves which required hospitalization in Camarillo State Hospital in 1959 and 1961. She was diagnosed as a

schizophrenic. During the 1961 hospitalization and sick leave, she was ordered by the court to be admitted. She resigned her teaching position with the Los Angeles School District in 1965.

Alford then asked the California State Board of Education to add an additional endorsement of “General Pupil Services Credential” to her teaching license. The California State Board of Education denied the application, and the California State Board of Education filed a motion in congruence with the California Education Code to revoke Alford’s teaching certificate due to her history of mental and emotional illness and her recent hospitalization for the condition. A hearing officer heard the case. During the hearing, two doctors gave psychiatric testimony as to her unstable condition. One of which was a witness she has requested on her behalf. After the hearing, Alford’s teaching certificate was revoked and she was again denied the additional endorsement she had sought. Alford sought a writ of mandate to set aside the administrative determination which was denied by the trial court. Alford appealed the decision to the Court of Appeals of California, Second District, Division One.

Issue(s): Did the California Board of Education have the legal right to revoke Alford’s teaching certificate based on her medical condition if a nexus did not exist between her medical condition and her ability to teach?

Holding(s): The California Board of Education had the legal right to revoke Alford’s teaching certificate based on her medical condition without showing of actual misconduct or dereliction in connection with performance of her duties.

Reasoning: The court found that there was cause that existed and disabled her from being able to sufficiently perform her job working with young children. A nexus did exist between her medical condition and her ability to teach. Two doctors gave medical testimony as to how Alford’s medical condition would impede her ability to teach children. The court found that this

was in fact enough evidence to support the California State Board of Education's decision, and that the trial court did not error in its findings supporting this decision.

Disposition: Court of Appeals of California, Second District, Division One, affirmed the decision.

1972

Citation: *Moser v. State Bd. of Education*, 22 Cal.App.3d 988 (Cal. 1972).

Key Facts: Brent Thomas Moser was a high school teacher in California. He was in a public restroom in Long Beach, California with a male companion. Moser was seen with this male companion with his penis exposed and masturbating. He also touched the genitals of this man. A police officer witnessed the act, and Moser was arrested. He was found guilty in Municipal Court of Long Beach Judicial District. Because of this conviction, the California State Board of Education held a hearing to revoke Moser's teaching license. The hearing officer recommended that Moser's teaching license be revoked. The California State Board of Education revoked Moser's teaching license for moral turpitude and unprofessional and immoral conduct. Moser appealed the decision of the California State Board of Education to the court and asked for a writ of mandate to compel California State Board of Education to rescind its action in revoking his teaching license. The Superior Court, Los Angeles County, entered judgment denying relief. Moser appealed the decision to the Court of Appeals of California, Second District, Division Two.

Issue(s): Was Moser's conduct sufficient to warrant the revocation of his teaching license under the law?

Holding(s): The court found that Moser's conduct did in fact warrant the revocation of his teaching certificate and was legally and procedurally done as required by law. Because the

conduct of masturbating while in public view in a public restroom, and in then touching private parts of another male was sufficient, in and of itself, to establish unfitness to teach, and such conduct warranted revocation of teaching credential under the Education Code.

Reasoning: The court found that the conduct exhibited by Moser was in a public place and was considered a criminal act and the evidence was sufficient to revoke Moser's teaching certificate. The court found that the conduct Moser engaged in was immoral which made him unfit to teach.

Disposition: Court of Appeals of California, Second District, Division Two, affirmed the decision.

Citation: *Comings v. Bd. of Education*, 23 Cal.App.3d 94. (Cal.1972).

Key Facts: This is a combined hearing of two teachers in the state of California involving marijuana possession. In 1969, Arthur T. Comings held a teaching certification issued by the California State Board of Education pursuant to the Education Code and to Title V of the California Administrative Code. This certification was an elementary teaching certificate and in Grades seven or eight of any junior high school. An accusation was filed in 1968, alleging that Comings had been in possession of marijuana in San Diego in February 1967 and had resulted in him being arrested and convicted on the charge and that his certification should be revoked because he had committed 'acts involving immoral and unprofessional conduct,' 'acts demonstrating his unfitness for service: and 'an act or acts involving moral turpitude.'

Comings asked for and received an administrative hearing. He appeared at the hearing through counsel only. No testimony was presented at the hearing, but opposing counsel produced evidence of the marijuana charge and his plea of guilty in the Superior Court of San Diego County. This charge resulted in a conviction and Comings was sentenced to probation.

The hearing officer found that because of this conviction, Comings's certification was revoked. Comings sought a writ of mandate, in the Superior Court of the City and County of San Francisco, to compel the board to set aside its decision and to reinstate his certification claiming the cause was submitted on the pleadings and the administrative record without evidence being presented. The superior court denied Comings's petition from which he appealed.

In 1969, Selwyn Jones was a permanent teacher of Jefferson Union High School District. He taught art at Westmoor High School in Daly City, San Mateo County. On August 22, 1969, on holiday in Hawaii, Jones was arrested and charged with possession of marijuana. Pursuant to his plea of *nolo contendere*, he was thereafter convicted as charged, and granted probation and fined, in the Circuit Court of the Fifth District of Hawaii. After Jones's returned to Westmoor High School in the fall of that same year, the school district's superintendent filed a written statement of charges against him. The board commenced administrative proceedings directed to Jones's immediate suspension and dismissal. When Jones demanded a hearing, the board by resolution authorized the San Mateo County District Attorney to file an action for Jones's dismissal. The district attorney commenced such action in the Superior Court of San Mateo County. The cause was tried before the court without a jury. The testimony was given by an administrator of the school that because of Jones's conviction, faith in him by administrators, teachers, parents, and students was diminished to the point he would not be effective in his role. Jones appealed the dismissal.

Both cases challenged the administrative determination and trial court's action in that, as a matter of law, possession of marijuana, or conviction for the crime thereof, cannot amount to 'immoral or unprofessional conduct,' or to an act or crime 'involving moral turpitude' or demonstrating 'evident unfitness for service,' within the meanings of these terms as used in

Education Code, and that, as a matter of proof, the contrary conclusion reached by the trial court, in each of the present cases respectively, is not supported by substantial evidence.

Issue(s): Could Comings be found unfit to teach and have his certificate revoked when he was not employed as a teacher in the state of California based on a charge of marijuana possession?

Holding(s): The Court held that evidence was insufficient to support revocation of Comings certification but was sufficient to support judgment authorizing second teacher's dismissal.

Reasoning: Jones's certificate was revoked because an unfitness to teach had been proven. Jones was actually a teacher in a school when his conviction occurred. It had been printed in the newspaper in California and many knew of his possession of marijuana charge. Because of this, his conviction could be cause for unfitness to teach based on the Morrison Test. The opposite was found in the Comings case. Comings was not employed as a teacher in California and no record was produced he had ever been. His unfitness could not be determined by using the Morrison Test. His revocation was reversed.

Disposition: Court of Appeal, First District, Division 4, California found that the judgment in 1 Civil 29298 is reversed (Comings). The judgment in 1 Civil 29573 is affirmed (Jones).

1973

Citation: *Pordum v. Board of Regents of State of N. Y.*, 357 F.Supp. 222 (N.Y. 1973).

Key Facts: Frederick F. Pordum was a tenured elementary school teacher in Lackawanna, New York. In 1967, Pordum requested and received a two-year leave of absence from the school district, and this leave was subsequently extended for an additional three years. In June 1971,

while Pordum was a member of the Erie County Legislature, he was convicted of conspiracy and bribery and was sentenced to three years in prison. In December 1972, Pordum was released on parole. He requested in writing to the Lackawanna School District that his leave of absence was about to expire, and he was ready to come back to his teaching position. In January 1973, the Lackawanna School District informed appellant that effective February 1, 1973. In January 1973, the Commissioner of Education of New York State notified Pordum that his certificate was being considered for revocation and a hearing would be held. In a timely manner, the Commissioner of Education gave notice of the charges to Pordum based on his conviction and imprisonment. The Commissioner of Education also notified the Lackawanna School District that Pordum was not to be reinstated to his position pending the outcome of the upcoming hearing in February. The Lackawanna School District argued that the system was ready and willing to reinstate Pordum. At Pordum's request, the hearing was postponed until March 30, 1973. On March 8, he filed suit in the United States District Court. The Commissioner of Education prepared to go forward with the hearing and a hearing officer was assigned to the case. Pordum claimed that the charges were unconstitutional because his due process rights were violated, there was great vagueness in the statute, that it violated the equal protection clause, and the revocation was a harsh penalty. The United States District Court, Northern District of New York affirmed the decision of the Commissioner of Education. Pordum appealed the decision to the United States Court of Appeals, Second Circuit.

Issue(s): Were Pordum's due process rights violated by the refusal of the Commissioner of Education of New York State's refusal to allow the Lackawanna School District to reinstate him to his position? Was there so much vagueness in the statute that it was unconstitutional? Was Pordum denied equal protection under the law?

Holding(s): Pordum's due process rights were not violated. Vagueness in the statute that was not unconstitutional. Pordum was not denied equal protection under the law.

Reasoning: The court stated that Pordum did not have his due process rights violated. He was given substantial notice that a hearing would be held. He was allowed to have the hearing delayed at his request. He did not have a hearing because he filed a court cast before he hearing was held. Although the school district had reinstated Pordum, he never reported to school. The Commissioner also had the legally authority to deny Pordum to start the contract that had been extended to him by the school system. The court found that there was not vagueness in the law because it should have been no surprise to Pordum that his teaching certificate was at risk of being revoked because of his conviction and prison sentence. Equal protection was not a defense under the statute that Pordum was arguing because teachers, who are entrusted with the well-being of children, are at different level of expected professionalism.

Disposition: The United States Court of Appeals, Second Circuit affirmed the decision of the United States District Court, Northern District of New York.

1974

Citation: *Erb v. Iowa State Board of Public Instruction*, 216 N.W.2d 339 (Iowa, 1974).

Key Facts: Richard Arlan Erb was a high school teacher in Iowa. He received his teaching certificate in 1963. He was a teacher and wrestling coach at Nishna Valley Community School. Erb was married and had two sons. In 1970, Robert Johnson accused Erb of having a sexual affair with his wife, Margaret Johnson. Mrs. Johnson was a home economics teacher at Nishna Valley Community School. She had planned to open a store and hired Erb to help with the construction. An affair occurred off school grounds during the construction of the store. Mr. Johnson hid in the trunk of his wife's car and witnessed the affair. He did not let Erb or Mrs.

Johnson know he was hidden in the trunk. He consulted an attorney. The attorney instructed Mr. Johnson that he would need other witnesses to testify about the affair. Mr. Johnson and a group of friends waited for Mrs. Johnson and Erb to engage in a sexual act, and the group confronted Mrs. Johnson and Erb and photographed the two partial clothed. Mr. Johnson read a statement to the school board as to why Erb should be dismissed from his position at Nishna Valley Community School. Erb offered to resign his position stating that his wife had forgiven him, and he would resign in order to save his family embarrassment and move on. The school board refused to accept his resignation stating his teaching abilities were exemplary and the principal, superintendent, and students were willing to forgive his misconduct and accept his apology. He was rehired for the following school year. Mr. Johnson presented evidence to the Board of Educational Examiners. A hearing was held, and Mr. Johnson read a lengthy statement to the Board of Educational Examiners. Erb presented several witnesses to the Board of Educational Examiners about his good character and teaching ability, but without stating findings, the board revoked Erb's teaching certificate voting five to four against Erb. The Board of Educational Examiners contended that because Erb admitted adultery was sufficient enough to establish his unfitness to teach. Erb had more than 35 other witnesses he had planned to have testify before the board. He was not allowed to present all of his witnesses. He was also not allowed to cross-examine Johnson or any of Johnson's witnesses. He challenged the revocation of his teaching certificate of the Board of Educational Examiners for moral turpitude and unfitness to teach. Erb brought an action in certiorari alleging the Board of Educational Examiner's action was illegal in the district court. After trial the writ of certiorari was annulled. Erb appealed the district court's finding to the Iowa Supreme Court.

Issue(s): Did the Board of Educational Examiners illegally revoke Erb's certificate because they failed to state legal findings, he was not allowed to cross-examine witnesses against him, and he was not allowed to present all of his character witnesses? Was Erb's teaching certificate revoked without substantial evidence being presented that he was not morally fit to teach based on adultery?

Holding(s): The Board of Educational Examiners did illegally revoke Erb's certificate because they failed to state legal findings; however, Erb did not have legal standing to protest that he was not allowed to cross-examine witnesses against him, and he was not allowed to present all of his character witnesses. Erb's teaching certificate was revoked without substantial evidence being presented that he was morally unfit to teach.

Reasoning: During the hearing before the board, Erb never made a motion that he was denied the right to cross-examine witnesses. Erb first stated this during the district trial. Because he did not challenge this during the actual hearing, he does not have the legal right to challenge it. The board does have the legal obligation to state findings during the board hearing. The board failed to do this. The trial court should have sustained the writ of certiorari due to the board's failure to state findings before the revocation of Erb's certificate. The court found that the affair did not impact the teaching ability of Erb. The court found that the opposite had been presented. The exceptional teaching abilities were stated by administrators, parents, and students. Even Mr. Johnson stated that he did not have the intention to ask for revocation of Erb's certificate, but only requested that he be moved to a different school.

Disposition: The decision was reversed by the Supreme Court of Iowa stating that board acted illegally in revoking Erb's certificate and that the trial court erred in annulling the writ of certiorari.

1977

Citation: *Shore v. Board of Examiners of City of N. Y.* 56 A.D.2d 872, (N.Y. 1977).

Key Facts: Rita N. Shore was a teacher in New York City. She was required to complete the requirements for her certificate within a 1-year timeframe because it was established that she did not meet the requirements. The record makes it abundantly clear that petitioner's license was issued subject to verification that she had met the minimum eligibility requirements, including college-supervised student-teaching or its authorized substitute, by February 1, 1972. Having concededly failed to do so, the subsequent revocation of her license was entirely proper and timely.

Issue(s): Was the revocation of Shore's teaching certificate legal?

Holding(s): The revocation of Shore's teaching certificate was legal.

Reasoning: The court declared that evidence was clearly presented that Shore's teaching license was issued subject to verification that she had met the minimum eligibility requirements, including all educational requirements and student teaching on or before the expiration date of February 1, 1972. Because Shore had failed to meet the timeframe and requirements set forth, the revocation was legally obtained.

Disposition: The judgment of the Supreme Court, Kings County, was affirmed by the Appellate Division of the Supreme Court of New York, Second Department without cost or disbursement.

1981

Citation: *Adams v. State, Professional Practices Council*, 406 So.2d 1170 (Fla. 1981).

Key Facts: Howard W. Adams and Randy D. Ward were high school teachers in the Lee County School System in the state of Florida. They had their certificates revoked by the State of

Florida, Professional Practices Council because they were found to be in possession of 52 marijuana plants in April 1979. The grounds for revoking their teaching certificates was based on moral turpitude. The Lee County School System argued that Adams and Ward would not be positive role models due to the charges. Adams and Ward argued that the warrantless seizure of the marijuana was illegal and that the marijuana evidence should have been suppressed. The marijuana plants were located after a police officer ran through the backyard where the plants were located in a greenhouse. He was trying to apprehend two young vandals who had been reported by a neighbor. The reporting neighbor pointed the officer in the direction of where he last saw the vandals. The officer ran in the direction given by the neighbor and saw two people standing inside a greenhouse. He thought the vandals were the two figures he saw inside the greenhouse. As he opened the door to the greenhouse and peered inside, he clearly viewed marijuana plants. The marijuana plants were then confiscated by the officer and charges followed. Adams and Ward also argued that even with the evidence presented it did not constitute that they engaged in an act of immorality. A hearing was held by the State of Florida, Professional Practices Council. The State of Florida, Professional Practices Council revoked the certificates of Adams and Ward. Adams and Ward appealed the revocation decision to the District Court of Appeal of Florida, First District.

Issue(s): Was Adams and Ward's teaching certificates lawfully revoked based on the evidence collected? Was the evidence collected legally and should it have been used in the revocation of Adams and Ward's teaching certificate by the State of Florida, Professional Practices Council.

Holding(s): The court found that Adams and Ward's teaching certificates were lawfully revoked based on the evidence collected. The evidence was collected legally was in plain view,

and it was warranted to use this evidence in the revocation of Adams and Ward's teaching certificate by the State of Florida, Professional Practices Council. They were also justified in determining that Adams and Ward's being in possession of the 52 marijuana plants, were guilty of acts involving moral turpitude and warranted the revocation.

Reasoning: Although the officer did not have a warrant to search the greenhouse, this legally fell within the "in plain view" exception and does not require a warrant. Because the officer was legally chasing two vandals when the marijuana plants were in plain view, the officer had the legal authority to confiscate the plants and the evidence was admissible in the revocation of Adams and Ward's teaching certificates. Because Adams and Ward violated the law, the court determined that this in fact constituted an act of immorality of the part of Adams and Ward because teachers are expected to maintain a high level of morality due to the leadership that is expected in the teaching profession. The media had printed the story and many community stakeholders, parents, students, and others were aware of the investigation and charges against Adams and Ward. It was maintained that this in its self would cause damage to both Adams and Ward's reputation and effectiveness as teachers and leaders when influencing young students.

Disposition: The District Court of Appeal of Florida, First District, affirmed the decision of the State of Florida, Professional Practices Council.

1982

Citation: *Cobb County Bd. of Educ. v. Vizcarrondo*, 162 Ga.App. 711 (Ga. 1982).

Key Facts: Wayne Vizcarrondo was a high school teacher in the Cobb County School System. He received notice that the Cobb County Board of Education planned to hold a hearing to terminate his contract and move to have his teaching licenses revoked with the Georgia State Board of Education. The Cobb County Board of Education charged Vizcarrondo with

unprofessional conduct which included encouraging his present and past students to drink alcoholic beverages and possess and use marijuana. Vizcarrondo notified the school board in February that he planned to resign his position on March 6th. Vizcarrondo was notified in February that a hearing was set for March 2nd and termination would take place on March 5th. Vizcarrondo then notified the school board that his resignation would be effectively immediately, February 20th, and took another job in another school district. The Cobb County Board of Education refused to accept Vizcarrondo's resignation and held the hearing on March 2nd as planned. Vizcarrondo's contract was terminated and the Cobb County Board of Education notified the Georgia State Board of Education of the termination and charges made against Vizcarrondo including the charge of immorality and placed a letter of reprimand in his folder. Vizcarrondo appealed the decision to the Georgia State Board of Education. A hearing officer heard evidence in the matter and found that the Cobb County Board of Education's decision should be reversed. The Georgia State Board of Education reversed the termination of Vizcarrondo by the Cobb County Board of Education stating that Vizcarrondo had already resigned before the hearing date. The Cobb County Board of Education no longer had any jurisdiction of Vizcarrondo once his resignation had been submitted. Because he had resigned before his contract had expired, the Georgia State Board of Education upheld the 1-year suspension and the reprimand placed in Vizcarrondo's file for wrongful termination of employment. This judgment was appealed to the Superior Court of Cobb County. The court affirmed the decision which was then appealed to the Court of Appeals of Georgia.

Issue(s): Did the Cobb County Board of Education have the legal authority to reject Vizcarrondo's letter of resignation, terminate his contract, and move to have his teaching certificate revoked by the Georgia State Board of Education?

Holding(s): The Cobb County Board of Education did not have the legal authority to reject Vizcarrondo's letter of resignation and instead terminate his contract. The Cobb County Board of Education could not lawfully move to have his teaching certificate revoked by the Georgia State Board of Education.

Reasoning: The contract signed between Vizcarrondo and the Cobb County Board of Education clearly states that if the employee terminates the contract without consent of the employer, the employee will be reported to the Georgia State Board of Education and a 1-year suspension of the teacher's teaching license will be sought. That is what happened in this case. The Cobb County Board of Education could not force Vizcarrondo to continue to work until a hearing was held in March. They must accept his resignation from the February date which caused Vizcarrondo to breach the contract entered into with the Cobb County Board of Education. Vizcarrondo lost his vacation pay and was subject to a 1-year suspension of his teaching certificate. This was enforced by the Georgia State Department of Education. He was also not required to be given a hearing because the evidence was clear that he resigned his position and breached his contract.

Disposition: Court of Appeals of Georgia affirmed the decision of the Superior Court of Cobb County.

1984

Citation: *Walton v. Turlington* 444 So.2d 1082 (Fla. 1984).

Key Facts: Lewis Walton was a high school teacher. He was charged with possession of marijuana and marijuana paraphernalia. Walton pled *nolo contendere* to a charge of possession of marijuana. The Education Commissioner notified Walton that a hearing would be held in order to determine if his teaching certificate should be revoked or suspended. A hearing officer

was assigned to hear the case. At an evidentiary hearing before the hearing officer, testimony was given by two police officers who had witnessed and assisted in the arrest of Walton. Prior to their testimony of the two arresting officers, they refreshed their recollections of the arrest by reading the copies of the written police reports. The hearing officer concluded that the testimony of the police officers was inadmissible because the police officers had to read the reports before they could testify. The hearing officer further concluded that the police reports were essentially the basis to the charges. Because of this, the hearing officer recommended that the complaint should be dismissed against Walton. Because of this plea and the conduct surrounding this plea, Walton was found guilty of an act of gross immorality and moral turpitude, and of conduct which seriously reduced his effectiveness as a teacher by the Commissioner of Education. The Commissioner of Education found that most of the finding of fact were correct as stated by the hearing officer; however, he concluded that Walton's effectiveness as a teacher was greatly reduced by the possession of marijuana and marijuana paraphernalia. He then proceeded to suspend Walton's teaching certificate for a period of three years. The Commissioner of Education found that a teacher does not necessarily need to be convicted of a crime in order for his/her teaching certificate to be suspended or revoked.

Issue(s): Did the Education Practices Commission have the legal authority to suspend Walton's teaching certificate for three years when there was a court-ordered "sealing" of his criminal conviction under his plea of *nolo contendere* to a charge of possession of marijuana and marijuana paraphernalia? Should the two officers who testified in the case against Walton have been allowed to read the police reports before giving testimony to the hearing officer?

Holding(s): The Education Practices Commission had the legal authority to suspend Walton's teaching certificate for three years even though there was a court-ordered "sealing" of

his criminal conviction under his plea of *nolo contendere* to a charge of possession of marijuana and marijuana paraphernalia. Even though the two officers had to refresh their recollection of the arrest, it was still considered legal and was credible testimony.

Reasoning: The court found that although the criminal record of Walton had been sealed and expunged, the noncriminal conduct of Walton in being in possession of the marijuana and marijuana paraphernalia was enough to suspend his teaching certificate for three years. The court found that teachers are expected to be positive role models to students and when this type of inappropriate conduct takes place, the effectiveness of the teacher is greatly reduced. Purely having exhibited gross immorality or moral turpitude can be a noncriminal reason to have a teacher's certificate revoked or suspended by the Education Commissioner. The court further stated that Walton's expunged criminal record does not disconnect him from his criminal conduct. The court also found that there was no legal reason why the police officers could not look at reports to recollect their memories of the occurrence and this did not make the testimony of the two police officers less credible.

Disposition: The order appealed from is affirmed by the District Court of Appeal of Florida, First District.

1985

Citation: *Balentine v. Arkansas State Bd. of Educ.* 285 Ark. 1 (Ark. 1985).

Key Facts: Roy L. Balentine was the superintendent in Balentine was charged with submitting altered numbers for Timbo School on student enrollment numbers, transportation numbers, and number of students who were served school lunches. Balentine argued that although he did submit false numbers, the Arkansas State Board of Education's action was not authorized by the controlling statute. He argued that the statute only revokes a teacher's teaching

certificate when the superintendent knowingly allows the teacher to submit falsified documents but does not apply if the superintendent is the person who knowingly submits the documents.

Issue(s): Did the Arkansas State Board of Education follow Arkansas Statute when Balentine's teaching certificates were revoked?

Holding(s): The Arkansas State Board of Education followed Arkansas Statute when Balentine's teaching certificates were revoked.

Reasoning: The court found that even though the language may have been such to only state "teachers" were not to falsify attendance records or teachers should not be instructed by the superintendent, or anyone for that matter, to falsify school records, the statute covers anyone who knowingly falsifies school records. This would include the superintendent. If a superintendent knowingly allows a teacher to submit falsified records or if a superintendent him/herself knowingly submits falsified records, the penalty is the same. The revocation of the teaching certificate or administrative is to be revoked by the Arkansas State Board of Education.

Disposition: Supreme Court of Arkansas affirmed the decision of circuit court's decision.

Citation: *Longenecker v. Turlington*, 464 So.2d 1249 (Fla. 1985).

Key Facts: Longenecker's teaching certificate was revoked by the Educational Practices Commission in February 1981. That order was not appealed by Longenecker. In March 1983, appellant filed an application for a teaching certificate with the Department of Education. The Department denied the application. Longenecker appealed the denial of the Education Practice Commission. On appeal, the Education Practice Commission denied the application. A hearing was ordered. The hearing officer entered an order recommending Longenecker's application be denied finding that the Education Practice Commission did not have the authority to reissue or

reinstate a teaching certificate to him because his former certificate had been permanently revoked. Longenecker appealed.

Issue(s): Did Longenecker have the legal right to have his certificate reinstated when the Educational Practices Commission had previously revoked his certificate?

Holding(s): Longenecker did not have the right to ask for his certificate to be reinstated by the Educational Practices Commission.

Reasoning: The teacher did not have the right to reinstatement or even to reapplication. Permanent means permanent and does not need further explanation according to the judge. When a teacher's certificate is permanently revoked in Florida, that implies it is forever and is considered a harsh penalty for a very serious offense.

Disposition: District Court of Appeal of Florida, First District, affirmed the decision of the Educational Practices Commission.

Citation: *Wagenblast v. Crook County School Dist.* 75 Or.App. 568 (Or. 1985).

Key Facts: Gail Wagenblast was an elementary teacher in 1977. In February 1984, the Teacher Standards and Practices Commission notified the Crook County School District, who employed Wagenblast, that she no longer held a valid teaching certificate. Wagenblast had received a certificate and then had it voided because her check was returned due to nonsufficient funds in her bank account. She was notified but refused the certified letter upon delivery. The district superintendent informed Wagenblast that she was terminated. She appealed to the Fair Dismissal Appeals Board contending that the termination was a "dismissal" under the Fair Dismissal Law and that it was invalid because the school district did not follow the statutory procedures for dismissing a tenured teacher. The school district asked that the Fair Dismissal Board dismiss the appeal because Wagenblast was no longer a certified elementary teacher at the

time it terminated her. Fair Dismissal Appeals Board dismissed the appeal citing lack of jurisdiction. Wagenblast appealed the decision of the Fair Dismissal Appeals Board upholding her termination.

Issue(s): Did the Fair Dismissal Appeals Board have the authority to determine if Wagenblast's dismissal for lack of paying required fees was legal?

Holding(s): The Court of Appeals held that Board lacked jurisdiction to determine whether district had legal authority to terminate teacher for failing to pay required fee for renewal of her teaching certificate.

Reasoning: The school board did not itself make any decision to terminate Wagenblast or vote to approve the action. The superintendent did not make any recommendation of termination to the school board before taking the termination action, and did not otherwise follow Fair Dismissal Law procedures. Wagenblast was not given any pretermination hearing before the school board although the superintendent had discussed the situation with Wagenblast and had given her time to look for evidence showing she had paid the required fee. Wagenblast's appeal to the Fair Dismissal Appeals Board is for certified teachers. When Wagenblast was dismissed, she was not a certified teacher and had not held a certification since her failure to pay her fee in September 1982. The school district did not revoke Wagenblast's certificate and neither did the Teacher Standard and Practices Commission who does have the legal authority. They simply made it invalid due to failure to pay the required fee. A teacher who does not hold a valid teaching certificate does not meet qualifications to be employed.

Disposition: Court of Appeals of Oregon affirmed.

1986

Citation: *Lubin v. Board of Educ. of City of New York*, 119 A.D.2d 497 (N.Y. 1986).

Key Facts: Lubin was a certified teacher who was employed to teach homebound students in New York. Lubin passed a qualifying examination, and received his certification in 1972. In 1973, after petitioner successfully retook the same examination, he received another license. Both of the licenses carried the condition that Lubin was required to meet preparatory eligibility requirements within the three years after issuance of the license. In March 1974, Lubin was given an available position, but two years later he was notified that his 1972 license was to be invalidated for his failure to fulfill the educational requirements of the job. In June of 1976, his termination became effective, upon revocation of his license, with a recommendation by respondent Board of Education, Lubin's probationary service also terminated due to his failure to meet preparatory requirements. In November 1979, Lubin requested information about his 1973 licenses. The Board notified Lubin that his 1973 license was still valid and that his prior appointment, which had been from the 1972 list, had been terminated in June 1976. Lubin petitioned for writ of mandamus directing the chancellor of the board of education to restore his license. The grant of that petition in Kings County was reversed on appeal. The Second Department ruled that that proceeding was time-barred since the four-month Statute of Limitations had commenced and had expired before the initiation of that proceeding.

Issue(s): Should a writ of mandamus be issued to Lubin for the revocation of his teaching certificate? Did the chancellor have the authority to reissue Lubin's teaching certificate?

Holding(s): Lubin did not comply with the requirements of regulation which was the only avenue that gave the chancellor the discretionary authority to restore license. Lubin was entitled to administrative determination but not restoration in that mandamus.

Reasoning: The four-month time bar commenced running on April 21, 1976, when Lubin was notified that his services were being terminated because he did not meet the requirements of his 1972 license. The time limitations barred the chancellor from reissuing his license, and it was still unclear if Lubin had ever completed the requirements for his certification to remain active.

Disposition: Supreme Court, Appellate Division, First Department, New York affirmed the decision as modified.

Citation: *Cooper v. Eugene School Dist. No. 4J*, 301 Or. 358 (Or. 1986).

Key Facts: Janet Cooper taught sixth and eighth grade Special Education students in Eugene Public Schools in Oregon. Cooper became a Sikh. She would often wear a white turban and clothes as part of her religious practices. She explained her religious views and her behavior changes to the faculty, staff, and students. The principal and superintendent warned Cooper that her religious apparel could be means to have her contract cancelled and her teaching certificate revoked. Cooper ignored the warnings. Cooper was instructed to refrain from wearing the religious attire at work. Cooper ignored the warnings. She refused and was suspended in accordance with the statute. The Eugene Superintendent reported the suspension to the Superintendent of Public Instruction. After a hearing, Cooper's teaching certificate was revoked. Cooper appealed the revocation claiming it was unconstitutional. The Court of Appeals reversed the revocation of Cooper's teaching certificate. The court found that the revocation was excessive under the First Amendment of the United States Constitution. The Eugene School District and Oregon State Superintendent appealed to the Oregon Supreme Court.

Issue(s): Did the statute forbidding Cooper from wearing religious garb violates religious freedom or the federal First Amendment? Was the revocation of the teaching certificate an excessive sanction?

Holding(s): The statute forbidding Cooper from wearing religious garb did not violate religious freedom or the federal First Amendment. The revocation of the teaching certificate was not an excessive sanction and was legally revoked under the statute.

Reasoning: The Supreme Court, Linde J., held that: 1) The religious dress statute, when correctly interpreted, did not violate State's guarantees of religious freedom or federal First Amendment. Wearing religious dress- clothing that is associated with, and symbolic of, religion while teaching may leave a conscious or unconscious impression among young people and their parents that the school endorses the particular religious commitment of the person. Religious dress statute does not forbid teachers from wearing common decorations that a person might draw from a religious heritage, such as a necklace with a small cross or Star of David. 2) Revocation of teaching certificate was disqualification from teaching in public schools based upon one's doing so in manner incompatible with that function, not by reason of hostility to religious and political belief, and thus revocation of teaching certificate was not excessive "sanction" discouraging even privileged exercise of First Amendment rights more than was necessary to achieve law's purpose of maintaining religious freedom and neutrality in public schools.

Disposition: The Oregon Supreme Court reversed the decision of the Court of Appeals affirming the revocation.

1987

Citation: *Trigg v. Sanders*, 162 Ill.App.3d 719 (Ill. 1987).

Key Facts: Thomas Trigg was a high school teacher in Illinois. He was issued a teaching certificate in 1968 by the State Teacher's Certification Board. In 1986, Trigg pled guilty and was convicted of five counts of harassment by telephone involving young female students. Trigg was

sentenced to one-year of probation with 40 hours of public service work, and was fined \$400 plus costs. He was also ordered to undergo a psychological examination and receive counseling. In April 1986, the superintendent of Monticello Community School District, No. 25, sent a letter to the regional superintendent. The superintendent of Monticello notified the regional superintendent of Trigg's convictions for harassment requested that proceedings start to suspend Trigg's teaching certificate. In May 1986, Trigg was served with notice informing him that within 10 days of the receipt of the notice he could request a hearing. The notice further stated that if he did not request a hearing within the 10-day period, the allegations contained in the attached statement of charges would be deemed uncontested by him and his teaching certificate would be suspended. Trigg did not respond within the 10-day timeframe. He did not appeal the suspension. At the end of May 1986, the State Superintendent of Education, served Trigg with a notice of hearing to determine if his certificate should be revoked. In early June 1986, Trigg filed an objection to jurisdiction and a motion to dismiss, arguing that the suspension order was a final disciplinary act, thereby precluding further disciplinary action based upon the same conduct. On August 26, 1986, the Illinois State Board of Education, acting through the State Superintendent of Education, issued an administrative order in the revocation proceeding, ordering that Trigg's teaching certificate be revoked. Trigg appealed. The Circuit Court, Sangamon County, affirmed administrative decision, and teacher appealed.

Issue(s): Did the State Superintendent have the authority to revoke Trigg's teaching certificate after the regional superintendent had previously suspended it? Was that the final order?

Holding(s): The prior suspension of Trigg's teaching certificate by regional superintendent did not preclude later revocation of his teaching certificate by the State

Superintendent for same act or misconduct after proceedings before State Teacher's Certification Board.

Reasoning: The State Superintendent could revoke the certificate even after it had been suspended. The suspension was not considered a final order.

Disposition: The judgment of the circuit court of Sangamon County is affirmed by the Appellate Court of Illinois, Fourth District.

1989

Citation: *Startzel v. Com., Dept. of Educ.*, 128 Pa.Cmwlth. 110 (Pa.1989).

Key Facts: Ronald F. Startzel was a math and science teacher for 23 years in the Mount Carmel School District. In 1985, a federal grand jury indicted Startzel on the charge of mail fraud. These criminal charges stemmed from Startzel's position as a Mount Carmel Township supervisor and a dishonest deal he made with private garbage collectors to use a landfill to deposit garbage, and he and others involved would benefit on a personal basis. No money was ever received by Startzel. Startzel pled guilty to the charge and received a suspended sentence, a \$500 fine, and six months of probation. In 1986, the Secretary of Education moved to have Startzel's certificate revoked for his criminal charge. Startzel was given notice of the charges, and a hearing examiner was assigned to hear the case. Hearings were held and the hearing examiner recommended that the Secretary of Education find Startzel guilty of moral turpitude and revoke his certificate. Startzel's permanent teaching certificate was revoked based on his plea of guilty to mail fraud. Startzel appealed the case arguing that he was being punished harshly with having his certificate permanently revoked and that the statute was unconditional that allowed the Education Secretary to automatically revoke his teaching certificate.

Issue(s): Did the Secretary of Education err as a matter of law in finding that a crime of moral turpitude was committed? Did the Secretary of Education apply the statute in a manner that violated Startzel's rights under the Pennsylvania Constitution?

Holding(s): The Secretary of Education did not err in finding that a crime of moral turpitude was committed. Mail fraud was a crime involving moral turpitude within the meaning of decertification statute in PA. The Secretary of Education was not required to conduct hearing at decertification and reinstatement stages on convicted educator's fitness to continue teaching. The two-step decertification/reinstatement process was rationally related to State's legitimate interest in insuring that state-certified educators were fit to work closely with students.

Reasoning: The court found that the Secretary of Education had the legal authority to revoke Startzel's teaching certificate under state statute due to the conviction. The court found that the Secretary of Education had the legal authority to revoke Startzel's certification without allowing him to present evidence to the contrary because the conviction warranted the revocation.

Disposition: Commonwealth Court of Pennsylvania affirmed.

1991

Citation: *Stedronsky v. Sobol*, 175 A.D.2d 373 (N.Y. 1991).

Key Facts: Edward Stedronsky was a certified teacher in New York. He was employed by the West Babylon Union Free School District in Suffolk County until he resigned on April 20, 1988. After being confronted by a private investigator hired by the school district, Stedronsky admitted he had sexual relationships and engaged in inappropriate conduct with male students. In the course of the investigation, the investigator falsely advised petitioner that there was incriminating evidence of his sexual misconduct with his students and that if he failed to admit

that he engaged in such conduct or if he sought counsel, the School District would pursue a criminal conviction rather than merely seek his resignation. Stedronsky then made nonspecific admissions of sexual misconduct with his male students and resigned. After the resignation, the Commissioner of Education sent Stedronsky a notice of substantial question as to moral character. He then requested a hearing to challenge the charges and moved to suppress his admissions made at the investigative interview. A Hearing Officer denied petitioner's suppression motion. After a full hearing, the hearing officer found that Stedronsky did in fact engage in inappropriate conduct with male students, lacked adequate moral character, and recommended that petitioner's teaching certificates be revoked, with an opportunity for reapplication in three years after appropriate therapy. Following administrative appeal, the Commissioner upheld the findings and adopted the Hearing Panel's recommendation. Stedronsky appealed.

Issue(s): Did the school board illegally obtain evidence of sexual contact with male students, and could this evidence be used to revoke the teaching certificate of Stedronsky?

Holding(s): The admission that teacher had engaged in inappropriate sexual conduct with male students was admissible in administrative proceeding to revoke teaching certificates, even though admission had been obtained following false representation by private investigator employed by the school.

Reasoning: The admission of improper sexual activity was sufficient to support certificate revocation due to the nature of the business of teaching and working with students.

Disposition: Supreme Court, Appellate Division, Third Department, New York affirmed.

Citation: *Stelzer v. State Bd. of Edn.*, 72 Ohio App.3d 529 (Ohio, 1991).

Key Facts: Barbara Stelzer was a teacher in Ohio. In 1988, Stelzer and her husband were convicted of falsifying welfare forms in order to receive welfare benefits that they were not qualified to receive. This went on from 1981-1987. The total amount received was \$43, 290. Stelzer was convicted of a fourth degree felony of receiving stolen property. Upon receiving notification of the conviction, Stelzer was notified by the Ohio State Board of Education that her teaching certificate was being considered for revocation or suspension due to her conviction. Stelzer asked for a hearing. A hearing officer found that Stelzer certificate should not be revoked. The hearing officer found that Stelzer's conviction did not have a direct impact of her ability to do her job. The hearing officer found that Stelzer did not have direct participation in the crime and had great support from the professional community where she was employed. The Ohio State Board of Education did not abide by the hearing officer's findings and revoked Stelzer's teaching certificate arguing that her testimony was not credible, and her conduct was unbecoming of a teacher. Stelzer argued that the Board failed to find a nexus between her criminal conduct and her teaching position. She appealed the decision to the Common Pleas Court of Auglaize County. The court affirmed the decision of the Ohio State Board of Education. Stelzer appealed to the Court of Appeals of Ohio.

Issue(s): Did the Ohio State Board of Education have sufficient evidence to legally revoke Stelzer's certificate on the basis of conduct unbecoming and immorality? Was the penalty of revocation of her teaching certificate too harsh?

Holding(s): There was substantial evidence to revoke Stelzer's certificate for illegal receipt of welfare benefits, and this was conduct unbecoming a teacher. The penalty of revocation of her teaching certificate was appropriate.

Reasoning: The Appeals Court of Ohio held that Stelzer illegally accepted welfare benefits which is conduct unbecoming of a teacher and constitutes immorality. The teacher's criminal record proved the revocation proceedings were justified. The Ohio State Board of Education was correct in rejecting the hearing officer's findings.

Disposition: Court of Appeals of Ohio, Third District, Auglaize County, affirmed.

1992

Citation: *Hainline v. Bond*, 250 Kan. 21 (N.Y. 1992).

Key Facts: Todd Hainline was a certified teacher employed at Southeast High School in the Unified School District No. 259 in the state of Kansas. In March 1989, Wichita, Kansas police officers were called to a burglary in progress in an old furniture building that was currently being used to store furniture. Two doors were chained and locked to secure the building. The officers noted that the chains had been cut off and started searching the building for intruders. Hainline and an accomplice were hiding behind boxes. Hainline was arrested and charged with burglary and theft. After being arrested, Hainline was suspended with pay. After Hainline entered into a diversion agreement, he was transferred to another school in the same district. This case received a great deal of media attention. With that stated, the Secretary to the Professional Practices Commission of the State Board of Education filed a complaint against Hainline's teaching certificate asking for it to be revoked. In February 1990, the Professional Practices Commission filed an order recommending the revocation of Hainline's teaching certificate. It was recommended to be suspended for 219 days. The Professional Practices Commission suspended Hainline's certificate for 140 days for immorality based on the conviction of burglary. Hainline filed a motion for the recommendation to be reviewed. It was denied. He then filed an appeal to the district court. The district court affirmed the decision.

Hainline appealed the judgment of the district court which affirmed the decision of the Kansas State Board of Education. Hainline appealed to district court's judgment to the Supreme Court of Kansas.

Issue(s): Was the Kansas State Board of Education lawful in the statute that was used to determine the 140-day suspension of Hainline's license on the grounds of immorality? Was there a nexus between Hainline's conviction and his ability to be an affective teacher? Did Hainline have a "right of privacy" for conduct occurring outside of school?

Holding(s): Kansas State Board of Education was lawful in using the statute to suspend Hainline's license for 140 days based on immorality. A nexus does exist between the professional life of a teacher and the teacher's personal life when a felony is committed by the teacher. The "right of privacy" was not violated when Hainline was suspended from his teaching duties for 140 days.

Reasoning: Although the statute was vague when it specifically addresses immorality, the Kansas State Board of Education argued that the part of the statute used to determine the suspension would fall under immorality and is grounded in the regulation. Moral turpitude occurred when Hainline exhibited felonious conduct with the conviction of burglary and theft. The Kansas State Board of Education has the authority to have a professional code of conduct which requires a person not to commit a felony. Having this code of conduct in place is not considered arbitrary or capricious. Felonies are public offenses. Mr. Hainline committed theft and burglary in a public arena. He does not have the right to privacy when convicted of a felony. Because the local school board supported Hainline that may have played into a suspension and not revocation. Teachers are held to professional standards and services that other nonprofessionals may not be held to, so a nexus does exist between the professional

responsibilities of a teacher and the responsibilities that encompass being said professional. In general, professionals and nonprofessionals are expected to follow the laws. Teachers in particular teach students how to be good citizens and abide by the law. When a teacher commits a felony, this impedes on his ability to influence good conduct and morals.

Disposition: The Supreme Court of Kansas affirmed the judgment of the district court.

1993

Citation: *Groht v. Sobol*, 198 A.D.2d 679 (N.Y. 1993).

Key Facts: George A. Groht was a teacher in the Lakeland Central School District in Westchester County, New York. He taught chemistry and general science in high school. He was tenured at the time the incident took place. Groht was accused of giving a student an alcoholic beverage and then having sex with her. Groht admitted he gave the student a half bottle of a wine cooler, but he denied the allegation of sexual intercourse. The student also made allegations that Groht had requested sex from her on several occasions. The student claimed that Groht had sent her romantic letters several times. Groht acknowledged that he had sent the cards and letters, but he stated he only sent those letters and cards to try and persuade the female student from having a lesbian relationship with another student. The Lakeland Central School District investigated and started proceeding to dismiss Groht. Groht reached a settlement with Lakeland Central School District. The Lakeland Central School District allowed Groht to irrevocably resign with prejudice. The New York Department of Education started an investigation and found that the allegations and facts presented in the case were true. The New York Department of Education held a hearing and moved to revoke Groht's teaching certificates. He denied that he had sex with student claiming he was impotent. During the hearing before the New York State Board of Education, the impotence claim was not confirmed with medical documentation. The hearing

officer recommended that Groht's license be revoked stating that he lacked adequate moral character to teach students in the state of New York. Groht appealed the decision and asked for a rehearing arguing, among other things, that his due process rights had been violated because he was not allowed to argue the impotence claim. The New York State Board of Education refused to reopen the hearing arguing that Groht had sufficient time to enter the impotence claim into the evidence, but he did not produce the evidence.

Issue(s): Was the New York State Board of Education's refusal to reopen the hearing to allow Groht a reargument an abuse of discretion, errored as a matter of law, and violate his due process rights?

Holding(s): The Supreme Court found that the New York State Board of Education was proper when it did not allow the hearing to be reopened. They had the lawful authority to choose not to reopen the hearing. Groht's due process rights were not violated, there was not an abuse of discretion, and the law was properly followed.

Reasoning: The Supreme Court found, inter alia, that the denial of reopening the hearing to allow for Groht to add evidence concerning impotence did not violate his due process rights because Groht could have presented the evidence during the hearing. They found that there was no substantiated reason that prohibited Groht from presenting the medical claim during the original hearing. The decisions of the hearing officer and was not arbitrary or capricious. If Groht had been allowed to offer additional evidence, the court found that it would be redundant in nature and would not change the outcome of the recommendation of the hearing officer's recommendation because Groht admitted he gave the student alcohol and the letter and cards were evidence he was initiating a sexual relationship with the student over a period of time. The

hearing officer also found the student's testimony credible. Groht's admission were more than adequate to confirm a lack of moral charter as a teacher in New York public schools.

Disposition: Appellate Division of the Supreme Court of the State of New York, Third Department, affirmed the decision.

1994

Citation: *Nelkin v. Board of Educ. of City of New York*, 205 A.D.2d 377 (N.Y. 1994).

Key Facts: Jerome Nelkin was a certified substitute teacher employed by the city Board of Education in New York City. After Nelkin sent incoherent letters to the Chancellor combined with the results of subsequent psychiatric examinations, Nelkin's substitute teaching certificate was suspended and he was denied a regular teaching position. Nelkin appealed the decision to the Supreme Court, New York County, claiming the decision was arbitrary and capricious. This court affirmed the decision of the City Board of Education in New York City. Nelkin again appealed the decision to the Supreme Court, Appellate Division.

Issue(s): Was the local school board arbitrary or capricious when Nelkin was denied a permanent teaching position and had his substitute teaching licenses suspended pending the outcome of a medical evaluation?

Holding(s): The Board did not act arbitrary or capricious by suspending substitute teaching certificate, and withholding the application for appointment as regular teacher, pending outcome of Nelkin's medical evaluation.

Reasoning: Because of the nature of the teaching profession and the work with young students, the mental fitness of a teacher may be evaluated if evidence exist as a need. The court ordered a full mental evaluation.

Disposition: Supreme Court, Appellate Division, First Department, New York affirmed.

Citation: *Tenbroeck v. Castor*, 640 So.2d 164 (Fla. 1994).

Key Facts: In 1989-1990 John Tenbroeck was an assistant principal at Westside Skills Center. This high school was part of the Duval County School Board. During the latter part of the school year, suspicions were circulating that Tenbroeck was seen with a 15-year-old female student on and off campus. Because this was unusual, the principal of the school questioned Tenbroeck about the student and his relationship with the student. Tenbroeck assured the principal on two occasions that he was not having an inappropriate relationship with the student in question. The next school year, Tenbroeck was transferred to another school. In December 1990, the now 16-year-old student and Tenbroeck were married with the permission of her father. After the principal had conferenced with Tenbroeck about the inappropriate relationship, there were no more reports that the student and Tenbroeck had been seen together. Soon after the marriage, Tenbroeck resigned. The local school board rescinded the resignation placing Tenbroeck on administrative leave. At the end of the school year, the Commissioner of Education filed an administrative complaint against Tenbroeck. The complaint stated that Tenbroeck had engaged with a student in an inappropriate relationship. The Commissioner of Education charged that Tenbroeck engaged in immoral conduct with a student which was moral turpitude, displayed conduct unbecoming of a teacher which caused a student harm, had diminished his ability to be an effective teacher, and used his professional position for personal gain. Tenbroeck disputed all of the allegations and requested an administrative hearing. The student, now Tenbroeck's wife, denied that they had a sexual relationship until after they were married. The student's friends testified that the student had told them that she and Tenbroeck had engaged in a sexual relationship prior to the marriage. The administrative hearing officer stated that there was no credible evidence that Tenbroeck had engaged in a sexual relationship with the

student before the night of the marriage. Even though there was no credible evidence that the teacher and student had engaged in premarital sex, the hearing officer stated that there was credible evidence that the Tenbroeck had engaged in personal relationship with a student. The hearing officer rejected the student's testimony that they had not engaged in a personal relationship before their marriage. The hearing officer found that Tenbroeck did have a personal relationship before he married a student and this caused his effectiveness as a teacher to be greatly diminished and caused embarrassment and stress to the student he was charged with protecting. The hearing officer recommended that Tenbroeck's teaching certificate be suspended for two years and three years' probation after the suspension. The Education Practices Commission adopted the recommendations adding that Tenbroeck could not hold an administrative position for two years. Tenbroeck appealed the final order of the Education Practices Commission.

Issue(s): Did clear and convincing evidence exist that Tenbroeck had an inappropriate relationship with a student? Was public concern surrounding the marriage of Tenbroeck and a former 16-year-old student enough to establish his ineffectiveness as a teacher?

Holding(s): There was no clear and convincing evidence established that an inappropriate personal relationship was ever established prior to the day of the marriage of Tenbroeck and his 16-year-old wife. Public concern surrounding the marriage could not be used to establish that Tenbroeck was ineffective as an administrator.

Reasoning: The evidence presented in the case was not clear and convincing that the teacher and student, now his wife, had an inappropriate sexual and intimate relationship before they were married. There was not a nexus between this marriage and Tenbroeck's ability to do his job as an administrator.

Disposition: District Court of Appeal of Florida, First District, reversed the decision of the final order of the Education Practices Commission.

Citation: *Patterson v. Superintendent of Public Instruction*, 76 Wash.App. 666 (Wash. 1994).

Key Facts: In 1988-1989, Dennis Patterson taught part-time in the West Valley School District. In his first two evaluations, he was rated unfavorably by the school principal. Patterson resigned his teaching position after the negative evaluations. Patterson then started to apply for other positions in nearby school districts. Two of the systems Patterson applied with were East Valley School District and Spokane's School District 81. Patterson acknowledged to the Spokane School District 81 that he had been employed in the West Valley School District; however, Patterson did not reveal to East Valley School System that he has ever been employed with the West Valley School System, Spokane School District 81 notified Patterson he would not be considered for their upcoming hiring pool. Patterson suspected that it was due to his references from West Valley School District. Patterson met with the school system's superintendent. When Patterson asked to see his file, he was denied access. Patterson then made an appointment to meet with the assistant superintendent. Before he met with the assistant superintendent, he went to the personnel office and asked to see his file. He wanted to verify that it was complete and make sure the reference from West Valley School System were in his file. The clerk assured him that they were. The clerk became distracted, and Patterson walked out with his complete file. His recommendations from West Valley School District were in the file and had been unfavorable. When the time arrive for Patterson to meet with the assistant superintendent, Patterson was asked to return the file. Patterson did return the file; however, the reference form from West Valley School District had been removed. The Spokane's School

District 81 filed a complaint with the Office of Professional Practices of the office of Superintendent of Public Instruction. During this time, East Valley School District hired Patterson as an overflow substitute teacher. When East Valley School District became aware that Patterson had been employed by West Valley School District and Patterson had not divulged this information, Patterson was released as the overflow substitute teacher. Patterson claimed that the reason he had not divulged his employment with the West Valley District was because he had asked for a copy of the recommendation and had not received it at the time he applied for employment with the West Valley School System. East Valley filed a complaint with the Office of Professional Practices of the office of Superintendent of Public Instruction. The Office of Professional Practices investigated both complaints and found the Patterson lacked the good moral character and personal fitness required to teach in Washington and recommended that Patterson's licenses be suspended for a period of 18 months. The office of Superintendent of Public Instruction held an informal hearing and suspended Patterson's license for six months. Patterson appealed. An Administrative Law Judge presided over a full evidentiary hearing and found that Patterson did exhibit conduct which called into question Patterson's moral character and personal fitness to teach when he failed to reveal his past employment history and took the file belonging to the Spokane School District 81. The six-month suspension was upheld. Patterson appealed Administrative Law Judge's decision to the State Board of Education. Patterson also filed suit against the office of Superintendent of Public Instruction in Spokane County, Superior Court. Patterson argued that the Administrative Procedure Act was violated due to erroneous interpretation of the law, and arbitrary and capricious action beyond the Superintendent of Public Instruction's scope of authority. He believed that the suspension of his teaching certificate lacked evidence and that the actions of the Superintendent of Public

Instruction amounted to malice, libel, and defamation of character. He wanted the Superintendent of Public Instruction's actions void and "equitable damages, costs and fees." The State Board of Education affirmed the Administrative Law Judge's decision. The Spokane County Superior Court affirmed the findings of the State Board of Education. Patterson asked for a direct review by the Supreme Court of the superior court decisions. It was denied and transferred to the Court of Appeals of Washington, Division Three.

Issue(s): Did the trial court err in dismissing Patterson's damage claim, and were his due process rights violated? Did the State Board of Education create misleading false public records which constituted malice, libel, and defamation of Patterson's character? Was the suspension arbitrary or capricious?

Holding(s): Mr. Patterson's due process rights were not violated. The suspension was not the result of arbitrary and capricious action. The State Board of Education did not create misleading false public records that constituted malice, libel, and defamation of Patterson's character.

Reasoning: Patterson did not state a cause of action for damages based on due process violations. Pleading were properly considered. Patterson also never gave any authority as to why he believed the proceedings should have been stricken. Defamation of character was not established because Patterson never established a prima facie case. Mr. Patterson had signed an employment application that allowed for the Board to seek confidential references from his prior employers. The actions of Patterson were considered unprofessional conduct and may also be defied as unfit. When Patterson deliberately left out his employment history and took the file from the clerk's office, these actions are considered unfit.

Disposition: Court of Appeals of Washington, Division Three, affirmed the decision.

1995

Citation: *Langston v. Jamerson*, 653 So.2d 489 (Fla.1995).

Key Facts: David Langston was a teacher at Port St. Joe Junior/Senior High School with the Gulf County School District. Langston was an alternative education teacher. His classes were composed of students deemed likely candidates to drop out, with problems such as poor grades and poor attendance. Langston was accused of doing things that the Gulf County School District argued were inappropriate. He would give students his telephone number and call students by their nicknames. Because many of these students were in trouble and at risk for dropping out of school, Langston argued that he tried to create a nontraditional relationship with the students in order to encourage the students to stay in school and graduate from high school. Langston was charged with intentionally embarrassing or disparaging students. A hearing officer found that this did not occur. A hearing officer concluded that there were not enough facts in the case to find Langston guilty. The Education Practices Commission agreed with the hearing officer's ruling, but determined that Langston's conduct still constituted misconduct. The Education Practices Commission issued a letter of reprimand and placed Langston on three years' probation. Langston appealed.

Issue(s): Did the Education Practices Commission abuse its discretion when it issued a letter of reprimand and placed Langston on three years' probation after a hearing officer found the factual information to be weak and recommended all charges to be dismissed? Did students suffer harm, embarrassed or felt disparaged due to the conduct of Langston?

Holding(s): The District Court of Appeals of Florida, First District, stated that the Education Practices Commission did abuse its discretion when it issued a letter of reprimand and

placed Langston on probation. There was not enough evidence that the students suffered any harm, embarrassment, or were disparaged due to Langston's conduct.

Reasoning: The hearing officer found that there was no harm, embarrassment, or disparagement suffered by any student and that there was never any potential for students to be harmed in Langston's classroom. The District Court of Appeals of Florida, First District, found that the Education Practices Commission's recommendation conflicted with the findings of the hearing officer which the Education Practices Commission had unequivocally adopted. The hearing officer used fact in determining its recommendation; therefore, the Education Practices Commission cannot substitute its findings for the hearing officer's.

Disposition: District Court of Appeal of Florida, First District, found that the Education Practices Commission abused its discretion and reversed.

Citation: *Nanko v. Department of Educ.* 663 A.2d 312 (Pa. 1995).

Key Facts: Regina Nanko applied for the position as the Superintendent of the Otto-Eldred School District. Nanko interviewed for the position. Nanko also held certifications in Elementary Education and Elementary Principal, and held an Assistant Superintendent's Letter of Eligibility. Nanko stated that she also held a letter of eligibility to be a superintendent. After the interview, the superintendent called Nanko and asked for the Superintendent's Letter of Eligibility. Nanko faxed the superintendent a copy of the eligibility letter. It was discovered that Nanko had actually altered a copy of her professional certificate making it appear as though she had the eligibility letter when she actually did not. Nanko tried on two occasions to alter documents that were sent to the State Board of Education. She forged a past superintendent's name and sent a handwritten letter from that same superintendent stating that he was the cause of the delay in getting Nanko's superintendent's letter. The Department of Education denied Nanko

a Letter of Eligibility stating that she did not have the administrative experience required to get the letter. The Department of Education ‘also started an investigation on Nanko. It was discovered that Nanko had misrepresented herself when she had completed applications. The Department of Education filed a “Notice of Charges” with the Professional Standards and Practice Commission. Nanko was charged with forging the superintendent’s name on documents when she applied for the eligibility letter, misrepresenting her employment history and areas of certification, and altering her Pennsylvania Public School Certificate. A hearing was held. The hearing officer found The Department of Education had enough evidence to prove its case and found that Nanko’s certificates should be revoked. Nanko filed exceptions. The Professional Standards and Practice Commission heard arguments and then affirmed the hearing officer’s decision of the revocation. Nanko appealed to Commonwealth Court of Pennsylvania.

Issue(s): Did the Professional Standards and Practices Commission err in revoking Nanko’s certificate on immorality? Because Nanko had no criminal conviction, was it unlawful to revoke her certificate? Did the Professional Standards and Practices Commission abuse its discretion because it did not comply with statutorily mandated prerequisites before revoking the certification?

Holding(s): The Professional Standards and Practices Commission did not err in revoking Nanko’s certificate based on immorality. Nanko did not need a past criminal conviction in order for her certificate to be revoked. The Professional Standards and Practices Commission did not abuse its discretion failing to follow statutorily mandated prerequisites when it revoked Nanko’s certifications.

Reasoning: The definition of immorality as defined by The Professional Standards and Practices Commission did meet the required definition and had been proven in the case and did

not violate Nanko's due process rights. The Commonwealth Court of Pennsylvania stated that the Professional Standards and Practices Commission did not err as a matter of law and was not required to wait for a misdemeanor conviction of document forgery because it had already been proven that this in fact had happened. The Professional Standards and Practices Commission did not abuse its discretion failing to follow statutorily mandated prerequisites because Nanko did not argue this before the Professional Standards and Practices Commission and therefore this is waived.

Disposition: The Commonwealth Court of Pennsylvania affirmed the Professional Standards and Practice Commission decision revoking Nanko's certificates as a public educator.

Citation: *Thompson v. Wisconsin Dept. of Public Instruction*, 197 Wis.2d 688 (Wis. 1995).

Key Facts: Ray Thompson was a music teacher in the Oshkosh School District in Wisconsin. Thompson taught students in elementary and secondary education. Thompson was accused of unwanted sexual touching that caused the Oshkosh School District to start proceedings to revoke his license. Thompson pled no contest to a disorderly conduct violation where he was accused of grabbing a man inappropriately in a park. Thompson thought the man was in agreement to a homosexual sexual advancement and grabbed the man in the chest area and in the groin. The man reported Thompson's actions to law enforcement. On another occasion, Thompson went to a movie store where known homosexual activity occurred. Thompson entered a booth where an undercover officer was. Thompson started groping the undercover officer. The undercover officer denied his sexual advances, and Thompson continued his sexual aggression by grabbing the undercover officer's genitals. Thompson was convicted of fourth-degree sexual assault by a jury. In both instances, alcohol was established as being a

factor in the behavior of Thompson. The Oshkosh Board of Education dismissed Thompson a Notice of Probable Cause and Intent to Revoke License was issued by the Wisconsin Department of Public Instruction. A hearing examiner issued findings recommending that the revocation action be dismissed. The hearing examiner found that based on the evidence presented, a nexus did not exist between Thompson's actions and the health, welfare, safety or education of students. The superintendent refused to adopt the hearing examiner's recommendation and revoked Thompson's license justifying it because he stated that Thompson could no longer be a role model for students. Thompson filed a petition for judicial review. The circuit court for Brown County stayed the revocation order and remanded the case to the superintendent stating the superintendent never reviewed the case and failed to hear the case before he revoked Thompson's license. On remand, the superintendent found that Thompson could no longer be an effective role model for the students. He argued that parents, students, stakeholders, and others would lose respect and confidence in Thompson's abilities as a professional. Again, the superintendent revoked Thompson's license. Thompson appealed to the Court of Appeals of Wisconsin.

Issue(s): Did a nexus exist between Thompson's conduct and the health, welfare, safety, or education of any pupil as applied by the State Superintendent of Public Instruction? Was substantial evidence presented to justify revocation of Thompson's license? Did the superintendent have the expert knowledge to justify revoking Thompson's license for immoral conduct de novo?

Holding(s): A nexus did not exist between Thompson's conduct and the health, welfare, or education of students based on the role model standard that was applied. There was not substantial evidence to support the revocation; however, the superintendent did include law de

novo because after reviewing 100 cases where the superintendent had revoked teachers' license for immoral conduct, the superintendent had the professional expertise to determine what is included in an effective education. The Court of Appeals found that the circuit court for Brown County erred when applying de novo to the superintendent's remand.

Reasoning: Because the State Superintendent used the wrong standard in determining whether a nexus existed between Thompson's immoral conduct and the health, welfare, safety or education of students, the Court of Appeals of Wisconsin stated that the State Superintendent should be allowed to review the facts and apply the proper legal standard. Instead of applying the immoral conduct standard, the superintendent applied the role model standard. The role model standard is difficult to prove because the standard could be read and interpreted in many ways.

Disposition: The Court of Appeals of Wisconsin affirmed in part, reversed in part, and cause remanded the judgment of the circuit court for Brown County.

Citation: *Howard v. Missouri State Bd. of Educ.* 913 S.W.2d 887 (Mo. 1995).

Key Facts: Nancy Howard was a licensed teacher in Missouri. She held certificates as a Librarian for Grades 1-12 and a Social Studies teacher for Grades seventh-twelfth. She worked as a substitute teacher in Springfield R-12 School District from September 1986 until September 1990. In September 1990, Howard received notice from the Springfield R-12 School District that she would no longer be a substitute teacher in the school district for misconduct involving boys between the ages of 12-years-old and 15-years-old. The students claimed that Howard solicited sex from them on numerous occasions, exposed herself, and used sexually inappropriate language. Parents of one two of the boys said that Howard had asked for her permission to engage in sex with her boys. She would offer the students a ride in her van and hire them to do yardwork. The boys reported she would try and kiss or fondle them while they were in her van.

She was accused of stalking a two brothers to the point that their mother moved them and obtained an unlisted telephone number. Howard claimed her mental disorder, and not a lack of morality or intent to commit immoral acts, was the cause of her behavior. She argued that she had a mental disorder that caused her to act in ways beyond her control. She stated she had sought medical treatment and with this treatment she would be able to return to normal duties once the program was completed and her medications were adjusted. She claimed she had medical documentation to support these findings. Her inappropriate behavior was reported to the Missouri State Board of Education by the Springfield R-12 School District. The Missouri State Board of Education notified Howard of their intentions to investigate and hold a hearing in the matter of misconduct and the revocation of her teaching certificate. A hearing officer was assigned to hear the facts of the case. After hearing all of the facts of the case from the Missouri State Board of Education, and Howard and her attorney, the hearing officer recommended revocation of Howard's teaching certificates. Howard appealed the revocation to the circuit court. Before the circuit court received any evidence in the case, a motion for summary judgment was filed by Howard. In favor of Howard, the court sustained the motion and entered judgment. This reversed the Missouri State Board of Education's decision revoking Howard's license. The Missouri State Board appealed the summary judgment to the Missouri Court of Appeals, Southern District, Division Two.

Issue(s): Did the circuit error as a matter of law when summary judgment was given in favor of Howard? Did the trial court fail to review, de novo, the Missouri State Board of Education's order of revocation? Did the trial court apply a subjective standard when defining immorality rather than an applying an objective standard?

Holding(s): The circuit court error as a matter of law when summary judgment was given in favor of Howard. The trial court failed to review, de novo, the Missouri State Board of Education's order of revocation. The trial court applied a subjective standard when defining immorality rather than an applying an objective standard.

Reasoning: The Missouri Court of Appeals, Southern District, Division Two, holds that the trial court erred in sustaining Howard's motion for summary judgment. They found that it was the duty of the circuit court to try the matter de novo. In view of the content of Howard's motion for summary judgment, that motion and the ruling thereon did not fulfill that duty. The definition of immorality was not applied as it should have been. Howard's actions included wrongful intent which constitutes immorality according to the standard and accepted definition of immorality. Howard's behavior was offensive and sexual harmful to students.

Disposition: The judgment is reversed by the Missouri Court of Appeals, Southern District, Division Two, and revocation of Howard's licenses is reinstated.

1996

Citation: *Alford v. Ingram*, 931 F. supp. 768 (Ala. 1996).

Key Facts: Several plaintiffs were included in this law suit. Regina Hunter, Linda Alford, and Phillip Edmonds were all teachers in the state of Alabama. The plaintiffs argued that Alabama Code 16-23-5 (1987) was unconstitutional. They claimed the code was unconstitutional because it violated the Due Process Clause of the Fourteenth Amendment of the United States Constitution. In order to maintain a valid certificate, certificates must be renewed and may even be revoked during the renewal process if circumstance arise that may warrant such. In this case, the certificates of Hunter, Alford, and Edmonds were revoked for immoral or unbecoming conduct of a teacher after being public school teacher for many years in Alabama. Before 1994,

teachers were simply asked if they had ever had a certificate revoked, suspended, denied, or voluntarily relinquished a certificate in order to avoid proceedings to revoke or suspended their certificate. In 1994, applicants for a new certificate or applicants who applied to renew a certificate were asked an additional question pertaining to being convicted of or pled guilty to a felony or misdemeanor. Applicants who responded yes were required to give details of the conviction. After reapplying for certificate renewals, Hunter, Alford, and Edmonds received letters from the State Superintendent of Education notifying them their certificates were being considered for revocation. Hunter's certificate was denied renewal for a conviction of unlawful distribution of cocaine. Alford's was cancelled due to a conviction of theft of property in the first and second degree. Edmonds's was felony conviction of bringing a stolen vehicle into the state was the cause of his certificate being revoked. All three teachers had their certificates revoked and appealed the state superintendent's decision.

Issue: Did substantial evidence exist to lawfully revoke the certificates of Hunter, Alford, and Edmonds for teacher immorality?

Holding: The United States District, M. D. Alabama, Northern Division, found that the statute was not unconstitutional and did not violate due process rights. The revocation of the certificates was lawful on the grounds of immorality.

Reasoning: The superintendent has the legal authority to revoke a teacher's certificate when the teacher exhibits immoral conduct that adversely affects students and can be related back to the unfitness to teach. The court found that the statute was not unconstitutionally vague.

Disposition: The superintendent's decision was affirmed by The United States District, M. D. Alabama, Northern Division.

Citation: *Falgren v. State Bd. Of Teaching*. 545 NW 2d 90 (Minn. 1996).

Key Facts: From 1977-1992, Jon Falgren was a teacher in the Independent School District No. 492 in Austin, Minnesota. He was certified to teach Science and Counseling. Mr. Falgren was accused of abusing his position as a counselor when he had nonconsensual sexual contact with a student who he had been counseling for over four years. The student reported that this had happened shortly after her graduation. The student testified that Mr. Falgren offered to give her a driving lesson and then took her to his home. He made sexual advances toward the student and pressured her into touching his genitals and touched her breast through her clothes and kissed her. In 1991, Mr. Falgren was put on paid leave. In 1991, Mr. Falgren contested the discharge proceeding and elected to have a hearing by a neutral arbitrator rather than by the school board. A full evidentiary hearing took place before an arbitrator. The arbitrator found that Mr. Falgren in fact exhibited “conduct unbecoming a person who occupied a very influential and sensitive position of trust within the school system.” In July 1992, the Board of the Independent School District No. 492, fired Mr. Falgren from his position. The Minnesota Board of Teaching investigated the dismissal. The Minnesota Board of Teaching determined that Mr. Falgren’s exhibited immoral conduct. An Administrative Law Judge was assigned to the case to determine if in fact the revocation of Mr. Falgren’s teaching certification was just. The Administrative Law Judge granted the Minnesota Board of Teaching authority to revoke Mr. Falgren’s certificate based upon the earlier findings of the arbitrator. Mr. Falgren’s license was revoked for a minimum of three years for immoral conduct. Mr. Falgren appealed to the Court of Appeals of Minnesota. The Minnesota Court of Appeals found that the Administrative Law Judge did in fact violate Mr. Falgren’s due process rights and remanded the case back to the Administrative Law Judge. The Minnesota Board of Teaching appealed this decision to the Supreme Court of Minnesota; however, Mr. Falgren died in 1995. The court explained that Mr. Falgren’s death

moots this issue but completed the hearing because this issue could be repeated in the future and out of public concern the case was heard. The Supreme Court of Minnesota reversed the decision of the Minnesota Court of Appeals siding with the Administrative Law Judge.

Issue(s): Did the Board impermissibly apply collateral estoppel to deny Mr. Falgren his right to a hearing under the Due Process Clauses of the Minnesota and United States Constitutions?

Holding(s): The Minnesota Court of Appeals stated that the Administrative Law Judge erred in applying collateral estoppel because the arbitration decision was not subject to judicial review. The Minnesota Court of Appeals also agreed with Mr. Falgren's argument that the application of collateral estoppel to preclude the hearing on his license revocation violated his right to due process. When the Supreme Court of Minnesota reviewed the case en banc, the court reversed the decision on the Minnesota Court of Appeals and sided with the Administrative law Judge.

Reasoning: The Supreme Court of Minnesota argued that for the court to apply the doctrine of collateral estoppel to a case involving an administrative decision, the party seeking issue preclusion must show that the issue meets the five-part test. This five-part test includes: 1) the issue to be precluded must be identical to the issue raised in the prior agency adjudication, 2) the issue must have been necessary to the agency adjudication and properly before the agency, 3) the agency determination must be a final adjudication subject to judicial review, 4) the estopped party was a party or in privity with a party to the prior agency determination, and 5) the estopped party was given a full and fair opportunity to be heard on the adjudicated issue. The Supreme Court of Minnesota explained that Mr. Falgren's due process rights were not violated.

Disposition: The Minnesota Court of Appeals reversed and remanded back to the Administrative Law Judge. This decision was appealed to the Supreme Court of Minnesota and that court reversed the decision of the Minnesota Court of Appeals. Mr. Falgren's certificate was revoked.

Citation: *Welcher v. Sobol*. 227 A.D.2d 770 (N.Y. 1996).

Key Facts: Robert S. Welcher became a certified teacher in 1966. His degree enabled him to teach preschool, kindergarten, and elementary school. In the following years, Mr. Welcher also earned his administrator and supervisor certifications. In 1973, he obtained his certification as a school district administrator. Mr. Welcher taught elementary students for five years. Following his elementary experience, he became an administrator in the Liverpool Central School District in Onondaga County. Mr. Welcher served in the role of an assistant principal and principal from 1971 through 1993. In March 27, 1992, Mr. Welcher was accused of sexually molesting his two nieces from 1969-1980. A "notice of substantial question as to moral character" was sent to Mr. Welcher. Welcher was placed on paid leave. Following a hearing a decision found that Welcher committed 25 incidents of sexual abuse or misconduct against his nieces. It was then recommended that his certificates be revoked. Late in 1993, Welcher appealed the Hearing Panel's decision to New York State Commissioner of Education. In November 1993, the New York State Commissioner of Education issued a decision dismissing the appeal. All of Mr. Welcher's certifications were revoked in pursuant to the authority of Education Law. Mr. Welcher appealed to Supreme Court of Albany County. The Supreme Court of Albany County affirmed, without costs the revocation of Mr. Welcher's certificates. Mr. Welcher then appealed to the Appellate Division of the Supreme Court of New York, Third Department.

Issue(s): Did the New York State Education Commissioner lack jurisdiction to revoke Mr. Welcher's certification based upon moral character? Did the New York State Education Commissioner err in his review of the Hearing Panel's determination? Was the evidence presented not supported by substantial evidence, and was the penalty excessive?

Holding(s): Although Mr. Welcher claimed that the New York State Education Commissioner lacked jurisdiction to revoke his certification based on moral character. The court found that is false. The Appellate Division for the Supreme Court of the State of New York found that the New York State Education Commissioner did not err in his review of the Hearing Panel's determination. The same court found that the evidence was substantial and the penalty of certificate revocation was appropriate.

Reasoning: The New York State Education Commissioner does in fact hold the authority to revoke Mr. Welcher's certificate because he is the administrative leader in that system. Based on Educational Law, he does have the authority to annul a certification when fact warrants. The Appellate Division for the Supreme Court of the State of New York found that the New York State Education Commissioner had comprehensive and independent evidence when it ordered revocation of Welcher's certifications. Even though many years had passed since the sexual misconduct was inflicted, the court found that this still warranted revocation of Welcher's teaching and administrative certificates on the ground of moral fitness. The threat could still have existed that Mr. Welcher could still hurt children in the future.

Disposition: Revocation of teaching certificate. Ordered is affirmed, without costs, from Appellate Division of the Supreme Court of the State of New York, Third Department.

1997

Citation: *Brogan v. Carter*, 694 So.2d 168 (Fla. 1997).

Key Facts: Courtney Carter was accused of having a sexual relationship with a student for a period of eight months. When this was exposed, The Florida Commissioner of Education sought to revoke Carter's teaching certificate for a period of five years. A hearing officer was assigned to the case. During the proceeding with the hearing offices, evidence was presented that Carter in fact had a sexual relationship with a student. The hearing officer recommended that Carter's certificate be revoked. The hearing officer did not indicate the date the revocation should effective. The Florida Education Practices Commission dismissed the complaint in the beginning stating that the evidence used by the hearing officer to revoke Carter's certificate was not based on substantial and convincing evidence. An appeal followed. On appeal from the District Court of Appeal of Florida, First District, the initial final order was set aside and the matter was remanded for further proceedings. On remand, the Florida Education Practices Commission adopted the hearing officer's findings and accepted the recommendation of the hearing officer. The Florida Education Practices Commission made the five-year revocation of the Carter's teaching certificate retroactive starting in May 1990. The hearing officer found that the date was the actual date the sexual contact began and if continued for a period of eight months after that date. Carter was also employed for a majority of the 1992/1993 schoolyear before she resigned her position which occurred only after the Florida Commissioner of Education filed a complaint against her. The District Court of Appeal of Florida, First District, remanded the case for further viewing.

Issue(s): Was the effective date of the revocation arbitrary and capricious and an abuse of discretion by the Florida Education Practices Commission? Did the hearing officer have clear and convincing evidence to revoke Carter's teaching certificate?

Holding(s): The District Court of Appeal of Florida, First District, found that the Florida Education Practices Commission was arbitrary and capricious and abused its discretion when it made the five-year suspension of Carter's certificate retroactive. The hearing officer did have clear and convincing evidence to revoke Carter's teaching certificate. Because the effective date of the revocation was arbitrary and capricious, and an abuse of discretion, the final order was set aside.

Reasoning: Because Carter was employed during part of the retroactive time that the Florida Education Practices Commission suspended her certification was not legal. She was getting paid and receiving benefits from her employment during parts of the time that the Florida Education Practices Commission suspended her license. She was also having a sexual relationship with the minor during the time they made the suspension retroactive.

Disposition: The District Court of Appeal of Florida, First District, set aside the final order and remanded.

1999

Citation: *Feldman v. Board of Educ. of City School Dist. of City of New York*, 259 A.D.2d 700 (N.Y. 1999).

Key Facts: Sandra Feldman was a teacher for Board of Education of the City School District of the city of New York. Ms. Feldman had her teaching certificate revoked when she did not pass the National Teacher's Examination mandated teacher test after a five-year period. She was among a group of five teachers who were involved in the case. Ms. Feldman and other teachers brought proceeding to review board of education's determination terminating their city teaching licenses. The Supreme Court, Kings County, dismissed petition. Feldman and the other teachers appealed.

Issue(s): Was the state's requirement that teachers make a passing score on the National Teacher's Examination arbitrary and capricious?

Holding(s): The board of education's termination of teachers' teaching licenses was not arbitrary and capricious.

Reasoning: Because Feldman, and the other teachers in the case, admittedly failed to achieve a passing grade on the National Teacher's Examination within five years of the issuance of their licenses, the Board of Education of the City School District of the City of New York had the authority to revoke the certificate(s).

Disposition: Supreme Court, Appellate Division, Second Department, New York affirmed the decision.

2000

Citation: *Epstein v. Benson*, 238 Wis.2d 717 (Wis. 2000).

Key Facts: In June 1992, Jerry Lu Epstein was a teacher in Wisconsin. She held a five-year license as a teacher for hearing-impaired students and an elementary education license. She also had a lifetime license as a school social worker. During her employment, she was involved in a shooting incident where she shot and killed her ex son-in-law. She claimed she was protecting her daughter and grandchildren when she saw her ex son-in-law driving away in a car that her daughter was partially in and her grandchildren were seated in the backseat. She argued that her ex son-in-law was intentionally trying to injure her daughter and grandchildren. She claimed she made many attempts to warn her ex son-in-law before she shot him. Ms. Epstein also claimed she was only attempting to wound her ex son-in-law and not mortally wound him. She had a loaded gun in her purse, which she claimed was there due to her intention to go target shooting, and she took it out and shot her ex son-in-law. Except for a concealed weapons charge,

Epstein was acquitted of all criminal charges. In April 1993, the Department of Public Instruction sent Ms. Epstein a notice of probable cause informing her of their plans to revoke her teaching certificate. A hearing officer heard the case and issued a recommendation in January 1994. The hearing officer found that the Department of Public Instruction did not present clear and convincing evidence that Ms. Epstein had committed an immoral act and that a nexus did not exist between the incident involving Ms. Epstein and her ability to teach students. The Department of Public Instruction did not adopt the recommendation of the hearing officer and chose to revoke Ms. Epstein's certification without giving an explanation to her or without allowing her to dispute the revocation. Ms. Epstein appealed the decision to the Milwaukee County, circuit court, and the decision was reversed. The Department of Public Instruction appealed the reversal to the Court of Appeals of Wisconsin.

Issue(s): Did the Department of Public Instruction fail to follow statutory provisions and procedures set forth? Was the Department of Public Instruction decision erred, as a matter of law, when Ms. Epstein's actions were found immoral?

Holding(s): The Court of Appeals of Wisconsin found that the Department of Public Instruction in fact did fail to follow statutory provisions and procedures when it revoked Ms. Epstein's certificates. The Department of Public Instruction was also found to have erred when it found Ms. Epstein's actions were immoral. The delay in reissuing Ms. Epstein's license violated her due process rights.

Reasoning: The Department of Public Instruction failed to consult with the hearing office when it changed the recommendation given by the hearing officer. The Department of Public Instruction failed to follow the clear statutory mandates. The Court of Appeals of Wisconsin found that several of the facts in the case were altered when the Department of Public Instruction

rendered the decision to revoke Ms. Epstein's certifications which in fact flawed the procedure. The court found that the renewal office should issue Ms. Epstein a new license and purposefully delayed the reissuing of the licenses.

Disposition: The Court of Appeals of Wisconsin order reversed and cause remanded to the Milwaukee County, circuit court, with directions.

2001

Citation: *In re Appeal of Morrill*. 145 N. H. 692 (N.H. 2001).

Key Facts: Timothy Morrill was a high school teacher and minister. He was employed at Pelham High School from 1976 - 1997. Morrill was a minister of a church in his hometown. In December 1995, Morrill was accused of having inappropriate conduct with a 13-year-old girl who attended his church services. She stated that she was required to give Morrill "holy hugs and holy kisses" as she entered his church services. The kisses were on the mouth. She also claimed that while on a church retreat, she was forced to hold hands and have Morrill put his hand on her leg. The adolescent reported that she asked Morrill to stop and explained to him she was uncomfortable with his actions. Morrill was found guilty pleading *nolo contendere*. He was sentenced to one year which was deferred for two years pending he received a sex offender evaluation. He was also ordered not to have unsupervised visits with minor children under the age of 16. The New Hampshire Department of Education began an investigation after the incident was reported to school officials. Morrill was also suspended with pay from his teaching duties. During the investigation, the New Hampshire Department of Education became aware that in 1989 a former female foster child had accused Morrill of sexual molesting her. As a result of this, the Division of Children, Youth, and Families (DCYF) would not allow the Morrill's to have a daycare center established in their home. The New Hampshire Department of education

made a motion to have Morrill's teaching certificate revoked pursuant to New Hampshire Code of Administrative Rules. The New Hampshire Department of Education revoked his certificate following the recommendation of the hearing officer. The hearing officer stated that because Morrill had a pattern of using his position and authority over adolescent girls, he lacked moral character. Morrill asked for a rehearing. It was denied by the New Hampshire Department of Education. Morrill then appealed. Morrill appealed for the following reasons: (1) the revocation of his teaching certification was unreasonable and unlawful because there is no nexus linking his conduct outside of school and his fitness to teach; (2) the revocation was unreasonable because it was based on reasons not included in the notice of revocation; (3) the board did not have the power to revoke his certificate for reasons not stated in the statute or in the certification regulations; (4) the revocation infringed on his sincerely held religious beliefs because it was based on purely religious conduct; and (5) he is entitled to immunity from liability because he reported suspected neglect of the victim by her parents.

Issue(s): Did the New Hampshire Board of Education revoke Morrill's teaching certification for unlawful and unreasonable findings due to no nexus being found between his conduct outside of school and his teaching abilities at school and were the reason stated not in the notice of revocation? Did the revocation infringe on Morrill's religious beliefs? Was Morrill entitled to immunity because he reported suspected neglect to DCYF about the 13-year-old's parents?

Holding(s): The New Hampshire Board of Education had the lawful authority to revoke Morrill's teaching certification based on the finding and conviction. Morrill was in fact given the opportunity to properly prepare for the hearing. The revocation did not infringe upon Morrill's religious rights. Morrill was not entitled to immunity from prosecution.

Reasoning: A nexus does exist between Morrill's outside life and his professional life of being a teacher. He is obligated to protect children and not cause harm. His actions made him a danger to minor females and made him untrustworthy with parents and school officials. Parents, teachers, and administrators would have no reason to trust that Morrill would be able to lookout for the well-being of the students he would be entrusted with. Morrill claimed he did not know that the evidence about his former foster child would be entered into evidence. This was found to be false because Morrill's attorney had filed a motion to exclude evidence in the case involving his foster child and to exclude the testimony from his ex-wife from the hearing. The court stated that the conduct Morrill exhibited did not allow for a religious exemption. The court further stated that Morrill's certification was revoked due to his assault on a female and his order to have a sex offender evaluation not his religious practices. The revocation was due to his conduct which had nothing to do with his beliefs. The court also stated that Morrill's immunity argument was not valid because the revocation had nothing to do with him reporting neglect of the student but for the assault he inflicted against the student. His report of the neglect and his assault were not related.

Disposition: The Supreme Court of New Hampshire affirmed the trial court and school board's findings based on teacher immorality.

Citation: *Hoffman v. State Bd. of Edn*, 145 Ohio App.3d 392 (Ohio, 2001).

Key Facts: James Hoffman was a high school teacher in the Shaker Heights School District. In October 1998, a police officer arrested Hoffman at an adult book store for public indecency. The indecency was said to be sexual contact in a non-private location. This was a fourth degree misdemeanor. In November 1998, Hoffman pled no contest in the Brookpark Mayor's Court. He was found guilty and fined a \$250.00 fine. This case was publicized and

gained attention through the media. Because of Hoffman's 30-year spotless teaching record, the Shaker Heights School Board did not move to take action against Hoffman. Even though the Shaker Heights School Board chose not to take action against Hoffman's certificate, in July 1999, the Ohio State Board of Education passed a resolution moving to limit Hoffman's teaching certificate. The Ohio State Board of Education reasoned that Hoffman's conduct was unbecoming to that of a teacher. The Ohio State Board of Education stated that even though the Shaker Heights School District did not take action against Hoffman's certificate, the Ohio State Board of Education still had the authority to take action. In April 2000, the Ohio State Board of Education passed a resolution and revoked Hoffman's license for two years. Hoffman appealed the decision to the common pleas court. The common pleas court affirmed the Ohio State Board of Education's decision. Hoffman then appealed to the Court of Appeals of Ohio, Eighth District.

Issue(s): Did the common pleas court act in an unlawful manner and abuse its discretion when it determined that the state board's decision was supported by reliable, probative, and substantial evidence?

Holding(s): The evidence was sufficient to support revocation of teaching license by reason of unbecoming conduct, and Hoffman had created a nexus between his conduct and his ability to teach when he solicited students to write letters on his behalf.

Reasoning: The Court of Appeals of Ohio, Eighth District, determined that the common pleas court had the authority to revoke Hoffman's teaching certificate based on the evidence presented in the case. One of the reasons a teaching certificate may be revoked is conduct unbecoming of a teacher. The arrest and guilty plea for indecency does in fact warrant conduct unbecoming. Even though the sexual conduct did not take place on school grounds, the conduct did impact Hoffman's professional duties as a teacher. This happened when the media tried to

engage Hoffman in conversation about the incident on school grounds; therefore, a nexus did exist between Hoffman's professional life and his personal life.

Disposition: The Court of Appeals of Ohio, Eighth District, affirmed the judgment of the common pleas court.

2003

Citation: *Hausey v. California Com 'n on Teacher Credentialing*, Cal.Rptr.2d (Cal. 2003).

Key Facts: John Hausey was a music teacher and band director at Magnolia High School in Anaheim, California. During the 1980 - 1981 school year, Hausey had sexual relations with a minor student on multiple occasions. After a period of six months, the student refused to continue the sexual encounters. Sixteen years later, the student reported the affair to the school principal. After an investigation, an Administrative Law Judge heard the evidence, including testimony from the former student and Hausey, and determined the student's testimony was very credible. Hausey's teaching certificate was revoked. Hausey filed a petition for writ of mandate in the superior court. After the hearing, the court denied the petition. Hausey appealed the decision.

Issue(s): Did the trial court err in its decision that laches does not apply? Did the trial court err in finding the evidence sufficient to support the revocation of the teaching credential?

Holding(s): Court of Appeals found that laches did not apply and that the former student's testimony was substantial evidence and the revocation was not an unwarranted penalty.

Reasoning: There must be an unreasonable delay between the time the agency learned of the charges and the sexual relationship and the time the administrative proceedings were started. There was no delay. The credible testimony of the student was heard by the Administrative Law

Judge who was also able to observe the demeanor of the student while hearing the testimony. The judge felt the student was more credible than Hausey's.

Disposition: Affirmed by the Court of Appeal, Second District, Division 2, California.

Citation: *Wax v. Horne*, 844 So.2d 797 (Fla. 2003).

Key Facts: Judith Hope Wax, a middle school teacher, taught seventh-grade in Florida. She sent students emails and audio files that were sexually suggestive jokes, profanity, and sexual material not suitable for students. Ms. Wax was 25-years-old and had recently lost her husband. She moved from Florida and was trying to get her license in Nevada. The Education Practices Commission of Florida permanently revoked Ms. Wax's teaching certificate. Ms. Wax did not argue that her conduct did not deserve some type of punishment. She argued that permanent revocation was a harsh punishment for what she did. Florida argued that due to the fact that Ms. Wax had sent the emails and audios to 16 students and displayed little to no remorse for her actions, showed that she did not have the ability to distinguish what was inappropriate for her students. Ms. Wax challenged the final order of the Education Practices Commission of Florida for permanently revoking her certificate.

Issue(s): Was the permanent revocation of Wax's certificate inconsistent with the past practices that Florida had with previous similar cases? Did this violate the equal protection clauses of the United States and Florida constitutions?

Holding(s): The permanent revocation of Ms. Wax's certification was consistent with past practices, but the difference was the specifics of the case were not identical in nature to any of the cases Wax argued. This did not violate the equal protection clause of the United States and Florida constitutions.

Reasoning: The decision was within the permissible range of statutory law and did not violate the equal protection clauses of the United States and Florida. The court ruled that whatever penalty the Education Practices Commission decided, was within their legal authority and at their discretion. The court also said that Ms. Wax did not prove that an inconsistent decision had been made based on past decisions made by the Education Practices Commission with similar circumstances. The court said that each case Ms. Wax cited were all different and unique and her case did not match with the facts and circumstances of the cases cited.

Disposition: Revocation was affirmed by the District Court of Appeal of Florida, Fourth District.

2004

Citation: *Bowalick v. Com.* 840 A.2d 519 (Pa. 2004).

Key Facts: Andrew J. Bowalick was a teacher. He and his wife had a domestic dispute and he was arrested for simple assault to which he later pled guilty and was sentenced. The Commonwealth of Pennsylvania Department of Education filed a notice of charges and a motion for summary judgment with the Professional Standards and Practices Commission asking for the revocation of Mr. Bowalick's teaching certificate. The Commonwealth of Pennsylvania Department of Education argued that because Mr. Bowalick had been convicted of a crime in which they believed was a crime that involved moral turpitude, Mr. Bowalick's teaching certification should be revoked. The Standards and Practices Commission granted the Commonwealth of Pennsylvania Department of Education authority to revoke Mr. Bowalick's teaching certificate. Mr. Bowalick argued that he only pled guilty in order to save his family from the embarrassment of going through the court and opening up his family to ridicule and stress. He also stated that his wife was filing for divorce and pushed for him to be arrested and

charged with simple assault to help her gain momentum in the divorce proceedings and that his conviction was not related to moral turpitude. The Professional Standards and Practices Commission granted summary judgment against Mr. Bowalick and revoked his teaching certification without a hearing because they determined his criminal conviction was moral turpitude. They also argued that regardless of the circumstances that the guilty plea was entered, Mr. Bowalick plead guilty. Mr. Bowalick appealed the findings to the Commonwealth Court of Pennsylvania.

Issue(s): Is simple assault always a crime of moral turpitude which allows for revocation of a teacher's teaching certificate? Was Mr. Bowalick denied due process rights because he was not allowed an evidentiary hearing?

Holding(s): Moral turpitude, which involved simple assault, is not enough always enough to warrant revocation of a teaching certificate and the elements of the crime do not necessarily satisfy the definition of "moral turpitude" especially if it was dispute that was mutually entered in to. Mr. Bowalick should have been allowed a due process hearing before his certification was revoked.

Reasoning: Simple assault is not always a crime involving moral turpitude. In this case, because when all the elements of the crime were gathered and examined, moral turpitude did not meet the definition under Pennsylvania Code. The order granting summary judgment is reversed because the Commonwealth of Pennsylvania Department of Education may not revoke Mr. Bowalick's teaching certificate without a due process hearing. A teaching certificate is a constitutionally protected property right entitled to due process protection. The Commonwealth of Pennsylvania Department of Education was erroneous in their finding and revocation of Mr. Bowalick's teaching certificate.

Disposition: The Commonwealth Court of Pennsylvania reversed and remanded the decision of the Professional Standards and Practices Commission.

2005

Citation: *Hayes v. State Teacher Certification Bd.*, 359 Ill.App.3d 1153, (Ill. 2005).

Key Facts: Dr. Joseph E. Hayes, who held a teaching certification, administrative certification, and a superintendent's certification, had his certifications suspended for five years for engaging in immoral conduct. This case was very lengthy and spans nearly two decades of hearings, trials, and appeals. In 1985, Dr. Hayes was an assistant principal at Rock Junior High School in East St. Louis. Dr. Hayes was married and had grown children. Dr. Hayes had sex with a 14-year-old seventh grade student who became pregnant. In January 1986, the student gave birth to a son. In July 1986, after a blood paternity test, the child was determined to be that of Dr. Hayes. The student Dr. Hayes impregnated initially claimed that another young teenager was the father of the child. This young teenager was never identified and was subsequently determined he did not exist. The student also reported she had sex with another student on July 4th before the baby was born who was identified. The student was never honest about the sex that had taken place with Dr. Hayes until she was pressured to take a polygraph test. Finally, the student reported that she and Dr. Hayes had sex on one occasion. During this same timeframe, Dr. Hayes failed a polygraph test. He denied having sex with the student. The student reported that the sex had taken place after much flirting and conversation between Dr. Hayes and the student. The student reported that Dr. Hayes initially took her to his home for the sex to occur, but she did not want to stay at his home. They left to go to a motel. Her mother heard from other students that Dr. Hayes was in fact the father of the child. The student's mother reported this to the superintendent and school principal. In September of 1986, Dr. Hayes was fired from his

position as an assistant principal from East St. Louis School District No. 189 for having sex with a student. Dr. Hayes is charged with aggravated criminal sexual assault. Dr. Hayes appealed the dismissal by East St. Louis School District No. 189. In November 1986, Dr. Hayes had a paternity case filed against him by the student in the circuit court of St. Clair County. In September of 1988, a circuit court judge closed the paternity case against Dr. Hayes for lack of activity. In June 1988, a jury finds Dr. Hayes not guilty on the sexual-assault charges against the student. Because Dr. Hayes was found not guilty, in November 1988 the appeal that Dr. Hayes filed over his dismissal by East St. Louis School District No. 189 was heard. A hearing officer was assigned to hear the case. The hearing office concluded that the East St. Louis School District No. 189 did not prove its case by preponderance of evidence that Dr. Hayes engaged in sexual contact with the student. Dr. Hayes had always denied the allegation. The hearing officer stated that the student had given inconsistent statements that had changed over a period of time. The student identified other people she had engaged in sexual contact with and changed her story often. Although a blood test had proven, with 99.99% accuracy, that Dr. Hayes was the father of the student's son, and Dr. Hayes had previously failed a polygraph test, the hearing officer concluded that that evidence was only minimally probative. The hearing officer reinstated Dr. Hayes to his position and ordered that Dr. Hayes receive back pay and benefits. In February 1989, East St. Louis School District No. 189 filed an appeal in the circuit court of St. Clair County for a judicial review of the hearing officer's decision. Two years later, in February 1991, the circuit court of St. Clair County affirms Dr. Hayes's reinstatement. The East St. Louis School District No. 189 appealed the decision of the court. In December 1992, the Appellate Court of Illinois affirmed the circuit court's judgment in the employment-dismissal action. In August of 1997, the student has the paternity case reopened in the circuit court of St. Clair County. In 1998,

a court ordered Dr. Hayes to undergo another paternity test. This time, a genetic DNA test was completed. The DNA test indicate that Dr. Hayes had a 99.90% likelihood of being the father of the student's son. In August 1999, the circuit court of St. Clair County orders the payment of both retroactive and continuing child support from Dr. Hayes. After hearing that ruling, the State Superintendent filed a motion to suspend Dr. Hayes's teaching certificate for a period of five years for immoral conduct for having sex with a student. This was filed because the court had found the Dr. Hayes was in fact the father of the student's child. Dr. Hayes asked for a hearing. The hearing officer denied Dr. Hayes's motion to dismiss the five-year suspension proceeding and enters a substantial ruling denying Dr. Hayes's charges of resjudicata and collateral estoppel. The hearing officer found that the State Superintendent proved by a preponderance of the evidence that Dr. Hayes in fact did engage in immoral conduct. The hearing officer issued a five-year suspension of Dr. Hayes's teaching certificate. In July 2001, the State Superintendent took the recommendation of the hearing officer and suspended Dr. Hayes's teaching, administrative, and superintendent's certifications. The State Teaching Certification Board approves and adopts the State Superintendent's recommendation for the five-year suspension. In July 2003, the circuit court of St. Clair County affirmed the administrative decision suspending Dr. Hayes's certificates. The court denied Dr. Hayes's subsequent motion to reconsider the suspension. Dr. Hayes again appealed. The Appellate Court of Illinois affirmed the lower court's decision.

Issue(s): Was the first hearing officer's findings binding in determining the suspension of Dr. Hayes's certificates? Did the State Superintendent have the authority to suspend Dr. Hayes's certificates because "collateral estoppel" he was acquitted on the sexual assault charges? Dr. Hayes argued that too much time elapsed under the doctrine of laches for the State

Superintendent to suspend his certificates. Were the legal conclusions regarding the DNA test erroneous?

Holding(s): The Appellate Court of Illinois rejected all of Dr. Hayes's contentions and affirmed the order suspending his three certificates stating prior employment termination proceeding did not have res judicata effect and did not have collateral estoppel effect. School Code did not preclude certificate suspension proceeding after assistant principal was acquitted of criminal charge and certificate suspension proceeding was not barred by laches.

Reasoning: The first hearing officer's ruling did not impact the second hearing officer's ruling because the court stated that the party in privity did not litigate the same issue, and the collateral estoppel claim is rejected for the same reason. Although the charges of sexual assault could not be argued again, the issue at hand was not sexual assault but immortality. Immorality was proved when the DNA test confirmed that Dr. Hayes was in fact the father of the student's son. The court stated that in 1985 the blood test performed to establish paternity was not as sophisticated as the DNA genetic test that was completed in 1998. The court also rejected the doctrine of laches argument by Dr. Hayes because this does not often apply to the public at large and new evidence was submitted proving paternity with the child. The State Superintendent then filed for Dr. Hayes's certificate suspension within six days of the new evidence being presented.

Disposition: The Appellate Court of Illinois, Fifth District, affirmed the five-year suspension by the State Teacher Certification Board.

Citation: *Knight v. Winn*. 910 So.2d 310, (Fla. 2005).

Key Facts: Josephine Knight was a teacher with the St. Lucie County School System. It was reported, on more than one occasion, Ms. Knight inappropriately and verbally made abusive comments to students. She also submitted a threatening letter of resignation. On December 17,

2002, the Commissioner of Education filed an Administrative Complaint against Knight. Ms. Knight was charged with statutory and rule violations based on her conduct. After filing the Administrative Complaint, the State Legislature renumbered the pertinent statutes relied on by the Commissioner. Knight argued that when the complaint was refiled, there were a large number of changes to the applicable statute. Because of these arguments, an order dismissing the case without prejudice was issued and the case was re-filed a subsequent administrative complaint. This includes the original charges and added additional charges. Ms. Knight argued that since the case had been dismissed without prejudice, the case should be dismissed. During the hearing, testimony was taken from Ms. Knight's coworkers, students, parents, and other. These people testified that Ms. Knight's behavior was often inappropriate despite the fact she received satisfactory evaluations. Administrators used the resignation letter as an example of how Ms. Knight was often inappropriate. Ms. Knight denied the allegations. Following the administrative hearing, the St. Lucie County Board adopted the recommendation of the Administrative Law Judge to suspend Ms. Knight's certification for a decade because he found that she in fact committed the alleged statutory and rule violations. Ms. Knight appealed to the District Court of Appeal of Florida, Fourth District.

Issue(s): Did the Administrative Law Judge commit error by hearing the amended complaint after the original complaint? Was the finding supported by competent and substantial evidence?

Holding(s): The Administrative Law Judge did not give an erroneous judgment when it allowed an amended complaint after the original complaint was dismissed. The court found that the final judgment was supported by competent and substantial evidence. The teacher's reduced effectiveness was proved and warranted the revocation.

Reasoning: The court found that the Commissioner of Education acted within his authority to dismiss and refile the complaint altered as it may be. The court found that there was convincing evidence both competent and substantial to support the Administrative Law Judge's recommendation.

Disposition: The District Court of Appeal of Florida, Fourth District, affirmed the decision of the Administrative Law Judge.

2006

Citation: *Board of Educ. of Park Forest Heights School Dist. No. 163, Cook County, Ill. v. State Teacher Certification Bd.* 363 Ill. App.3d 433 (Ill. 2006).

Key Facts: Michael DuBose was a probationary teacher in Forest-Chicago Heights School District No. 163. He worked during the 2001-2002 school year. When the 2002-2003 school year began, Mr. DuBose reported for two In-service days and teaching duties on days three-five. On days six and seven, Mr. DuBose used two paid personal days to interview and seek employment in a different school system. Mr. DuBose accepted a contract in another system and turned in a resignation letter to the Board of Education of Park Forest-Chicago Heights School District No. 163. He stated his reason for resignation as an increase in insurance premiums. He subsequently reported to his new job a few days later. The Board of Education of Park Forest-Chicago Heights School District No. 163 filed a complaint with Regional Superintendent of Schools for Suburban Cook County. The Board of Education of Park Forest-Chicago Heights School District No. 163, asked for the Regional Superintendent of Schools for Suburban to suspend Mr. DuBose's teaching certificate for violating the Illinois School Code stating that no teacher can break a contract and accept another teaching assignment, after the start of the school year, unless approved by the Board. The Regional Superintendent of Schools for

Suburban agreed with the Board of Education of Park Forest-Chicago Heights School District No. 163 that Mr. DuBose in fact violated Illinois School Code. He then suspended Mr. DuBose's certification for one year. DuBose filed an appeal to the State Teacher Certification Board. The State Teacher Certification Board informed Mr. DuBose that among other things, the local Board is allowed to participate in the hearing. Mr. DuBose filed a motion to ban the local Board from being allowed to participate in the hearing and filed a motion for a de novo hearing. The motions were denied. During this timeframe, a new Regional Superintendent took over. He stated that he had no interest in participating in the upcoming hearing. Following the hearing, the State Teacher Certification Board reversed the decision stating that the Illinois State Code pertained only to tenured teachers. Mr. DuBose was not tenured in the Park Forest-Chicago Heights School District No. 163. The Board of Education of Park Forest-Chicago Heights School District No. 163 filed a complaint for administrative review of the State Teacher Certification Board's decision. Mr. DuBose filed a motion to dismiss. This motion was denied by the trial court. The Circuit Court of Cook County reversed the decision of the State Teacher Certification Board. The circuit court argued that the Illinois State Code did pertain to both tenured and nontenured teachers. Mr. DuBose appealed to the Appellate Court on Illinois, First District. An appeal followed.

Issue(s): Did the Illinois State Code pertaining to a teacher breaking his/her contract to accept another position in another system apply only to tenured teachers?

Holding(s): The Illinois State Code does pertain to both tenured and nontenured teachers. A nontenured teacher is held to the Illinois State Code just as tenured teachers. The board of education had authority to seek administrative review and the Certification Board was not required to conduct a de novo hearing, and was not required to make findings of fact.

Reasoning: If only tenured teachers were held to the Illinois State Code, nontenured teachers who resign after the school year begins would cause issues for students. The disruption of the school day would most likely occur if a replacement teacher could not be found. This also limits the applicants and limits the leverage a Board would have in finding a replacement.

Disposition: The Appellate Court of Illinois, First District, Fourth Division, affirmed.

2007

Citation: *Powell v. Paine*, 655 S.E.2d 204 (W. Va. 2007).

Key Facts: Brian Powell was a coach and teacher at Moorefield High School. On September 26, 2004, Powell's nine-year-old son, presented his father with a disciplinary note from Moorefield Elementary School. The child received the note for making inappropriate comments about two students in the classroom. When the child was questioned by Powell, he responded, "I don't know." Powell preceded to pick up a belt and repeatedly lashed his son across his back until the son admitted what took place at school. After school officials noted the marks on the child's back, Powell was reported to West Virginia Department of Health and Human Resources (DHHR). As a result, the son and two other children were removed from Powell's home. DHHR filed an abuse and neglect case in the circuit court and continued to investigate the occurrence. The parents moved for and were allowed an improvement period by the court. During the improvement plan period, the 13-year-old son was allowed to be reunited with the family within seven days of removal. The abused child and one younger child, were returned to the home two months after the occurrence of the abuse. Powel underwent psychiatric evaluation and attended counseling as required by DHHR. The circuit court dismissed the child abuse and neglect case upon the recommendation of DHHR by order entered on May 10, 2006.

During the investigation of DHHR, a criminal investigation was in process by the West Virginia State Police. This investigation yielded in Powell being charged with felony child abuse. The prosecutor moved to dismiss the felony charge and tendered a plea agreement to the court by which Powell pled guilty to one count of the misdemeanor offense of domestic battery. The court accepted the agreement on October 21, 2004. Powell was sentenced to 30 days of confinement in the county jail. The court allowed Powell to serve this time on weekends and holidays, and Powell was fined. The imposed penalties were satisfied. Powell immediately notified the school district's superintendent and the principal of Moorefield High School. When the superintendent was notified about Powell's felony charge, he suspended Powell with pay on October 15, 2004, pending the investigation. After completing his investigation and learning that Powell's plea agreement with the State had been accepted by the court, the superintendent suspended him without pay on October 29, 2004. The superintendent then recommended to the Hardy County Board of Education that Powell be fired. A hearing was held on November 16, 2004. During the hearing, the Board rejected the superintendent's recommendation of dismissal, but did "uphold the superintendent's suspension without pay until a satisfactory comprehensive evaluation by a psychiatrist of our choosing determines that he is not a danger to any Hardy County School students and that he will not return back to school before January 1st." The psychiatrist found that Powell was not a danger to students in his care. The Board then moved to return Powell to his classroom duties on January 12, 2005. No back pay was awarded to Powell. As required, the county superintendent notified the State Superintendent's Office of the Board's action. At the state level, a Notice of Proceeding Against Certification was sent to Powell on October 6, 2005. The West Virginia Department of Education had conducted an investigation regarding the incidents surrounding Powell's abuse of his son. The Notice informed Powell that proceedings

were being initiated to revoke or suspend his teaching certificates. The Notice further informed Powell that a hearing would be held on October 25, 2005. The hearing was held before the Professional Practices Panel (PPP). After accepting documentary and testimonial evidence, the PPP concluded the hearing by announcing its decision to recommend suspension of Powell's license for four years. Powell appealed the suspension order, in the timeframe required, to the Circuit Court of Kanawha County. After hearing oral arguments, the circuit court upheld the actions of the agency by order dated May 26, 2006. Powell had continued to teach without incident until his license to teach was suspended. Legislatively prescribed prerequisites to the suspension or to revocation of teaching licenses and certificates are set forth in West Virginia Code. This statute states: The state superintendent may, after 10 days' notice and upon proper evidence, revoke the certificates of any teacher for any of the following causes: Intemperance; untruthfulness; cruelty; immorality; the conviction of a felony or a guilty plea or a plea of no contest to a felony charge; the conviction, guilty plea or plea of no contest to any charge involving sexual misconduct with a minor or a student; or for using fraudulent, unapproved or insufficient credit to obtain the certificates; Provided, That the certificates of a teacher may not be revoked for any matter for which the teacher was disciplined, less than dismissal, by the county board that employs the teacher, nor for which the teacher is meeting or has met an improvement plan determined by the county board, unless it can be proven by clear and convincing evidence that the teacher has committed one of the offenses listed in this subsection and his or her actions render him or her unfit to teach; Provided, however, That in order for any conduct of a teacher involving intemperance; cruelty; immorality; or using fraudulent, unapproved or insufficient credit to obtain the certificates to constitute grounds for the revocation of the certificates of the teacher, there must be a rational nexus between the conduct

of the teacher and the performance of his or her job. Powell appealed based on what he claimed was a failure by the PPP to explain nexus between his misconduct and job performance and that there is no clear and convincing evidence that Powell was unfit to teach. The PPP argued that a rational nexus exists between a teacher's off-duty conduct: (1) if the conduct directly affects the performance of the occupational responsibilities of the teacher; or (2) if, without contribution on the part of the school officials, the conduct has become the subject of such notoriety as to significantly and reasonably impair the capability of the particular teacher to discharge the responsibilities of the teaching position. The PPP went on to argue that, a rational nexus exists between a teacher's off-duty conduct and his duties as a teacher in at least two circumstances: (1) if the conduct directly affects the performance of the occupational responsibilities of the teacher; or (2) if, without contribution on the part of the school officials, the conduct has become the subject of such notoriety as to significantly and reasonably impair the capability of the particular teacher to discharge the responsibilities of the teaching position.

Issue(s): Does a misdemeanor conviction of domestic battery warrant suspension of a teacher's license and show rational nexus between the conduct of the teacher and being unfit?

Holding(s): A rational nexus must be proved between a teacher's conduct and being unfit to teach and reliable, probative, and substantial evidence must be presented.

Reasoning: The court stated that no evidence of being unfit in his ability to teach was Proven. Powell had completed all required rehabilitative measures established. The Court found no reason why Powell should not be permitted to resume his teaching career without delay. The PPP failed to provide clear and convincing evidence and the Court found that the four-year suspension was unwarranted and is the result of a fundamental misapplication of the law governing revocation and suspension of teaching licenses, is clearly wrong in light of the

“reliable, probative and substantial evidence” and represents the unwarranted exercise of discretion of the State Superintendent of Schools.

Disposition: Reversed and Remanded by Supreme Court of Appeals of West Virginia. The Circuit Court of Kanawha County, is reversed and the matter is remanded for reinstatement of Powell’s teaching license.

Citation: *Brehe v. Missouri Department of Elementary and Secondary Education*, 213 S.W. 3d 720 (Mo. 2007).

Key Facts: Lori Lee Brehe was a licensed Special Education Teacher employed by the Jefferson City School System in Missouri. On December 31, 2002, while school was not in session, Ms. Brehe took her three children ages eleven, ten, and two-years-old to a nearby casino. Ms. Brehe entered the casino for approximately 45 minutes and left the children alone and unsupervised in the car. When Ms. Brehe returned to her car, the police officers were waiting for her. A passerby had noticed the children sitting in the car and called the police. Ms. Brehe was charged with a Class A misdemeanor of endangering the welfare of a child in the second degree. Ms. Brehe eventually pled guilty in Cooper County Circuit Court to one count of second-degree child endangerment. The court suspended imposition of the sentence, and she served one year of probation which ended on March 21, 2004. On December 23, 2004, the Department of Elementary and Secondary Education filed a complaint with the Missouri State Board of Education against Ms. Brehe’s teaching certificate under section 168.071.1, RSMo. The Missouri State Board of Education claimed that they had the authority to do so because Ms. Brehe was convicted of a “crime involving moral turpitude.” Ms. Brehe asked the move be dismissed because what she pled guilty to did not involve moral turpitude. Her motion was not accepted. A hearing officer was appointed by the commission and in February 2005 the Missouri State Board

of Education presented its findings to the hearing officer. Ms. Brehe testified on her behalf stating that she had made her school system aware of the plea and was presented with another teaching contract after the system was aware of the conviction. On June 7, 2005, the hearing officer presented findings. The hearing officer found that the State Board of Education is authorized to suspend or revoke the certification of Ms. Brehe. The Commissioner made a recommendation to suspend Ms. Brehe's license for 90 days. Ms. Brehe appealed the decision to the Cole County Circuit Court without requesting a stay of the order. The 90-day suspension ended on September 21, 2005. In November 2005, the Circuit Court issued its findings and reversed the Missouri State Board of Education's findings because the court stated that a crime of endangering the welfare of a child in the second-degree was not necessarily a crime involving moral turpitude. The Department of Elementary and Secondary Education appealed.

Issue(s): Does a second-degree conviction involving endangering the welfare of a child constitute moral turpitude which would instigate disciplining a teacher's teaching license?

Holding(s): The Court held that the Board was required to show that the circumstances of the offense were such as to involve moral turpitude. A second-degree conviction involving endangering the welfare of a child does not constitute moral turpitude and cannot be used to discipline a teacher's teaching certificate.

Reasoning: The Court stated that second-degree child endangerment almost never involves "a conscious decision to violate the law," and when that is the case, "moral turpitude" cannot be applied. The Court declared that Ms. Brehe's certificate could not be disciplined because she had no notice that her conduct could cause her certificate to be disciplined and is "unconstitutionally vague" as the charges were applied, and that the hearing officer and the

Board misapplied the law in concluding that a conviction of second-degree child endangerment is ipso facto a conviction of a crime involving moral turpitude.

Disposition: Reverse and Remand. The Missouri Court of Appeals, Western District, reversed the decision of the Department of Elementary and Secondary Education and remanded for the dismissal of the complaint.

Citation: *Teacher Standards and Practices Commission v. Bergerson*, 342 Or. 301 (Or. 2007).

Key Facts: Bergerson had been a teacher in the Salem-Keizer School District for 15 years. Bergerson received Mark for her teaching abilities. After many years of being an educator, Bergerson and her husband started to have marital problems. Bergerson's husband moved out of the family home and into the home of a girlfriend. Bergerson's husband was injured in a serious motorcycle accident. He was in a coma for several weeks, and during this time, Bergerson stayed close by his side. While still in the hospital, after recovering from a coma, Bergerson's husband began filing a petition for divorce. Bergerson's husband did not want Bergerson to visit him in the hospital, or have any contact with him. During this time, Bergerson also learned that her husband was living with his girlfriend and had an emotional setback with her 17-year-old son. Bergerson was also experiencing financial hardship. Part of this was due to her husband's refusal to pay child support. Bergerson approached the home of her husband and his girlfriend to deliver items that belong to her husband. Bergerson had parked down the street and after returning to her car ingested multiple prescriptions in order to attempt suicide. She drove into her husband's girlfriend's driveway and slammed into the rear of her husband's empty truck. Due to the impact, the truck was pushed into the girlfriend's home which caused damage to the exterior of the house. Bergerson was admitted to the hospital and diagnosed by psychiatrist with Major

Depressive Disorder, single episode severe. After this incident was reported to the school system, and because it was printed in the local newspaper, a number of parents reported their concern about Bergerson's fitness to teach. She was charged in the incident with four counts of criminal mischief in the first degree. Pursuant to a plea agreement, she pleaded no contest to one of the four counts. She was sentenced to a term of probation. After taking a number of months off work, Bergerson felt she was now ready to return to her classroom duties. The district superintendent did not agree and recommend to the school board that Bergerson be dismissed. The school board agreed and recommended the termination of Bergerson. Bergerson appealed her dismissal with the fair dismissal appeals board (FDAB). The FDAB reversed Bergerson's dismissal and ordered the school district to reinstate Bergerson. The district sought judicial review and a stay enforcement of the order pending judicial review. The FDAB denied stay and the Court of Appeals affirmed the decision. The TSPC also started to investigate suspension or revocation of the license of Bergerson. The TSPC sought this suspension or revocation due to "gross unfitness" and "gross negligence of duty." Bergerson requested a hearing. Bergerson had her teaching license suspended for 60 days. She appealed her case claiming that "the gross negligence of duty" or "gross unfitness" did not occur in her case. She challenged the Teacher Standards and Practices Commission on the grounds that they failed to identify and explain modifications that it made to a proposed order issued by the administrative law judge (ALJ). The ALJ concluded that suspension of Bergerson's teaching license was not warranted. The TSPC issued a proposed final order that deleted or altered some of the ALJ's finding of fact and added a large number of its own findings. Bergerson filed exceptions to the TSPC. Bergerson sought judicial review of the TSPC's final order in the Court of Appeals. That court affirmed the final orders of the TSPC without opinion. Bergerson then sought review by Oregon Supreme Court.

Issue(s): Does a teacher have a professional obligation to behave ethically and lawfully at all times, and does this eradicate the boundary between private and professional obligations all together? If a teacher does not behave ethically and lawfully at all times, does this constitute gross neglect of duty?

Holding(s): The court found, when off-duty conduct is at issue, the conduct must be related to the teacher's professional duties. The Supreme Court held that TSPC's definition of "gross neglect of duty" as unethical conduct was not linked to the conduct and her professional duties and based on that rule was erroneous. The TSPC's finding of teacher's "gross unfitness" based on her past misconduct had to warrant a reversal.

Reasoning: The court found that there must be a clear nexus between the conduct at issue and the teacher's professional responsibilities. The court found that the TSPC's role in interpreting gross neglect of duty and gross unfitness of duty was simply that, interpretive. It was not legislative. The court also holds that the TSPC modified the ALJ's proposed order in a substantial manner.

Disposition: Reversed and Remanded. The decision of the Court of Appeals is reversed by the Supreme Court of Oregon. The final order of the teacher standards and practices commission is reversed, and the case is remanded to the Teacher Standards and Practices Commission for further consideration.

2008

Citation: *Contini v. Ohio State Board of Education*, N.E.2d (Ohio, 2008).

Key Facts: In 2004-2005, Donald Contini was employed as a high school science teacher with Whitehall City School District in Columbus, Ohio. Mr. Contini attended a high school dance smelling of alcohol and engaged in inappropriate physical contact with a female student.

The female student testified that Mr. Contini commented that she looked nice in her dress. Mr. Contini proceeded to come up behind her and told her that her “ass” looked good in her dress. He rubbed his hand across her buttocks. Also, the Ohio Department of Education noted Mr. Contini had prior convictions in the Licking County Municipal Court for one count of a misdemeanor violation of a civil protection order on July 14, 2003 and one count of misdemeanor assault on June 28, 2004. On May 2, 2006, the Office of Professional Conduct notified Mr. Contini that there would be hearing to determine whether to limit, suspend or revoke his permanent high school teaching certificate issued to him. Mr. Contini asked for a hearing before the Ohio State Board of Education. The hearing was held on November 26th and 27th of 2006 and was attended by Mr. Contini and his legal counsel. On January 5, 2007, the hearing officer issued his Report and Recommendation, and he found that the convictions, his behaviors underlying those convictions, and the incident at the high school dance were in violations demanding revocation. Appellant argues in his first Assignment of Error it was error for Appellee to revoke Appellant’s teaching license based upon Appellant’s misdemeanor conviction for violation of a civil protection order. On July 14, 2003, Mr. Contini was convicted by the Licking County Municipal Court for violating a civil protection order issued by the Licking County Court of Common Pleas, Domestic Relations Division. Mr. Contini’s wife filed a civil protection petition against him because he made threats to his wife during their divorce. He was ordered to cease all contact with his wife. Mr. Contini entered the residence of Paul Ikehon, where he knew his former wife was located, in an effort to attempt contact with her. Mr. Contini assaulted Mr. Ikehon and on June 28, 2004, Mr. Contini was convicted by the Licking County Municipal Court on one count of assault against Mr. Ikehon. Mr. Contini was fined \$250 plus court costs and was sentenced to 90-days in jail, with 30-days suspended. In addition, the municipal court ordered Mr. Contini to

make restitution to Ikehon for lost wages. It was recommended by the hearing officer that the permanent high school teaching license be revoked. The hearing officer then concluded that Mr. Contini may be eligible to reapply for a new license after a two-year period if the corrections noted in Mr. Contini had been made. The Resolution recommendations were held, and Mr. Contini's teaching license was revoked. Mr. Contini appealed the Resolution to the Licking County Court of Common Pleas. On October 9, 2007, the trial court affirmed Appellee's decision to revoke Mr. Contini's teaching license.

Issue(s): Does evidence presented to revoke a teacher's license need to be supported by reliable, probative, and substantial evidence? Does the Ohio State Board of Education have the authority to revoke a teacher's license based on a conviction for violation of a civil protection order, a misdemeanor offense?

Holding(s): The court found that sufficient evidence was presented to conclude that Mr. Contini convictions, his behaviors underlying those convictions, and the incident at the high school dance were violations that warranted the revocation of his teaching certificate.

Reasoning: The Court cannot find the trial court abused its discretion in affirming the administrative order and its resolution of those evidentiary conflicts. Upon review of the record in this matter, the court stated that the revocation of Mr. Contini's teaching license was not solely based upon his conviction for violation of a civil protection order. It was also based on the undisputed conviction for assault and the incident with a student at the high school dance.

Disposition: The judgment of the Licking County Court of Common Plea is affirmed by the Court of Appeals of Ohio, Fifth District.

2009

Citation: *Richardson v. North Carolina Department of Public Instruction Licensure Section*, 199 N.C.App. 219 (N.C. 2009).

Key Facts: Charlie Richardson was a teacher for 22 years in the state of North Carolina. In 1994, Richardson brought suit in the United States District Court for the Western District of North Carolina against his employer. He was employed by the Cabarrus County Board of Education. Mr. Richardson claimed that the Cabarrus County Board of Education had illegally denied him a job advancement, to an administrative position, because of his race. Mr. Richardson further accused that he was given low evaluations and denied advancement because he had filed discrimination charges with the Equal Employment Opportunity Commission (EEOC). A federal magistrate dismissed all of the claims except the discrimination suit. At trial, the jury failed to reach a verdict, and the federal magistrate declared a mistrial. A retrial was scheduled. Before the retrial was held, the parties reached a settlement. A few weeks after the settlement, Jessie Blackwelder, Assistant Superintendent for the Cabarrus County Schools was mailed an anonymous letter. The letter referred to Blackwelder's "lies," noted that it was time "to get [her] back," and made reference to "incriminating evidences" which would be disclosed "to Mr. Richardson's attorney, [and] to Judge Horn, too" unless Richardson received an administrative position "immediately." The letter also "promise[d]" Blackwelder jail, fines, and sudden retirement" if she did not cooperate. On April 8, 1997, Blackwelder received another anonymous letter referring to the settlement agreement as a "cheap ass deal" that Richardson was too smart to sign. The letter was more threatening than the first letter and referred to Blackwelder using harsh, inappropriate language. Blackwelder intercepted a third anonymous letter sent to her husband. This letter was threatening Blackwelder as the previous letters did. The Federal District

Court granted the Cabarrus County Board of Education a hearing asking for a dismissal to force the settlement agreement. An evidentiary hearing was held on April 12, 1997 to determine if Richardson was witness tampering or intimidating Blackwelder. A federal magistrate found that Richardson did indeed type and mailed the three anonymous letters or was a party to this taking place. The magistrate determined that Richardson's conduct was intentional, egregious, and in bad faith and that the letters threatened Blackwelder. Which also violated federal laws dealing with perjury and intimidating witnesses. Richardson's license was revoked because he engaged in unethical conduct by sending threatening and obscene letters to his supervisor. These letters caused a "reasonable and adverse" relationship to his continuing ability to perform any of his professional responsibilities. Richardson applied for reinstatement of his license. It was rejected. Richardson argued that there is a difference between immoral and unethical conduct. An Administrative Law Judge found that the conduct underlying Richardson's license revocation was "immoral" citing Barringer. Richardson's first revocation was based on unethical behavior that made him unfit to teach. The State Board of Education revoked Richardson's license. Richardson pursued appealed the final decision by the State Board of Education to the North Carolina Superior Court, the North Carolina Court of Appeals, and the North Carolina Supreme Court. The Courts upheld the license revocation.

Issue(s): Is there a difference between immoral and unethical conduct as related to revocation of a teacher's license?

Holding(s): The teacher's "unethical" conduct in sending threatening and obscene letters to his supervisor constituted "immorality" justifying revocation of his teaching certificate and was considered moral turpitude such that the State Board of Education could not reinstate

license. Richardson failed to establish that the State Board of Education's decision was arbitrary, capricious, or an abuse of discretion.

Reasoning: Revoking a teaching license based upon several grounds, including "any unethical conduct by a person, if there is a reasonable and adverse relationship between the underlying conduct and the continuing ability of the person to perform any of his/her professional functions in an effective manner. The State Board of Education may not reinstate the license if the action that resulted in revocation involved abuse of minors, moral turpitude, or grounds listed in N.C. Gen.Stat. 115C-325 16 N.C.A.C. 6C.0312 (2007) Richardson failed to show any error in the trial court's decision.

Disposition: Affirmed by the Court of Appeals of North Carolina.

Citation: *Mann v. Kentucky Education Professional Standards Board*, S.W.3d (Ky. 2009).

Key Facts: During a 19-year timeframe, (1980-1999), Terry Mann was employed as the principal of Chapman School. Chapman School was an academic and vocational school. This school was original Holmes High School which became Chapman School. Mr. Mann claimed that he was originally contracted to lead the experimental program at Chapman School. Mr. Mann did not obtain an administrator's certification for 1987 through 1995. Mr. Mann claims he was informed that a principal's certificate was not a requirement for this position, but in 1995 Mr. Mann was notified that he could not be employed as the principal of Chapman School without the required certification. Mr. Mann sent a letter to the Covington Independent School Systems addresses to the Superintendent Richard Howard. Mr. Mann argued that he was never aware that his 1986 certification was temporary. In 1995, Mr. Mann's salary was reduced to reflect the current pay scale for his certification. A few months later, Mr. Mann was certified as a

vocational principal for one year, July 1, 1995 to June 6, 1996. Later during 1995, Mr. Mann was informed by the Kentucky Educational Professional Standards Board that there was an ongoing investigation that Mr. Mann had worked in a position he was not certified or licensed to do so. Because of an ongoing criminal case involving Mr. Mann, this case was deferred until 2004. In 2004, the EPSB started a full investigation about Mr. Mann's lack of certification in his position as a principal. In 2005, an appointed hearing officer issued a finding that Mann did in fact violate Kentucky Revised Statutes 161.020 by being in the role of a principal without certification. The hearing office further found that Mr. Mann's claim that he was told he did not need a principal's certification to serve in this role could not be substantiated and that the evidence collected showed the opposite of this claim. The hearing officer also recommended that Mann's teaching certificate be revoked for three years. The Kentucky Educational Professional Standards Board took the recommendations of the hearing officer, but added two additional years of certification revocation for a total of 5 years. Mr. Mann appealed the decision to the Franklin Circuit Court. The Franklin Circuit Court affirmed Mr. Mann's revocation, and he the appealed the decision of the Franklin Circuit Court.

Issue(s): Did the lacked Kentucky Educational Professional Standards Board substantial evidence to support its conclusion and abuse its discretion in deciding his penalty? Did the Kentucky Educational Professional Standards Board procedures violate Mr. Mann's due-process rights? Was there a statute of limitations on this suit?

Holding(s): The Commonwealth of Kentucky's Court of Appeals, confirmed Franklin Circuit Court order that the Kentucky Education Professional Standards Board decision to suspend Mann's teaching certificate due to Mann knowingly working as a principal of a school without an administrative certification and found all claims by Mr. Mann to be unsubstantiated.

Reasoning: The Court found substantial evidence to support the factual determinations and no error in the law and explained that, “In light of the overwhelming evidence in this case, including state records and Mann’s admission that he was not certified, we find that substantial evidence existed to support the EPSB’s factual findings.” The Court found that the penalty handed down of a five-year revocation of Mr. Mann’s teaching certificate was justified and the EPSB had the authority to do this.

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

2010

Citation: *M. T. v. Department of Education*, 56 A.3d 1 (Pa. 2010).

Key Facts: M. T. was a band director and music teacher for a high school in Pennsylvania. M.T was accused of having a sexual relationship with a student who was under his supervision. The sexual encounter took place for a period between the years of 2001-2004 while the student was enrolled in school. In 2005, after hearing of the allegations from the student and her parents, the District suspended M. T. without pay. An investigation was done and in 2007 a notice of charge was set against M. T. stating that M. T. “engaged in a pattern of inappropriate conduct of a sexual nature with [a] high school student.” M. T. was charges with immorality, negligence, intemperance, cruelty, incompetence, sexual abuse or exploitation, and violations of the Code of Professional Practice and Conduct. The relationship started in the student’s sophomore year and did not subside until after the student’s graduation. A hearing officer was assigned to the case, and the hearing officer recommended that M. T.’s teaching certification be permanently revoked.

Issue(s): Were M.T.'s due process rights violated as a result of a delay between the inception of the alleged improper conduct and the date of the Department filing its Notice, and does the doctrine of laches preclude the Department from initiating its charges against M.T.?

Because no witnesses testified to the fact the M. T. had inappropriate sexual contact with the student, does the Department have the authority to revoke M. T.'s certification?

Holding(s): The conduct of M. T. was immoral, negligent, malicious, and showed intemperance. There was an abundance of evidence that proved M. T. had sexual encounters with the student without having eye witnesses. M. T.'s due process rights were not violated.

Reasoning: The Commission stated that the Department did not become aware of the misconduct until shortly before it brought its charges against M. T. and did not discern any material and inexplicable delay in the Commission's actions in the case. The Commission is not under a duty to issue a decision within 45 days of its receipt of a Hearing Officer's recommended decision. The Department argued that the grounds for discipline existed by preponderance of the evidence and that touching students in an inappropriate manner constitutes immorality.

Disposition: The Court's decision affirmed the Commission's adjudication in part and remand the matter to the Commission for reconsideration of the discipline imposed. The section that was reversed and remanded was M.T.'s conduct constituted incompetence and cruelty.

Citation: *Broney v. California Commission on Teaching Credentialing*, 184 Cal.App.4th 462 (Cal. 2010).

Key Facts: Shirley Marie Broney was arrested for her first offense of DUI at the age of 21. At that time, Ms. Broney was not licensed as a teacher. In 1997, while doing her student teaching, Ms. Broney was again arrested for a DUI. From the years of 1987-2002, Ms. Broney was arrested on three occasions for DUI offenses. In 1999, Ms. Broney became employed with

the Westminster School District in Orange County. She received her third offense during this employment. On the third offense, Ms. Broney was sentenced to 30 days in jail. The Court allowed her to serve this sentence at home and in the classroom while wearing an ankle monitoring bracelet. The California Commission on Teacher Credentialing (the Commission) suspended her teaching licenses for 60 days on finding she was unfit as a teacher. Ms. Broney requested an administrative hearing with an Administrative Law Judge (ALJ). The ALJ recommended that the charges be dismissed because the Commission had failed to prove unprofessional conduct. The ALJ cited the seven factors set out in Morrison and at title 5, section 80302, of the California Code of Regulations. The Commission did not take the recommendation of the ACL and suspended Ms. Broney's licenses for 60 days. The suspension was stayed pending Ms. Broney completing a three-year probation period. Ms. Broney petitioned the Sacramento County Superior Court for a writ of administrative mandate pursuant to Code of Civil Procedure. The decision stated she was found to be unfit per se due to this being her third DUI arrest. Ms. Broney appealed and claimed the trial court erred by applying a per se rule. On appeal, the Court found the decision was not prejudicial, but that the Court did err by applying the per se rule. The Court found the Commission's decision was neither arbitrary nor unreasonable. The trial then proceeded to utilize the Morrison factors in assessing the penalty and ruled that the Commission did act within the authority held.

Issue(s): Did the California Commission on Teacher Credentialing abuse its discretion by suspending the credentials of Broney? Does a DUI conviction constitute being an unfit teacher?

Holding(s): The Third District, Court of Appeal, ruled the California Commission on Teacher Credentialing did not abuse its discretion by suspending the teaching licenses of the teacher.

Reasoning: The appellate panel disagreed with the trial court's use of a per se rule on Ms. Broney being unfit but agreed the error was harmless. The appellate panel reasoned that the court would have come to the same decision had it invoked the Morrison factors instead of a per se rule. The court held that the state cannot merely cite the fact of a DUI conviction and proceed to suspend or revoke a teaching credential. Morrison factors were applied in finding her unfit as a teacher. The trial court affirmed that ruling, but utilized a "per se" test, finding that the third DUI rendered the teacher unfit "as a matter of law." Instead, the state must affirmatively demonstrate that the person is unfit to teach, and that must be done by applying the 7-factor test established by the California Supreme Court in *Morrison v. State Board of Education*, (1969)

Disposition: Affirmed. The appeal from a judgment of the Superior Court of Sacramento County was affirmed by the appellate panel.

Citation: *Macy v. Kentucky Education Professional Standards Board*, S.W.3d (Ky. 2010).

Key Facts: Sharon Macy started her career in education in 1981 with the Hopkins County Board of Education as a middle school physical-education teacher. In 1987, Ms. Macy suffered a severe head injury in an accident. The head injury was so severe that Ms. Macy had to relearn simple tasks including writing her name. Ms. Macy suffered from headaches, irritability, and anger issues, among other problems, which she controlled with the help of medication and therapy. In 1995, Ms. Macy was again involved in an accident which caused her symptoms to return. The Hopkins County School System initiated a teacher "504 Plan" to try and help Ms. Macy adapt to the classroom and be an effective classroom teacher. This even included

providing a cot for Ms. Macy if she suffered a severe headache during school hours. They also provided her an assistant. In 1998, Ms. Macy had an anger outburst which was witnessed by students. A note was placed in her file by Principal Darryl Herring. In 1999, Ms. Macy had another outburst with a parent, student, and teacher. Ms. Macy also became associated with a school club the Loser Club which mocked the Pride Club. In 2000, a parent filed a complaint with the local law enforcement stating that Ms. Macy had threatened students on the boys basketball team. After an investigation by law enforcement, Ms. Macy was charged with nine counts of terroristic threats. Later that same month, Ms. Macy was terminated from the Hopkins County School System. In 2009, Ms. Macy was found guilty of all nine counts and fined \$4,500.00. The fine was set aside as long as Ms. Macy made no contact with the students and committed no other legal offenses. The Hopkins County Court affirmed the decision in December 2001. Ms. Macy did not do as instructed. She started making threats against Linda Zellich, assistant superintendent, in the months following. These threats included telling Zellich that Ms. Macy's termination would result in Zellich's death. She also approached her in the school parking lot and blocked her car in with hers. In late 2000, an additional 18 charges were filed against Macy from the Hopkins County School System. These charges included several statutory and regulatory provisions concerning Ms. Macy's conduct as a school teacher in the state of Kentucky. More charges were tacked on in April, 2004. The Kentucky Education Professional Standards Board started the process to have Ms. Macy's teaching certificate revoked. A hearing officer was assigned to the case. The hearing officer found that several of the charges did not show a nexus between Ms. Macy's teaching certificate and others were not dismissed due to the hearing officer finding no legal basis for the charge. The only charges that were found to warrant revocation of Ms. Macy's certificate were the charges involving the

students. The hearing officer recommended revocation of Ms. Macy's certificate until 2005. The legal counsel of the Kentucky Education Professional Standards Board rejected the hearing officer's recommendation and revoked Ms. Macy's certificate for a period of 10 years until 2015. Macy appealed to the Franklin Circuit Court. In 2008, the Franklin Circuit Court issued its finding both reversing and affirming findings by the Kentucky Education Professional Standards Board. The circuit court found that the conviction of the nine terrorist threats against students alone justified the 10-year revocation of Ms. Macy's certification. Ms. Macy again appealed. Ms. Macy now argues pro se and that the Kentucky Education Professional Standards Board acted arbitrarily and contrary to the amount of evidence and in rejecting the hearing officer's order.

Issue(s): Did the Kentucky Education Professional Standards Board violate constitutional or statutory law, excess its statutory authority, not provide substantial evidence, acting in an arbitrary or capricious way, base its decision on ex parte communications, or was it contrary to the law when it suspended Ms. Macy's teaching certificate?

Holding(s): The court appeals board found that the Kentucky Education Professional Standards Board did not act in an arbitrary or capricious way, unsupported by substantial evidence, based its decision on ex parte communication, or act in an unlawful way. The Court of Appeals of Kentucky also moved to affirm that Ms. Macy was physically and mentally unable to do her job acknowledging that this was a result of her traumatic brain injury which was beyond her control.

Reasoning: The court concluded "that the criminal conduct involving the threatening of students during school hours and on school property, which resulted in a conviction on multiple counts of terroristic threatening, by itself provides a sufficient basis to support the severe

penalty.” Although part of the decision was reversed, the appeals board affirmed the 10-year revocation of the Kentucky Education Professional Standards Board.

Disposition: The Court of Appeals of Kentucky affirmed the revocation of the teaching certificate, but reversed in part.

Citation: *Moro v. Mills*, 70 AD 3d 1269 (N.Y. 2010).

Key Facts: Stephen A. Moro, held a teaching certificate in the state of New York. He was hired and signed a probationary contract. In 2005, the superintendent of the district notified the New York Department of Education that Mr. Moro had been arrested and charged with endangering the welfare of a child. The student was the only eyewitness to the sexual misconduct. The New York Department of Education’s investigation led to the conclusion that Mr. Moro had allegedly committed an act of sexual misconduct in the presence of a 14-year-old student that he was giving a music lesson to. The Department of Education issued a notice of substantial question of moral character and designated a Hearing Officer. After a hearing, the Hearing Officer found that Mr. Moro’s certification should be revoked and agreed with the finding of the Department of Education. The Hearing Officer’s determination was based on the testimony of the student, who gave a detailed description of the incident at issue, as well as that of the district superintendent, several other teachers, the investigating police officer, and petitioner, among others. The Hearing Officer concluded that the student’s testimony was credible, finding that her testimony was supported by the evidence and by other witnesses, and that petitioner’s conflicting testimony was inconsistent and controverted by the other testimony.

Issue(s): Does the Department of Education have the right to revoke a teacher’s certification based on allegations, before a conviction, when it is based on sexual misconduct and endangering the welfare of a child?

Holding(s): Due to the allegations, the court determined that substantial evidence coupled with the 14-year-old music student's testimony as well as the testimony of law enforcement and other teachers, the New York Department of Education did have the authority to revoke a teacher's certification. Substantial evidence supported Commissioner's determination and the revocation of Moro's teaching certificate was not shocking, excessive, or incommensurate with his offense.

Reasoning: Revocation of Mr. Moro's certification was appropriate considering sexual conduct he exhibited in the presence of a young female student to whom he was providing music instruction.

Disposition: Supreme Court, Appellate Division, Third Department, New York agreed with the findings and affirmed. (He was acquitted of the charges at trial.)

Citation: *In re Suspension of teaching Certificate of Van Pelt*, 414 N.J.Super. 440 (N.J. 2010).

Key Facts: In 2007, Melissa Van Pelt was a non-tenured eighth grade math teacher assigned to Gray Charter School in Newark, New Jersey. Van Pelt signed a contract to teach another year, this was her second year, in May 2007. Two days before In-service training began for the teachers and eight days before students were required to start school, Van Pelt resigned her position in order to accept another teaching certificate in another school system. Gray Charter School reported Van Pelt to the New Jersey Education Commission arguing unprofessional conduct exhibited by Van Pelt and citing she had violated two statutes in New Jersey which included wrongful resignation and failure to provide the required 60-day notice. The school declared that the untimeliness of Van Pelt's resignation caused harm to students and incurred expenses to the school because school was delayed in starting, and In-service had to be

rescheduled. Van Pelt was one of 7 who had resigned their positions. Van Pelt argued that the statutes that she was being charged with violating only pertained to public school employees and not charter school employees. The case was heard by and Administrative Law Judge who found that Van Pelt had violated both statutes as charged by the school. The Commissioner of Education accepted the Administrative Law Judge's findings, and Van Pelt's teaching certificate was suspended for one year. Van Pelt appealed the decision of the New Jersey Department of Education on the grounds that charter schools are governed by their own statutes and regulations and the statutes enforced against them were not incorporated therein.

Issue(s): Are charter school teachers, in the State of New Jersey, expected to follow the same statutes as required by other teachers in the state in regards to resignation of a teaching position and a 60-day notice?

Holding(s): The same statutes apply to charter school teachers requiring a 60-day notice to resign from a contracted teaching position. Due to this finding, the teacher wrongfully resigned.

Reasoning: New Jersey charter school teachers are required to hold New Jersey issued state teaching certificates. Because of this, the laws pursuant to the teachers in charter schools are the same. Even though the teaching contract signed by Van Pelt did not specifically require a 60-day notice, this has been well founded in educational law.

Disposition: The decision was affirmed by the Superior Court of New Jersey, Appellate Division.

2011

Citation: *Kellough v. Ohio State Board of Education*, N.E.2d (Ohio, 2011).

Key Facts: Martin Kellough was a teacher at Pike County Career Technology Center in Piketon, Ohio. Kellough and another teacher, Timothy Cox, held a Christmas party for their electrical students. Kevin Smith, the school principal, rejected Cox and Kellough's first suggestion of holding the Christmas party at another location off the main campus. Instead, Principal Smith instructed the teachers to hold the Christmas in a classroom on the main campus. Kellough and Cox rejected the idea of having the party inside the small classroom and had the party in the school auditorium/gym. Principal Smith was not aware the teachers had held the party in the auditorium/gym until he arrived at the school after getting an emergency call stating that there had been an accident during the party. Principal Smith, who had been off campus when he received the call, immediately returned to the main campus. Upon arriving, Principal Smith found a student who was unconscious being attended to by a nurse at the school. The student had drifted in and out of consciousness and was struggling with a severe head injury. After the student was taken to the hospital, Principal Smith spoke with Kellough and Cox about the events that led up to the injury of the student. Kellough explained that the student and another student were boxing on the stage area of the auditorium/gym, and the student had accidentally fallen off the stage and hit his head. He explained that the students were hiding behind the curtain so they would not be in the view of the teachers. Students who were interviewed immediately and after the Christmas holidays, were all in agreement about the facts of the accident. Most of the students, as well as both teachers, denied seeing the incident and all stated the student had fallen off the stage and hit his head. The superintendent instructed Principal Smith to get written statements from both teachers and all the student who were involved. The injured students could

not give a statement because of the injury he was unable to recall the facts leading up to the injury. Kellough gave his written statement; however, Cox asked to speak with Principal Smith away from the main campus before he gave his written statement. Cox then revealed that the stories that were told by Kellough, the students, and him were all false. Cox explained that the student was actually standing on the floor, not the stage, when the injury occurred. He also explained that both he and Kellough were aware of this. The students were boxing and Kellough was actually standing in the group watching the two students box while Cox was in close proximity watching other students play a video on a large screen. Cox said Kellough called his name and instructed Cox to watch the students boxing just as the student was hit in the head and jaw and fell to the ground unconscious. Before others arrived to aid the student in need of medical care, Kellough instructed the students to lie about what had actually occurred, and Cox supported the story. The students did as Kellough had instructed and only revealed the truth when they knew Cox had informed the principal and superintendent of what had taken place. Both teachers were forced to resign for their part in the incident; however, Kellough insisted the first story told was actually true and that Cox and the other students were being dishonest. Because of the circumstances involved in the incident, a case was opened against Kellough from the Ohio Department of Education. As a result of the investigation, the Ohio Department of Education issued Kellough a notice of its intent to determine whether to limit, suspend, or revoke his teaching license. Kellough or his attorney failed to answer within the 30-day timeframe. The hearing was scheduled anyway. Kellough later explained that he had received the notice through the mail, but he thought his attorney got the same letter and would be responding in the designated timeframe. A hearing examiner was assigned to the case and heard evidence given by all involved. The hearing examiner determined that even if the story had occurred just as

Kellough stated, the issue still was that Kellough failed in his duties to properly supervise the students under his care. The hearing officer stated that even if Kellough was telling the truth, how students were able to hold a boxing match without the teachers being aware, means that the students were not being properly supervised. The hearing officer found that the Ohio State Board should revoke Kellough's teaching certificate on a permanent basis because he did exhibit conduct unbecoming of a teacher with his actions and failure to properly supervise students in his care. The Ohio State Board did in fact follow the recommendation of the hearing examiner and revoked Kellough's license on a permanent basis. Kellough appealed this order to the trial court. The Court of Common Pleas, Franklin County, affirmed. Kellough appealed.

Issue(s): Did the Ohio State Board error when permanently revoking Kellough's teaching license because there was not reliable, probative, and substantial evidence? Should Kellough have been allowed to testify and present additional evidence even though he missed the 30-day timeframe to do so?

Holding(s): The mailing to Kellough's attorney of the Board's intent to make a determination of whether to limit, suspend, or revoke his license was enough to satisfy notice statute and did not deny any due process rights. The Board did not have the statutory authority to disregard his waiver of a hearing and grant the right to participate in proceedings. The Board's decision to permanently revoke Kellough's license was supported by reliable, substantial, and probative evidence, and the Court of Appeals did not have the legal authority to change the Board's disciplinary sanction.

Reasoning: Mailing the letter to the attorney, even if the attorney states it was not received, does not violate Kellough's due process rights and was enough to satisfy statute. Mailing the letter is all that the Ohio State Board was required to do. Kellough received the letter

at his home address and should have in in turn followed up with his attorney. The court of appeals also sided with the court's decision to uphold the Ohio State Board's decision to permanently revoke Kellough's license stating that Kellough did in fact fail to properly supervise his students and exhibited conduct unbecoming of a teacher and that the evidence presented was reliable, probative, and substantial.

Disposition: The decision affirmed the judgment of the Franklin County, Court of Common Pleas.

Citation: *Gomez v. Texas Education Agency, Educator Certification and Standards Division*, 354 S.W.3d 905 (Tex. 2011).

Key Facts: Gilberto Gomez was a teacher in the state of Texas. He was employed by Donna Independent School District during the 2003-2004 school year. In early August 2003, Gomez was at a bar. Sergeant Joe Cavazos, an officer for the Texas Alcoholic Beverage Commission, walked into the bar to do an inspection of the bar on the night in question. Sergeant Cavazos was approached by a female customer of the bar who pointed out Mr. Gomez to Sargent Cavazos. She explained that Mr. Gomez had his penis pulled out of his pants and was exposing his penis to others standing nearby. Sergeant Cavazos approached Mr. Gomez and did in fact report that Mr. Gomez has his penis exposed and was rubbing it for sexual gratification without concern for any other bar customer. Mr. Gomez was watching dancers on the dance floor while he was exposing himself. Sergeant Cavazos arrested Mr. Gomez and charged him with indecent exposure. Later, these charges were dismissed and the records were later expunged. In October 2006, the Board filed a petition against Gomez with the State Office of Administrative Hearings stating that Mr. Gomez's behavior while in the nightclub clear showed that "he is a person unworthy to instruct or supervise the youth of the State of Texas" and asked for the permanent

revocation of his Texas educator certificate. The case went to an Administrative Law Judge (ALJ) for a hearing. The ALJ did not allow any evidence based on the expunged evidence; however, the ALJ did allow Sergeant Cavazos's eyewitness testimony as part of the hearing evidence since it was not based on the expunged records. The ALJ concluded that Gomez's behavior did in fact constitute as moral turpitude, as defined by the Board's rules, and that an act of moral turpitude can preclude a finding of good moral character; however, the ALJ stated that the Board did not prove that Mr. Gomez was "unworthy to instruct or to supervise the youth of this state" and could not hold this against Mr. Gomez's certificate since Mr. Gomez had not been convicted of a crime. The Board did not agree with all of the ALJ's findings, but did accept a majority of the findings and concluded that Mr. Gomez's certification should be revoked. Mr. Gomez's certification was then revoked by the Texas Education Agency. Mr. Gomez asked for and received a judicial review of the Texas Education Agency's order in district court. After a hearing of all the evidence, the district court affirmed the Texas Education Agency's decision. Mr. Gomez's appealed the court's decision arguing that the Texas Education Agency acted in excess of its statutory authority, in an arbitrary or capricious manner, and abused its discretion by rejecting the ALJ's recommendation not to revoke Mr. Gomez's teaching certificate because the ALJ did not find Mr. Gomez meet the requirement of being "unfit to teach" as needed to revoke a certificate. The District Court affirmed the administrative determination and Mr. Gomez appealed.

Issue(s): Because Mr. Gomez's case had been dismissed and the records were expunged, did the Texas Education Agency have the authority to revoke Mr. Gomez's certification?

Holding(s): The Court of Appeals found that the Board's written findings adequately explained its reasons and legal basis for rejecting conclusion of administrative law judge that Mr.

Gomez's conduct provided no basis for revoking his educator certificate and definition of phrase "unworthy to instruct" as not requiring a conviction of a statutorily enumerated offense was reasonable. The ALJ's finding that Mr. Gomez engaged in conduct rising to level of indecent exposure was sufficient to support Board's conclusion that educator was unworthy to instruct based on moral turpitude, and district court acted within its discretion in declining to remand to permit educator to present additional evidence. The Court of Appeals of Texas overruled all three of Mr. Gomez's arguments finding that the Texas Education agency acted within its rights to revoke Mr. Gomez's teaching certification finding Mr. Gomez as unfit to teach students in the state of Texas.

Reasoning: According to the Court of Appeals of Texas, under the Board's interpretation, engaging in conduct that rises to the level of indecent exposure is conduct that renders a person "unworthy to instruct" and therefore the Board did act within its authority when it revoked Mr. Gomez's certificate. Because Sergeant Cavazos was an eyewitness, his testimony was not part of the expunged record, and his testimony was legally presented.

Disposition: Court of Appeals of Texas, affirmed the order of the district court's judgment.

2012

Citation: *Brower v. New York City Department of Education*, 38 Misc.3d 291 (N.Y. 2012).

Key Facts: Bari A. Brower was employed as a kindergarten teacher at P.S. 1 in the Bronx in August, 2006. She received a satisfactory observation in November 2006; however, she received an unsatisfactory evaluation on her job performance in January 2007. In January 2007, the principal discovered that Ms. Brower was teaching kindergarten without proper certification.

Mr. Brower's was not certified to teach kindergarten. She was only certified to teach grades one-six. Ms. Brower was moved to a first grade classroom following this discovery. In April, 2007, the assistant principal observed Ms. Brower's classroom and consequently gave her an unsatisfactory rating. A final observation was scheduled for June 2007. This observation did not occur. In June 2015, Mr. Brower received and signed her final year-end review of her teaching performance. Most of the 23 categories were marked as unsatisfactory. Ms. Brower was also cited for being absent for 11 days of the school year. The Community Superintendent for District 7 informed Ms. Brower that she was being reviewed to discontinue her probationary teacher employment and further was being reviewed to have her teaching license terminated. In July 2007, the Superintendent sent Ms. Brower a "Discontinuance of Probationary Service and Termination" letter. In November 2007, a Chancellor's Committee, composed of three members, conducted a review of the decisions to issue Ms. Brower an unsatisfactory yearly rating, examined the file to discontinue her probationary service, and to revoke her New York City teaching certificate. Ms. Brower brought an action against the New York City Department of Education in order to reverse the school district's decision to terminate her probationary teaching position and revoke her license based on an unsatisfactory rating. Although it was not stated in the original allegations, Ms. Brower was now being cited with absenteeism as being the one of reasons for dismissal and revocation of her teaching certificate. The hearing conducted by the Chancellor's Committee also failed to provide completed transcripts of the actual hearing which violates lawful procedure. After appealing to the New York State Supreme Court, the decision was reversed and remanded for a new hearing.

Issue(s): Based on the evidence presented, which did not include any information related to Ms. Brower's absenteeism record, should Ms. Brower have received an unsatisfactory rating,

and should the New York City Department of Education have revoked Ms. Brower's teaching certificate after the Chancellor's Committee recommended that it not be? Where Ms. Brower's due process rights violated?

Holding(s): The Supreme Court, New York County, found that revocation of license was grossly disproportionate penalty. Ms. Brower was not allowed to adequately prepare to refute the findings that her absenteeism was being used against her as part of the reason she was being dismissed and her teaching certificate was revoked; therefore, the court found that Ms. Brower's due process rights were in fact violated. The Chancellor's Committee or the Interim Acting Deputy Chancellor failed to mention this in the hearing or in their findings. Therefore, Ms. Brower was not allowed time for an adequate defense. The matter-to respondent for reconsideration of petitioner's performance rating for the 2006-2007 school year based solely on the evidence related to the charges of which petitioner received proper notice which did not include absenteeism. The court vacated the Interim Acting Deputy Chancellor's decision and remanded back for a new hearing. Lucy Billings, four-month period to seek judicial review of termination began to run upon receipt of notice from city department of education terminating employment.

Reasoning: The Interim Acting Deputy Chancellor was arbitrary and imposed a heavy punishment, revocation of Ms. Brower's teaching certificate, without being in the hearing and reading an incomplete transcript of the hearing which was not provided by the hearing committee. The Interim Acting Deputy Chancellor also went against the unanimous Chancellor's Committee recommendation of not revoking Ms. Brower's certificate. Ms. Brower may have been rated as unsatisfactory for teaching kindergarten and first grade, but this should not be used against for grades second-six which she was also certified to teach. Finally, the absenteeism

cannot be used against Ms. Brower in her unsatisfactory rating or revocation of her teaching certificate because the charge was never mentioned in the hearing. The court determined that this was a violation of Ms. Brower's due process rights.

Disposition: Petition granted in part, denied in part, and remanded in part by the Supreme Court, New York County, New York.

Citation: *Robinson v. Ohio Department of Education*, 971 N.E.2d 977 (Ohio, 2012).

Key Facts: Craig Robinson was employed at Longfellow Alternative School in the Dayton Public School System. He had been employed with the system for over 21 years. He had earned the respect of many fellow educators, students, and parents in his position as a science teacher. During a planning period in June 2009, Mr. Robinson opened an email from a friend who had no affiliation with the school. The email contained a picture of a naked woman. Mr. Robinson wanted to share the picture with Billy Brooks. Mr. Brooks was also a teacher at the school. Mr. Robinson used one of Mr. Brook's classroom computers and opened the picture via the email. Students were present when the picture was opened. Students did not view the picture; however, Mr. Brooks felt the picture was pornographic and reported this to Principal Mulligan. She then reported this to Dayton Public School Superintendent, and Mr. Robinson was suspended for five school days without pay. In the fall of 2009, Dayton Public Schools filed an educator misconduct reporting form with the Ohio Department of Education. Mr. Robinson asked for a hearing officer to review the case. The hearing officer explained that because Mr. Robinson had used a school computer, the school Internet, and a school email account, he did violate the Licensure Code of Professional Conduct for Ohio Educators. The hearing officer concluded that this did in fact constitute conduct unbecoming of a teacher and that a nexus did exist between the conduct and Mr. Robinson as a teacher. The hearing officer recommended that

Mr. Robinson's license be suspended for one year. Robinson filed objections to the hearing officer's report. The Ohio State Board of Education accepted the hearing officer's recommendation. Robinson filed objections to the hearing officer's report and the Ohio State Board of Education's one-year suspension with the Montgomery County Court of Common Pleas. The trial court affirmed the Board's resolution.

Issue(s): Did Mr. Robinson's conduct constitute conduct unbecoming of a teacher, and was it supported by reliable, probative, and substantial evidence as supported by law?

Holding(s): The Court of Appeals, Montgomery County, found that Mr. Robinson's actions violated the Licensure Code of Professional Conduct for School Educators and did in fact constitute conduct unbecoming of a teacher. The appeals court found that there was reliable, probative, and substantial evidence that Mr. Robinson showed "lewd photos" from his school email, on the school network, school computer, and during school time. This, in its self, is enough to show conduct unbecoming of a teacher. This was not contrary to law, and the trial court did not abuse its discretion in affirming the Board's decision. The court found that Robinson's actions in accessing and viewing inappropriate images constituted conduct unbecoming an educator, did not constitute an abuse of discretion, that the hearing officer did not act unreasonably, a nexus existed between teacher's conduct in viewing lewd images on a school computer and his performance as a teacher, and his claim that his sharing of a joke with another teacher was constitutionally protected was not.

Reasoning: Mr. Robinson opened the email once and saw the images. He then chose to reopen the email a second time and show them to another member of the education profession during the school day with students present in the classroom. The court found no error in the conclusions that Robinson's conduct constituted conduct unbecoming an educator.

Disposition: The trial court's judgment was affirmed by the Court of Appeals of Ohio, Second District, Montgomery County.

Citation: *Orth v. Ohio Department of Education*, 12AP-155 (Ohio, 2012).

Key Facts: Sherry Orth was a teacher in the Columbus Public Schools. She had served in this position for 25 years. She was a preschool teacher at Forge Elementary School for the better part of a decade. On a Thursday, Ms. Orth restrained a student who had behavior that she considered warranted having to restrain the child. The child had red marks and scratches on his back and bottom. Ms. Orth started to issue a report, but was interrupted by her daily schedule, and the student rode the school bus home. The next day, Ms. Orth still did not complete the required report. She stated that this occurred because the principal was away from the campus and would not return until the Monday. She said the report had to be given to the principal and he would not be returning to the campus until the following Monday morning. On Monday, Ms. Orth completed the report and turned it into the principal. On the afternoon that the restraint occurred, the student's mother noticed the red marks and scratches on the student's back and bottom. She reported that she bathed his wounds and applied a topical ointment. Ms. Orth asked the bus driver to have the student's mother to contact her. The mother did contact Ms. Orth. The student acted out when he was asked to get on the school bus. Ms. Orth stated that had the child been asked to get on another bus or if she had attempted to arrange another mode of transportation, the fit would have been more violent, and she made a professional judgment call. Ms. Orth was questioned about this incident and was later charged with conduct unbecoming of a teacher after Franklin County Children Services "substantiated" the student's injuries as "child abuse." Witnesses, including students, stated that Ms. Orth had dragged the student across the pavement and dirt. The student witness described this which was consistent with dirt and dried

blood on the student's clothes. His mother had taken photographs of the injuries when the student arrived home on the bus. Ms. Orth reported she had not had any altercations or restrained the child outside of the classroom. Another teacher reported that this was the second time Ms. Orth had restrained the child in her presence on that day. She said she had seen the child's back after the first restraint and there were no noticeable scratches or red marks on his back. Two teachers stated that Ms. Orth had asked them to report that she had not taken her students outside when in fact she had. Ms. Orth reported that the injuries were sustained inside of the classroom during a restraint which resulted in carpet burns on the child's back. The original legal investigation and school investigation stated that the injuries appeared to have occurred from the child being dragged across the pavement and dirt and not as Ms. Orth reported. Ms. Orth originally gave her resignation as the circumstances surrounding the case were being investigated by law enforcement and Franklin County Children Services. She later rescinded her resignation. The Ohio State Board of Education revoked Ms. Orth's teaching certificate. Ms. Orth asked for a hearing officer to review the case. The recommendation of the hearing officer was to revoke Ms. Orth's teaching certificate. The Ohio State Board of Education adopted the hearing officer's recommendation and revoked. Teacher sought judicial review of permanent revocation of her teaching license by Ohio Department of Education. The Court of Common Pleas, Franklin County, affirmed administrative determination, and teacher appealed to The Court of Appeals of Ohio, Tenth Appellant District. That court remanded the judgment of the Franklin County Court of Common Pleas. It vacated and the case was remanded to Ohio Department of Education for further appropriate proceedings.

Issue(s): Did the Ohio State Board of Education have reliable, probative, and substantial evidence to revoke Ms. Orth's teaching certificate? Did Ms. Orth's conduct and actions meet the definition of conduct unbecoming of teacher?

Holding(s): The Court of Appeals found that Ms. Orth's actions in allowing student to get on school bus immediately after scratches on student's lower back were discovered, before applying first aid cream, failure to file report within two business days of incident, and hearing officer's use of word "prone" to describe position of teacher and student teacher was trying to restrain did not prejudice teacher or was it conduct unbecoming a teacher.

Reasoning: Evidence of reliable, probative, and substantial evidence to revoke Ms. Orth's teaching certificate were unfounded. Allowing the student to get on the school bus before treating scratches on his lower back did not warrant permanent license revocation especially where the child obtained scratches during a screaming fit thrown when he was asked to get on the school bus. Ms. Orth had 25 years of service with no reported issues. The teacher's failure to file a report within two business days of the incident did not constitute grounds for permanent revocation of her teaching certificate. Violations of statute permitting suspension of a teacher's license for engaging in an immoral act, incompetence, negligence, or conduct that is unbecoming to the teacher's position can have a nexus with the ability to teach if they involve unreasonable physical restraint of a student. The court determined that this was not the finding in this case.

Disposition: Vacated and remanded by Court of Appeals of Ohio, Tenth District, Franklin County.

2013

Citation: *Courtney v. King*, 112 A.D.3d 1110 (N.Y. 2013).

Key Facts: Courtney A. Maher was employed as a high school teacher in 2006 with the Hamilton Central School District. Several months after reporting for her teaching assignments, reports were made that she was showing favoritism towards certain male students and was having inappropriate communication with the students. An investigation occurred and the teacher was allowed to continue teaching because the allegations could not be proven. The teacher was again hired the following year. The teacher was again accused of having inappropriate contact with a male student when it was determined that over 1800 text messages were discovered. The male student's mother demanded that the contact stop, but it continued. The teacher would press *67 when she called the student in an attempt to hide the phone calls from the student's mother. The teacher was placed under an improvement plan, and she again violated the improvement plan by having unsupervised contact with a student. She resigned, but the revocation of her teaching certificate was sought. After the teacher resigned, she continued to try and have contact with former students and attended events and parties where former students were. The teacher brought proceedings, seeking to annul determination of commissioner of education revoking her teaching certificate. The Supreme Court, Albany County, dismissed the petition. The teacher appealed. Appeal from a judgment of the Supreme Court, Albany County to annul the determination revoking petitioner's teaching certificate was dismissed.

Issue(s): Did the teacher lack good moral character by having inappropriate communications and contact with the students despite having an improvement plan in place? Was the charge arbitrary or capricious? Did the commissioner abuse his discretion by imposing penalty of revocation of the teacher's teaching certificate?

Holding(s): The Supreme Court, Appellate Division, ruled that the evidence supported that the teacher ignored the directive of the superintendent and instructions in her teacher improvement plan by being alone with the student, that teacher had inappropriate contact with the student, and that she showed a lack of good moral character to remain a teacher. The court found that this was not arbitrary or capricious, and the commissioner did not abuse his discretion in imposing penalty of revocation of the teacher's teaching certificate.

Reasoning: Because of the teacher's continued lack of good judgement, texts, and inappropriate conduct the revocation for her be charged with the lack of good moral character was not arbitrary or capricious. The teacher also failed to follow the improvement plan she was placed in and had unsupervised contact with a student after returning to school under the improvement plan.

Disposition: The decision was affirmed without cost.

Citation: *Terkosky v. Indiana Department of Education*, 996 N.E.2d 832 (Ind. 2013).

Key Facts: Patricia Terkosky was a special needs teacher who taught students with severe disabilities, who were mildly mentally disabled, or had learning disabilities. Ms. Terkosky was employed at Worthington Elementary School in the White River Valley School District. On several occasions from 2008-2010, Ms. Terkosky was reported for responding to students in inappropriate ways. On one occasion, another employee saw Ms. Terkosky instruct a student to stand behind an easel that was close to the board. Ms. Terkosky slapped the easel, which had a large notepad on it, with a yardstick. She then was seen loosely placing a piece of plastic over the top of the child's head which covered down to the child's shoulders. This was reported to superiors. On another occasion, Ms. Terkosky was reported to have popped a student in the mouth who had called her a meanie. Ms. Terkosky reported that this child suffered from Pica,

and she was trying to remove an eraser from the child's mouth. The child told her mother that Mrs. Terkosky slapped her in the mouth. This was witnessed by another employee who had reported that Ms. Terkosky had popped a child in the mouth. She said she did not see a red mark on the child's mouth or hear a popping sound, but she did witness Ms. Terkosky's hand up to the student's mouth and touching the child's lips. On another occasion in March 2010, a child refused to do what Ms. Terkosky asked and she forcible made the child sit in a chair and caused a bruise on the inside of the child's arm which was not seen until the next day. This incident was also reported by an employee who stated that Ms. Terkosky had made the child sit in the chair who was refusing to do what she instructed and left red marks on the child's arm. The next day, the bruises were reported by the employee and the nurse called child protective services. Dr. Tony Bennett, the State Superintendent of Public Instruction, issued a Recommendation for Licensure Action against Ms. Terkosky in which he recommended that her license be revoked based upon immorality and misconduct in office for a period of three years. An Administrative Law Judge was assigned to hear the facts of the case. The Administrative Law Judge determined that the incidents combined was enough evidence to suspend Ms. Terkosky's license and recommended a 2-year suspension. The Indiana Department of Education followed the recommendation of the Administrative Law Judge and suspended Ms. Terkosky teaching certification for two years. The Administrative Law Judge acknowledge the vagueness of Indiana Law when defining immorality and misconduct in office and cited *Morrison v. State Bd. of Educ.*, (1969). Ms. Terkosky appealed to the Marion Superior Court which affirmed the decision of the Indiana Department of Education and the Administrative Law Judge. Ms. Terkosky appealed the decision to the Indiana Court of Appeals. The Superior Court, Marion County, affirmed. Teacher appealed

Issue(s): Was the two-year suspension of Ms. Terkosky contrary to the law because of the misinterpretation of what constitute immorality and misconduct in office under Indiana law? Did the Administrative Law Judge and the trial court error when citing *Morrison v. State Bd. of Ed.*, (1969) and did the Administrative Law Judge have the right to impose sanctions not recommended by the State Superintendent?

Holding(s): The Indiana Court of Appeals found that the two-year suspension by the trial court and the Indiana Department of Education was not erred. The court explained that although the terms immorality and misconduct in office may be vague under Indian Law, the Administrative Law Judge did not error when citing the California Supreme Court decision of *Morrison v. State Bd. of Educ.*, (1969), to come to the decision to suspend her license. The Court of Appeals stated that administrative law judge had authority to imposed sanction not recommended by State Superintendent.

Reasoning: Ms. Terkosky's conduct was found to have offended generally accepted standards of conduct of teachers and constituted misconduct in office The two-year suspension was not contrary to law. The Administrative Law Judge was not unlawful in the decision.

Disposition: The Indiana Court of Appeals affirmed the decision of the trial court and the Indiana Department of Education who followed the recommendation of the Administrative law Judge's recommendation.

Citation: *Talbott v. Teacher Standards and Practices Commission*, 260 Or App 355 (Or. 2013).

Key Facts: Charles S. Talbott was employed as a teacher in a system he had never before worked. Before the school year started, a new principal took over. Talbott was also asked to be the temporary athletic director as well as a teacher by Superintendent Jones and the school's new

principal, Knoedler. Before a football game, a meeting took place between Talbott and the football coach about the playing status of a student who was facing suspension. Talbott, who was acting as the athletic director, agreed that the student should be allowed to participate in that night's football game. As a result, Superintendent Jones asked the football Coach to resign. The football coach did not resign and was allowed to remain in his position. When the athletic director's position was posted, the football coach supported another person for the job and so did Principal Knoedler. In January 2007, Principal Knoedler put Talbott on a program of assistance for improvement to address what was perceived as Talbott's weaknesses as a teacher. During this same time, Superintendent Jones resigned his position. The district hired a private consultant to work with Talbott to improve. Talbott claimed that this was due to a parent/school employee, Kim Smith, complaining about him because they had a negative working relationship. Smith argued that Talbott's classroom environment was poor and he was not a good teacher. Talbott decided it was in his best interest to leave his teaching position. Talbott began working with James Sundell. Sundell was a teachers' union consultant. Talbott, with the assistance of Sundell, negotiated a resignation from his basketball coaching position and for resignation from his teaching duties that would take place at the end of the school year. Before the end of the school year arrived, Principal Knoedler did not see improvement in Talbott's instruction in the classroom and was disturbed that Talbott refused to provide lesson plans and his grade book. Principal Knoedler asked that Talbott be placed on an unpaid leave with only five days remaining in the school year. Talbott was informed in a letter that he had had been placed on leave. Principal Knoedler explained in the letter to Talbott that, "the superintendent will be reporting, per his legal obligation, your suspected gross neglect of duty to the [TSPC]." After Talbott negotiated his resignation, he applied for other teaching jobs for the 2007-2008 school year. In

April 2007, he filled out an application for another job. The application included questions about whether Talbott had ever (1) left education-related employment while he was the subject of an investigation, (2) whether he was currently the subject of investigation, and (3) whether he had ever failed to complete an education employment contract. After consulting with Sundell, Talbott answered “no” to question one and three, and Talbott responded “yes” to question two. After being placed on leave Talbott, with Sundell’s help, filed a grievance against the district, claiming that Principal Knoedler had violated the collective bargaining agreement they had previously reached in numerous ways. On July 24, 2007, the new superintendent agreed to hear the grievance, and, on August 23, 2007, respondent and the district entered into an agreement under which respondent would drop his grievance and the district would pay respondent for the remainder of the school year. On September 4, 2007, the first day of school in Talbott’s former school system, Talbott went to the school bearing gifts for four former students. Then, he put a “graded” copy of Smith’s complaint letter into her mailbox. Smith had misspelled “complaint,” and Talbott “graded” what Smith had written. Then Talbott spoke with Principal Knoedler in the privacy of her office. He asked her for a reference letter that they both believed that she was obliged to provide. Talbott then expressed his negative opinion of Principal Knoedler as an administrator and proceeded to give her a gift. He gave her a book entitled *The Girl’s Guide to Being a Boss (Without Being a Bitch)*, in which Talbott marked one of the book chapters “Don’t Try This at Work: Ten Ways to Alienate Your Staff” and the section “Bad Boss Behavior 10: Being a Jealous Julie.” These actions and past actions, prompted the new superintendent to report Talbott to the Teacher Standards and Practices Commission.

The Teacher Standards and Practices Commission determined that Talbott engaged in gross neglect of his duties in four instances by giving false answers to questions on his

employment application after applying for other jobs, leaving an offensive letter to the parent of one of his students, and giving an offensive book to the principal of the school where he worked previously. The Teacher Standards and Practices Commission determined these violations had taken place and imposed sanctions. These sanctions included a six-month suspension of Talbott's teaching license and a four-year probationary period. Talbott appealed the decision of the Teacher Standards and Practices Commission claiming that the Teacher Standards and Practices Commission modified findings of facts without clear and convincing evidence. He argued he was disciplined without reference to his professional responsibility which was a violation of his rights according to the Oregon Constitution. When Talbott received the allegations of the Teacher Standards and Practices Commission, he requested a hearing from an Administrative Law Judge (ALJ). The ALJ found that Talbott and Principal Knoedler had a clear dislike of one another and this made their testimonies much less credible. The Teacher Standards and Practices Commission rejected most of the ALJ's finding and facts and issued a final order including the six-month suspension and four-year probationary licenses. Talbott sought judicial review of the Teacher Standards and Practices Commission final order.

Issue(s): Does a good faith answer to employment related questions that later proves to be false, constitute a gross neglect of duty? Does writing an offensive letter to the parent of a student, made while off duty but related to professional duty, violate professional standards and constitute a gross neglect of duty? Does sending an offensive letter to the principal of the school where previously employed constitute gross neglect of duty?

Holding(s): The Court held that because Talbott did answer employment questions in what was considered good faith, he knowingly did not give falsified answers to questions on the employment application he completed. The Court also held that the offensive letter did violate

professional responsibility standards and constituted gross neglect. Lastly, the Court held the offensive book was a private expression of opinion which did not violate professional responsibility standards. The Court found that any constitutional claim was not preserved at the Teacher Standards and Practices Commission hearing.

Reasoning: Because the Teacher Standards and Practices Commission had not identified any narrower basis for its conclusion that the petitioner had committed “gross neglect of duty,” the court held that the Teacher Standards and Practices Commission had erred in suspending the petitioner’s license. The court explained that “the ALJ interpreted the rules as extending to unlawful and unethical conduct that occurs off-duty and off-premises, but only if there is a specific and demonstrable nexus between the conduct and an educator’s professional responsibilities.” The letter that Talbott gave to Smith was a nexus between his professional responsibilities and his conduct sufficient to satisfy the requirement because Smith was not only an employee but was a parent to a child in Talbott’s class, and Talbott referred to her daughter’s name in his response to Smith. Although it took place while Talbott was off duty and while he was off the premises of his current school district he was employed with, that conduct nevertheless showed a nexus to respondent’s professional responsibilities.

Disposition: Reversed and remanded.

2015

Citation: *Wall v. Ohio State Board of Education*, 29 N.E. 3d 1024 (Ohio, 2015).

Key Facts: On November 25, 2011, Kimberly Wall passed her husband’s ex-wife, Carolyn Wall, and pulled her vehicle in front Carolyn’s vehicle blocking her in without an escape route. Wall then struck Carolyn’s driver-side window causing it to break and continued by hitting Carolyn’s driver-side door and front driver-side door. On November 28, 2011, two

complaints were filled in the Sidney Municipal court against Wall who was an adjunct instructor at Sinclair Community College, but Wall also held an elementary education degree. Wall was charged with criminal damaging, a second-degree misdemeanor, and unlawful restraint a third-degree misdemeanor. On March 16, 2012, Wall pled guilty to a lesser offense--one count of "Dis. Conduct" and was fined \$75.00. Wall was also sentenced to 10 days in jail with five days suspended if she attended counseling and sentenced to one year of probation. On March 4, 2013, the Ohio Department of Education sent Wall a "Notice of Opportunity for Hearing" notifying her that the Ohio Department of Education intended "to determine whether to limit, suspend, revoke, or permanently revoke her elementary teaching certificate due to her "disorderly conduct" conviction. The Ohio Department of Education held an administrative hearing to determine if her conviction constituted conduct unbecoming of a teacher. The Department held and administrative meeting on before a hearing officer on September 3, 2013. The Department's hearing officer stated that Wall's conviction did constitute conduct unbecoming of a teacher but that "there is no nexus between Wall's conviction and her future employment as a teacher." A recommendation was made to issue Wall a letter of admonishment from the Department. The Department filed objections to the hearing officer's recommendation on October 31, 2013. On January 14, 2014 the Board made a resolution to suspend Wall's license until June 30, 2015 instead of issuing the hearing officer's recommendation. Wall appealed to the Shelby County, Court of Common Pleas, on April 1, 2014. The Court of Common Pleas, Shelby County, reversed but denied teacher's motion for attorney fees. Board appealed, and teacher cross-appealed. The trial court ordered that Wall be issued the letter of admonishment as the hearing officer had recommended. The Board filed a notice of appeal on September 18, 2014. At this same time, Wall filed to have her attorney's fees recovered from the Board.

Issue(s): Did Wall's conviction constitute conduct unbecoming of a teacher? Did Wall's disorderly conduct conviction make her a danger to work with children? Because the Board continue to appeal and lose these appeals, was Wall entitled to attorney's fees.

Holding(s): In order for a teacher's license to be revoked or suspended, the Board must provide reliable, probative, and substantial evidence and must show a nexus between the teacher's "conduct unbecoming" and being an unfit teacher. The Court of Appeals held that there was no nexus between conviction and teacher's performance as a teacher, as required for Board to suspend license for engaging in conduct that is unbecoming to a teacher, and State Department of Education was substantially justified in initiating action, and thus trial court did not abuse its discretion in denying teacher's motion for attorney fees.

Reasoning: The trial court reversed the Board's resolution because it was not based on reliable, probative, and substantial evidence that there was no nexus between Wall's conduct and her ability to perform as a teacher. This was Wall's only criminal offense. Wall had successfully completed all the requirements of her conviction which included probation and counseling. "Reliable, probative and substantial evidence has been defined as: (1) "Reliable" evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. (2) "Probative" evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) "Substantial" evidence is evidence with some weight; it must have importance and value. Wall was not awarded attorney's fees because the court found she was not entitled to attorney fees because the Board was substantially justified in initiating the administrative action against her.

Disposition: The judgment was Affirmed.

Analysis of Cases

The purpose of this research was to examine and evaluate court cases in an effort to identify issues, outcomes, and trends in court decisions involving revocation or suspension of teachers' certificates. The data was retrieved through analyzing 88 court cases from *People ex rel. McIver v. Board of Education of New York*, (N.Y. 1853) through *Wall v. Ohio State Board of Education*, 29 N.E. 3d 1024 (Ohio, 2015). The cases were analyzed using a format by Statsky and Wernet (1995) as explained in their book, *Case Analysis and Fundamentals of Legal Writing*. Each case was described using the outline of case citation, key facts, issue(s), holding(s), reasoning, and disposition. The court cases were analyzed to locate key facts and court decisions in order to find patterns, trends, or categories. Over a century of cases were analyzed (see Table 1). As each case was analyzed, categories emerged about the revocation or suspension of a teacher's teaching certificate.

Table 2

Relevant Court Cases

Year	Case	Revocation or Suspension	All Categories	Predominate Category
1853	<i>People ex rel. McIver v. Board of Education of New York</i>	Revocation	Immorality	Immorality
1883	<i>Arnold v. School Dist.</i>	Revocation	Unprofessional and conduct unbecoming	Unprofessional conduct
1890	<i>School Dist. of Ft. Smith v. Maury</i>	Revocation	Incompetent and moral turpitude	Immorality
1899	<i>Superintendent of Common Schools of Daviess County v. Taylor</i>	NO	Immoral or incompetent to teach Unprofessional conduct	Unprofessional conduct
1899	<i>Browne v. Gear</i>	NO	Unprofessional conduct	Unprofessional conduct
1907	<i>Stone v. Fritts</i>	Revocation	Teacher refused to do as instructed insubordination	Insubordination
1908	<i>Barthel v. Board of Ed. of City of San Jose</i>	NO	immorality, unprofessional conduct, profanity, intemperance, or unfitness for teaching	Unprofessional conduct

(table continues)

Year	Case	Revocation or Suspension	All Categories	Predominate Category
1911	<i>School Dist. No. 2, Fremont County v. Shuck</i>	NO	Bad moral character	Immorality
1925	<i>Marrs v. Matthews</i>	Revocation	Unworthy to Instruct	Unprofessional conduct
1942	<i>Smith v. State Bd. of Educ</i>	Revocation	Unlawful Acts	Unlawful Act
1950	<i>Shirer v. Anderson</i>	Revocation	Cheating on teaching exam	Unprofessional conduct
1952	<i>Hodge v. Stegall</i>	Revocation	Willful violation of state law	Unlawful Act
1958	<i>Fountain v State Bd of Ed.</i>	Revocation	Lewd vagrancy conviction	Unfitness
1961	<i>Vogulkin v. State Bd. of Ed.</i>	Revocation	Convicted of sex crime	Unlawful Act
1963	<i>Glass v. Board of Ed. of City of New York</i>	NO	Due Process Rights Violation	Certification
1964	<i>Mack v. State Bd. of Ed.</i>	NO	worn falsely to the loyalty oath required by the Levering Act	Unlawful Act
1964	<i>Mack v. State Bd. of Ed</i>	NO	worn falsely to the loyalty oath required by the Levering Act	Unlawful Act
1967	<i>Sarac v. State Bd. of Ed.</i>	Revocation	Immoral and Unprofessional Conduct Unfit to teach	Immorality
1969	<i>Morrison v. State Board of Education</i>	NO	Immoral Conduct, Moral Turpitude, Unprofessional Conduct	Immorality
1969	<i>Henderson v. School Dist. of Scottsbluff, in Scotts Bluff County</i>	1 year Suspension	Just Cause Contract Violation	Just Cause
1970	<i>Alford v. Department of Education</i>	Revocation	Unfit to teach	Unfit
1972	<i>Moser v. State Bd. of Education</i>	Revocation	Immorality	Immorality
1972	<i>Comings v. Bd. of Education</i>	Revocation	Moral Turpitude	Immorality
1972	<i>Comings v. Bd. of Education</i>	NO	Moral Turpitude and Unprofessional Conduct	Immorality

(table continues)

Year	Case	Revocation or Suspension	All Categories	Predominate Category
1973	<i>Pordum v. Board of Regents of State of N. Y.</i>	Revocation	Unprofessional Conduct and Unfitness	Unlawful Act
1974	<i>Erb v. Iowa State Bd. of Public Instruction</i>	NO	moral Unfitness to teach	Immorality
1977	<i>Shore v. Board of Examiners of New York City</i>	Revocation	Failure to meet requirements for certification	Certification
1981	<i>Adams v. State Professional Practices Council</i>	Revocation	Moral Turpitude	Immorality
1981	<i>Adams v. State, Professional Practices Council</i>	Revocation	Moral Turpitude	Immorality
1982	<i>Cobb County Bd. of Educ. v. Vizcarrondo,</i>	1 year Suspension	Unprofessional Conduct Immorality breach of contract	Just Cause
1984	<i>Walton v. Turlington</i>	3 year Suspension	Gross immorality Moral Turpitude	Immorality
1985	<i>Balentine v. Arkansas State Bd. of Educ.</i>	Revocation	submitting alter enrollment numbers	Unprofessional conduct
1985	<i>Longenecker v. Turlington</i>	Revocation	Permanent Revocation means PERMANENT	Certification
1985	<i>Wagenblast v. Crook County School Dist.</i>	Not Revoked-Invalid	Failure to pay fee for teaching certificate	Certification
1986	<i>Lubin v. Board of Educ. of City of New York</i>	Revocation	Failure to meet full preparatory requirements within specified period of time	Certification
1986	<i>Cooper v. Eugene School Dist. No. 4J</i>	Revocation	Violating religious dress statute	Religious Dress Statute
1987	<i>Trigg v. Sanders</i>	Revocation	Unprofessional conduct, immorality and a condition of health detrimental to the welfare of pupils	Immorality
1989	<i>Startzel v. Com., Dept. of Educ</i>	Revocation	Moral Turpitude	Immorality
1991	<i>Stelzer v. State Bd. of Edn</i>	Revocation	Conduct Unbecoming	Unprofessional conduct
1991	<i>Stedronsky v. Sobol</i>	Revocation	Moral character	Immorality
1992	<i>Hainline v. Bond</i>	140 day Suspension	Immorality	Immorality
1993	<i>Groht v. Sobol</i>	Revocation	Misconduct	Immorality
1994	<i>Nelkin v. Board of Educ. of City of New York</i>	Suspension	Mental fitness	Unfitness

(table continues)

Year	Case	Revocation or Suspension	All Categories	Predominate Category
1994	<i>Tenbroeck v. Castor</i>	NO	Immorality	Immorality
1994	<i>Patterson v. Superintendent of Public Instruction</i>	6 months Suspension	Unprofessional Conduct	Unprofessional conduct
1995	<i>Langston v. Jamerson</i>	NO	Intentionally exposing students to embarrassment or disparagement	Unprofessional conduct
1995	<i>Nanko v. Department of Educ.</i>	Revocation	Immorality	Immorality
1995	<i>Thompson v. Wisconsin Dept. of Public Instruction</i>	Revocation	Role Model	Immorality
1995	<i>Howard v. Missouri State Bd. of Educ</i>	Revocation	Immorality	Immorality Sexual Act With Students
1996	<i>Alford v. Ingram</i>	Revocation	Immorality Unfitness to teach	Immorality
1996	<i>Alford v. Ingram</i>	Revocation	Immorality, unfitness to teach	Immorality
1996	<i>Alford v. Ingram</i>	Revocation	Immorality, unfit to teach	Immorality
1996	<i>Falgren v. State, Bd. of Teaching</i>	Revocation	Immorality	Immorality
1996	<i>Welcher v. Sobol</i>	Revocation	Immorality	Immorality
1997	<i>Brogan v. Carter</i>	5-Year Revocation	Sexual Contact with minor	Immorality
1999	<i>Feldman v. Board of Educ. of City School Dist. of City of New York</i>	Revocation	Failed to pass National Teacher's Exam within a given period of time	Certification
1999	<i>Feldman v. Board of Educ. of City School Dist. of City of New York</i>	Revocation	Failed to pass National Teacher's Exam within a given period of time	Certification
1999	<i>Feldman v. Board of Educ. of City School Dist. of City of New York</i>	Revocation	Failed to pass National Teacher's Exam within a given period of time	Certification
1999	<i>Feldman v. Board of Educ. of City School Dist. of City of New York</i>	Revocation	Failed to pass National Teacher's Exam within a given period of time	Certification
2000	<i>Epstein v. Benson</i>	NO	Immorality	Immorality
2001	<i>In re Appeal of Morri11</i>	Revocation	Unprofessional Conduct, Immorality	Immorality
2001	<i>Hoffman v. State Bd. of Edn</i>	2-years Revocation	Unbecoming Conduct	Unbecoming Conduct
2003	<i>Hausey v. California Com 'n on Teacher Credentialing</i>	Revocation	Sexual Misconduct (not listed specifically)	Immorality
2003	<i>Wax v. Horne</i>	Permanent Revocation	Unfit to teach (not listed specifically)	Unfitness
2004	<i>Bowalick v. Com</i>	NO	Moral Turpitude	Immorality
2005	<i>Hayes v. State Teacher Certification Board</i>	5-year Suspension	Immoral Conduct	Immorality
2005	<i>Knight v. Winn</i>	10 year Revocation	Teacher's reduced effectiveness warranted revocation of her education certificate.	Unfitness

(table continues)

Year	Case	Revocation or Suspension	All Categories	Predominate Category
2006	<i>Board of Educ. of Park Forest Heights School Dist. No. 163, Cook County, Ill. v. State Teacher Certification Bd.</i>	One-year suspension	Breaking Contract Unprofessional Conduct	Just Cause Unfitness
2007	<i>Powell v. Paine</i>	NO	Unfit to teach	Unfitness
2007	<i>Brehe v. Missouri Department of Elementary & Secondary Education</i>	NO	Moral Turpitude	Immorality
2007	<i>Teacher Standards & Practices Commission v. Bergerson</i>	NO	Gross Neglect of Duty Gross Unfitness	Unfitness
2009	<i>Richardson v. North Carolina Department of Public Instruction Licensure Section</i>	Revocation	Unethical and Immorality	Immorality
2008	<i>Contini v. Ohio State Board of Education</i>	Revocation	Prior convictions and inappropriate conduct with a student	Immorality
2009	<i>Mann v. Kentucky Education Professional Standards Board</i>	5 year Revocation	Working not Certified as a Principal	Certification
2010	<i>M. T. v. Department of Education</i>	Revocation	Cruelty Sex with child	Immorality
2010	<i>In re Suspension of teaching Certificate of Van Pelt</i>	Suspension 1 year	Unprofessional Conduct	Just Cause
2010	<i>Broney v. California Commission on Teacher Credentialing</i>	Suspension 60 Day Stay and 3 years' Probation	Conduct Unbecoming	Unfitness
2010	<i>Macy v. Kentucky Education Professional Standards Board</i>	10 year Suspension	Professional Conduct/Wrongful Discharge	Unfitness
2010	<i>Moro v. Mills</i>	Revocation	Sexual Misconduct	Immorality
2011	<i>Gomez v. Texas Education Agency Certification and Standards Division</i>	Revocation	Unworthy to Instruct	Unfitness
2011	<i>Kellough v. Ohio State Board of Education</i>	Revocation	Dishonesty conduct unbecoming	Unprofessional conduct
2012	<i>Robinson v. Ohio Department of Education</i>	Suspension 1 year	Conduct Unbecoming	Unprofessional conduct
2012	<i>Orth v. Ohio Department of Education</i>	NO	Conduct Unbecoming	Unprofessional conduct
2012	<i>Brower v. New York City Department of Education</i>	NO	Absenteeism and Performance	Incompetence
2013	<i>Courtney v. King</i>	Revocation	Inappropriate Conduct with Students	Immorality
2013	<i>Terkosky v. Indiana Department of Education</i>	Suspension 2 years	Immorality and Misconduct	Immorality
2013	<i>Talbott v. Teacher Standards & Practices Com</i>	NO	Gross Neglect of Duty Falsify a document,	Unprofessional conduct
2015	<i>Wall v. State Bd. of Education</i>	NO	Conduct Unbecoming	Unprofessional conduct

There are many reasons a state may revoke or suspended a teacher's teaching certificate. These reasons vary from state-to-state (see Table 2). In order for the researcher to categorize like charges, a list of "All Categories" of the case were listed (see Table 1); however, the "Predominate Category" (see Table 1) was used for the purpose of the research which was determined using the facts of the case.

The data produced 81 cases; however, there were five cases that included more than one plaintiff. These cases, *Feldman v. Board of Educ. of City School Dist. of City of New York*, (N.Y. 1999), *Comings v. Bd. of Education*, (Cal. 1972), *Alford v. Ingram*, (Ala. 1996), *Mack v. State Bd. of Ed.*, (Cal. 1964), and *Adams v. State, Professional Practices Council*, (Fla.1981), were listed as separate plaintiffs bringing the total number of teachers or administrators involved in the revocation or suspension of teaching certificates to 88. The school employees involved in the litigation included certified public school teachers who had teaching certificates issued to them by a state or other issuing agency as teachers and administrators. The certificates were held in all areas of the curriculum and included Pre-K-12th grades. Educators prevailed 24% of the time while overwhelmingly the teacher had his/her certificate revoked 60% of the time or suspended 15% of the time (See Figure 1).

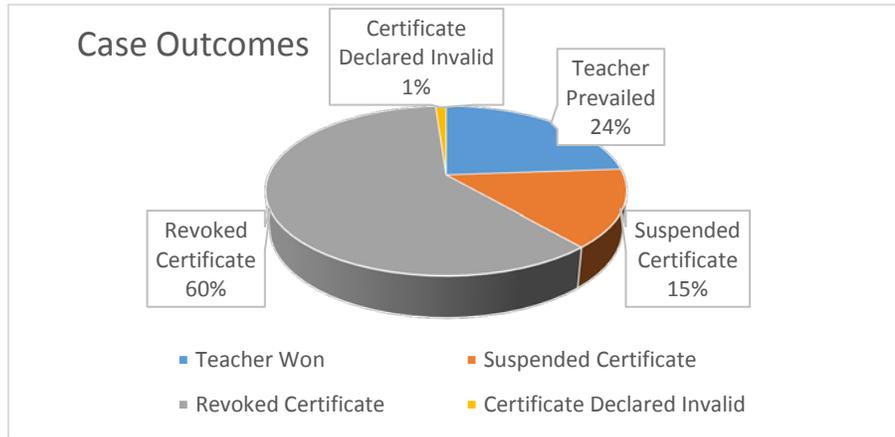


Figure 1. Outcomes of the revocation or suspension of certificates.

Revocation or Suspension Penalties

The cases were further analyzed according to the types of penalty placed on the certificate for the specific misconduct of the teacher. Approximately 38%, or a majority of the suspension cases, resulted in a suspension of one-year (see Figure 2).



Figure 2. Suspension cases by penalty placed on the certificate.

In 92% of the cases involving revocation, the teacher’s certificate was permanently revoked (see Figure 3). In many cases, the certificate was suspended for a short period of time,

Broney v. California Commission on Teaching Credentialing (Cal. 2010), while in other cases the harshest penalty of permanent revocation was rendered, *Wax v. Horne* (Fla. 2003).

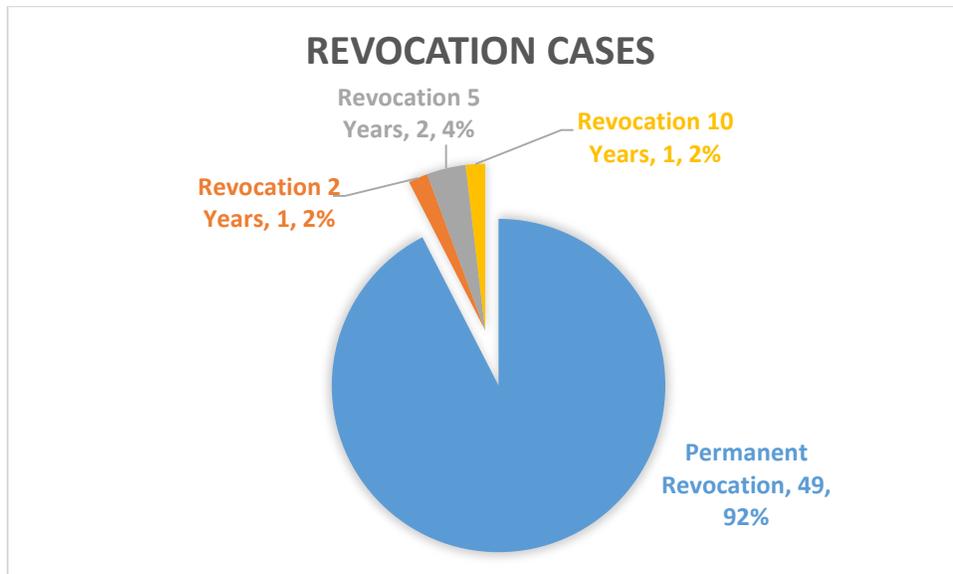


Figure 3. Revocation cases by penalty placed on the certificate.

The suspension cases ranged from a 60-day suspension up to a 10-year suspension (see Figure 2). The revocation cases were overwhelmingly ruled as permanent revocation (see Figure 3), but in some cases, *Hoffman v. State Bd. of Edn.* (Ohio, 2001) and *Mann v. Kentucky Education Professional Standards Board* (Ky. 2009), the revocation of two-five years mimicked a suspension type penalty rather than that of a revocation.

In *Broney v. California Commission on Teaching Credentialing* (Cal. 2010), Broney was arrested for her first offense of DUI at the age of 21. At that time, Broney was not licensed as a teacher. In 1997, while doing her student teaching, Broney was again arrested for a DUI. From the years of 1987 - 2002, Broney was arrested on three occasions for DUI offenses. In 1999, Broney became employed with the Westminster School District in Orange County. She received her third offense during this employment. On the third offense, Broney was sentenced to 30 days in jail. The Court allowed her to serve this sentence at home and in the classroom while wearing

an ankle monitoring bracelet. The California Commission on Teacher Credentialing suspended her teaching licenses for 60 days on the finding that she was unfit as a teacher.

The harshest penalty of permanent revocation was found in the case of *Wax v. Horne* (Fla. 2003), when Wax, a 25-year-old middle school teacher, sent students emails and audio files that included sexually suggestive jokes, profanity, and sexual material not suitable for students. The Education Practices Commission of Florida permanently revoked Ms. Wax's teaching certificate. Ms. Wax argued that permanent revocation was a harsh punishment for what she did. The Education Practices Commission of Florida argued that since Ms. Wax sent the emails and audios to 16 students and displayed little to no remorse for her actions, these facts showed that she did not have the ability to distinguish what was inappropriate for her students. Ms. Wax challenged the final order of the Education Practices Commission of Florida for permanently revoking her certificate. The court ruled that whatever penalty the Education Practices Commission decided was within their legal authority and at their discretion. The revocation was affirmed by the District Court of Appeal of Florida, Fourth District.

In the two-year revocation case of *Hoffman v. State Bd. of Edn.* (Ohio, 2001), Hoffman was arrested at an adult book store for public indecency. The indecency was said to be sexual contact in a non-private location. This was a fourth degree misdemeanor. Hoffman pled no contest in the Brookpark Mayor's Court. Because of Hoffman's 30-year spotless teaching record, the local school board did not move to take action against Hoffman's certificate; however, the Ohio State Board of Education passed a resolution moving to limit Hoffman's teaching certificate. The Ohio State Board of Education reasoned that Hoffman's conduct was unbecoming to that of a teacher. The Ohio State Board of Education stated that even though the school district did not take action against Hoffman's certificate, the Ohio State Board of

Education still had the authority to take action. The Ohio State Board of Education passed a resolution and revoked Hoffman's license for two years. The Court of Appeals of Ohio, Eighth District, affirmed the judgment of the common pleas court.

In the case of *Mann v. Kentucky Education Professional Standards Board* (Ky. 2009), Mann was employed as a high school principal. Mann claimed he was informed that a principal's certificate was not a requirement for this position, but in 1995 Mann was notified that he could not be employed as a principal without the required certification. Mann argued that he was never aware that his certification was temporary. Mann was informed by the Kentucky Educational Professional Standards Board that there was an ongoing investigation that he had worked in a position for which he was not certified or licensed. An appointed hearing officer issued a finding that Mann did in fact violate Kentucky Revised Statutes by being in the role of a principal without certification. The hearing officer recommended that Mann's teaching certificate be revoked for three years. The Kentucky Educational Professional Standards Board took the recommendations of the hearing officer, but added two additional years of certification revocation for a total of five years.

Categories of Revocation or Suspension

In this study, nine categories emerged as a result of the analysis. The categories included: immorality/moral turpitude, unprofessional/unbecoming conduct, unfitness to teach, certification issues, unlawful acts, just cause, incompetence, insubordination, and religious dress. Of these nine categories, six categories immorality/moral turpitude, unprofessional/unbecoming conduct, unfitness to teach, certification issues, unlawful acts, and just cause emerged as main categories and are discussed in detail in the analysis.

Of the total cases briefed, immorality/moral turpitude totaled 44% of the cases, unprofessional/unbecoming conduct involved 18% of the total cases, unfitness to teach involved 12% of the cases, 11% of the cases involved certification issues, unlawful act was 7% of the cases, just cause totaled 5% of the cases, and insubordination, incompetence, and religious dress were 1% each (see Figure 4).

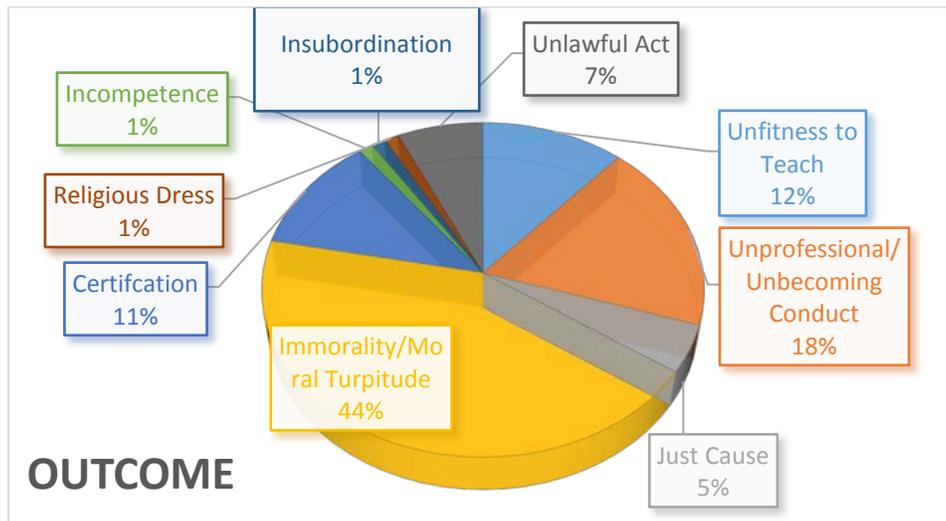


Figure 4. Categories of revocation or suspensions.

Immorality/Moral Turpitude

Immorality charges made up 39 (44%) of the total cases in the study (see Table 3). The immorality charges included acts of homosexuality, sexual misconduct, bad moral character, drug charges, and criminal misconduct, as well as other types of misconduct. The outcome for the immorality charges based on the revocation or suspension of the teachers' certificates included 26 (67%) were revoked, eight (20%) resulted in no revocation or suspension, and five (13%) were suspended (see Figure 5).

The courts have defined immorality and found that a nexus must be proven between the immorality and the teacher's ability to do his/her job. The courts have found that a teacher may

be found guilty of immorality if the teacher's immorality is: "What is against the community standard of behavior for a teacher; With a nexus to the teacher's role; Proven to have been done by the teacher." In the early years of revocation or suspension of teaching certificates, a nexus was not needed in order to revoke a teaching certificate. The teacher's certificate could be revoked if the issuing agency decided the teacher was guilty of a charge of immorality as judge by the members of the education agency issuing the certificate.

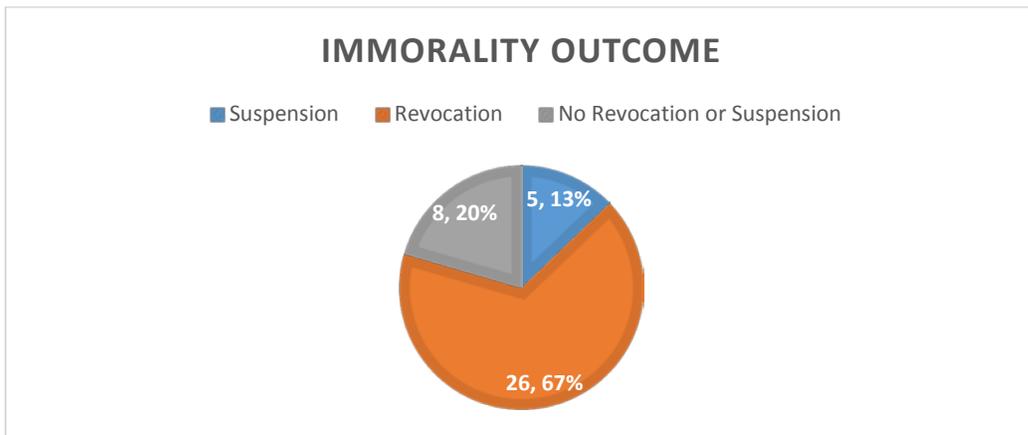


Figure 5. Outcome revocation or suspension of certificates based on immorality.

Table 3

Immorality Cases

Year	Case	Revocation or Suspension	Issue
1853	<i>People ex rel. McIver v. Board of Education of New York</i>	Revocation	Immorality
1890	<i>School District of Ft. Smith v. Maury</i>	Revocation	Immorality
1911	<i>School District No. 2, Freemont County v. Shuck</i>	NO	Immorality
1967	<i>Sarac v. State Bd. Of Ed.</i>	Revocation	Immorality
1969	<i>Morrison v. State Board of Education</i>	NO	Immorality
1972	<i>Moser v. State Bd. Of Education</i>	Revocation	Immorality
1972	<i>Comings v. Bd. Of Education</i>	Revocation	Immorality
1972	<i>Comings v. Bd. Of Education</i>	NO	Immorality
1974	<i>Erb v. Iowa State Bd. Of Public Instruction</i>	NO	Immorality
1981	<i>Adams v. State Professional Practices Council</i>	Revocation	Immorality
1981	<i>Adams v. State Professional Practices Council</i>	Revocation	Immorality
1984	<i>Walton v. Turlington</i>	3-year Suspension	Immorality
1987	<i>Trigg v. Sanders</i>	Revocation	Immorality
1989	<i>Startzel v. Com., Dept. of Educ</i>	Revocation	Immorality
1991	<i>Stedronsky v. Sobol</i>	Revocation	Immorality
1992	<i>Hainline v. Bond</i>	140-day Suspension	Immorality
1993	<i>Groht v. Sobol</i>	Revocation	Immorality
1994	<i>Tenbroeck v. Castor</i>	NO	Immorality
1995	<i>Nanko v. Department of Educ.</i>	Revocation	Immorality
1995	<i>Thompson v. Wisconsin Dept. of Public Instruction</i>	Revocation	Immorality
1995	<i>Howard v. Missouri State Bd. Of Educ.</i>	Revocation	Immorality
1996	<i>Alford v. Ingram</i>	Revocation	Immorality
1996	<i>Alford v. Ingram</i>	Revocation	Immorality
1996	<i>Alford v. Ingram</i>	Revocation	Immorality
1996	<i>Falgren v. State Bd. Of Teaching</i>	Revocation	Immorality
1996	<i>Welcher v. Sobol</i>	Revocation	Immorality
1997	<i>Brogan v. Carter</i>	5-year Revocation	Immorality
2000	<i>Epstein v. Benson</i>	NO	Immorality
2001	<i>In re Appeal of Morrill</i>	Revocation	Immorality
2003	<i>Hausey v. California Com'n on Teacher Credentialing</i>	Revocation	Immorality
2004	<i>Bowalick v. Com</i>	NO	Immorality
2005	<i>Hayes v. State Teacher Certification Board</i>	5-year Suspension	Immorality
2007	<i>Brehe v. Missouri Department of Elementary & Secondary Education</i>	NO	Immorality
2008	<i>Contini v. Ohio State Board of Education</i>	Revocation	Immorality
2009	<i>Richardson v. North Carolina Dept. of Public Instruction Licensure Section</i>	Revocation	Immorality
2010	<i>M. T. v. Department of Education</i>	Revocation	Immorality
2010	<i>Moro v. Mills</i>	Revocation	Immorality
2013	<i>Courtney v. King</i>	Revocation	Immorality
2013	<i>Terkosky v. Indiana Department of Education</i>	Suspension 2 years	Immorality

The cases included in the study related to immorality spanned from 1853-2013 (see Figure 6). Of the 39 immorality cases, 24 occurred from 1993-2013. From 1853-1952, there were only two cases of immorality included in the analysis of this study.

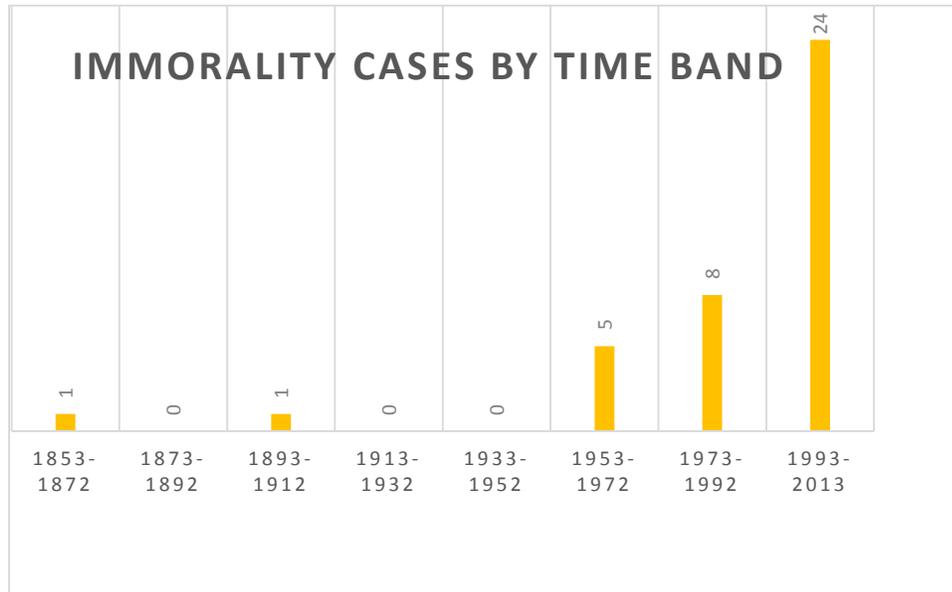


Figure 6. Immorality cases by time band.

Sexual Contact with Student

In this study, there were 13 or 34% of the immorality cases that involved some type of sexual contact with students (see Figure 7). All of the sexual contact included some type of sexual touching, sexual intercourse, or long term inappropriate sexual contact with a student. The court's view was that teachers are looked upon as leaders and role models and teachers entrusted with this position should not take advantage of this trust by making sexual advances, wanted or not, towards any student.

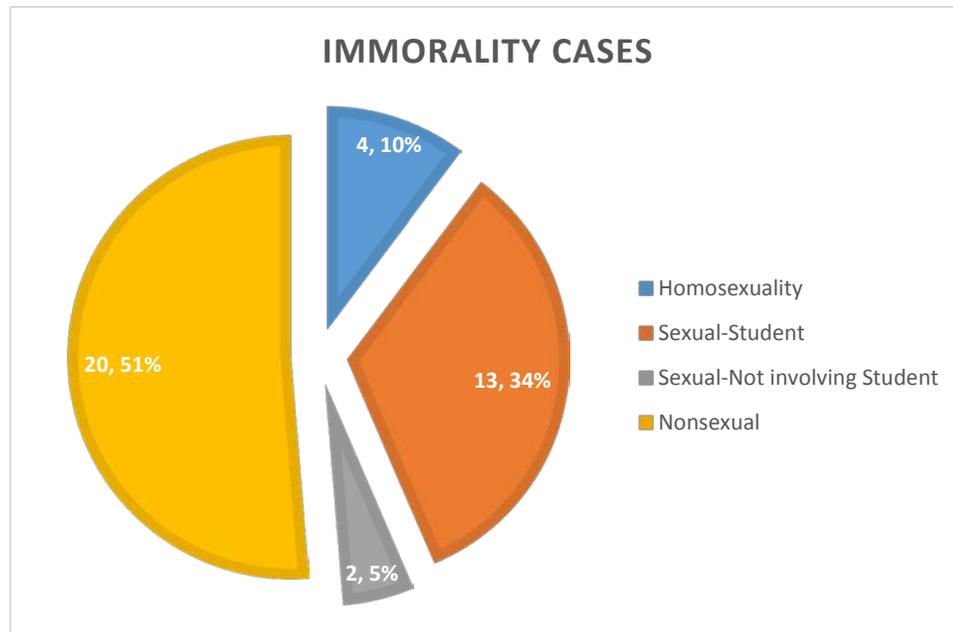


Figure 7. Immorality cases.

Many court cases have evolved from a teacher blurring the line between professional and personal relationships with students (*Groht v. Sobol*, N.Y. 1993; *Howard v. Missouri State Bd. of Educ.*, 1995; *Contini v. Ohio State Board of Education*, 2008). Teachers who have personal contact with students, especially off of school grounds, may be setting themselves up for being accused of misconduct with the student if the contact is made privately. In the age of so much social media, a Facebook response, an email, text message, picture, or other type of social media contact with a student may escalate into a personal relationship. The trouble is that it is very easy for the lines between professional and personal relationships to become blurred. A text message, email, or private Facebook message is very much one-to-one contact with a student which can lead to misinterpretation and accusations that the boundaries of a professional relationship are being crossed. One poor choice by a teacher could cause a teacher to be investigated for an inappropriate relationship with a student.

In sexual cases involving students, sexual intercourse does not have to take place in order for a revocation or suspension of a teacher's certificate to occur. This was the case in *Contini v. Ohio State Board of Education* (2008). Contini was a high school science teacher who attended a high school dance smelling of alcohol and engaged in inappropriate physical contact with a female student. The female student testified that Contini commented that she looked nice in her dress and came up behind her and told her that her ass looked good in her dress. He rubbed his hand across her buttocks. Contini had prior convictions for one count of a misdemeanor violation of a civil protection order and one count of misdemeanor assault. The Office of Professional Conduct found that the convictions, his behaviors underlying those convictions, and the incident at the high school dance were enough evidence to revoke Contini's teaching license. The Court of Appeals of Ohio, Fifth District, found that sufficient evidence was presented to conclude that Contini convictions, his behaviors underlying those convictions, and the incident at the high school dance was enough evidence to revoke the license and the court could not find that the trial court abused its discretion in affirming the administrative order and its resolution of those evidentiary conflicts.

Another case, *Howard v. Missouri State Bd. of Educ.* (Mo. 1995), the court found that sexual solicitation was enough to permanently revoke a teacher's certificate. Howard was a licensed teacher in Missouri. Students claimed that Howard solicited sex from them on numerous occasions, exposed herself, and used sexually inappropriate language. Howard claimed her mental disorder, and not a lack of morality or intent to commit immoral acts, was the cause of her behavior. She argued that she had a mental disorder that caused her to act in ways beyond her control. Her inappropriate behavior was reported to the Missouri State Board of Education. Howard's certificate was ultimately revoked and the decision was upheld by the Missouri Court

of Appeals, Southern District, Division Two. The court found that Howard's actions included wrongful intent which constitutes immorality according to the standard and accepted definition of immorality. Howard's behavior was offensive and sexually harmful to students.

The courts have a history of being firm with teachers concerning sexual offenses that involve teachers in and out of school (*Welcher v. Sobol*, 1996; *Stedronsky v. Sobol*, 1991; *Tenbroeck v. Castor*, 1994; *Hausey v. California Com 'n on Teacher Credentialing*, 2003). Cases have gone before the courts when a teacher has had his/her teaching certificate revoked when many, many years had passed since the sexual contact. This was the finding in *Welcher v. Sobol*, (N.Y. 1996) and *Hausey v. California Com 'n on Teacher Credentialing*, (Cal. 2003). Welcher became a certified teacher in 1966. In the following years, Welcher earned his administrator and supervisor certifications. Welcher served in the role of an assistant principal and principal from 1971 through 1993. In 1992, Welcher was accused of sexually molesting his two nieces from 1969-1980. A "notice of substantial question as to moral character" was sent to Welcher. Welcher's certificates were revoked. Welcher appealed to Supreme Court. The Supreme Court of affirmed. Although Welcher claimed that the New York State Education Commissioner lacked jurisdiction to revoke his certification, the Appellate Division for the Supreme Court of the State of New York found that the New York State Education Commissioner did not err in his review of the Hearing Panel's determination. The same court found that the evidence was substantial and the penalty of certificate revocation was appropriate. Even though many years had passed since the sexual misconduct was inflicted, the court found that this still warranted revocation of Welcher's teaching and administrative certificates on the ground of moral fitness.

A past history of sexual offense, even before the teacher was issued a certificate, may also cause a teacher's certificate to be revoked once the sexual misconduct has been exposed. In

the case of *Hausey v. California Commission on Teacher Credentialing* (Cal. 2003), Hausey was a music teacher and band director. During the 1980-1981 school year, Hausey had sexual relations with a minor student on multiple occasions. After a period of six months, the student refused to continue the sexual encounters. Sixteen years later, the student reported the affair to the school principal. After an investigation, an Administrative Law Judge heard the evidence, including testimony from the former student and Hausey, and determined the student's testimony was very credible. Hausey's teaching certificate was revoked. Hausey filed a petition for writ of mandate in the superior court. After the hearing, the court denied the petition. Hausey appealed the decision. The Court of Appeals found that laches did not apply and that the former student's testimony was substantial evidence and the revocation was not an unwarranted penalty. There must be an unreasonable delay between the time the agency learned of the charges and the sexual relationship and the time the administrative proceedings were started. There was no delay. The credible testimony of the student was heard by the Administrative Law Judge who was also able to observe the demeanor of the student while hearing the testimony. The judge felt the student was more credible than Hausey. The Court of Appeal, Second District, Division 2, California, affirmed the decision. Hausey's certificate was permanently revoked.

Proven sexual contact with students will almost assuredly end with the revocation of a teacher's certificate (*Stedronsky v. Sobol*, 1991; *Tenbroeck v. Castor*, 1994; *Hayes v. State Teacher Certification Bd.*, 2005; *M. T. v. Department of Education*, 2010).

In one of the most recent cases in the study, *M. T. v. Department of Education*, (Pa. 2010), M. T. was a band director and music teacher. M.T was accused of having a sexual relationship with a student who was under his supervision. The sexual encounter took place for a period between the years of 2001-2004 while the student was enrolled in school. An

investigation was done and in 2007 a notice of charge was set against M. T. stating that M. T. “engaged in a pattern of inappropriate conduct of a sexual nature with [a] high school student.” M. T. was charged with immorality, negligence, intemperance, cruelty, incompetence, sexual abuse or exploitation, and violations of the Code of Professional Practice and Conduct. A hearing officer was assigned to the case, and the hearing officer recommended that M. T.’s teaching certification be permanently revoked.

Immorality Homosexuality

In the study, four cases or 10% of the immorality cases were cases involving homosexuality (see Figure 7). Homosexuality was once an automatic reason to revoke a teacher’s certificate (*Sarac v. State Bd. of Ed.*, 1967; *Moser v. State Bd. of Education*, 1972). For several decades, the courts have ruled inconsistently about the rights of homosexuals to hold a teaching certificate; however, during the past two decades, the courts have found more and more that there is not a nexus between homosexuality as a lifestyle choice and a teacher’s ability to be an effective teacher.

In a 1972 case, *Moser v. State Bd. of Education*, the court found that Moser’s conduct warranted the revocation of his teaching certificate when he was in a public restroom with a male companion with his penis exposed and masturbating. He was found guilty in Municipal Court of Long Beach Judicial District. Because of this conviction, the California State Board of Education revoked Moser’s teaching license for moral turpitude, immorality, and unprofessional conduct. Moser appealed the decision to the Court of Appeals of California, Second District, Division Two. The court affirmed the decision and found that the conduct exhibited by Moser was in a public place, was considered a criminal act, and the evidence was sufficient to revoke his teaching certificate. The court found that the conduct was immoral and made him unfit to teach.

In another case, *Sarac v. Board of Education* (1967), Sarac was arrested for having inappropriately touched another man on a public beach. Sarac was charged with having immoral and unprofessional conduct within the meaning of the Education Code. After his arrest, Sarac pled guilty to the charges. Because of his guilty plea and the reported conduct, the California Board of Education moved to have Sarac's teaching licenses revoked. The trial court found that the facts in the case were accurate, and Sarac had committed "a homosexual act involving moral turpitude" and was unfit to teach, and it was affirmed by the California Court of Appeals. Second Dist., Div. Three. The court found that Sarac was in a public place when he solicited the homosexual contact and that this conduct was offense to most community members, because "homosexual behavior has long been contrary and abhorrent to the social mores and moral standards of the people of California."

Many court cases have evolved from the fact that a teacher admitted or openly practiced a homosexual lifestyle. *Morrison v. State Board of Education* (Cal. 1969) has been used as a landmark case about homosexuality and a teacher's right to privacy. In the Morrison case, the Supreme Court of California found that the applicable statute only allowed for the dismissal of teachers when the immorality, unprofessional conduct, or moral turpitude impacted classroom learning and diminished teacher effectiveness. Morrison was a public high school teacher. He had been employed for many years and received satisfactory and above ratings on his teaching abilities. He was well received by students, parents, coworkers, and the community. In 1963, Morrison and another male teacher had a physical relationship. The other teacher reported the sexual encounter to the principal of the school and resigned his position approximately one year after the encounter occurred. After the report to the superintendent, Morrison resigned his position as a teacher. In 1965, approximately a year and a half later, the California Board of

Education moved to revoke Morrison's teaching certificates. A hearing examiner recommended that the certificates that Morrison held be revoked due to immoral and unprofessional conduct and moral turpitude under the California Education Code. The California Board of Education accepted the recommendation of the hearing examiner and revoked Morrison's teaching certificates. Morrison immediately filed a petition for writ of mandamus to review the determination of the California State Board of Education. The Superior Court of Los Angeles County, denied the writ of mandamus. Morrison appealed the decision to the Supreme Court of California, *in banc*. The Supreme Court of California, *in banc* found that Morrison could not be legally disciplined under a statute allowing for the revocation of his teaching certificate for immoral conduct, unprofessional conduct, or moral turpitude because of a lack of any evidence that his conduct proved him unfit to teach because a nexus did not exist between his sexual encounter with a male teacher and his ability to perform his teaching assignment.

In the years that followed, other people cited the Morrison Standard in cases. The few cases in this study that also cited the Morrison Standard included: *Broney v. California Commission on Teacher Credentialing*, (Cal. 2010), *Comings v. Bd. of Education*, (Cal.1972), and *Terkosky v. Indiana Department of Education*, (Ind. 2013). The courts continue to use the Morrison Standard in cases.

Immorality Nonsexual

In the study, 51% (20 cases) of the immorality cases included nonsexual types of immorality (see Figure 7). These cases involved drug possession, burglary, stolen property, bad moral character, forged documents, having a concealed weapon, child endangerment, and other various misconduct considered immoral by the states where the teachers were charged with immorality (*School Dist. No. 2, Fremont County v. Shuck*, 1911; *Comings v. Bd. of Education*,

1972; *Startzel v. Com., Dept. of Educ.*, 1989; *Epstein v. Benson*, 2000; *Brehe v. Missouri Department of Elementary and Secondary Education*, 2007). In many of the cases the certificate was revoked or suspended (*Comings v. Bd. of Education*, 1972; *Startzel v. Com., Dept. of Educ.*, 1989; *Nanko v. Department of Educ.*, 1995) while in other cases the certificate was not revoked or suspended (*School Dist. No. 2, Freemont County v. Shuck*, 1911; *School Dist. No. 2, Freemont County v. Shuck*, 1911; *Epstein v. Benson*, 2000; *Brehe v. Missouri Department of Elementary and Secondary Education*; 2007).

In one such case, *Nanko v. Department of Educ.* (Pa. 1995), a teaching certificate was revoked. Nanko applied for the position as a superintendent. Nanko held certifications in Elementary Education and Elementary Principal, and held an Assistant Superintendent's Letter of Eligibility. Nanko stated that she also held a letter of eligibility to be a superintendent. After the interview, the superintendent called Nanko and asked for the Superintendent's Letter of Eligibility. Nanko faxed the superintendent a copy of the eligibility letter. It was discovered that Nanko had actually altered a copy of her professional certificate, making it appear as though she had the eligibility letter when she actually did not. Nanko tried on two occasions to alter documents that were sent to the State Board of Education. She forged a past superintendent's name and sent a handwritten letter from that same superintendent stating that he was the cause of the delay in getting Nanko's superintendent's letter. The Department of Education denied Nanko a Letter of Eligibility stating that she did not have the administrative experience required to get the letter. The Department of Education filed a "Notice of Charges" with the Professional Standards and Practice Commission. Nanko was charged with forging the superintendent's name on documents when she applied for the eligibility letter, misrepresenting her employment history and areas of certification, and altering her Pennsylvania Public School Certificate. Nanko's

certificate was revoked. The definition of immorality as defined by The Professional Standards and Practices Commission did meet the required definition and had been proven in the case and did not violate Nanko's due process rights. The Commonwealth Court of Pennsylvania stated that the Professional Standards and Practices Commission did not err as a matter of law and was not required to wait for a misdemeanor conviction of document forgery because it had already been proven that this in fact had happened. The Professional Standards and Practices Commission did not abuse its discretion failing to follow statutorily mandated prerequisites because Nanko did not argue this before the Professional Standards and Practices Commission. The Commonwealth Court of Pennsylvania affirmed the Professional Standards and Practice Commission decision revoking Nanko's certificates for immorality.

In two other case, *Epstein v. Benso*, (Wis. 2000), and *Brehe v. Missouri Department of Elementary and Secondary Education* (Mo. 2007), the courts found that the charges of immorality did not meet the definition as defined by the state. In the case of *Brehe v. Missouri Department of Elementary and Secondary Education*, (Mo. 2007), Brehe was a licensed Special Education Teacher employed by the Jefferson City School System in Missouri. Brehe took her three children ages eleven, ten, and two-years-old to a nearby casino. Brehe entered the casino for approximately 45 minutes and left the children alone and unsupervised in the car. When Brehe returned to her car, the police officers were waiting for her. Brehe was charged with a class A misdemeanor of endangering the welfare of a child in the second degree. Brehe eventually pled guilty to one count of second-degree child endangerment. The court suspended imposition of the sentence, and she served one-year of probation. The Department of Elementary and Secondary Education filed a complaint with the Missouri State Board of Education against Brehe's teaching certificate. The Missouri State Board of Education claimed that they had the

authority to do so because Brehe was convicted of a “crime involving moral turpitude.” Brehe asked the move be dismissed because what she pled guilty to did not involve moral turpitude. Her motion was not accepted. A hearing officer was appointed by the commission. The Missouri State Board of Education presented its findings to the hearing officer. Ms. Brehe testified on her behalf stating that she had made her school system aware of the plea and was presented with another teaching contract after the system was aware of the conviction. The hearing officer found that the State Board of Education is authorized to suspend or revoke the certification of Brehe. The Commissioner made a recommendation to suspend Brehe’s license for 90 days. Brehe appealed the decision to the Circuit Court, Cole County, without requesting a stay of the order. The 90-day suspension ended on September 21, 2005. The Circuit Court issued its findings and reversed the Missouri State Board of Education’s findings because the court stated that a crime of endangering the welfare of a child in the second-degree was not necessarily a crime involving moral turpitude. The Department of Elementary and Secondary Education appealed. The Court held that the Board was required to show that the circumstances of the offense were such as to involve moral turpitude. A second-degree conviction involving endangering the welfare of a child does not constitute moral turpitude and cannot be used to discipline a teacher’s teaching certificate. The Court stated that second-degree child endangerment almost never involves “a conscious decision to violate the law,” and when that is the case, “moral turpitude” cannot be applied. The Court declared that Brehe’s certificate could not be disciplined because she had no notice that her conduct could cause her certificate to be disciplined and is “unconstitutionally vague” as the charges were applied, and that the hearing officer and the Board misapplied the law in concluding that a conviction of second-degree child endangerment is *ipso facto* a conviction of a crime involving moral turpitude. The Missouri Court of Appeals, Western

District, reversed the decision of the Department of Elementary and Secondary Education and remanded for the dismissal of the complaint.

Immorality Role Model Standard

This study found that the courts have shifted in their favoring of teachers as role models; favoring other less vague charges. Lifestyles have changed, and community norms have changed, and so have the expectations of the role of the teacher; however, the courts have found that the role model standard may be applied if a nexus can be proven between the teacher's misconduct and his/her ability to teach students. This was the case in *Adams v. State Professional Practices Council* (Fla. 1981), two tenured teachers, Adams and Ward, had their certificates revoked by the State of Florida, Professional Practices Council because they were found to be in possession of 52 marijuana plants. The grounds for revoking their teaching certificates was based on moral turpitude because the teachers would not be positive role models to students. Adams and Ward argued that the warrantless seizure of the marijuana was illegal and that the marijuana evidence should have been suppressed. Adams and Ward also argued that even with the evidence presented it did not constitute that they engaged in an act of immorality. The State of Florida, Professional Practices Council revoked the certificates of Adams and Ward. Adams and Ward appealed the revocation decision to the District Court of Appeal of Florida, First District. The court found that Adams and Ward's teaching certificates were lawfully revoked based on the evidence collected. The evidence was collected legally and it was warranted to use this evidence in the revocation of Adams and Ward's teaching certificate, and the evidence was admissible in the revocation. Because Adams and Ward violated the law, the court determined that this in fact constituted an act of immorality. The court stated that teachers are expected to maintain a high level of morality due to the leadership that is expected in the

teaching profession, and they are role models. The media had printed the story and many community stakeholders, parents, students, and others were aware of the investigation and charges against Adams and Ward. It was maintained that this in itself would cause damage to both Adams and Ward's reputation and effectiveness as teachers and leaders when influencing young students.

The same findings were delivered in another case, *Walton v. Turlington* (Fla. 1984). Walton was a high school teacher. He was charged with possession of marijuana and marijuana paraphernalia. Walton pled *nolo contendere* to a charge of possession of marijuana. The Education Commissioner notified Walton that a hearing would be held in order to determine if his teaching certificate should be revoked or suspended. A hearing officer was assigned to hear the case. At an evidentiary hearing before the hearing officer, testimony was given by two police officers who had witnessed and assisted in the arrest of Walton. Walton was found guilty of an act of gross immorality and moral turpitude, and of conduct which seriously reduced his effectiveness as a teacher by the Commissioner of Education. The Commissioner of Education found that most of the findings of fact were correct as stated by the hearing officer; however, he concluded that Walton's effectiveness as a teacher was greatly reduced by the possession of marijuana and marijuana paraphernalia. He then proceeded to suspend Walton's teaching certificate for a period of three years. The Commissioner of Education found that a teacher does not necessarily need to be convicted of a crime in order for his/her teaching certificate to be suspended or revoked. The Education Practices Commission had the legal authority to suspend Walton's teaching certificate for three years even though there was a court-ordered "sealing" of his criminal conviction under his plea of *nolo contendere* to a charge of possession of marijuana and marijuana paraphernalia. The court found that although the criminal record of Walton had

been sealed and expunged, the noncriminal conduct of Walton in being in possession of the marijuana and marijuana paraphernalia was enough to suspend his teaching certificate for three years. The court found that teachers are expected to be positive role models to students and when this type of inappropriate conduct takes place, the effectiveness of the teacher is greatly reduced. Purely having exhibited gross immorality or moral turpitude can be a noncriminal reason to have a teacher's certificate revoked or suspended by the Education Commissioner. The court further stated that Walton's expunged criminal record does not disconnect him from his criminal conduct.

In a 1995 case in the study, *Thompson v. Wisconsin Dept. of Public Instruction* (Wis. 1995), the court found that the role model standard is vague and is often difficult to prove. Thompson was a music teacher. Thompson taught students in elementary and secondary education. Thompson was accused of unwanted sexual touching that caused the Oshkosh School District to start proceedings to revoke his license. Thompson pled no contest to a disorderly conduct violation where he was accused of grabbing a man inappropriately in a park. Thompson thought the man was in agreement to a homosexual sexual advancement and grabbed the man in the chest area and in the groin. The man reported Thompson's actions to law enforcement. On another occasion, Thompson went to a movie store where known homosexual activity occurred. Thompson entered a booth where an undercover officer was. Thompson started groping the undercover officer. The undercover officer denied his sexual advances, and Thompson continued his sexual aggression by grabbing the undercover officer's genitals. Thompson was convicted of fourth-degree sexual assault by a jury. In both instances, alcohol was established as being a factor in the behavior of Thompson. The Oshkosh Board of Education gave Thompson a Notice of Probable Cause and Intent to Revoke License was issued by the Wisconsin Department of

Public Instruction. A hearing examiner issued findings recommending that the revocation action be dismissed. The hearing examiner found, that based on the evidence presented, a nexus did not exist between Thompson's actions and the health, welfare, safety or education of students. The superintendent refused to adopt the hearing examiner's recommendation and revoked Thompson's license, justifying it because he stated that Thompson could no longer be a role model for students. Thompson filed a petition for judicial review. The circuit court for Brown County, stayed the revocation order and remanded the case to the superintendent stating the superintendent never reviewed the case and failed to hear the case before he revoked Thompson's license. On remand, the superintendent found that Thompson could no longer be an effective role model for the students. He argued that parents, students, stakeholders, and others would lose respect and confidence in Thompson's abilities as a professional. Again, the superintendent revoked Thompson's license. Thompson appealed to the Court of Appeals of Wisconsin. The court found that a nexus did not exist between Thompson's conduct and the health, welfare, or education of students based on the role model standard that was applied. There was not substantial evidence to support the revocation. The Court of Appeals found that the circuit court for Brown County erred when applying de novo to the superintendent's remand because the State Superintendent used the wrong standard in determining whether a nexus existed between Thompson's immoral conduct and the health, welfare, safety or education of students. The Court of Appeals of Wisconsin stated that the State Superintendent should be allowed to review the facts and apply the proper legal standard. Instead of applying the immoral conduct standard, the superintendent applied the role model standard which is an absence of the nexus standard. The court stated that the role model standard is difficult to prove because the standard could be read and interpreted in many ways. The Court of Appeals of Wisconsin

affirmed in part, reversed in part, and cause remanded the judgment of the circuit court for Brown County.

Unprofessional/Unbecoming Conduct

There were 16 cases (18%) of unprofessional conduct included in the total cases of the study (see Figure 4). Seven (44%) of the unprofessional conduct cases resulted in the revocation of a teaching certificate. An equal amount, seven cases (44%) resulted in the suspension of a teaching certificate due to unprofessional conduct. Only two (12%), resulted in the certificate not being revoked or suspended (see Figure 8).

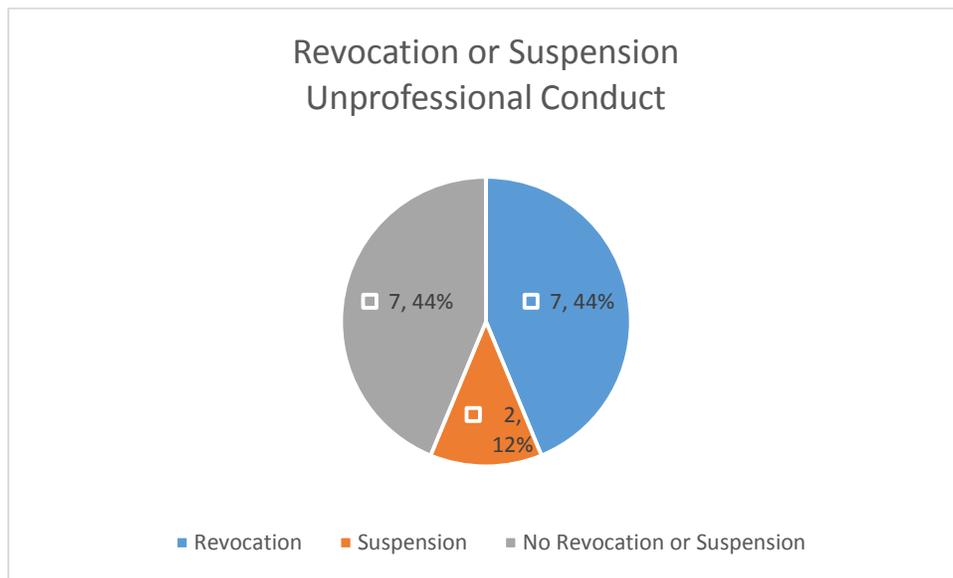


Figure 8. Revocation or suspension of teaching certificates for unprofessional conduct.

There are many different accepted norms between one state to the next. Court cases involving teacher unprofessional conduct have been inconsistent through time (see Table 4).

Table 4

Unprofessional/Unbecoming Conduct Cases

Year	Case	Issue	Outcome
1883	<i>Arnold v. School Dist.</i>	Unprofessional conduct	Revocation
1899	<i>Superintendent of Common Schools of Daviess County v. Taylor</i>	Unprofessional conduct	NO
1899	<i>Browne v. Gear</i>	Unprofessional conduct	NO
1908	<i>Barthel v. Board of Ed. of City of San Jose</i>	Unprofessional conduct	NO
1925	<i>Marrs v. Matthews</i>	Unprofessional conduct	Revocation
1950	<i>Shirer v. Anderson</i>	Unprofessional conduct	Revocation
1985	<i>Balentine v. Arkansas State Bd. of Educ.</i>	Unprofessional conduct	Revocation
1991	<i>Stelzer v. State Bd. of Edn</i>	Unprofessional conduct	Revocation
1994	<i>Patterson v. Superintendent of Public Instruction</i>	Unprofessional conduct	6 months Suspension
1995	<i>Langston v. Jamerson</i>	Unprofessional conduct	NO
2001	<i>Hoffman v. State Bd. of Edn</i>	Unprofessional conduct	2-years Revocation
2011	<i>Kellough v. Ohio State Board of Education</i>	Unprofessional conduct	Revocation
2012	<i>Robinson v. Ohio Department of Education</i>	Unprofessional conduct	Suspension 1 year
2012	<i>Orth v. Ohio Department of Education</i>	Unprofessional conduct	NO
2013	<i>Talbott v. Teacher Standards & Practices Com</i>	Unprofessional conduct	NO
2015	<i>Wall v. State Bd. of Education</i>	Unprofessional conduct	NO

The unprofessional conduct charges that resulted in the revocation or suspension of a teacher's certificate included charges of hitting/stomping a child (*Arnold v. School Dist.*, 1883), cheating or helping others cheat on a state certification test (*Marrs v. Matthews*, 1925; *Shirer v. Anderson*, 1950), altering school records (*Balentine v. Arkansas State Bd. of Educ.*, 1985; *Patterson v. Superintendent of Public Instruction*, 1994), accepting welfare checks not entitled to (*Stelzer v. State Bd. of Edn.*, 1991), indecent exposure (*Hoffman v. State Bd. of Edn.*, 2001), improper supervision of students, dishonesty (*Kellough v. Ohio State Board of Education*, 2011),

and accessing and opening inappropriate email at school (*Robinson v. Ohio Department of Education*. 2012).

In the case of *Balentine v. Arkansas State Bd. of Educ.* (Ar. 1985), Balentine was a superintendent. Balentine was charged with submitting altered numbers for student enrollment numbers, transportation numbers, and number of students who were served school lunches. Balentine argued that although he did submit false numbers, the Arkansas State Board of Education's action was not authorized by the controlling statute. He argued that the statute only revokes a teacher's teaching certificate when the superintendent knowingly allows the teacher to submit falsified documents but does not apply if the superintendent is the person who knowingly submits the documents. The court found that even though the language may have been such to only state "teachers" were not to falsify attendance records or teachers should not be instructed by the superintendent, or anyone for that matter, to falsify school records, the statute covers anyone who knowingly falsifies school records. This would include the superintendent. If a superintendent knowingly allows a teacher to submit falsified records or if a superintendent him/herself knowingly submits falsified records, the penalty is the same. The revocation of the teaching certificate or administrative is to be revoked by the Arkansas State Board of Education, and the Supreme Court of Arkansas affirmed the decision of the circuit court.

In a 2011 revocation case, a teacher's certificate was revoked when a teacher failed to offer proper supervision to a group of students and then was dishonest about the facts of the circumstances surrounding the case. Kellough, and another teacher, held a Christmas party for students. Kellough rejected the idea of having the party inside the small classroom, as he had been instructed to do by the school principal, and held the party in the school auditorium/gym. During the party, a student was injured and suffered a severe head injury. After the student was

taken to the hospital, the principal spoke with Kellough about the events that led up to the injury of the student. Kellough explained that the student and another student were boxing on the stage area of the auditorium/gym, and the student had accidentally fallen off the stage and hit his head. He explained that the students were hiding behind the curtain so they would not be in the view of the teachers. Students who were interviewed immediately and after the Christmas holidays, were all in agreement about the facts of the accident. Most of the students, as well as both teachers, denied seeing the incident and all stated the student had fallen off the stage and hit his head. Kellough had instructed the students to report false information about what had actually occurred. It was later determined that the students were boxing and Kellough was actually standing in the group watching the two students box. Both teachers were forced to resign for their part in the incident. Because of the circumstances involved in the incident, a case was opened against Kellough from the Ohio Department of Education. As a result of the investigation, the Ohio Department of Education issued Kellough a notice of its intent to determine whether to limit, suspend, or revoke his teaching license. The hearing examiner determined that even if the story had occurred just as Kellough stated, the issue still was that Kellough failed in his duties to properly supervise the students under his care. The hearing officer found that the Ohio State Board should revoke Kellough's teaching certificate on a permanent basis because he did exhibit conduct unbecoming of a teacher with his actions and failure to properly supervise students in his care.

Certification

The study included 10 cases (11%) that were categorized as certification cases (see Figure 4). In eight cases, the teacher did not have the proper requirements to maintain the

certificate and therefore, the certificate was revoked (see Figure 9). The 10 cases are listed in Table 5 below.

It has been established that the states have the right to develop and require guidelines and requirements for teachers to initially be certified as a teacher and then to maintain the certificate once it has been issued. In cases where the teacher was charged with failure to meet or maintain requirements for certification (*Shore v. Board of Examiners of City of N. Y.*, 1977; *Wagenblast v. Crook County School Dist.*, 1985; *Lubin v. Board of Educ. of City of New York*, 1986; *Feldman v. Board of Educ. of City School Dist. of City of New York*, 1999; *Mann v. Kentucky Education Professional Standards Board*, 2009) the courts considered it to be clear that not meeting the requirements is reason to revoke a certificate. The teacher did not have the required classes or did not pass a required certification test and therefore their certificates were revoked.

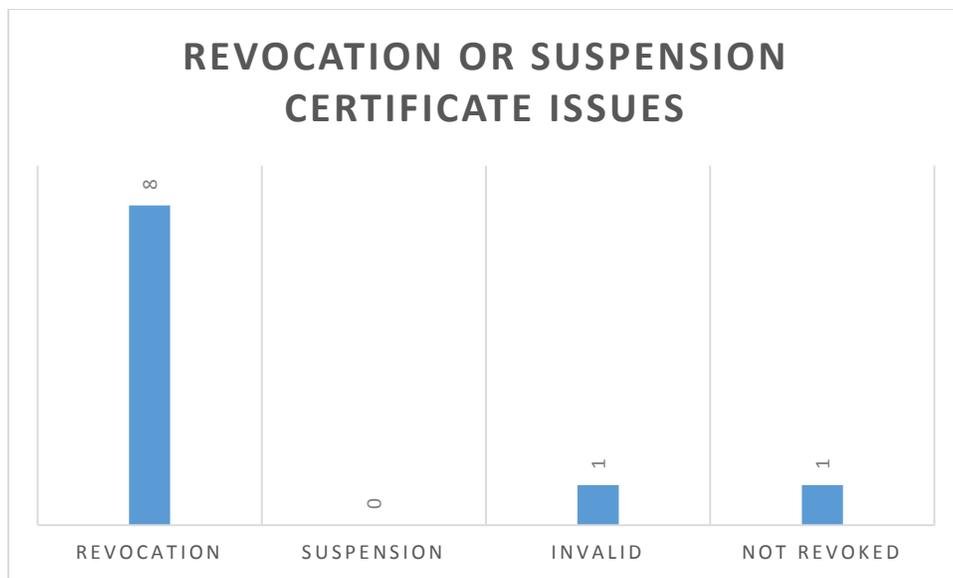


Figure 9. Revocation or suspension of certificates based on certification issues.

Table 5

Certification Cases

Year	Case	Issue	Outcome
1963	<i>Glass v. Board of Ed. of City of New York</i>	Certification	NO
1977	<i>Shore v. Board of Examiners of New York City</i>	Certification	Revocation
1985	<i>Longenecker v. Burlington</i>	Certification	Revocation
1985	<i>Wagenblast v. Crook County School Dist.</i>	Certification	Not Revoked-Invalid
1986	<i>Lubin v. Board of Educ. of City of New York</i>	Certification	Revocation
1999	<i>Feldman v Board of Educ. of City School Dist. of City of New York</i>	Certification	Revocation
1999	<i>Feldman v Board of Educ. of City School Dist. of City of New York</i>	Certification	Revocation
1999	<i>Feldman v Board of Educ. of City School Dist. of City of New York</i>	Certification	Revocation
1999	<i>Feldman v Board of Educ. of City School Dist. of City of New York</i>	Certification	Revocation
2009	<i>Mann v. Kentucky Education Professional Standards Board</i>	Certification	5-year Revocation

There was only one case in the study concerning certification issues when the teacher's certificate was not revoked or suspended. In the case of *Glass v. Board of Ed. of City of New York* (N.Y.1963), Glass was originally hired by the Board of Education of the City of New York as substitute teacher. Glass met all of the requirements to be employed as a teacher and a librarian. Glass completed her probationary period and was tenured. Glass was terminated and her tenure status was annulled without a hearing. Glass was charged with failure to show proof that she had completed two required courses of two semester hours each. Glass appealed the decision of the Board of Education of the City of New York. The Supreme Court, Kings County, affirmed the decision of the Board of Education of the City of New York. Glass then appealed the decision to the Appellate Division of the Supreme Court of New York, Second Department, and the case was reversed on law because a teacher who is tenured cannot be dismissed without a hearing and notice of charges. The court ruled Glass had her due process rights violated. Glass met the requirements during the timeframe that the case was being considered.

Another case relevant to the certificate issues in the study involved the case of Gail Wagenblast. In this case, the certificate was not revoked or suspended, but the certificate was declared invalid. Wagenblast had her certificate declared invalid because she failed to meet the requirement of paying the fee established to get her certificate. She wrote a check for the certificate, but it was returned due to nonsufficient funds in her account. In February 1984, the Teacher Standards and Practices Commission notified the school district, who employed Wagenblast, that she no longer held a valid teaching certificate. Wagenblast had received a certificate and then had it voided because her check was returned due to nonsufficient funds in her bank account. She was notified but refused the certified letter upon delivery. The district superintendent informed Wagenblast that she was terminated. She appealed to the Fair Dismissal Appeals Board contending that the termination was a “dismissal” under the Fair Dismissal Law and that it was invalid because the school district did not follow the statutory procedures for dismissing a tenured teacher. The school district asked that the Fair Dismissal Board dismiss the appeal because Wagenblast was no longer a certified elementary teacher at the time it terminated her. Fair Dismissal Appeals Board dismissed the appeal citing lack of jurisdiction. Wagenblast appealed the decision of the Fair Dismissal Appeals Board upholding her termination. The Court of Appeals held that Board lacked jurisdiction to determine whether the district had legal authority to terminate the teacher for failing to pay the required fee for renewal of her teaching certificate. The school board did not itself make any decision to terminate Wagenblast or vote to approve the action. The superintendent did not make any recommendation of termination to the school board before taking the termination action, and did not otherwise follow Fair Dismissal Law procedures. Wagenblast was not given any pretermination hearing before the school board although the superintendent had discussed the situation with Wagenblast and had given her time

to look for evidence showing she had paid the required fee. Wagenblast's appeal to the Fair Dismissal Appeals Board is for certified teachers. When Wagenblast was dismissed, she was not a certified teacher and had not held a certification since her failure to pay her fee in September 1982. The school district did not revoke Wagenblast's certificate and neither did the Teacher Standard and Practices Commission who does have the legal authority. They simply made it invalid due to failure to pay the required fee. A teacher who does not hold a valid teaching certificate does not meet qualifications to be employed. The Court of Appeals of Oregon affirmed.

In another case, four teachers had their certificates revoked due to failure to meet the requirement of passing a required exam. Feldman was President of the United Federation of Teachers in New York. Ms. Feldman brought this suit on behalf of four teachers, Jennifer Jones, Brenda Parsons-English, Jose Dunker, and Karen Jacoby-Raglievich, who had their teaching certificates revoked when they did not pass the National Teacher's Examination test after a five-year period. They were among a group of teachers who were involved in the case. Ms. Feldman and the other teachers brought proceedings to review the board of education's determination terminating the teachers' city teaching licenses. The Supreme Court, Kings County, dismissed the petition. Feldman and the teachers appealed. The teachers in the case, admittedly failed to achieve a passing grade on the National Teacher's Examination within five years of the issuance of their licenses, the Board of Education of the City School District of the City of New York had the authority to revoke the certificate(s). Supreme Court, Appellate Division, Second Department, New York affirmed the decision.

Unfitness to Teach

The study included 10 (12%) cases categorized as unfitness (see Figure 4). Five of these cases resulted in the revocation of the teachers' certificates. In three cases, the teachers had their certificates suspended. The remaining two cases resulted in the teachers' certificates not being suspended or revoked (see Table 6).

There were four cases that resulted in the revocation or suspension of the teachers' certificates due to mental unfitness (*Alford v. Department of Education*, 1970; *Nelkin v. Board of Educ. of City of New York*, 1994; *Wax v. Horne*, 2003; & *Macy v. Kentucky Education Professional Standards Board*, 2010). Two cases involved indecent exposure (*Gomez v. Texas Education Agency, Educator Certification and Standards Division*, 2011, & *Fountain v. State Bd. of Ed.*, 1958). Another unfitness case involved a DUI conviction (*Broney v. California Commission on Teaching Credentialing*, 2010). In the 2005 unfitness case of *Knight v. Winn.*, (Fla. 2005), the teacher had her certificate revoked for 10 years after writing a threatening letter of resignation and verbally made abusive comments to students. Two cases did not result in the revocation or suspension of the teachers' certificates (see Table 6).

Table 6

Unfitness Cases

Year	Case	Issue	Outcome
1958	<i>Fountain v. State Bd. Of Ed.</i>	Unfitness	Revocation
1970	<i>Alford v. Department of Education</i>	Unfitness	Revocation
1994	<i>Nelkin v. Board of Educ. of City of New York</i>	Unfitness	Suspension
2003	<i>Wax v. Horne</i>	Unfitness	Permanent Revocation
2005	<i>Knight v. Winn</i>	Unfitness	10-year Revocation
2007	<i>Powell v. Paine</i>	Unfitness	NO
2007	<i>Teacher Standards & Practices Commission v. Bergerson</i>	Unfitness	NO
2010	<i>Broney v. California Commission on Teacher Credentialing</i>	Unfitness	Suspension 60-day Stay and 3 year's Probation
2010	<i>Macy v. Kentucky Education Professional Standards Board</i>	Unfitness	10-year Suspension
2011	<i>Gomez v. Texas Education Agency Certification and Standards Division</i>	Unfitness	Revocation

Of the four cases involving of mental unfitness, one case was a case involving Ruth Greene Alford, who was a tenured elementary school teacher in the Los Angeles School District. Alford had taken two sick leaves which required hospitalization in Camarillo State Hospital in 1959 and 1961. She was diagnosed as schizophrenic. During the 1961 hospitalization and sick leave, she was ordered by the court to be admitted. She resigned her teaching position with the Los Angeles School District in 1965. Alford then asked the California State Board of Education to add an additional endorsement of “General Pupil Services Credential” to her teaching license. The California State Board of Education denied the application, and the California State Board of Education filed a motion in congruence with the California Education Code to revoke Alford’s teaching certificate, due to her history of mental and emotional illness and her recent hospitalization for the condition. A hearing officer heard the case. During the hearing, two doctors gave psychiatric testimony as to her unstable condition. One of the doctors was a witness she had requested on her behalf. After the hearing, Alford’s teaching certificate was revoked and she was again denied the additional endorsement she had sought. Alford sought a writ of mandate to set aside the administrative determination, which was denied by the trial court. Alford appealed the decision to the Court of Appeals of California, Second District, Division One. The California Board of Education had the legal right to revoke Alford’s teaching certificate based on her medical condition without showing of actual misconduct or dereliction in connection with performance of her duties. The court found that there was cause that existed and disabled her from being able to sufficiently perform her job working with young children. A nexus did exist between her medical condition and her ability to teach. Two doctors gave medical testimony as to how Alford’s medical condition would impede her ability to teach children. The court found that this was in fact enough evidence to support the California State

Board of Education's decision, and that the trial court did not err in its findings supporting this decision.

Another case involving mental unfitness included *Macy v. Kentucky Education Professional Standards Board*, (Ky. 2010). Macy started her career in education as a middle school physical-education teacher. In 1987, Ms. Macy suffered a severe head injury in an accident. The head injury was so severe that Ms. Macy had to relearn simple tasks including writing her name. Ms. Macy suffered from headaches, irritability, and anger issues, among other problems, which she controlled with the help of medication and therapy. In 1995, Ms. Macy was again involved in an accident which caused her symptoms to return. The Hopkins County School System initiated a teacher "504 Plan" to try and help Ms. Macy adapt to the classroom and be an effective classroom teacher. This even included providing a cot for Ms. Macy if she suffered a severe headache during school hours. They also provided her an assistant. In 1998, Ms. Macy had an anger outburst which was witnessed by students. A note was placed in her file. In 1999, Ms. Macy had another outburst with a parent, student, and teacher. Macy also became associated with a school club the Loser Club which mocked the Pride Club. In 2000, a parent filed a complaint with the local law enforcement stating that Macy had threatened students on the boys basketball team. After an investigation by law enforcement, Macy was charged with nine counts of terroristic threats. Later that same month, Macy was terminated. In 2009, Macy was found guilty of all nine counts and fined \$4,500.00. The fine was set aside as long as Macy made no contact with the students and committed no other legal offenses. The Hopkins County Court, affirmed the decision in December 2001. Macy did not do as instructed. She started making threats against Linda Zellich, assistant superintendent, in the months following. These threats included telling Zellich that Macy's termination would result in Zellich's death. She also

approached her in the school parking lot and blocked her car in with hers. In late 2000, an additional 18 charges were filed against Macy from the Hopkins County School System. These charges included several statutory and regulatory provisions concerning Macy's conduct as a school teacher in the state of Kentucky. More charges were added in April, 2004. The Kentucky Education Professional Standards Board started the process to have Macy's teaching certificate revoked. A hearing officer was assigned to the case. The hearing officer found that several of the charges did not show a nexus between Macy's teaching certificate and others were not dismissed due to the hearing officer finding no legal basis for the charge. The only charges that were found to warrant revocation of Macy's certificate were the charges involving the students. The hearing officer recommended revocation of Ms. Macy's certificate until 2005. The legal counsel of the Kentucky Education Professional Standards Board rejected the hearing officer's recommendation and revoked Macy's certificate for a period of 10 years until 2015. Macy appealed to the Franklin Circuit Court. In 2008, the Franklin Circuit Court issued its finding both reversing and affirming findings by the Kentucky Education Professional Standards Board. The circuit found that the conviction of the nine terrorist threats against students alone justified the 10-year revocation of Macy's certification. Macy again appealed. Macy now argues pro se and that the Kentucky Education Professional Standards Board acted arbitrarily and contrary to the amount of evidence and in rejecting the hearing officer's order. The Court of Appeals of Kentucky found that the Kentucky Education Professional Standards Board did not act in an arbitrary or capricious way, unsupported by substantial evidence, based its decision on ex parte communication, or act in an unlawful way. The appeals board also moved to affirm that Macy was physically and mentally unable to do her job acknowledging that this was a result of her traumatic brain injury which was beyond her control. The court concluded "that the criminal

conduct involving the threatening of students during school hours and on school property, which resulted in a conviction on multiple counts of terroristic threatening, by itself provides a sufficient basis to support the severe penalty.”

Unlawful Act

Data from this study indicated six (7%) cases were categorized as an unlawful act not involving sexual misconduct (see Figure 4). Four cases resulted in the revocation of the teacher’s teaching certificate and two cases resulted in no revocation. There were no suspension cases in the category listed as unlawful acts. The mere act of the criminal conduct (*Smith v. State Bd. of Educ.*, 1942; *Hodge v. Stegall*, 1952) may result in the revocation of the certificate even when the courts may have found the teacher not guilty. Depending upon the state that issued the certificate, a teacher who is convicted of a felony offense will result in a revocation by law. In other states, a string of misdemeanors will be enough substantial evidence to revoke the teacher’s certificate.

In the case of *Pordum v. Board of Regents of State of N. Y.*, 1973, Pordum requested and received a two-year leave of absence from the school district, and this leave was subsequently extended for an additional year while Pordum was serving time in jail because he had been convicted of conspiracy and bribery. Pordum was released on parole and requested to come back to his teaching position. The school district agreed for him to return and informed him of a specific return date. The Commissioner of Education of New York State notified Pordum that his certificate was being considered for revocation based on his conviction and imprisonment. The Commissioner of Education also notified the school district that Pordum was not to be reinstated to his position. Pordum claimed that the charges were unconstitutional because there was great vagueness in the statute, that it violated the equal protection clause and due process, and the

revocation was a harsh penalty. The United States Court of Appeals, Second Circuit, affirmed the decision of a lower court stating that there was not vagueness in the law because it should have been of no surprise to Pordum that his teaching certificate was at risk of being revoked because of his conviction and prison sentence, and that equal protection was not a defense under the statute because teachers who are entrusted with the well-being of children, are at different level of expected professionalism.

Table 7

Cases Involving Unlawful Acts

Year	Case	Issue	Outcome
1942	<i>Smith v. State Bd. of Educ</i>	Unlawful Act	Revocation
1952	<i>Hodge v. Stegall</i>	Unlawful Act	Revocation
1961	<i>Vogulkin v. State Bd. of Ed.</i>	Unlawful Act	Revocation
1964	<i>Mack v. State Bd. of Ed.</i>	Unlawful Act	NO
1964	<i>Mack v. State Bd. of Ed</i>	Unlawful Act	NO
1973	<i>Pordum v. Board of Regents of State of N. Y.</i>	Unlawful Act	Revocation

Just Cause

There were four (5%) cases in the study categorized as just cause (see Figure 4). All four of the cases listed (see Table 8) were breach of contract cases and resulted in a one-year suspension of the teacher’s teaching certificate. A teacher charged with misconduct that may not fall under a specific statute may be charged with “just cause,” in order to revoke or suspended a teacher’s certificate; however, the revocation cannot be related to personal, arbitrary, or capricious reasons. Good and Just Cause is often seen as a vague charge in the eyes of the court and the study showed this in the cases briefed.

Table 8

Cases Involving Just Cause

Year	Case	Issue	Outcome
1969	<i>Henderson v. School Dist. of Scottsbluff, in Scotts Bluff County</i>	Just Cause	1-year suspension
1982	<i>Cobb County Bd. of Educ. v. Vizcarrondo, Board of Educ. of Park Forest Heights School Dist. No. 163, Cook County, Ill. v. State Teacher Certification Bd.</i>	Just Cause	1-year suspension
2006		Just Cause	1-year suspension
2010	<i>In re Suspension of teaching Certificate of Van Pelt</i>	Just Cause	1-year suspension

Incompetence

Only one (1%) case in the study was categorized as incompetence (see Figure 4). Courts have ruled that a teaching certificate is as prima facie proof that a teacher is competent. Many cases of incompetency have been proven in the court systems; however, in this study there was only one case, *Brower v. New York City Department of Education* (N.Y. 2012) that was categorized as incompetence and it was not proven to be incompetence as required by the courts. Proper documentation must be presented of evidence that the teacher is incompetent. This documentation was not kept properly in this case.

Insubordination

One (1%) of the cases categorized as insubordination (see Figure 4). Insubordination charges must be reasonable and unbiased against the teacher. In this one case, the certificate was revoked.

In the case of *Stone v. Fritts* (1907), Fritts was a teacher for over two decades when a complaint was filed against him by the superintendent. The superintendent sought revocation of Fritts’s certificate for refusing to board within the area of the community, refusing to attend preliminary teacher institutes, monthly township institutes, monthly teacher institutes, and to strategically plan for daily instruction. Fritts’s argument was that he was highly rated with a 92%

teacher's rating, and that the superintendent did not legal have the right to revoke is teaching certificate. A lower court found in favor of Fritts; however, the case was appealed to the Indiana Supreme Court, which found that the superintendent did have the legal authority to revoke Fritts's teaching certificate.

Religious Dress

One (1%) claim of religious dress was included in the 88 cases for the study (see Figure 4). The case, *Cooper v. Eugene School Dist. No. 4J*, (Or. 1986), resulted in the teacher having her certificate revoked for refusing to stop wearing religious garb/dress to school. Cooper taught sixth and eighth grade Special Education students in Oregon. Cooper became a Sikh. She would often wear a white turban and clothes as part of her religious practices. She explained her religious views and her behavior changes to the faculty, staff, and students. The principal and superintendent warned Cooper that her religious apparel could be means to have her contract cancelled and her teaching certificate revoked. Cooper ignored the warnings. Cooper was instructed to refrain from wearing the religious attire at work. Cooper ignored the warnings. She refused and was suspended in accordance with the statute. The Eugene Superintendent reported the suspension to the Superintendent of Public Instruction. After a hearing, Cooper's teaching certificate was revoked. Cooper appealed the revocation, claiming it was unconstitutional. The Court of Appeals reversed the revocation of Cooper's teaching certificate. The court found that the revocation was excessive under the First Amendment of the United States Constitution. The Eugene School District and Oregon State Superintendent appealed to the Oregon Supreme Court. The statute forbidding Cooper from wearing religious garb did not violate religious freedom or the federal First Amendment. The revocation of the teaching certificate was not an excessive sanction and was legally revoked under the statute. The Supreme Court held that: 1) The

religious dress statute, when correctly interpreted, did not violate State's guarantees of religious freedom or federal First Amendment. Wearing religious dress--clothing that is associated with, and symbolic of, religion while teaching may leave a conscious or unconscious impression among young people and their parents that the school endorses the particular religious' commitment of the person. Religious dress statute does not forbid teachers from wearing common decorations that a person might draw from a religious heritage, such as a necklace with a small cross or Star of David. 2) Revocation of teaching certificate was disqualification from teaching in public schools based upon one's doing so in manner incompatible with that function, not by reason of hostility to religious and political belief, and thus revocation of teaching certificate was not an excessive "sanction" discouraging even privileged exercise of First Amendment rights, more than was necessary to achieve law's purpose of maintaining religious freedom and neutrality in public schools. The Oregon Supreme Court reversed the decision of the Court of Appeals affirming the revocation.

Data Analysis

Cases by Year

One noticeable finding in the analysis of the data was the number of cases in each year (see Figure 10). There were more cases in the years 1995, 1996, 1999, and 2000 than any other years; however, a majority of the cases have occurred since the 1960s which showed a trend toward an increase involving the revocation or suspension of teaching certificates in the United States.

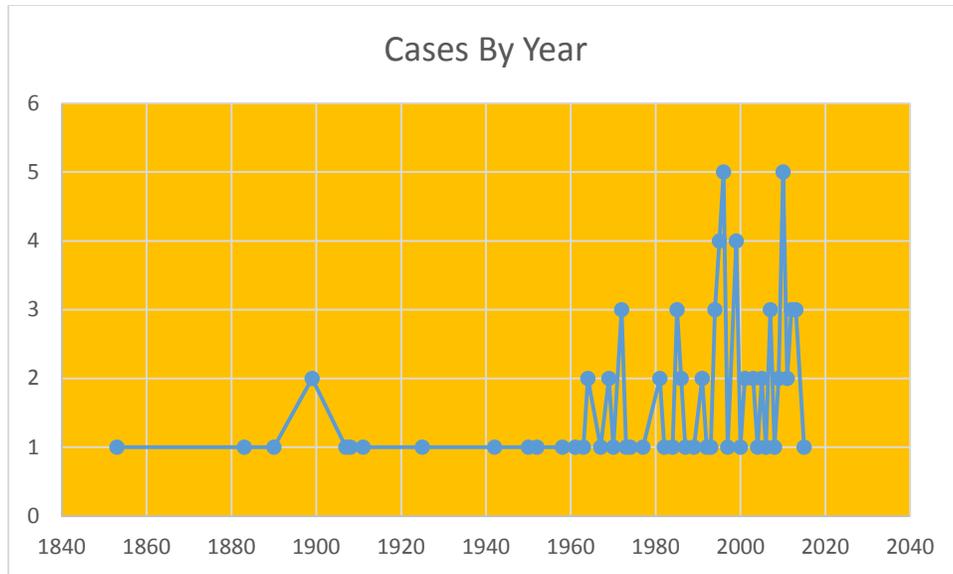


Figure 10. Cases by year from 1853-2015.

Gender Analysis

The data in this study indicated that more male teachers than female teachers had their teaching certificates revoked or suspended (see Figure 11). In the study, 58 (66%) of the cases involved males while 30 (34%) of the cases involved females. More males were involved in the cases involving immorality (males 30, females 9), unprofessional conduct (males 11, females 6), unlawful acts (males 5, females 1), just cause (males 3, females 1), and insubordination (males 1, females 0). More females were involved in the cases involving unfitness (females 5, males 4), certification (females 6, males 4), incompetence (females 1, males 0), and religious dress (females 1, males 0). A majority of the cases involving females have occurred since the 1990s.

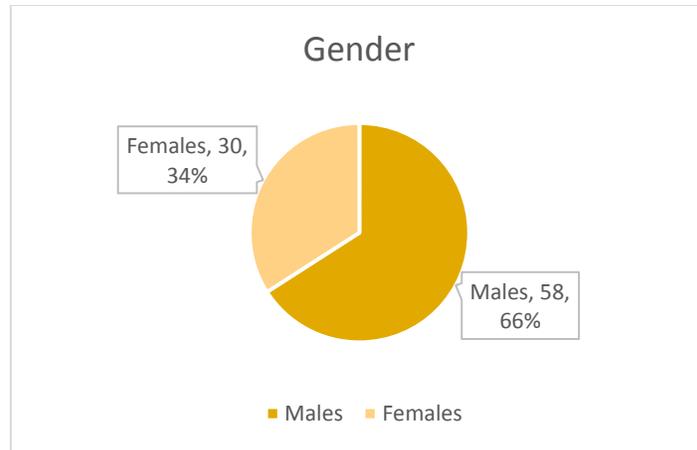


Figure 11. Gender of teachers involved.

School Role

The study indicated that the majority (82) of the cases involved educators in the role of a teacher (see Figure 12). A small number (6) of the cases involved an administrator in the role of assistant principal, principal, or superintendent.

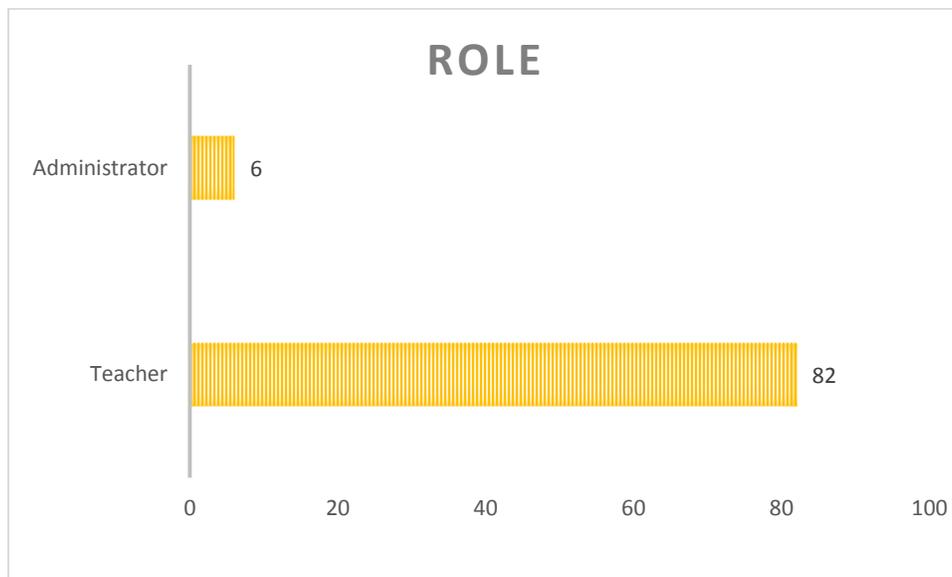


Figure 12. Role of the teachers involved in the cases.

State Analysis

An analysis of the cases state-by-state provided a unique view of where the court cases were most prevalent in the United States (see Figure 13). The data revealed that 24 states did not

have any court cases while other states like New York (19%), California (15%), and Florida (10%) had many (see Figure 13). New York had nearly 1/5 of the cases included in the study. Although all four corners of the United States were represented by cases, a greater number of Northern and Southern states had cases than states in the Eastern or Western sections of the country.

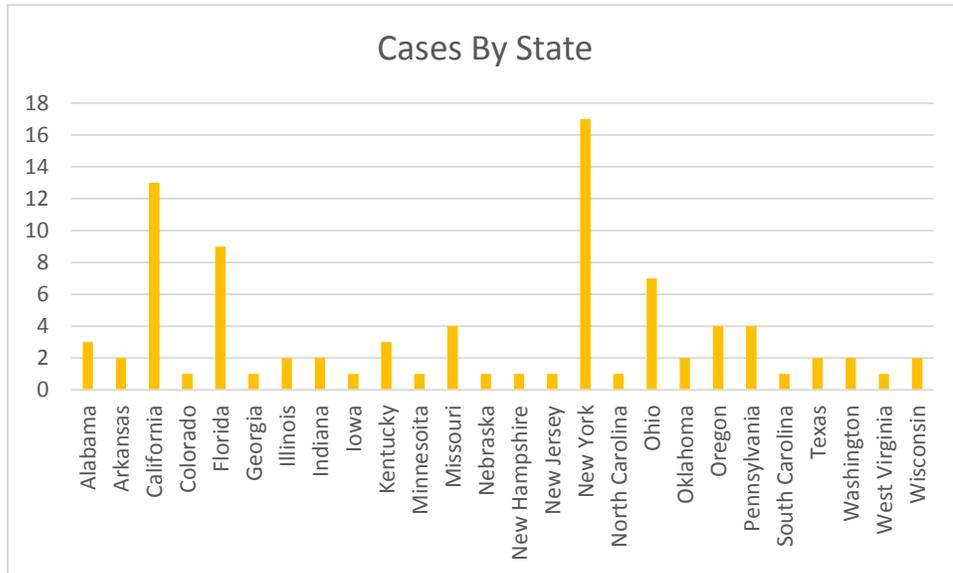


Figure 13. Number of cases per state.

School Level

The school level of 23 (26%) of the teachers was unknown, while 31 (35%) of the teachers were high school teachers, 21 (24%) were at the elementary level, six (7%) were at the middle school level, four (5%) middle and high school seventh-twelfth grades, one (1%) elementary and middle school k-eighth grades, one (1%) elementary, middle, and high school K-12, and one (1%) was a district-level employee (see Figure 14).

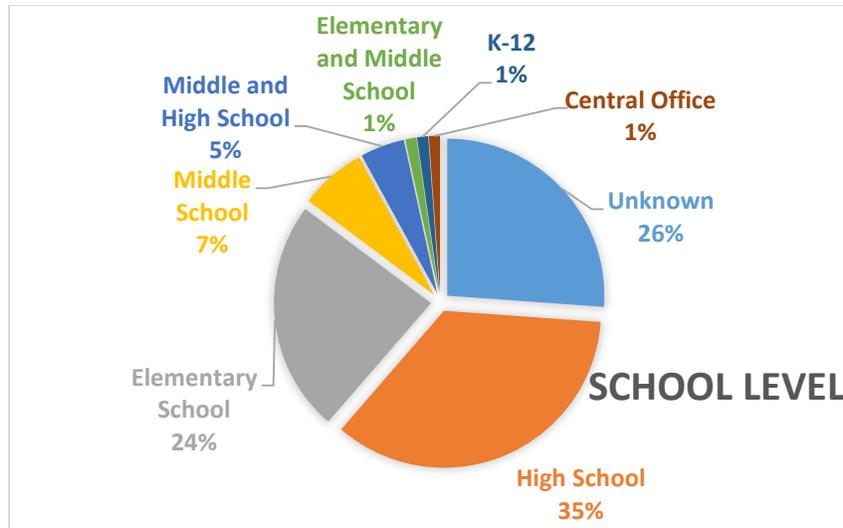


Figure 14. Cases by school level of the teacher.

Nexus

Courts are now finding that a nexus must exist in order to revoke or suspend a teacher's teaching certificate (see Figure 15). The watershed case for the nexus test was in 1969 in the Morrison ruling. Before 1969, teachers' certificates were revoked or suspended based on the moral exemplar test. The moral exemplar test was used to decide if a teacher was morally fit to teach. How society judged a teacher's misconduct depended on the values and morals in the community in which the teacher resided. According to DeMitchell (1992), "A new theory of causation was born--nexus." This emerged from the Morrison case in 1969. The Morrison standard, coupled with the moral exemplar test, are still used today. These standards are most often geared toward immorality, moral turpitude, unfitness, and unprofessional conduct and less in cases involving insubordination or incompetency (Hooker, 1994). This study included 22 cases that cited the nexus standard since the Morrison ruling in 1969 (see Table 9).

In the 2015 case of *Wall v. State Bd. of Education*, Wall was charged with criminal damaging, a second-degree misdemeanor, and unlawful restraint a third-degree misdemeanor. The Court of Appeals held that there was no nexus between the teacher's disorderly conduct

conviction and her performance as a teacher, as required for the State Board of Education to suspend her elementary teaching license. The alleged conduct related to a conviction that the teacher had blocked the vehicle of her husband's ex-wife, had broken the ex-wife's driver's side window, and struck the doors of her vehicle. The offense did not involve children, did not occur during school hours, did not occur on school grounds, and the teacher's students were not aware of the incident or subsequent administrative disciplinary proceedings. Because of this, the court determined that there was no nexus that existed between the teacher's disorderly conduct conviction and her performance as a teacher as required for suspension of license.

In the case of *Orth v. Ohio Department of Education* (Ohio, 2012), Sherry Orth was a teacher in the Columbus Public Schools. She had served in this position for 25 years. Ms. Orth restrained a student who had behavior that she considered warranted having to restrain the child. The child had red marks and scratches on his back and bottom. Ms. Orth started to issue a report, but was interrupted by her daily schedule, and the student rode the school bus home without the incident being reported to the principal. Ms. Orth was questioned about this incident and was later charged with conduct unbecoming of a teacher, because the Franklin County Children Services "substantiated" the student's injuries as "child abuse." The case went before a hearing officer. The Ohio State Board of Education adopted the hearing officer's recommendation and revoked. The teacher sought judicial review of permanent revocation of her teaching license by the Ohio Department of Education. The Court of Common Pleas, Franklin County, affirmed administrative determination, and teacher appealed to The Court of Appeals of Ohio, Tenth Appellant District. That court remanded the judgment of the Franklin County Court of Common Pleas. It vacated and the case was remanded to the Ohio Department of Education for further appropriate proceedings. The Court of Appeals found that there was not reliable, probative, and

substantial evidence to revoke Ms. Orth's teaching certificate. Allowing the student to get on the school bus before treating scratches on his lower back did not warrant permanent license revocation especially where the child obtained scratches during a screaming fit thrown when he was asked to get on the school bus. Ms. Orth had 25 years of service with no reported issues. Violations of statute permitting suspension of a teacher's license for engaging in an immoral act, incompetence, negligence, or conduct that is unbecoming to the teacher's position can have a nexus with the ability to teach if they involve unreasonable physical restraint of a student. The court determined that this was not the finding in this case.

In the case of *Powell v. Paine* (W. Va. 2007), the Supreme Court of Appeals of West Virginia, determined that no rational nexus existed between a high school teacher's misconduct of beating his nine-year-old child and his duties as a teacher, as required to justify suspension of teaching license; while teacher's past behavior in being cruel to his young son could not be condoned, teacher made efforts to rehabilitate his behavior, and entered into plea agreement regarding criminal charge so that all his children could be returned to the family unit.

In the case of *Hoffman v. State Bd. of Edn.* (Ohio, 2001), the Court of Appeals of Ohio found that Hoffman created a nexus between his arrest for indecent exposure and his ability to teach when he solicited students to write letters on his behalf, and thus the State Board of Education could revoke his teaching license for his conduct. This was also the finding in *Hainline v. Bond* (N.Y. 1992). Hainline was arrested and charged with burglary and theft. Hainline entered into a diversion agreement, and he was transferred to another school in the same district. This case received a great deal of media attention. With that stated, the Secretary to the Professional Practices Commission of the State Board of Education filed a complaint against Hainline's teaching certificate asking for it to be revoked. The Professional Practices

Commission suspended Hainline's certificate for 140 days for immorality based on the conviction of burglary. Hainline filed a motion for the recommendation to be reviewed. It was denied. He then filed an appeal to the district court. The district court affirmed the decision. Hainline appealed the judgment of the district court, which affirmed the decision of the Kansas State Board of Education. Hainline appealed the district court's judgment to the Supreme Court of Kansas. The court found that a nexus does exist between the professional life of a teacher and the teacher's personal life when a felony is committed by the teacher. The "right of privacy" was not violated when Hainline was suspended from his teaching duties for 140 days. Although the statute was vague when it specifically addresses immorality, the Kansas State Board of Education argued that the part of the statute used to determine the suspension would fall under immorality and is grounded in the regulation. Moral turpitude occurred when Hainline exhibited felonious conduct with the conviction of burglary and theft. Felonies are public offenses. Mr. Hainline committed theft and burglary in a public arena. He does not have the right to privacy when convicted of a felony. In general, professionals and nonprofessionals are expected to follow the laws. Teachers, in particular, teach students how to be good citizens and abide by the law. When a teacher commits a felony, this impedes on his ability to influence good conduct.

Table 9

Cases Citing a Nexus

Year	Case	Revocation or Suspension	All Categories	Predominate Category	Nexus Cited
1969	<i>Morrison v. State Board of Education</i>	NO	Immoral Conduct, Moral Turpitude, Unprofessional Conduct	Immorality	YES
1970	<i>Alford v. Department of Education</i>	Revocation	Unfit to teach	Unfit	YES
1974	<i>Erb v. Iowa State Bd. of Public Instruction</i>	NO	moral Unfitness to teach	Immorality	YES
1991	<i>Stelzer v. State Bd. of Edn</i>	Revocation	Conduct Unbecoming	Unprofessional conduct	YES
1992	<i>Hainline v. Bond</i>	140 day Suspension	Immorality	Immorality	YES
1994	<i>Tenbroeck v. Castor</i>	NO	Immorality	Immorality	YES
1995	<i>Thompson v. Wisconsin Dept. of Public Instruction</i>	Revocation	Role Model	Immorality	YES
1996	<i>Alford v. Ingram</i>	Revocation	Immorality Unfitness to teach	Immorality	YES
1996	<i>Alford v. Ingram</i>	Revocation	Immorality, unfitness to teach	Immorality	YES
1996	<i>Alford v. Ingram</i>	Revocation	Immorality, unfit to teach	Immorality	YES
2000	<i>Epstein v. Benson</i>	NO	Immorality	Immorality	YES
2001	<i>In re Appeal of Morri11</i>	Revocation	Unprofessional Conduct, Immorality	Immorality	YES
2001	<i>Hoffman v. State Bd. of Edn</i>	2-years Revocation	Unbecoming Conduct	Unbecoming Conduct	YES
2007	<i>Powell v. Paine</i>	NO	Unfit to teach	Unfitness	YES
2007	<i>Teacher Standards & Practices Commission v. Bergerson</i>	NO	Gross Neglect of Duty Gross Unfitness	Unfitness	YES
2008	<i>Contini v. Ohio State Board of Education</i>	Revocation	Prior convictions and inappropriate conduct with a student	Immorality	YES
2010	<i>Broney v. California Commission on Teacher Credentialing</i>	Suspension 60 Day Stay and 3 years' Probation	Conduct Unbecoming	Unfitness	YES
2010	<i>Macy v. Kentucky Education Professional Standards Board</i>	10 year Suspension	Professional Conduct/Wrongful Discharge	Unfitness	YES
2012	<i>Orth v. Ohio Department of Education</i>	NO	Conduct Unbecoming	Unprofessional conduct	YES

(table continues)

Year	Case	Revocation or Suspension	All Categories	Predominate Category	Nexus Cited
2012	<i>Robinson v. Ohio Department of Education</i>	Suspension 1 year	Conduct Unbecoming	Unprofessional conduct	YES
2013	<i>Talbott v. Teacher Standards & Practices Com</i>	NO	Gross Neglect of Duty Falsify a document,	Unprofessional conduct	YES
2015	<i>Wall v. State Bd. of Education</i>	NO	Conduct Unbecoming	Unprofessional conduct	YES

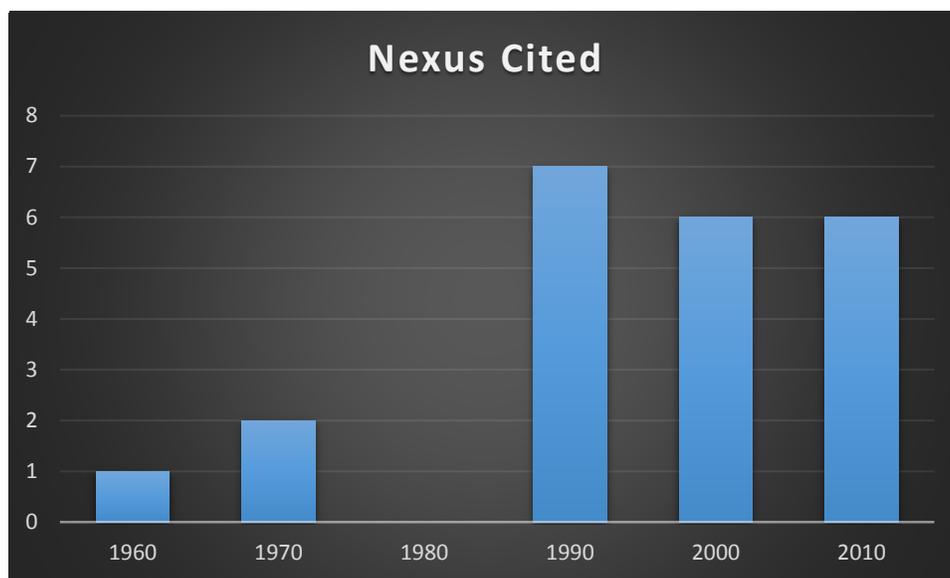


Figure 15. Cases where a nexus was cited.

Summary

The data in this study indicated that courts rule more in the favor of the school board or other state issuing certificate agency in cases involving the revocation or suspension of a teacher's certificate than against it. In this study, the revocation or suspension favoring the school board or other state issuing certificate agency was 75% of the time. Of the total cases briefed, immorality/moral turpitude totaled 44% of the cases, unprofessional/unbecoming conduct involved 18% of the total cases, unfitness to teach involved 12% of the cases, 11% of the cases involved certification issues, unlawful act was 7% of the cases, just cause totaled 5% of the cases, and insubordination, incompetence, and religious dress were 1% each.

The data revealed that there were more cases in the years 1995, 1996, 1999, and 2000 than any other years; however, a majority of the cases have occurred since the 1960s which shows a trend toward the increase in litigation cases involving the revocation or suspension of teaching certificates in the United States. Other noticeable finding in the analysis of the data included: more male teachers than female teachers had their teaching certificates revoked or suspended. More female teachers have had their certificates revoked in the last 25 years than any other time in the study. A majority of the cases involved educators in the role of a teacher, 24 states did not have court cases listed in the study while New York, California, and Florida had the majority of cases, and high school teachers had more revocations than any other level where the school level was known.

The courts are finding that a nexus must exist before a teacher can have their teaching certificates revoked or suspended. In this study, there were 22 cases citing the nexus standard. Nine of the cases resulted in no revocation or suspension of the teachers' certificates, 9 resulted in the revocation of the teachers' certificates, and 4 resulted in the suspension of the teachers' certificates. Over half of the 22 cases (12) have occurred since the year 2000. What was once allowed as being acceptable to revoke or suspend a teaching certificate, is no longer acceptable as a cause for revocation or suspension of teaching certificates. This includes causes such as sexual preference, religious affiliation, sexual infidelity, and misdemeanors not involving children. Teachers have fought back in an attempt to balance their professional and personal lives. The courts have found that a nexus must be present in order for a teacher to have his/her teaching certificate revoked or suspended. In many states, Alabama being one, a teacher cannot lose a certificate for incompetency. In other states, Georgia, Vermont, and Pennsylvania, a teacher can have his/her teaching certificate revoked or suspended for incompetency.

Although the courts are finding that a nexus must be present in order for a teacher's certificate to be revoked or suspended, the courts are also finding that equal protection under the law is not a defense for teachers convicted of certain causes. In the State of Alabama, a teacher cannot have a sexual or inappropriate relationship with a student regardless of the age of the student. If a teacher has a relationship with a student, even if the student has reached the age of consent, the teacher's teaching certificate may be revoked. If the teacher has a relationship with a student who is enrolled in another school or system, the teacher will still be charged under Alabama statute because a teacher is not allowed to have a sexual relationship with any student enrolled in an Alabama K-12 public school. In the state of Alaska, this also pertains to college professors and students enrolled in higher education.

CHAPTER V:
SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

Introduction

The purpose of this research was to examine how the courts have ruled in the revocation and suspension of a teacher's teaching certificate in order to establish issues, outcomes, and trends. A period of time from 1853 - 2015 was investigated in order to develop and analyze an expansive range of the results. Through the collection, examination, and review of relevant court cases, insights gained from the results may be used for public school administrators and school districts in the K-12 setting to protect school districts from litigation and assist teachers in maintaining their certification, avoiding litigation, and provide insight into the future of educational legal issues. Included in this chapter is a summary of the research as it pertains to the research questions, conclusions based upon the analysis of the decisions from the pertinent court cases, and recommendations for further study.

Summary

1. The following research questions guided the data collection and analysis:

What are the issues in court cases involving the revocation or suspension of a teacher's certificate in education?

Data gathered in the study showed that the main issues with teacher revocation or suspension of teaching certificates included immorality/moral turpitude, unprofessional/unbecoming conduct, unfitness to teach, certification issues, unlawful acts, just

cause, incompetence, insubordination, and religious dress. According to the research of this study other issues included issues of the right to privacy for teachers in their personal lives, nexus issues, role model standard issues, and a vagueness in the claims and statutes involving the revocation or suspension of certificates. The case law included in this research study was analyzed and 12 guiding principles were developed to guide K-12 school administrators in their role as a school administrator.

2. What are the outcomes in court cases when a teacher has had his/her teaching certificate revoked or suspended?

In court decisions that ranged from *People ex rel. McIver v. Board of Education of New York*, (N.Y. 1853) through *Wall v. Ohio State Board of Education*, 29 N.E. 3d 1024 (Ohio, 2015), as indicated in the analysis, the courts have ruled in favor of school boards and other state agencies who issue teaching certificates than for teachers. Educators prevailed 24% of the time while overwhelmingly the teacher had his/her certificate revoked 60% of the time or suspended 15% of the time (See Figure 1). Approximately 38%, or a majority of the suspension cases, resulted in a suspension of one-year (see Figure 2). In 92% of the cases involving revocation, the teacher's certificate was permanently revoked (see Figure 3).

The data produced 81 cases; however, there were five cases that included more than one plaintiff. These cases, *Feldman v. Board of Educ. of City School Dist. of City of New York*, (N.Y. 1999); *Comings v. Bd. of Education*, (Cal. 1972); *Alford v. Ingram*, (Ala. 1996); *Mack v. State Bd. of Ed.*, (Cal. 1964); and *Adams v. State, Professional Practices Council*, (Fla. 1981), were listed as separate plaintiffs bringing the total number of teachers or administrators involved in the revocation or suspension of teaching certificates to 88.

State statutes regarding the revocation or suspension of teaching certificates differ from state to state. The research produced a table that listed the causes of revocation or suspension of teaching certificates in all 50 states. A state-by-state table of the causes of the revocation or suspension of teaching certificates was valuable as the researcher progressed through the study (see Table 1).

Nine categories emerged as a result of the analysis including immorality/moral turpitude, unprofessional/unbecoming conduct, unfitness to teach, certification issues, unlawful acts, just cause, incompetence, insubordination, and religious dress. Six categories immorality, unprofessional conduct, unfitness, certification issues, unlawful acts, and just cause emerged as main categories.

Of the total cases briefed, immorality/moral turpitude totaled 44% of the cases, unprofessional/unbecoming conduct involved 18% of the total cases, unfitness to teach involved 12% of the cases, 11% of the cases involved certification issues, unlawful act was 7% of the cases, just cause totaled 5% of the cases, and insubordination, incompetence, and religious dress were 1% each (see Figure 4). The outcome for the immorality charges based on the revocation or suspension of the teachers' certificate included 26 (67%) were revoked, eight (20%) resulted in no revocation or suspension, and five (13%) were suspended (see Figure 5). There were 13 or 34% of the immorality cases that involved some type of sexual contact with students, four cases or 10% of the immorality cases were cases involving homosexuality, and 51% (20 cases) included nonsexual types of immorality (see Figure 7).

There were 16 cases (18%) of unprofessional conduct included in the total cases (see Figure 4). Seven (44%) of the unprofessional conduct cases resulted in the revocation of a teaching certificate. An equal amount, seven cases (44%) resulted in the suspension of a teaching

certificate due to unprofessional conduct. Only two (12%), resulted in the certificate not being revoked or suspended (see Figure 8).

Ten cases (11%) that were categorized as certification cases (see Figure 4). In eight cases, the teacher did not have the proper requirements to maintain the certificate and therefore, the certificate was revoked (see Figure 9).

Ten (12%) cases categorized as unfitness (see Figure 4). Five of the cases resulted in revocation of the teacher's certificate, three cases the teacher had his/her certificate suspended, and two cases resulted in the teachers' certificate not be suspended or revoked (see Table 6). The four cases that resulted in revocation or suspension of the teachers' certificates due to mental unfitness. Six (7%) cases were categorized as an unlawful act not involving sexual misconduct (see Figure 4). Four cases resulted in the revocation of the teacher's teaching certificate and two cases resulted in no revocation.

There were no suspension cases in the category listed as unlawful acts. Four (5%) cases in the study categorized as just cause (see Figure 4). All four of the cases listed, (see Table 8) were breach of contract cases and resulted in a 1-year suspension of the teacher's teaching certificate. Only one (1%) case in each category was categorized as incompetence, insubordination, and religious dress.

Employees involved in the litigation included certified public school teachers who had teaching certificates issued to them by a state or other issuing agency as teachers and administrators. The certifications were held in all areas of the curriculum and included Pre-K-12th grades. Fifty-eight or (66%) of the cases involved males, while 30 (34%) of the cases involved females (see Figure 11); 82 cases involved educators in the role of a teacher and six involved administrators (see Figure 12); 24 states did not have any court cases, while New York

had 17, California had 13, and Florida had nine (see Figure 13). The school level the teacher was assigned to included 23 (26%) of the teachers was unknown, while 31 (35%) of the teachers were high school teachers, 21 (24%) were at the elementary level, six (7%) were at the middle school level, four (5%) were at the middle and high school seventh-twelfth grades, one (1%) at the elementary and middle school K-eighth grades, one (1%) at the elementary, middle, and high school K-12, and one (1%) was a district-level employee (see Figure 14).

Court cases using the nexus standard and role model standard were included in some of the court cases. These standards applied to cases may put the school system and state agencies at a disadvantage when trying to have a teacher's certificates revoked or suspended.

3. What are the trends in court cases involving the revocation or suspension of a teacher's certificate?

The data showed that more litigation has been addressed in recent years. In the late 19th to the mid-20th centuries, there were few cases involving the revocation or suspension of a teacher's certificate. The data revealed that there were more cases in 1995, 1996, 1999, and 2000 than any other years. A majority of the cases have occurred since the 1960s which shows a trend toward the increase in litigation cases involving the revocation or suspension of teaching certificates in the United States. Sixty-two percent of the cases were categorized as immorality and unprofessional conduct cases. Administrators must evaluate these increases in legal cases pertaining to the revocation or suspension of teaching certificates in order to protect students, teachers, the school system, and ultimately him/herself.

It has been established that the states have the right to develop guidelines and requirements for teachers to initially be certified and then to maintain the certificate issued to them. Since the early 1920s to late 1930s, the issuing of teaching certificates has been widely

accepted and acknowledged to be the authority of the states. Because of this, the local school boards no longer hold the authority to issue, revoke, or suspend a teacher's teaching certificate.

When revocation or suspension cases are settled in court, overwhelmingly the teacher is not favored in the ruling. The trend in revocation or suspension favoring the school board or other state issuing certificate agency was 75%. These legal issues included an unfitness to teach, unprofessional or unbecoming conduct, immorality or moral turpitude, incompetence, insubordination, religious issues, role model standard, and other good or just causes. When a certificate was revoked, 92% of the time the revocation penalty was a permanent revocation.

Community standards differ from state to state and change from one decade to the next. For several decades, the courts ruled inconsistently about the rights of homosexuals to hold a teaching certificate; however, during the past two decades, the courts have found more and more that there is not a nexus between homosexuality as a lifestyle choice and a teacher's ability to be an effective teacher. Homosexuality once required an automatic revocation of a teaching license. The trends in the courts showed that this is no longer common practice since the Morrison Standard is often cited involving the revocation or suspension of a teaching certificate.

The courts are finding that a nexus must exist before a teacher can have their teaching certificates revoked or suspended. In this study, there were 22 cases citing the nexus standard. Over half of these cases (12) have occurred since the year 2000. As lifestyles have changed, and community norms have changed, so have the expectations of the role of the teacher. The role model standard has shifted in favor of the nexus standard when dealing with issues such as immorality, homosexuality, unprofessional conduct and other charges the court are now finding to be vague charges. The revocation or suspension must be warranted in the eyes of the court. The courts have found that the role model standard may be applied if a nexus can be proven

between the teacher's misconduct and his/her ability to teach students as such the case in *Adams v. State Professional Practices Council* (Fla. 1981) and *Thompson v. Wisconsin Dept. of Public Instruction* (Wis. 1995).

The trend in court cases showed that teachers are now being held accountable for misconduct. Teachers only prevailed in the revocation or suspension of their teaching certificates in 24% of the cases. In years past, a teacher was allowed to simply resign and move on to the next teaching position. Forty-four percent of the cases of the revocation or suspension litigation involved immorality, which often involved inappropriate teacher-student relationships. This is a trend that seems to be steadily increasing. Of the immorality cases in the study, 81% occurred since 1973, with 60% of them occurring in the last two decades. The courts showed a pattern of being firm with teachers concerning sexual offenses. The data showed that 34% of the cases involving immorality were related to inappropriate sexual contact with students. That was more than any other category classified as immorality. This was also the trend with cases involving unprofessional conduct. The number of cases from 1985 to 2015 was double the number of cases from 1953-1984. The courts are now holding teachers accountable for misconduct where a nexus can be proven between the misconduct and the job performance as a teacher.

Much controversy often lies within the interpretations of the laws, policies, procedures, codes, and statutes, and the high expectations to which teachers are held. This shift to more litigation may be related to the vast increase in the numbers of students and teachers in America's public educational setting. With an increase in the number of students and teachers, there is also an increase in the number of legal case.

The data indicate that high school teachers may be at an increased risk of litigation. The trend seemed to be geared towards more high school teachers having their certificates revoked

than any other school level. Thirty-five percent of the teachers were high school teachers. This number may be considerably higher because 26% of the school level was unknown.

4. What legal principles for educators may be distinguished from a study of court cases involving the revocation or suspension of teacher's certificate?

The research in this study established 12 guidelines and principles for school administrators to consider concerning revocation and suspension of a teacher's certificate. The major principles established from the research may assist school administrators in making the best decisions for the students and teachers she/he leads. The job as an educator requires that teachers and administrators interact with students and others on a regular basis. By having an understanding of the legal issues that may evolve from this interaction with students and teachers, public school administrators are armed with the knowledge to help deflect major issues that may arise. Being a public school administrator is not a task that should be taken lightly. School administrators must be aware of the litigation that is often attached to the position as leader. Administrators and teachers alike are at risk of litigation because of the job they do on a daily basis. It is essential that school administrators are aware of the legalities involved in the job as an administrator.

Guiding Principles

1. It has been established that the states have the right to revoke or suspend a teacher's certificate. (*Superintendent of Common School of Daviess County v. Taylor*, 1899; *Marrs v. Matthews*, 1925; *Fountain v. State Bd. of Ed.*, 1958).

2. A nexus must be present in order to revoke or suspend a teacher's certificate. A nexus must be proven by showing that the teacher's misconduct impacts the teacher's ability to teach students (*Morrison v. Board of Educ.*, 1969; *Adams v. State Professional Practices Council*,

1981; and *Thompson v. Wisconsin Dept. of Public Instruction* 1995). The courts are now finding that a teacher cannot have his/her certificate revoked or suspended if a proven nexus cannot be made between the teacher's misconduct and the teacher's ability to do his/her job in the classroom. A direct correlation must be made.

3. A teacher may be acquitted for all legal purposes, but school boards may continue the process of seeking to revoke or suspend a teacher's license based on certain claims. A charge of a crime does not need to end in a conviction for the certificate to be revoked (*Smith v. State Bd. of Educ.* 1942; *Hodge v. Stegall*, 1952; *Walton v. Turlington*, 1984).

4. Equal protection is not a defense because teachers who are entrusted with the well-being of children, are at different level of expected professionalism (*Vogulkin v. State Bd. of Ed.*, 1961; *Pordum v. Board of Regents of State of N. Y.*, 1973; *Wax v. Horne*, 2003;).

5. Sexual misconduct by teachers has been the most clearly defined by courts. The courts have a history of being firm with teachers concerning sexual offenses that involve teachers in and out of school (*Welcher v. Sobol*. 1996; *Stedronsky v. Sobol*, 1991; *Tenbroeck v. Castor*, 1994; *Hausey v. California Com 'n on Teacher Credentialing*, 2003).

6. The burden of proof is directly placed in the laps of the school officials to determine if the lifestyle choices directly impact the teacher's performance in the classroom and constitutes the revocation or suspension of a teacher's certificate (*Morrison v. State Board of Education*, 1969).

7. Courts uphold the revocation or suspension of a teacher's certificate more often than not once favor has been ruled against them (*Hayes v. State Teacher Certification Bd.*, 2005; *M. T. v. Department of Education*, 2010).

8. Sexual intercourse does not need to occur with a student in order for a teacher's certificate to be revoked. The act of any sexual advancement towards a student such as inappropriate touching or sexual language may also cause a teacher's certificate to be revoked. (*Wax v. Horne*, 2003; in *Contini v. Ohio State Board of Education*, 2008; *Howard v. Missouri State Bd. of Educ.*, 1995)

9. Past criminal history, even before a teacher is licensed to teach, may end in the revocation or suspension of a teacher's certificate (*Alford v. Ingram*, 1996; *Hausey v. California Com 'n on Teacher Credentialing*, 2003).

10. Teachers may have their certificate revoked for sexual misconduct involving a child or student when many years have passed before the claim is made against the teacher (*Welcher v. Sobol*, 1996; *Hausey v. California Com 'n on Teacher Credentialing*, 2003).

11. A teacher's teaching certificate will be revoked if a teacher fails to maintain the necessary requirements for certification or follow the required guidelines when seeking to renew his/her certificate (*Shore v. Board of Examiners of City of N. Y.*, 1977; *Wagenblast v. Crook County School Dist.*, 1985; *Lubin v. Board of Educ. of City of New York*, 1986; *Feldman v. Board of Educ. of City School Dist. of City of New York*, 1999).

12. The courts found that the role model standard is vague and is often difficult to prove unless a nexus is clearly found (*Adams v. State, Professional Practices Council*, 1981; *Walton v. Turlington*, 1984; *Thompson v. Wisconsin Dept. of Public Instruction*, 1995).

Conclusions

Much controversy often lies within the interpretations of the laws, policies, procedures, codes, and statutes, and the high expectations to which teachers are held. Being an administrator requires one to have a working knowledge of the legal issues that impact the teachers and affect

school operations and personnel. Administrators feel the constant strain of having the threat of litigation looming close by. This threat is a constant fear for many administrators and teachers alike. Because of this threat, many administrators have been forced to take a serious look at how litigation impacts their profession. In a study of 500 principals conducted by Joyce (2000), indicated that 65% of principals modified or changed school-related programs as a direct result of legal concerns. Much case law has developed and changed the process of revocation or suspension of teaching certificates. Administrators who are armed with the legal knowledge necessary to conduct school business are more likely to make wise decisions about important issues involving school personnel. In order for an administrator to best protect him/herself from litigation and guide and direct the teachers he/she leads, an administrator should be knowledgeable about how courts have historically settled suits involving the revocation and suspension of teaching certificates. Zirkel (1978) described how school administrators lack the legal knowledge needed to guide school personnel. It is imperative that school administrators are aware of how the courts are considering cases brought against school personnel and the decisions that are being made in those court cases. School administrators have a responsibility to understand the law and how the law impacts teachers and administrators alike.

The focus of this study was to analyze court decisions involving the revocation or suspension of teaching certificates. The analysis of the cases revealed nine categories that emerged as a result of the analysis of the revocation or suspension of teaching certificates. The categories included: immorality/moral turpitude, unprofessional/unbecoming conduct, unfitness to teach, certification issues, unlawful acts, just cause, incompetence, insubordination, and religious dress. Of these nine categories, six categories emerged as main categories. These six

categories included: immorality/moral turpitude, unprofessional/unbecoming conduct, unfitness to teach, certification issues, unlawful acts, and just cause.

Recommendations for Further Study

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

1. Research should be conducted to examine if school districts are reactive or proactive to litigations when it comes to training school administrators in matters involving public school laws as it pertains to the revocation or suspension of teaching certificates.

2. A study should be conducted to examine the revocation or suspension of teaching certificates as it relates to the role of the public school teacher in the k-12th grade setting such as physical education, band director, music instructor, coaching, administration, counseling, and so forth.

3. A postsecondary study should be conducted to examine the issues involved in the revocation or suspension of teaching certificates beyond the K-12th grade setting.

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