

AN EXAMINATION OF COURT CASES RELATING TO THE DISMISSAL
OF K-12 TEACHERS FOR IMMORALITY (1977-2007)

by

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A DISSERTATION

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ABSTRACT

This was a purposeful, qualitative, historical and document-based research study that investigated the trends and outcomes of the legal issues relating to teacher dismissal for *immorality*. The study included 114 cases over a 30-year period spanning from 1977-2007. Federal and state level law cases were researched to determine the ruling of courts as they applied the law and state statutes. Ten guiding principles were developed for school leaders to consider when confronted with teacher misconduct issues.

Terminating a teacher's contract on grounds of *immorality* requires that a school board demonstrates one of two legal tests: the moral exemplar v. the nexus test. The moral exemplar test holds that teachers are held to a higher community standard of a mandatory role model. On the other hand, it has been asserted that teachers are entitled to the right to have a private life and that their privacy should be protected unless it can be proved that the behavior of the teacher directly and negatively impacts his or her teaching or harms the school community. Courts have used one of these legal tests in determining whether the dismissal is warranted.

The literature revealed, and the outcomes of the cases studied, clearly indicate that over the last 30 years courts have moved from applying the moral exemplar standard to teacher dismissal cases relating to immorality to utilizing the nexus test when considering the dismissal of teachers for immoral acts. It is very clear from reviewing both standards that a teacher's conduct outside of the workplace can result in disciplinary action by the school board. The outcomes of this study revealed that school boards have been successful in terminating teachers for immorality including, but not limited to, the following areas: sexual improprieties

with students, violation of school policy regarding alcohol and illegal drug use, theft, dishonesty, grand larceny, inappropriate use of computer and internet access, violation of districts' corporal punishment/discipline policy, homosexual solicitation, violation of sexual harassment policy, use of profanity, breach of contract, conviction of a criminal act, embezzlement, violation of school district's weapons policy, and inappropriate comments to students or co-workers.

DEDICATION

In memory of my beloved and cherished grandparents, Mr. Jimmy and Mrs. Fannie Steele, and
my brother Hosea Steele, who selflessly supported and encouraged me,
who taught me to listen with my heart to find my path in life,
who instilled in me to be a lifelong learner,
who encouraged me to follow my dreams,
who inspired me to reach for the stars...

Throughout my life these individuals taught me the meaning of
perseverance, dedication, and hard work.

Their unshakeable confidence in me has always served as a source of strength.

I feel so blessed to have had them as a part of my life. I will forever cherish their memories.

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What I know for sure is this: The big secret in life is that there is no big secret. Whatever your goal, you can get there--as long as you're willing to be honest with yourself about the preparation and work involved. There are no back doors, no free rides. There's just you, this moment, and a choice.

--Oprah Winfrey

It is with sincere and profound appreciation that I acknowledge some of those individuals who have personified the meaning of the foregoing quote for me, and have made a difference in my life. The completion of this study would not have been possible without the help and assistance of many whom I owe much.

I express sincere appreciation to Dr. David Dagley, the chairperson of my dissertation committee. His guidance and expertise assisted me from the beginning of the coursework to the completion of this project. It was his patience, support, and words of encouragement that enabled me to persevere through very difficult times. Because of the knowledge that I have gained from this journey, I have a deeper appreciation for education law.

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Yes, Emry I have completed all five chapters. Now I don't have an excuse of why we can't go to Cold Stone Creamery on a Sunday afternoon. To my aunts, Geneva Ray, Dorothy Ann Hughes, and Alice Fay Steele who provided lodging and home cooked meals as I spent many hours at McLure Education and Bounds Law Libraries. To my uncles Marvin Steele, Charles Steele, and John Steele, who were available whenever I needed them. Marvin, thanks for returning my overdue books to the library many days. Without my family's support, my pursuit of this doctoral study would not have come to fruition.

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I especially want to express my love and adoration to my Lord and Savior, Jesus Christ, for giving me the strength to persevere through what seemed like a never ending journey. For his grace and mercy, I am eternally grateful.

Education is the key to unlocking the world, a passport to freedom.

--Oprah Winfrey

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CHAPTER I

INTRODUCTION TO THE STUDY

Introduction

The conduct of teachers has been an interest to the public since the beginning of public education. At one time, a teacher's lifestyle was determined to a large extent by a school system's formal or informal rules. An example of a formal rule is *Rules of Conduct for Teachers*, which was published by a local West Virginia Board of Education in 1915 (as cited by LaMorte, 2005):

Rules of Conduct for Teachers

1. You will not marry during the term of your contract.
2. You are not to keep company with men.
3. You must be home between the hours of 8:00 P.M. and 6:00 A.M. unless attending a school function.
4. You may not loiter downtown in ice cream stores.
5. You may not travel beyond the city limits unless you have the permission of the chairman of the board.
6. You may not ride in a carriage or automobile with any man unless he is your father or brother.
7. You may not smoke cigarettes.
8. You may not dress in bright colors.
9. You may under no circumstances dye your hair.
10. You must wear at least two petticoats.
11. Your dress must not be any shorter than two inches above the ankle.
12. To keep the schoolroom neat and clean, you must sweep the floor at least once daily; scrub the floor at least once a week with hot, soapy water; clean the blackboards at least once a day, and start the fire at 7:00 A.M. so the room will be warm by 8:00 A.M.

Obviously, these rules have become obsolete over the years, but they indicate the continuing belief that teachers should act as role models for their students and the community

(Palestini & Palestini, 2006). Perhaps as a reaction to the dubious moral character and conduct of some of the earliest public school teachers, modern teachers in many areas of America continue to be expected to serve as exemplars for the public school students (Allen, 1990). Standards of teacher morality have generally remained relative to the local community and the discretion of school boards, with their conduct subject to close public scrutiny. In fact, at one time it appeared common for teachers to serve at the pleasure of the board. Furthermore, it seems there has always been concern about the competency and orientation of teachers as judged by those who control the schools (Punke, 1971).

According to Clay (1976), the cornerstone of American public education has been the assumption that students, in order to become well-balanced human beings and stable members of the community, must be taught to discern moral values. He states that the teacher must be sensitive to the morality of his own life because his behavior will be emulated by the students in his classroom.

Although the discretionary power of the school boards to determine immorality and to discharge teachers has much support in state statutes and the courts, recent cases demonstrate the fact that school board hearings and dismissal proceedings are essentially a judicial function over which superior court has a statutory right to review. In all dismissal actions the best interests of the school must be intended, and arbitrary or capricious use of power will not survive judicial scrutiny.

For the most part, the courts have supported the inherent right of the employer to dismiss employees without question. This legal principle has traditionally encompassed the public school domain, with school boards viewing teachers as employees in an employer-employee

relationship. But with the increased support from labor unions, professional teacher organizations, and court litigation, this principle of employer right has eroded (Matthews, 1975).

School boards are finding little solace in the statutory authority, as many federal courts have ruled statutes invalid because the term *immorality* was spelled out in education codes as too vague to be used as a basis for dismissal (*Burton v. Cascade School District Union High School District*, 1973; *Jarvella v. Willoughby-Eastlake City Board of Education*, 1967). Legislation in more than half of the states has included immorality, or various causes such as immoral conduct, conduct unbecoming a teacher, unprofessional conduct, moral turpitude, or good and just cause, as a cause of dismissal of teachers. However, few states have attempted to define the term. Alaska is one of the few states that has included a definition of immorality in its statutes: “the commission of an act which constitutes a crime involving moral turpitude” (Kowalski & Benway, 1979). Where the state statutes spelled out the acts that constitute immorality on the part of teachers, the courts have upheld dismissals in most instances (*Hankla v. Governing Board of Roseland School District*, 1975; *Pettit v. State Board of Education*, 1973).

Although a number of federal court rulings have been in favor of the dismissed teacher as long as the alleged immoral act had no clear nexus to job performance or school efficiency, other court cases have supported the basic right of school boards to determine and to dismiss teachers for immoral conduct as long as due process was protected (Shoop & Dunklee, 1992). There is a great deal of writing in the area of school law and much attention given to isolated court decisions concerning teacher dismissals and teacher rights; however, there is a scarcity of comprehensive information dealing exclusively with teacher dismissal for immorality that spans from 1977 to the present.

Statement of the Problem

School boards and school officials are caught in a dilemma. On the one hand communities are expecting that traditionally high standards of morality be practiced by teachers. School officials are being held responsible for disciplining teachers who do not adhere to local moral values and mores. On the other hand, teachers are increasingly challenging through the courts the concept of the employer's right to dismiss teachers for acts in their private lives as well as the discretionary power of school boards to determine immorality and to dismiss teachers for immoral causes.

Different courts have reached different decisions on the issue of teacher dismissal for immoral causes. In *Watson v. State Board of Education* (1971), a California teacher was denied a secondary teaching credential on grounds of immorality because of six convictions involving the use of alcohol. Although there was no proof that his convictions affected his teaching, the court ruled that the evidence amply demonstrated his unfitness to teach (Fischer, Schimmel, & Stellman, 2007).

In contrast, a Florida judge ruled in favor of a tenured fifth grade teacher who was dismissed after a 3-day summer "alcohol-related binge" that resulted in misdemeanor charges, probation, and rehabilitation (*Clark v. School Board*, 1992). The court reversed the teacher's dismissal because the incident took place during the summer vacation, was not widely known, and did not impair her effectiveness.

Another issue that some courts also differ on is shoplifting. Some judges believe that conviction for shoplifting is a sufficient basis for dismissal; others hold that schools must prove that the crime impairs teacher effectiveness. A case illustrating this conflict involved a West Virginia guidance counselor who was fined \$100 for shoplifting at a local mall. The school board

dismissed her; however, the West Virginia Supreme Court ruled in the counselor's favor because there was no evidence that the conviction had any relationship to her professional effectiveness (*Golden v. Board of Education*, 1981). In *Lesley v. Oxford Area School District* (1980), the Pennsylvania state court upheld the right of the school board to dismiss a teacher for shoplifting on grounds of immorality. According to the court, immorality includes conduct that offends community morals and is a "bad example to the youth whose ideals a teacher is supposed to foster" (Fischer et al., 2007, p. 291).

State legislative bodies generally do not remove a cause of dismissal, such as immorality, from their statutes nor bother to define it (Swader, 1997). Courts, on the other hand, may strike down immorality due to the vagueness of the term. Given the subjectivity allowed school boards, due to the lack of specificity of state statutes concerning immorality as a cause for dismissal, and the reliance in many judicial definitions on the standards of the community, it is easy to understand the problems facing many school boards who attempt to dismiss teachers for immoral conduct.

In recent years, there has been a steady supply of court cases dealing with the dismissal of public school teachers for "immorality," "moral turpitude," and "unfitness to teach." This study examines the status of the problem of teacher dismissal for immoral conduct. Formulating a working definition of the concept of immorality in the field of public education, as well as for setting forth legal guidelines for dealing with the issues involved, are also included in the study.

Significance of the Study

Educator misconduct is an issue that receives scant attention from administrators who believe that this cannot happen on their watch, school boards who seek to avoid controversial

issues and adverse publicity, and teacher unions who receive millions of dollars to protect teachers. The examination of judicial opinion regarding selected court cases challenging the dismissal of public education teachers on grounds of immorality as defined by state statutes should be beneficial to educational leadership professors as they prepare individuals aspiring to become school administrators. The findings of this study will also be helpful to school board attorneys as they assist school administrators in teacher termination cases.

The guidelines should be of value to superintendents and principals who are faced with the problem of potential teacher termination. Practices on the part of administrators that have helped the school districts to win teacher dismissal cases will be identified. The guidelines will identify due process regulations omitted by administrators during the process of teacher termination. It is anticipated that the guidelines will help administrators decide whether there is appropriate evidence to withstand a court test. The analyses of the judicial opinion will be particularly beneficial to the researcher who wishes to pursue a position in human resources management in a K-12 public education setting.

Purpose of the Study

The purpose of the study was to examine the literature as well as the state appellate and federal court cases to determine the trends, issues, and outcomes of the dismissal of K-12 public school teachers for immorality during the period from 1977-2007. In addition, the study was to arrive at some conclusions as to the trends and patterns of teacher dismissal for immorality. Guidelines and principles for school and district-level administrators as well as school board members who attempt to dismiss teachers for acts that might be construed as immoral under state statutes were set forth.

Research Questions

This study attempted to examine the problem by seeking to answer the following questions:

1. What are the issues arising in court cases relating to the dismissal of K-12 teachers for immorality?
2. What are the outcomes of court cases relating to the dismissal of K-12 teachers for immorality?
3. What are the trends in court cases relating to the dismissal of K-12 teachers for immorality?
4. What legal principles for school administrators can be discerned from the court cases relating to the dismissal of K-12 teachers for immorality?

Assumptions

The following assumptions should be considered when reviewing this study:

1. The relevant cases were reported in WESTLAW™ Reporter system under the key number *Schools* 147.20.
2. It was assumed that all court cases had been adjudicated in consideration of existing local, state, and federal statutes.
3. The reported cases of teacher dismissal included tenured, probationary, part-time, or annual contract teachers.
4. The method of analysis of cases cited in the study provided data to school personnel relevant to determining principles for teacher dismissal on grounds of immorality.

Limitations

The following limitations applied to this study:

1. The study was limited to an examination of teacher dismissal cases for immorality from 1977 through 2007 involving kindergarten through 12th grade public education teachers across the United States.

2. The study was limited to those cases heard at the state trial court, state appellate court, state supreme court, and federal district and appellate court levels identified through the *Adverse Personnel Actions* topic and key number 147.20 *Immoral or criminal conduct* search in the *Westlaw Digests*, *West's Education Law Reporter*, and database and through keyword and case name searches in the *Lexis-Nexis* database from the last 30 years.

3. The study was limited to cases that specified K-12 public school teachers. Court cases involving private school, parochial, and postsecondary teachers were not examined.

4. The researcher was trained in educational leadership rather than law, and thus carried that perspective into the study.

Definition of Terms

The following words and phrases are key terms were utilized in this study, and may not necessarily be the most common definitions of the terms. Unless otherwise noted, *Black's Law Dictionary* (Garner, 2004) and *Case Analysis and Fundamentals of Legal Writing* (Statsky & Wernet, 1995) were the sources for definitions.

Adjudicate: "To resolve a dispute through the court system" (Statsky & Wernet, 1995, p. 449).

Appeal: “A proceeding undertaken to have a decision reconsidered by bringing it to a higher authority” (Garner, 2004, p. 105).

Appellant: “A party who appeals a lower court’s decision, usually seeking reversal of that decision” (Garner, 2004, p. 107).

Appellee: “The party against whom the appeal is taken and whose role is to respond to that appeal” (Garner, 2004, p. 108).

Brief: “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 the case, consisting of legal and factual arguments and the authorities in support of them” (Garner, 2004, p. 204).

Case law: “The collection of reported cases that form the body of law within a given jurisdiction” (Garner, 2004, p. 229).

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” (Garner, 2004, p. 241).

Citation: “A reference to a legal precedent or authority, such as a case, statute, or treatise that either substantiates or contradicts a given position” (Garner, 2004, p. 260).

Concurring opinion: “A vote cast by a judge in favor of the judgment reached, often on grounds differing from those expressed in the opinion or opinions explaining the judgment” (Garner, 2004, p. 309).

Contract: “An agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law” (Garner, 2004, p. 341).

Defendant: “A person sued in a civil proceedings or accused in a criminal proceeding” (Garner, 2004, p. 450).

de novo: “Anew; afresh; a second time” (Black, 1990, p. 435).

Dismissal for cause: “A dismissal of a contract employee for a reason that the law or public policy has recognized as sufficient to warrant the employee’s removal” (Garner, 2004, p. 503).

Dissenting opinion: “An opinion by one or more judges who disagree with the decision reached by the majority” (Garner, 2004, p. 1125).

Due process clause:

The constitutional provision that prohibits the government from unfairly or arbitrarily depriving a person of life, liberty, or property. There are two Due Process Clauses in the U.S. Constitution, one in the 5th Amendment applying to federal government, and one in the 14th Amendment applying to the states. (Garner, 2004, p. 539)

Evidence: “Something (including testimony, documents, and tangible objects) that tends to prove or disprove the existence of an alleged fact” (Garner, 2004, p. 595).

Fact: “Something that actually exists; an aspect of reality” (Garner, 2004, p. 628).

Holding: “A court’s determination of a matter of law pivotal to its decision; a principle drawn from a decision” (Garner, 2004, p. 749).

Immoral: “Contrary to moral standards” (Statsky & Wernet, 1995, p. 399).

Immorality: Conduct unbecoming; moral turpitude, gross misconduct; “course of conduct as offends the morals of the community and is a bad example to the youth whose ideals a teacher is supposed to foster and elevate (Reutter, 1994, pg. 653.)

Indecent exposure: “An offensive display of one’s body in public, esp. of the genitals” (Garner, 2004, p. 783).

Indecent liberties: “Improper behavior toward a child, esp. of a sexual nature” (Garner, 2004, p. 783).

In loco parentis: “Acting as a temporary guardian of a child” (Garner, 2004, p. 803).

Irremediable: An act that could not be corrected with instruction and supervision or if there is no reason to believe the act would be corrected with intervention strategies.

Issue:

A disputed point or question to which both parties to action have narrowed their several allegations and upon which they are desirous of obtaining either decision of court on questions of law or of court or jury on question of fact. (Black, 1990, p. 831)

Just cause:

A legally sufficient reason. Good cause is often the burden placed on a litigant (usu. by court rule or order) to show why a request should be granted or an action excused. The term is often used in employment-termination cases. (Garner, 2004, p. 235)

Key fact: “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” (Statsky & Wernet, 1995, p. 453).

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” (Garner, 2004, p. 980).

Moral turpitude: “Conduct that is contrary to justice, honesty, or morality” (Garner, 2004, p. 1030).

Nexus: “A connection or link, often a causal one” (Garner, 2004, p. 1070).

Per Curiam: “By the court as a whole” (Garner, 2004, p. 1172).

Plaintiff: “The party who brings a civil suit in a court of law” (Garner, 2004, p. 1188).

Precedent: “A decided case that furnishes a basis for determining later cases involving similar facts or issues” (Garner, 2004, p. 1214).

Principle: “A basic rule, law, or doctrine” (Garner, 2004, p. 1231).

Procedural due process: “The minimal requirements of notice and hearing guaranteed by the Due Process Clause of the 5th and 14th Amendments, esp. if the deprivation of a significant life, liberty, or property interest may occur” (Garner, 2004, p. 539).

Public schools:

An elementary, middle, or high school established under state law, regulated by the local state authorities in the various political subdivisions, funded and maintained by public taxation, and open and free to all children of the particular district where the school is located. (Garner, 2004, p. 1372)

Remand: “To send back to the court or tribunal from which it came for some further action” (Garner, 2004, p. 1319).

Statute: “A law passed by a legislative body” (Garner, 2004, p. 1448).

Substantive due process: “The doctrine that the Due Process Clause of the 5th and 14th Amendments require legislation to be fair and reasonable in content and to further a legitimate governmental objective” (Garner, 2004, p. 539).

Summary judgment: “A judgment rendered without a trial because there was no dispute between the parties on any of the material facts” (Statsky & Wernet, 1995, p. 456).

Teacher: Any certified professional employee of a public school district.

Tenure: “Status afforded to teacher or professor upon completion of trial period, thus protecting him or her from summary dismissal without sufficient cause. Tenure denotes relinquishment of the employer’s unfettered power to terminate the employee’s services” (Garner, 2004, p. 1509).

Termination of employment: “The complete severance of an employer-employee relationship” (Garner, 2004, p. 1511).

Organization of the Study

Chapter I is an introduction to the study. It includes a statement of the problem, the significance of the problem, and a statement of purpose. Also included in this chapter are the research questions, assumptions regarding the study, limitations of the study, a compilation of definitions, and the organization of the study. Chapter II is a review of the literature that includes a historical overview of expected teacher conduct and the varied definitions of immorality as outlined in case law prior to 1977. Also included in Chapter II are discussions about teacher dismissal cases for immorality prior to 1977, statutory causes for dismissal according to each state's statute, procedural constitutional requirements for teacher dismissal for immorality, the prevalence of sexual misconduct by educators, and the impact of technology on educator misconduct. Chapter III explains the methodology and procedures used in this study as well as a discussion of statutory causes for teacher dismissal. Also included in this chapter are introductions to qualitative research, historical research, and legal research. Special attention is given to the process of conducting legal research at the law library and to using the West's digests and reporters. Chapter IV presents the case briefs regarding teacher dismissal on grounds of immorality. An analysis of the briefs is also included in Chapter IV. Chapter V contains the summary, conclusions, and guidelines and principles for school officials. The chapter also contains recommendations for further study in the area.

CHAPTER II

OVERVIEW OF THE LITERATURE

Introduction

The purpose of this chapter was to examine the literature related to teacher dismissals due to immorality issues. An attempt was made (1) to review and assess the thinking of researchers in the fields of philosophy, education, and law as revealed in the literature; (2) to assess movement in the field of education in view of teacher dismissal problems and court decisions related to dismissal on the ground of immorality; and (3) to build a conceptual base for succeeding chapters. The literature was divided into several broad categories: (1) historical overview; (2) immorality defined; (3) professional ethics; (4) teachers' personal conduct and right to privacy; (5) statutory causes of teacher dismissal; (6) due process; and (7) the impact of technology on educator misconduct.

Historical Overview

Since the beginning of public education in the United States, there has been an interest in the conduct of teachers. Perhaps as a reaction to the dubious moral character and conduct of the earliest public school teachers, modern teachers in many areas of America continue to be expected to serve as exemplars for the public school students (Allen, 1990). In the past, schools severely restricted many aspects of a teacher's personal life. Minehan (1927) included the

following excerpt from a teacher's contract in 1920 as cited in Fischer et al. (2007):

I promise to abstain from all dancing, immodest dressing, and any other conduct unbecoming a teacher and a lady.

I promise not to go out with any young man except in so far as it may necessary to stimulate Sunday school work.

I promise not to fall in love, to become engaged or secretly married.

I promise to sleep at least eight hours a night and to eat carefully . . . in order that I may be better able to render efficient services to my pupils. (p. 275)

As Joel Spring (2005) suggested in *The American School 1642-2004*, the common school movement was imbued with a spirit of hope that the common schools would bring about the good society by improving economic conditions, providing equality of opportunity, eliminating crime, and maintaining political and social order. Teacher educators of the 19th century believed that the success of the common school project was dependent, in large part, on the development of moral character in school children. As a result, a great emphasis was placed on the moral character of the teacher. Spring recalls,

The teacher was to be a paragon of virtue whose influence would be felt and imitated by the students in the common school. If the schools were to reform and morally uplift society, it was reasoned, it was of fundamental importance that the teacher functions as a model of morality. Consequently, along with education in the subject matter to be taught, a major goal of teacher training was to link methods of instruction, classroom management, and the characters of teachers to the development of students' moral character. (Spring, p. 138)

As the common school movement gained momentum in the years after the Civil War, the need for a professional teaching corps emerged alongside a desire for a stable, moral teaching force. As Paul Mattingly (1975) demonstrated in *The Classless Profession: American Schoolmen in the Nineteenth Century*, the early common-school reformers were certain that the teacher's moral character was essential, even if they could not always articulate with clarity how, exactly, the teacher's character would manifest itself in pedagogical terms. Mattingly wrote,

Before the 1840s and 1850s, popular and professional discussions of pedagogy described the educational process and goals in vague, poorly defined terms. The educational literature stressed the importance of a teacher's moral character in producing desired changes among his students, but at no point did they explicate the full complexities of the learning process, nor did they discuss the nature of moral character. The rhetoric of the time attributed any change of mind, any alteration of moral conviction, and development of social consciousness in a student, or, in a word, any educational experience, primarily to the moral and personal qualities of the instructor. This assumption about the pivotal role of a teacher's character reduced the technical aspects of pedagogy to a subordinate position. (p. 62)

As institutions began to emerge to train teachers for the workforce, the development of teachers' moral character was seen as paramount. Mattingly (1975) explained,

The major institution for preparing young men for a worthy profession in education, for heightening their own awareness of themselves and of their talents for instruction, or to borrow the schoolmen's own term, for "awakening" aspirant professionals, was the teacher's institute. For the first generation of professional educators this institution made explicit, more than any other educational agency, how determined schoolmen were to equate professionalization with the "awakening of moral character rather than with the training in communicable skills and the standard techniques of teaching. "Awakening" arranged the inspiration of the inner man; training assured at least minimal competencies in actual classroom performance. Professionals employing numerous individualized strategies to inculcate character in these early years always discussed their techniques in non-mechanical terms, as emanations of moral character. (pp. 62-63)

Thus was born the notion of the teacher as a paragon of virtue. Spring (2005) echoed Mattingly's observations about the centrality and lasting effects of this focus on teacher morality when he suggested that "Through the nineteenth century and into the twentieth, teachers were expected to live exemplary lives, with their social activities constantly under public scrutiny" (p. 138).

During the 1950s and 1960s, teachers who violated their community's moral standards usually resigned or were quickly dismissed. Few educators doubted that teachers could be fired for adultery, drunkenness, homosexual conduct, illegal drug use, committing a felony, or becoming pregnant while single. However, in recent years, community beliefs have divagated

about what constitutes immoral conduct. The concept of immorality seems to vary according to time and place (Fisher et al., 2007). Changes in community attitudes toward public school teachers came about with industrialization and the migration of a large number of people to cities (Rich, 1986).

There has been an understood expectation that a teacher's character and conduct was to be above those of the average person not working in so sensitive a relationship as that of teacher and student. Nevertheless, there has been a discernible trend toward according teachers more freedom in their personal lives than was true in the more distant past (Reutter, 1994). Ingersoll (2003) suggested that "how teachers behave and the values to which they expose children" remains "of special concern to parents and the public" (p. 106). But, he insisted, "often there is little consensus on the degree to which the personal appearance and values of teachers can and should be controlled" (Ingersoll, p. 106). Vacca (2005) stated that public school teachers must recognize that they have both ethical and legal responsibilities to their employer (the local school board) to work to protect and maintain the relationship of public trust and reliance that exists between their school system and the community, especially parents. Moreover, and as part of this public trust, they are (1) obligated to conduct themselves in public in ways that do not offend the community, and (2) expected to function as role models for the students they teach.

In another leading case, *Morrison v. State Board of Education* (1969), the Supreme Court of California listed some relevant factors that must be considered in determining whether a teacher's alleged wrongdoing constituted grounds for dismissal:

- 1) The court listed the 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 circumstances, 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 questioned conduct, and
 - 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.
- (Trebilcock, 2000, p. 448)

According to Clay (1976), a cornerstone of American public education has been the assumption that students, in order to become well-balanced human beings and stable members of the community, must be taught to discern moral values. In addition, a teacher must be sensitive to the morality of one's own life because one's behavior will be emulated by the students in one's classroom.

Traditionally, teachers have been compelled to adhere more strictly to the community's moral codes. They have been considered as holding a special position of trust and responsibility because of their relationship with the children of the community. The courts have interpreted this concept by attaching the status of exemplar to the profession of teaching, thus holding teachers to a higher standard of conduct than the average citizen (DeMitchell & DeMitchell, 1990).

Immorality Defined

Reutter suggested that immorality is a value-laden word that is defined in a subjective manner. One of the most quoted definitions of the term *immorality* was set out in *Horosko v. Mount Pleasant Tp. School District* (1939) by the Supreme Court of Pennsylvania: "immorality is a course of conduct as offends the morals of the community and is a bad example to the youth whose ideals a teacher is supposed to foster and to elevate" (Reutter, 1994, p. 653).

More than half of the state statutes have included immorality as grounds for teacher dismissal; however, few have defined the term. In some statutes, it is not as clear what conduct is

required in order to terminate a teacher based on immorality. This term has given courts, as well as teachers, difficulty in ascertaining exactly what conduct is prohibited (Fulmer, 2002).

Because the legislatures have been remiss in defining the specific behaviors that have led to dismissal for immorality, the task has been left to the courts. However, a review of court decisions yielded some consistency in the definition of the term as applicable to teachers. The Supreme Court of Michigan made the following statement in a 1936 ruling:

Immorality is not necessarily confined to matters sexual in their nature; it may be that which is *contra bonos mores*; or not moral, inconsistent with rectitude, purity, or good morals; contrary to conscience or moral law; wicked; vicious; licentious, as an immoral man or deed. Its synonyms are: corrupt, indecent, depraved, dissolute; and its antonyms are: decent, upright, good, and right. That may be immoral which is not decent. (*Schumann v. Pickert*, 1936)

In a 1960 California case, the Court of Appeals provided another judicial definition:

The term “immoral” has been defined generally as that which is hostile to the welfare of the general public and contrary to good morals. Immorality has not been confined to sexual matters but included conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or a willful, flagrant, or shameless conduct showing moral indifference to the opinion of respectable members of the community, and as an inconsiderate attitude toward good order and public welfare. (*Board of Education of San Francisco Unified School District v. Weiland*, 1960)

In *Harry v. Marion City Board of Education* (1998), the court stated, as cited by Fulmer (2002),

Immorality is an imprecise word which means different things to different people. In essence, it connotes conduct not in conformity with accepted principles of right and wrong behavior. It is contrary to the moral code of the community; wicked, especially, not in conformity with the acceptable standards of proper sexual behavior.

School boards in 38 states are statutorily authorized to dismiss a teacher on a direct charge on immorality and/or moral turpitude. No other single charge has been as widespread in dismissal statutes. In the remaining 12 states, statutory grounds of good or just cause, unfitness to teach, or unprofessional conduct may be used to dismiss a teacher for immoral conduct. While legislatures have chosen to cite immorality as a cause for dismissal, they have been reluctant to

define the term or to discuss its application to specific conduct (Landauer, Spangler, & Horn, 1983).

Landauer et al. (1983, p.155) listed 13 categories of conduct which may lead to dismissal:

1. Heterosexual conduct with students
2. Heterosexual conduct with non-students
3. Homosexuality
4. Non-sexual misconduct with students
5. Physical abuse of students
6. Classroom discussion or use of materials that are sexual in nature
7. Use of profanity
8. Misconduct involving drugs
9. Misconduct involving alcohol
10. Other criminal misconduct
11. Misappropriation of funds
12. Cheating
13. Lying

Standards of morality differ from community to community and change from year to year. Delon (1978) stated for this reason, caution must be used in attempting to specify what conduct currently represents “immorality,” especially that sufficient to justify the dismissal of a teacher or revocation of the teaching certificate.

For educators to be dismissed or terminated under a charge of immoral behavior or moral turpitude, there must be a nexus or connection between the personal behavior that is considered immoral and their effectiveness as professional educators. The educator’s private or personal actions must have had an adverse effect upon the school and the community. This adverse effect would create an environment that would seriously hinder their ability to be effective teachers.

This legal standard has precluded any universal definition of immorality. Each charge must be judged whether or not a nexus between private and professional life has been created (Bradley, 2005).

Professional Ethics

Codes of professional ethics have been created by professional organizations to bridge the gap between individuals' personal character and morality and the standards of practice members agree will guide their work. Ethical codes describe professionals' responsibilities to their clients, each other, and society while offering the public an assurance that practitioners' behavior will live up to their high expectations (Freeman, 2000).

There has been a renewed interest, as in other professions, in professional ethics for educators. The ethics of teaching is based in "those norms, values and principles that should govern the professional conduct of teachers and other educational professional" (Stengel & Tom, 2006, p. 56). Because teachers have presumed legitimacy in the eyes of students and because they wield power, character education proponents believe they should model moral behavior (Lockwood, 2009). Teaching requires teachers to constantly make ethical choices over matters both within and outside the school context, often with little assistance or guidance. Unlike many occupations, the teacher cannot easily live two lives--that of teacher and that of private individual. Teaching, by its very nature, encompasses both these aspects (McKenzie & Clark, 2003). An educator must be honest, trustworthy, caring, and fair, providing both educational instruction and an appropriate role model for the students in their class. Moral matters are an enormous part of what it means to be formally engaged in the education of the young (Fenstermacher et al., 2009).

In some cases, teacher dismissals could be avoided if the study of professional ethics became an integral part of teacher preparation programs (Rich, 1987). The pre-service teacher should understand community expectations and teacher's rights, including the right to due process. This area includes the teacher's rights as a citizen, community misconduct and the

grounds for dismissal, a teacher's relations with parents, the holding of public office, and conflicts over employment and outside incomes. Thus, problems of immorality can be reduced when teachers become more knowledgeable about professional ethics and learn to think critically about ethical problems, and when school boards and administrators fully protect teachers' rights and clearly inform them of school and community standards.

Teachers' Personal Conduct and Right to Privacy

The statutes of most states provide for dismissal of teachers on grounds of immorality or other similar misconduct. Immorality is perhaps the most widespread single statutory cause for dismissal of public school teachers (Landauer et al., 1983). Although the scope of immorality as a ground for teacher termination is not limited to sexual immorality, dismissals for sexual immorality appear to be the "most sensitive, the most controversial, and perhaps the most frequent" (Dutile, 1986, p. 104) among actions to fire teachers for cause.

Even more controversial and especially difficult are teacher dismissals in which the alleged acts of sexual immorality are committed or practiced outside of the school environment and do not directly involve students (Keating, 1992). Matters of sexual immorality outside the classroom and not involving students raise significant issues regarding the privacy rights of teachers and the relevance of the alleged misconduct to job performance and/or fitness to teach. Therefore, dismissal of teachers for sexual immorality under such circumstances can be fraught with peril for both school boards and teachers. According to Shivers (2004), most employees believed that what they do off the job especially in regard to legal activities within the confines of their own homes and own time, is an area where the employee's public employer should stand clear.

Francis and Stacey (1977) stated that deviant behavior of school personnel outside the school has become a serious problem to administrators and school board members. Violations of the moral code of the community in school may have a direct impact upon students and thus constitute just cause for dismissal. On the other hand, immorality outside the school building and on the educator's own time might have no ill effects on students and no discernible relationship to job performance and efficiency. Two legal principles that have become the central issue in teacher dismissals and subsequent litigation are the right to privacy and demonstration of a nexus between the alleged immoral acts and fitness to teach (Fischer et al., 2007).

Historically, parents and school officials have maintained that a teacher cannot lead two lives--one as a role model in school and another as a private citizen. It was assumed that one who chose a career in teaching surrendered a substantial measure of individual privacy. The sacrifice of individual freedom was a necessary adjunct to the overriding goal of guiding the nation's youth to moral ground that was equal to or above the standards of the community (Hooker, 1994).

When he enters the teaching profession, a person legally surrenders a measure of his freedom of action. It should be remembered that a teacher may legally be free to be immoral, so long as he violates no law, but he is not legally free to be a teacher and engage in immoral conduct. (as cited in Hooker, 1994)

According to Hooker (1994), Hamilton wrote what was thought to be the "settled law" on the teachers' right to privacy, or more precisely, the lack thereof; since then, teachers have fought back. Teachers have asked the courts to restore them to their teaching positions when boards of education have terminated their contracts for questionable conduct outside the classroom.

The thread that is woven throughout the entire fabric of humanity--from education theory, medical theory, sociology theory, and psychological theory, rests a premise that teachers are role models. John Dewey (as cited in Hooker, 1994) stated that “there cannot be two sets of ethical principles or two forms of ethical theory; one for life in the school and the other for life outside the school as conduct is one, the principles of conduct are also one” (p. 6).

In *Pickering v. Board of Education* (1968), the Supreme Court rendered its first opinion in a case involving teacher conduct not connected with alleged subversive activities. The basis for dismissal of a teacher was a letter the teacher had written to a newspaper attacking the school board’s handling of a bond issue and its subsequent allocation of financial resources between the school’s educational and athletic programs (Spring, 2008). A further statement was that the superintendent attempted to prevent teachers in the district from opposing or criticizing the proposed bond issue.

The board contended that the letter was detrimental to the best interests of the schools. It also objected to certain statements which were not accurate. The Court noted that the criticisms were in no way directed to any person with whom the teacher would normally be in contact in the course of his daily work as a teacher. The Court found no evidence that any actual harm to the schools or interference with their operation had resulted. The court noted that the public interest in having free and unhindered debate on matters of public importance was crucial, and that “teachers are, as a class, the members of community most likely to have informed and definite opinions as to how funds allotted to the operation of the schools should be spent. Accordingly, it is essential that they can speak out freely on such questions without fear of retaliatory dismissal” (Spring, 2008, p. 339). The court ruled in favor of the teacher.

In a landmark teacher termination case, *Morrison v. Board of Education* (1969), a teacher's right to privacy was addressed. The case involved Marc Morrison, a teacher for the Lowell Joint School District. During April 1963, Mr. Morrison engaged in a "limited noncriminal" physical relationship with a fellow public school teacher, Fred Schneringer, to whom he had been giving 'counsel and advice' about his "grave marital and financial difficulties." Morrison had never been accused or convicted of any criminal activity and the record contained "no evidence of any abnormal activities or desires by Morrison since the Schneringer incident some six years in the past" (Kaufman & Kaufman, 2005, p. 822).

One year after the incident with Mr. Morrison, Schneringer reported it to the superintendent of the Lowell Joint School District. As a result, Morrison resigned from his teaching job on May 4, 1964. Nineteen months later, the State Board of Education held hearings to determine whether to revoke Morrison's life diplomas. Even though no evidence was presented that he had ever committed any act of misconduct while teaching, the board defended its action by saying that teachers should be models of good conduct, that state law requires teachers to impress on their pupils' "principles of morality," that homosexual behavior is contrary to the morals of standards of the people of California, and that the board of education is required to revoke a teacher's credentials for immoral conduct (Fischer et al., 2007, p. 276).

The Supreme Court of California overturned the board's decision because it found that the applicable statute only allowed the dismissal of teachers whose immorality, unprofessional conduct, or moral turpitude rendered them unfit to teach (Fischer et al., 2007).

Zirkel and Gluckman (1980) discussed the factors that a board may consider when determining whether a teacher's conduct indicates unfitness to teach. These include the following:

1. Likelihood that the conduct may have adversely affected the 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; and
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. (p. 113)

In essence, the court was saying that any act that substantially interferes with the education of children and directly affects the teacher's fitness to teach can form the basis for charges of immorality (Essex, 2009).

In *Wishart v. McDonald* (1973), the courts upheld the dismissal of a Massachusetts teacher for out-of-school behavior on grounds of immorality and public conduct unbecoming a teacher. The teacher had been observed on several occasions moving his property with a mannequin, dressing it in female attire, undressing it, caressing it in the area of the breast, engaging in lewd and suggestive action, and engaging in what witnesses interpreted as a form of masturbation. The court rejected the claim that the plaintiff had a right to privacy on his own property. Because the conduct was certain to gain a degree of notoriety, the court reasoned that his effectiveness as a teacher and his working relationships within the school system would be impaired. It was essentially the effect of the immorality, rather than the immorality per se, which led the court to sustain the dismissal.

Concept of Nexus

In most jurisdictions, the behavior in question must relate in some meaningful way to the teaching profession to warrant an action of dismissal or revocation of license (Weldon, 2003).

Due process requires that the dismissal of a teacher or other limitation of property or liberty be justified by demonstration of a rational nexus between the proscribed activity and a serious limitation of the education process. A nexus is commonly defined in teacher employment issues as a connection or link between personal conduct and fitness to teach (Dunklee & Shoop, 2002).

Considerations in determining whether or not a nexus exist often include the following:

- The likelihood that the conduct has or may adversely affect students or fellow teachers
- The degree of such adversity now or anticipated
- The proximity or remoteness in time of the conduct
- Extenuating or aggravating circumstances, if any, surrounding the conduct
- The praiseworthiness or blameworthiness of the motives resulting in the conduct
- The extent to which disciplinary action may cause an adverse impact or “chilling effect” on the constitutional rights of the teacher. (Dunklee & Shoop, 2002, p. 92)

Moral Exemplar v. Nexus Standard

Terminating a teacher’s contract on grounds of immorality requires that a school board demonstrates one of two legal tests: the moral exemplar v. the nexus test. The moral exemplar test holds that teachers are held to a higher community standard of a mandatory role model. On the other hand, it has been asserted that teachers are entitled to the right to have a private life and that their privacy should be protected unless it can be proved that the behavior of the teacher directly and negatively impacts his or her teaching or harms the school community (DeMitchell, 1993, 1997; Zirkel, 1998). Courts have used one of these legal tests in determining if the dismissal is warranted.

Although there is a small grouping of states that still view teachers as “moral exemplars” for the community, long gone are the days when a school board can dismiss a teacher solely on the basis of engaging in “immoral conduct,” which usually translates into an action that is contrary to prevalent community beliefs. During the early 20th century, a simple rumor was

enough to ruin a teacher's career, whether it was true or not. With the moral exemplar standard, the school board needs to only demonstrate that the conduct or activity engaged in is immoral and that it is adequate evidence to sustain the dismissal of the teacher for immorality.

Some courts have consistently ruled that when educators subscribe to personal habits or behaviors that may be contrary to currently accepted norms, they can place their positions at risk. These courts have agreed that no amount of standardization of teaching material or lesson plans can eliminate the *personal qualities* teachers bring to the learning environment. Furthermore, educators serve as *role models* for their students, exerting subtle but important influence over students' perceptions and values. A South Dakota court in *Sullivan v. Meade City Independent School District* (1975) upheld the dismissal of a teacher who was living with a boyfriend in a mobile home provided by the school system. Many of her students and parents were aware of the living arrangements. The teacher challenged her dismissal on the ground that the action of the school board constituted an abridgement of her right to privacy and freedom of association. The court ruled that the school board may inquire into the character and integrity of teachers. The conclusion that the school board reached as a result of these inquiries could not be trivial or unrelated to the educational process. In addition to the moral exemplar test, the court found that a nexus existed between the teacher's out-of-school behavior and her effectiveness as a teacher. Her dismissal was affirmed. Dunklee and Shoop (2002) stated that through both presentation of course materials and the examples they set, educators have the opportunity to influence the attitude of students toward government, the political process, and a citizen's social responsibilities. The courts are in agreement that this influence--this exemplar status--is critical to the continued good health of democracy.

However, today, in another larger grouping of states, school boards must demonstrate a nexus or relationship between the proscribed conduct and a negative impact on the teacher's job performance. The courts in these particular states are saying that there must be a nexus or connection between the teacher's actions and his ability to teach (Hooker, 1994). The nexus standard is more difficult for school boards to justify termination of a teacher on grounds of immorality.

The incidence of unwed, pregnant teachers is becoming increasingly common in the nation's public schools. In the past, school boards usually considered a single teacher's pregnancy to be prima facie evidence of immorality and a justification for dismissal. In *Reinhardt v. Board of Education* (1974), a teacher who was 8.5 months pregnant and married for less than 1 month was dismissed for immorality. A trial court reversed the action of the board of education, and an appellate court affirmed the judgment. According to the courts, the record of the hearing disclosed that the pregnant teacher's presence caused no injury to the students, faculty, or school. Neither the parents nor the students complained of her presence. There was no evidence of a breakdown in her relationship with other teachers, her ability to teach, or in the standing of her school as an educational institution. The appeals courts ruled that immorality is sufficient cause for dismissal only where the record shows harm to students, faculty, or the school itself. Because there was an absence of this showing of harm, the teacher was reinstated to her position.

Some courts have ruled that the conduct of an educator's private life must be just that: private. They hold that there exists not only an educator's right to privacy but also an educator's duty of privacy. As a result, it appears that the educator's duty to maintain privacy within the school environment is absolute. Dunklee and Shoop (2002) stated that if school employees value

their privacy and their positions as educators, allowing their private lives to become public is a choice that may bear consequences.

In essence, some states require that a nexus, or connection, be evident between the educators' private acts and their work in the school, in order for private acts to have any bearings on their employment. If a nexus cannot be shown--that is, that something in the educator's private life has reduced the educator's ability to maintain discipline, present curriculum, or in some other way, perform his or her professional duties--then actions in the educator's private life may not be usable in a disciplinary or termination proceeding (Dunklee & Shoop, 2002).

Imber (2001) believed that school boards should do everything in their power to ensure that the safety of their students is not compromised and that every teacher is effective in the classroom. But unless student safety is at risk or state law requires that they act, school boards should leave the punishment of off-campus crime to the criminal courts. And with regard to noncriminal behaviors that affect neither student safety nor classroom effectiveness, school boards should recognize that teachers' lives are their own.

Teacher Privacy and Social Networking

As we have become firmly rooted in the technology tools of the 21st century, social networking has evolved as an integral part of our reality. The introduction of online social networking has created a cultural shift related to the idea of privacy (Carter et al., 2008).

Many teachers view social networking sites, such as MySpace, Facebook, and YouTube, as an avenue to enhance instruction. Other school professionals have created social networking profiles as a means to generate conversation about programs.

However, while there have been many benefits that teachers are experiencing from using social networking technology, other uses are being scrutinized. Recent reports in the media have shown teachers being reprimanded for what school districts consider inappropriate activity. Such questionable content includes candid photos, racy or suggestive song lyrics, and references to sex or to alcohol or drug use (Carter et al., 2008). Some districts have taken a wide range of disciplinary actions, including dismissal of teachers for questionable uses of social networking.

The ability and authority of a school district to discipline a teacher for his or her off-duty, online conduct depends upon the following: (1) whether the teacher has tenure; (2) the nature of the offending conduct, which in many cases is statutorily defined; (3) the nexus between the conduct and job performance; (4) the terms and conditions of a collective bargaining agreement; and (5) first amendment considerations (Todd et al., 2008).

Educator Sexual Misconduct with Students

The taboos regarding the sexual abuse of children who are subject to the control of a parent are similar to the taboo of the sexual abuse of a student by an educator who stands in the place of the parent. Richard Riley, the former U.S. secretary of education, stated that “Any sexual harassment of a student--particularly sexual abuse by a teacher--is a basic breach of trust between the school and the student and family” (DeMitchell, 2007, p. 84).

There is little dispute among the courts that teachers who have sexual contact with students will be dismissed (Looney, 2004). In *Weissman v. Board of Education of Jefferson County School District* (1976), a tenured teacher was dismissed for what he considered “horseplay,” which consisted of touching and tickling the girls on various parts of their bodies and occasionally between the legs in proximity to the genital areas. The conduct was

reciprocated by the girls. During the course of this conduct, the dialogue between the teacher and students was sometimes vulgar, suggestive in nature, and contained many sexual innuendos. Even though all involved denied any sexual activity, the court held that there is no place for such conduct in an educational setting.

Dismissal of teachers who have sex with minors is always upheld. It does not matter whether the minor was currently enrolled in the teacher's school or even in the same school district (Imber & Geel, 2004). In *Elvin v. City of Waterville* (1990), a Maine Supreme Court upheld the dismissal of a female elementary teacher who had sexual intercourse with a 15-year-old boy. It does not matter if the sexual relationship took place prior to the teacher's current employment. A teacher's dismissal was allowed when a 23-year-old man established that his elementary teacher had sexually abused him many years before (*Fisher v. Independent School District*, 1984).

Prevalence of Sexual Misconduct Against Students

A major problem facing school administrators is the issue of sexual misconduct against students by school personnel (Shakeshaft, 2003; U.S. Department of Education, 2004). Shakeshaft defined educator sexual misconduct as any behavior of a sexual nature which may constitute professional misconduct (U.S. Department of Education, 2004).

Shakeshaft (1994) estimated that 15% of America's students will have experienced educator sexual misconduct before they graduate from high school. After conducting a longitudinal study surveying 778 superintendents in the state of New York on the incidence of educator sexual misconduct and a telephone survey of 225 school superintendents who reported they had dealt with sexual misconduct against students by school personnel, Shakeshaft and

Cohan (1995) concluded that the approximate number of educators implicated ranges from 0.04% to 5.0% of the teaching force. Shakeshaft (1995) provided a state of the nation report to Congress under the No Child Left Behind Act that surveyed the extent of employee sexual abuse or harassment and pervasiveness of sexual harassment of students in our nation's schools.

Hendrie (1998), an associate editor for Education Week, conducted an investigative study of educator sexual misconduct. Hendrie (2003) presented the update of the 1998 study, including the survey she circulated of state sexual misconduct policies from each of the 50 states. The results of the survey found that more than half the states now have laws that punish educators who abuse their positions of trust, and though school personnel in several states may legally have sex with students as young as 16, many more states are revising criminal codes to elucidate that such conduct is inappropriate. At the time of her investigation, applicants seeking state certification in 42 states were required to undergo criminal background checks involving fingerprinting through the Federal Bureau of Investigation (FBI) and the state police versus the handful of states that were requiring background screenings decades ago. Hendrie (2003) also discovered that many more states were requiring local school officials to inform the state if an educator left his or her teaching position due to suspicions of educator sexual misconduct.

In Stover and Cook's (2009) article, school board attorneys were surveyed to determine what are the top 10 hot issues faced by school districts. Sexual misconduct by teachers was ranked ninth on the list. A 2007 report by The Associated Press found more than 2,500 cases of teachers who lost their teaching certificate on charges of sexual misconduct over a 5-year period (Stover & Cook, 2009). This number does not include the cases that were never reported or dismissed for lack of evidence.

When confronted with any kind of notice of substantial risk of educator sexual misconduct with students, Kent (2006) recommended that school districts should always err on the side of the student. School districts can avoid liability suits by taking prompt, prudent action to follow district policy, investigate the circumstances, confront the parties, preserve confidentiality, and document the incident with a letter to the employee's file. It also may be necessary to review professional conduct and ethical behavior with the employee.

The Arizona Department of Education developed guidelines in a handbook for all of its employees that outlined the educators' obligations to report suspected misconduct as well as the consequences for failure to report (Hendrie, 2003). It is noted in the guidelines that failure to comply could result in criminal and administrative proceedings against the school district.

The Impact of Technology on Educator Misconduct

The use of technology has recently been a concern for parents trying to keep their children safe from victimization, including child sexual abuse. At this point, most Internet-related child abuse is arguably consensual and seems to lead to statutory rape charges more often than to other types of sexual abuse charges (as cited in Sharbek & Parrish, 2009; Wolak, Finkelhor, Mitchell, & Ybarra, 2008).

While technology might provide access to youth, it also assists in investigations into allegations of abuse (Irvine & Tanner, 2007; Maxwell & Holovach, 2007). Text messaging, e-mail, and postings on sites such as Facebook and MySpace are becoming new and prevalent pieces of child sexual abuse, including child sexual abuse involving educators (Sharbek & Parrish, 2009).

Grooming of victims still happens face-to-face in most instances but technology is making pursuing victims easier in that it allows a more constant access than in the past. The use of digital tools can help perpetrators pursue a potential victim with more persistence, but it also leaves a trail that can aid in the prosecution of alleged child sexual abuse, especially when the victim refuses to talk about the situation (Maxwell & Holovach, 2007).

Statutory Causes of Teacher Dismissal

Virtually every state statute allowing for the termination of a teacher's contract has some provision relating to character. These provisions fall under several headings such as unfit to teach, immoral conduct, immorality, good and just cause, and neglect of duty (Fischer, 1999). According to Fischer (1999), the terminology used in these statutes is broad and vague. Swader (1997, p. 26) listed 55 statutory causes for teacher dismissal. Of the 15 categories for causes for teacher dismissal, immorality is included in a category with unprofessional conduct and dishonesty (see Table 1).

Table 1

Statutory Causes of Teacher Dismissal

1. Incompetency	29. Violation of a law
2. Insubordination	30. Inefficiency
3. Neglect of duty	31. Willful neglect
4. Immorality	32. Grounds for revocation of certificate
5. Reduction in force	33. Failure to pay debts
6. Other good and just cause	34. Habitual drug use
7. Noncompliance with rules and regulations	35. Failure to perform satisfactorily on required test
8. Unprofessional conduct	36. Breach of contract
9. Physical or mental disability	37. Revoked certificate in another state
10. Conviction of a felony	38. Delivery, manufacture, production of drugs
11. Disloyalty	39. Kidnapping a child
12. Drunkenness	40. Unprofitable to the school
13. Crime of moral turpitude	41. Reasons in employment contract
14. Inciting students	42. Any offense involving child
15. Failure to maintain certification	43. Intemperance
16. Cruelty	44. Any cause not arbitrary, capricious, discriminatory
17. Best interest of the school	45. Involuntary manslaughter
18. Dishonesty	46. Membership in communist party
19. Member of or contributing to an unlawful group	47. Failure to secure and maintain training
20. Unfit for service	48. Not qualified to teach
21. Brutal treatment of student	49. Mental or physical abuse to a child
22. Excessive or unreasonable absence	50. Unsatisfactory teaching performance
23. Failure to improve	51. Probable cause
24. Advocating overthrow of government	52. Commission, aiding, advocating acts of criminal syndicalism
25. Failure to perform duties	53. Violation of section 51530
26. Failure to repay money owed to State	54. Violation of sections 7001-7007
27. Negligence in performance of duties	55. Failure to obtain release from the authorities to teach
28. Instructional ineffectiveness	

Dagley (2001) outlined some different types of immorality as a cause of dismissal for school personnel: subversive activities, communism, loyalty oaths, civil rights activity, marriage and pregnancy, homosexuality, heterosexuality between adults, sexuality involving students, use of alcohol and drugs, arson, trafficking in counterfeit goods, gambling, assault with a firearm, theft, internal problems within schools, and non-exemplary teaching matters.

One of the most widely quoted definitions appeared in a 1939 decision by the Supreme Court of Pennsylvania. In the case of *Horosko v. Mt. Pleasant School District* (1939), immorality was defined as “a course of conduct as offends the morals of the community and is a bad example to the youth whose ideals a teacher is supposed to foster and to elevate” (Kaufman & Kaufman, 2005, p. 821).

Homosexuality

In *Morrison v. State Board of Education* (1969), California’s Supreme Court held that a teacher who had engaged in a limited noncriminal homosexual relationship could not have his teaching certificate revoked unless there was a showing that he was unfit as a teacher. The court indicated that the board may consider the likelihood that the teacher’s conduct may have adversely affected students or fellow teachers. The degree of the adversity anticipated the remoteness in time of such conduct, and the extent that the board’s action may adversely affect the constitutional rights of the teacher or other teachers involved in similar conduct are relevant considerations (Essex, 2005).

The California courts first explored the relationship between homosexual behavior and fitness to teach in *Sarac v. State Board of Education* (1967). A teacher, Sarac, was convicted for soliciting two undercover policemen to engage in homosexual acts at a public beach. Revocation of his credentials was sought by the State Board of Education. In its review of the revocation, the court of appeals held that because homosexuality is highly offensive to most citizens it constitutes immoral conduct amounting to unfitness to teach within the meaning of the Education Code. The court declared that “homosexual behavior has long been contrary and abhorrent to the

social mores and moral standards of the people of California as it has been since antiquity to those of many other peoples” (Willett, 1973, p. 1445).

In *Pettit v. State Board of Education* (1973), the court invoked the notoriety doctrine as a partial rationale for upholding revocation and dismissal. Pettit had participated in two televised discussions of unconventional sexual life-styles. Although Pettit appeared on the program wearing a disguise, she was recognized by a fellow teacher who apparently informed other teachers and administrators of Pettit’s television appearances and her statements approving spouse-swapping and group sex. By choosing to regard notoriety as conclusive, *Pettit* seems to have ignored the holding of *Morrison* that notoriety is only a means of giving content to the fitness requirement. The court cited no evidence in the record that knowledge on the part of a few teachers and administrators of Pettit’s televised comments in any way interfered with her teaching effectiveness. No evidence was offered to show that knowledge of her conduct had come to the attention of parents or students. Nor was there any showing that her working relations with colleagues or classroom performance had suffered. The California Supreme Court upheld the teacher’s dismissal.

In *Gaylord v. Tacoma School District No. 10* (1977), a teacher who had acknowledged his homosexuality was discharged due to his status as a publicly known homosexual. The teacher had over 12 years of experience at the school, had graduated Phi Beta Kappa, had a master’s degree, and had a recent evaluation that stated he “continues his high standards and thorough teaching performance” (Flygare, 1978, p. 482). In upholding his discharge, the court based its decision on his being guilty of immorality and unfitness. He was considered immoral under local school board policy and Washington statute at the time of the trial and, the court declared, on the basis of homosexuality being widely condemned as being immoral just as it had been during

biblical times. The court also held that Gaylord's performance as a teacher was sufficiently impaired by his known homosexuality. In addition, the court cited that he had sought out homosexual company; a student, three teachers, and others connected with the school found his presence objectionable, and his retention would have indicated school board approval of his homosexuality (LaMorte, 2005).

With the exception of the Washington Supreme Court ruling in *Gaylord v. Tacoma School District* (1977), most courts have ruled that homosexuality per se cannot be grounds for dismissal. To support a dismissal there must still be a nexus between the teacher's private sexual orientation and the performance of his or her duties as a teacher to justify dismissal (Underwood & Webb, 2006.)

Criminal Activity

Courts use various proof standards to determine whether a criminal act is sufficient to sustain dismissal. Criminal behaviors that have led to certificate denial or revocation and contract termination include alcohol and drug violations, larceny, theft, shoplifting, bribery, illegal gambling, and manslaughter (Beezer 1990; Larke, 1987). Today, courts are ruling that involvement alone of the teacher in the criminal action does not necessarily warrant dismissal or revocation or denial of certificate. In many cases, the court considers such questions: (1) Does the alleged criminal conduct of the teacher affect the teacher's ability to maintain the respect of students, parents, community, and educational staff; and (2) Is the teacher's teaching ability and performance unaffected by the criminal conduct (Larke, 1987)? Under criminal law, a jury must find that a plaintiff is guilty beyond a reasonable doubt.

Grounds for Dismissal

The history of teacher dismissal parallels that of the enterprise of public education in the United States. It has implications that not only touch and concern the teacher directly affected by the dismissal action, but also the administrator, school district, and profession of public education. During the early years of public education in the United States, teachers were dismissed from their duties for a variety of reasons, including, but not limited to the following: social relationships, marital status, maternity, religion, public comments, and teaching style, in addition to insubordination, immorality, and incompetence (Alexander & Alexander, 1995). By today's standards, statutory grounds for discharge encompass a broad range of acts, many of which permit discharge under several listed grounds. The principle grounds--incompetency, insubordination, unprofessional conduct, neglect of duty, immorality and good and just cause--have withstood constitutional challenge that they are unconstitutionally vague (Valente & Valente, 2001).

State law, local school board policies, and collective bargaining agreements set forth the specific reasons why teachers can be dismissed. For example, in Maryland Annotated Code §6-202(b), the board has the power to fire teachers for "incompetency, willful neglect of duty, immorality, misconduct, and insubordination" (Fisher et al., 2007, p. 35). Such grounds are cause for dismissal in most states, if school officials can prove that the teacher's actions violated the state law. Practically every ground for discharge embraces the core idea of "fitness" to be a teacher, but even that standard invites diverse readings. Some courts construe discharge statutes as applying only to the ability to function as a teacher while others read them to prohibit conduct that undermines a teacher's broader duty to be a role model for students (Valente & Valente, 2001).

Dunklee and Shoop (2002) stated that,

immorality, moral turpitude, unfitness to teach, conduct unbecoming a teacher, teacher misconduct, violation of a code of ethics, and subversive activity are common statutory grounds for the dismissal of a teacher when community values conflict with teacher values or lifestyles. (Dunklee & Shoop, p. 8)

Teachers Terminated for Insubordination

Teachers can be dismissed for insubordination if they deliberately defy school authorities or violate reasonable school rules. For the order to be reasonable, school officials must have the legal authority to issue it (Fischer et al., 2007). In *Gaylord v. Board of Education* (1990), a Kansas teacher was terminated for insubordination when he was informed by the principal that he could not be absent; however, the teacher called in “sick” so that he could attend an interview for another job. The court ruled that he deliberately disobeyed the directives of his superior and was in violation of his contract. Dismissal for insubordination varies from court to court. Some courts have found insubordination for a single incident as in the case of *Crump v. Board of Education* (1986), while others have concluded that insubordination can only occur when there is a constant or persistent course of conduct. In *Sims v. Board of Tr., Holly Springs* (1982), a New Mexico teacher was dismissed on grounds of insubordination when, during a classroom observation, he insisted that the principal leave the classroom, threatened to call the police if the principal did not comply, and ripped lesson plans out of the principal’s hands. The court upheld the dismissal.

Teachers Terminated for Incompetency

An incompetent teacher can be defined as one who cannot perform the duties required by the teaching contract. Generally in order to terminate a teacher for incompetency, school officials must present a number of examples of the teacher's inability to meet contractual responsibilities (Fischer et al., 2007). With incompetency dismissal cases, most school districts are required to implement a remediation plan to improve the teacher's performance. Even in states or school districts where remediation is not specifically required, it is not uncommon for state school boards or reviewing courts to impose their own requirements on the local district that the teacher be first afforded remediation before being terminated for incompetence as in the case of *Iven v. Hazelwood School District* (1986).

In the Matter of Mary Selby v. N. Callaway Board of Education (1989), a Missouri teacher was reinstated to her teaching position when the courts ruled that the local board of education failed to show that it had issued a written warning letter with identified areas for improvement following which the teacher was given sufficient time to correct the identified deficiencies.

A very clear example of an incompetent teacher is one who lacks knowledge about the subject he or she is supposed to teach. In *Singleton v. Iberville Parish School Board* (1961), a Louisiana teacher was dismissed for incompetency when her supervisor noted many mistakes in her grammar and in her punctuation.

Teachers Terminated for Immorality/Unprofessional Conduct

Immorality, the most frequently cited reason for dismissal in state statutes, is broadly defined as unacceptable conduct that warrants removal from one's role as a teacher of children.

The exact definition varies by state. Some states define immorality as conviction or commission of a crime of moral turpitude such as murder or embezzlement; others make no attempt to define immorality, but leave it up to the local school districts and perhaps, eventually, the courts (Underwood & Webb, 2006).

Underwood and Webb (2006) stated that generally, immorality is considered actions that are contrary to commonly accepted moral principles or conduct unbecoming of a teacher, such as the following:

1. Sexual conduct with students;
2. Sexually explicit remarks or talking about sex unrelated to the curriculum;
3. Distribution of sexually explicit materials to classes;
4. Use of obscene, profane, or abusive language;
5. Public lewdness;
6. Possession and use of controlled substances;
7. Criminal misconduct; and
8. Dishonesty. (p. 67)

In the past, teachers were expected to teach morality through their actions, and when teachers violated community norms, they usually resigned quietly or were quickly fired. Teachers have been fired for cheating, lying, talking about sex, using “obscene” language, public drinking, drug use, homosexual conduct, and having a child out of wedlock (Fischer et al., 2007). Thus what was considered immoral conduct has varied from place to place, and the definition has changed over time.

Unprofessional conduct, like conduct unbecoming, can potentially include the use of offensive language, abuse of corporal punishment, threats and insults to fellow teachers, taking time off without permission, and shoplifting. In *Caravello v. Board of Education* (1975), the New York Supreme Court ruled a teacher can be dismissed on grounds of conduct unbecoming a teacher. The tenured guidance counselor was arrested and charged with petty larceny following

an alleged shoplifting incident. The school board heard testimony that failed to substantiate the charge that the shoplifting incident impaired the teacher's effectiveness as a counselor.

Nonetheless, the school board dismissed the teacher on the basis that the offense was conduct unbecoming a teacher. The New York Supreme Court upheld the dismissal based on the teacher having a reputation as a shoplifter in the community. Even though the behavior was not directly related to his work, it was clearly conduct unbecoming a teacher. As with other grounds, court appraisals of conduct range from strict to indulgent.

An Oregon teacher was dismissed at the midpoint of a 1-year contract for staring at the physical attributes of the female members of the classroom and for making statements with sexual overtones. The evidence to support the charges was testimony by five female members of the teacher's class. The United States Court of Appeals in *Vanelli v. Reynolds School District* (1982) heard the case on the grounds that Vanelli had been denied property and liberty interests because of the board's failure to hold a pre-termination hearing. The judges held that there was sufficient evidence to uphold the dismissal of Vanelli. However, they also ruled that there was indication that his dismissal had implicated his property and liberty interests, which were protected under the due process clause; and, therefore, the case was vacated and remanded back to the district court for review.

The Supreme Court of Oregon reversed and remanded a Fair Dismissal Appeals Board's (FDAB) decision to terminate a teacher for immorality on the basis of that teacher engaging in deviate sexual acts at an adult book store. In *Ross v. Springfield School District* (1982), the court ruled that the Fair Dismissal Appeals Board has the duty to determine whether the facts surrounding the teacher's conduct are true and substantiated and whether they adequately justify the statutory grounds for dismissal, as well as whether the dismissal action is arbitrary or

capricious. The FDAB was also required to determine if the facts of the teacher engaging in deviate sexual acts at the adult book store were adequate to justify the removal on the grounds of immorality. The evidence presented to support the charges was a report written by a police officer with the Eugene Police Department assigned to the criminal intelligence division wherein the police officer observed specific sexual contact between the petitioner and another man at the Adult World Bookstore. Additionally, the record showed that numerous parents had written or phoned the school district objecting to Ross continuing as a teacher in their community.

Under Oregon law, dismissal for gross unfitness “or immorality” must contain a plain and concise statement of facts relied upon to support the statutory grounds for dismissal. Furthermore, the burden is on the school district to find a connection between the teacher’s conduct and his ability to function effectively as a teacher. In *Shiple v. Salem School District* (1983), the respondent was dismissed for taking indecent liberties with a student in the school district where the teacher taught. Specifically, the defendant was charged with 12 instances of battery, 11 of which involved offensive sexual conduct with a student who was the same approximate age as the teacher’s students. As evidence of the teacher’s conduct, the notice of dismissal which informed the teacher of the allegations against him referred to a civil action that was filed against the teacher. Shipley had appealed to the Oregon Fair Dismissal Appeals Board on the ground that by merely listing the civil action against him, the district had failed to establish a connection between his conduct and his ability to teach effectively. The FDAB agreed with Shipley and reversed the school district’s dismissal action. However, on appeal by the district, the Court of Appeals of Oregon reversed and remanded the FDAB decision noting that the FDAB erred in concluding that the notice was insufficient for the reason that although the notice did not expressly set out the connection between respondent’s acts and his teaching

responsibilities that such a conclusion or nexus may obviously be inferred based on the 12 instances of battery.

Immorality charges chiefly involve dishonesty, sexual misconduct, and criminal acts. Today teachers can still be terminated for immoral conduct, but in most states such conduct must be connected to a teacher's effectiveness. Sexual misconduct with a student is a definite act of immorality and would warrant termination under any state's tenure law (Fulmer, 2002).

In *Reitmeyer v. Unemployment Comp. Bd. Of Education* (1992), a Pennsylvania teacher's distribution of copies of a racist "joke sheet" to his colleagues constituted an act considered to be immoral. The court agreed with the school board that the behavior served as a poor role model and upheld the school board's decision to terminate.

A teacher's sexual harassment of students and even other teachers is a companion to sexual contact that is also considered an act of immorality. According to Imber and Geel (2004) in *Sauter v. Mount Vernon School District* (1990), a high school math teacher was terminated for immorality when school officials intercepted a personal, highly seductive note from the teacher soliciting sex from a student with whom he had developed a close personal and trusting relationship. Behavior that harms or endangers students may be referred to as "immorality," "unprofessional conduct," or "unfitness to teach" in the statutes of some states.

Dismissal of teachers who have sex with minors is always upheld. It does not matter whether the minor was currently enrolled in the teacher's school or even in the same school district. In *Elvin v. City of Waterville* (1990), the Maine Supreme Court upheld the dismissal of an elementary teacher who had sexual intercourse with a 15-year-old even though she and the boy did not live in the town where she taught. Nor does it matter if the sexual relationship took place prior to the teacher's current employment. In *Fisher v. Independent School District* (1984),

a 23-year-old man established that his former elementary school teacher had sexually abused him many years before; the Minnesota court upheld the teacher's dismissal. There is some question as to whether a legal sexual relationship with a student, that is, a consensual relationship with a student who had reached the legal age of consent, which varies from state to state, is cause for dismissal. Dismissal would almost surely be upheld if the student attended the same school where the teacher taught (Imber & Geel, 2004).

Charges of sexual misconduct pose special problems for school administrators. On one hand, they risk criticism and potential liability for failure to promptly investigate and prosecute sexual misconduct. On the other hand, they face criticism for failure to deal fairly with accused teachers. Courts appraisals of sexual immorality vary widely, but the eruption of teacher sexual abuse of school students will likely induce stricter standards (Valente & Valente, 2001).

Other Reasons for Teacher Dismissal

Neglect of Duty

In general, neglect of duty means that an individual had a legal duty to perform in a certain way and failed to do so (Permuth & Egley, 2002). Some issues of neglect of duty range from drinking beer and sharing marijuana with students to failing to supervise and protect students on field trips.

Other Good or Just Cause

The concept of good or just cause is purposely broad and has been upheld as long as the reasons for the dismissal are not arbitrary or capricious, irrational, or unreasonable, and show commitment to the health, safety, and welfare of children. Teachers have been dismissed for

such causes as misrepresenting reasons for absence from school or failing to seek professional counseling.

According to Imber and Geel (2004), a case for dismissal becomes stronger when it contains any of the following elements: documented observations of the teacher according to a formalized and properly followed evaluation procedure, establishment of a connection between the behavior and teaching effectiveness in the classroom, evidence of incompetence or other grounds based on more than the subjective evaluation of a single school official, proof that formal steps of remediation were undertaken and failed, proof that the teacher's behavior undermined the educational goals of the school, evidence of specific harms or disruption of the school's educational mission, the establishment of a pattern of offending behavior, evidence of notices and warnings provided to the teacher, the absence of any sound educational justification for the teacher's behavior, evidence of notoriety over the teacher's behavior diminishing the school's or teacher's effectiveness, the absence of mitigating circumstances explaining or excusing the teacher's behavior, or evidence that the continuing presence of the teacher in the school poses an educational or physical risk to the students.

Due Process

At the center of the American system of law is the notion that all law will be equally enforced and that all persons subject to the law will be treated fairly. The equality of protection and the elements of fair play, known as *due process of law*, are guaranteed by the U.S. Constitution. An individual who has life, liberty, and property interest with a school board is entitled to due process of law. Employment once commenced triggers a property right. No concept of fundamental law is more basic to individual rights and freedoms than due process

(Alexander & Alexander, 2001). Due process normally requires that a series of events must take place that conform to a number of constraints on (1) the intervals between the events; (2) the relation of events to other key events, such as dismissal; and (3) their nature. These events involve, but are not confined to, providing a realistic opportunity for remediation (Scriven, 1997).

Depending upon contractual specifics, a school district must observe various degrees of procedural due process when dismissing/terminating a teacher. Permissible grounds for dismissal/termination are usually enunciated in state law, the teacher's contract, board policy, and/or an agreement resulting from collective bargaining (Reutter, 1994). Even if a nexus is found between the teacher's actions and the ability to teach, teachers are still entitled to due process.

First Amendment

The First Amendment to the Constitution affords teachers the rights to freedom of expression. Within limits, they enjoy the same rights and privileges regarding speech and expression as other citizens (Essex, 2005). Until the mid-20th century, it was generally accepted that public school teachers could be dismissed or disciplined for expressing views considered objectionable by the school board (McCarthy, Cambron-McCabe, & Thomas, 2004). The private-sector practice of firing employees was assumed to apply to public employment as well. Since the late 1960s, however, the Supreme Court has recognized that the First Amendment limits public employers' discretion to condition employment on the expression of certain views, including those critical of government policies.

There have been several court cases that have ruled on teachers' freedom of expression. In *Pickering v. Board of Education* (1968), a teacher was terminated because of a letter he wrote to a local newspaper criticizing the school board, as well as the superintendent, in their proposals to raise new revenue to build new schools using bond monies. The school board dismissed the teacher. The teacher claimed that the school board violated his First and Fourteenth Amendment rights. The appeals to the circuit and state supreme court affirmed his dismissal; however, the Supreme Court of the United States ruled that the teacher's First Amendment to free speech was violated and reversed the decision of the lower court.

In *Connick v. Myers* (1983), Ms. Myers was employed as an assistant district attorney in New Orleans. She was informed by the district attorney, Mr. Connick, that she would be transferred to another department within the office. Ms. Myers voiced objections regarding the transfer to Mr. Connick as well as her co-workers. She also created and distributed a questionnaire addressing office operations and policies. When Mr. Connick learned of this information, he terminated Ms. Myers from her position for refusing to accept a transfer. She was also told that her distribution of the questionnaire was considered an act of insubordination. Connick particularly objected to the question which inquired whether employees "had confidence in and would rely on the word" of various superiors in the office, and to a question concerning pressure to work in political campaigns which he felt would be damaging if discovered by the press. Ms. Myers filed 42 U.S.C. § 1983, claiming that her termination violated her First Amendment expression rights. A federal district court and court of appeals ruled in favor of Myers; however, the Supreme Court of the United States ruled that because one question that Ms. Myer included on the questionnaire did indeed touch on public concern, her

termination was justified. The Supreme Court overturned the decisions of the lower court and ruled that Ms. Myers should be terminated.

In another Supreme Court decision case, *Mt. Healthy City Board of Ed. v. Doyle* (1977), a non-tenured public school teacher was not rehired because, allegedly, he had given to a radio station the contents of a memorandum relating to teacher dress and appearance that the school principal had circulated to various teachers. The memorandum was apparently prompted by the view of some in the administration that there was a relationship between teacher appearance and public support for bond issues, and indeed, the radio station promptly announced the adoption of the dress code as a news item. One month later, the school board voted to non-renew the teacher's contract, citing his lack of tact in handling professional matters, including the situation with the radio station as well as the obscene gesture incidents. The teacher filed a claim that the school board's refusal to rehire him violated his First and Fourteenth Amendment rights. The lower courts affirmed that he was entitled to reinstatement with back pay.

The United State Supreme Court ruled that (1) the school board was not entitled to assert any Eleventh Amendment immunity from suit in the federal court, since under state law, the board was more like a county or city, not entitled to immunity, than it was like an arm of the state, (2) the teacher's constitutional claims were not defeated merely because he did not have tenure, (3) even though the District Court's finding that the teacher's communication to the radio station was protected by the First and Fourteenth Amendments would be accepted, nevertheless the mere fact that such protected conduct was found by the District Court to have played a "substantial part" in the board's decision not to renew the teacher's contract would not amount to a constitutional violation justifying remedial action if the board, in fact, would have reached the decision not to renew the contract in any event, (4) the District Court had erred in not

determining whether the board showed by a preponderance of the evidence that it would have reached the same decision as to the teacher's re-employment even in the absence of the protected conduct, and (5) the case would be remanded, since it could not be determined from the lower courts' opinions what conclusion those courts would have reached had they applied the proper test.

In *Garcetti v. Ceballos* (2006), Mr. Ceballos was employed as the deputy district attorney with the Los Angeles County District Attorney's Office. Mr. Ceballos was contacted by the district attorney, Mr. Garcetti, regarding the challenge that was made relating to the misrepresentation of information on an affidavit. Mr. Ceballos contacted the deputy sheriff who had sworn out the affidavit, but was not satisfied with the response he received. Mr. Ceballos shared his concerns with his supervisors and later followed up with a letter in which he recommended that the case be dismissed. A hearing was held on the motion, which the trial court denied and moved forward with the warrant.

Mr. Ceballos filed a section 1983 claim with the United States District Court in Central California, asserting that his superiors had violated his First Amendment rights by retaliating against him for writing the letter. The District Court granted their motion for summary judgment, concluding that Mr. Ceballos wrote his letter pursuant to the duties of his employment; therefore, he was not entitled to First Amendment protection for the letter's content.

The United States Court of Appeals reversed and remanded. This court concluded that (1) the letter, which had recited alleged governmental misconduct, was a matter of public concern; and (2) the deputy's interest in his speech outweighed the supervisors' interest in responding to such speech, as there had been no suggestion of disruption or inefficiency in the workings of the district attorney's office as a result of the memorandum. The United States Supreme Court

reversed and remanded. When public employees make statements pursuant to their official duties, such employees are not speaking as private citizens for First Amendment purposes, and thus the First Amendment does not prohibit managerial discipline of such employees for such speech.

Fifth Amendment

The Fifth Amendment to the United States Constitution provides that

no person shall be required to answer for a capital or otherwise infamous offense unless on indictment or presentment of a grand jury except in military cases; that no person will suffer double jeopardy; that no person will be compelled to be a witness against himself; that no person shall be deprived of life, liberty, or property without due process of law; and that private property will not be taken for public use without just compensation. (Black, 1990, p. 627)

Fourteenth Amendment

The Fourteenth Amendment prohibits the deprivation of life, liberty, or property from any individual, without due process of law. As courts have interpreted this amendment over time, they have added requirements that procedures must not be arbitrary, unreasonable, or discriminatory in policy or practice (Dunklee & Shoop, 2002). Essentially then, this amendment demands *fair* practices. Once a property right is acquired, the teacher may be dismissed only for cause. Courts view due process in two ways: *substantive due process* and *procedural due process*.

Substantive Due Process

According to Underwood and Webb (2006), substantive due process, as a principle of fundamental fairness, requires that rules are reasonable and “not arbitrary, capricious, or without a rational basis.” The basic attributes of substantive due process may be best understood by those features showing its absence. Dunklee and Shoop (2002) stated that a rule, law, regulation, policy, or action violates substantive due process when it is overly broad or unnecessarily vague, is arbitrary or capricious, invades the protected zone of personal privacy, is unrelated to a valid education objective, or does not use reasonable means to achieve the objective.

Procedural Due Process

On the other hand, procedural due process means that the policies, rules, and regulations, are applied in a fair manner. This process encompasses such basics as the right to timely, clear notification of charges and their basis and the right to an impartial hearing on the charges in which the accused is given an opportunity to defend against them (Dunklee & Shoop, 2002).

The procedural due process that must be provided to teachers depends on the requirements of state statutes, school board policies, and the terms set forth in the employment contract. At minimum, the school district must provide the teacher with a notice of charges, a hearing, and a decision based solely on the evidence presented (Underwood & Webb, 2006). In determining what process is due, courts apply a balancing-of-interest test that weighs the interests of society, as represented by the school, against the rights of the individual teacher.

Teacher Dismissal and Tenure

Tenure, unlike academic freedom, is not a constitutional right, but instead a statutory attempt to protect competent teachers from unwarranted or arbitrary interference from administrators, school boards, or other interested parties (Speery, Daniel, Heufner, & Gee, 1998). Once tenure is granted, teachers have a property right. Teachers, even while probationary, have a property interest in an existing term contract, without achieving tenure. This property right has constitutional repercussions, as those teachers to whom tenure has been granted are entitled to due process rights pursuant to the Fourteenth Amendment of the United States Constitution (Alexander & Alexander, 1995).

Tenure is a form of job security for teachers who have successfully completed a probationary period. Its primary purpose is to protect competent teachers from arbitrary nonrenewal of contract for reasons unrelated to the educational process--personal beliefs, personality conflicts with administrators or school board members, and the like. Tenure provides public school teachers with two essential rights: (a) a vested property interest in continued employment; and (b) due process rights in the event that a school district chooses to deny continued employment. "Tenure laws are designed to assure competent teachers continue employment as long as their performance is satisfactory" (McCarthy & Cambron-McCabe, 1992, p. 387). It is not a guarantee of permanent employment for the teacher.

The type and amount of protection vary from state to state and, depending on agreements with teachers' unions, may even vary from school district to school district. In general, a tenured teacher is entitled to due process when he or she is threatened with dismissal or nonrenewal of contract for cause: that is, for failure to maintain some clearly defined standard that serves an educational purpose (Scott, 1986).

School administrators are, at times, faced with the prospect of initiating dismissal proceedings against a tenured teacher under their supervision. The dismissal of a tenured teacher can be a difficult process and almost always causes some anxiety. According to Pope (1983) and Frells and Cooper (1983), tenure and evaluation statutes create an administrative dilemma. Conscientious administrators who want to assist teachers in the improvement of skills must be able to demonstrate faith in their ability to do that and must emphasize the positive as well as negative aspects of the employee's performance. In order to improve the school system, administrators may need to make decisions which place the employees in an adversary position when the administrator documents weaknesses and gives notice that corrections must be made or dismissal/termination may result.

Common law dictates that the right to employ includes the right to discharge except as restricted by either contractual or constitutional considerations. Even in the absence of express contractual provisions, which indicate the grounds upon which a teacher may be discharged, the common law will permit sufficient cause dismissals. The court determines each case of alleged sufficient cause on its own merits (Reutter, 1994).

Summary

This chapter covered the literature in the area of court trends as viewed by a variety of researchers. The literature indicated that traditionally, "immorality" was what school boards said it was. Boards have enjoyed wide discretion in determining immorality as a basis for teacher dismissal. Generally, the courts have deferred to school boards the right to determine cause. Therefore, relatively few dismissal cases concerned with immorality reached the courts.

However, unlimited board discretion is not the case today. Teachers are more likely to sue school boards, alleging violation of constitutional rights.

Many of the legal problems center around the ambiguity of the term “immorality” and the often challenged right of school boards to make such determinations in disciplining teachers for immoral conduct. Generally, the literature offered evidence of the fact that courts are moving toward greater protection of teacher rights in general and against arbitrary dismissal in particular.

The literature further indicated that teachers have made considerable progress through the courts in moving from second-class citizenship, as far as the Bill of Rights is concerned, to full protection of rights as first class citizens. When the courts are involved they must balance the teacher’s constitutional rights against the competing interests of society in maintaining school discipline and integrity. A teacher’s dismissal for conduct that is considered immoral depends on the circumstances of the case: whether the conduct was personal and private, whether it became public through the indiscretion of the teacher, and whether it involved students.

The literature revealed that historically, teachers have been held to a higher standard. In the early days of public education, there was a general dominance of the moral exemplar standard, but there has been a movement of many courts towards the nexus standard; however, the courts have not reached uniformity.

The chapter also examined the literature concerning significant court cases dealing with teacher dismissal for immoral causes. The literature on the topic was voluminous. A representative sample of the literature was examined and presented in this chapter as an overview of the topic under study.

CHAPTER III

METHODOLOGY AND PROCEDURES

Introduction

This study was a purposeful, qualitative historical and document-based research study. Related case law was reviewed using an analytical, inductive, and legal-historical research orientation. Gall, Borg, and Gall (1996) define historical research as a process of systematically searching for data to answer questions about a past phenomenon for the purpose of gaining a better understanding of present institutions, practices, trends, and issues in education. All materials reported were from the time span of 1977-2007 to provide a substantial number of cases for comparison and trend determination, in addition to validate if the cases heard during that period were subject to the same standards of law. Primary source materials, as well as a variety of secondary sources, were evaluated to provide background for the study and were used to analyze and interpret case law. Materials used in the study included all of the related United States Supreme Court, United States Court of Appeals, United States Federal District Court, and state appellate court cases.

Public school administrators across this country are confronted with an overwhelming and increasingly alarming number of teachers who are allegedly accused of inappropriate conduct inside and outside the workplace. The study of teacher dismissal cases for immorality provided insight and guidance for school administrators when they are faced with adverse employment actions.

This study investigated teacher dismissal on grounds of immorality, the outcome of court cases during the last 30 years, and the relevance of the court opinions to a K-12 school setting. Court cases from 1977-2007 were summarized using Statsky and Wernet's (1995) case brief method, forming the data for the study. Qualitative methods were employed to provide reliability and validity. Qualitative analysis was used to reduce the cases to patterns, themes, and categories, and then to synthesize the data into rich and useful information (Merriam, 1998).

Research Materials

This study employed a variety of primary and secondary sources of legal information. Primary sources included state statutes and court opinions related to the dismissal of teachers on grounds of immorality. The court cases were obtained from the circuit court, district court, state and federal court opinions rendered from 1977-2007. Secondary sources such as journal articles, law reviews, and legal and qualitative research texts were utilized to introduce, inform, and provide a framework for the study. In order to prevent bias or tainting of the data, however, these sources were not used to provide case analysis for the briefs, which constituted the data for the study.

Methodology

The methodology for this study relied on qualitative historical, document-based research. Qualitative research relies on narrative data. It is an umbrella concept covering several forms of inquiry that help us understand and explain the meaning of social phenomena with as little disruption of the natural setting as possible.

Merriam (1998) outlined five characteristics of qualitative research.

(a) The key philosophical assumption upon which all qualitative research is based is the view that reality is constructed by individuals interacting with their social worlds. In the case of this study, the judge is the individual who has interpreted his perception of the meaning of the situation.

(b) With qualitative research, the researcher is the primary instrument for data collection and analysis. The researcher is responsive to the context. He or she can adapt techniques to the circumstances. The data can be processed immediately, clarified, and summarized as the study evolves.

(c) Qualitative research involves field work. In this study, the researcher spent a considerable deal of time collecting, reviewing, and analyzing law cases and other data.

(d) Qualitative research primarily employs an inductive research strategy. This type of research builds abstractions, concepts, hypotheses, or theories rather than tests existing theory. Unlike deductive researchers who hope to find data to match a theory, inductive researchers hope to find a theory that explains their data. Theory developed this way emerges from the bottom up; hence, the theory is grounded in data (Bodgan & Biklen, 1998). Typically qualitative research findings are in the form of themes, categories, typologies, concepts, tentative hypotheses, and even theory which have been inductively derived from the data.

(e) Qualitative research, which focuses on process, meaning and understanding, produces richly descriptive words rather than numbers. (Merriam, 1998, pp. 8-9)

Document-based Research

Qualitative researchers are increasingly turning to documents as a primary source of data. Documents clearly fit the criteria of using data rich in description but to what extent the researcher uses them in a manner that is naturalist, inductive, and concerned with the process of meaning construction for those who produce them or use them has to be examined in each case. Merriam (1998) states that using documentary material as data is not much different from using interviews or observations; however, she believes that documents have been underused in qualitative research. The reasons for the underuse have been attributed to the fact that researchers prefer to produce their own data, that the use of documents is too much like historical research, that researchers want “to see the concrete situation and informants in person,” and that they distrust their own competency in using documentary materials (Merriam, 1998, p. 124). Merriam

lists several limitations to documentary data. For the most part, documentary data have not been developed for research purposes. The material may therefore be incomplete from a research perspective. Furthermore, because documents are not produced for research purposes, the information they offer may not be in a form that is useful or understandable to the researcher. The data from documents may not fit the conceptual model of the study. Lastly, another major problem with documentary materials is determining their authenticity and accuracy. For purposes of this study, these limitations do not impact the study. The cases listed in West Reporters were designed for legal research, including substantial case data, editorial comment, and referencing tools.

Despite the limitations of documentary data, their strengths make them the most appropriate choice for this type of study. In the case of multiple-case legal research, documents will likely produce better and more data than other qualitative research methods. The document can provide more accurate and general information regarding the cases than a one-on-one interview with the judge(s) of the cases. Many documents are easily accessible, free, and contain information that would take a researcher an enormous amount of time and effort to gather. Merriam (1998) mentions that besides practical considerations, documentary data are relatively objective compared to other forms of data. One of the greatest advantages in using documentary material is its stability. Unlike interviewing and observation, the presence of the researcher does not alter what is being studied. Finally, documentary data tie the study to the contexts of the cases. This lends contextual richness to the naturalistic approach of the study. In spite of the limitations of document-based research, the advantages of the methodology compel its use in this study.

The document-based study case briefing method utilized in this study is very similar to an interview method of data collection where the researcher asks the judge(s) of a case a series of questions. The researcher asks, “What were the key facts of the case?” “What laws were applied to the situation?” “What was your reasoning?” “What did you decide?” Merriam (1998) explained this parallel thoroughly:

Whether in fieldwork or library work, the data collection is guided by questions, educated hunches and emerging findings. Although the search is systematic, both settings also allow for accidental uncovering of valuable data. Tracking down leads, being open to new insights, and being sensitive to the data are the same whether the researcher is interviewing, observing, or analyzing documents. Since the investigator is the primary instrument for gathering data, he or she relies on skills and intuition to find and interpret data from documents. (p. 120)

Historical Research

Fraenkel and Wallen (2000) list five reasons educational researchers undertake historical studies:

- (a) To make people aware of what has happened in the past so they may learn from past failures and successes.
- (b) To learn how things were done in the past to see if they might be applicable to present-day problems and concerns.
- (c) To assist in prediction.
- (d) To test hypotheses concerning relationships or trends.
- (e) To understand the present educational practices and policies more fully. (pp. 573-574)

The goal of historical research is to find connections between events in the past (Slavin, 2007).

Historical investigations seek to reveal facts about certain events in the past or relationships between events in the past by means of critical review of documentary evidence, sometimes supplemented by interviews with eyewitnesses involved in the events.

The principal advantage of historical research is that it permits investigation of topics and questions that can be studied in no other way. It is the only research method that can study

evidence from the past in relation to questions (Fraenkel & Wallen, 2000). The major impetus in historical research, as with other data-collection strategies, is the collection of information and the interpretation or analysis of the data. Historical research is concerned with preliminary, primary, and secondary sources. Preliminary sources are indexes to primary and secondary sources. West Digests serve as the preliminary sources for this study. Primary sources are records, such as the public records of court cases contained in West Legal Reporters. Secondary sources are documents written by individuals not directly witnessing a given event or phenomenon. The secondary sources include journal articles, legal textbooks, and dictionaries, which serve to frame and enlighten the case data (Gall et al., 1996; Merriam, 1998).

External and Internal Validity

All research is particularly concerned with producing valid and reliable knowledge in an ethical manner. Primary source materials are subjected to two kinds of evaluations or criticisms. Initially, the researcher must determine whether a document or artifact is authentic, which is often referred to as external criticism or validity. Secondly, it must be determined if the meaning of the material is accurate, which is known as internal criticism or validity. Internal validity is related to the document's reliability (Berg, 2004). Assessing the validity and reliability of a qualitative study involves examining its component parts (Merriam, 1998). In a qualitative study, the researcher must ask himself, "were the interviews reliably and validly constructed; was the content of the documents properly analyzed; do the conclusions of the case study rest upon data?" (Merriam, 1998, p. 199).

Berg (2004) states that external criticism deals with determining the authenticity of a document, whether it is a piece of primary data. External validity is concerned with generalizing

qualitative findings to other populations, settings, and treatment arrangements (Marshall & Rossman, 2006). Often in qualitative research, as in a case study, generalizability is not a goal of research. Depth of understanding is the goal of such a study. Merriam (1998) suggests that the generalizability of a study may be enhanced by utilizing random sampling in the selection of cases. Another strategy is to use multiple cases to study the same phenomenon. In multi-case or cross-case analysis, the use of predetermined questions and specific procedures for coding and analysis enhances the generalizability of findings, as in this study.

According to Merriam (1998), internal validity deals with the question of how research findings match reality. Are the findings congruent with reality? Are the researchers measuring what they think they are measuring? Merriam (1998) ascertains that one of the assumptions underlying qualitative research is that reality is “holistic, multidimensional, and ever-changing; it is not a single, fixed, objective phenomenon waiting to be discovered, observed, and measured as in quantitative research” (p. 202). In qualitative research, people’s construction of reality is observed. This perspective fits the current study, since the judge’s perceptions is legal reality, rendered in opinions, which are the data under consideration. Merriam (1998) recommends six basic strategies to enhance internal validity:

1. Triangulation--using multiple researchers, multiple sources of data, or multiple methods to confirm the emerging findings
2. Member checks--checking emerging data and tentative interpretations against the original sources of the data
3. Long-term or repeated observations--gathering data over a period of time in order to increase the validity of the findings
4. Peer examination--asking colleagues to critique emerging findings
5. Participatory or collaborative modes of research--involving participants in all phases of the study from conceptualization to conclusions
6. Researcher’s biases--clarifying the researcher’s assumptions, worldview, and theoretical orientation at the outset of the study. (p. 204)

Reliability

McMillan (2004) defines reliability as the extent to which what is recorded as data is what actually occurred in the setting that was studied. Reliability is enhanced by detailed field-notes, teams of researchers to endure better comprehensiveness and accuracy, the review of field notes for accuracy by participants, use of tape recorders, photographs and videotapes, use of participant quotations and literal descriptions, and an active research for discrepant data or cases. In reliability, there is an expectation that there will be consistency in results of observations made by different researchers or by the same researcher over time. However, qualitative researchers do not exactly share this expectation. In qualitative studies, researchers are concerned with the accuracy and comprehensiveness of their data (Bogdan & Biklen, 1998). Qualitative researchers tend to view reliability as a fit between what they record as data and what actually occurs in the setting under study, rather than the literal consistency across different observations.

Data Collection

The legal cases focusing on teacher dismissal on grounds of immorality were located utilizing *West's Education Law Digest* at the Bounds Law Library on the campus of The University of Alabama in Tuscaloosa, Alabama. Common digests and reporters from the West National Reporting System were utilized. The collection was extremely useful for this study due to its inclusion of the *West Education Digest* and *West Education Reporter*, which limits topics such as adverse personnel actions to cases dealing specifically with educational settings. The digests formed the index necessary to access appropriate cases in the reporters. During the beginning stages of the research, the researcher obtained over 200 cases that had been identified under the key term *Schools*. The law cases that dealt with the dismissal of higher education

personnel and principals were eliminated. Electronic databases such as Westlaw and Lexis-Nexis Academic were also used to access specific cases. The print version of Shepard's Citations was cross-checked against Lexis-Nexis' Shepard's Citations in order to see whether a case had been limited, overruled, or was still good law. In addition, many hours were spent at McLure Education Library on the campus of The University of Alabama in Tuscaloosa researching current literature regarding the dismissal of public school teachers as it related to the law. A more complete discussion of conducting legal research follows.

Conducting Legal Research

Kunz et al (2004) discussed two essential purposes for courts to decide cases: (1) The decision of the court can provide both parties with a peaceful and principled resolution; and (2) The decision can assist other participants in the future who may have experienced similar situations, in resolving their own disputes, or participating in business or other activities. Both of these purposes are served by the court's written explanation of the case's facts, the outcome, and the reasoning behind the outcome.

Published cases are available in multiple media and from multiple publishers. For more than a century West Publishing Company, also known as West Group and presently known as Thomson West, has been the dominant publisher of federal and state cases.

There are four practices that are most likely to meet the four criteria of excellent legal research--correct, comprehensive, credible, and cost-effective:

1. utilizing West's system of case digests and reporters in paper;
2. running natural-language, terms-and-connectors (Boolean), or key number searches or using Key Search in Westlaw's case law databases;

3. using Search Advisor, along with natural-language and terms-and-connectors (Boolean) searching, in LexisNexis' case law databases;
4. searching the court's website.

In the case of this study, the researcher used several interlocking sources to conduct the legal research: Lexis Nexis, digests, and reporters, in that order. A digest is a finding tool that leads to case law published in a reporter.

Understanding Reporters and Digests

A case reporter is a book containing the decisions issued during a particular time period by a single court or a set of courts. Reporters can be official or unofficial. Official reporters do not contain the editorial enhancements of unofficial reporters and are not as useful for the researcher.

The National Reporter System, published by West beginning in the late 1800s, is the most prominent set of reporters. West currently publishes reporters containing decisions of the federal courts as follows: (a) *Supreme Court Reporter* for decisions of the United States Supreme Court, (b) *Federal Reporter* for decisions of the various courts of appeals, and (c) *Federal Supplement* for decisions of the various district courts. In addition to the West reporters, there is an official reporter for the Supreme Court, *United States Reports*, but not for the lower federal courts.

As for case law from state courts, West has divided the country into seven regions. Each region contains 4 to 15 states, and each is served by one of the regional reporters. The regional reporters contain the decisions designated for publication by the various state appellate courts; decisions of lower state courts typically are not published. West also publishes two single-state

reporters for California and New York; these contain some cases not published in the regional reporters.

For many reporters, West has published more than one series, for example, F., F.2d, F.3d for the *Federal Reporter*. The first series of a reporter contains the oldest cases, while the second or even third series contains the newest.

Cases are published in case reporters as they arrive at the publisher and clear the editorial process. Thus, case reporters are organized chronologically, not topically.

West Digests

A digest presents brief statements of the legal points made in the covered cases, written by the publisher's editorial staff and then fit into a framework of major legal topics and subtopics. West publishes digests for the Atlantic, Northwestern, Pacific, and Southeastern regional reporters. It also publishes digests for most states; these digests cover state court decisions published in the regional reporters as well as federal cases arising in or appealed from the state.

West has combined the information in its various federal, regional, and state digests into three master digests: *Century Digests*, *Decennial Digests*, and *General Digests*, covering multiple decades, multiyear periods, and years, respectively.

West has divided law into about 450 main topics, with each topic divided into subtopics. The sub-topics are assigned numbers, called "key numbers." This configuration of topics and key numbers is the same across the West system (Kunz et. al., 2004).

One way to find a pertinent topic, but not key numbers, is by scanning the topic list near the front of the digest volumes. In addition, to find pertinent key numbers, one would consult the

Descriptive Word Index, which appears in its own volumes and typically is updated by pocket parts or pamphlets.

After the topic and key number(s) have been determined, the next step is to assemble the necessary digest volumes and supplements covering the appropriate topic (i.e., *West Education Digest*, Volume 22, key number 147.20 for Immoral and criminal conduct, *Ninth Decennial Part I and II*, *Tenth Decennial Part I and II*, *Eleventh Decennial Part I*, and the *General Digest*).

When reviewing the digests, it is important to skim the general and detailed outlines at the outset of the topic. There may be additional pertinent key numbers that have not been identified; rarely is there only one pertinent key number for a legal issue. Key number 147.20 Immoral and criminal conduct, is one of many key numbers that is listed under the main topic *Schools* and the subtopic *Adverse Personnel Actions*.

When the information in the digest has been located, the researcher will have a list of pertinent cases along with their citations, and a basic idea of what each case stands for. The next step is to read the case in its entirety.

The easiest and most foolproof method of approaching a digest is to begin with the headnotes of a case on point, having similar statutory or factual elements to the research problem or case at hand.

Citators

To complete the process of legal research, the researcher must employ a citator to verify that the case is good law. The purpose of this process is to ascertain its subsequent history and treatment.

Case law is not a static body of information, but an ever-changing landscape wrought by interpretations, precedents, and reinterpretations. According to Kunz et al. (2004), a researcher may implore five reasons for using a case citatory: to understand the history of the case-in-hand; to learn how the case has been treated in other jurisdictions with similar cases; to expand research by finding strong cases that support the facts; to expand research by locating secondary sources; and lastly to learn of the parallel citation(s) relating to the case at hand.

Prior to the late 1990s only one comprehensive legal citation service existed, *Shepard's Citations*. The use of *Shepard's Citations* to update and verify legal authority became so established that the process is commonly referred to as *Shepardizing* (Mersky & Dunn, 2002). In 1997 Westlaw introduced its own online citation service, *KeyCite* and in 1998 *Shepard's* was included in the electronic database LexisNexis.

Case Brief Method

Legal research begins with framing the problem as a legal issue: dismissal of teachers on grounds of immorality. State statutes that control this issue were investigated. Subsequently, a bibliography of court decisions was built. Each case was read and analyzed using Statsky and Wernet's (1995) model in the 4th edition of their book *Case Analysis and Fundamentals of Legal Writing*:

1. A *citation* is the descriptive information about a legal document that includes the names of the parties, the official and unofficial cites, and the date of the decision. This information will enable the researcher to locate the document in the law library (p. 24).
2. The *facts* include any information concerning a person, thing, or occurrence that is obtained through the senses (p. 6).
3. The *issue* includes two items of information: the rule of law being interpreted and applied, including a reference to the particular language or portion of the rule that is

the focus of the controversy; and the key facts that concretely raise the controversy (p. 139).

4. The *holding* is the court's application of a particular rule of law to the particular facts of the dispute (p. 6).
5. The *reasoning* is an opinion telling why the court reached the result it did or why a legal issue led to a particular holding (p. 119).
6. The *disposition* is whatever must happen in the litigation as a result of the holdings that the court made in the opinion. (p. 168)

Legal cases were *Shepardized* utilizing Shepard's Citations, which provides a history of reported court decisions and a treatment of that decision. This allowed the researcher to rely on the applicable court holding.

Research Questions

The following research questions were developed to guide this study.

1. What are the issues arising in court cases relating to the dismissal of K-12 teachers for immorality?
2. What are the outcomes of court cases relating to the dismissal of K-12 teachers for immorality?
3. What are the trends in court cases relating to the dismissal of K-12 teachers for immorality?
4. What legal principles for school administrators can be discerned from the court cases relating to the dismissal of K-12 teachers for immorality?

Data Analysis

The purpose of this study was to analyze court cases involving adverse employment actions predicated on dismissal of teachers on grounds of immorality from 1977 through 2007, in

order to determine fact patterns and possible trends in court decisions, and to develop principles to guide school and district-level administrators as well as school board attorneys in the future as they deal with teachers who are dismissed for immorality.

Data analysis is the process of systematically searching and arranging the interview transcripts, field notes, and other materials that one accumulates to increase understanding of them and to present what is discovered to others. “Analysis involves working with data, organizing them, breaking them into manageable units, synthesizing them, searching for patterns, discovering what is important and what is to be learned, and deciding what you will tell others” (Bogdan & Biklen, 1998, p. 157). Qualitative data consist of “direct quotations from people about their experiences, opinions, feelings, and knowledge” obtained through interviews; “detailed descriptions of people’s activities, behaviors, actions” recorded in observations; and “excerpts, quotations, or entire passages” extracted from various types of documents (Patton, 1990, p. 10).

Analytic induction is an approach to collecting and analyzing data as well as a way to develop and test a theory. The procedure of analytic induction is employed when some specific problem, question, or issue becomes the focus of research (Bogdan & Biklen, 1998). Data are collected and analyzed to develop a descriptive model that encompasses all cases of the phenomena. This procedure has been used extensively in open-ended interviewing, but it can be used with participant observation and documented analysis as well.

The method of sampling in analytic induction was purposeful sampling. Purposeful sampling is based on the assumption that the researcher wants to discover, understand, and gain insight and therefore must select a sample from which the most can be learned. The particular subjects were included in this study because they are believed to facilitate the expansion of the

developing theory. Patton (1990) argues that the logic and power of purposeful sampling lies in selecting information-rich cases for in-depth study. Information-rich cases are those from which one can learn a great deal about issues of central importance to the purpose of the research.

Content Analysis

Content analysis is the systematic study of documents to study human behavior. After the cases were briefed, the resulting information was analyzed, reduced into data, and placed into categories by the issues before the courts and the resolution to those issues. The various courts decisions provided information and reasoning that could be applied to other similar situations in the area of school administration. The court cases provided factual issues and results that were used to gather the data needed for detailed analysis. Cases were analyzed by state as well as chronologically. Discernible trends that were found as a result of the gathered data were identified and reported.

Boyatzis (1998) describes thematic analysis as a process of encoding qualitative information. It is a way of seeing. The encoding requires an explicit “code.” This may be a list of themes; a complex model with themes, indicators, and qualifications that are causally related; or something in between these two forms. A theme is a pattern found in the information that at the minimum describes and organizes possible observations or at the maximum interprets aspects of the phenomenon.

Analysis of State Statutes Regarding Teacher Dismissal

All states have some statutory provisions regarding teacher dismissals, but few cite exactly the same causes. However, it is very clear from the statutory schemes of the 50 states and

the courts' analysis of the same that educators are held to a higher standard of behavior. Teachers play a unique role in our culture and society. Like other publicly regulated professions (doctors, lawyers, accountants), educators cannot practice their profession in public schools without a license to do so. Consequently, their behavior in school and out is examined closely and often harshly (Weldon, 2003).

The reasons specified for dismissal vary from the very specific to the very general, with a great deal of ambiguity and overlap among the causes. The most frequently cited causes for teacher dismissal are immorality, incompetence, and insubordination (Landauer et al., 1983).

Swader (1997) listed causes for teacher dismissal in the tables below. In most of the states, teachers may be dismissed for immorality or conduct unbecoming a teacher. Swader's research revealed 55 causes of teacher dismissal. Table 2 includes the varied reasons for a teacher to be dismissed.

Table 2

Statutory Grounds for Teacher Dismissal

1. Incompetency	29. Violation of a law
2. Insubordination	30. Inefficiency
3. Neglect of duty	31. Willful neglect
4. Immorality	32. Grounds for revocation of certificate
5. Reduction in force	33. Failure to pay debts
6. Other good and just cause	34. Habitual drug use
7. Noncompliance with rules and regulations	35. Failure to perform satisfactorily on required test
8. Unprofessional conduct	36. Breach of contract
9. Physical or mental disability	37. Revoked certificate in another state
10. Conviction of a felony	38. Delivery, manufacture, production of drugs
11. Disloyalty	39. Kidnapping a child
12. Drunkenness	40. Unprofitable to the school
13. Crime of moral turpitude	41. Reasons in employment contract
14. Inciting students	42. Any offense involving child
15. Failure to maintain certification	43. Intemperance
16. Cruelty	44. Any cause not arbitrary, capricious, discriminatory
17. Best interest of the school	45. Involuntary manslaughter
18. Dishonesty	46. Membership in communist party
19. Member of or contributing to an unlawful group	47. Failure to secure and maintain training
20. Unfit for service	48. Not qualified to teach
21. Brutal treatment of student	49. Mental or physical abuse to a child
22. Excessive or unreasonable absence	50. Unsatisfactory teaching performance
23. Failure to improve	51. Probable cause
24. Advocating overthrow of government	52. Commission, aiding, advocating, acts of criminal syndicalism
25. Failure to perform duties	53. Violation of section 51530
26. Failure to repay money owed to State	54. Violation of sections 7001-7007
27. Negligence in performance of duties	55. Failure to obtain release from the authorities to teach
28. Instructional ineffectiveness	

Summary

School boards and school officials are caught in a dilemma. On the one hand communities are expecting that traditionally high standards of morality be practiced by teachers and are holding school officials responsible for disciplining teachers who do not adhere to local

moral values and mores. On the other hand, teachers are increasingly challenging through the courts the concept of the employer's right to dismiss teachers for acts in their private lives as well as the discretionary power of school boards to determine immorality and to dismiss teachers for immoral causes.

The design of this research was a law-based qualitative study. State and Federal court cases were selected from the West Education Law Digest and Lexis-Nexis databases. The selected cases span a 30-year period from 1977-2007 to provide a substantial number of cases for comparison and trend determination. Court decisions provide data that indicate trends in court decisions and provide insight into the future of these educational issues. The sample of 114 cases relating to the dismissal of teachers for immorality has been decided by the U.S. District Court, the U.S. Court of Appeals, and the state courts. Jacobstein, Mersky, and Dunn (1998) identified a general approach to legal research that includes identifying and analyzing the significant facts, formulating the legal issues to be researched, and researching the issues presented. Primary sources were state and federal court decisions and state statutes. Secondary sources such as legal encyclopedias, law reviews, education articles, and books were utilized to provide supplemental information. Included as resources were the *Educational Resource Index Catalog (ERIC)*, *Lexis Nexis Academic*, and *ProQuest*.

According to Cohen et al. (1989), the Westlaw database can be used to search for cases by key number. A chief use of the computer-assisted legal research systems is also for keyword searches. Keywords furnish the researcher with the key number that was used in this study for the purpose of differentiating relevant court cases under the subject indicator *Adverse Personnel Actions* are as follows: 147.20 Immoral and criminal conduct

Cases under this key number that dealt with dismissal of teachers on grounds of immorality and criminal conduct were culled for briefing. A search of the Westlaw database was also done using the keywords *teacher dismissal* and *teacher immorality*.

Again, cases only pertaining to the specific subject of teacher dismissal for immorality were chosen for review. Cases were further culled by selecting only cases on the federal district, appellate court, and state court level. The researcher used the Lexis-Nexis database for a search using *teacher dismissal for immorality* as keywords. The Lexis-Nexis system also provided a means for retrieving cases by name (i.e., *Morrison v. Board of Education*).

The cases were briefed according to Statsky and Wernet's (1995) case briefing method. Data from the case briefs were analyzed using content analysis. The process employed an emergent approach to codes, categories, and themes (Berg, 2004). The generalizability of the results was supported by the purposeful, multi-case approach. Methods to improve internal and external validity, as well as the reliability of the study, included triangulation; repeated, longitudinal data collection; ongoing member checks; and the disclosure of the researcher's biases, assumptions, and theoretical orientation.

CHAPTER IV
DATA AND ANALYSIS

Introduction

This chapter is a description of 114 teacher dismissal for immorality court cases found under key number *Schools* 147.20 in the Westlaw data base. The cases were organized utilizing a standard briefing established by Statsky and Wernet (1995) in the book, *Case Analysis and Fundamentals of Legal Writing*. These cases are presented in chronological order by year. Each case brief contains the following elements: case citation, key facts from the opinion of the court, issues, holdings, the court's reasoning, and the disposition of the case.

Case Briefs

1977

Citation: *Carrao v. Board of Education of the City of Chicago et al.*, 360 N.E. 2d 536 (Appellate Court of Illinois, First District, Fifth Division, 1977).

Key Facts: The acting general superintendent of the Chicago Public Schools filed a complaint against Joseph Carrao, a tenured teacher at McCutcheon Elementary School, alleging that on or about June 30, 1974, Mr. Carrao took indecent liberties with a minor, a student at the McCutcheon School. The complaint also charged that such conduct was not remediable. A hearing was conducted before a trial committee of three Board members appointed to hear the charges. On behalf of the superintendent, the 8-year-old student was called to testify. The student testified that one night while she was sleeping in the trailer, she was awakened and found

that her sleeping bag had been partially unzipped, her pants were down, and Mr. Carrao was touching her “front and back” with his hands. The mother of the student also testified. Several witnesses were called who testified that Mr. Carrao was a conscientious teacher and of good character. Mr. Carrao testified on his own behalf and denied taking any indecent liberties with this student as well as any other child. Following the hearing and upon recommendation of the trial committee, the Board dismissed Mr. Carrao from his teaching position. The trial court affirmed this decision and Mr. Carrao appealed the judgment.

Issues: At issue was whether the plaintiff-appellant was denied due process of law because of various procedural deficiencies in the hearing process. Another issue was whether the superintendent’s attorney also assisted and advised the trial committee. The next issue was whether the member of the trial committee was biased and prejudged the facts. The last issue was whether the Board’s decision was against the manifest weight of the evidence.

Holding: The Appellate Court of Illinois held that Mr. Carrao had sufficient notice of the allegations against him, and thus was not denied due process. The Appellate Court also held that the board did not improperly assume the role of prosecutor, and its members, were not shown to be biased. The Court held that there was sufficient evidence to support the board’s findings. Finally, the Court held that there was no prejudicial error involved in the manner in which the board permitted the competency evaluation of the student.

Reasoning: The court reasoned that the charges in an administrative hearing do not have to be drawn with the same precision required in pleadings in judicial actions but need only to be sufficiently clear and specific to allow the preparation of a defense. Although a reversible error can occur if the prosecuting attorney also acts as advisor to the trial committee, this is not the case here. Mr. Carrao failed to establish his contention that the board assumed an unlawful

combination of functions in violation of his due process rights. The court also recognized that it is an established principle that the decision of an administrative agency will be set aside if the prejudice or bias of a hearing officer results in an unfair hearing, but just being familiar with the facts of a case does not disqualify a decision maker. The findings and evidence were sufficient in the Board reaching its decision.

Disposition: The Appellate Court of Illinois affirmed the decision of the Circuit Court.

Citation: *Board of Education of Long Beach v. Jack M.*, 566 P.2d 602 (Supreme Court of California, 1977).

Key Facts: The defendant was a tenured fifth grade teacher who had been employed with the district for 16 years. Prior to the incident on October 19, 1972, he was recognized as a teacher of fitness, ability, and good moral character. He was arrested on October 19, 1972, for violating Penal Code section 647, subdivision (a), which penalizes as a misdemeanor the solicitation of anyone to engage in or engagement in lewd or dissolute conduct in any public place or in any place open to the public or exposed to public view. Even though no charges were filed, the defendant reported the incident to his principal. The board filed a complaint with the superior court, according to Education Code section 13412, characterizing the defendant with immoral conduct and evident of unfitness to teach. The Superior Court reinstated the teacher with back pay because the defendant's conduct did not demonstrate unfitness to teach under Cal. Educ. Code § 13403. The school board appealed this decision.

Issues: At issue was whether the defendant's conduct demonstrated an unfitness to teach.

Holding: The court held that the substantial evidence supported the trial court's findings that the defendant's conduct did not demonstrate his unfitness to teach. The evidence admitted demonstrated the defendant's teaching competence as well as rendered insubstantial any fear that

the defendant might repeat the charged act or otherwise harm students or fellow colleagues. It was also held that because the defendant had committed a public sexual offense did not authorize the appellate court to disregard the trial court findings and declare him unfit to teach. In addition, the terms immoral or unprofessional conduct are broad and vague.

Reasoning: The court reasoned that neither statute nor decisional authority has applied a rule of unfitness to persons who are not convicted of- specified sex offenses, and that the board's argument conflicted with earlier legislation, which grants even to a person convicted of specified sex offenses the right to a fitness hearing. The board presented no evidence to show that the defendant, in 16 years of teaching, had failed to impress and instruct his students in manner and morals. The defendant's principal testified that defendant was capable of performing his statutory duties. In spite of the fact that defendant's actions on October 19, 1972, suggested a lack of judgment and discretion, the trial court found that this conduct was an isolated act that was a result of an accumulation of stress and pressure. Substantial evidence supported the trial court's finding that the defendant's conduct did not demonstrate his unfitness to teach.

Disposition: The Supreme of Court of California affirmed the judgment of the trial court in favor of the defendant teacher's reinstatement to his teaching position with back pay.

Citation: *Kilpatrick v. Wright*, 437 F. Supp. 397 (United States District Court for the Middle Division of Alabama, Northern Division, 1977).

Key Facts: Howard T. Kilpatrick, a tenured teacher, brought a section 1983 action against the Montgomery County School Board and chairpersons and members of the Alabama Tenure Commission. On July 2, 1976, Mr. Kilpatrick received a letter from the superintendent of the school system notifying him of his termination effective the date of the letter for violation of section 358 of title 52 of the Code of Alabama. The termination letter indicated that the plaintiff

had a right to a hearing on the charges forming the basis for the termination. A hearing was held at which the plaintiff was represented by his attorney. The Board found that the evidence of Mr. Kilpatrick making improper sexual advances to female students, threatening a student with a loaded gun, and attempting to unzip a student's pants in front of the class overwhelmingly established that during the 1975-1976 school year, Mr. Kilpatrick was guilty of immorality as set forth in the code.

Issues: At issue is whether the terms "immorality" and "other good and just cause" are vague and imprecise in that they fail to give adequate warning to an ordinary citizen of average intelligence. Also, the plaintiff challenged Section 358 on the overbreadth doctrine. At the core of the overbreadth challenge is whether the conduct is constitutionally protected.

Holding: The District held that since the teacher was found guilty of making sexual advances to some of his students, he could not claim that a discharge of "immorality" and "other good and just cause" were so vague that he could not know that his behavior would fall within its meaning. It was also held that the Mr. Kilpatrick was not inadequately warned of the charges against him and the statute was not constitutionally overbroad.

Reasoning: The court reasoned that the terms "immorality," "unprofessional conduct," and "other good and just cause" were not so impermissibly vague in that the plaintiff's conduct was definitely within the range of activities that are clearly prohibited by Section 358. It was also reasoned that the overbreadth doctrine was not applicable in this case.

Disposition: The court granted judgment for the defendants.

1978

Citation: *Penn-Delco School District v. Urso*, 382 A.2d 162 (Commonwealth Court of Pennsylvania, 1978).

Key Facts: The Penn-Delco School District appeals an order of the Acting Secretary sustaining the appeal of Thomas Urso, a 9-year tenured employee. Mr. Urso was charged with immorality from separate incidents involving two female students. The first incident occurred in March of 1975. The teacher, the newspaper advisor, called a 17-year-old senior away from her newspaper assignment into the hallway and offered to “spank” her for her birthday. The student initially thought the teacher was joking but became concerned when the offer was made a second time via the telephone. The incident was reported to the school principal. The principal advised her that this behavior should be reported in the future. Over the next 2 weeks, the teacher sought out the student and attempted to engage in continued conversations about spanking. After a meeting with the administration and the student’s parents, the teacher was warned not to engage in similar conversations with students in the future.

In December 1975, a second incident involving inappropriate conversation with a 15-year-old female student occurred. The teacher obtained an embarrassing and incriminating note the student had written during class to a girlfriend. The student requested that the teacher meet her after class regarding the note. Prior to meeting the student, the teacher read the note as well as made a photocopy. While meeting, several forms of discipline were discussed. As a form of punishment, the teacher suggested that the student wear a dress to school. A discussion about spanking within a sexual context and other matters of explicitly sexual nature were mentioned. The student reported this incident to the principal. As a result, the student was allowed to transfer to another class taught by another teacher.

A conference was held on January 14, 1976, concerning the incident with the second student. The teacher admitted that he had fantasies about spanking students for some time. On January 20, 1976, the board notified the teacher that he was being suspended with pay pending a hearing on charges of mental derangement and immorality based on his conduct with these two students. At the hearing, the charge of mental derangement was dropped.

Issues: At issue is whether the secretary erred in concluding that there was not substantial evidence in the record to support a finding of immorality in the state code. Another issue is whether the secretary erred in holding that finding of fact and a statement of reason accompanying the decision of the school board to dismiss the tenured employee. The final issue raised is whether the respondent received a full and impartial hearing before the board.

Holding: The Court held that the secretary's definitional standard of immorality was improper. Substantial evidence supported the board's finding of immorality. Finally, the Court held that secretary erred in holding that findings of fact and statement of reasons must accompany the decision of a school board when dismissing a tenured employee.

Reasoning: The court reasoned that the definitional standard of immorality used by the secretary went beyond the standard of immorality in Section 1122 of the Code. The teacher's behavior offended the morals of the community and was a bad example to the youth whose ideals a teacher is suppose to foster and elevate. The teacher's First Amendment rights of free speech were not protected because of the nature of inciting or producing ill effects to the educational process. The Board accepted the students' version of the incident; therefore, the question of insufficient evidence was a mute point. Because the teacher engaged in sexual discussions unrelated to the context of the classroom or a pedagogical setting, the court reasoned that these findings are all that is necessary to deprive a teacher of the privilege of teaching

students on the grounds that his conduct offended the moral standards of the community and set a bad example for the youth under his supervision. After reviewing Section 1130 of the Code, the court reasoned that a finding or reason does not have to be made when a professional employee is dismissed although findings are required when a non-tenured employee is dismissed and seeks a hearing pursuant to the Local Agency Law. The court made note that the Secretary reasons that findings and reasons need review; a change in procedure explicitly set forth in the Code is a legislative responsibility rather than the Courts of the Secretary of Education. Finally, the court reasoned that there was not anything in the record that supported a finding that the teacher did not receive a full and impartial hearing.

Disposition: The court restated the decision of the Board to terminate the teacher and vacated the order of the Acting Secretary of Education.

Citation: *Cochran v. Chidester School District*, 456 F. Supp. 390 (United States District Court for the Western Division of Arkansas, 1978).

Key Facts: June Nelson, a non-tenured music teacher, filed an action against the school board alleging that her employment contract, which was terminated and non-renewed, was a violation of her constitutional rights. On April 12, 1976, the board voted to terminate Ms. Nelson's employment effective April 14, 1976. She was verbally informed that she was dismissed based on becoming pregnant out of wedlock. Ms. Nelson's job performance was of a satisfactory manner.

Issues: At issue is whether the plaintiff was deprived equal protection and due process clauses of the Fourteenth Amendment as well as her privacy rights. The plaintiff also had an issue with the board's failure to renew her contract for the next school year.

Holding: The Court held that Ms. Cochran was deprived of her liberty interest by lack of a pretermination hearing. Also, it was held that due process standards were not met by the school board. Lastly, the teacher was entitled to a monetary award of damages for the unpaid balance of her contract in addition to \$7,500 damages for stigma and impact of constitutional deprivation upon her professional future.

Reasoning: The court reasoned that the teacher was deprived of her liberty interest by the lack of a pretermination hearing. It was also reasoned that Ms. Nelson was clearly deprived of a property interest. However, because the board cancelled the contract on April 14, it was not necessary to renew a contract that did not exist.

Disposition: The court ordered that the teacher be awarded damages for the remaining balance of her contract in the amount of \$1,103.16, as well as \$7,500.00 for the stigma and impact of the constitutional deprivation upon her future employment, and for attorneys' fees and costs. The court also ordered the board to adopt nondiscriminatory standards with regard to their hiring and dismissal practices. The information has to be distributed to each teacher solicited by the board and each teacher applicant.

1979

Citation: *Wissahickon School District v. McKown*, 400 A.2d 899 (Commonwealth Court of Pennsylvania, 1979).

Key Facts: Marvin McKown, a tenured employee, was dismissed by the Board for allegedly engaging in, on nine separate occasions, conduct of a sexual and romantic nature with two of his female students over a period of a year. The board provided proper notice and

conducted five separate hearings. The board found that three of the charges could not be proved; however, six of the charges involving sexual intimacy with one of the students could be proved.

Issues: At issue is whether the Secretary of Education's order to terminate the teacher's contract was justified and if the introduction of character witnesses should have been allowed because of the inconsistency. Also, was there substantial evidence to support the dismissal? The teacher raised issues on whether he was denied due process, equal protection of the law, and the opportunity to present a defense.

Holding: The Court held that there was substantial evidence to support Mr. McKown's dismissal.

Reasoning: The court reasoned that as in *Penn-Delco*, there is substantial evidence to justify a school board's decision to dismiss a tenured employee where the record shows the board chose to accept the students' version of two incidents rather than the teacher's version. The court found no merits to the teacher's arguments. However, the charges did specify two occurrences that constituted immoral conduct. In regard to the character witness, the court reasoned that the teacher did not suffer any harm because the witness who did testify was his "sole, pure character witness."

Disposition: The Appeal of the School District was sustained while the employee's appeal was dismissed. The Court ordered the dismissal reinstated.

1980

Citation: *Thompson v. Southwest School District, et.al.* 483 F. Supp. 1170 (United States District Court for the Western District of Missouri, 1980).

Key Facts: Diane Thompson, a tenured second grade teacher, filed action against the Southwest School District. She alleged in her complaint that on November 14, 1979, she was asked to sign a statement on her performance evaluation indicating that she was living with a man to whom she was not married but that she did plan on marrying in the future. The next day, the school officials informed her that she could resign and be provided with a favorable recommendation for employment or she would be fired and her credentials as an educator revoked. Ms. Thompson married the man she had been living with on November 19 and notified the school board of the marriage. On November 20, 1979, the plaintiff received a letter informing her of a suspension with pay because of a charge of immorality. The letter did indicate that she had a right to a hearing.

Issues: At issue is whether Missouri Revised Statute 168.114 is void for vagueness, does the suspension outlined by the board violate plaintiff's substantive due process, and does the board's action infringe upon the plaintiff's right to privacy and freedom of association? Another issue is whether the plaintiff has sustained or is in immediate danger of sustaining some direct injury.

Holding: The court held that Missouri statute permitting termination of employment for tenured teachers for engaging in immoral conduct would only apply to conduct that adversely affects teacher's performance. It was also held that there was no evidence that showed that the teacher's conduct affected her teaching performance. Lastly, the court held that the teacher's claim of denial of substantive due process was sufficient.

Reasoning: The court reasoned that there was insufficient evidence to support that any "immoral conduct" on the part of the plaintiff affected her performance as to permit termination

of her contract. In reviewing the character of a teacher, there must be a nexus between the teacher's conduct and the workings of the educational system must be demonstrated.

Disposition: The court ruled in favor of the plaintiff and ordered the defendants to restrain from suspending plaintiff or terminating her employment based on an immoral conduct charge.

1981

Citation: *Chicago Board of Education v. Payne*, 430 N.E.2d 310 (Appellate Court of Illinois, First District, Second Division, 1981).

Key Facts: The Chicago Board of Education sought to dismiss Artee Payne, a tenured elementary teacher, from his teaching position because of his arrest and conviction of possession of marijuana in 1976. An administrative hearing was held where the hearing officer reversed the decision of the board. Upon review instituted by the board, the circuit court reversed the hearing officer's decision.

On August 30, 1978, the general superintendent began proceedings against Mr. Payne, charging him with conduct unbecoming a teacher. The charge contained four specific items: (1) on or about February 6, 1976, Mr. Payne had possession of marijuana; (2) on or about January 19, 1978, Mr. Payne knowingly had in his possession a quantity of marijuana; (3) on or about this same date, Mr. Payne had in his possession a controlled substance; and (4) such conduct was irremediable.

Several individuals testified at the hearing regarding Mr. Payne's teaching ability and his reputation as a strong disciplinarian. It was also noted that Mr. Payne had satisfactory

evaluations but that the incident was the subject of general discussion among students and teachers.

Issues: At issue is whether the court erred in finding that the hearing officer's decision was against the manifest weight of the evidence and contrary to law.

Holding: The Appellate Court held that the school board proved that the teacher was in possession of a small amount of marijuana in 1976. There was a clear nexus between the teacher's possession of the drug and his fitness to teach. It was also held that the teacher's conduct was irremediable for which a warning would not have remedied damage.

Reasoning: The court reasoned that it was a fact that Mr. Payne was in possession of marijuana in 1976, even by his own admission of guilt. Because of this reason, the court had no other alternative but to find that the Board had proved by a preponderance of evidence that Mr. Payne did possess marijuana. There was evidence in this case that the teacher's possession of even a small quantity of marijuana, once it became general knowledge, did have a major adverse impact upon students and fellow teachers. By the mere fact of the teacher's elevated position in society, his actions are subject to greater scrutiny than that given to the activities of the average person. The teacher's conduct was not an isolated incident. Evidence also indicated that Mr. Payne possessed marijuana on two occasions. The court believed that there was a clear nexus between Mr. Payne's conduct and his fitness to teach. Finally the court reasoned that Payne's possession of marijuana in 1976 was irremediable conduct. A warning to Mr. Payne could not have remedied the damage that had already been done in regard to the students, the faculty, and the school.

Disposition: The judgment of the circuit court was affirmed, which reversed the hearing officer's decision.

Citation: *Golden v. Board of Education of the County of Harrison*, 285 S.E.2d 665 (Supreme Court of Appeals of West Virginia, 1981).

Key Facts: Arlene Golden, a tenured high school guidance counselor, challenged her dismissal from the Harrison County Board of Education because of a conviction of misdemeanor shoplifting. The teacher was arrested on December 11, 1978, for the shoplifting incident. Ms. Golden pled *nolo contendere* and was fined \$100 for the misdemeanor of petty theft. In January 1979, the board informed Ms. Golden that the incident, as well as the fine, was a serious act of immorality under the West Virginia Code. Ms. Golden was dismissed effective the day after she received the letter, pending her right to request a hearing before the board. The teacher requested a hearing shortly thereafter, of which the board was advised by their counsel that the handling of the matter might not be in compliance with the provisions of the Code. In February 1979, the board rescinded its decision to dismiss Ms. Golden, granting her back-pay during the time she was dismissed. Instead, the board voted to suspend the teacher.

During the hearing, Ms. Golden testified that she had several personal issues that preoccupied her mind, resulting in her inadvertently walking out of the store prior to payment. A store detective apprehended her at this time. Evidence was also presented by other co-workers, and school administrators that supported her professional competency.

Issues: At issue is whether the board erred in failing to notify her of the charge against her and of her right to a hearing prior to the dismissal. A second issue is whether the misdemeanor conviction constituted immorality.

Holding: The court held that the conduct of a public employee outside the job may be examined, but disciplinary action against the employee can only be based on whether there is a

nexus between the conduct and the duties performed. The conduct in question must indicate unfitness to teach.

Reasoning: The Court of Appeals reasoned that the lower court acted beyond its jurisdiction. The court issued a warrant for Ms. Golden's arrest for what appeared to be the felony of shoplifting merchandise of a value in excess of \$50. Nine days later, another magistrate took a plea of *nolo contendere* to the charge and entered a misdemeanor conviction. Secondly, since the state statute does not define immorality, the court reasoned that the conduct must indicate unfitness to teach. The evidence provided by the teacher's co-workers concluded the opposite. One justice dissented the ruling.

Disposition: The Supreme Court of Appeals reversed the decision of the circuit court and remanded for reinstatement of the teacher with full back-pay for the period of the dismissal.

1982

Citation: *Yanzick v. School District No. 23, Lake County Montana*, 641 P.2d 431 (Supreme Court of Montana, 1982).

Key Facts: Tim Yanzick, a tenured seventh grade science and math teacher, was non-renewed as a teacher with School District No. 23. Mr. Yanzick was notified on March 24, 1977 via letter that his contract would not be renewed for specific reasons.

The Board of Trustees believed that Mr. Yanzick demonstrated a lack of fitness for teaching for making statements to his students, ages of 11-14, regarding his "girlfriend" having to move out of his house because some people did not approve of the living arrangements.

The Board also believed Mr. Yanzick demonstrated a lack of fitness for the teaching position for introducing the subject of abortion in his classroom and asking the male students,

ages 11 to 14, “How many of you boys would have your girlfriend get an abortion if she were pregnant?”

Mr. Yanzick also demonstrated a lack of fitness for employment by permitting the use of human fetuses to be brought by one of the students who had obtained them without authorization from a local hospital laboratory or the knowledge of the hospital administration or the owner of the specimens.

Lastly, the Board believed that Mr. Yanzick demonstrated a lack of moral values by openly cohabitating with a female teacher, whom he wasn't married. This fact had adversely affected Mr. Yanzick's classroom performance. Mr. Yanzick requested a hearing, of which was denied. Next he appealed to the County Superintendent.

On August 24 and 25, 1978, the County Superintendent of Schools held a hearing and extensive testimony was presented. The County Superintendent upheld the decision of the Board of Trustees not to renew Mr. Yanzick's contract.

Issues: The issues are whether the standard of review was applied by the County Superintendent, the State Superintendent, the District Court and Supreme Court. Also, another issue is whether each agent acted within its authority. The final issue as whether the County Superintendent decision contained any errors.

Holding: The Supreme Court held that: (1) Administrative Procedure Act was applicable; (2) the county superintendent should hear and decide controversies such as this case; (3) the state superintendent based her decision on the transcript from the county superintendent; (4) District and Supreme Court had to review the matter to determine if there were any errors in the county superintendent's decision; (5) conduct of the teacher must directly affect teacher's job performance; and (6) evidence supported the findings that Mr. Yanzick was living with a woman

whom it wasn't married and this adversely affected the performance of his duties as a junior high school teacher.

Reasoning: The Supreme Court reasoned that the County Superintendent followed the statutory procedure, and acted within the scope of her authority. It was also reasoned that the State Superintendent found substantial evidence in the record to support the facts and reasons as given by the Board of Trustees.

The statute sets forth that the trustees of each district have the power and duty to employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district superintendent, the high school principal, or other principal as the board may deem necessary, accepting or rejecting such recommendation as the trustees shall determine. Although, the trustees have the power to employ and terminate a teacher under appropriate circumstances, the rights of the teachers must also be kept in mind. It is noted that Trustees did not attempt to dismiss Mr. Yanzick during this term of employment contract, but instead they chose not to renew his contract for the subsequent school year.

Disposition: Reversed the decision of the District Court and reinstated the decision of the State Superintendent and the County Superintendent to terminate the teacher.

Citation: *Shurgin v. Ambach*, 57 N.Y.2d 777 (Court of Appeals of New York, 1982).

Key Facts: Leslie Shurgin, a tenured high school photography teacher who had been employed with the district for 20 years, was charged with knowingly showing an unauthorized pornographic film to his students. Three students testified that the teacher was present when the film was viewed. The students also noted that the teacher announced that the film might be pornographic or "x-rated." A hearing panel recommended that the school district reprimand the teacher for using poor judgment. The school district appealed the decision to the Commissioner,

who disagreed with the panel's recommendation. The Commissioner thought the recommended penalty was too lenient for the seriousness of the offense and that appropriate penalty was dismissal. On March 19, 1980, the board of education terminated Mr. Shurgin's employment.

Issues: At issue is whether Mr. Shurgin's due process rights were violated and whether there was substantial evidence to terminate his employment with the school district.

Holding: The Court of Appeals held that the Commissioner of Education was not bound by factual findings of hearing panel even though findings were allegedly supported by substantial evidence. The record clearly showed that the teacher knowingly exhibited unauthorized film of pornographic nature to his high school students.

Reasoning: The Court reasoned that the state statute provides that either an employee or an employing board may review the findings of a hearing panel by appeal to the Commissioner of Education. The Commissioner of Education is given broad authority in terms of reviewing determinations made within the educational system and that authority may not be overturned unless it's arbitrary, capricious or lacks support in the record. The Commissioner was fully justified in finding that Mr. Shurgin had knowingly exhibited a pornographic film to his students. The testimony of the three students further established this fact.

Disposition: The Court affirmed the judgment of the appellate division.

Citation: *Potter v. Kalama Public School District No. 402*, 644 P.2d 1229 (Court of Appeals of Washington, Division Two, 1982).

Key Facts: Verl Potter was employed as a fourth grade elementary teacher. During the fall of 1978, an incident occurred where he placed his hand in a caressing manner on the knee of one of his female students. This matter came to the attention of the principal. The principal made it clear that this behavior was unacceptable.

On June 6, 1979, the teacher blew a kiss to a female student and told her not to tell anyone. The student told her mother who informed the principal. The principal discussed the incident with the teacher and also the superintendent sent him a letter informing him that he would be on probation during the following year. It was very clear in the letter that if similar incidents occurred, it might result in more severe disciplinary action and possible discharge.

On February 27, 1980, Mr. Potter lifted the dress of a female student in his class a few inches, allegedly to look at a bruise on her knee. The student's parents complained, after which the principal and superintendent investigated. It was discovered that the teacher's inappropriate physical contact with young female students had occurred regularly and discharged him. The teacher appealed. The hearing officer concluded that the teacher's conduct constituted sufficient cause for discharge.

Issues: At issue is whether the school district failed to provide remediation for the teacher's deficiencies and whether the discharge was improper due to statutory requirements that a written program for improvement and evaluation be met.

Holding: The Court held that the teacher shouldn't have been surprised by his discharge for inappropriate physical contact with female students. Also, the statute provides that a teacher cannot be discharged for deficiencies in teaching in classroom related performance unless statutory procedures for improvement of work related deficiencies have been tried and were unsuccessful. This statute was not applicable to this case. The teacher was discharged for inappropriate physical contact with female students.

Reasoning: The Court of Appeals reasoned that the teacher's conduct constituted sufficient cause for discharge according to the following factors: (1) the age and maturity of the students; (2) the likelihood the teacher's conduct will adversely affect the students and other

teachers; (3) the degree of the anticipated adversity; (4) the proximity or remoteness in time of the conduct; (5) the extenuating or aggravating circumstances surrounding the conduct; (6) the likelihood that the conduct may be repeated; (7) the motives underlying the conduct; and (8) whether the conduct will have a chilling effect on the rights of teachers involved or other teachers. Using these factors, the undisputed facts overwhelmingly suffice for cause for discharge. The teacher was warned and later placed on probation but persisted in his behavior with no sign of improvement.

The statute deals with the on-going evaluation of classroom teaching in the following categories: instructional skill; classroom management, professional preparation and scholarship; effort toward improvement when needed; the handling of student discipline and attendance problems; and interest in teaching students and knowledge of subject matter. Mr. Potter's inappropriate physical contact with his students did not have a professional purpose; therefore, this statute did not apply to this case.

Disposition: The court affirmed the judgment of upholding the school district's discharge of the teacher.

Citation: *Bethel Park School District v. Krall*, 445 A.2d 1377 (Commonwealth Court of Pennsylvania, 1982).

Key Facts: Mrs. Krall was a tenured teacher with the Bethel Park School District and also elected director in another school district in which she resided. In her position as a director, she wished to attend various conferences; however, her requests for paid personal leave to attend conferences unrelated to her work were denied. Regarding this particular case, Mrs. Krall wanted to attend a conference in New Orleans on February 14 and 15, 1979. The conference was related to her director's position and not her teacher position. Mrs. Krall did not request personal

time off; instead she informed the principal's secretary that she would be unavailable to perform her duties on the specific dates.

After returning to work, Mrs. Krall submitted an absence report indicating that she was ill during this time. She also submitted a doctor's excuse indicating that she was ill on the specified dates. The statement was based on misrepresented information from her husband without Mrs. Krall ever having a physical examination from the physician. When the physician learned of the misrepresentation, he retracted his report.

A hearing was conducted and the school board voted to dismiss Mrs. Krall for immorality according to the state code. Ms. Krall appealed this decision and a hearing was held on October 3, 1979. Two years later, on November 30, 1981, the Secretary of Education sustained Mrs. Krall's appeal, concluding that she did not act in an immoral manner. The school board filed this appeal.

Issues: At issue is whether Mrs. Krall's conduct constituted immorality as a matter of the law.

Holding: The Court held that there was substantial evidence to support the school board's finding that Ms. Krall misrepresented her absence and this was immoral conduct that warranted dismissal.

Reasoning: The Court reasoned that the determination of community standards is made by the school board, and finding by the board that a tenured employee is guilty of offending the moral standards of the community by his actions is not supported by an appeal when there is substantial evidence. Substantial evidence to justify dismissal is determined by whether a reasonable person acting reasonably might have reached the same decision as the board. The

Court believed that given the limited scope of view, they could not say that a reasonable person might not have reached the same decision of the school board.

Disposition: The decision was reversed and the school board's decision to terminate was reinstated.

Citation: *Lang v. Lee*, 639 S.W.2d 111 (Court of Appeals of Missouri, Western District, 1982).

Key Facts: Mr. Lang was a permanent teacher in the South Callaway R-II School District. Mr. Lang was charged with taking indecent and immoral liberties with a 13-year male student by showing him pornographic magazines and movies and by placing his hands on the boy's genital area. Charges also included indecent and immoral liberties with at least four other boys under the age of 18.

A hearing was held to determine if Mr. Lang's contract should be terminated based on the finding of facts and conclusions. Mr. Lang's attorney requested that the board delay the hearing for one week due to the pending criminal charges. The attorney felt that there was a good chance that the criminal charges pending would be resolved in a week. If the charges were not resolved within a week, Mr. Lang would provide a letter of resignation. The board denied the request. Mr. Lang's attorney read a letter of resignation from Mr. Lang. Mr. Lang denied the charges and stated that his client wasn't ruling out any additional lawsuits against everyone involved in the proceedings. The board voted to reject the resignation and directed the hearing to proceed.

Mr. Lang did not attend the hearing; however, evidence was presented that indicated on two occasions a 13-year-old male had visited Mr. Lang's house for the purpose of performing odd jobs. During the visits, Mr. Lang had shown him pornographic magazines and movies and placed his hands on the boy's genitals.

After Mr. Lang's Miranda rights were read, he voluntarily gave the police officers a statement admitting to allowing the boy to look at the magazines and viewing pornographic movies. Mr. Lang admitted placing his hand on the boy's crotch. In the statement, Mr. Lang also admitted having sexual contact between 1971 and 1980 with four other boys who were between the ages of 14 and 18.

The board voted to terminate Mr. Lang. He appealed the decision. The circuit court affirmed the decision of the school board.

Issues: At issue is whether the school board (1) infringed upon Mr. Lang's due process rights by insisting that the hearing proceed before the criminal charges had been resolved; (2) the evidence was based on hearsay; and (3) the school board's attorney improperly influenced the rulings of the Board.

Holding: The Court held that the school board did not violate Mr. Lang's due process rights by denying the requested one-week continuance. Mr. Lang's admission in the police investigative report containing the hearsay statement of the 13-year-old boy in which it was alleged that he took indecent and immoral liberties was harmless error. The statement that Mr. Lang provided admitting his conduct was substantial evidence independent of the statement to support the action of the board. Lastly, it was held that school board's attorney did not improperly influence the ruling of the board.

Reasoning: The Court reasoned that Mr. Lang's loss of opportunity to testify in a civil proceeding because of a fear that the testimony may be used in a criminal proceeding was not a denial of his Fifth Amendment rights. His termination was not based on his failure to testify at the termination hearing; rather, whether the Board was able to present competent and substantial evidence to prove the charges. The Board also did not have any factual basis given on which the

criminal charges would be concluded at the end of a week. Mr. Lang's contented that the boy's statement included in the investigative report was hearsay. The Board had a statement given by Mr. Lang admitting his conduct with the boy; therefore, there was ample evidence independent of the letter to support the finding and conclusion of the administrative body. The admission of the report constituted at most harmless error. Lastly, Mr. Lang's concern about the Board's attorney improperly participating and influencing the Board's decision was not supported. The Board's attorney was allowed to express his views as well as Mr. Lang's attorney was given the same courtesy.

Disposition: The judgment was affirmed.

1983

Citation: *Dupree v. School Committee of Boston*, 446 N.E.2d 1099 (Appeals Court of Massachusetts, Suffolk, 1983).

Key Facts: Mr. Dupree, a non-tenured junior high school teacher, was suspended by the school board after his indictment for possessing with intent to distribute cocaine. The Superior Court ruled in favor of Mr. Dupree, awarding him the salary and other benefits withheld from his pay. It is noted that the Superior Court ruled that because the alleged criminal conduct was unconnected to Mr. Dupree's school-related duties, activities, or contacts, the school board had no authority to suspend him without pay while the criminal charges were pending. The school committee challenged the decision.

Issues: At issue is whether Mr. Dupree was indicted for misconduct "in office or employment" within the meaning of the state statute.

Holding: The Court held that Mr. Dupree's indictment for possession with intent to distribute cocaine was misconduct "in office or employment" within the meaning of the state statute.

Reasoning: The court reasoned that an indictment for a crime during off-duty conduct is generally not considered misconduct in office under G.L. c. 268A, §25. However, there are circumstances where the crime charges, regardless of on or off duty, is so inimical to the duties inherent in the employment that an indictment for that crime is misconduct in office.

Disposition: The Appeals Court reversed and remanded to the lower court.

Citation: *Clarke v. Board of Education of the School District of Omaha*, 338 N.W. 2d 272 (Supreme Court of Nebraska, 1983).

Key Facts: The Board of Education appealed an order from the District Court reversing the action of the school board in dismissing Mr. Clarke, a permanent teacher. The trial court found that Mr. Clarke's conduct was insensitive, intemperate, and deplorable, but did not justify a dismissal to the level of immorality. Although the Supreme Court agreed with the description of the conduct, the court also believed the conduct demonstrated immorality according to the statute.

Mr. Clarke admitted in writing that he said to several of his Black students who were being disruptive, "How many times a day do I have to ask you dumb niggers to stop playing around, stop talking and get to work?" This statement is undisputed. Mr. Clarke recognized the inappropriateness of the statement because before the class concluded, he apologized. The following day, Mr. Clarke had another altercation with a Black student, resulting in him kicking the chair and extending an invitation for the student to take a swing at him. Both of the incidents

were brought to the attention of the administration. Mr. Clarke admitted to making the statements alleged by the students.

On March 2, 1981, Mr. Clarke was suspended with pay, pending a review of the situation. On March 6, 1981, Mr. Clarke received a letter stating that the Assistant Superintendent of Personnel would be recommending to the board the termination of his teaching contract. Mr. Clark requested a hearing that was granted. The superintendent recommended that Mr. Clark should be terminated on the grounds of immorality. The board agreed and voted to terminate Mr. Clarke's employment.

Issues: At issue is whether the teacher's actions were "immoral" within the meaning of the statute in question so as to justify immediate termination?

Holding: The Supreme Court held that the act of "immorality" within meaning of statute authorizing immediate cancellation of a teaching contract for immorality must be an act which directly relates to a teacher's fitness to teach. The Court also held that the act of the teacher who called Black students in a racially mixed class "dumb niggers" constituted "immorality" within meaning of statute.

Reasoning: The Court reasoned that according to the state statute, a school board could terminate an indefinite contract immediately for immorality or insubordination. Mr. Clarke's actions were in fact immoral within the meaning of §79-1260. It is noted that the school system was under a court order to desegregate, and had adopted a policy which supported certain affirmative obligations for students, staff, and the general public. The policy called upon the staff and students alike to exhibit mature good judgment, respect and sensitivity for others, and warned that violations of the statement would result in disciplinary action being taken, including termination from duty. Mr. Clarke was aware of this statement.

Disposition: The Supreme Court reversed the decision of the trial court and remanded, with instructions to reinstate the action of the board in dismissing Mr. Clarke's employment immediately.

Citation: *Florian v. Highland Local School District*, 570 F. Supp. 1358 (United States District Court for the Northern District of Ohio, Eastern Division, 1983).

Key Facts: James Florian had been a teacher in Ohio for approximately 15 years. He had been a guidance counselor in the school system and head wrestling coach of the varsity wrestling team since 1973. In 1981, the appellant held a continuing contract as a counselor and a limited contract as a wrestling coach. The records reflect that until December 1981, the appellant had done a commendable job in both capacities. On December 11 and 12, 1981, the appellant, as head coach accompanied the wrestling team to a tournament. During the tournament, the appellant, on two separate occasions, instructed a freshman team member to weigh-in under the weight class of another team member so that latter member, who was overweight, could wrestle in his weight class. The appellant was confronted about these allegations and admitted his wrongdoing and voluntarily resigned his position as wrestling coach. However, the board initiated proceedings to terminate the defendant's continuing counseling contract as well. The appellant demanded and received a hearing before an impartial hearing officer concerning the proposed termination. The hearing officer concluded that the conduct was "directly related to the performance of the teacher's duties for the Board and directly involved students in the context of a school related activity, meets the requisite character of immorality and other good and just cause, to warrant termination in accordance with the statute."

Issues: At issue is whether the court erred in determining that Mr. Florian's conduct constituted immorality. Several additional issues include the Board's decision to terminate was

contrary to the manifest weight of the evidence, it was error to rely on the misconduct as grounds for terminating Mr. Florian's guidance counselor position, the term immorality was vague and overbroad, and Mr. Florian was denied due process because of bias and prejudice of the board.

Holding: The Court of Appeals held that the teacher who instructed a freshman wrestler to misrepresent his status by weighing in the older wrestler so that latter, overweight boy could participate in tournament, engaged in conduct which fell within meaning of the statute providing for termination of teacher's contract for gross inefficiency or immorality, willful and persistent violations of reasonable regulations of board of education or for other good and just cause. The Court also held that the refusal to hear additional testimony on issue of community reaction to teacher's misconduct was not abused of trial courts' discretion. Finally, the Court held that the fact that one or more board members conducted private investigation and formed opinion prior to hearing was not improper.

Reasoning: The Ohio statute states that the contract of a teacher may not be terminated except for gross inefficiency or immorality; for willful and persistent violations of reasonable regulations of the board of education; or for other good and just case. The Legislature provided school boards with some standards in placing restraints on the conduct of teacher, particularly regarding the welfare of the school community. In this case, the court reasoned that Mr. Florian's conduct was directly related to his professional responsibilities and directly involved his students in the context of a school-related activity. In addition, as a guidance counselor, Mr. Florian duties included advising students concerning difficulties and problems. As a counselor, presumably he should be advising them along the lines of generally accepted standards of morality and the difference between right and wrong as well as obedience to the law and rules. In

addition, as a teacher, guidance counselor, and coach, Mr. Florian had a vitally significant additional responsibility of being a role model for his team members.

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

Citation: *Ross v. Robb*, 651 S.W.2d 680 (Courts of Appeals of Missouri, Western Division, 1983).

Key Facts: Mr. Ross, a tenured vocational education teacher, was charged with immoral conduct and dismissed from his position as a tenured teacher. The charges included (1) permitting a female student to be harassed by male students in his classroom; the male students asked the female how much money she would take for sexual favors. In exasperation, the female replied \$150.00. Mr. Ross took out two \$100 bills from his wallet and offered them to her; (2) In a month preceding the hearing, Mr. Ross grabbed, hugged, pinched, and put his arms around the female student; (3) Mr. Ross allowed a centerfold from a Playboy magazine to be displayed on the wall in the classroom as well as taken to an off-site carpentry field trip; (4) Mr. Ross permitted the male students to harass the female student; (5) During Mr. Ross' presence, the male student handed the female student a plastic substance in the form of a phallus, which was displayed in a sexually suggestive manner; (6) Mr. Ross allowed a male student to interrogate the female student about her sexual behavior and about how many guys she had performed sexual relations with; and (7) Mr. Ross did not confiscate or reprimand a student for playing a pornographic eight-track cassette in the classroom. A notice of hearing was given to Mr. Ross as required. The board voted to terminate Mr. Ross' employment as a tenured teacher.

Issue: At issue is whether the statute was unconstitutionally vague and violated Mr. Ross' due process rights. Also, at issue is whether the Board had competent and substantial evidence to

support the dismissal. Was the dismissal arbitrary, capricious, and unreasonable and an abuse of discretion?

Holding: The Supreme Court held that the state statute for dismissing a teacher for engaging in immoral conduct is not unconstitutionally vague. There was competent and substantial evidence to support the finding that Mr. Ross had permitted male students in his class to harass a female student. Lastly, the court held that Mr. Ross received a fair trial.

Reasoning: The Court reasoned that Mr. Ross' conduct related to conduct rendering a teacher unfit for the performances of his duties. This analysis does not support a denial of constitutional rights. The records contain competent and substantial physical evidence; therefore, the Board did not act unreasonably, arbitrarily, or capricious in reaching its decision. The Board exercised its' discretion properly. Finally, the school board's attorney participation in the proceedings did not deprive Mr. Ross of a fair trial. The record indicated that the Board conducted the hearing properly, fairly, reasonable, and within its statutory authority.

Disposition: The Supreme Court reversed the decision of the lower court and reinstated the decision of the Board of Education to terminate Mr. Ross.

1984

Citation: *National Gay Task Force v. Board of Education of City of Oklahoma City*, 792 F.2d 1270 (United States Court of Appeals, Tenth Circuit, 1984).

Key Facts: The National Gay Task Force, which includes teachers in the Oklahoma public schools, challenged the decision of the United States District, which ruled in favor of the school board as well as the constitutional validity of the state statute that allowed the school board to terminate teachers for public displays of homosexuality. The Task Force filed this appeal.

Issue: At issue is whether the state statute violates the members' of the National Gay Task Force right to privacy and equal protection. Also, another issue is whether the statute is void for its vagueness and violation of the Establishment Clause. The task force also had an issue with the statute being overbroad.

Holding: The Court of Appeals held that there were not any constitutional problems with the statute allowing school boards to terminate a teacher for engaging in public homosexual activity. However, the court found that portions of the statute were problematic.

Reasoning: The Court reasoned that there were no constitutional problems with the statute in regards to the school district dismissing a teacher for engaging in public homosexual activity. According to the statute, Section 6-103.15 defines public homosexual activity as the commission of an act with a person of the same sex and is indiscreet and not practiced in private. Section 6-103.15 does not punish acts performed in private. Therefore, the right of privacy, whatever its scope in regard to sexual acts, is not implicated in this case. The court could not find that the statute violated the members' right to equal protection of the law. The court agreed with the lower court in correctly rejecting the Establishment Clause claim.

Lastly, the court reasoned that §6-103.15 was unconstitutionally overbroad and violated the First Amendment. The statute defined public homosexual conduct as advocating, soliciting, imposing, encouraging, or promoting public or private homosexual activity in a manner that creates a substantial risk that such conduct will come to the attention of school children or school employees. The First Amendment protects advocacy even of illegal conduct except when "advocacy" is directed to inciting or producing imminent lawless action and is likely to incite or produce such action. First Amendment rights may be restricted only if the employer shows some restriction is necessary to prevent the disruption of official functions or to insure effective

performance of the employee. The school board did not provide any evidence to support a finding of such.

The statute states that a teacher may be dismissed if there is a finding of “unfitness” and outlines the factors that are considered in determining “unfitness”: whether the activity or conduct is close in time and place to the teacher’s, student teacher’s or teacher’s aides official duties; whether any extenuating or aggravating circumstances exist; and whether the conduct or activity is of a repeated or continuing nature which tend to encourage or dispose school children toward similar conduct or activity. An adverse effect on students or other employees is the only criteria among those listed in the statute that is related to a material and substantial disruption. The court reasoned that the unfitness requirement did not exempt §6-103.15 from its unconstitutional overbreadth.

Disposition: The Court of Appeals reversed part of the district court’s decision and found that the statute was overbroad because it sought to regulate pure speech.

Citation: *Kimble v. Worth County R-III Board of Education* 669 S.W.2d 949 (Court of Appeals of Missouri, Western Division, 1984).

Key Facts: Mary Kimble, a tenured teacher-librarian, was dismissed from The Worth County R-III Board of Education for engaging in immoral conduct as noted in §168.114.1 (2) of the Missouri state statute. Ms. Kimble appealed the dismissal with the Circuit Court, who ordered that the school board restate Ms. Kimble as a tenured teacher and compensate her for the suspended period. The school board appealed this ruling.

Ms. Kimble was charged with three instances of immoral conduct. The first incident involved her taking a teapot during the 1973-1974 school year and returning it after word was disseminated that it was missing; secondly, during the 1976-1977 school year, Ms. Kimble took

\$20 from gate receipts collected from a basketball game, although she refunded the money after being confronted with the matter; and, finally, in February 1982, she took a set of books belonging to the school district, indicated that she never received the books from the vendor, and when she was confronted with the situation, she returned the books to the school library. The school board voted to terminate the teacher.

Issue: At issue is whether Ms. Kimble's conduct was immoral and that it rendered her unfit to teach. Also, is the state statute unconstitutionally vague? Finally, did the school board have competent and substantial evidence to support its decision?

Holding: The Court of Appeals held that the school board's decision was supported by competent and substantial evidence. Secondly, it was held that Ms. Kimble's conduct was immoral rendering her unfit to teach. Also it was held that taking property belonging to another without consent fell within the statutory basis for terminating a teacher.

Reasoning: The court reasoned that there was competent and substantial evidence to support the school board's finding that Ms. Kimble's conduct was immoral and it rendered her unfit to teach. The court noted that Ms. Kimble, in addition to her duties as a librarian, taught "library" and "reference" skills at the elementary level on a regular basis, and on an incidental basis at the high school level. It was not found that the school board acted in an arbitrary, capricious, and unreasonable manner. Ms. Kimble's conduct was evidence of a continuing pattern of behavior.

Disposition: The Court reversed and remanded with directions that the lower court support the board's decision to terminate the teacher.

Citation: *Baker v. School Board of Marion County*, 450 So.2d 1194 (Court of Appeal of Florida, Fifth District, 1984).

Key Facts: Clyde Baker, an elementary teacher, was arrested for possession of illegal alcohol and marijuana. The criminal charges were dismissed; however, the school board refused to reinstate Mr. Baker and after a hearing, voted to terminate his employment.

The record established that marijuana seeds were found by beverage agents in a dresser drawer in the office of a nightclub which was owned by Mr. Baker and his brother. Mr. Baker stated to the officers that he was the manager and was responsible for the marijuana. The county judge dismissed the charges noting that Mr. Baker based his statement upon a sense of responsibility to his brother and upon his personal knowledge of the presence of marijuana. Mr. Baker's brother acknowledged ownership of the illegal substance.

Issues: At issue is whether the dismissal on grounds of immorality and misconduct in office, under section 231.-36(6), Florida Statutes is supported by substantial and competent evidence. Also, another issue is whether the teacher's effectiveness was impaired.

Holding: The Court of Appeals held that evidence was not sufficient to support finding that the teacher was guilty of immorality or misconduct in office. The Court also held that the possibility that the teacher's effectiveness was impaired by his arrest did not justify his dismissal.

Reasoning: The Court reasoned that substantial evidence did not exist to establish that Mr. Baker was in possession of marijuana. The court also rejected the board's argument that Mr. Baker's effectiveness of a teacher was impaired and that this alone justified his dismissal. The court reasoned that this action would be improper because whenever a teacher is accused of a crime and is subsequently exonerated with no evidence being presented to connect the teacher to the crime, the school board could dismiss the teacher because the attendant publicity has impaired the teacher's effectiveness. This rule would be improper.

Disposition: The Court of Appeals reversed the order of the Board due to lack of substantial, competent evidence to support the findings of guilty for immorality or misconduct in office.

Citation: *Balog v. McKeesport Area School District*, 484 A.2d 198 (Commonwealth Court of Pennsylvania, 1984).

Key Facts: Mr. Balog was a tenured employee of the McKeesport Area School District. He had served in the role of a vocational teacher before being promoted to the Director of Vocational Education.

Mr. Balog was charged with 28 incidents involving persistent negligence, immorality, and willful violation of school laws. There was substantial evidence that supported the following: the teacher made false statements to the superintendent and other district staff regarding his presence in an elementary school building; the teacher did not attempt to have his duties and compensation defined and continued to apply for money not authorized under the terms of his contract; the teacher used pressure on his fellow colleagues to answer questions on an evaluation form contrary to what they believed; he demeaned professional staff; he submitted paperwork for his university course that was completed by another staff member; and he neglected his duties by failing to revise his teaching schedule and by failing to perform or supervise assignments.

Issues: At issue is whether there was a violation of the teacher's constitutional rights, whether the Secretary of Education erred and abused his discretion.

Holding: The court held that there was sufficient evidence to support the Secretary of Education's decision to terminate the teacher's contract due to finding of willful violation of school laws, immorality, and persistent negligence.

Reasoning: The court reasoned that §1122 of the Public School Code of 1949 provides that valid causes for termination include the following: immorality, incompetency, intemperance, persistent negligence, mental derangement, advocacy of or participating in un-American or subversive doctrines, and persistent and willful violation of the school laws of the Commonwealth on the part of the employee. The court reasoned that immoral conduct may include lying. Mr. Balog failed to comply with the directive of a supervisor and thus dismissal is warranted for persistent negligence. Finally it was reasoned that the Secretary did not commit an error of the law, nor did he abuse his discretion. There was no evidence to support a violation of due process or procedural error.

Disposition: The Court affirmed the decision of the Secretary of Education to terminate the teacher's contract.

Citation: *Kenai Peninsula Board of Education v. Brown*, 691 P.2d 1034 (Supreme Court of Alaska, 1984).

Key Facts: Roy Brown was a tenured teacher at Kenai Central High School. In 1980, the appellee, was convicted of diverting electricity from the Homer Electric Association in violation of Alaska Statute §42.40.030. This is a misdemeanor statute concerned with obstruction of electric, gas, telegraph, or telephone lines. The appellee was sentenced to jail and ordered to make restitution to the Electric Association. During all of the proceedings, the appellee continued to teach. After all of the criminal appellate remedies were exhausted, the Director of Personnel for the school district recommended that Mr. Brown be dismissed immediately. The recommendation was based on Alaska Statute §14.20.170(a), which permits dismissal when a teacher commits an act that constitutes a crime of moral turpitude. On April, 28, 1982, Mr. Brown was notified that he was suspended with compensation until the board determines

whether or not it will accept the recommendation. A Board meeting was held on May 3, 1982. The board approved dismissal of Mr. Brown. Mr. Brown appealed the decision of the board to the superior court. The superior court reversed the board's decision. The school board appealed the court's decision to the Supreme Court. Mr. Brown died while the school board was appealing the case.

Issues: At issue was whether the board's dismissal violated Brown's right to due process as set forth in the state statute? Another issue was whether there was sufficient evidence to support the finding of moral turpitude. The last issue was whether back-pay should be awarded.

Holding: The Supreme Court held that although dismissal prior to the hearing violated the tenured school teacher's due process rights, subsequent hearing as to dismissal did comply with the statute setting forth procedures for dismissing teachers and with the teacher's due process rights, where a letter to the teacher notified him of his right to request such a hearing, even though the teacher's counsel apparently treated the hearing as an appeal for dismissal rather than an evidentiary hearing. The Court held that the teacher was entitled to back pay, minus any mitigation, from his initial dismissal until such hearing. Finally the Court held that evidence was sufficient to support the board's finding that the teacher committed an act which, under the laws of the state, constituted a crime involving moral turpitude, and thus supported his dismissal.

Reasoning: The Court reasoned that a teacher's due process rights are set forth in the state statute. The school board must notify the teacher of the dismissal and provide a statement of cause and a complete bill of particulars. The teacher may request a public or private hearing and other rights, such as representation by counsel or cross-examination. The dismissal cannot be effective until the teacher has had an opportunity to request a hearing, if one is desired. It was reasoned the Mr. Brown was entitled to back pay. The evidence indicated that the board properly

determined that Brown committed an act, which under state laws, constituted a crime involving moral turpitude.

Disposition: The court reversed and remanded to the lower court.

1985

Citation: *Downie v. Independent School District*, 367 N.W.2d 913 (Court of Appeals of Minnesota, 1985).

Key Facts: Mr. Downie was a tenured guidance counselor with District No. 141. His duties included counseling students regarding school and nonschool related problems and dealing with student discipline problems. Prior to his suspension, Mr. Downing had never received a reprimand or any notice of deficient performance of his duties. His performance evaluations by the principal were uniformly complimentary. On May 2, 1984, three staff members approached the District's superintendent and charged that Mr. Downie's conduct was improper and unprofessional. Because of the seriousness of the allegations, on May 3, 1984, Mr. Downie was immediately suspended with pay pending further investigation of the charges. At that time, he was not informed of the charges against him. On May 24, 1984, the school board voted to immediately discharge Mr. Downie pursuant to Minnesota Statute §125.12. The specific charges included (1) being involved in a weight-loss bet with two ninth-grade female students, the terms of which included sexual activities with Mr. Downie; (2) telling two male teachers in the teachers' lounge about entering into the bet; (3) sending a handwritten note to a ninth-grade female student which stated: "Stay out of my fucking business"; (4) repeatedly administering an oral survey to individuals and groups of junior high school students, regarding their personal sexual activities; (5) using vulgar, crude, and inappropriate language and stories when speaking

to students; (6) sexually harassing staff and students by making inappropriate remarks and staring at their bodies; and (7) breaching the confidentiality of students whom he counseled. In July 1984, Mr. Downie's attorney was provided with a letter specifying all of the instances that supported the District's general allegations. At the hearing, Mr. Downie denied that the alleged misconduct had occurred or offered a reason to explain his behavior. Students, several teachers, and other staff of the District testified. Downie's version of various incidents was supported in part by a few witnesses; however, it was substantially contradicted by several others. A prominent child and educational psychologist and the school nurse testified about the harm that Mr. Downie may have caused. The hearing officer issued comprehensive and exhaustively-detailed findings, a conclusion, a recommendation, and a memorandum. The hearing officer listed 51 separate findings supporting the seven grounds of alleged misconduct. The hearing officer recommended that Mr. Downie's employment be terminated pursuant to the state statute. The report was adopted by the school board on September 13, 1984, and Mr. Downie was dismissed. On November 8, 1984, Mr. Downie filed a writ of certiorari to the Court of Appeals for review of the decision by the school board.

Issues: At issue is whether the record contains substantial and competent evidence to sustain the determination that the relator committed the alleged misconduct. Another issue is whether the immediate dismissal of the relator was proper according to Minnesota Statute §125.12, subd. 8.

Holding: The Court of Appeals held that the evidence was sufficient to support the hearing examiner's findings that Mr. Downing committed misconduct by sexually harassing staff and students and by breaching students' confidentiality. It was also held that Mr. Downing was not entitled to warning that breach of confidentiality was inappropriate where it clearly violated

code of professional ethics. The Court also held that findings of misconduct supported immediate dismissal.

Reasoning: The court reasoned that it was not at liberty to hear the case and substitute its findings for those of the school board. A school board's decision to terminate a teacher or principal should be set aside only if the decision is fraudulent, arbitrary, unreasonable, not supported by substantial evidence on the record, not within the school board's jurisdiction, or is based on an erroneous theory of law. The district contended that Mr. Downie, who was a professionally-trained junior high counselor, should have known that his language and behavior were inappropriate. It was found that Mr. Downie's most serious charge was the breach of confidentiality of students who came to him for counseling. It is reasoned that the dismissal was not arbitrary or capricious. Mr. Downie was suspended with pay pending a hearing, given an adequate notice of charge against him, and was granted a full hearing before an impartial independent hearing officer.

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

Citation: *Madril v. School District No. 11*, 710 P.2d 1 (Court of Appeals of Colorado, Division Three, 1985).

Key Facts: Benito F. Madril was a tenured foreign language teacher at William J. Palmer High School. The superintendent filed a letter to the board recommending that Mr. Madril be dismissed from his employment with the school district for neglect of duty, immorality, and other good and just cause. Madril was charged with leaving his class unattended at school and also during a field trip to Mexico, with failing to render assistance to students during a field trip to Mexico, with exhibiting improper behavior, and making immoral advances toward female

students following a hearing under the Teacher Employment, Dismissal, and Tenure Act §22-63-101.

Issues: At issue is whether the hearing officer used the wrong standard of proof and whether the board's findings of immorality and other good and just cause are sustained by substantial evidence. Another issue is whether there were certain discovery and procedural errors.

Holding: The Court of Appeals held that the proper standard of proof in dismissal action is preponderance of the evidence. The Court also held that the male teacher's words to female students did not support finding of sexually provocative or exploitive conduct.

Reasoning: The court reasoned that the proper standard of proof is by preponderance of evidence according to the dismissal actions under the Teacher Tenure Act. The school board failed to follow a procedure that concluded that the dismissal could also be on the grounds of other good and just cause; however, the court limited their review based on the dismissal for immorality. The standard of review that this court applies must be supported by substantial evidence in order to set aside the board's action and substitute its own. If there is not substantial evidence, the finding must be set aside as contrary to the law.

The court concluded that the words "I know you are here for me, and I know you are here to see me," do not constitute substantial evidence of sexually provocative or exploitive conduct. Because of these reasons, the court could not support a dismissal for immorality.

Disposition: The Court of Appeals set the order of dismissal aside and remanded the matter to the board for further proceedings consistent with the holding herein.

Citation: *Lile v. Hancock Place School District*, 701 S.W.2d 500 (Court of Appeals of Missouri, Eastern Division, Division Two, 1985).

Key Facts: Charles Lile, a tenured fourth grade teacher, was terminated by the board of education for engaging in immoral conduct as outlined in §168.114.0 (2). Mr. Lile began dating the mother of one of his fourth grade students. The mother also had another daughter, age 14. The two girls and their mother moved into Mr. Lile's home.

The mother became ill and was hospitalized for a period of time. During the hospitalization, the girls moved out of Mr. Lile's home and began living with their biological father. The girl's father filed a complaint with the St. Louis Police Department charging Mr. Lile with sexual abuse. The officers questioned both girls about the alleged sexual abuse. Mr. Lile was notified the following day of the charges.

Mr. Lile admitted to the following charges: walking in the bathroom on several occasions when the girls were taking baths; taking nude photographs of the girls; sleeping with both girls while their mother was hospitalized; walking around the house nude; taking baths with the girls when they were younger; and on one occasion removing the bra of one of the girls to examine sores on her body.

S. H., the initials of the fourth grade student, made the following allegations to the police: Mr. Lile was sleeping with her and reached over and around her and touched her breast. When Mr. Lile walked into the bathroom while the girls were bathing, he would sometimes go to the bathroom; and when Mr. Lile took nude photographs of them, they did not consider it a joke.

The superintendent learned of the sexual charges and interviewed both girls. The news media became involved and the superintendent told Mr. Lile not to return to his classroom. Mr. Lile was suspended for the remainder of the school year. After reviewing the facts, the Board concluded that Mr. Lile's actions constituted immoral conduct, rendering him unfit to teach children. The Board voted to terminate his contract.

Issues: At issue is whether the Board's decision was supported by competent and substantial evidence. Another issue is whether due process and right to privacy were violated.

Holding: The Court of Appeals held that the termination was supported by sufficient evidence. It was also held that the school board showed sufficient nexus between the alleged activity and the school community. It was held that the teacher was not deprived of his due process rights nor was the right of privacy violated.

Reasoning: The Court concluded that there was competent and substantial evidence in the record to support the board's decision. An erroneous finding or conclusion by an administrative agency is not grounds for reversal of the agency's decision if other competent and substantial evidence supports the decision. Using the factors from *Thompson v. Southwest South District*, the age and the maturity of Mr. Lile's fourth grade students rendered them susceptible to psychological harm. Mr. Lile's conduct did have a substantial adverse impact upon students and other teachers, given the sexual abuse charge that had been publicized locally.

The court also ruled that the school board may terminate a teacher for conduct outside the school if it can establish a sufficient nexus between such conduct and the board's legitimate interest in protecting the school community from harm. The Board established a sufficient nexus and that harm was likely to occur if Mr. Lile remained as a teacher.

Mr. Lile argued that the board's actions violated his constitutional rights to procedural and substantive due process. The record indicates that the board gave Mr. Lile timely notice of the charges against him and held a public hearing. The board's reasons for terminating Mr. Lile were not trivial in nature; therefore, the court rejected Mr. Lile's claim of procedural and substantive due process. The reasons for termination are both real and substantial, and directly related to the educational process. Finally, it was reasoned that Mr. Lile's conduct is not

protected by the right of privacy created under the Fourth and Fourteenth Amendments. The school board had an important interest in protecting the well-being of its students and the integrity of the school system.

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

1986

Citation: *Mott v. Endicott School District No. 308*, 105 Wn.2d 199 (Supreme Court of Washington, 1986).

Key Facts: Mr. Gregory Mott was a non-tenured teacher hired in 1979 by the Endicott School District. During the 1981-1982 school year, Mr. Mott taught a number of courses including two band classes. The school principal observed and evaluated Mr. Mott on January 21 and 26, 1982. Based on these evaluations, on January 29, 1982, the superintendent gave notice to Mr. Mott that he would be placed on probation from February 1, 1982 to May 1, 1982. Mott's work was judged to be unsatisfactory in five areas, which included classroom management and handling of student discipline and attendant problems. The superintendent outlined a program for improvement that Mr. Mott was to follow during his probation. During this time period, Mr. Mott made a lot of progress and the principal would have recommended that the superintendent remove Mr. Mott from probation except for reports she received from four students on April 21, 1982, alleging that Mr. Mott had struck each of them in the genital area.

Issues: At issue is whether the teacher's intentional striking of students' genitals constitutes sufficient cause for discharge.

Holding: The Supreme Court held that the teacher's intentional striking of students in their genitals constituted sufficient cause for discharge. The Court also held that such conduct was not a remediable teaching deficiency.

Reasoning: The court reasoned that a teacher's repeated intentional striking of students in the genital area lacks any positive educational aspect or legitimate professional purpose, is not a disciplinary measure within the meaning of state statute, and constitutes sufficient cause for dismissal.

Disposition: The Supreme Court reversed the decision of the Court of Appeals and concluded that there was sufficient cause to discharge.

Citation: *Ross v. Springfield School District*, 716 P.2d 724 (Supreme Court of Oregon, 1986).

Key Facts: Mr. Ross, a teacher with the Springfield School District in Oregon, appealed the decision of the Court of Appeals, which affirmed his dismissal by the Fair Dismissal Appeals Board (FDAB). His dismissal was based in part on grounds of immorality under Oregon Revised Statute §342.865 in the form of engaging in sexual conduct in an adult bookstore.

Issues: At issue is whether "immorality" refers to what people profess or what they do, and what part of the public is entitled to set standards of morality for the population as a whole. Another issue is whether "immorality" refers to conduct that those admitted to the standard-setting "public" consider immoral themselves, or more particularly for their children, or for school teachers, or for one sex but not the other.

Holding: The Supreme Court held that the Fair Dismissal Appeals Board was not to determine whether a teacher's conduct was "immoral" merely by reference to alleged factual content of "community moral standards," but was to exercise its own interpretative judgment.

Reasoning: The Court reasoned that the standards stated in the statute were interpretative rather than legislative. The state statute provides that consideration should be given to standards adopted by the local school boards; however, the Springfield School Board did not have any standards of immorality. The statute places primary interpretative responsibility with the Fair Dismissal Appeals Board, which chose to interpret the case as immorality. The Court ruled that the Fair Dismissal Appeals Board's order was inadequate because there was not any basis set forth to determine that Mr. Ross' conduct violated the immorality standard and thus lacked any rationale that Mr. Ross' conduct was immoral.

Disposition: The Supreme Court reversed the decision of the Court of Appeals and remanded the proceeding to the Fair Dismissal Appeals Board.

Citation: *Schmidt v. Board of Education*, 712 S.W.2d 45 (Court of Appeals, Western District, 1986).

Key Facts: Mr. Schmidt and Mr. Taylor were teachers with the Consolidated School District No. 2 in Raytown, Missouri. The teachers coached the boys' wrestling team. Both teachers took six boys to the State Wrestling Meet in Columbia, Missouri. Four of the boys competed in competition and all six boys stayed at the motel in Columbia under the teachers' authority.

In addition, four female cheerleaders and the mother of one of the students also were present for the event. It is noted that the female students were not serving in the capacity of cheerleaders for this function.

After having dinner one evening during their stay, the coaches and the female chaperone went to the lounge in the motel for a drink, leaving the students unsupervised in two adjoining rooms. The female students were staying in another motel. Later that evening, the female

chaperone and the coaches left the motel and traveled to another area in the city to attend a private party. During the adults' absence, four of the boys left the motel room and traveled by automobile to another motel in the city to visit the parents of one of the students. The teachers were unaware of these actions.

During the time of no supervision, a third party brought beer into one of the motel rooms and consumed a portion. The students did not drink any of the beer; thus, the additional teacher who had accompanied the wrestling coaches and female chaperone on the trip was in the adjoining room and was unaware of the incident.

The coaches and female chaperone returned to the motel room at approximately 1:30 a.m. The female cheerleaders were sleeping, so the teachers made a decision to allow the cheerleaders to remain and sleep over. The reasons for this decision given by the teachers include the following: the hour was late, the weather was bad, the female chaperone was not familiar with the vehicle she was driving, and she had been drinking. After this decision was made, Mr. Schmidt and the female chaperone proceeded to occupy one of the beds while Mr. Taylor, the assistant coach, occupied the second bed in the same room with a female student.

The next day, everyone agreed that the previous day's activities would not be discussed with anyone, including parents and administrators of the school district. A month later, Dr. Graff, the school principal, learned of the incident and discussed it with the teachers. After further investigation, Dr. Graff determined that the actions of the teachers were indeed immoral in character rendering them unfit to teach. Dr. Graff recommended to the superintendent that both teachers be terminated from the school district. Proper notice and a hearing was granted. The teachers were dismissed.

Issues: The issues are whether the evidence is sufficient to support the board of education's decision to dismiss the teachers, whether the dismissal was arbitrary and capricious, was there an abuse of discretion.

Holding: The court held that the teachers, because of their actions and inactions, conducted themselves immorally under the terms of §168.114.1 (2) of the Missouri Revised Statute.

Reasoning: The Court reasoned that because the immoral conduct adversely affected the teachers' performance in the capacity of teachers and coaches, their contracts should be terminated. The teachers did not contest the Board's finding of immoral conduct; however, the teacher did not believe there was evidence to support a finding of unfit to teach. The Court did not find the board to be arbitrary and capricious or an abuse of discretion.

Disposition: The Court of Appeals affirmed the decision of the school board and circuit court.

Citation: *McBroom v. Board of Education, District No. 205*, 494 N.E.2d 1191 (Appellate Court of Illinois, Second District, 1986).

Key Facts: Nance McBroom was a tenured physical education teacher employed by the Board of Education of District No. 205 for 12 years and was chairperson of the girls' physical education department at York High School during the 1982-1983 school term. During her tenure, the plaintiff maintained an excellent work record. During the 1983-1984 school year, the plaintiff was given a leave of absence. Ms. McBroom sought reinstatement from her leave status for the 1984-1985 school year. The district dismissed the plaintiff for theft of a \$290.00 social security check.

Issues: At issue is whether there is cause for teacher dismissal. Another issue is whether the teacher's conduct is remediable.

Holding: The Appellate Court held that the teacher's theft of check from the student's locker, which became a matter of general knowledge, was cause for dismissal. The Court also held that the allegation that theft was an isolated incident resulting in the teacher's severe grief reaction and depression did not preclude dismissal of the teacher. The Court finally held that the teacher's criminal conduct was irremediable and the board was not required to give the teacher written warning informing her of the consequences for failing to take corrective measures.

Reasoning: The Court reasoned that there was substantial evidence to support the finding of cause for dismissal. A teacher's theft of a student's property did have an adverse impact on the teacher's effectiveness. It was noted that the teacher had a special leadership position as one who serves as a role model and instills the basic values of society. The high school students the teacher instructs are at an impressionable age. As a result, the theft did have a major effect upon the school.

The teacher stated that her conduct was caused by a psychiatric disorder; however, the Court reasoned in this case that the teacher did not seek medical attention for her depression until 3 months after the theft occurred. Ms. McBroom, when she entered her plea of guilty, testified before the trial court that at the time of the theft she was aware that her conduct was wrong.

A two-prong analysis is needed to determine whether conduct is irremediable. The first is whether damage has been done to the students, faculty, or school, and secondly is whether the conduct resulting in that damage could have been corrected had the teacher's superiors warned her.

The Court finally reasoned that it was clear that Ms. McBroom's conduct had an immediate adverse effect on the students, faculty, and school; however, the second prong of the remediability test is not applicable in that the matter involved the criminal conduct of the teacher. It was concluded that the conduct was irreparable.

Disposition: The Appellate Court affirmed the judgment of the circuit court.

Citation: *Rogliano v. Fayette County Board of Education*, 347 S.E. 2d 220 (Supreme Court of Appeals of West Virginia, 1986).

Key Facts: Mr. Rogliano was a permanent substitute teacher in the Fayette County school system. On February 17, 1982, he was arrested and charged with possession of marijuana, a misdemeanor, following a police search of his home. On February 19, 1982, the appellant was suspended without pay from his teaching position. At the March 24, 1982 board meeting, the superintendent recommended to the board that Mr. Rogliano's suspension be extended until the disposition of the drug charge.

The drug charges were dismissed against Mr. Rogliano due to a technicality with the search warrant; however, the school board voted to have a hearing about the matter. The teacher was notified that a hearing was scheduled.

The school board met in closed session to hear the evidence on the substance charge against Mr. Rogliano. Two deputies who were present during the search of Mr. Rogliano's home testified at the hearing. A representative from the West Virginia Education Association appeared on the teacher's behalf and challenged the validity of the proceedings on procedural grounds, alleging that the school board had no authority to dismiss the teacher because the evidence had not shown a correlation between the alleged misconduct and his ability to teach.

The school board voted to dismiss the teacher. Mr. Rogliano appealed to the Circuit Court, which concluded that the teacher did possess marijuana, but the school board had no evidence to indicate that the misconduct impaired his ability to teach and ordered the case remanded for further proceedings before the board.

Issues: At issue is whether a school board may dismiss an employee for acts performed at a time and place separate from employment. Another issue is whether there was a rational nexus demonstrated between the conduct performed outside of the job and the duties the employee is to perform.

Holding: The Supreme Court of Appeals held that misdemeanor possession of a small amount of marijuana, resulting in arrest of teacher but ultimately resulting in dismissal of charge, did not make teacher such a subject of notoriety in community as to impair, indirectly, his ability to function as a teacher, and hence did not warrant dismissal. The Court held that the above average teacher was well-liked by his students, misconduct occurred in private and did not directly involve any student or school personnel, and school board unnecessarily protracted proceedings against teacher, thereby contributing to whatever notoriety he may have attained in the community as a result of his arrest.

Reasoning: The Supreme Court reasoned that there was no evidence that the teacher's alleged misconduct had directly affected his performance of his teaching responsibilities. It was also noted that the circuit court erred in upholding the teacher's discharge on this ground.

Disposition: The Supreme Court of Appeals reversed the decision of the trial court and remanded the matter to the board with instructions that it reinstate the teacher to his former position.

Citation: *Board of Education of Hopkins County v. Wood*, 717 S.W. 2d 837 (Supreme Court of Kentucky, 1986).

Key Facts: Two 15-year-old girls informed the Hopkins County grand jury that 2 days prior to a murder, they purchased 10 marijuana cigarettes and had taken the marijuana to the apartment of the Wood brothers where they and the brothers smoked some of the marijuana. The Wood brothers were employed as teachers with the Hopkins County Board of Education. The brothers were arrested and charged with a misdemeanor of contributing to the delinquency of a minor.

On September 1, 1983, the school board took the testimony of the girls, and the Wood brothers were suspended from their teaching position on September 6 for immoral character and conduct unbecoming a teacher. A hearing was conducted on September 28. The brothers denied smoking marijuana and three other witnesses testified that they did not see any marijuana smoking. At the conclusion of the hearing, the school board voted unanimously to terminate the Wood brothers.

The Court of Appeals reversed the decision because it was determined that no written reports were prepared at any time prior to, during, or after the termination hearing. Evidence was presented by the school principal that he had kept written records on both teachers for 9 years and 6 years, respectively. The brothers' in-class teaching evaluations had been satisfactory.

The Supreme Court reversed the decision of the Court of Appeals and reinstated the judgment of the trial court.

Issues: The issue is whether the contracts of tenured teachers may be terminated for immoral conduct or conduct unbecoming a teacher for off-campus activities involving students, when no written records of such conduct are in the personnel file.

Holding: The Supreme Court held that the tenured teachers could be discharged for off-campus smoking of marijuana with two 15-year-old students.

Reasoning: The court reasoned that the evidence indicated that there was a serious misconduct of an immoral and criminal nature and a direct connection between the misconduct and the teachers' work.

Disposition: The Supreme Court reversed the decision of the Court of Appeals and reinstated the judgment of the circuit court, which was to terminate the teachers.

Citation: *Board of Education of Laurel County v. McCollum*, 721 S.W. 2d 703 (Supreme Court of Kentucky, 1986).

Key Facts: Jim McCollum, a tenured 13-year employee of the Laurel County Board of Education, was engaged as a homebound teacher. The superintendent pressed charges against McCollum on May 12, 1982, and later presented McCollum a letter on May 17, 1982, detailing the charges. A hearing was conducted by the board of education on June 11 and 12, 1982. The Board dismissed McCollum for violation of Kentucky statute 161.790(1) (a) and (b), insubordination in violating lawful rules and regulations and conduct unbecoming a teacher. It was determined by the board that McCollum had deliberately and intentionally taken sick leave from his employment for the purpose of driving a coal truck to Ohio and that he failed to visit a homebound student for the minimum required time.

Issues: The issue is whether charges of conduct unbecoming a teacher must be supported by written records of teacher performance if such conduct is to be used as a basis for terminating the continuing service contract of the teacher.

Holding: The Supreme Court held that the statutory requirement that termination of the tenured teacher be supported by written records of teacher performance does not apply to

termination of tenured teacher based on evidence of immoral conduct or conduct unbecoming a teacher. The Court also held that the evidence sustained finding of conduct unbecoming a teacher.

Reasoning: The court reasoned that the evidence demonstrated misconduct of a moral and criminal nature and a nexus between the actions and the teacher's work, but not his professional competency in the classroom. Mr. McCollum presented a false affidavit in regard to a sick day, which was in violation of Kentucky Revised Statute 523.030, second-degree perjury, a Class A misdemeanor.

Kentucky Revised Statute 161.790 provides that a teaching contract shall remain in force during good behavior and efficient and competent service by the teacher. The statute lists four causes of termination. Three of those causes related to classroom performance, which require that the causes be supported by written records of teacher performance.

Disposition: The Supreme Court reversed the decision of the Court of Appeals and reinstated the judgment of the circuit court.

1987

Citation: *Weaver v. Board of Education of Pine Plains Central School District*, 514 N.Y.S.2d 473 (Supreme Court, Appellate Division, Second Department, 1987).

Key Facts: The petitioner, Bernard H. Weaver, Jr., was dismissed from his position as a tenured school teacher following two hearings where he was found guilty of multiple charges of insubordination and conduct unbecoming a teacher. Specifically, the refusal of the petitioner to obey a directive by the superintendent ordering him to stop residing with a 16-year-old former student, who was still attending school in the district and who had left his mother's home to

reside with the petitioner over the expressed objections of the mother. The petitioner was also charged with encouraging and assisting the student to leave his mother's home, including waiting outside the student's house with a loaded gun on the night the student was to leave home.

Issues: At issue is whether the teacher is guilty of insubordination and conduct unbecoming of a teacher. Another issue is whether the dismissal was an excessive punishment.

Holding: The Supreme Court held that the evidence sustained finding that the teacher was guilty of insubordination and conduct unbecoming a teacher by refusing to obey a directive ordering him to cease and desist from residing with the 16-year-old male former student. The Court also held that the penalty of dismissal was not excessive.

Reasoning: Based on the testimony in the record, the hearing panel's determinations were clearly supported by substantial evidence and cannot be said to have been arbitrary or capricious. It was not found that imposition of the penalty of dismissal to be so shocking under the existing circumstances that it should be set aside.

Disposition: The Supreme Court reviewed the petitioner's contentions and found them to be without merit. The determination was confirmed.

Citation: *Fowler v. Board of Education of Lincoln County, Kentucky*, 819 F.2d 657 (United States Court of Appeals, Sixth Circuit, 1987).

Key Facts: Plaintiff Jacqueline Fowler was a tenured teacher employed by the Lincoln County, Kentucky, school system for 14 years. In July 1984, she was discharged for insubordination and conduct unbecoming a teacher. The basis for the discharge is that Ms. Fowler allowed an "R" rated movie to be shown to her high school students, ages 14 through 17.

Ms. Fowler rented the video and had it shown on May 31, 1984. The students had informed her that the movie had “one bad place in it.” One of the students attempted to edit the parts that were unsuitable for viewing at school. He used a letter-sized file folder.

The assistant principal observed the movie and testified that the student’s editing attempt was not sufficient to preclude the students from seeing the nudity. It was undisputed that the audio portion of the movie contained offensive language to mandate the “R” rating. The principal, superintendent, and board members viewed the video and started proceedings to terminate Ms. Fowler’s contract.

In July 1984, a hearing was held where Ms. Fowler and her counsel was present. Ms. Fowler testified that, even though she had never seen the video, she believed it had significant value. She also stated that she would show an edited version of the movie again if given the opportunity to explain it. She did not discuss the movie with her students because she did not have enough time.

After the board viewed the movie in its entirety and also the edited version that was shown in class, the board members went into executive session. Following the executive session, the board voted unanimously to terminate Ms. Fowler’s contract for insubordination and conduct unbecoming a teacher.

The district court ruled in favor of Ms. Fowler and awarded her reinstatement and damages on grounds that her employment was terminated in violation of her First Amendment rights. Ms. Fowler also cross-appealed on the grounds that Kentucky Revised Statute §161.790 (1) was unconstitutionally vague as applied to her conduct. The school board appealed.

Issues: At issue is whether the teacher's First and Fourteenth Amendment rights were violated. Another issue is whether the Kentucky statute that formed the basis for the teacher's dismissal was unconstitutionally vague or overbroad.

Holding: The Court of Appeals held that the teacher's conduct in showing film was not under circumstances expressive or communicative, and thus the First Amendment did not prevent her discharge. In addition, the Court held that the Kentucky statute proscribing conduct unbecoming a teacher was not unconstitutionally vague as applied to teacher. The Court also held that the teacher's conduct was unbecoming and allowed her discharge.

Reasoning: The Court of Appeals reasoned that Ms. Fowler's conduct in having the movie shown under the circumstances did not constitute expression protected by the First Amendment. It is clear that this conduct clearly was not "speech" in the traditional sense of expression of ideas through the use of the spoken or written word. However, the Supreme Court has recognized that certain forms of expressive conduct are entitled to protection under the First Amendment. This is not the case in the particular situation. Not at anytime during the showing of the movie did Ms. Fowler make an attempt to explain any message that the students might derive from viewing the movie.

The court found the argument that the statute was unconstitutionally vague had no merit. Ms. Fowler had a 15-year-old student show the controversial movie to a group of high school students. Ms. Fowler did not preview the movie, despite being warned that portions were unsuitable for viewing in this context. In addition, she made no attempt to explain the meaning of the movie or its use as an educational tool. Rather, she had it shown for the purpose of keeping the students occupied during a non-instructional day while she was involved in posting grades on report cards. The court concluded that the statute proscribing "conduct unbecoming a teacher"

gave her adequate notice that such conduct would subject her to discipline. Finally, the court reasoned that the statute was not unconstitutionally vague as applied to Ms. Fowler's conduct. Ms. Fowler's conduct was determined to constitute serious misconduct.

Disposition: The Court of Appeals vacated the judgment of the district court and dismissed the cause.

Citation: *Fiscus v. Board of School Trustees of Central School District of Greene County*, 509 N.E.2d 1137 (Court of Appeals of Indiana, 1987).

Key Facts: Ms. Fiscus, a tenured art, physical education, and library skills teacher, was dismissed from her position with the school district because of immorality. She had taught for 12 years and was accused of uttering a single profanity word before her fifth grade art students.

At the hearing, 6 of the 24 students testified that they heard Ms. Fiscus say the obscene remark. The students were asked, "Did you hear Mrs. Fiscus say, 'Fuck you'?" M.B., one of the students, stated that he heard the teacher utter this remark when he asked about his grade on the Easter cross art project. M.B. told his mother and she demanded that something be done about the matter.

On May 23, 1984, the school board, having found that Mrs. Fiscus uttered this remark, canceled the indefinite contract on the basis of immorality. The school board found that the use of profanity was detrimental to the school and an inappropriate model to the students. In addition, the teacher's effectiveness is weakened by the use of the profanity.

Issues: At issue is whether the trial court erred in failing to find that the school board abused its discretion in finding that the teacher did in fact utter the remark, whether the utterance constituted immorality, and whether the penalty was too severe.

Holding: The Court of Appeals held that the evidence was sufficient to support the board's finding that the teacher uttered the remark. It was also held that the teacher's conduct constituted "immorality" was not an abuse of discretion. In addition, the Court held that the cancellation of the permanent teacher's indefinite contract was not an abuse of discretion.

Reasoning: The court reasoned that their standard of review may not weigh the evidence nor question the credibility of the witnesses, even if a different conclusion was drawn. The court reasoned that because the board believed the students; the evidence was sufficient. Given the facts that the phrase was spoken during the class but not for educational purposes, the court did not believe the school board abused its discretion in concluding that Mrs. Fiscus's conduct constituted immorality. Lastly, the court ruled that the board's ruling was neither arbitrary nor capricious, and therefore the board did not abuse its discretion.

Disposition: The Court of Appeals affirmed the decision of the trial court.

Citation: *Barcheski v. Board of Education of Grand Rapids Public Schools*, 412 N.W.2d 296 (Court of Appeals of Michigan, 1987).

Key Facts: Mr. Barcheski, a tenured teacher with the Grand Rapids Public Schools, was discharged on reasonable and just cause. The three charges brought against Mr. Barcheski include (1) he invited two of his female students to a party; (2) the two female students attended the party and drank beer and smoked marijuana in the presence of Mr. Barcheski; and (3) he took one of the female students home after the party, parked his car, and had sexual intercourse with the student.

On February 15, 1977, the school board found that the first two charges had been proven and that the evidence was "conflicting and inconclusive" regarding the third charge. One board

member believed that Mr. Barcheski exhibited extremely poor judgment. The school board voted to terminate Mr. Barcheski and he appealed to the tenure commission.

Additional testimony was taken before the tenure commission, who voted to reinstate Mr. Barcheski. The school board appealed to the circuit court, which reversed the tenure commissioner's order on two grounds: the findings were not supported by competent, material and substantial evidence to order reinstatement of petitioner, and the procedure used by the tribunal in reaching the decision was improper. During all of the proceedings, the composition of the tenure commission had changed several times.

In a decision dated June 20, 1983, the tenure commission reversed itself and ruled that the Mr. Barcheski's discharge was based on reasonable and just cause. Mr. Barcheski challenged the ruling of the tenure commission.

Issues: At issue is whether the tenure commission exceeded the scope of the Supreme Court's remand instructions by issuing a wholly new decision and not merely considering the effect of those portions of the testimony of the witness. Another issue is whether the tenure commission's three findings were supported by substantial, material, and competent evidence. The last issue is whether the teacher was given notice that taking the student home by itself constituted a basis for a charge of wrongful conduct.

Holding: The Court of Appeals held that the tenure commission's findings that teacher invited two students to party, that two students drank beer and smoked marijuana in teacher's presence at party, and that teacher took one of female students home alone in this car after leaving party were supported by substantial, material, and competent evidence and supported discharge of teacher. The Court also held that the teacher was adequately put on notice that

driving a female student home alone constituted by itself basis for charge of improper wrongful conduct which could be considered in disciplining teacher.

Reasoning: The Court of Appeals reasoned that the tenure commission had no option but to conduct a new hearing. The findings did support substantial, material, and competent evidence.

Disposition: The Court of Appeals confirmed the teacher's dismissal on reasonable and just cause.

Citation: *Norton v. Board of Education of Jefferson County Schools*, 748 P.2d 1337 (Colorado Court of Appeals, 1987).

Key Facts: Charlotte Norton was a tenured teacher with the Jefferson County Schools. Numerous charges concerning her performance as a teacher were filed by the board of education. A hearing officer made numerous findings of fact and conclusions and dismissed many of the charges. However, the hearing officer did find that Ms. Norton had, on several occasions, provided alcohol to underage students. It was also discovered that Ms. Norton had various students perform personal errands for her during school hours.

Issues: At issue is whether the Board erred in allowing public comment prior to the ultimate disposition of the case. Another issue is whether the hearing officer erred in recommending dismissal.

Holding: The Court of Appeals held that though the board erred in allowing public comment prior to ultimate disposition of the teacher's case, error was harmless. It was also held that the hearing officer's recommendation of dismissal was appropriate, although she expressed her desire to afford the teacher probation had that recommendation been available to her under the statute.

Reasoning: The court agreed that the school board erred in allowing the public comments prior to making their decision to terminate Ms. Norton. It is believed that there is danger in allowing commentary by persons who are unfamiliar with the facts contained in the record. The board members are elected officials who should exercise their independent judgments based on the evidence adduced from properly conducted proceedings. However, it is noted that the Board took added precautions to preserve Ms. Norton's rights, although she was not substantially prejudiced. The Board concluded that the hearing officer's findings of fact supported the record, and the Board voted to adopt them.

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

Citation: *Fadler v. Illinois State Board of Education*, 506 N.E 2d 640 (Appellate Court of Illinois, Fifth District, 1987).

Key Facts: Prior to his dismissal, Theodore Fadler was a tenured teacher for the Prairie du Rocher Community Consolidated School District No. 134. He taught third grade in the district for 3 years and sixth grade for the preceding 13 years. On November 15, 1984, the board of education passed a resolution to dismiss the plaintiff without prior notice. The board adopted a "supplemental resolution" on December 10 clarifying that the November 15 resolution had actually been a suspension pending dismissal. The plaintiff was charged with immoral conduct based on two alleged incidents. According to the bill of particulars, on October 22 and 23, 1984, the plaintiff placed his hand beneath the waistband of the jeans and undergarment worn by one of his students, K. M., in the area of her buttocks while she was standing on the floor leaning over her desk. The second incident allegedly occurred on October 31, 1984, at the end of recess. Another one of the plaintiff's student was returning a ball to the first grade classroom and upon entering the outside door of the building, found plaintiff standing inside the door. As the student

approached the plaintiff, he put his hand out and squeezed her breast several times. The hearing officer sustained the plaintiff's dismissal. The hearing officer found that the two fondling incidents were "proven by competent testimony and by preponderance of the evidence." The hearing officer also found that the plaintiff's conduct was irremediable, having caused damage to the students and to the school as a whole. The trial court upheld the plaintiff's dismissal. The plaintiff appealed the trial court's decision.

Issues: At issue is whether the trial court abused its discretion in sustaining the hearing officer's findings that the plaintiff's conduct was immoral with the meaning of section 10-22.4 of the School Code. Another issue was whether the plaintiff's conduct was remediable.

Holding: The Appellate Court held that sufficient evidence of harm to students and to school, by teacher's fondling of school children, supported the board of education's decision to dismiss teacher for cause.

Reasoning: The court reasoned that Mr. Fadler took advantage of his position of authority to the detriment of the students' trust and confidence. Mr. Fadler questioned whether the court used an objective standard in determining immoral conduct. The court noted that no one should need a definitional list to realize that placing one's hand inside the undergarments of a 9-year-old student or squeezing the breast of a young girl is acceptable conduct for a teacher.

Regarding the remediable test, the question of fact with the initial determination rests with the school board. The board's decision cannot be overturned unless the reasons given for dismissal are against the manifest weight of the evidence or the board acted in an arbitrary or capricious manner. The test for determining whether the conduct is irremediable is (1) whether damage has been done to the students, faculty, or school; and (2) whether the conduct resulting

in that damage could have been corrected had the teacher been warned. If the conduct is remediable, the teacher is entitled to a written warning before being dismissed.

The court concluded that Mr. Fadler's conduct caused irreparable damage to the students and the school itself and could not be remedied by a simple written warning. It was clear that he took advantage of his special position in society in taking sexual liberties with his students.

Disposition: The Appellate Court affirmed the decision of the circuit court to dismiss the teacher.

Citation: *In the Matter of the Proposed Discharge of Donald Lee Shelton*, 408 N.W.2d 594 (Court of Appeals of Minnesota, 1987).

Key Facts: Donald Shelton and his co-teachers Charles Wead and Donald Narveson formed the Let-3 Corporation in March 1979 to sell computer software and service computer hardware. Mr. Shelton was the corporation's secretary and treasurer and the sole signatory for all corporate bank accounts. The three individuals formed their relationship at Blooming Prairie High School. Mr. Shelton taught social studies for Grades 7-12 for 20 years. Wead and Narveson were also long-term teachers at the high school. On July 1, 1985, Wead and Narveson confronted Mr. Shelton with a bank statement and cancelled checks that revealed unauthorized withdrawals of corporate funds. Mr. Shelton admitted the theft that began in March 1983. He had also forged the others' signatures on personal guarantees to the bank.

Issues: At issue is whether the teacher was properly discharged pursuant to Minnesota Statute §125.12, subd.8. Another issue is whether the teacher's discharge violated Minnesota Statute §364.03.

Holding: The Court of Appeals held that the school district properly discharged the teacher. The Court also held that the discharge did not violate criminal offender's rehabilitation statute.

Reasoning: A school board's decision to terminate a teacher will be set aside only if the decision is fraudulent, arbitrary, is unreasonable, not supported by substantial evidence on the record, not within the school board's jurisdiction, or is based on an erroneous theory of law. The court was not at liberty to hear the case de novo and substitute its findings for those of the school board.

The Minnesota Supreme Court has established three factors that must be assessed when determining if a teacher's conduct is remediable: (1) the teacher's prior record must be considered, (2) whether the teacher's one behavioral incident is sufficient to warrant immediate discharge, and (3) whether the teacher's conduct resulted in actual or threatened harm.

Mr. Shelton was never before charged with a crime and his prior record was one of fitness; however, this particular incident directly affected his ability to teach. He taught in the area of business ethics and social studies. The school district did find that the conduct caused harm to the faculty. In addition, the school board concluded that the return would ultimately affect the quality of teaching of the students. Lastly, the court reasoned that the discharge did not violate Minnesota Statute §364.03.

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

1988

Citation: *Everett Area School District v. Ault*, 548 A.2d 1341 (Commonwealth Court of Pennsylvania, 1988).

Key Facts: Brenda Ault and William Baker were teachers with the Everest Area School District. On June 5, 1987, the last day of classes for the school year, Ms. Ault engaged in a water fight with her tenth grade class. It was forbidden by the school board policy for teachers and students to engage in any such conduct, and it was stated that a violation of this policy would result in severe disciplinary conduct.

At the end of the class, the students moved to Mr. Baker's class. The students sneaked up on Mr. Baker and he reached for the nearest bottle of liquid. This bottle of liquid contained a cleansing solution. With no malice of intent, Mr. Baker splashed three students with the cleanser. The students suffered minor irritations of the eyes and skin which required them to be sent to the school nurse. The students were also transported to a local hospital where they received further medical attention and were issued prescriptions for eye drops.

The school board sought to terminate Mr. Baker and suspend Ms. Ault for 90 days. After the hearing was conducted, the school board found the teachers guilty of immorality and suspended them for 15 days without pay. The appealed to the Court of Common Pleas of Bedford County, which resulted in a reversal of the suspensions and remanded to the school board with a suggestion that the teachers only receive a letter of reprimand.

Issues: At issue was whether the teachers' conduct constituted "immorality" under public school code warranting termination of employment.

Holding: The Court of Common Pleas held that the conduct did not constitute "immorality" and vacated the 15-day suspension.

Reasoning: The court reasoned that the burden is on the school board to establish that a suspended tenured employee committed one of the statutorily acts justifying the suspension. The

determination must be a legal one and can only be sustained if legally correct and supported by substantial evidence.

Although the conduct of the teachers may have been outrageous and unnecessary, the court did not believe it rose to the level of immorality. The teachers' conduct was most inappropriate and an error in judgment but not immoral. The trial court found that the conduct did not, as a matter of law, constitute immorality under §1122 of the Public School Code of 1949, Act of March 10, 1943. Therefore, this court ruled that there was no error with the trial court's determination.

Disposition: The Court found no error and affirmed the decision of the trial court.

1989

Citation: *Johnson v. Board of Trustees*, 771 P.2d 137 (Supreme Court of Montana, 1989).

Key Facts: Darrell Johnson was a tenured teacher who had worked as an arts teacher with the Beaverhead County High School from 1970 until August of 1984. In August, 1984, Mr. Johnson was suspended pending a hearing before the board of education regarding charges of sexual contact with two female students during the 1983-1984 school year. The specific facts include the following: (1) Mr. Johnson admitted that he gave back rubs and placed his hands upon female students in a locked storage room during the 1983-1984 school year; (2) Mr. Johnson engaged in acts of sexual contact with a student under the age of 16 years at various places within the high school, during class periods, and at other times, which sexual contact amounted to sexual intercourse or attempted sexual intercourse; and (3) Mr. Johnson engaged in acts of sexual contact with an additional student, during school hours and on school premises. This contact consisted of fondling and kissing the students' breasts. The Board subsequently

dismissed Johnson on March 21, 1985, for immorality and unfitness after a full hearing on the charges. Johnson appealed this dismissal.

Issues: At issue is whether the appellant's dismissal was with good cause and wrongful violation of the rights of a tenured teacher. Another issue is whether the appellant was deprived of his right to a de novo trial before the superintendent.

Holding: The Supreme Court held that the evidence supported the superintendent's decision to uphold the teacher's dismissal. The Court also held that the written transcripts of the school board hearing were admissible at the de novo hearing before the superintendent.

Reasoning: The court reasoned that there was substantial evidence to meet the standard of immorality that Mr. Johnson, a 41-year-old, married teacher, engaged in sexual activities with female students. By statute §20-4-301 (1), a teacher is charged with providing moral and civic instruction to students while endeavoring to impress upon the students principles of morality, truth, justice, and patriotism. The District Court did not abuse its discretion in affirming the superintendent's decision to dismiss Mr. Johnson. The court ruled that good cause existed to support the dismissal. Finally, the court reasoned that neither the admission of the videotaped testimony nor admission of the board transcripts acted to deprive Mr. Johnson of his right to a de novo hearing before the County Superintendent.

Disposition: The Supreme Court affirmed the judgment of the District Court upholding the decision of the County Superintendent to dismiss the appellant.

1990

Citation: *Sauter v. Mount Vernon School District No. 320*, 791 P.2d 549 (Court of Appeals of Washington, 1990).

Key Facts: Mr. Sauter began his career with the Mount Vernon School District in 1971 as a middle school math teacher as well as coach. In the fall of 1985, Mr. Sauter began teaching math at the high school.

During the summer of 1986, Mr. Sauter rode his bicycle daily. One day he rode by a female student's residence and stopped in to see how she was doing, following her surgery. Mr. Sauter had extensive conversations with the female student. Some of the discussion included Mr. Sauter expressing that the female student was attractive, the difficulties with his marriage, his experience in having a vasectomy, and his desire to make love with her also.

On September 19, 1986, Mr. Sauter wrote a note to the female student that outlined his feelings for her. The female student brought the note to the attention of the school officials. Mr. Sauter was suspended with pay on October 6, 1986.

A hearing was held on July 1, 1987, and the hearing officer determined that the school board had sufficient cause to dismiss Mr. Sauter. The school board dismissed Mr. Sauter and he appealed to the Superior Court, which confirmed the hearing officer's decision. The trial court also confirmed the district's decision. Mr. Sauter appealed to this court.

Issues: At issue is whether there was sufficient evidence to support the dismissal. Another issue is whether the trial court erred by affirming the order of the hearing officer denying motion to depose a witness. The last issue was whether the trial court erred by affirming the discontinuation of the appellant's salary.

Holding: The Court of Appeals held that the teacher's conduct was sexually exploitive of the student and directly related to his conduct as a teacher, and was sufficient cause to warrant dismissal. It was also held that the communications from the student's counseling sessions with her psychologist did not fall within child abuse reporting exception to psychologist/patient

privilege. Lastly the Court held that the teacher was not entitled to salary withheld after the hearing officer affirmed his dismissal.

Reasoning: The court reasoned that the challenges Mr. Sauter presented were supported with evidence. The hearing officer found that Mr. Sauter's note was a means of laying the groundwork for pursuing a sexual relationship with the female student. There was also evidence through the testimony of school personnel and members of the school board to support the hearing officer's findings that if Mr. Sauter returned to the classroom, his trust would be lost among the students, and the community would be outraged. It was determined that Mr. Sauter's conduct did not have any positive educational aspect or legitimate professional purpose. Therefore, there was sufficient cause for Mr. Sauter's dismissal as a matter of law.

Disposition: The Court of Appeals affirmed the decision of the trial court.

Citation: *McCullough v. Illinois State Board of Education*, 562 N.E.2d 1233 (Appellate Court of Illinois, 1990).

Key Facts: William McCullough, a tenured teacher with the Board of Education of Lawrenceville Unit School District, taught social studies and science at the upper grade-school level. Mr. McCullough had also served as a principal of the St. Francisville grade school. He was certified to teach Grades 6 through 12 and Kindergarten through 12 as well as administration.

Mr. McCullough made substantial profits from a commodities trading, and chose not to file his Federal income taxes between 1980 and 1982. In 1986, Mr. McCullough was indicted for three felony counts of tax evasion and three misdemeanor counts of failure to file tax returns for the years 1980, 1981, and 1982.

Mr. McCullough claimed that he was not a United States citizen and he was mentally incompetent. After a series of psychiatric examinations, it was determined that Mr. McCullough was mentally competent.

On April 29, 1987, Mr. McCullough pled guilty to three misdemeanor counts of failure to file income tax returns for the years 1980, 1981, and 1982. In return, the federal government agreed to dismiss the felony charges. The court imposed six sentences: (1) 5 years' probation; (2) the immediate payment of \$100,000 to be applied to taxes due; (3) payment of \$25,000 in six months if the IRS determination of amounts due had not been made; (4) payment of all taxes due, plus penalties and interest; (5) continued professional counseling; and (6) a prohibition of Mr. McCullough engaging in the teaching position during his 5-year term of probation. In August 1987, the court removed the sixth condition of the probation.

News of Mr. McCullough's conviction was publicized throughout the school district and surrounding community. The school board approved Mr. McCullough's dismissal on June 19, 1987, for incompetency, negligence, immorality, and other sufficient cause. A hearing was held and the hearing officer found that there was sufficient evidence to dismiss; however, the board failed to establish a charge of negligence.

Issues: At issue is whether the findings constituted cause for dismissal. Another issue is whether the plaintiff's conduct could have resulted from a severe psychiatric condition. Also another issue is whether the hearing officer erred in concluding that the conduct was not remediable.

Holding: The Appellate Court held that the teacher's criminal tax conviction and his post-indictment conduct provided cause for dismissal. It was held that the teacher was not within the

temporary mental incapacity exception to school board's statutory dismissal authority. The court also held that the teacher's conduct was not remediable.

Reasoning: The court reasoned that the witnesses called upon by the board of education testified that the school community had lost respect for Mr. McCullough and his criminal conduct had harmed the school's reputation. The court concluded that Mr. McCullough's criminal conduct and its surrounding circumstances constituted sufficient cause to warrant dismissal. Mr. McCullough did not meet his burden of proof to establish temporary mental incapacity or to show that he was dismissed of that incapacity. Section 10-22.4 requires that any temporary mental incapacity be found and determined by a medical examination. Furthermore, the court stated that the board of education did not dismiss Mr. McCullough for his mental condition but for his incompetency, immorality, other sufficient cause, and the best interests of the school. Regarding the challenge presented by Mr. McCullough that the conduct was remediable, the court disagreed. The school board was not aware of any misconduct of Mr. McCullough in 1983. It only knew that the IRS was requesting information and could not assume that Mr. McCullough was guilty of a crime. Even if the conduct was remediable in 1983, it was certainly not remediable after Mr. McCullough was convicted and the information was publicized. The remediability test is inapplicable to situations involving the criminal conduct of a teacher.

Disposition: The Appellate Court affirmed the decision of the circuit court.

Citation: *Rado v. Board of Education*, 583 A.2d 102 (Supreme Court of Connecticut, 1990).

Key Facts: William Rado, a tenured physical education teacher and director of athletics at Naugatuck High School, was dismissed by the school board. The trial court affirmed the decision

of the board and dismissed the appeal. Mr. Rado appealed the trial court's decision claiming three grounds: (1) certain evidence was barred by General Statute §54-142a(a) regarding the erasure of criminal records, (2) the remaining evidence of misconduct was insufficient, and (3) four members of the school board were biased against him.

Mr. Rado was arrested for three counts of eavesdropping in violation of General Statute §53a-189, a class D felony, which imposes criminal liability when a person "unlawfully engages in wiretapping or mechanical overhearing of a conversation." These charges were based on allegations that Mr. Rado had intercepted telephone calls involving other colleagues at the high school. As a result of the arrest, Mr. Rado was suspended with pay.

Mr. Rado was acquitted of the accused charges; however, the school board voted to terminate his contract as set forth in §10-151(d). He requested that the school board provide him the reasons for the termination in writing. The school board provided two reasons: "moral misconduct" and "other due and sufficient cause." Both of the grounds were based on detailed factual allegations that Mr. Rado obtained a recording of a private telephone conversation of a teacher at the high school and he had intercepted private telephone conversations at the school and disclosed the information.

A panel was appointed and they found that there was insufficient evidence for Mr. Rado's termination. The panel recommended that the school board reinstate Mr. Rado to his teaching position. The school board rejected this recommendation and voted to terminate Mr. Rado's contract.

Issues: At issue is whether the plaintiff's misconduct was barred by General Statute §54-142a (a), concerning the erasure of criminal records. Another issue is whether the evidence was

sufficient to justify the discharge of a tenured teacher. Lastly, at issue is whether the four board members were biased against the plaintiff.

Holding: The Supreme Court held that the Erasure Act did not preclude use of evidence that the teacher tampered with the telephone system at the high school. The court held that evidence sufficiently established statutory grounds for termination relied upon the board. Finally, the court held that none of the board members challenged were disqualified for bias or for conflict of interest.

Reasoning: The Court reasoned that the findings of the panel, which were based on evidence, sufficiently established the statutory grounds for termination. It was also found that none of the board members was disqualified for bias or for a conflict of interest. The board's decision was not arbitrary or illegal.

A school board has the discretion to accept or reject a recommendation from an impartial hearing panel, although it is bound by the panel's findings of fact unless unsupported by the evidence. It was reasoned that if Mr. Rado had never challenged any of the board members, the result of his termination hearing would have been the same. The court concluded that the trial court did not err in rejecting Mr. Rado's claim of partiality on the part of the board.

Disposition: The Supreme Court affirmed the decision of the trial court.

1991

Citation: *Stelzer v. State Board of Education*, 595 N.E.2d 489 (Court of Appeals of Ohio, 1991).

Key Facts: Barbara Stelzer and her husband illegally received \$43,290.90 in welfare benefits over a 5-year period. On September 19, 1987, Ms. Stelzer was convicted of receiving

stolen property, a felony of the fourth degree. The board notified her of its intent to suspend or revoke her teaching certificate and her right to a hearing. A hearing referee heard the case on February 27, 1989. The referee recommended that Ms. Stelzer's certificate not be revoked for several reasons: (1) Ms. Stelzer had no active participation in the scheme; (2) the crime had no relation to her duties as a teacher; and (3) she was supported by her employer, administrators, and coworkers.

The Board rejected the referee's recommendation and passed a resolution to revoke Ms. Stelzer's teaching certificate. The Board stated that Ms. Stelzer's testimony lacked credibility, and the seriousness and length of time of the deceit demonstrated conduct unbecoming the position of a teacher. Ms. Stelzer appealed the decision. The trial court affirmed the order of the Board.

Issues: At issue is whether the trial court erred by not finding that the state board's rejection of the referee's recommendation without showing an absence of evidence supporting such recommendation was not in accordance with law. Another issue is whether the trial court had sufficient evidence to support the revocation of license.

Holding: The Court of Appeals held that the teacher's illegal receipt of welfare benefits was conduct unbecoming of a teacher and the penalty of revocation of her teaching certificate was appropriate.

Reasoning: The Court of Appeals reasoned that the trial court's attitude must be unreasonable, arbitrary, or unconscionable. The court found that the trial court did not abuse its discretion when affirming the order of the board. The board is not required to follow the recommendation of the referee. The referee's primary function is to serve as a fact finder for the board. The record did not reflect that the board rejected the referee's finding of fact but rather

that the board reached a conclusion of the law, which differed from the referee. The board had all of the necessary facts before reaching its conclusion.

The Ohio Supreme Court had not adopted a nexus requirement when interpreting the state statute. Due to the fact the Ms. Stelzer's behavior over a 5-year period of time was a serious matter that constituted conduct unbecoming the position of a teacher, there is just cause for dismissal.

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

Citation: *Jefferson County School District No. 509-J v. Fair Dismissal Appeals Board and Kari*, 812 P.2d 1384 (Supreme Court of Oregon, 1991).

Key Facts: The Jefferson County Board of Education recommended that Carol Kari, an 11-year permanent teacher, be dismissed. This recommendation was a result of a police search of Ms. Kari's home that produced evidence that Mr. Kari had been using the home to grow and sell marijuana. It is noted that Ms. Kari was aware of the drug sales. With this knowledge, Ms. Kari took no further action to curtail the unlawful drug activity except to personally oppose, obtain counseling for herself regarding her husband's drug activity, and encourage her husband to also attend counseling.

The district superintendent cited "immorality" and "neglect of duty" as reasons for dismissal. The neglect of duty was based on Ms. Kari's knowledge of her husband's activity and her inaction to respond to those activities. The superintendent gave three reasons for the neglect of duty: (1) her duty as a teacher to serve as a role model for students and the community; (2) her duty to maintain effective relationships with students, parents, and staff; and (3) her duty as a teacher to teach the approved curriculum. The board voted to dismiss Kari on all statutory grounds.

On appeal, the Fair Dismissal Appeals Board (FDAB) reversed the board's decision. The FDAB ruled that the facts did not justify the statutory grounds of "immorality" and "neglect of duty." The FDAB found that the dismissal was an unreasonable and clearly excessive sanction. The board filed an appeal.

Issues: At issue is whether the Court of Appeals, in its review of an order of the Fair Dismissal Appeals Board (FDAB), exceeded its statutory scope of review under the Oregon Administrative Procedures Act. Another issue is whether the court correctly interpreted the term "neglect of duty." The last issue is whether the court correctly remanded for reconsideration FDAB's conclusion that dismissal was unreasonable.

Holding: The Supreme Court held that the Court of Appeals remand was not a substitution of its judgment for that of the Fair Dismissal Appeals Board on issue of fact but rather exercise of court's authority to correct FDAB's erroneous interpretation of law. The Court also held that "duty" within the meaning of the statute authorizing dismissal of teacher for neglect of duty, did not require the school district to consider the teacher's personal circumstances in determining whether duty had been breached. The Court also held that the dismissal was an unreasonable and clearly excessive sanction.

Reasoning: The Court of Appeals reasoned that the Fair Dismissal Appeals Board made an erroneous interpretation in the use of the term "duty." The Court of Appeals found that the FDAB had focused on Ms. Kari's personal situation rather than her general responsibilities as a teacher. Ms. Kari wanted the Supreme Court to reject the Court of Appeals interpretation of the term "duty." The court declined to do so because a school board must look at broad considerations when providing for the education of the students, providing for the efficient operation of its school, and for maintaining favorable relations with the community. The Court

also reasoned that the school district had no obligation to outline to Ms. Kari what she personally should do to avoid breaching the responsibilities of which she was already well-aware. The Court of Appeals did not support the conclusions that the Fair Dismissal Appeals Board's explanation that the dismissal was an unreasonable and clearly excessive sanction.

Disposition: The Supreme Court affirmed the decision of the Court of Appeals remanding to the Fair Dismissal Appeals Board.

Citation: *Cochran v. Board of Education of Mexico School District*, 815 S.W.2d 55 (Missouri Court of Appeals, 1991).

Key Facts: Steven Cochran, a tenured welding instructor with the Mexico Area Vocational Technical School, was terminated by the school board for immoral conduct. Mr. Cochran was the authorized school representative for the government surplus program. The school system purchased various items through the surplus program at a greatly reduced cost. Mr. Cochran handled the negotiation for both the sale and purchase of the surplus property.

After an audit and articles in the press, and a federal investigation, the school board requested its auditor and its attorney to investigate allegations of impropriety in the surplus property program. After receiving the results of the investigation, the school board issued a warning letter to Mr. Cochran for insubordination and immoral conduct regarding the surplus property program. The school board negotiated a settlement in the amount of \$54,000 to the United States government.

On October 18, 1989, the school board issued a letter to Mr. Cochran advising him of the school board's interim decision to terminate him for three alleged charges of immoral conduct: (1) Mr. Cochran filed at least four reports with the State Agency for Surplus Property; (2) various violations of regulations were found in the way the Vocational School utilized the pieces

of surplus equipment; and (3) Mr. Cochran filed an application to teach in the adult education program and the application contained incorrect personal information that resulted in overpayment by the district. Mr. Cochran received notice outlining his rights to a hearing. A hearing was conducted and the school board voted 4-2 to terminate him. Mr. Cochran filed a petition to review at the circuit court level, but the motion was denied.

Issues: At issue is whether the appellant's constitutional, administrative, and due process rights were violated. Another issue is whether there was substantial evidence to support a nexus between wrongdoing and fitness to teach.

Holding: The Court of Appeals held that the conduct of the attorney for the board, including his multiple roles as investigator and prosecutor on behalf of the superintendent, his providing procedural advice in connection with dismissal proceedings, and his aid in drafting the board's decision, was proper and did not violate due process. It was also held that the teacher failed to establish the due process violation. The Court also held that evidence supported the board's determination that nexus existed between the teacher's fitness to teach and immoral conduct.

Reasoning: The Court of Appeals explained that their review is limited to a determination of whether or not the decision of the school board is supported by competent and substantial evidence, whether the decision was arbitrary, capricious, or unreasonable, or whether the administrative action constituted an abuse of discretion.

Mr. Cochran challenged that his constitutional and administrative due process rights were violated because the school board attorney served in multiple roles. The court reasoned that generally, attorneys for school boards are given latitude in participating in dismissal proceedings against a tenured teacher. There was no evidence that the school board attorney actively

participated in the actual decision-making of the school board or that he influenced the outcome of the school board's deliberations.

Mr. Cochran claimed that two members of the board were bias. Prior knowledge of the facts does not by itself create bias. The statutory scheme provides for the school board to both initiate and make the ultimate adjudication. The record demonstrated that each board member had sworn that he was not irrevocably committed to Mr. Cochran's termination, and therefore the argument that the two members were biased was denied.

Mr. Cochran asserted that there was no substantial and competent evidence to support a connection between his conduct and his ability to teach in the classroom. He argued that the school board found no immoral actions, but rather he made mistakes that should have only warranted a charge of incompetency, inefficiency, or insubordination.

In evaluating the charges against Mr. Cochran, the school board must consider whether his conduct rendered him unfit to teach in a classroom. A classroom teacher must set an example for his students. One's integrity must be beyond question. This is a key element in the student-teacher relationship. The court concluded that the fundamental requirement for teaching in the classroom would be severely compromised if Mr. Cochran were to resume his teaching duties with the school district. The record contained competent and substantial evidence to support the finding of immoral conduct.

Disposition: The Court of Appeals upheld the decision of the school board and affirmed the judgment of the trial court.

Citation: *Board of Education of Sparta Community Unit School v. Illinois State Board of Education*, 577 N.E.2d 900 (Appellate Court of Illinois, Fifth Division 1991).

Key Facts: Gary G. Stull, Jr., a tenured high school teacher and softball coach, was dismissed from his position “for cause.” The school board charged Stull with unprofessional and immoral conduct in respect to his relationship with two female students.

The charges included that Mr. Stull had given unsolicited and uninvited kisses and hugs to the students, presented them with gifts, and written letters to them expressing affection and attraction to them. As required by Section 24-12 of the School Code, the school board served Mr. Stull written notice of the charges. Mr. Stull requested a hearing on the charges before a disinterested hearing officer. A hearing was conducted in August 1989.

The hearing officer found that Mr. Stull’s actions were of poor judgment and did not constitute just cause for dismissal. He further determined that the evidence supported a finding that the conduct was remediable. The hearing officer concluded that Mr. Stull should be reinstated and receive all lost wages and benefits. The school board sought administrative review from the circuit court. The circuit court upheld the hearing officer’s decision and the school board appealed.

Issues: At issue is whether the teacher’s conduct was remediable and whether the conduct resulting in damage could have been corrected had the teacher been warned.

Holding: The Court of Appeals held that the teacher/coach engaged in immoral conduct by writing overtly sexual letters to two female students. The Court also held that the conduct was irreparable, and teacher could be dismissed without written warning.

Reasoning: The court reasoned that it is not disputed that tenured public school teachers may not be removed from employment except for cause. “Cause” is some substantial shortcoming which renders continuance in employment detrimental to discipline and effectiveness of service. The hearing officer’s facts and findings are considered to be true and

correct; however, the primary reason for the Mr. Stull's dismissal was because of the series of letters he sent to the two female students.

When considering the evidence such as these letters, the court is not bound to the hearing officer's finding of fact, but it is free to examine the evidence and reach an independent conclusion. The court believed that the letters were overtly sexual in nature. A clinical psychologist also confirmed the sexual nature of the letters. It was of his opinion that the letters were sexual exploitation in nature.

Mr. Stull's conduct was found to be irremediable because it demonstrated an adverse effect on his victims and was potentially harmful to other female students, if he was not removed from his position. The court reasoned that the second prong of the remediability test, whether the conduct resulting in that damage could have been corrected had the teacher been warned, was not applicable in this case.

Disposition: The Court of Appeals reversed the judgment of the circuit court. The school board had cause to discharge Mr. Stull.

1992

Citation: *Gerig v. Board of Education of Central School District*, 841 S.W.2d 731 (Missouri Court of Appeals, 1992).

Key Facts: Mr. Gerig was a tenured teacher who taught English and media classes at a high school. He was terminated by the Board of Education for engaging in immoral conduct. The teacher published and distributed a newspaper that promoted sexual conduct and drug use, undermined student morals, school discipline, and disrespect for law enforcement. The Circuit Court reversed the decision of the school board and the school board appealed.

The Missouri Statute allows for a tenured teacher to be dismissed for six reasons, one of which is immoral conduct. Under the statute, “immoral conduct” means “immoral conduct rendering the teacher unfit to teach.”

Issues: At issue is whether the teaching technique used constituted immoral conduct and whether there was substantial evidence to satisfy the legal test for immoral conduct.

Holding: The Court of Appeals held that the teacher’s conduct constituted “immoral conduct” which the board could find rendered him unfit to teach.

Reasoning: The Court reasoned that the teacher was responsible for the publication and dissemination of the newspaper. The teacher had read and approved each article contained in the newspaper. The Court also found that the obscene articles did constitute substantial and competent evidence to support the findings. The Board had the authority to terminate the teacher for his unacceptable conduct, regardless of whether or not it was a “teaching technique.”

Disposition: The Court of Appeals reversed the decision of the circuit court and remanded with directions for the lower court to reinstate the Board’s decision to dismiss the teacher.

Citation: *Vukadinovich v. Board of School Trustees of Michigan City Area Schools*, 978 F.2d 403 (United States Court of Appeals, 1992).

Key Facts: Brian Vukadinovich, a tenured teacher, appeared at a school board meeting in 1986 and openly criticized the Board for hiring the current superintendent. The superintendent requested a meeting with Mr. Vukadinovich to discuss the inappropriate manner in which he handled the situation. Mr. Vukadinovich was initially a part-time teacher for the district, but in August 1987, the Board awarded him a full-time teaching contract.

The previous year, Mr. Vukadinovich had experienced some legal problems related to driving while intoxicated. He was found guilty of public intoxication and driving under the influence. Mr. Vukadinovich received a sentence of 365 days in jail, with all but 30 days suspended. He was incarcerated which resulted in missing 11 days of work.

The following year, Mr. Vukadinovich was again convicted in another county of resisting law enforcement and of operating a motor vehicle without a valid license. He received a 1-year jail sentence, of which the court again suspended all except 30 days of his sentence. He was to serve the sentence on the weekends. He was placed on probation because of the second conviction.

The principal and superintendent learned of Mr. Vukadinovich's incarceration for the first conviction, and they met to discuss his future employment with the district. On January 8, 1988, the superintendent sent Mr. Vukadinovich a certified letter notifying him that Board would consider canceling his employment contract. The letter included the procedures to be followed and his right to request a hearing before the Board. The reasons included in the letter were (1) immorality, (2) neglect of duty, and (3) other good and just cause.

The hearing was held in March, 1988. At the hearing, Mr. Vukadinovich did not mention that he thought this was retaliation for his criticism of the board and the superintendent in February 1986. On March 22, 1986, the Board voted to terminate his employment. An arbitrator was appointed who ruled that the board should reinstate Mr. Vukadinovich. The board filed suit in an Indiana state court challenging this decision, and the court entered summary judgment in favor of the board. Mr. Vukadinovich sued all parties involved for alleged constitutional violations.

Issues: At issue is whether the plaintiff's First Amendment, Fourteenth Amendment, and due process rights were violated. In addition, at issue is whether the dismissal was a breach of contract, defamation, and slander.

Holding: The Court of Appeals held that the dismissal was not in retaliation for the teacher's criticism to hire the superintendent. Restricting the teacher's access to the school following dismissal did not violate the First Amendment. It was also held that the pre-discharge hearing satisfied the procedural due process requirement and the teacher was not entitled to post-deprivation hearing. Lastly, the Court held that dismissing the teacher for alcohol-related problems and being arrested did not violate teacher's equal protection rights.

Reasoning: The Court of Appeals concluded that Mr. Vukadinovich's First Amendment rights were not violated. It is established that the government may not discharge an employee for reasons that infringe upon that employee's constitutionally protected interest in freedom of speech. Mr. Vukadinovich did not demonstrate that his 1986 criticism of the board was even a factor in his termination. He did not assert any connection between his 1986 comments and his discharge until more than 2 years later. The board renewed his contract twice and upgraded his status to full-time, after he made the derogatory comments about the superintendent.

The Court also reasoned that the Mr. Vukadinovich's First Amendment rights were not violated when he was ordered to stay off of the school grounds. The Court noted three types of forums: (1) the traditional public forum, (2) the public forum created by government designation, and (3) the nonpublic forum. Public schools are the second type. Mr. Vukadinovich failed to show that the high school was a public forum; therefore, he was no longer an employee, but rather a public citizen. Members of the public have no constitutional right of access to public schools.

Procedural due process was not violated because the board provided Mr. Vukadinovich with notice approximately 2 months before the hearing. He was allowed to present evidence, call witnesses, and cross-examine the school administration's witnesses, as well as argue his case to the board. In addition, the label of "immoral" did not violate his due process rights. The Court noted that the board gave notice and an opportunity to be heard. Vukadinovich's allegations that the board violated his rights under the Equal Protection Clause of the Fourteenth Amendment were not sufficient. He failed to show that the government classified him on the basis of race, religion, or gender.

Lastly, the court reasoned that the district court did not abuse its discretion when it dismissed Mr. Vukadinovich's state law claims.

Disposition: The Court of Appeals affirmed the decision of the district court.

1993

Citation: *Scheiber v. New York City Board of Education*, 593 N.Y.S.2d 563 (Supreme Court, Appellate Division, Second Department, 1993).

Key Facts: Mr. Steven Scheiber, a tenured high school math teacher, was dismissed after a hearing for 14 specifications of misconduct. The charges included his solicitation of a student to vandalize the automobile of an assistant principal.

Issues: At issue is whether there is substantial evidence to support the findings of the respondent.

Holding: The Supreme Court held that substantial evidence supported the finding of the board of education that the teacher was guilty of 14 specifications of misconduct. It was also held that the penalty of dismissal was not shocking to one's sense of fairness.

Reasoning: The Court reasoned that the substantial evidence supported their decision to uphold the teacher's termination.

Disposition: The Supreme Court confirmed the determination and the proceeding was dismissed on the merits with costs.

Citation: *Morris v. Clarksville-Montgomery County Consolidated Board of Education*, 867 S.W.2d 324 (Court of Appeals of Tennessee, 1993).

Key Facts: James R. Morris, a tenured band instructor, was dismissed from the Clarksville-Montgomery County School System for conduct unbecoming to a member of the teaching profession. The specific offenses that Mr. Morris were charged with included his inappropriate relationship with students. The Director of Clarksville-Montgomery County School System included the following reasons to the board. Mr. Morris invited Paul Smith, one of his students to stay overnight in his home on more than one occasion and slept in the same bed and had sexual contact with the student and allowed the student to have sexual contact with him. In addition, Mr. Morris also invited other male students to stay overnight at his home, after the principal and assistant principal had advised him that students should not stay overnight at his home. The Board adopted a resolution that supported his dismissal. The teacher demanded a hearing that occurred on December 17 and 18, 1990. On December 19, 1990, the Director sent Mr. Morris a letter notifying him of his dismissal from the position of a tenured teacher with the school system. Mr. Morris filed an action for this judicial review.

The case was heard in the Trial Court on August 17, 1992. The Court ruled in favor of the Defendants.

Issues: At issue is whether the evidence supported the dismissal and whether the Chancellor erred in dismissing the appellant.

Holding: The Court of Appeals held that it was an error to decline to consider the administrative record before the school board. The Court held that there had been no order which would support charge of “insubordination.” It was also held that “conduct unbecoming a member of the teaching profession” is not a ground for dismissal. Lastly, it was held that evidence supported dismissal on the ground of unprofessional conduct.

Reasoning: The Court reasoned that the evidence before the board and the testimony before the Chancellor were sufficient to support the dismissal of Mr. Morris. The written statement from the Director contained a single charge of “conduct unbecoming to a member of the teaching profession” is not mentioned in the Tennessee statute; however, the facts cited are sufficient to support charges of unprofessional conduct but not insubordination.

Mr. Morris admitted that a student, Paul Smith, spent the night in bed with him at his home on three occasions in November and December; that Paul Smith spent the night in bed with him on a trip to Kansas City; that he and Paul Smith had exchanged “back rubs” in bed at Mr. Morris’ home; and that, thereafter, Paul Smith became a problem at school, consisting of disrespect and bad language. Mr. Morris also admitted that two other students had spent the night in bed with him at his home. Paul Smith, the student, testified that when he spent the night with the plaintiff, Mr. Morris rubbed his back and private parts on several occasions. After this incident, the student refused to go to Mr. Morris’ home. Thereafter, according to the student, Mr. Morris became very critical of the student’s bad performance and reported him for misbehavior. The Court reasoned that a teacher who invited or permits students to sleep with him and engage in intimate activity compromises this ability to teach.

Disposition: The Court of Appeals found the plaintiff guilty of unprofessional conduct and affirmed his dismissal. The Court modified the judgment of the Trial Court and affirmed.

The plaintiff is taxed the cost of the appeal. The cause is remanded to the Trial Court for entry of the modified judgment, for collection of costs accrued in that Court and for any other necessary proceedings.

1994

Citation: *Riverview School District v. Riverview Education Association*, 639 A.2d 974 (Commonwealth Court of Pennsylvania, 1994).

Key Facts: Brian Miller and Paulette Luczak, teachers with the Riverview School District, were dismissed from their position due to a charge of immorality. Both teachers were employed in the elementary school.

In the fall of 1990, Ms. Luczak, Mr. Miller, and his wife began planning for a ski trip to Colorado scheduled for a week in February 1991. Personal leave requests were submitted to the superintendent, who denied the request. Both teachers met with the superintendent to discuss the reasons for their requests. The requests were denied because they failed to represent matters that must be conducted at times when school is in session.

Personal leave is granted to handle affairs that must be conducted at times when school is in session and is subject to preapproval by the superintendent. The guidelines also state that the purpose of the leave does not have to be stated in the application except when the day for which leave is requested falls either immediately prior to or subsequent to a school holiday or a holiday weekend.

On December 20, 1990, the Association filed a grievance on behalf of both teachers requesting approval for the personal leave days and reimbursement for any losses incurred. After a hearing, the superintendent again denied the requests. On February 1, 1991, the Association

informed the school board that it accepted the decision and would not pursue the matter any further. An Association representative inquired if the superintendent would approve unpaid leave. The superintendent was open to the idea if the teachers requested it; however, the teachers did not make a request.

The teachers both left messages on the School District's answering machine indicating that they would not be at work. Upon returning, Mr. Miller presented an absence excuse and a letter from a clinical psychologist indicating that due to a personal illness and stressful life events, he needed to be granted time off in order to prevent further psychological disability. The superintendent suspended Mr. Miller from his teaching duties pending a hearing.

Ms. Luczak returned to work on Monday, March 4, 1991, with an absence excuse and letter from Mr. Morris, the same psychologist, that stated that she had a personal illness and was currently under treatment for recent family events in her life that caused psychological stress. The superintendent also suspended Ms. Luczak. After notice and a hearing, the school board voted to terminate both teachers for just cause.

The arbitrator overturned the decision of the school board. The school board appealed this decision.

Issues: At issue is whether the school district had just cause to dismiss the teachers and whether the arbitrator's decision may rationally be derived from the collective bargaining agreement between the School District and the Association.

Holding: The Commonwealth Court held that the use of sick leave to go on ski trip after requests for personal leave had been denied constituted just cause for termination. The Court also held that once the arbitrator found that the teachers had committed the conduct charged, question of appropriate discipline was reserved to the school district.

Reasoning: The school board argued that the arbitrator had no authority to overturn the dismissal of the teachers because their conduct constituted just cause for discipline. The court noted that its review was limited. Under the essence test, the court was confined to determining whether the arbitrator's decision could rationally be derived from the collective bargaining agreement.

The only valid causes for a termination of contract are immorality, incompetency, intemperance, cruelty, persistent negligence, mental derangement, or persistent and willful violation of the school laws of the Commonwealth of Pennsylvania. Lying and/or making false statements to a school district staff is included under immorality. A teacher's representations regarding his or excused absences are properly the subject of immorality charges and may also be considered in the context of "persistent and willful" misconduct.

The court made reference to another case when dismissal was sustained for a teacher who voluntarily misused personal business and sick leave privileges to go on a one-week ski trip in Vermont. The court held that the incident amounted to persistent and willful violation of the school laws. Mr. Miller and Ms. Luczak had the opportunity to present their letters from the psychologist prior to departing for their ski trip, but instead presented the letters after the fact to justify the use of sick leave.

The letters also did not include the dates that the teachers were unable to perform their duties. Section 1154 of the School Code states, that the school district may require the employee to furnish a certificate from a physician or other practitioner certifying that the employee is unable to perform his or her duties during the period of absence.

The court reasoned that the arbitrator made no findings of fact contrary to those asserted by the School District as supporting its charge of misconduct. The record clearly indicated that

the teachers' conduct violated provisions of the School Code and School District policy, thus establishing just cause for the dismissal.

Disposition: The Commonwealth Court reversed the decision of the trial court, vacated the arbitrator's award, and reinstated the School District's decision to dismiss the teachers.

Citation: *Governing Board of ABC Unified School District v. Haar*, 33 Cal.Rptr.2d 744, and (Court of Appeal, Second District, Division 2, 1994).

Key Facts: Kenneth Haar, a 26-year tenured middle school music teacher, was dismissed by the school board for engaging in immoral conduct of sexually harassing some female students. The teacher requested a hearing before the Commission of Professional Competence to determine if the suspension and dismissal were justified. The commission made a decision that the school board should reinstate Mr. Haar with back pay. The school district filed a petition for writ of administrative mandamus and the trial court granted the writ and reversed the decision of the commission.

Substantial evidence supported the findings that Mr. Haar was guilty of immoral conduct for dressing up as Santa Claus and indicating to female students that he would give them an extra raffle ticket if they would sit on his lap, give him a hug and a kiss, and tell them what they wanted for Christmas. Another charge included touching one of his female students inappropriately by placing his hand on her thigh and rubbing it in circles. Two additional charges involved inappropriately touching female students.

The Court of Appeals affirmed the decision that Mr. Haar was guilty of several counts of immoral conduct toward female students.

Issues: At issue is whether the trial court erred in overruling the appellant's demurrer. Also at issue is whether the trial court erred by substituting its judgment for that of the

Commission on Professional Competence and whether the “Morrison” factors supported the dismissal.

Holding: The Court of Appeal held that substantial evidence supported the trial court’s finding that the teacher engaged in immoral conduct by sexually harassing female students. Substantial evidence supported the trial court’s determination that the teacher was unfit to teach.

Reasoning: The Court of Appeals reasoned that Mr. Haar had to bear the burden of proof of demonstrating either that a demurrer was sustained erroneously or that sustaining a demurrer without leave to amend was an abuse of discretion.

Mr. Haar contented that the trial court substituted its judgment for that of the Commission and that the proper standard is not one of independent review by the trial court. The court disagreed with this contention. An independent review is legislatively mandated. Section 44945 provides that on petition by either the governing board or the employee, the trial court may exercise its independent review on the evidence in reviewing the decision of the Commission. On appeal, the appellate court must sustain the trial court’s findings if they are supported by substantial evidence.

The court applied the Morrison test to the case and determined that there was sufficient evidence to support the dismissal. The Supreme Court denied another petition for review.

Disposition: The Court of Appeal affirmed the decision of the lower court.

Citation: *Toney v. Fairbanks North Star Borough School District*, 881 P.2d 1112 (Supreme Court of Alaska, 1994).

Key Facts: David Toney, a tenured teacher with the Fairbanks North Star Borough School District, was fired from his position based on evidence establishing that he had engaged

in a sexual relationship with a minor prior to his employment with the school district. The sexual relationship occurred while Mr. Toney was a teacher in Boise, Idaho.

Mr. Toney was in his early 30s when he became involved with a 15-year-old student, Traci F. Not long into the relationship, Traci became pregnant and the child was adopted. Traci's father and Mr. Toney entered into an agreement regarding Traci's medical expenses and other costs relating to the child's birth. They also agreed that Mr. Toney would submit his resignation or take a leave of absence from the faculty of the high school in order for Traci to attend the school the following school year as well as graduate. Mr. Toney resigned from the school district before the beginning of the 1982 spring semester.

In the spring of 1981, Mr. Toney completed an application for a teaching position with the Fairbanks North Star Borough School District. The records indicated that the application was received on April 28, 1981. On the application, Mr. Toney asserted that he had not been asked to resign for any reason and that he had not been convicted of any offense involving moral turpitude. He was hired by the Alaska district on September 17, 1982.

In 1992, Traci contacted the Alaska school district and informed them of her prior relationship with Mr. Toney. After investigating the allegations, the school board terminated Mr. Toney by a letter dated March 26, 1992. The dismissal was based on Mr. Toney's failure to disclose to the district his relationship with Traci and his resignation agreement with Traci's father. The letter also stated that his conduct supported the termination under Alaska Statute 14.20.170(a)(2)-3 on grounds that it constituted immorality and substantial noncompliance with the school laws of the state, the regulations or bylaws of the Department of Education, the bylaws of the District, and the written rules of the superintendent.

Mr. Toney appealed his termination; however, the board upheld the dismissal by a vote of six to one.

Issues: At issue is whether the Alaska Statute authorizing dismissal of a tenured teacher for immorality includes conduct engaged in prior to employment with the district.

Holding: The Supreme Court held that the teacher's pre-hiring conduct in engaging in a sexual relationship with 15-year-old student while working in an Idaho school was adequate grounds for dismissal for immorality.

Reasoning: The court reasoned that under the Alaska Statute 14.20.170 (a) (2), a tenured teacher may be dismissed for immorality as defined as a commission of an act that, under the laws of the state, constitutes a crime involving moral turpitude. A criminal conviction is not necessary to support a teacher's dismissal under this provision. The school district had sufficient evidence to conclude that Mr. Toney violated the statute. In addition, Mr. Toney admitted that he engaged in a sexual relationship with Traci when she was 15 years of age. This conduct in itself satisfies the elements of the crimes of sexual abuse of a minor in the second and third degree under Alaska law. The conduct also constituted a crime under Alaska and Idaho law.

Mr. Toney argued that the statute authorizing the dismissal for such acts does not reach conduct engaged in before a teacher is hired by a school district. The superior court noted that the language in the statute did not explicitly or implicitly limit the statute's application to acts that occur only while a teacher is under contract with an Alaska school district. The court concluded that the pre-hiring conduct did establish immorality under the statute and was sufficient grounds for dismissal.

Disposition: The Supreme Court affirmed the decision of the Superior Court.

Citation: *Youngman v. Doerhoff*, 890 S.W.2d 330 (Missouri Court of Appeals, 1994).

Key Facts: Ronald V. Youngman, a tenured teacher, was dismissed from the Gasconade County R-1 School Board of Education based on its determination that he had engaged in immoral conduct with a male middle school student. Allegedly, Mr. Youngman hugged, rubbed the back, and proceeded to kiss the student.

The superintendent sent Mr. Youngman a letter dated March 22, 1993. The letter stated that the incident was considered to be abuse and indicated a physical or mental condition that made him unfit to instruct or associate with children as outlined in Missouri Revised Statute 168.114. Mr. Youngman was suspended with pay and instructed to stay away from the school during regular school hours. He was given a right to a hearing before the board. Following the hearing, the board met in a closed session at which it adopted findings of fact and conclusions that resulted in Mr. Youngman's termination for engaging in immoral conduct.

Issues: At issue is whether the board erred in determining that the teacher's actions amounted to "immoral conduct" within the meaning of the state statute. Also at issue is whether the additional findings by the board are competent and substantial evidence.

Holding: The Court of Appeals held that the teacher's acts of hugging and kissing the student did not constitute sexual harassment and immorality.

Reasoning: Mr. Youngman maintained that the board had substituted an unconstitutionally vague standard of "community standards" for an equally vague standard of immoral conduct. He also argued that the board improperly relied on a minor's perception to determine the appropriate standard of conduct and arbitrarily and capriciously found him guilty of immoral conduct.

The court reasoned that the board did not have competent and substantial evidence to support Mr. Youngman's termination. The records indicated that only hearsay evidence was

introduced during the trial. It was noted that there was a letter in Mr. Youngman's local school file that was written by the former principal, approximately 4.5 years prior to this incident. The principal stated that a student had come into the office and said she was afraid of Mr. Youngman. The student also that she had seen Mr. Youngman rub a male student on the back and caress his cheeks. Mr. Youngman objected to this document being considered because it was hearsay.

The board's determination that Mr. Youngman engaged in immoral conduct cannot be based solely on the student's reactions to his conduct. If the actions were undertaken for the purposes of sexual gratification, then Mr. Youngman would be guilty of immoral conduct whether the student found it offensive or solicited it. The board made no finding that Mr. Youngman had an improper motive. The court found that the evidence presented supports a finding that Mr. Youngman's actions were motivated by his caring and concern for the student's apparent distress. There was no evidence that supported a finding that the teacher engaged in immoral conduct.

Disposition: The Court of Appeals reversed the judgment of the circuit court and remanded for entry of an order that the teacher be reinstated to position.

Citation: *Tuffli v. Governing Board of San Diego Unified School District*, 36 Cal.Rptr.2d 433 (Court of Appeal, 1994).

Key Facts: Christian S. Tuffli was a veteran teacher with the San Diego Unified School District prior to his dismissal for allegedly committing sex offenses against one of his handicapped students with Down's syndrome. Mr. Tuffli was placed on leave of absence according to the state statute and his teaching credentials were suspended by the State Commission on Teacher Credentialing.

At the first trial, he was acquitted of some charges and a mistrial was declared as to other counts because of the jury's inability to reach a verdict. A second trial was conducted where he was convicted of a single sex offense, oral copulation of an incompetent individual. He was sentenced to 8 years in prison on November 16, 1990.

On November 19, 1990, the superintendent notified Mr. Tuffli that his employment was terminated effective November 28, 1990, pursuant to section 44836. The letter also stated that if he wished to present evidence to maintain his employment, he should present evidence as to why he should not be terminated. Mr. Tuffli did not request to present evidence. The termination was processed without a hearing. Mr. Tuffli argued that he never received a letter because he was incarcerated. In January 1991, he was notified that his teaching certificate had been revoked.

Mr. Tuffli appealed the conviction and the court reversed the judgment on March 13, 1992, based on instructional error which created double jeopardy problems because of the two trials which were held. The charges were dismissed and Mr. Tuffli was released from custody.

On July 22, 1992, the Commission reissued Mr. Tuffli's teaching certificate. He requested that the school board reinstate him, but his request was denied. As a result, he filed a petition for writ of mandate to set aside the school board's action terminating him, and sought reinstatement with back pay.

Issues: At issue is whether the teacher should have been dismissed before the appeal from the conviction was resolved. Another issue is whether the District followed the dismissal procedures as set forth in the statute. Also, there was the issue of whether the teacher should be reinstated due to the reversal of his conviction. Lastly, was the issue of whether there was violation of due process rights since the criminal conviction no longer existed.

Holding: The Court of Appeal held that the revocation of the teaching certificate was premature. The summary termination of the teacher was unrelated to his status of credentialed employee. The Court held that the district was justified in summarily terminating the teacher from employment based on conviction of oral copulation of an incompetent person. Also, it was held that due process considerations required that when a conviction is reversed and a charge is dismissed that a hearing procedure should take place to determine the status of the teacher's revived interest in continued employment.

Reasoning: The court outlined the statutes regarding the dismissal of a teacher and suspension of a credential. In section 44836 of the state statute, governing boards of school districts should not employ or retain employment persons in public school service who have been convicted, or who have been convicted following a plea of nolo contendere to charges, of any sex offense as defined in the state statute. However, if any conviction is reversed and the person is acquitted of the offense, in a new trial of charges against him or her are dismissed, then this does not prohibit his or her employment thereafter.

Based on the facts, the school board was justified in dismissing Mr. Tuffli's employment; however, upon the dismissal of the charges, Mr. Tuffli became eligible once again for continued employment and was entitled to the protections of dismissal for cause. Also, because a teaching certificate was reissued, it was required that Mr. Tuffli be provided equal protection and a hearing like any other permanent employee charged with misconduct.

Disposition: The Court of Appeals reversed the decision of the Superior Court with directions for the District to conduct proceedings to determine if the dismissal was warranted and to dispose of any back pay issues.

1995

Citation: *Dubuclet v. Home Insurance Company*, 660 So.2d 67 (Court of Appeal of Louisiana, 1995).

Key Facts: Eric Dubuclet, a tenured teacher with the Orleans Parish, was arrested for possession of marijuana and cocaine. He pled guilty to the charges. The state statute La R. S. 40:983 allows for first time offenders to be placed on probation. Upon successful completion of the probation, the defendant is discharged and the criminal proceedings are dismissed. Mr. Dubuclet completed the probation, was discharged, and the criminal proceedings against him were dismissed.

The school board conducted a hearing and terminated him on grounds of immorality. Mr. Dubuclet's attorney filed two lawsuits: one for denial of unemployment benefits for Mr. Dubuclet and also a reinstatement suit. The reinstatement suit was pending in trial court for 5 years with no activity and, as a result, was dismissed for failure to prosecute. The result of the inaction is this particular legal malpractice suit.

Issues: At issue is whether the plaintiff's discharge and dismissal of the criminal proceedings bar his employer from terminating him for the same conduct that was the subject of the criminal proceedings and could he have won the reinstatement suit.

Holding: The Court of Appeal held that the school board had authority to terminate the teacher, despite the dismissal of criminal charges against him.

Reasoning: The state statute under which Mr. Dubuclet was terminated does not require or even refer to conviction of a crime. However, the statute does refer to immorality. Although he was never convicted of a crime, due to the fact that he possessed marijuana and cocaine, the school board has the authority to implement a disciplinary action.

Mr. Dubuclet argued that one of the police officer should not have been allowed to testify at the school board hearing because he was not named on the witness list that was provided to him at least 15 days prior to the hearing. However, during the hearing, neither side raised an objection to the officer testifying.

The final argument by Mr. Dubuclet was that the school board's decision to terminate him would have been reversed by the court in the reinstatement suit, had the suit not been dismissed. The evidence of Mr. Dubuclet's guilty pleas was admitted over objection at the school board hearing. However, the court ruled that there was evidence independent of the guilty pleas that Mr. Dubuclet had used and possessed marijuana and possessed cocaine.

Disposition: The Court of Appeal affirmed the judgment of the trial court.

Citation: *Howard v. Missouri State Board of Education*, 913 S.W.2d 887 (Missouri Court of Appeals, Southern District, Division Two, 1995).

Key Facts: Nancy Howard was a reading teacher at a junior high school. Ms. Howard asked one of her male students to complete some yard work for her. The student complied with the request and Ms. Howard allowed the student to drive her van to his home when he was finished. The relationship continued as Ms. Howard would make frequent visits to the student's home. During some of these visits, it was alleged that Ms. Howard made very inappropriate comments and behaviors to the student as well as his mother and brothers.

In addition, Ms. Howard was arrested for removing her blouse and yelling explicit comments to an officer. She was later transferred to a medical facility to receive psychiatric services.

The psychiatrists provided an affidavit that stated that Ms. Howard's behavior was the direct result of her mental disorder or the effects of medication she received for that disorder.

They did not believe that the behavior was the result of a lack of morality or intention to commit an immoral act.

Issues: At issue is whether the teacher can be deprived of her teaching certificate on the ground of immorality being that there was not specific evidence of a conscious intent to commit the acts alleged, and there was no allegation that she intended to be immoral or even knew she acted in an immoral manner.

Holding: The Court of Appeals held that the teacher's petition for judicial review was not jurisdictionally deficient for failure to name school district in original petition. The Court also held that it was not necessary to show that grossly offensive and inherently harmful sexual conduct by the teacher was contrived and intended as a breach of ordinary morality before the state could revoke the teacher's license.

Reasoning: The court concluded that the purpose of the tenure law is to protect competent and qualified teachers in the security of their positions. References are made to the *Youngman* case; however, the court determined that there were differences between this case and the *Youngman* case. The court was unable to conclude that gross offensive and harmful sexual conduct by a teacher, practiced upon school-age children, must be shown to be actually contrived and intended as a breach of ordinary morality before the state can withdraw the privilege of a license from the teacher. It was concluded that the Ms. Howard's conduct was immoral. The trial court erred, based on the particular facts that Ms. Howard did not engage in immorality. Finally, it was decided that her actions did have a connection with her teaching performance.

Disposition: The Court of Appeals reversed the judgment of the lower court and the board's revocation of the teacher's license was reinstated.

Citation: *James v. Trumbull County Board of Education*, 663 N.E.2d 1361 (Court of Appeals of Ohio, 1995).

Key Facts: Marianna James, a teacher of a multi-handicapped unit with the Trumbull County Board of Education, was accused by some disgruntled special education aides of using aversives to correct students' behavior. Ms. James worked with 17 students who had multiple disabilities including, Down's syndrome, mental retardation, cerebral palsy, blindness, and deafness. The aides were unhappy because of scheduling changes that were announced.

After an internal investigation, the school board terminated Ms. James' teaching contract. She contested the decision and according to R.C. 3319.16, a referee was appointed to hear the matter. The referee recommended that Ms. James' contract not be terminated. The school board did not accept the recommendation.

Ms. James appealed to the Court of Common Pleas, who overturned the school board's decision because it was not supported by the preponderance of evidence. The court also ordered that Ms. James be awarded back pay and offered reinstatement.

Issues: At issue is whether the appellee's use of aversives created a potential harm to the students and whether the dismissal constituted "other good and just cause." Another issue is whether the trial court abused its discretion.

Holding: The Court of Appeals held that the teacher did not violate a board regulation. It was also held that the teacher's techniques for disciplining multi-handicapped students were not good and just cause required for dismissal.

Reasoning: The court reasoned that the process to be employed in such a matter, after the decision to discharge is made, begins with the referee. He is required to have an evidential hearing to present his report to the school board. The board may elect to accept or reject his

recommendation; however, if the board decides to reject the recommendation of the referee, it must articulate its reasons for doing so as it is required to afford due deference to the referee's findings. From this decision, the school board may appeal to the court of common pleas.

The court reviewed and rejected the specific grounds for dismissal by the school board. The school board failed to produce any written or verbal policy allegedly violated by Ms. James. There was not a single directive cited by the school board that was not followed by Ms. James.

The evidence indicated that there was a diversity of opinion on the various discipline techniques that were employed by Ms. James that formed the basis for her dismissal. The evidence failed to establish any intentional disregard for the safety or well-being of her students. The court noted that Ms. James may not have used the best judgment, being that teachers work without clear guidelines in an educational area, such as a multiple handicapped classroom. Statutory and case law require that school boards inform teachers of their expectations before terminating them.

Finally, the court was unable to deduce that the trial court abused its discretion by reversing the decision of the school board. Therefore, the school board's claim that the trial court erred is without merit.

Disposition: The Court of Appeals affirmed the decision of the trial court.

1996

Citation: *Kinniry v. Abington School District*, 673 A.2d 429 (Commonwealth Court of Pennsylvania, 1996).

Key Facts: Francis Kinniry appealed his dismissal from the Abington School District on May 31, 1995. Mr. Kinniry was indicted for selling counterfeit watches valued at \$37,520.00. He

pled guilty to trafficking in counterfeit goods or services in violation of 18 U.S.C. §2320 and conspiracy to commit offenses or to defraud the United States in violation of 18 U.S.C. §371.

The superintendent recommended dismissal on grounds of immorality. A hearing was conducted where the District presented evidence that Mr. Kinniry's illegal activities were immoral, compromising his honesty, integrity, and truthfulness within the District. Mr. Kinniry also testified on his own behalf and presented the testimony of 31 character witnesses.

On November 23, 1993, the school board terminated Mr. Kinniry's employment as a professional employee in the District on the basis of immorality. On December 9, 1993, Mr. Kinniry filed an appeal to the secretary, who affirmed the board's decision on May 31, 1995.

Issues: At issue is whether the evidence presented to the District proved that the teacher's conduct offended the morals of the community and set a bad example for students. Another issue is whether the nearly 18-month delay from time of appeal to decision violated the teacher's due process.

Holding: The Commonwealth Court held that (1) the teacher's federal conviction for trafficking in counterfeit goods or services was per se offensive to community and warranted termination of teacher's contract for immorality, (2) delay of 16 months and 20 days between hearing did not violate due process, and (3) Department of Education's consideration of both motion to decertify teacher and appeal from teacher's dismissal did not result in impermissible comingling of prosecutory and adjudicatory function in violation of due process.

Reasoning: The court reasoned that the state statute includes immorality as one valid cause for the termination of a teacher's contract. The Pennsylvania Supreme Court has determined the various definitions of immorality. Among the definitions is a course of conduct

that offends the morals of the community and is a bad example to the youth whose ideals a teacher is supposed to foster and elevate.

The school district bears the burden of using a three-prong test to prove the elements of the offense of immorality. First, the school district must prove that the claimed acts occurred. Secondly, the school district must show that the conduct offends the morals of the community. Lastly, the school district must demonstrate that the conduct is a bad example to the youth whose ideals the educator is supposed to foster and elevate.

The court agreed with the district in that Mr. Kinniry's commitment of federal offenses did offend the morals of every community in the nation. Particularly, the court took notice of the illegal actions, which in their description, fall into the category of *crimen falsi* crimes. The court believed that trafficking in counterfeit goods was also a *crimen falsi* crime due to the element of deceit involved. It was determined that the District satisfied all three elements necessary to justify Mr. Kinniry's dismissal for immorality under section 1122.

The character witnesses' testimony was not reflective of the community moral standards, as required, but instead was based on personal relationships with, and perceptions of Mr. Kinniry. Character witnesses must testify to the person's reputation in the community, not to their own personal opinions.

It was concluded that Mr. Kinniry's due process rights were not violated. The court upheld the decision to terminate Mr. Kinniry on grounds of immorality.

Disposition: The Commonwealth Court affirmed the decision of the Secretary of Education.

Citation: *Alford v. Ingram*, 931 F.Supp. 768 (United States District Court, 1996).

Key Facts: Teachers within the Alabama public school system filed an action under 42 U.S.C. Section 1983 claiming that Alabama Code §16-23-5 was unconstitutionally vague. The teachers also sought certification of a class.

K-12 teachers and administrators are required to hold a valid certificate issued by the Superintendent of Education. The original certificate must be periodically renewed. A valid certificate may be revoked by the superintendent if the individual is found guilty of immoral conduct or unbecoming or indecent behavior. However, before a certificate may be revoked a written notice and hearing must be granted.

The three plaintiffs in this case, Regina Hunter, Linda Alford, and Phillip Edmonds, testified about the potential revocation of their teaching certificates. Ms. Hunter, a tenured teacher in the maintenance department with the Birmingham Board of Education, was granted a teacher certificate in 1977 and a renewal certificate was issued in 1991. The superintendent proposed to revoke the 1991 certificate based on a 1985 conviction of conspiring to unlawfully distribute cocaine. She received a pardon for the conviction. Ms. Alford, a tenured elementary teacher with the Dothan City school system, received a notice that her 1992 certificate was being considered for revocation. Ms. Alford had a 1984 conviction of theft of property in the first and second degree. Mr. Edmonds, a tenured vocational teacher, was convicted in 1983 of the felony of bringing a stolen motor vehicle into the state. He was facing a revocation of his teaching certificate that was first issued in 1969.

Issues: At issue is whether the Alabama Code §16-23-5 is unconstitutionally vague and whether there's a violation of the Due Process Clause of the Fourteenth Amendment.

Holding: The District Court held that the statute allowed for dismissal of a teacher for immoral conduct. It also held that unbecoming or indecent behavior was not unconstitutionally

vague under the due process clause as long as the superintendent or others enforcing the statute relate terms to fitness to teach.

Reasoning: The teachers wanted the court to declare the statute unconstitutionally vague on its face; however, after careful consideration, the court concluded that the statute, with a limiting judicial construction, was constitutional. The court reasoned that in order for there to be a vagueness problem, the statute must be drafted whereas the ordinary person could not understand the conduct prohibited. The constitution is violated only when a statute is so vague that persons of common intelligence must guess its meaning and differ as to its application.

The court concluded that the superintendent could revoke a teaching certificate only if the immoral conduct or unbecoming or indecent behavior indicated that the teacher was unfit to teach. A reference was made to *Morrison v. State Bd. Of Educ.*, a leading case in the field. The court ruled that the statute under which the teacher was charged was not unconstitutionally vague, but only when the terms, including immoral conduct, were read to imply an unfitness to teach. The court reasoned that the state superintendent followed reasonable guidelines.

Disposition: The District Court affirmed the judgment in favor of the state superintendent of education.

Citation: *In re Thomas*, 926 S.W.2d 163 (Missouri Court of Appeals, 1996).

Key Facts: Donna Thomas was an exemplary teacher who had taught ninth grade English since 1975. She was separated from her husband, who had become involved with Ms. Litzelfelner. Ms. Thomas had several confrontations with Ms. Litzelfelner. On one particular incident, the two females had exchanged words resulting in Ms. Thomas using a Smith and Wesson .357 caliber revolver to fire into Ms. Litzelfelner's vehicle. Four shots were fired, with three bullets actually hitting the car, including the bullet that injured Ms. Litzelfelner.

The school board brought charges against Ms. Thomas alleging immoral conduct and sought termination of her contract. A hearing was held in which the board voted unanimously to dismiss her.

Issues: At issue is whether the Board properly defined immoral conduct and whether the evidence presented was sufficient to show a nexus between the teacher's conduct and performance of her duties. Another issue is whether there was a violation of due process rights.

Holding: The Court of Appeals held that the teacher's intentional conduct in shooting her estranged husband's girlfriend was "immoral conduct" and the board's findings demonstrated that such conduct rendered her unfit to teach. The Court also held that dismissing the teacher without waiting for resolution of criminal charges did not violate her due process rights.

Reasoning: Ms. Thomas argued that the school board improperly defined immoral conduct and that the evidence presented was insufficient to show a nexus between the conduct and performance of her duties. The court determined that immoral conduct is not only limited to conduct that affects performance that occurs on school grounds, directly involves students or school property, or only when the teacher is acting in her official capacity. The intentional shooting of another without legal justifications or excuse was sufficiently contrary to justice and good morals to meet the definition of immoral conduct.

Ms. Thomas also argued that the school board violated her due process rights when they dismissed her before she was convicted. The court concluded that Ms. Thomas was not terminated for conviction of a crime involving moral turpitude, but rather for immoral conduct. The school board did not violate her due process rights by proceeding with its action without waiting for the criminal charges to be resolved.

Disposition: The Court of Appeals affirmed the decision of the trial court.

Citation: *Barringer v. Caldwell County Board of Education*, 473 S.E.2d 435 (Court of Appeals of North Carolina, 1996).

Key Facts: Joseph H. Barringer, a tenured mathematics teacher at West Caldwell High School, was dismissed by the school board for immorality. Mr. Barringer approached a pool room, armed with a 12-gauge, short barrel, pump shot gun, fully loaded with one shell in the chamber. He also had a .38 caliber pistol in his waistband.

Two police officers happened to be among the 60-100 persons present within the pool room. The police officers ordered that Mr. Barringer put the gun down, and he complied. He was arrested and charged with going armed to a public place and carrying a concealed weapon. Mr. Barringer pled guilty to first degree trespass and received a 6-month sentence, suspended upon 3 years supervised probation. The incident was widely publicized in the media as well as spread by word-of-mouth among students, parents, faculty, and staff at West Caldwell.

The superintendent initiated suspension and dismissal procedures against Mr. Barringer. A hearing was conducted where testimony was presented by the officers, a West Caldwell parent, teachers, the principal, and a guidance counselor. The school board voted to join the superintendent's recommendation that Mr. Barringer be dismissed.

Mr. Barringer sought judicial review by the Caldwell County Superior Court. The trial court affirmed the school board's dismissal of Mr. Barringer. A notice of appeal was filed.

Issues: At issue is whether the trial court erred in dismissing the tenured teacher. Another issue raised is whether the school board had the authority to dismiss a teacher for immorality without defining immorality is unconstitutionally vague and it fails to give fair warning of what conduct is prohibited and permits erratic and prejudiced exercises of authority.

Holding: The Court of Appeals held that the statute pursuant to which teacher was dismissed was not unconstitutionally vague.

Reasoning: The court determined that Mr. Barringer's argument was unfound. He carried the heavy burden in contesting the constitutionality of the state law. The North Carolina Supreme Court has previously stated that terminology such as "good moral character" which denotes acceptable and unacceptable standards of behavior has been used as a standard for a long time. The case law surrounding the usage has given the term well-defined contours, which make it a constitutionally appropriate standard.

To qualify as grounds for dismissal of a tenured teacher, immorality must be viewed in the context of or in regard to the teaching performance. The statute implicitly requires the immorality of a career teacher to be in relation to, or to affect, that teacher's work, before the teacher may be dismissed or demoted upon such ground.

The court stated that the Supreme Court has emphasized that teachers, in addition to being required to teach a particular subject matter, also serve as role models for their students. The court noted that Mr. Barringer's behavior at the pool room suggested that he was aware that his conduct related to his performance as a teacher, because he listed his occupation as "self-employed carpenter." Presumably, if he were not concerned with his actions placing his teaching position in jeopardy, then the correct information would have been provided to the officers.

The court believed that Mr. Barringer's conduct and actions resulted in his ability to effectively function as a teacher had been substantially adversely affected. The incident constituted an immoral and highly dangerous conduct that had law enforcement not been present the situation would have likely led to violent injury or death of innocent people. Mr. Barringer's

conduct violated every important principle of good citizenship that the teaching profession aims to impart to students.

Disposition: The Court of Appeals affirmed the decision of the trial court.

Citation: *McNeill v. Pinellas County School Board*, 678 So.2d 476 (District Court of Appeals of Florida, 1996).

Key Facts: Richard McNeill was suspended after he was arrested for criminal battery when he allegedly touched an undercover law enforcement officer in a sexually suggestive manner. The school board held a hearing according to section 120.57 (1) of the Florida Statutes to determine whether the conduct was sufficient ground for dismissal. After reviewing the facts, the hearing officer recommended that the school board reinstate Mr. McNeill without back pay and benefits lost during his suspension. However, the school board declared that Mr. McNeill was guilty of immoral conduct and rejected the hearing officer's recommendation, and dismissed him.

Mr. McNeill appealed the school board's decision due to their lack of sufficient evidence to support the dismissal.

Issues: At issue is whether the school board erred by rejecting the hearing officer's recommended penalty because the evidence was insufficient to prove an essential element of the offense; that is, that the teacher's conduct impaired his effectiveness within the community.

Holding: The District Court of Appeals held that the school board failed to meet its burden of showing that the teacher had impaired effectiveness due to the notorious nature of conduct in order to merit termination of his employment contract for immoral conduct arising out of his arrest for allegedly touching an undercover officer in sexually suggestive way.

Reasoning: The school board bears the burden of proving that each element of the charged offense warranted dismissal. The state statute defines immorality as conduct that is inconsistent with the standards of public conscience and good morals. It is conduct that is sufficiently notorious to bring the teacher concerned or the education profession into public disgrace or disrespect and impair the individual's service in the community.

The court reasoned that the school board failed to meet its burden of proof with respect to impaired effectiveness. The hearing officer noted that the testimony offered by the school officials was unsupported by specific information from students, parents, or coworkers. The school board's action of findings of fact was unsupported by competent substantial evidence.

Disposition: The District Court of Appeals set aside the School Board's final order of dismissal and remanded the case for the teacher's reinstatement.

Citation: *Satterfield v. Board of Education of the Grand Rapids Public Schools*, 556 N.W.2d 888 (Court of Appeals of Michigan, 1996).

Key Facts: Yuel Satterfield worked for the Grand Rapids Public Schools for 9 years as a special education teacher. He also was employed part-time at a Witmark Catalog Showroom. After an investigation by Witmark, it was discovered that Mr. Satterfield had embezzled \$10,000 to \$15,000 in 1 year. He pled guilty to embezzling over \$100 and received 5 years probation, was ordered to perform community service, and had to make full restitution. Because of the conviction, the school board terminated his employment.

A hearing was conducted, which concluded that the school district had sustained its burden of proving just and reasonable cause for the discharge. The commission agreed and ruled that Mr. Satterfield had been convicted of a crime involving moral turpitude and the conviction raised a presumption that his conduct made him unfit to teach. It was also determined that Mr.

Satterfield failed to provide evidence that his continued employment would have had an insignificant effect upon his students, their parents and the staff, and the school district would be adversely affected as a result of the conviction.

Issues: At issue is whether the commission erred in adopting the so-called *Kenai* presumption that a teacher who is convicted of a crime involving moral turpitude is unfit to teach. Also at issue is whether the presumption properly shifts the burden of proof in a tenure case from the employer to the teacher. The final issue is whether the dismissal was proper because there was not a “rational nexus” between the teacher’s act of embezzling funds and the job performance.

Holding: The Court of Appeals held that the *Kenai* presumption, rebuttable presumption that teacher who is convicted of crime involving moral turpitude is unfit to teach, places burden on the teacher to come forward with evidence to rebut the presumption of unfitness; the burden of persuasion, burden of proving reasonable and just cause of termination of tenured teacher, remains with the school district. The Court also held that rational nexus existed between the teacher’s act of embezzling funds from his part-time employer and performance of his job duties as a special education teacher.

Reasoning: The teacher tenure act states that a tenured teacher such as Mr. Satterfield may be terminated only for reasonable and just cause. The school district showed that there was reasonable and just cause for the dismissal.

A review of the commission’s decision showed that it addressed the adverse effect of Mr. Satterfield’s embezzlement conviction and that the finding was supported by competent, material, and substantial evidence. In addition, there was testimony from several parents and

school employees who stated that his retention would have an adverse effect on the school, the parents, and the children, not to mention the school's reputation.

Disposition: The Court of Appeals affirmed the decision of the commission.

Citation: *Ysleta Independent School District v. Meno*, 933 S.W.2d 748 (Court of Appeals of Texas, 1996).

Key Facts: Victor Aguilar was employed with the Ysleta Independent School District as a tenured middle school teacher. Two female students reported that Mr. Aguilar touched them inappropriately. One student alleged that Mr. Aguilar hugged and kissed her in a darkened, empty classroom; the other student claimed that he grabbed her buttocks while she was bending over to retrieve papers that she had dropped. A hearing was conducted and the board of trustees concluded that Mr. Aguilar's conduct was immoral. The board of trustees voted to terminate Mr. Aguilar.

Mr. Aguilar appealed to the Commissioner of Education. During the appeal hearing, evidence from proceedings of the school board and two additional documents were introduced. The Commissioner concluded that there was not substantial evidence to support the board's finding that Mr. Aguilar's conduct was immoral. The Commissioner determined that Mr. Aguilar had exercised bad judgment, which was not a lawful charge for discharge. The Commissioner ordered that the school district reinstate the teacher.

Issues: At issue is whether the Commissioner erred in exceeding his authority by conducting a de novo review of Mr. Aguilar's appeal.

Holding: The court held that by predetermining the credibility of the witnesses and the weight that should be given their testimony in the case, and by substituting their judgment for

that of the board, the Commissioner and the Texas Education Agency exceeded their statutory authority.

Reasoning: At one time, state statute allowed the Commissioner to review appeals under a de novo standard; however, that authority ended in 1967 when the legislature vested board of trustees of independent school districts the power to discharge during the school year a teacher employed under a continuing contract for specified causes listed in the enactment. Under a de novo standard of review, the Commissioner would be making the employment decision rather than the local school board.

Disposition: The court reversed and remanded the Commissioner and education agency's final order of reinstating the teacher, and the lower court's judgment of sustaining the order. The Commissioner was ordered to review the board's decision under the substantial evidence standard.

1997

Citation: *Wright v. Mead School District*, 944 P.2d 1 (Court of Appeals of Washington, 1997).

Key Facts: Shawn Wright, a junior high school music teacher, was dismissed from the Mead School District for inappropriate relations with two female students 7 to 10 years prior in another school district. In addition, the investigations also revealed that Mr. Wright consumed alcohol in front of students while on a school-sponsored trip and allowed students to drink in his motel room.

The superintendent of the Mead School District had a written notice delivered to Mr. Wright that listed three reasons for his discharge: (1) unprofessional, unacceptable, and immoral

conduct with L.B; (2) unprofessional, unacceptable, and immoral conduct with S.A.; and (3) consumption of alcohol at school events and furnishing alcohol to students. It was determined that there was probable cause to terminate Mr. Wright.

Issues: At issue is whether the teacher's conduct provided the school district with sufficient cause for dismissal.

Holding: The Court of Appeals held that the notice and hearing provided the teacher satisfied due process. The teacher's inappropriate sexual conduct with students was not "status" insufficient matter of law to support discharge. The Court also held that the teacher's sexual contact with two high school students 7 years prior to his dismissal was "sufficient cause" for his termination.

Reasoning: The court reasoned that the relationship between a school district and a teacher is governed by principles of contract law. A school district may discharge a teacher only for sufficient cause. Although the statute fails to define sufficient cause, the courts have interpreted it to mean conduct that materially and substantially affects the teacher's performance.

It was determined that Mr. Wright's due process rights were not violated because he was afforded a hearing in front of a hearing examiner. Mr. Wright also argued that the school district discharged him because of his "sexual misconduct status." The court ruled that his discharge was not based upon his status, but rather because of his inappropriate conduct with students. The state statute does not have a limitations period. The court reasoned that sexual conduct is not remediable. The school district had sufficient cause to terminate Mr. Wright.

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

Citation: *Gedney v. Board of Education of Town of Groton*, 703 A.2d 804 (Appellate Court of Connecticut, 1997).

Key Facts: Ronald Gedney, a tenured fourth grade teacher in the Groton public school system, was arrested and charged with possession of cocaine, which is a felony in violation of §21a-279 (a), and possession of drug paraphernalia, a misdemeanor. Mr. Gedney was granted accelerated rehabilitation and was never convicted of the crimes with which he had been charged.

The school board notified Mr. Gedney that termination of his contract for immoral conduct and other due and sufficient cause was under consideration. He requested a hearing, which was held over the course of 8 days. The hearing officer recommended that Mr. Gedney not be terminated and he be allowed to return to his employment at the beginning of the next school year. The board accepted the hearing officer's findings, rejected his recommendation, and voted to terminate him for moral misconduct and other due and sufficient cause. Mr. Gedney appealed the decision based on the premise that his prior addiction was a "disability" and the termination violated both federal law and article 21 of the amendments to the Connecticut constitution.

Issues: At issue is whether the teacher's termination was violation of both federal law and article 21 of the amendments to the Connecticut constitution.

Holding: The Appellate Court held that (1) the teacher was arrested for possession of narcotics was properly terminated for moral misconduct within meaning of statute governing tenured teachers, and, thus, was not terminated solely by reason of his recovering cocaine addict disability within meaning of Rehabilitation Act; and (2) the teacher failed to show that he was discriminated against based on his disability within meaning of equal protection provision.

Reasoning: The court reasoned that in order to establish a violation of §504 of the act, Mr. Gedney must prove (1) that he is an "individual with a disability" under the act (2) that he is "otherwise qualified" for the position sought (3) that he is being excluded from the position

“solely by reason of his disability,” and (4) that the position exists as part of a program or activity receiving federal funds. It was determined that Mr. Gedney qualified as an “individual with a disability” because the hearing officer found that he was a recovering drug addict at the time of the termination.

Mr. Gedney argued that he was terminated based solely on his disability; however, the court ruled that the conduct was felonious activity leading to an arrest that, despite the disability, would have disqualified Mr. Gedney from employment or justified his termination. It was concluded that the termination was proper and Mr. Gedney was not entitled to protection of the Rehabilitation Act. Nor did the dismissal indicate any discrimination based on religion, race, color, ancestry, national origin, sex, or physical or mental disability. The claim of a violation of constitutional rights had no merit.

Disposition: The Appellate Court affirmed the decision of the lower court.

Citation: *Hamm v. Poplar Bluff R-1 School District*, 955 S.W.2d 27 (Missouri Court of Appeals, 1997).

Key Facts: Brian Hamm, a probationary teacher with the Poplar Bluff R-1 School District was terminated by the school board for immoral conduct. Mr. Hamm appealed the decision.

The termination was a result of Mr. Hamm’s relationship with a 14-year-old girl. On the late evening of August 15, 1996, and early morning hours of August 16, 1996, two officers went to Mr. Hamm’s home after a phone call from a private detective concerning the whereabouts of the girl.

The officers questioned Mr. Hamm about the girl being at his home. Mr. Hamm denied that the girl was there. He told the officers that he had spoken to the girl about 30 minutes earlier.

After this conversation with Mr. Hamm, the officers decided to observe the front of the home. One officer radioed the other to inform him that he observed a White female leaving Mr. Hamm's home. The girl was taken into custody and the officers returned to Mr. Hamm's home.

The school board concluded that Mr. Hamm's actions constituted immoral conduct. Mr. Hamm appealed the decision.

Issues: At issue is whether the school board erred in terminating the teacher's contract due to insufficient evidence.

Holding: The Court of Appeals held that the evidence was sufficient to support determination that the probationary teacher had engaged in immoral conduct rendering him unfit to serve as a teacher.

Reasoning: Immoral conduct is conduct that renders a teacher unfit for the performance of his duties; conduct rendering a teacher unfit to teach. The school board had reason to question Mr. Hamm's motives in view of his inappropriate dress when confronted by police. Mr. Hamm was dishonest when questioned by the officers and he disregarded the rights of the girl's parents to prescribe rules for her behavior.

The court reasoned that the school board acted within its authority in reaching its decision. In addition, evidence supported the decision.

Disposition: The Court of Appeals affirmed the decision of the school board.

Citation: *Baldrige v. Board of Trustees, Rosebud County School District #19*, 951 P.2d 1343 (Supreme Court of Montana, 1997).

Key Facts: Elmer Baldrige, a tenured science teacher with the Rosebud County School District #19, was dismissed by the board of trustees for incompetence, unfitness to teach, and

violations of the board policy. It was alleged that he made several inappropriate comments to students on numerous occasions.

Before the dismissal, a hearing was held and the principal recommended to the district superintendent that Mr. Baldrige be suspended with pay pending further investigation. These actions took place; however, the board voted to terminate him from his tenured position.

Mr. Baldrige appealed the case to the county superintendent. During the testimony, nine instances of alleged misconduct were discussed. Eight of the nine instances were found to have taken place. The county superintendent concluded that Mr. Baldrige's conduct was inappropriate; however, there were no sexual intentions and the comments did not offend the students. After analyzing each of the bases for dismissal, the county superintendent determined that the school board had not established that Mr. Baldrige was incompetent in his teaching assignments nor was he unfit to teach. The board's decision was reversed by the county superintendent.

The school board appealed this decision, indicating that the county superintendent had erred in concluding that the school board did not have good cause to terminate Mr. Baldrige.

Issues: At issue is whether the acting county superintendent erred in concluding that the teacher's conduct constituted incompetence, unfitness to teach, or violation of Board policy.

Holding: The Supreme Court held that the teacher was unfit to continue teaching, as a matter of law under statute allowing dismissal of teachers under contract on grounds of unfitness, as teacher made jokes about testes and about a student's menstrual periods, flipped off his students and viewed it as "the highest form of respect," and made gender-based remarks and innuendoes in his classroom.

Reasoning: The court looked at the fact that the “unfitness” is not defined by state statute; however, a teacher may be unfit to teach if he or she engages in inappropriate conduct in the classroom or with students outside the classroom. The county superintendent found that Mr. Baldrige was involved in eight of nine instances involving inappropriate conduct.

The court reasoned that seven incidents were considered inappropriate conduct by a high school teacher toward his students. Mr. Baldrige’s behavior demonstrated a lack of judgment regarding a teacher’s role and relationship with his students which relates directly to his fitness to teach.

The court determined that the county superintendent’s findings were not supported by substantial evidence. It is clear that Mr. Baldrige’s conduct was inappropriate on the face of it and it was his conduct and lack of judgment in engaging in the conduct, rather than his intent that is the issue.

The court concluded that the county superintendent did not properly apply the law to the facts regarding Mr. Baldrige’s conduct. Because of this finding, the court held that the county superintendent erred in concluding that the conduct did not constitute unfitness under the state statute.

The state statute provides that a teacher may be dismissed for “immorality, unfitness, incompetence, or violation of the adopted policies by the school board.” Because the statute is written in the disjunctive, it is clear that only one of the statutory bases for dismissal need to exist; therefore, the court held that Mr. Baldrige’s conduct constituted unfitness as a matter of the law.

1998

Citation: *Forte v. Mills*, 672 N.Y.S.2d 497 (Supreme Court, Appellate Division, 1998).

Key Facts: Gary Forte, a tenured physical education teacher with the Manhasset Union Free School District, was charged with conduct unbecoming of a teacher and insubordination. Mr. Forte had been warned by his principal on four separate occasions against engaging in any physical contact with students. It was alleged that he had nudged and poked fourth and fifth grade female students in the back and/or snapped their bra straps during the physical education class. A hearing was provided that offered evidence that Mr. Forte was guilty of conduct unbecoming a teacher and insubordination. Mr. Forte appealed this decision to the Commissioner.

Issues: At issue is whether the commissioner's decision to terminate was arbitrary or capricious, affected by an error of law, or lacking rational basis.

Holding: The Supreme Court held that (1) the decision that the teacher engaged in insubordination was not arbitrary or capricious; (2) the decision that teacher engaged in conduct unbecoming a teacher was not arbitrary or capricious; and (3) the dismissal was appropriate penalty.

Reasoning: The court found no basis upon which to overrule the Commissioner's determination of insubordination. Mr. Forte admitted that he had a habit of touching students. In addition, the testimony of the students provided a reasonable basis for the decision rendered, being that Mr. Forte's prior knowledge that such "motivational techniques" made the female students, who were in early stages of puberty, very uncomfortable.

It was reasoned that dismissal is appropriate when a teacher, having been repeatedly warned against physical contact with students, failed to avoid such contact, regardless of its

purpose, may be interpreted by those students as sexually suggestive or harassing. The court failed to find the penalty was as disproportionate to the offense as to be shocking to one's sense of fairness.

Disposition: The Supreme Court confirmed the determination of the commissioner.

Citation: *Parker v. Board of Education of Byron Center Public Schools*, 582 N.W.2d 859 (Court of Appeals of Michigan, 1998).

Key Facts: Steven Parker, a tenured teacher with the Byron Center Public School District, appealed his dismissal for conduct that had occurred 16 years earlier. The State Tenure Commission discharged him.

The superintendent of the school district received a letter from a woman alleging that Mr. Parker had engaged in a sexual relationship with her in the late 1970s while she was a student in the district. Proceedings to dismiss Mr. Parker were initiated by the school board. A hearing was conducted by a hearing officer.

The woman provided detailed accounts of specific events that took place with her and Mr. Parker. According to the woman, she was in Mr. Parker's fifth grade homeroom class and the sexual abuse began when she was a student at Byron Center High School. During the trial, the woman outlined the details of the relationship and testified that she had not come forward sooner because she blamed herself for what had happened.

The hearing officer concluded that the school board had proved by a preponderance of evidence that Mr. Parker had engaged in sexual relations with the woman while she was a student of the district and this conduct justified dismissal. The commissioner upheld the preliminary decision.

Issues: At issue is whether the commission erred in not dismissing the charges against the teacher because the events occurred 16 years prior. Another issue is whether evidence was excluded as well as whether the termination was supported by competent, material, and substantial evidence.

Holding: The Court of Appeals held that (1) the 16-year interval between teacher's alleged sexual relationship with student and commencement of termination proceedings did not unduly prejudice teacher's preparation of defense; (2) the evidence was irrelevant to sexual relationship occurring while complainant was student; (3) the evidence of complainant's sexual relationship with persons other than teacher was properly excluded; and (4) the Commission's determination that teacher engaged in sexual activity with student warranting his dismissal was supported by competent, material, and substantial evidence.

Reasoning: The court stated that the Legislature had not acted to include a statute of limitations in the teacher tenure act for charges relating to sexual misconduct. Also, the purpose of the proceedings is to discipline Mr. Parker for the past abuse as well as prevent any further abuse to other students. It was noted that a sexual predator, especially of young children, may not argue that he should escape responsibility under the teacher tenure act merely because time has passed.

The court also disagreed with Mr. Parker's claim that the commissioner's decision to terminate was not supported by competent, material, and substantial evidence. It was concluded that the hearing officer and the commission made very detailed findings of fact that supported their determination that Mr. Parker had engaged in sexual activity, including repeated instances of sexual intercourse with a student.

Disposition: The Court of Appeals affirmed the decision of the State Tenure Commission.

Citation: *Woo v. Putnam County Board of Education*, 504 S.E.2d 644 (Supreme Court of Appeals, 1998).

Key Facts: Matthew Woo was a tenured math teacher with the Putnam County Board of Education. In February 1993, he was arrested and charged with the felony sale of a controlled substance, marijuana, to an undercover police officer. When the school board learned of his arrest, Mr. Woo was transferred to the district office so that he would not be directly involved with students.

A trial was held where Mr. Woo successfully asserted the defense of entrapment and the jury found him not guilty. However, he did admit to smoking marijuana at his home on a regular basis, but never during work hours or school activities.

The local newspaper published articles relating to the case; thereby causing a parent to begin the circulation of a petition protesting Mr. Woo's return to his teaching position at the high school. The school board explored a possible solution to transfer him to another school; however, another new petition was circulated and delivered to the school board.

The school board sent a letter to Mr. Woo regarding his possible dismissal. On October 4, 1993, the school board voted 3-2 to terminate Mr. Woo on the grounds of immorality and intemperance, citing *W.Va Code*, 18A-2-8.

Mr. Woo grieved his termination that resulted in a hearing where the Administrative Law Judge upheld the termination. The Circuit Court reversed the decision and the present appeal was ordered.

Issues: At issue is whether there was a rational nexus between appellee's off-duty conduct outside his job and his job performance.

Holding: The Supreme Court of Appeals held that finding the teacher's off-duty conduct had become subject of such notoriety as to warrant termination was supported by evidence.

Reasoning: The court reasoned that the Administrative Law Judge's findings were supported by substantial evidence. It was determined that the board had shown that there was a rational nexus between Mr. Woo's off-duty conduct outside his teaching position and his ability to perform that job because of the notoriety which had been attached. It was also found that some of the notoriety was contributed by the school board; however, there was also substantial notoriety independent of the school board.

Disposition: The Supreme Court reversed the order of the circuit court and remanded for reinstatement of the decision of Administrative Law Judge.

Citation: *Harry v. Marion County Board of Education*, 506 S.E.2d 319 (Supreme Court of Appeals of West Virginia, 1998).

Key Facts: The Marion County Board of Education terminated Thomas Harry, a high school social studies teacher, for violating its sexual harassment policy. According to the definition, conduct that constitutes sexual harassment, includes, but is not limited to, verbal or physical sexual advances, touching, pinching, patting, or brushing against; comments regarding physical or personality characteristics of a sexual nature; sexually-oriented "kidding," "teasing," and jokes. Harassing conduct would not be subjected but for such person's sex. Sanctions were also included with the district's policy.

The board provided Mr. Harry with a written notice of its intent to dismiss him and the reasons for such an action. In the letter, the board charged Mr. Harry with, among other things, making repeated remarks of a sexual nature to students and fellow employees.

Mr. Harry filed a grievance that culminated in the administrative law judge concluding that the school board had proven that Mr. Harry had engaged in the alleged acts of misconduct involving students, specifically that he had made repeated sexually-oriented remarks to students; however, the administrative law judge ruled that misconduct does not always support a dismissal and that the school board acted arbitrarily and capriciously in dismissing Mr. Harry. It was ruled that Mr. Harry should be reinstated, but without back pay or reimbursement of benefits or costs. The administrative law judge believed that the school board's termination was excessive.

The school board appealed the ruling to the Circuit Court who affirmed the administrative law judge's ruling that Mr. Harry be reinstated. The school board appealed this decision.

Issues: At issue is whether the teacher's termination was appropriate. Another issue is whether the circuit court erred in ordering the reinstatement of the teacher.

Holding: The Supreme Court held that the board was authorized to terminate employees for sexual harassment. The Court also held that the board's termination of the teacher for sexual harassment was reasonable.

Reasoning: The record was supported by substantial evidence. The state statute allows a county board of education to dismiss a teacher based on just causes and must be exercised reasonably, not arbitrarily or capriciously. The court noted that Mr. Harry made not one sexual comment to one student, but that he made several, to several students, and he made comments after he was cautioned that they were inappropriate.

The court also reasoned that the administrative law judge and the circuit court did not consider the fact that students were subjected to sexually harassing remarks to a sufficiently substantial basis for the school board to terminate Mr. Harry's contract. The state statute not only authorizes termination of employment for immorality, of which sexual harassment may be considered a species, but the Supreme Court of the United States has indicated that sexual harassment is a significant concern and that a school board which receives federal funds and which tolerates such conduct, is in violation of federal law. The school board has a duty to protect students.

Being that sexual harassment is a substantial matter and the state statute authorizes termination, and after examining the evidence, the court concluded that the school board did not act arbitrarily or capriciously in terminating Mr. Harry.

Disposition: The Supreme Court reversed and remanded with directions.

Citation: *State of Louisiana v. DeGueurce*, 726 So.2d 18 (Supreme Court of Louisiana, 1998).

Key Facts: Kelly Dukes DeGueurce, a 28-year-old school teacher, became involved with a male student about a month before his 15th birthday. The affair was discovered after the male student was hospitalized for psychological treatment.

After the student's mother learned of the affair, she contacted an attorney, who also served as the City Attorney of Bossier City, and the police department. A video camera was hidden in Ms. DeGueurce's home which revealed the male student and her hugging and kissing. In addition, the video also caught them engaging in intercourse and oral sex.

Ms. DeGueurce was charged with carnal knowledge of a juvenile between the dates of April 1, 1995 and February 7, 1996. After the arrest, Ms. DeGueurce was provided psychological testing.

A hearing was held where the court made numerous references to a pre-sentence investigation report. The report stated that the male student had suffered severe stress as a result of the affair, resulting in him being hospitalized and treated by specialists.

Issues: At issue is whether the imposed 3-year hard labor sentence was constitutionally excessive in addition to making restitution. Another issue is whether the due process rights were violated.

Holding: The court held that the sentence was not constitutionally excessive; however, the restitution and additional default time were illegal when a sentence was not suspended.

Reasoning: The court concluded that because of the seriousness of the offense, a 3-year hard labor sentence should be imposed. In addition, Ms. DeGueurce was ordered to make full restitution to the student's family for any losses they sustained, or to serve an additional year in jail.

Ms. DeGueurce filed a motion for the reconsideration of the sentence. Another hearing was conducted to include information that was not heard at the initial hearing.

The court agreed that constitutional due process requires that a defendant is given an opportunity to rebut false or inaccurate information of a substantial nature; however, that failure to request the opportunity to rebut such information constitutes a waiver of the opportunity.

The court did not consider the sentence too severe considering the circumstances of the case and Ms. DeGueurce's background. A sentence is constitutionally excessive if it is grossly out of proportion to the seriousness of the offense or is purposeless or needless. Ms.

DeGueurce's sentence was less than one-third of the statutory 10-year maximum sentence for carnal knowledge of a juvenile. She was originally charged with molestation of a juvenile as well as additional charges. The sentence was greatly reduced because she pled guilty.

The court amended to vacate the order of restitution and the default sentence of 1 year in jail; however, the sentence of 3 years at hard labor was affirmed.

Disposition: The court affirmed the 3-year sentence at hard labor.

1999

Citation: *DeMichele v. Greenburgh*, 167 F.3d 784 (United States Court of Appeals, Second Circuit, 1999).

Key Facts: Robert DeMichele was a physical education teacher at the Woodlands High School in the Greenburgh Central School District. The school district brought charges against him for immoral conduct and conduct unbecoming a teacher that involved allegations that he had engaged in inappropriate conduct with female students.

A hearing was held and Mr. DeMichele was suspended without pay for 1.5 years beginning January 1, 1994. Mr. DeMichele appealed the hearing officer's decision to the Commissioner of Education, who sustained the hearing officer's decision. The misconduct included using sexually provocative language with students; touching them on the hip, waist, and buttocks; and having them sit on his lap.

In February 1999, two women contacted the District Superintendent and reported that he had sexually abused or molested them when they were students at Woodlands decades earlier. The women learned of the charges against Mr. DeMichele after reading about them in the local newspaper. Another hearing was conducted where both women provided detailed testimony. The

hearing officer found Mr. DeMichele guilty of three of the four specifications of immoral conduct and all four specifications for conduct unbecoming a teacher and recommended his termination and loss of tenure. Shortly after, the prosecutor disclosed the results of the proceeding to the media. Mr. DeMichele filed an action under 42 U.S.C. §1983.

Issues: At issue is whether the district court erred in rejecting Mr. DeMichele's due process claim on the basis that he suffered no "actual prejudice" as a result of the 24-year lapse between the alleged wrongdoing and the commencement of disciplinary proceedings. Also another issue is whether there was a violation of liberty interest.

Holding: The court held that there was no general statute of limitations that governed the initiation of a disciplinary hearing. It was also held that Mr. DeMichele had a constitutionally protected interest in his employment and he failed to establish actual prejudice.

Reasoning: The court states that New York law does not contain a general statute of limitations governing the initiation of a disciplinary proceeding; therefore the court declined this claim. Congress has determined that capital crimes may be prosecuted without limitation of time, whereas many states impose no statute of limitations restricting certain criminal prosecutions and the state of Wyoming has declined to place time limitations on any criminal prosecutions at all.

The court reasoned that Mr. DeMichele had a constitutional protected property interest at stake and could not be terminated without due process. The question that remains is whether the school district deprived him of his due process rights by holding a hearing based on misconduct charges 24 years after the alleged misconduct occurred. It was determined that he did not show any deprivation of evidence, if the charges had been brought earlier. The court concluded that the district court did not err in holding that Mr. DeMichele failed to establish actual prejudice, which was fatal to his due process claim.

There is not question about Mr. DeMichele's interest in his tenured teaching position; however, the school district has a greater interest in removing from the school setting an alleged sex offender who had only recently been found to have been sexually harassing female students in a crude manner. The court also agreed that there was no basis for Mr. DeMichele's claim that the results of the proceeding were to remain private, and the prosecutor's dissemination of the information deprived him of his liberty interest.

Disposition: The decision of the district court was affirmed.

Citation: *Johanson v. Board of Education*, 589 N.W.2d 815 (Supreme Court of Nebraska, 1999).

Key Facts: Jim Johanson was a fifth grade teacher with the Lincoln County School system. The interim superintendent sent him notice that a recommendation to terminate his contract would be submitted to the school board effective May 30, 1997. Mr. Johanson's right to a hearing was outlined in the notice. A hearing was requested and held.

The alleged grounds of dismissal involved incidences of alleged unprofessional conduct towards two students, Jacob M. and Craig L. The notice stated that Mr. Johanson had allowed the fifth grade class to hide from Jacob, had tied Jacob up with an extension cord, had referred to Jacob as an "idiot," and had physically and verbally abused Craig. It is noted that both students suffered from attention deficit hyperactivity disorder and learning disability. In addition, Craig has a pervasive developmental disorder.

At the hearing, several staff members testified on behalf of the school board: the school secretary, a fourth grade teacher, an elementary behavioral consultant, a resource teacher, and an aide to behaviorally disturbed students at the school. The principal also testified at length about

the allegations against Mr. Johanson. The interim superintendent provided information regarding teacher conduct contained in the district's policy manual and teacher handbook.

The district found that Mr. Johanson's conduct toward Craig and Jacob was unprofessional and thus terminated the teaching contract effective at the end of the school year. The district court concluded that there was insufficient evidence to support the district's findings. The district court appealed this decision.

Issues: The issue is whether there was sufficient evidence presented to support the school district's finding that Mr. Johanson's conduct was unprofessional.

Holding: The court held that there was sufficient evidence to support Mr. Johanson's termination for unprofessional conduct.

Reasoning: Mr. Johanson claimed that his due process rights were violated in that he was not provided with a summary of the nature of the testimony of every witness that testified against him and hearsay testimony was admitted over objection. The court concluded that because Mr. Johanson was present at the hearing, he was not constitutionally entitled to a summary of the nature of the testimony of the witnesses against him. In addition, hearsay testimony may be properly admitted at a hearing to terminate a tenured teacher's contract.

The court defined unprofessional conduct as conduct that breaches the rules or ethical code of a profession or conduct that is unbecoming a member in good standing of a profession. The teacher handbook and policy manual were a part of the rules or ethical code governing teachers in the district, thus this provided sufficient evidence.

The court reasoned that the hiding incident, electrical cord incident, soap incident, and incidents of physical force or restraint were clearly sufficient evidence to support the school

district's finding that Mr. Johanson's conduct constituted unprofessional conduct and termination.

Disposition: The court reversed the district court's order and remanded the cause with directions to reinstate the school district's decision.

Citation: *Montefusco v. Nassau County*, 39 F.Supp.2d 231 (United States District Court, New York, 1999).

Key Facts: John Montefusco was a school teacher with the Linderhurst Union Free School district. His wife was also employed by the school district. Mr. Montefusco took candid shots of female students and had the photos developed at a local drug store. He used the alias name "Joe Borrelli" and a fictitious address. After Mr. Montefusco picked up the photos, he dropped them in the parking lot of the drug store. The photos were turned in to the Nassau County Police Department.

An investigation was conducted and determined that several of the photos were taken from inside Mr. Montefusco's home. Mr. Montefusco admitted to taking the photos and developing them under a fictitious name. According to a detective, he also admitted that he used the photos in private to masturbate but later denied this incident.

The school superintendent was notified by the state department of the situation. The school board met in executive session to receive the report from the detective. A meeting was held the following day with Mr. Montefusco. Two weeks following, the board voted to charge Mr. Montefusco with conduct unbecoming a teacher. A hearing was held and Mr. Montefusco was suspended, with pay, from his classroom duties and was removed from extracurricular activity assignments, including coaching the girl's softball team, pending the outcome of the hearing.

The hearing officer dismissed the charges and ordered that Mr. Montefusco be restored and reassigned to his former school and teaching assignments. However, a notice of claim was filed by Mr. Montefusco and his wife asserting that the superintendent had made defamatory statements about Mr. Montefusco to several individuals, resulting in this action being taken.

Issues: At issue is whether the teacher's civil rights, constitutional rights, First Amendment rights were violated. In addition, whether there was intentional emotional distress as well as a defamation claim.

Holding: The District Court held that the intentional emotional distress and prima facie tort claims against the board of education were time-barred. The court also held that the teacher was not deprived of property interest, procedural due process, substantive due process, or First Amendment right to free expression.

Reasoning: The court reasoned that Mr. and Mrs. Montefusco failed to establish that the school board acted solely because of their malevolence towards them and also failed to allege with particularity any special damages. The actions taken by the school board were entirely reasonable. There was no evidence of a deprivation of any rights.

No evidence exists that prohibited Mr. Montefusco from taking the photos, developing the photos, selling the photos, possessing the photos, or displaying the photos. In addition, there was no evidence that the school board sought to punish Mr. Montefusco or retaliate against him for his picture-taking activity, nor prohibiting him from engaging in any of these activities in the future. Nonetheless, the school board simply determined that based on the nature of the photos, protected by First Amendment of not, Mr. Montefusco should be charged with conduct unbecoming a teacher.

All federal claims were dismissed, including the allegation of malicious prosecution against the school board. Mrs. Montefusco's claim for loss of consortium was also dismissed.

Disposition: The motion of the school board was granted in its entirety. Summary judgment was granted to school board and defendant.

2000

Citation: *Baltrip v. Norris*, 23 S.W.3d 336 (Court of Appeals of Tennessee, 2000).

Key Facts: William George Baltrip, a tenured teacher, was dismissed by the school board for sexual battery. Mr. Baltrip had one of his students perform some cleaning in a house that he was building. As Mr. Baltrip was showing the student the house, the two entered the bathroom, where Mr. Baltrip hugged the student. The student reported the incident to the Department of Human Services and filed a complaint against Baltrip alleging that he had hugged and tried to kiss her. The superintendent suspended Mr. Baltrip, when the grand jury returned an indictment of sexual battery.

Mr. Baltrip pled guilty to assault, a misdemeanor. Mr. Baltrip and his attorney met with the assistant superintendent who informed them that in the past, the school board had not taken any action against a teacher for pleading guilty to a misdemeanor. Mr. Baltrip was allowed to resume teaching; however, the student's mother protested the retention and demanded a hearing before the board. After hearing the charges, the superintendent drafted charges against Mr. Baltrip for violating the code of ethics. The school board voted to terminate him. Mr. Baltrip appealed the decision.

Issues: At issue is whether the trial court erred in concluding that no genuine issue of material fact exists as to whether the Board acted arbitrarily and capriciously in terminating the

teacher after he pled guilty to a misdemeanor. Another issue is whether the trial court erred in concluding that the Board violated the Open Meeting Act.

Holding: The Court of Appeals held that (1) the teacher engaged in unprofessional conduct supporting dismissal, and (2) the school board's private meeting with attorney to discuss options did not violate the Open Meetings Act.

Reasoning: The court reasoned that the superintendent and the school board have the initial burden of producing competent, material evidence showing that there is no genuine issue as to any material fact. If they successfully negate an essential element of a claim, Mr. Baltrip must then establish there are disputed material facts creating genuine issues that must be resolved by the trier of fact. There was material evidence before the board from which it could reasonably conclude that Mr. Baltrip entered a plea of guilty to a charge arising out of an uninvited and unwelcomed touching, with sexual overtones, of one of his students. Such an act clearly falls within the definition of unprofessional conduct. Since there is material evidence of unprofessional conduct by the school board, the court could not say that the board acted in an arbitrary or capricious manner when it terminated Mr. Baltrip.

The assistant superintendent had no authority to bind the school board to an agreement with respect to Mr. Baltrip's continued employment. The court did not find any evidence of an agreement, either written or oral, between the school board and Mr. Baltrip in regard that his employment status would be unaffected by his guilty plea or by the underlying facts that led to his prosecution.

Finally, the school board did not violate the Open Meetings Act when it met with its attorney. The board's attorney advised them of three options: (1) termination, (2) reinstatement, or (3) reinstatement with conditions. Every member of the school board testified in a deposition

that the meeting was limited to a discussion with the attorney about the possible legal options and that no deliberation or decision-making occurred.

Disposition: The Court of Appeals affirmed the decision of the trial court and remanded to the trial court for collection of costs assessed there.

Citation: *Board of Education of East Hampton Union Free School District v. Yusko*, 703 N.Y.S.2d 219 (Supreme Court, Appellate Division, Second Department, 2000).

Key Facts: A hearing officer imposed counseling, remediation, and a 60-day suspension to Jeffrey Yusko for conduct unbecoming a teacher. He was charged with giving unwanted and inappropriate physical contact and verbal conduct to students who had been entrusted to his care over a 3-year period.

Issues: At issue is whether the penalty imposed by the Hearing Officer violated the strong public policy and penalty properly vacated.

Holding: The Supreme Court held that (1) the penalty imposed by hearing officer violated strong public policy, and (2) the trial court exceeded its statutory authority in directing that teacher's employment be terminated.

Reasoning: The court reasoned that it exceeded its authority when it directed that Mr. Yusko's employment be terminated. The court should have remitted the matter for a rehearing and new determination on the issue of the penalty to be imposed.

Disposition: The Supreme Court affirmed as modified and matter remitted.

Citation: *Panzella v. River Trails School District 26, Cook County*, 729 N.E.2d 954 (Appellate Court of Illinois, 2000).

Key Facts: Steven Panzella, a tenured special education teacher with River Trails School District 26, was terminated based on findings that he sexually abused his child. He contested the dismissal and was held by a hearing officer, who upheld the decision of the school board.

Mr. Panzella contends that the allegations were a result of his divorce. He was placed on leave pending the adjudication of the charges. While Mr. Panzella was on leave, Public Act 90-566 became effective. This act added language that prohibited a school board from knowingly employing a person who has been found guilty by a court to be the perpetrator of sexual or physical abuse of a minor. The superintendent recommended termination and the board voted to dismiss Mr. Panzella. An administrative hearing was conducted. The hearing officer conducted that the school board was correct in dismissing Mr. Panzella. He appealed this decision.

Issues: At issue is whether the legislature intended for the amendment to section 10-21.9(c) to apply to teachers who entered into contractual continued service prior to January 2, 1998; and (2) whether the amendment required dismissal of a teacher in contractual continued service based on a juvenile court adjudication order for which appeals were not yet exhausted.

Holding: The Appellate Court held that (1) the statutory amendment barring a school board's knowing employment of a person found by a juvenile court to have sexually abused a minor requires dismissal prior to the exhaustion of appeals of the juvenile court's order; (2) the application of the amendment to the teacher did not impermissibly impair vested rights flowing from his employment contract; and (3) the amendment did not substantially impair any of the teacher's contractual rights.

Reasoning: The court reasoned that the school code provides that a tenured teacher may only be discharged for cause; however, the state legislators failed to define cause. The statute states that a teacher may be fired for incompetency, cruelty, negligence, immorality or other

sufficient cause. The school code does not require a hearing, unless the teacher requests one in writing within 10 days of receipt of the notice. If the school board does not issue a written warning, then it must prove that the teacher's conduct was irremediable in order to dismiss him.

Mr. Panzella did not have a vested right in the school board having to prove the underlying conduct not in the district having to prove irremediable cause. The amendment to the code provided the school board with a ground for dismissal cause based on the juvenile court's finding that a person sexually or physically abused a minor. Mr. Panzella's tenure rights were fully protected by a pre-termination opportunity to be heard in person by the school board, which he declined, and a post-termination hearing; therefore, the amendment to the code did not impair his rights.

Disposition: The decision of the lower court was affirmed.

Citation: *Hierlmeier v. North Judson*, 730 N.E.2d 821 (Court of Appeals of Indiana, 2000).

Key Facts: Dale Hierlmeier, a 22-year tenured teacher with the North Judson-San Pierre School Corporation, was terminated by the school board for inappropriate behavior with students. This behavior included Mr. Hierlmeier making a presentation in front of the class of a morbid, grotesque, and offensive picture to one of his students. He made inappropriate comments to one of his female students and gave gifts to students that were inappropriate due to the student-teacher relationship and age difference between the student and the teacher.

A hearing was held where the board voted to dismiss. Mr. Hierlmeier filed a complaint in the trial court seeking reinstatement.

Issues: At issue is whether the school board violated Indiana Code §20-6.1-4-11(a)(A)(9) when it did not vote on whether to cancel Mr. Hierlmeier's teaching contract on the same day

that his hearing was held; another issue was whether a letter received by the school board from the superintendent after Mr. Hierlmeier's hearing constituted improper additional ex parte evidence; whether the school board complied with the state code in notifying Mr. Hierlmeier at his hearing of the reasons for the proposed cancellation of his contract; and finally whether the school board's decision to terminate Mr. Hierlmeier was supported by substantial evidence.

Holding: The court held that the state code did not require the vote for termination to be taken on the same date of the hearing. It also held that the Board of Trustees could not predicate error on a delay to which Mr. Hierlmeier agreed. Finally, it was held the decision to terminate the contract was supported by substantial evidence.

Reasoning: The court reasoned that the Mr. Hierlmeier did not request that the school board vote nor did he object at the time of the hearing to the board not voting on the day of the hearing. His failure to object or request a vote is his agreement that March 17, 1997, was an acceptable date for the school board to vote.

The superintendent provided a letter to the school board, who requested the information. According to Mr. Hierlmeier, the letter contained additional improper evidence. The state code requires that a letter be written by the superintendent prior to the cancellation of a permanent or semi-permanent teacher's contract. After review of the letter, it was determined that it was based purely on the information presented at the hearing. The letter was no more than the recommendation required by the code; therefore, the school board could have properly considered it in making its final decision to cancel Mr. Hierlmeier's contract. There was substantial evidence that clearly showed that Mr. Hierlmeier was given a full statement of the school board's proposed reasons for cancelling his contract. In addition, the school board

concluded that the sexual harassment policy was violated by creating a hostile learning environment for students.

Disposition: The court affirmed the decision of the school board.

Citation: *McKnight v. School District of Philadelphia*, 105 F.Supp.2d 438 (United States District Court, 2000).

Key Facts: Michael McKnight was a tenured teacher with the School District of Philadelphia when he was suspended without pay and subsequently discharged for sexual assault and other crimes committed in his home against an 18-year-old former student.

Issues: At issue is whether the school district failed to provide COBRA notification violations, and also violations of Title VII, the PHRA, RICO, the Fifth and Fourteenth Amendments, the Privacy Act, and the Federal Conspiracy Act. Another issue is whether there was a breach of contract, due process violations, and civil conspiracy.

Holding: The court held that Mr. McKnight failed to file his Equal Employment Opportunity Commission claim in a timely manner. The breach of contract claim is a Fifth and Fourteenth Amendment claim.

Reasoning: Title VII requires that claims be filed with the Equal Employment Opportunity Commission (EEOC) within 300 days before a federal court may adjudicate a claim. Mr. McKnight filed his claim 6-months beyond the 300 days; therefore, EEOC could not investigate the claim. The Pennsylvania Human Relations Act (PHRA) requires that its agency receives claims within 180 days. This claim was filed 9 months beyond the timeline. Mr. McKnight strongly insisted that he filed in a timely manner; however, Title VII clearly states that its tolling date is the date of the alleged unlawful employment practice.

The school board contended that Mr. McKnight waived any and all rights to a hearing before the Board for failure to request one within 10 days of receipt of the recommended termination letter. Mr. McKnight requested that the Philadelphia Federation of Teachers (PFT) process his grievance, but they declined to file a demand for arbitration on his behalf. Because the court was unaware of the agreement between the school district and the PFT, the school board's motion to dismiss was denied.

Lastly, Mr. McKnight's COBRA insurance issue was denied because his termination was because of a criminal arrest, not gross misconduct. He argued that an arrest and subsequent dismissal of criminal charges did not constitute gross misconduct and entitled him to relief. The court denied the school district the COBRA benefits claim, breach of contract, common law conspiracy, and Fifth and Fourteenth Amendment claims.

Disposition: The defendant's motion was denied in part and granted in part.

Citation: *Andrews v. Independent School District*, 12 P.3d 491 (Court of Civil Appeals of Oklahoma, 2000).

Key Facts: Kathy Andrews was terminated as a tenured special education teacher on grounds of moral turpitude. Ms. Andrews was found guilty of engaging in a romantic relationship with a 17-year-old student who attended the local high school. She had been warned by the school administrators as well as the student's parents' lawyer not to have any contact with the student.

The student's mother installed a recording device on an extension telephone located in the family house. The conversations between Ms. Andrews and the students were admitted as evidence. Another student also provided testimony that he and Ms. Andrews had a sexual relationship when he was 14 and 15 years old. This occurred 15 years prior.

Issues: At issue is whether the trial erred when it ruled that the interceptions of the telephone conversations violated the Oklahoma Security of Communications Act. Another issue is whether the teacher's due process rights were violated when the trial court allowed evidence beyond the scope of the issues framed by the notice of termination and the admission of the handwritten notes.

Holding: The Court of Civil Appeals held that (1) the teacher waived any objection to admission of tapes of recorded telephone conversations between herself and minor student; (2) the teacher's due process rights were not violated by admission of evidence concerning her prior contacts with minor student; (3) any error committed by trial court in admitting handwritten notes of individual who observed teacher and minor student kissing was harmless; and (4) the testimony of man who claimed that he had sexual affair with teacher when he was a minor student 15 years ago was properly admitted for purpose of impeaching teacher.

Reasoning: The court reasoned that there were no violations committed when determining that the telephone conversations could be admitted for evidence. The evidence concerning Ms. Andrews's behavior was within the scope of the notice. Although there was no clear evidence of a mature sexual relationship, the record is clear that there was a romantic relationship between the 39-year-old teacher and the 17-year-old male student which had endured for a couple of years. The court concluded that a teacher having a romantic relationship with a minor student is contrary to good morals. The school board did not abuse its discretion.

Disposition: The Court of Civil Appeals affirmed the decision of the district court.

Citation: *Purvis v. Marion County*, 766 So.2d 492 (Court of Appeal of Florida, 2000).

Key Facts: Barrett Purvis was a tenured high school physical education teacher and head basketball coach at Dunnellon High School. He was arrested by officers of the local police

department subsequent to an altercation he had with his finance outside a local nightclub. He was charged with resisting an officer with violence, domestic violence battery, and battery on a law enforcement officer as a result of the incident.

Mr. Purvis was suspended and a hearing was postponed until after the resolution of the criminal charges against him. He was tried before a jury on the reduced charges of resisting arrest without violence and battery on a law enforcement officer where he was acquitted.

After the criminal trial, the superintendent amended the administrative charges against him to add the further allegation that Mr. Purvis had lied at his criminal trial. At a subsequent hearing, Mr. Purvis disputed all of the material allegations contained in the amended document.

The administrative law judge issued an order in which she recommended that Mr. Purvis be reinstated; however, the superintendent recommended that Mr. Purvis be terminated because of his questionable integrity. The school board voted to terminate and Mr. Purvis appealed this decision.

Issues: The issue is whether the school board erred in terminating Mr. Purvis because the evidence was insufficient to show that his teaching effectiveness was impaired.

Holding: The court held that there was competent and substantial evidence to show that effectiveness of teacher/head coach in the school district was impaired, warranting termination of employment contract.

Reasoning: The court reasoned that Mr. Purvis lied under oath and resisted arrest. This is a level of misconduct that would support the inference that his effectiveness as a teacher has been impaired, even though witnesses did not provide a testimony at the hearing. The court concluded in stating that the fact that Mr. Purvis was willing to lie under oath is particularly

damaging to his effectiveness as a teacher and coach, since it harms his credibility in dealing with others.

Disposition: The decision of the court was affirmed.

Citation: *Canipe v. Memphis City Schools*, 27 S.W.3d 919 (Supreme Court of Tennessee, 2000).

Key Facts: Ronnie Lee Canipe was a tenured music teacher with the Memphis City Schools before his termination on January 30, 1996. Mr. Canipe was accused of inappropriate conduct with a fourth-grade student in 1992. The personnel director investigated the allegations and determined that it was inconclusive evidence of any intentional wrongdoing. Mr. Canipe was suspended for 5 days. However, in 1994, Mr. Canipe was indicted for sexual battery stemming from this same incident.

Mr. Canipe pleaded guilty to sexual battery and was placed on a 1-year probationary period. Included with the agreement of probation, his records would be expunged in accordance with statutory provisions. The school board took no action against Mr. Canipe for the remainder of the 1994-1995 school year.

A local newspaper published an article which revealed Mr. Canipe's guilty plea. A conference was held between Mr. Canipe and the personnel director. Mr. Canipe admitted that he had pleaded guilty to the charge but only because he wanted to end his legal problems expeditiously and economically. The school voted to terminate his employment for conduct unbecoming a teacher and also because the guilty plea contradicted his earlier version of the incident and made the 5-day suspension an inadequate sanction. Mr. Canipe appealed this decision.

Issues: At issue is whether the school board inappropriately dismissed Mr. Canipe. Another issue is whether there were due process violations.

Holding: The court held that evidentiary protections of prior expungement statute were not applicable to the school board's decision to terminate the teacher's employment.

Reasoning: The court reasoned that the school board relied upon information reported in the local newspaper that detailed Mr. Canipe's plea of guilty and diversion agreement. He even admitted that he had pleaded guilty to the personnel director. The court determined that records of prior convictions that were later expunged could be considered in determining a defendant's eligibility for judicial diversion in a new case. Expungement does not return a person to the position occupied prior to committing the offense.

Disposition: The court affirmed the decision of the court of appeals.

Citation: *Hawzipta v. Independent School District No. I-004 of Noble County*, 13 P.3d 98 (Court of Civil Appeals of Oklahoma, 2000).

Key Facts: Owen Hawzipta was a tenured teacher with the district's Frontier Public Schools. The school principal required him to submit a plan of action to improve his teaching performance or face termination. Mr. Hawzipta complied with the directive.

Several months following this incident, a student informed Mr. Hawzipta that she and two other students had discovered some inappropriate written material in the school trash dumpster. He asked the students to bring the material him, in which they delivered the information in a closed box. Mr. Hawzipta instructed the students to take the box to another teacher, who is the local school association representative.

The teacher asked the students to go with him to the dumpster, where some pornographic material was discovered. Mr. Hawzipta found a shipping box, cardboard videotape covers, adult

catalogs, and an invoice from a company called Back Room Sales. The name was removed but the invoice was readable. Mr. Hawzipta called the company to inquire about who had ordered the material. Mr. Hawzipta claimed that the company's telephone operator told him the material had been shipped to the principal at a local post office box. He later informed two individuals that according to the company, the principal had ordered the material and discarded it on school grounds.

The superintendent conducted an investigation. During his investigation, a district-employee administrator admitted to purchasing the material for his personal use and discarded it in the school dumpster. The employee resided on school grounds and was allowed to use the school dumpsters.

The court concluded that the superintendent had determined that Mr. Hawzipta never spoke to the company or that he had been given correct information from the company but chose to name the principal as the owner of the pornographic material in retaliation for having to submit a plan of actions 6 months earlier. The superintendent recommended that Mr. Hawzipta be terminated for giving false information regarding the principal's ownership of the material. The school board terminated him for moral turpitude.

Issues: At issue is whether the school district properly terminated the teacher on grounds of moral turpitude.

Holding: The Court of Civil Appeals held that evidence was insufficient to show that the teacher, who had called the seller and had been given the principal's name as the purchaser of the materials, had knowledge that another employee had confessed to purchasing the materials and thus to show moral turpitude.

Reasoning: The court reasoned that the trial court correctly concluded that the district failed to establish that Mr. Hawzipta was guilty of moral turpitude. The district failed to prove that he knowingly published false information about the principal.

Disposition: The Court of Civil Appeals affirmed the decision of the trial court and ordered the teacher reinstated to his position.

2001

Citation: *In re Appeal of Morrill*, 765 A.2d 699 (Supreme Court of New Hampshire, 2001).

Key Facts: Timothy Morrill taught at Pelham High School for 21 years before his suspension. He also was a minister of a church that was located in his home. A complaint was filed with the local police department that Mr. Morrill was behaving inappropriately with a 13-year-old girl who attended his church services. A warrant was issued for his arrest for simple assault on a minor female.

The court found him guilty and he was sentenced to 12 months in the house of correction, deferred up to 24 months on the condition that he obtain a sex offender evaluation. He was also prohibited from having unsupervised contact with minors less than 16 years of age in his home.

The school board suspended Mr. Morrill from his position and the New Hampshire Department of Education began an investigation into the activities. During this investigation, the department became aware of allegations that had been made in 1989 regarding Mr. Morrill by a former foster daughter, who claimed he had sexually abused her. As a result, Mr. Morrill and his wife were denied a license application to have a day care in their home.

The department sought to revoke Mr. Morrill's teaching certificate because he violated a number of provisions in the state code, the Code of Ethics of New Hampshire Teaching Profession, which provides that a teacher shall protect the student from physical harm, refrain from using his position to take advantage of students, and respond to parents' concerns. The hearing officer made a recommendation to revoke the certificate and the board terminated Mr. Morrill. He appealed this decision.

Issues: At issue is whether (1) the revocation of teaching certificate was unreasonable and unlawful because there is no nexus linking the teacher's 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 certificate for reasons not stated in the statute or in certification regulations, (4) the revocation infringed on religious beliefs, (5) teacher is entitled to immunity from liability because he reported suspected neglect of the victim by her parents.

Holding: The Supreme Court held that there was sufficient evidence of a nexus between teacher's outside conduct, namely his assault of minor victim who attended his church, and the teacher's fitness and ability to teach in the classroom for purposes of determining whether the board properly revoked teacher's certificate for lack of good moral character.

Reasoning: The court refused to overturn the board's decision unless there was a preponderance of evidence that such an order is unjust and unreasonable. The board's findings of facts were considered to be *prima facie* lawful and reasonable.

The court did not find that Mr. Morrill's classroom behavior to be the sole basis for determining his fitness to teach; rather a school board may terminate a teacher for conduct outside of school if there is a sufficient nexus between the conduct and the board's interest in

protecting the school community from harm. The board revoked the teaching certificate because of his conduct with the victim, and not because of his religious beliefs.

Disposition: The Supreme Court affirmed the decision of the State Board of Education.

Citation: *Bogosian v. Board of Education of Community Unit School District 200*, 134 F.Supp.2d 952 (United States District Court, 2001).

Key Facts: Christopher Bogosian was terminated from his first grade position following an investigation of charges by other teachers that he had been touching and kissing female students in an inappropriate manner. The school board issued a press release describing the charges against him and saying that they were in agreement that Mr. Bogosian's actions were inappropriate, unprofessional, and inconsistent with the district's philosophy of instruction in primary grades.

The school district provided Mr. Bogosian an opportunity to explain or rebut the charges at a meeting. He denied or explained the charges against him. Because of his early childhood background, Mr. Bogosian stated that his actions focused on the social, emotional, and physical development of children. He believed that physical contact with young students is developmentally appropriate.

The school board informed him that he needed to resign or he would be fired. He decided to resign on two separate occasions, one time in August and the other in October; however, the first resignation was successfully revoked. When he submitted the second resignation in October, the board voted against him withdrawing the resignation. Mr. Bogosian filed a lawsuit.

Several months later, the school board passed a resolution reinstating Mr. Bogosian as a certified teacher with full tenure rights, seniority, and back-pay in the amount of \$9,423.20. He was re-employed as a physical education teacher at another elementary school.

Issues: At issue is whether the school board violated the teacher's due process rights, defamation of character, civil conspiracy, interference with a contractual relationship, and violations of the Illinois Personnel Review Act.

Holding: The District Court held that (1) the statements by fellow teachers, containing a mixture of opinions and facts regarding teacher's touching of female first grade students, were actionable as defamation; (2) there were fact issues precluding determination that statements of teachers were true, so as to defeat defamation claim; (3) there were fact issues precluding determination that teachers had qualified privilege defeating defamation action; (4) there were fact questions as whether teachers engaged in civil conspiracy; (5) the district violated Personnel Record Review Act by disclosing reasons for his termination and subsequent reinstatement; (6) the teacher did not have §1983 claim for violation of procedural or substantive due process rights; and (7) there were fact issues as to whether the district had provided the teacher with a substantially similar position when reinstated, as required under Illinois statute.

Reasoning: The court reasoned that there were material issues of fact that precluded summary judgment on the defamation claim against the teachers. The teachers and Mr. Bogosian submitted evidence of conversations prior to meeting with the principal. As a matter of fact, Mr. Bogosian submitted evidence that could support an inference of a motive or plan to have him fired. The court denied the defendants' motion to dismiss this claim. Mr. Bogosian failed to establish procedural or substantive due process violations.

Disposition: The District Court granted the motions in part and denied in part.

Citation: *Lafferty v. Board of Education of Floyd County*, 133 F.Supp.2d 941 (United States District Court, 2001).

Key Facts: Jerry Lafferty was terminated by the school board after serving in the capacity of a teacher for 12 years. The school board had substantial evidence supporting its decision. Among other things, there was evidence that Mr. Lafferty initiated discussions with students about circumcision and the size of student's penises.

A tribunal hearing was requested and held. The tribunal upheld Mr. Lafferty's dismissal and he filed a timely appeal alleging that the school board violated the state law as well as 42 U.S.C. §1983.

Issues: At issue is whether the any of the teacher's state and federal rights were violated.

Holding: The District Court held that (1) the teacher's pre-termination procedure fulfilled constitutional due process requirements; (2) that even if teacher's pre-termination procedure was considered cursory, it was saved under the due process analysis by the extensive post-deprivation hearing; and (3) the termination of teacher for initiating comments and conversations with students regarding circumcision and the penis sizes of various students at school was not arbitrary.

Reasoning: The court reasoned that Mr. Lafferty had established a property interest; therefore, he was provided due process. The pre-deprivation procedure fulfilled the due process requirements. Mr. Lafferty was given an opportunity to make a statement on his own behalf.

Disposition: The District Court granted motion for the board of education.

Citation: *Rivera v. Community School District*, 145 F.Supp.2d 302 (United States District Court, 2001).

Key Facts: Anne Rivera was a probationary teacher who was terminated by the school district for allegedly committing misconduct in an effort to raise her students' standardized test scores. The New York City Special Commissioner issued a report that made allegations that

educators in the New York City public school system used a variety of inappropriate means to raise their students' scores on standardized tests. The report alleges that Ms. Rivera was present while a "cheat sheet" was prepared the day before the citywide reading and math tests were given to all third graders. She denied all the claims but students stated in an interview that Mr. Rivera did in fact cheat on the test. She was reassigned in a non-teaching capacity.

A hearing was held; however, Ms. Rivera was not allowed to be represented by an attorney. A teacher's union representative did speak on her behalf. The school board found that she had violated board policy. A strong letter of reprimand was placed in her file and the principal was instructed to rate her job performance as unsatisfactory. She filed another notice claiming that her due process rights were violated.

Issues: At issue is whether the school district violated the teacher's due process rights by terminating her without a meaningful hearing and violating her First Amendment rights by terminating her in retaliation for filing a notice of claim against other New York employees.

Holding: The District Court held that (1) the teacher had no property interest in her position; (2) the accusations against teacher implicated a liberty interest protected by the due process clause; (3) that Article 78 proceeding under New York law provided adequate post deprivation remedy; and (4) the teacher could not establish First Amendment retaliation claim.

Reasoning: The court reasoned that because Ms. Rivera was a 10-year probationary teacher, she had no property interest in her position. However, she did have a liberty interest. An individual must be granted an opportunity to defend one's good name, reputation, honor, and integrity when fired and publicly charged with an act of dishonesty or immorality. A school board has the right to terminate the employment of a teacher during his probationary period unless the teacher establishes that the board terminated for a constitutionally impermissible

purpose or in violation of a statutory proscription. Because Ms. Rivera was provided with adequate due process, there was no constitutional violation to be redressed through a §1983 suit.

The school district had held one disciplinary meeting and scheduled another one before even learning from Ms. Rivera's attorney that she had filed another notice of claim against the commissioner and others. Because of this fact, this strongly suggests that the school district's actions were based upon the allegations of the report and supplemental report rather than retaliation for the filing of the claim.

Disposition: The Court granted the defendant's motion to dismiss claim.

Citation: *Peaster Independent School District v. Glodfelty*, 63 S.W.3d 1 (Court of Appeals, 2001).

Key Facts: Patricia Glodfelty and Keri Dobbs, high school term contract teachers, were dismissed from their teaching positions. On August 28, 1998, two school board members reported to the superintendent that a former student had made allegations that he had been involved in consensual relationships with both teachers while in high school. The student was 19 years old when he made the allegations and had been out of school for 1 year.

The superintendent met with the student, who gave details of the sexual improprieties that had occurred when he was a student. The following day, the superintendent met with both teachers regarding the allegations. The teachers were placed on administrative leave with pay. Several months later, the teachers received a letter from the president of the school board informing them that the superintendent recommended nonrenewal of their teaching contracts for the 1999-2000 school year.

The reason given for nonrenewal is 1 of 26 that are included in the school board policy: Any activity, school-connected or otherwise, that because of publicity given it, or knowledge of

it among students, faculty, and community, impairs or diminishes the employee's effectiveness in the District. The allegations had spread throughout the community in the newspapers as well as a subject of much discussion in the community.

A two-day hearing was held before the school board, in which testimony was heard from numerous witnesses and arguments from both the school district and the teachers. After the hearing, the school board voted to non-renew the teachers' contracts. The school board president sent a notice to the teachers informing them that their contracts would be terminated at the end of the year. The teachers appealed their nonrenewal to the commissioner of education. The commissioner denied the appeal. The teachers then appealed to the District Court, who reversed the commissioner's decision and ruled in favor of the teachers. The district court ordered that the school district reinstate the teachers with back pay and all other employment benefits retroactive to the date of their nonrenewal. The school system appealed this decision.

Issues: At issue is whether the teachers' effectiveness had been diminished by widespread gossip and rumors in the small community, triggered by unproven allegations of sexual misconduct by a former student.

Holding: The Court of Appeals held that (1) the widespread publicity of the student's allegations in the community did not support nonrenewal, absent proof that teachers engaged in sexual relationships with student, and (2) the school district's policy allowing nonrenewal of teacher's contract based on an "activity" that, because of publicity given to it, impaired or diminished teacher's effectiveness required evidence of "activity" by the teacher.

Reasoning: The court reasoned that a commissioner's decision can be reversed if the decision is not supported by substantial evidence or if the commissioner's conclusions of law are

erroneous. Substantial evidence means that upon the evidence as a whole, reasonable minds could have reached the same conclusion that the agency reached.

The evidence presented at the hearing related only to the student's allegations, the community's knowledge of those allegations, and the community's belief that the teachers had lost their effectiveness as teachers as a result of the publicity about and knowledge of those allegations. There was virtually no evidence presented describing the content of the student's allegations. The student did not testify. The superintendent provided the only testimony regarding the content of the student's allegations.

The court reasoned that the evidence did not establish any activity of the teachers--it established allegations of activity, publicity, and knowledge of those allegations in the community, and diminished the effectiveness of the teachers because of the allegations. The pre-established reason for nonrenewal given to the teachers was that of engaging in an "activity," not allegations of an activity. The school district had the burden of proof to establish the existence of the pre-established reason given for the proposed nonrenewal.

The court rejected the proposed interpretations of the reason for nonrenewal. It was believed that the reason for nonrenewal required substantial evidence of inappropriate activity by the teachers. It was noted that out of the 26 reasons listed in the policy for reasons for nonrenewal, only one made reference to financial constraints of the district. The other 25 reasons for nonrenewal are based on the teacher's own conduct, omissions, failures, or deficiencies. The court stated that it would seem that the reason given for the teachers' nonrenewal should be based on the conduct of the teachers, not others; therefore, the court refused to accept the school district's alternative argument that conduct of others than the teacher, herself, is sufficient to satisfy the element of "activity." The student's making of the allegations and the newspaper's

printing of the story of the allegations could be the “activity” that resulted in publicity or knowledge of the allegations.

The court reasoned that the commissioner’s conclusion was erroneous to the extent that it permitted the “activity” element of the reason of nonrenewal to be satisfied by presenting substantial evidence of nothing more than allegations, activity which is not appropriate, activity of others, or diminished effectiveness. Also the commissioner’s decision was erroneous in that it implied a legal conclusion that the teachers had the burden to prove their innocence of an alleged activity under the reason for nonrenewal in the school board policy.

Disposition: The Court of Appeals affirmed the decision of the trial court.

Citation: *Fort Wayne Education Association v. Fort Wayne Community Schools*, 753 N.E.2d 672 (Court of Appeals of Indiana, 2001).

Key Facts: Patrick McKinney was employed by Fort Wayne Community Schools as a long-term middle school substitute teacher. On February 25, 1998, he supervised a basketball practice in the school gym. During a break time during the practice, Mr. McKinney placed his hands in his shorts and told an eighth grade female student that he did not like the underwear he was wearing. In addition, he raised his shirt to show the student his nipple piercing. He told the student not to tell her parents.

The student shared the incident with the basketball coach, guidance counselor, and school principal. She expressed that the incident made her uncomfortable. A meeting was held with the school administration, parents, the students, and Mr. McKinney. He apologized and the student and he shook hands. Shortly after the meeting, Mr. McKinney and the student went to the gym to play basketball. After the game, the student and Mr. Kinney shot “three-pointers” together.

The principal sent a letter to the student's parents' informing them of the school system's action and stating that appropriate disciplinary actions would be provided. A month later, Mr. McKinney received a letter from the school district informing him that his employment was being terminated based on inappropriate conduct by a teacher to a student, and confirmed allegations of sexual harassment.

Mr. McKinney waived his rights to a hearing and proceeded to a binding arbitration. A hearing was conducted by an arbitrator who concluded that the actions were inappropriate. A sanction of 1-week suspension, not termination, was recommended. The arbitrator ordered that Mr. McKinney be reinstated to his long-term substitute position and receive back pay less the 1-week disciplinary suspension.

The school system filed a complaint to vacate and/or modify or correct the arbitrator's award. The trial court granted the school district's summary judgment and denied the association's motion. The association appealed the decision.

Issues: At issue is whether the trial court erred in granting summary judgment on the basis that the arbitrator impermissibly modified the parties' collective bargaining agreement; whether the arbitrator's opinion and award violates public policy against sexual harassment and/or immorality; and whether reinstatement of a long-term substitute to a position that has been filled by a permanent teacher violates the master contract.

Holding: The Court of Appeals held that (1) the arbitrator's decision did not exceed this powers or effectively amend agreement between district and union; (2) the teacher's conduct in adjusting his underwear and showing student his nipple ring did not violate public policy against sexual harassment and/or immorality; and (3) the district did not have to reinstate the teacher, who was a long-term substitute, to a teaching position the following year.

Reasoning: The arbitrator concluded that Mr. McKinney exercised poor judgment when he committed the act of adjusting himself in public and displaying his nipple ring to the student. This conduct is inconsistent with a proper teacher role model. However, it was noted that the conduct did not constitute an immoral act.

The school district bears the burden of proving the grounds to set aside the arbitrator's award. It must be established that the arbitrator exceeded his power. The court concluded that the school system had not established that the arbitrator had exceeded his powers and that the trial court erred in this conclusion.

The court reasoned that Mr. McKinney's behavior did not rise to the level to constitute sexual harassment according to the district's policy. The form of sexual harassment that the school board policy refers to is someone with authority who uses that authority to extract sexual favors by threatening the victim with adverse circumstances if he or she does not accede to the demands made. Mr. McKinney was no longer the student's teacher at the time of the incidents in question, and had no power to affect her academically. There was no evidence that he used his position as a teacher to demand sexual favors from the student.

The court concluded that the arbitrator did not disregard the law in determining that Mr. McKinney's conduct was not immoral. In addition, it was clarified that because Mr. McKinney was a long-term substitute teacher, he had no rights or security for the succeeding year, except that he not be replaced by another substitute teacher without cause; thereby, the arbitrator exceeded his authority by ordering reinstatement for the following academic year. The only available remedy for the following school year was ordering that Mr. McKinney's name be placed on the roster of eligible substitute teachers. Back pay for the remainder of the school year, less the 1-week unpaid suspension, was within the arbitrator's authority.

Disposition: The Court of Appeals reversed the decision of the trial court and remanded the case with instructions to amend the arbitrator's award in accordance with this opinion.

Citation: *Oleska v. Hilliard City School District*, 146 Ohio App.3d 57 (Court of Appeals of Ohio, 2001).

Key Facts: Sandra Oleska was a continuing contract music and/or band director with the Hilliard City School District. Ms. Oleska was terminated from her teaching position for telling offensive, sexually explicit jokes to her students. In addition to this charge, she also deliberately and for the purpose of denigrating and humiliating a fellow colleague, referred to the teacher as a "turd."

Ms. Oleska admitted to telling jokes of a sexual nature on occasion to certain female, middle school students. Four students testified at the hearing as to the jokes. She referred to Turid Gaedeke, the orchestra and other music teacher, as a "Turd." Ms. Oleska cleverly mispronounced the teacher's name in front of the students.

A hearing was conduct before a referee. The referee made a recommendation that based on the facts, Ms. Oleska should be terminated for good and just cause. Ms. Oleska appealed the hearing officer's decision.

Issues: At issue is whether the court erred in holding that the school board satisfied the "good and just cause" standard in terminating a public school teacher's contract under the state statute. Another issue is whether the court erred in holding that the school board did not violate the due process rights of Ms. Oleska where the board had decided to terminate her employment prior to a hearing on the matter.

Holding: The court held that Ms. Oleska's telling of dirty jokes to students and referring to another teacher by a derogatory name constituted "good and just cause" for dismissal.

Reasoning: The court reasoned that there was no evidence to support that the school board had already made up its mind to terminate before the hearing. Ms. Oleska was afforded the opportunity for due process. She was given a full and meaningful hearing and an opportunity to be heard.

The Supreme Court of Ohio has clearly defined how a teacher's contract may be terminated. It is comprised of two parts: (1) the factual basis for the allegations giving rise to the termination; and (2) the judgment as to whether the facts, as found, constitute gross inefficiency, immorality, or good cause as defined by statute.

Ms. Oleska claimed that her conduct did not rise to the level of good and just cause sufficient to terminate her contract; however, the Supreme Court has defined good and just cause as a fairly serious matter. The court found that Ms. Oleska's conduct in telling students dirty jokes and in calling colleagues an inappropriate name constituted a fairly serious matter. The court concluded that there was sufficient evidence to support the referee's and school board's findings.

Disposition: The court affirmed the decision of the lower court.

Citation: *Zelno v. Lincoln Intermediate Unit No. 12 Board of Directors*, 786 A.2d 1022 (Commonwealth of Pennsylvania, 2001).

Key Facts: Nancy Zelno, a tenured alternative education teacher, pled guilty to driving under the influence and driving while her license was suspended. This was her third DUI offense and second offense for driving while her license was suspended. Ms. Zelno taught students who were required to undergo rehabilitation and treatment for drug and/or alcohol addiction or related problems.

Ms. Zelno was sentenced to serve a prison sentence on consecutive weekends during the school year and remain incarcerated over the summer months until the sentence was served. She was required to serve 92 days in jail. During the summer, the school district learned of Ms. Zelno's convictions and incarceration and began the process to dismiss her for violating the school code.

A hearing was conducted and the school board voted to terminate Ms. Zelno for immorality under the school code. She appealed to the Secretary of Education, who affirmed the decision of the school board. She then appealed the decision to this court.

Issues: At issue is whether the Secretary of Education erred in determining that the teacher's conduct was immoral and, even if it were, dismissal was not warranted because witnesses could not identify any particular person whose morals had been corrupted or that the crimes interfered with her ability to teach.

Holding: The Commonwealth Court held that the teacher's conduct, which resulted in three drunken driving convictions and two more for driving without a license, constituted "immorality" within meaning of the statute providing that conduct constituting immorality is cause for termination.

Reasoning: According to the Vehicle Code, the nature of the offense for driving under the influence increases in seriousness and penalty with Accelerated Rehabilitative Disposition for a first time offender resulting in no conviction and no penalty up to a misdemeanor in the first degree with up to 1 year in jail. Ms. Zelno was convicted on DUI three times and she received a sentence of 90 days, evidencing her pattern of conduct resulting in criminal offense conviction of a type that constituted immoral conduct.

Ms. Zelno contended that the school board did not prove its case because it did not prove that her conduct corrupted the morals of her students or ability to teach. However, the court reasoned that her conduct impacted on a specific student or her ability to teach is not relevant to show immorality; proof of the conduct makes her a bad role model. Ms. Zelno ignored the fact that she was teaching students who were at this particular school because they also had drug and alcohol problems, her conduct, was a bad example to students whose ideals she as a teacher is supposed to foster. The court concluded that this type of behavior affects her credibility and impacts her ability to teach.

Disposition: The Commonwealth Court affirmed the decision of the Secretary of Education.

Citation: *Barrett v. Charleston County*, 559 S.E.2d 365 (Court of Appeals of South Carolina, 2001).

Key Facts: Roberta Barrett was a tenured computer and drama teacher at the middle school. She had been teaching at Laing Middle School since 1986. Ms. Barrett was terminated from her teaching position for her dishonesty in handling an ice cream sales account and her representations on a grant application form to Wal-Mart to fund a drama club trip and related activities.

The school and the Parent Teacher Student Organization (PTSO) began a program selling ice cream to students after lunch. A checking account was opened that was solely dedicated to handling the ice cream proceeds and expenditures. The profits were initially earmarked for technology upgrades and Ms. Barrett was involved because she was the computer teacher.

Her initial role was limited to rolling coins, counting the money, and making deposits into the account. Over a period of time, the individual responsible for maintaining the

bookkeeping for the account changed. However, according to two former bookkeepers, the account always made substantial profits. After the PTSO had spent a substantial amount of money on technology upgrades, a discussion about the future of the use of the monies was held.

Because Ms. Barrett had transitioned to the role of a drama teacher, a meeting was held where Ms. Barrett assumed total control over the ice cream account. In addition to collecting and counting money, her duties now included making the deposits, writing the checks, and accounting for the funds.

After 2 years of having complete control over the account, the principal informed Ms. Barrett that the PTSO wanted a more active role with the ice cream account. All of the funds would now be deposited into the PTSO account rather than a separate dedicated ice cream account.

The district auditor was asked to audit the account for the years 1996-1998, the period of time where Ms. Barrett had exclusive control over the account. The auditor determined that the account revealed a \$19,000 difference between actual money taken in and the amount of the expected profit. It was discovered that Ms. Barrett had written personal checks to the account on several occasions. Her first act when taking over the account was to write a \$2,000 check out of the ice cream account, completely depleting all funds in the account. The \$2,000 check was written to her mother-in-law's account, over which Barrett had the power to withdraw money.

In an attempt to determine Ms. Barrett's honesty, the new bookkeeper tested a situation where Ms. Barrett was given money to count and deposit into the PTSO account. She was told that the money had not been counted, but in actuality, it had been counted and the exact amount of the expected deposit was known. Ms. Barrett's actual deposit was less than the amount of money given to her to be deposited.

Ms. Barrett was also the drama club teacher. She wanted to take the students on a field trip to New York City, but the principal denied her request for the trip to be a school-sponsored trip. To independently raise money, Ms. Barrett and her students began selling candy outside the local Wal-Mart. She learned from the school manager that Wal-Mart had a matching grant program. When she completed the application, she checked the box stating she was representing a school organization, which was the closest option to a drama club.

She was awarded \$1,000 based on the grant application. Ms. Barrett took the money and deposited it into her personal account rather than the school account. She kept accurate records of the proceeds and their distribution from her personal account. Each student received a credit of \$50.00 and Ms. Barrett kept receipts that showed the remaining \$500.00 was spent on a production given at a local nursing home. The school board cited the handling of the grant application and the discrepancies in the ice cream account as grounds for dishonesty warranting immediate termination.

Issues: At issue is whether there is substantial evidence to support the finding that Ms. Barrett was dishonest in her dealings with the ice cream account.

Holding: The court held that substantial evidence supported the school board's decision to terminate Ms. Barrett.

Reasoning: The court reasoned that the state statute provides that a school board can immediately terminate a teacher for dishonesty. The school board provided substantial evidence to support the fact that Ms. Barrett was taking the money home and only putting enough money in to pay the bills, thus ensuring the ice cream account would break even while enabling her to keep any excess for herself.

On two separate occasions, Ms. Barrett submitted deposits that were less than expected. The evidence of short deposits was the most damaging evidence to Ms. Barrett's position that substantial evidence did not exist to support the school board's finding because these were specific instances where records were kept to determine exactly how much money should have been deposited and every time, the amounts actually deposited were significantly less.

Ms. Barrett's handling of the grant money was substantial evidence that she could keep adequate financial records when it suited her to do so. The contrast in her handling of the grant money in combination with her lack of keeping adequate records of the ice cream account, especially her failure to record her personal checks made to the ice cream account as deposits, is substantial evidence that supported the school board finding that Ms. Barrett was seeking to conceal her activities regarding the ice cream account.

Disposition: The court of appeals reversed the decision of the trial court.

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Citation: *Weems v. North Franklin School District*, 37 P.3d 354 (Court of Appeals, 2002).

Key Facts: Dr. James Weems was the director of special education and the school psychologist for North Franklin School District. The school district accused Dr. Weems of altering and backdating student files to feign compliance with federal special education law, which required maintenance of the records. The school board issued a letter of probable cause to terminate him.

Dr. Weems either denied changing the records or tried to explain away others, and he also argued that any damages were not misconduct anyway. A hearing was held where the hearing officer concluded that the documents were backdated to be in compliance with the

required regulations. The hearing officer held that the school district had probable cause to terminate Dr. Weems. Dr. Weems appealed the hearing officer's decision to the superior court.

Issues: At issue is whether there is sufficient cause to terminate and whether the trial court erred in denying the appellant his motion for reconsideration and a new trial.

Holding: The Court of Appeals held that (1) the school district's failure to provide a complete transcript of testimony did not require reversal or new trial, and (2) the director's conduct in altering and backdating student files to feign compliance with federal special education law provided sufficient cause for termination of employment as certificated employee.

Reasoning: Dr. Gill, a witness for Dr. Weems, provided an opinion that basically stated that there was no violation of law or ethical transgression in Dr. Weems' correcting, completing, or modifying student records to correct or complete them. However, the court reasoned that Dr. Weems was not merely correcting, completing and modifying certain special education records, which he had learned to be inaccurate, uncompleted, or erroneous. It was found the Dr. Weems attempted to create and falsify records, not merely correct dates. The court concluded that this type of conduct served no educational or legitimate professional purpose. It was dishonest and there is no reason for dishonesty in any workplace. The school board had sufficient cause to terminate Dr. Weems.

Disposition: The Court of Appeals affirmed the judgment of the trial court and hearing examiner to terminate.

Citation: *Arriola v. Orleans Parish*, 809 So.2d 932 (Supreme Court of Louisiana, 2002).

Key Facts: Roy Arriola was a tenured high school teacher who had an attendance problem. When Mr. Arriola conferenced with the principal, he admitted that his attendance problems resulted from a dependency on cocaine. He provided a urine sample, which resulted in

a positive test for cocaine metabolites. Mr. Arriola was placed on an outpatient treatment and monitoring program that required him to submit to a 6-month period of random drug testing. During his outpatient treatment period, Mr. Arriola never tested positive for drugs; however, during his probationary period, he provided a urine sample that tested positive for cocaine metabolites.

Issues: At issue is whether there were due process violations.

Holding: The court held that the phlebotomist's testimony established a proper foundation for admitting the chain of custody documentation. It was also held that the testimony by persons who tested the teacher's urine and by additional persons in the chain of custody at the testing laboratory was not required to satisfy procedural due process; and finally, there was evidence to support the termination.

Reasoning: It was observed that each phlebotomist testified as to her training and experience with the collection of urine samples and identified her signature as the first link in the chain of custody documentation. Also, each one testified from her review of the documentation that Mr. Arriola initialed the seal on the lid of the bottle containing the sample and that he also initialed the seal on the bag that contained the bottle. The court reasoned that the phlebotomists who collected Mr. Arriola's sample were the first links in the chain of custody and that their testimony provided the minimum required due process to admit the chain of custody documentation. The court concluded that a proper foundation for the chain of custody documentation was established.

Mr. Arriola argued that the school board's findings were based solely on the documentary evidence without live testimony detailing the actual receipt and testing of the samples in the

laboratory. Without this live testimony, Mr. Arriola contended that he had no opportunity to cross-examine the evidence.

The court concluded that Mr. Arriola failed to show a probative benefit for requiring the testimony of persons in the chain of custody at the laboratory and the testimony of persons actually performing the tests. The school board pointed out that the chain of custody documentation was reliable and, consequently, that the testimony of the director was sufficient, because SmithKline Laboratories was a National Institute on Drug Abuse certified laboratory.

The court found that Mr. Arriola was accorded due process at his hearing. The testimony of the laboratory director presented sufficient opportunity for cross-examination of the test results. Substantial evidence was found to support the conclusion that Mr. Arriola engaged in drug abuse during the periods in question, based on the presence of cocaine metabolites in the sample identified as Mr. Arriola's.

The examination of the record clearly showed that the chain of custody evidence, the testing procedures, the test results, and other evidence in support of the charge against Mr. Arriola, including his past admissions of drug abuse, offered a sufficient basis for the school board to terminate his employment.

Disposition: The court reversed and vacated the judgments of the district and trial court and reinstated the decision of the school board to terminate Mr. Arriola.

Citation: *Hill v. Independent School District*, 57 P.3d 882 (Court of Appeals of Oklahoma, 2002).

Key Facts: Donna Hill was a tenured high-school guidance counselor at Stilwell High School where her husband was the principal. The superintendent appointed a committee to

investigate the academic records at Stilwell High School, after some teachers expressed concern about favoritism.

The committee discovered that a student's grade had been changed from an "F" to a "D-" in a required Senior English course. This change made the student eligible to graduate. Another student's transcript reflected a course that was not even offered at the school. The committee also further discovered that Ms. Hill had changed her daughter's transcript to reflect two non-existent courses. She also failed to assign credit points on her daughter's transcript for a particular class, thereby artificially enhancing her daughter's overall grade point average.

The superintendent made a recommendation to the school board that Ms. Hill be terminated for willful neglect of duty. A hearing was scheduled but had to be rescheduled because Ms. Hill's attorney experienced a death in the family. The superintendent also notified the attorney prior to the scheduled hearing that he was amending the notice of termination to include the additional statutory ground for dismissal of moral turpitude.

When the school board convened, Ms. Hill's counsel objected to holding the due process hearing that day, arguing that Ms. Hill had not received the statutory minimum of 20 days in which to prepare a defense to the newly added moral turpitude charge. The school board agreed to postpone the hearing. When the board did reconvene to hold the hearing, they voted to terminate Ms. Hill's employment.

Issues: At issue is whether Ms. Hill's due process rights were violated.

Holding: The court held that (1) the guidance counselor was given adequate notice under Teacher Due Process Act of factual basis for school district's recommendation for termination on grounds of willful neglect of duty and moral turpitude; (2) the school district was not required under Act to admonish counselor and give her time to improve prior to recommending dismissal;

(3) the school board's allowance of testimony at due process hearing pertaining to counselor's husband's misconduct did not deny counselor due process under the Act; (4) any due process concerns regarding hearing were cured by trial court's de novo review; and (5) the evidence was sufficient to support charge of moral turpitude.

Reasoning: The Teacher Due Process Act includes language that a hearing must take place no sooner than 20 days or later than 60 days after the teacher's receipt of the notice. The school board provided Ms. Hill with notice as well as her attorney copies of the committee's reports on the integrity of student records at the school, which set forth in detail the specific instances of transcript alterations for which Ms. Hill was allegedly responsible. The court stated that Ms. Hill's attorney had ample opportunity to interview whomever he wanted and review any and all pertinent documents in preparing his client's defense.

Ms. Hill failed to show how she was prejudiced by the lack of specificity in the moral turpitude charge. It did not require any further discovery. Although, if it had, the school board agreed to postpone the hearing date, thereby providing Ms. Hill with more time than the 20-day statutory minimum during which to prepare her defense. The facts did not support the claim that the school district violated the Teacher Due Process Act by failing to supply her with adequate notice of the underlying facts or give her sufficient time in which to prepare her defense.

It is well-settled that tenured teachers who commit acts demonstrating moral turpitude are not entitled to the admonishment and reasonable time for improvement as provided in the state statute. Teachers who have remediable teaching performance problems that could result in dismissal for willful neglect of duty are entitled to admonishment, while those whose dismissals are based on specific, irreparable instances of misconduct are not.

Because Ms. Hill was a guidance counselor, her dismissal was not based on teaching deficiencies or remediable classroom problems. Rather, it was supported by discrete instances of misconduct, of altering students' transcripts. These acts exhibited dishonesty, a lack of respect for the sanctity of school records, and a tendency to show favoritism.

The court concluded that Ms. Hill's falsification of student records, favoritism toward her daughter, and failure to maintain the integrity of the official student records constituted lawful cause for dismissal based on grounds of moral turpitude.

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

2003

Citation: *Younge v. Board of Education of the City of Chicago*, 788 N.E.2d 1153 (Appellate Court of Illinois, 2003).

Key Facts: This is an appeal for two tenured teachers who were terminated for working while under the influence of marijuana. Wynona Younge had worked for the district since 1970. She taught sixth and seventh grade students. The administrators began to notice a change in Ms. Younge's behavior. Students complained that she would not allow them to use the bathroom. Parents also complained that Ms. Younge was screaming at their children as well as other complaints.

The administrators observed that Ms. Younge's eyes were red, her face was swollen, and she appeared to lack coordination. The medical administrator for the school district was contacted about these observations. The school administrators signed a form requesting that Ms. Younge take a drug test based on reasonable suspicion. The urine test resulted in a positive reading for marijuana.

Upon completion of the drug testing, Ms. Younge's blood pressure was discovered to be uncontrollably high. She was admitted to the hospital where she remained for several weeks. She later applied for and received a medical leave of absence. The board did not take any action at this time, but when she indicated that she would return, the school board brought charges seeking her dismissal.

The superintendent charged Ms. Younge with several board policy violations relating to her conduct and drug use. A hearing was held before a hearing officer. The hearing officer concluded that Ms. Younge had used marijuana and that use of marijuana was criminal conduct. He concluded that her conduct was irremediable, a written warning was not required, and the circumstances supported her dismissal. The school board adopted the recommendation that Ms. Younge be dismissed.

Louella Higgs was a tenured elementary physical education teacher. One morning, the assistant principal passed by Ms. Higgs, who was standing at the main entrance to the school. He noticed a very strong odor of marijuana and engaged Ms. Higgs in a conversation. Due to the strength of the odor, the assistant principal concluded that it was coming from Ms. Higgs. He reported his observations to the principal.

The principal contacted the medical administrator for the district who concluded that a drug screen was appropriate. She made arrangements to have Ms. Higgs escorted by security forces to be tested for drug use. When security arrived, Ms. Higgs refused to go. Ms. Higgs began to speak loudly and act in a belligerent manner. She was escorted from the school. At approximately 4:15 p.m., Ms. Higgs reported to the drug testing site and provided a urine sample for testing.

An employee of the drug testing site testified that while Ms. Higgs was in the waiting room, she drank approximately 30 ounces of water, until she vomited into the waste can. Ms. Higgs' urine sample was analyzed and the results showed positive for marijuana.

The school district's chief executive officer, Paul Vallas, charged Ms. Higgs with violating several school board policies relating to alcohol and drug abuse and conduct unbecoming a teacher in the school district.

A hearing was held. Ms. Higgs presented testimony that she had been exposed to passive inhalation of marijuana smoke exhaled by her HIV-positive sister, but also admitted that she had smoked marijuana 2 days before the drug test. The hearing officer rejected the passive inhalation claim and noted that the urine test results were considerably higher than that which would result from passive inhalation. The hearing officer upheld the charge and recommended that the school board terminate her employment. He concluded that the preponderance of the evidence in the record warranted the conclusion that Ms. Higgs violated the 1997 Board Rule 4-50 when she came to work as a grade school teacher under the influence of a controlled substance. The board voted to dismiss Ms. Higgs. Both teachers filed a timely appeal.

Issues: At issue is whether cause for dismissal existed and whether the cause was irremediable warranting immediate dismissal without a written warning, or remediable warranting a written warning and progressive discipline.

Holding: The court held that reporting to work under the influence of marijuana was irremediable per se, warranting discharge without a written warning or progressive discipline.

Reasoning: The hearing officers in both cases found by a preponderance of the evidence that Ms. Younge and Ms. Higgs were under the influence of marijuana while teaching students. These findings were based on documentary evidence, as well as credibility determinations the

hearing officers made after observing testimony of the teachers ,the administrators who observed the teachers' behavior and then referred them to drug testing, the drug testing experts, the teachers' co-workers, and other witnesses called by the teachers.

The court reasoned that a warning serves no purpose for conduct that is criminal or immoral. A warning in these cases would not have served a purpose. Ms. Higgs and Ms. Younge were already aware that reporting to work under the influence of an illegal drug was proscribed conduct under relevant sections of the Employee Discipline Code and other Board policies. Thus, such conduct could not be remedied by a warning.

In 1995, the legislature added language in the school code that stated no written warning should be required for conduct on the part of a teacher or principal which is cruel, immoral, negligent, or criminal or which in any way causes psychological or physical harm or injury to a student as that conduct is deemed to be irremediable.

The hearing officers concluded that both teachers reporting to work under the influence of marijuana not only violated several of the Board's rules and policies, but also constituted immoral conduct. Both dismissals without written warning and without progressive discipline were appropriate.

Disposition: The court affirmed the judgment.

Citation: *Grieb v. Unemployment Compensation Board of Review*, 827 A.2d 422 (Supreme Court of Pennsylvania, 2003).

Key Facts: Karen Grieb was a part-time physical education teacher employed with the State College Area School District. Her regular day usually began at 11:30 a.m.; however, one morning she received a call from the district at 6:00 a.m. to see if she was available to substitute teach prior to her regular shift. Ms. Grieb agreed and inadvertently forgot that three unloaded

shotguns were in the back seat of her vehicle. A custodian noticed the weapons in the car and alerted the school administration. The school district subsequently suspended Ms. Grieb without pay. Ms. Grieb sought unemployment compensation, but was denied because it was concluded that she engaged in willful misconduct. She appealed this decision.

Issues: At issue is whether the teacher's conduct rises to the level of willful misconduct that is required to disqualify her from receiving unemployment compensation pursuant to Section 402(e).

Holding: The Supreme Court held that (1) the teacher's act of bringing unloaded shotguns onto school property in violation of school district's weapons policy were merely negligent and not intentional or deliberate, and (2) the teacher's one-time, inadvertent act of bringing the guns onto property did not rise to the level of willful misconduct that was required to deny her request for unemployment benefits.

Reasoning: The court disagreed with the decision rendered by the Commonwealth Court that Ms. Grieb was ineligible to receive unemployment compensation because (1) there was no showing of willful misconduct; and (2) the court had not adopted a public policy expectation to the statute that sets forth a number of situations where an employee must be precluded from receiving unemployment benefits.

The court acknowledged that a determination of whether an action constitutes willful conduct requires a consideration of all of the circumstances, including the reasons for the employee's noncompliance with the employer's directives. An analysis of all of the circumstances surrounding Ms. Grieb's noncompliance with the school district's weapon policy revealed that she did not intentionally fail to remove the unloaded shotguns from her vehicle, but instead that her transgression was due to all of the stresses in her personal life combined with the

fact that the district unexpectedly called her approximately 6 hours before she was scheduled to work and asked her to substitute teach because of a school emergency.

The statute provides that a claimant cannot receive unemployment benefits if the actions involve willful misconduct. Thus, it follows that if an action does not involve willful misconduct, the claimant must receive benefits.

The court reasoned that Ms. Grieb's inadvertent violation of the District's Weapons Policy did not rise to the level of willful misconduct necessary to disqualify her from receiving unemployment benefits.

Disposition: The Supreme Court reversed the determination of the Commonwealth Court affirming the denial of unemployment compensation benefits to teacher.

Citation: *Ballard v. Independent School District*, No. 4 of Bryan County, 78 Fed.Appx. 77 (United States Court of Appeals, 2003).

Key Facts: Keach Ballard was a tenured teacher with the Colbert School District. He had an argument with the school superintendent and the assistant principal, which resulted in Mr. Ballard threatening physical assault of both individuals. The school board terminated Mr. Ballard on grounds of moral turpitude. The district court affirmed the termination and Mr. Ballard appealed.

Issues: At issue is whether the teacher's conduct, which led to his termination, constituted dismissal on grounds of moral turpitude.

Holding: The Court of Appeals held that the teacher's unexecuted threat against the school superintendent and another teacher did not constitute moral turpitude, and thus dismissal was not justified.

Reasoning: The Oklahoma statute does not define the term “moral turpitude.” Therefore the court presented the question to the Supreme Court for certification. The Oklahoma Supreme Court replied in the negative, indicating that the term refers to a level of conduct that is higher than mere impropriety. The term cannot be used as a catchall for every kind of conduct that is offensive, inappropriate, or unprofessional.

The court agreed that Mr. Ballard’s threats were unprofessional, unwise, and unacceptable behavior, but the threats did not constitute moral turpitude. While an assault might rise to the level of moral turpitude, Mr. Ballard’s threats were merely verbal and were never further executed in any manner; therefore, his actions could not be deemed moral turpitude under Oklahoma law. The Oklahoma Supreme Court made it very clear that the district court erred in finding that the school board properly concluded Mr. Ballard’s conduct justified termination on grounds of moral turpitude.

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

Citation: *Boguslawski v. Department of Education*, 837 A.2d 614 (Commonwealth Court of Pennsylvania, 2003).

Key Facts: Charles Boguslawski had been teaching for 32 years. He was a fourth-grade teacher with the Armstrong School District. During the 1998-1999 school year, two of Mr. Boguslawski’s students alleged that he touched them inappropriately while they were waiting for their bus number to be called during afternoon dismissal.

One student alleged that Mr. Boguslawski placed one of his hands on top of the other and placed his lower hand upon the student’s penis. The other student reported very similar incidents. In addition, the student reported that Mr. Boguslawski touched his nipple under his shirt with his fingers. One female student witnessed the nipple incident.

At first the boys did not tell their parents about the touching; however, the student whose nipple was touched decided to tell his mother since the incident involved touching beneath the clothing. Both mothers spoke on the telephone about the inappropriate touching.

Mr. Boguslawski was arrested and criminal charges filed against him. The school board suspended him with pay for the remainder of the 1998-1999 school year. The following year, he took a medical sabbatical leave. He returned to his teaching position for the next 2.5 years. A trial was conducted and he was found not guilty of all charges.

However, in June 2001, the Department of Education filed a notice of charges seeking disciplinary actions against Mr. Boguslawski on the grounds of immorality and intemperance. A hearing officer found him guilty of the alleged conduct and revoked his teaching certificate.

Issues: At issue is whether Mr. Boguslawski's constitutional rights were violated, whether an error of law was committed, and whether necessary findings of fact were supported by substantial evidence.

Holding: The court held that substantial evidence supported the hearing officer's findings of immorality and intemperance so as to revoke Mr. Boguslawski's teaching certificate.

Reasoning: The doctrine of res judicata requires that Mr. Boguslawski meets the following four elements: (1) identity of the thing sued for, (2) identity of the cause of action, (3) identity of persons and parties of the action, and (4) identity of the quality in the persons for or against whom the claim is made. In this particular case, the thing sued for is Mr. Boguslawski's certification as an educator in the Commonwealth. Because he did not meet this initial requirement, the court did not address the other three prongs.

The Department had the burden of establishing the grounds for discipline. The students testified that they were abused, how they were abused, and the time of day that it occurred. The

students were only inconsistent in the number of times that it happened and the date the abuse started.

The Department is empowered to substitute its own independent judgment instead of deferring to the judgment of the hearing officer. The Commission did not err in its review of this matter. The Commission accepted the students' testimony as credible and Mr. Boguslawski and his witnesses were found to lack credibility. There was substantial evidence to support the hearing officer's findings of immorality and intemperance.

Disposition: The court affirmed the decision of the Commission.

2004

Citation: *Winters v. Arizona Board of Education*, 83 P.3d 1114 (Court of Appeals of Arizona, 2004).

Key Facts: Claude Winters began his first teaching job at Buckeye Union High School in 1997 with a temporary secondary teaching certificate issued by the Arizona State Board of Education. In August of 2000, the school board initiated disciplinary proceedings against Mr. Winters for unprofessional conduct.

He was involved in five separate incidents of unprofessional conduct: (1) verbal altercation with a 21-year-old neighbor in which he was charged with disorderly conduct; (2) discharged a loaded .357 revolver and damaged a neighbor's air conditioning unit and was charged with criminal damage and disorderly conduct; (3) physical altercation with a neighbor and charged with disorderly conduct; (4) verbal confrontation with a former student; and (5) arrested and charged with obstructing a criminal investigation, aggravated harassment, interfering with judicial proceeding, and threatening and intimidating. The school board served

Mr. Winters with a notice of complaint. He requested and was granted a hearing. The Professional Practices Advisory Committee (PPAC) recommended that the school board revoke Mr. Winter's teaching certificate. He appealed this decision.

Issues: At issue is whether the evidence supported the board's decision to terminate Mr. Winters and was his conduct unprofessional.

Holding: The court held that (1) a showing of nexus, or reasonable relationship, between the teacher's off-campus actions and his fitness to teach, was required before disciplinary action could be taken based on such acts, and (2) the off-campus conduct of the teacher related to his fitness to teach.

Reasoning: A finding of immoral or unprofessional conduct is required before the Board can impose any disciplinary action, including the revocation of a teaching certificate. The court reviewed the records and found that Mr. Winters' conduct was unprofessional.

The Professional Practices Advisory Committee determined that Mr. Winters' conduct, including but not limited to the numerous charges of disorderly conduct, threatening and intimidating, criminal damage, and pleading guilty to aggravated harassment, constituted good and sufficient cause for disciplinary action against him. The court held that the off-campus acts for which a teacher can be disciplined need not be limited to teacher-student interactions, but must relate to his/her fitness as a teacher and must have an adverse effect on or within the school community. This nexus requirement has been adopted by the majority of jurisdictions that have considered this issue.

Mr. Winters admitted to his conduct, even as to the incidents for which he was not ultimately adjudicated. The court concluded that his undisputed conduct did relate to his fitness as a teacher. The evidence clearly established his tendency to react with violence and aggression.

In addition, the frequency of the conduct suggested a pattern of behavior. The fact that the incidents did not occur on school premises did not negate the gravity of Mr. Winters' behavior.

Disposition: The court affirmed the judgment upholding the decision of the board to revoke Mr. Winters' teaching certificate.

Citation: *Loeffelman v. Board of Education*, 134 S.W.3d 637 (Court of Appeals of Missouri, 2004).

Key Facts: Jendra Loeffelman was an eighth grade English teacher at Crystal City Elementary School. She had an indefinite contract with the school district. On October 23, 2002, during her second period class, an African American student posed a question to Ms. Loeffelman about her opinion regarding abortion. She answered that the answer would depend on the circumstances.

After the question on abortion, the same student asked Ms. Loeffelman if she was for or against interracial relationships. She responded, "Oh, that's an easy one. I'm totally against it." The student followed up with a question to the effect of, "But what if the two are in love?" Ms. Loeffelman responded, "Well, then, they should not have children." Several students in the classroom testified that Ms. Loeffelman said that interracial couples should be "fixed" so that they cannot have children and that "mixed children" are "racially confused." Two bi-racial students were present during this discussion.

The following day, Ms. Loeffelman met with the superintendent and the principal to inform them that some of the students may try to "twist" her words. As a result of the incident, the superintendent placed Ms. Loeffelman on paid administrative leave pending an investigation.

The superintendent sent her a letter notifying her of his recommendation of termination and her right to a hearing. A hearing was conducted. The school board found that Ms.

Loeffelman's comments were (1) race-based and constituted an instance of discriminating categorically on the basis of race; (2) not part of an objective classroom discussion; (3) expressing her personal views on the topic during class time; and (4) disparaging to biracial children, especially the two who were present during the discussion. The school board voted to terminate her indefinite contract. She appealed the decision.

Issues: At issue is whether the school board erred in terminating Ms. Loeffelman's indefinite contract and whether there was competent and substantial evidence to support that she willfully violated school board policy.

Holding: The court held that (1) the evidence was sufficient to support the finding that Ms. Loeffelman willfully violated school board policy, (2) Ms. Loeffelman's comments were not protected speech under the First Amendment, and (3) the school board's interest in efficiently running schools outweighed teacher's free speech rights.

Reasoning: There is no dispute that Ms. Loeffelman intended to act, in that she willingly responded to the student's questions. Evidence supported the finding that she violated Board Policy 1300 and Board Policy 2130. The fact that she made a statement restricting marriage and/or a couple's ability to have children based solely on race is in and of itself discriminatory.

Ms. Loeffelman knew that teachers in the school district had an obligation to protect students from harassment or discrimination based on race and that students who engaged in such harassment or discrimination were subject to disciplinary action in accordance with the school district's policy. Teachers should expect the district to have a similar policy prohibiting teachers from the same conduct.

To be protected by the First Amendment, a public school teacher's speech must address a matter of public concern. A matter of public concern is a matter of political, social, or other

concern to the community. In order to determine whether or not speech qualifies as a matter of public concern, the court examined the content, form, and context of the speech. The board found, and the court agreed, that the teacher's comments did not address a matter of public concern. Her comments expressed a private opinion regarding interracial relationships and biracial children.

Disposition: The appellate court affirmed the trial court's judgment.

Citation: *Rivers v. Board of Trustees*, 876 So.2d 1043 (Court of Appeals of Mississippi, 2004).

Key Facts: Jack Rivers was a technology teacher at Forrest County Agricultural High School. Three female students shared with the principal that Mr. Rivers touched one of the students in an appropriate manner during class on March 20, 2002. The principal sent the student to the counselor's office to share this information. The counselor met with the principal and explained that the way the student described the incident; it was not just a brush-up-next-to type of touch. The student also provided a written statement and her testimony at the hearing was consistent with what she shared with the principal and counselor.

The superintendent met with Mr. Rivers and his wife to inquire about his version of the incident. Mr. Rivers denied touching the student except to say that he might have brushed up against her leg when he got up to leave.

After speaking with the students, the superintendent made a decision to terminate Mr. Rivers' employment if he did not resign voluntarily. He did not resign; therefore, the superintendent notified him that he was being dismissed from employment, subject to his right to a hearing.

Mr. Rivers requested a formal hearing in addition to discovery information and documents that included (1) a detailed listing of the allegations, including names, addresses, and telephone numbers of the persons who made the allegations; (2) a copy of the board's minutes; (3) a complete copy of his personnel records; (4) a complete copy of the student file of the person and persons who made the allegations against him; (5) a complete copy of oral and written reports and allegations; (6) the name, address, and telephone number of any person interviewed; and (7) the name, address, and telephone number of any persons the school board intended to subpoena or call as witnesses. The school board denied and the hearing officer denied these requests.

A hearing was held and the hearing officer affirmed the decision made by the school board.

Issues: At issue is whether the Board of Trustees violated Mr. Rivers's constitutional rights by terminating him and also whether the termination was arbitrary or capricious and not founded upon substantial evidence.

Holding: The court held that (1) the procedures employed during hearing to dismiss the teacher did not violate the teacher's constitutional rights, and (2) substantial evidence supported the Board of Trustees decision to dismiss the teacher due to misconduct.

Reasoning: The Mississippi Code Annotated section 37-9-109 governs non-renewals and also states the initiating requirements for actions of non-renewals. The code provides that a written notice of the specific reasons for non-employment, together with the summary of the factual basis, including a list of witnesses and a copy of documentary evidence substantiating the reasons intended to be presented at the hearing, should be given to the individual. However, it is clear that this is a dismissal case and not a non-renewal case. The actions required for a dismissal

case include that before being dismissed or suspended, any licensed employee should be notified of the charges against him and be advised that he is entitled to a public hearing. After reviewing the code and case law, the court concluded that Mr. Rivers' statutory and constitutional rights were not violated.

The school board's decision was supported by evidence and it met the burden of proof by proving substantial evidence that Mr. Rivers' actions constituted misconduct.

Disposition: The court affirmed the decision of the trial court.

2005

Citation: *Walthart v. Board of Directors*, 694 N.W.2d 740 (Supreme Court of Iowa, 2005).

Key Facts: Carol Walthart, an 18-year veteran teacher with the Edgewood-Colesburg Community School District, was terminated by the school board. The superintendent included in the written notice the following reasons for dismissal: (1) unprofessional conduct in allowing students to use teacher's property for a party where alcohol was illegally consumed by students, (2) failure to effectively monitor a party on teacher's property wherein student alcohol consumption contributed to the death of several students, (3) failure to protect the safety and welfare of students, (4) inability to be effective as a teacher, (5) poor role model, and (6) poor and ineffective leadership.

In September 2000, students from the EDCO school district gathered in a hay field on Ms. Walthart's property. Her son, Mark, was a senior at the high school who hosted the party. On the night in question, Mark and several other students were drinking alcohol. After all of the beer was gone, four students left by car to purchase more. On the way into town, the driver lost

control of the car and hit a tree, killing all four of the students. The investigation found that the driver had an alcohol blood level of .380, more than three times the legal limit.

After receiving the written notice of termination, Ms. Walthart requested a private hearing before the school board. At a closed meeting, the board voted unanimously to terminate Ms. Walthart's contract. Ms. Walthart filed a notice of appeal to an adjudicator, according to the state statute. Her claim was the termination violated statutory and constitutional provisions; was in excess of the statutory authority of the board; violated board rules, policies, and contracts; was made under unlawful procedures; was affected by errors of law; was unsupported by a preponderance of competent evidence; and was unreasonable, arbitrary, capricious, and an abuse of discretion.

The adjudicator concluded that the school board's findings of just cause to terminate was unsupported by a preponderance of competent evidence and reversed the school board's decision. The school board appealed that decision to the district court. The district court reversed the adjudicator's decision and affirmed the school board's decision to terminate. Ms. Walthart appealed to this court.

Issues: At issue was whether the district court erred by refusing to consider evidence outside the record as certified by the school board. In addition, another issue raised was whether the board's decision to terminate Ms. Walthart was supported by a preponderance of evidence in the record according to the state code.

Holding: The court held that (1) the trial court could not consider matters that were outside record as certified by the board, (2) the hearsay testimony concerning students' statements bore sufficient indicia of reliability, and (3) the school board had just cause to terminate Ms. Walthart's employment.

Reasoning: The court reasoned that the school board found that the superintendent had satisfied his burden to show grounds for termination. The board found that Ms. Walthart had knowledge of the alcohol consumption by students on her property; she allowed that to continue with adequate monitoring. She did not attempt to stop the party except to take the car keys from the boys. Because of her actions, the school board determined this behavior damaged her reputation as a teacher and was detrimental to her ability to be an effective role model. The findings gave the school board just cause to terminate her employment.

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

Citation: *Green v. New York City Department of Education*, 793 N.Y.S.2d 405 (Supreme Court of New York, 2005).

Key Facts: Gloria Green, a tenured New York City school teacher, was convicted upon her guilty plea of grand larceny in the third degree. The conviction was based on the fact that on numerous times she misrepresented her Section 8 housing filings. Section 8 refers to the Housing Choice Voucher program operated by the Department of Housing and Urban Development and administered by the local public housing authority. The Housing Choice Voucher program provides for subsidized housing for low-income families and individuals. Ms. Green also had previous convictions for fraud. She was sentenced to a conditional discharge and restitution of more than \$30,000.

Issues: At issue is whether Ms. Green's dismissal was appropriate.

Holding: The court held that the penalty of dismissal imposed upon Ms. Green following her conviction of grand larceny was not so disproportionate to the offense as to shock the judicial conscience.

Reasoning: The court reasoned that the applicable standards according to the education law supported the school district's decision to terminate Ms. Green.

Disposition: The court affirmed the decision of the lower court.

2006

Citation: *Ahmad v. Board of Education*, 847 N.E.2d 810 (Appellate Court of Illinois, 2006).

Key Facts: Rita Ahmad, a tenured teacher with the Chicago City Board of Education, was charged with violating several provisions of the district's Employee Discipline Code. The school district's complaint alleged that Ms. Ahmad misappropriated supplies from a nonprofit organization by misrepresenting herself as an agent of the school system. It was alleged that Ms. Ahmad obtained the supplies with the intent to sell them through her business, entitled "Ology Parent-Teacher, One Stop Educational Supplies."

Ms. Ahmad applied for membership in the National Association for Exchange of Industrial Resources (NAEIR). NAEIR restricts its membership to organizations and does not allow individual memberships. Ms. Ahmad represented herself as a teacher and that she was applying for membership on behalf of the Chicago Public Schools. She used her home address and telephone number as the applying organization's address on the application. The application was returned because it lacked a school address and name of a school. Ms. Ahmad returned the application with "Chicago Public Schools, Office of Schools and Regions, c/o Rita Ahmad." The application was approved.

Ms. Ahmad placed 16 orders for school supplies worth a value of \$33,979. On at least 12 of these orders, she marked "Chicago Public Schools/Office of Schools and Regions" in her own

handwriting under “Organization Name.” She also used the membership number assigned to the school system.

The National Association for the Exchange of Industrial Resources sent Ms. Ahmad numerous invoices for the merchandise; however, payment was never forwarded to the company. A hearing was held regarding the charges against Ms. Ahmad.

The hearing officer decided the case by applying an analysis set forth by the Illinois Supreme Court in the Gilliland court case. Using this standard, a school board must demonstrate that the conduct is irremediable. The school board must prove by a preponderance of the evidence, that (1) the teacher’s conduct caused significant damage to students, faculty, or the school; and (2) the teacher would not have corrected his conduct, even if he had been issued a written warning and afforded a period of time for remediation. The school board voted to terminate Ms. Ahmad.

Issues: At issue is whether the hearing officer erred by applying the standard expressed in Gilliland. Another issue is whether Ms. Ahmad’s conduct was immoral.

Holding: The court held that the term immoral means shameless conduct showing moral indifference to opinions of the good and respectable members of the community as that term is used in statute providing that conduct on the part of teacher that is immoral is deemed to be irremediable misconduct, which is cause for determination. It was also held that the evidence of Ms. Ahmad engaged in immoral conduct within the meaning of the statute.

Reasoning: The court reasoned that the evidence indicated that Ms. Ahmad intentionally misled both the NAEIR and the school district as to the true nature of her intentions concerning the merchandise she obtained from NAEIR, which, according to her testimony, was to sell through her business venture. The court further concluded that Ms. Ahmad’s claim of ignorance

as to the permissible use of the NAEIR products was disingenuous and unreasonable in light of the clear admonishments appearing on the application form and numerous order forms that she signed. Finally, her decision to donate the merchandise did not negate the original immoral conduct plaintiff engaged in to acquire the merchandise.

Disposition: The court reversed the decision of the lower court and reinstated the hearing officer's decision.

Citation: *Binghamton City School District v. Peacock*, 823 N.Y.S.2d 231 (Supreme Court, Appellate Division, Third Department, 2006).

Key Facts: The school board filed formal charges against Brian Peacock, a 32-year-old tenured teacher, for his relationship with a 16-year-old female student over the course of her senior year of high school. The hearing officer found that Mr. Peacock was guilty of some of the charges but not all. Specifically, the hearing officer found that Mr. Peacock and the student had constant telephone contact during most of the 2002-2003 school year; the student frequently visited him in his office even though he was not her teacher; they spent other time together in private. Mr. Peacock admitted that he called the student 1,329 times within a 6-month period, including when he was on vacation. In addition, he also gave the student cell phone cards worth \$400, which allowed her to call him without record of her calls appearing on any phone bills.

The hearing officer found Mr. Peacock guilty of the charges of insubordination for failing to heed to an administrative order, neglect of duty for leaving school early without permission, and conduct unbecoming a teacher because of engaging in an inappropriate personal relationship with a student.

Based on the findings, the hearing officer imposed a penalty of suspension without pay for 1 year. The Supreme Court found the penalty to be shocking lenient, vacated it and remitted the matter for imposition of a new penalty. The school board appealed.

Issues: At issue is whether the hearing officer exceeded his power in violating a strong public policy by ordering that Mr. Peacock only receive a 1-year suspension without pay.

Holding: The court held that the arbitrator's decision to suspend Mr. Peacock without pay for 1 year violated strong public policy.

Reasoning: The court reasoned that the state of New York has an explicit and compelling public policy to protect children from the harmful conduct of adults, particularly in an educational setting. When an educator's conduct involves inappropriate contact with students who are minors, the state policy gives the highest priority to protecting their welfare. In addition, in light of the school's liability and the adverse effect on its students, if such misconduct were to recur, the policy prohibits an award in a disciplinary proceeding which would not adequately protect students from the teacher in the future, particularly where the offender has been insubordinate, refuses to admit that he or she has done anything wrong, and shows no remorse.

The hearing officer found that Mr. Peacock engaged in an improper and intimate relationship with a minor female student. He showed no remorse for the conduct proven by the school board, disobeyed administrative direction to cease his relationship with the student and not transport her in his car, and continued to contact her even after disciplinary charges were brought against him. The court concluded that the award failed to adequately protect the students in the future, and thus violated a strong public policy.

Disposition: The court affirmed the decision of the lower court.

2007

Citation: *Dixon v. Clem*, 492 F.3d 665 (United States Court of Appeals, 2007).

Key Facts: David Dixon, a 26-year veteran carpentry teacher at Cumberland High School was terminated by the school district for conduct unbecoming of a teacher. In addition to teaching carpentry, Mr. Dixon also was an accomplished photographer. As a professional photographer, he had a studio in downtown Cumberland.

With the school's approval, Mr. Dixon offered students an opportunity to come to his studio to retake their senior yearbook pictures. S. C. was one of the students who accepted the offer. She and another female student arrived at the studio around 6:00 p.m. on October 24, 1995. Eventually the other female student left the studio, while S. C. remained alone with Mr. Dixon. Mr. Dixon took photographs of S. C. wearing no clothing from the waist up, although her nipples were covered either by her hair or a "fishnet."

The school superintendent sent Mr. Dixon a letter 5 months later informing him that he had been suspended pending termination of his contract. The letter cited Mr. Dixon as having taken "topless" photographs of a student. This was deemed to be conduct unbecoming a teacher within the meaning of the Kentucky state statute.

The school board upheld the superintendent's recommendation that Mr. Dixon be terminated. Eight years later, Mr. Dixon appealed the decision to the Harlan Circuit Court. Following this action, there were a series of long and complex hearings, appeals, remands, and lawsuits.

Issues: At issue is whether Mr. Dixon's due process rights were violated.

Holding: The court held that (1) the continuing violation doctrine did not apply to toll limitations period for claims against principal, attorney, and representative; (2) claims against the

hearing officer in his official capacity were barred by doctrine of sovereign immunity; (3) judicial immunity applied to shield the hearing officer from §1983 liability in his individual capacity; (4) the teacher's due process rights were not violated; (5) the jurisdiction existed over appeal challenging imposition of sanctions against teacher's attorney; (6) the imposition of sanctions against attorney was not abuse of discretion; and (7) the motion for recusal or disqualification was moot.

Reasoning: The district court reasoned that Mr. Dixon's case against each of the defendants had been filed outside the 1-year statute of limitations and therefore was dismissed. The dismissal of the claims against the hearing officer was proper on the grounds of sovereign and judicial immunity.

Disposition: The court affirmed the judgment of the district court in all respects.

Citation: *Leban v. Orleans Parish School Board*, 972 So.2d 376 (Court of Appeal of Louisiana, 2007).

Key Facts: Levon Leban, a 15-year tenured biology teacher with the Orleans Parish School Board, was dismissed for willful neglect of duty and immorality. One of his female students accused him of sexual harassment. On May 1 and May 3, 1996, the school principal conducted a "Level I" conference with Mr. Leban concerning the allegations. Mr. Leban denied the accusations. The student did not attend the conference; although Mr. Leban alleged that the principal played the tape recorded "full statement" of the student for him. The principal forwarded the complaint to the school district's Compliance Department for investigation. A representative from the Compliance Department then visited the school and prepared a report. However, a "Level II" administrative hearing was not conducted until November 5, 2001, 5.5 years after the sexual harassment complaint was made. Ten days later, a "Level III"

administrative hearing was held to review the 1996 sexual harassment accusation. For the first time at this hearing, Mr. Leban was given an opportunity to confront the student who had made the complaint in 1996. The student claimed that some of the harassment took place in front of the entire class, and that Mr. Leban had made inappropriate comments to the entire class. No other students were brought in to testify. Thereafter, on November 21, 2001, the superintendent recommended that Mr. Leban be dismissed based upon the student's harassment complaint.

It is also noted that during this time, the school district conducted a series of conferences with Mr. Leban regarding his attendance. However, the school board failed to bring forth any matters related to the sexual harassment accusations, nor did the school board give Mr. Leban the opportunity to refute any evidence relating to the sexual harassment accusations.

In 1997, the superintendent lodged charges of willful neglect of duty and immorality against Mr. Leban relating to the attendance matters only. However, on March 16, 2000, after a 2-day hearing related to the attendance matter only, the superintendent withdrew the non-sexual charges against Mr. Leban as part of a negotiated settlement, and reinstated him into active service as a teacher.

Thereafter, in December 2003, 2 years after the administrative hearings related to the sexual harassment accusation, and 7.5 years after the student made her complaint, the school board held a tenure hearing according to the state statute, to consider the sexual harassment charges. Mr. Leban's attorney subpoenaed documents as well as the tape recorded statement of the student, but the documents and tape recording had disappeared during the 7.5-year lapse. At the conclusion of the hearing, the school board found Mr. Leban guilty of the charges of willful neglect of duty and immorality, and ordered his immediate discharge from employment.

On July 17, 2006, the trial court judge reversed the decision of the school board. The school board appealed this final judgment.

Issues: At issue is whether the trial court committed reversible error in failing to follow the proper standard of review with regard to the decision of the school board; and (2) whether the trial court committed reversible error in failing to find that the formalities of the tenure law were followed and that the decision of the school board was based upon substantial evidence.

Holding: The court held that the school board's decision to allow a hearing relating to the sexual harassment charge against Mr. Leban to move forward more than 7 years after the alleged complaint was first filed was arbitrary and an abuse of discretion.

Reasoning: The court reasoned that the superintendent and administration had waited 5.5 years before convening a hearing to give Mr. Leban an opportunity to confront and cross-examine witnesses. After reviewing the record, the district court agreed with the trial court that the school board's decision to delay the disciplinary matter for 5.5 years, then for another 2 years, deprived Mr. Leban of a meaningful opportunity to respond to the charge, and impaired his ability to defend himself against the charge of sexual harassment. The school board also failed to properly gather and then preserve the documents, and then bring the charges in a timely manner. To wait over 7 years before discharging a teacher for alleged misconduct is unfair as such a delay makes it impossible to gather evidence, particularly in a situation where the witnesses are students.

Disposition: The court affirmed the decision of the trial court.

Analysis of Data

The analysis of data for this study included reviewing case briefings regarding teacher dismissal for immorality within the timeframe of 1977-2007. There were 114 cases researched during a 30-year period, commencing with *Board of Education of Long Beach v. Jack M.* (1977) and concluding with *Leban v. Orleans Parish School Board* (2007). In order to determine the patterns and trends of these court decisions, the cases were organized by key issues, court decisions, gender, tenure status, and level of education (i.e., elementary, middle, or high school level). The cases were also organized into two types of misconduct: sexual-related and non-sexual related misconduct (see Table 3). Sexual-related misconduct cases involved issues pertaining to misconduct with students, homosexuality, other heterogeneous situations (i.e., cohabitation, inappropriate physical contact with students, immorality, conduct unbecoming, and unprofessional conduct). Non-sexual related misconduct cases involved such topics as alcohol and drugs, criminal activity, dishonesty, fraud, theft, profanity, and unprofessional conduct. The researcher gathered all of the information in order to conduct a thorough analysis. As a result of the study, guidelines and principles were developed for K-12 schools and district-level administrators as well as for school board attorneys.

Table 3

Case Law 1977-2007: Type of Misconduct

Year	Case name	Type of misconduct
1977	Board of Education of Long Beach v. Jack M	Sexual
1977	Carrao v. Board of Education, City of Chicago	Sexual
1977	Kilpatrick v. Wright	Sexual
1978	Cochran v. Chidester School District of Ouchita County	Sexual
1978	Penn-Delco v. Urso	Sexual
1979	Wissahickon School District v. McKown	Sexual

(table continues)

Year	Case name	Type of misconduct
1980	Thompson v. Southwest School District	Sexual
1981	Chicago Board of Education v. Payne	Non-sexual
1981	Golden v. Board of Education of Harrison	Non-sexual
1982	Bethel Park School District v. Krall	Non-sexual
1982	Lang v. Lee	Sexual
1982	Potter v. Kalama Public School District, No. 402	Sexual
1982	Shurgin v. Ambach	Sexual
1982	Yanzich v. School District No. 23, Lake County	Sexual
1983	Clark v. Board of Education of School District of Omaha	Non-sexual
1983	Dupree v. School Committee of Boston	Non-sexual
1983	Florian v. Highland Local School District Board of Education	Non-sexual
1983	Ross v. Robb	Sexual
1984	Baker v. School Board of Marion County	Non-sexual
1984	Balog v. McKeesport Area School District	Non-sexual
1984	Kenai Peninsula Borough Board of Education v. Brown	Non-sexual
1984	Kimble v. Worth County R-III Board of Education	Non-sexual
1984	National Gay Task Force v. Board of Education of Oklahoma	Sexual
1985	Downie v. Independent School District No. 141	Sexual
1985	Lile v. Hancock Place School District	Sexual
1985	Madril v. School District No. 11, El Paso County	Sexual
1986	Board of Education of Hopkins County v. Wood	Non-sexual
1986	Board of Education of Laurel County v. McCollum	Non-sexual
1986	McBroom v. Board of Education District, No. 205	Non-sexual
1986	Mott v. Endicott School District	Sexual
1986	Rogliano v. Fayette County Board of Education	Non-sexual
1986	Ross v. Springfield School District, No. 19	Sexual
1986	Schmidt v. Board of Education of Raytown	Non-sexual
1987	Barcheski v. Board of Education of Grand Rapids	Sexual
1987	Fadler v. Illinois State Board of Education	Sexual
1987	Fiscus v. Board of School Trustees of Cent. School District	Non-sexual
1987	Fowler v. Board of Education of Lincoln County	Non-sexual
1987	Matter of Shelton v. School Board	Non-sexual
1987	Norton v. Board of Education of Jefferson County	Non-sexual
1987	Weaver v. Board of Education of Pine Plains Central	Non-sexual
1988	Everett Area School District v. Ault	Non-sexual
1989	Johnson v. Board of Trustees, Beaverhead County	Sexual
1990	McCullough v. Illinois State Board of Education by Feuille	Non-sexual
1990	Rado v. Board of Education	Non-sexual
1990	Sauter v. Mount Vernon School District, No. 320	Sexual
1991	Board of Education of Sparta School District v. Illinois	Sexual
1991	Cochran v. Board of Education of Mexico School District	Non-sexual
1991	Jefferson County School District No. 509-J v. Fair Dismissal	Non-sexual
1991	Stelzer v. State Board of Education	Non-sexual
1992	Gerig v. Board of Education of Central School District	Non-sexual

(table continues)

Year	Case name	Type of misconduct
1992	Vukadinovich v. Board of School Trustees of Michigan	Non-sexual
1993	Morris v. Clarksville-Montgomery County Consolidated	Sexual
1993	Scheiber v. New York City Board of Education	Non-sexual
1994	Governing Board v. Haar	Sexual
1994	Riverview School District v. Riverview Education Assn.	Non-sexual
1994	Toney v. Fairbanks North Star Boroughs	Sexual
1994	Tuffli v. Governing Board	Sexual
1994	Youngman v. Doerhoff	Sexual
1995	Dubuclet v. Home Insurance Company	Non-sexual
1995	Howard v. Missouri State Board of Education	Sexual
1995	James v. Trumbull County Board of Education	Non-sexual
1996	Alford v. Ingram	Non-sexual
1996	Barringer v. Caldwell County Board of Education	Non-sexual
1996	In re Thomas	Non-sexual
1996	McNeil v. Pinellas County School Board	Sexual
1996	Kinniry v. Abington School District	Sexual
1996	Satterfield v. Board o Education of Grand Rapids	Non-sexual
1996	Ysleta Independent School District v. Meno	Non-sexual
1997	Baldrige v. Board of Trustees, Rosebud School District	Non-sexual
1997	Gedney v. Board of Education of Town of Giston	Non-sexual
1997	Hamm v. Poplar Bluff R-1 School District	Non-sexual
1997	Wright v. Mead School District	Sexual
1998	Forte v. Mills	Non-sexual
1998	Harry v. Marion County Board of Education	Sexual
1998	Parker v. Board of Education of Byron Center Public Schools	Sexual
1998	State v. DeGueurce	Sexual
1998	Woo v. Putnam County Board of Education	Non-sexual
1999	DeMichele v. Greenburgh Central School District, No. 5	Sexual
1999	Johanson v. Board of Education of Lincoln County School	Non-sexual
1999	Montefusco v. Nassau County	Sexual
2000	Andrews v. Independent School District	Non-sexual
2000	Baltrip v. Norris	Sexual
2000	Board of Ed. of East Hampton School District v. Yusko	Sexual
2000	Canipe v. Memphis School Board of Education	Non-sexual
2000	Hawzipta v. Independent School No. I-004 of Noble County	Non-sexual
2000	Hierlmeier v. North Judson-San Pierre Bd. of School Trustees	Non-sexual
2000	McKnight v. School District of Philadelphia	Sexual
2000	Panzella v. River Trails School District	Sexual
2000	Purvis v. Marion County School Board	Non-sexual
2001	Barrett v. Charleston County School District	Non-sexual
2001	Bogosian v. Board of Education of Community Unit	Sexual
2001	Ft. Wayne Education Assn. v. Ft. Wayne Community Schools	Non-sexual
2001	In re Appeal of Morrill	Sexual
2001	Lafferty v. Board of Education	Sexual

(table continues)

Year	Case name	Type of misconduct
2001	Oleska v. Hilliard City School District of Education	Non-sexual
2001	Peaster Independent School District v. Glodfelty	Sexual
2001	Rivera v. Community School District	Non-sexual
2001	Zelno v. Lincoln Intermediate Unit No. 12	Non-sexual
2001	Arriola v. Orleans Parish School Board	Non-sexual
2002	Hill v. Independent School District	Non-sexual
2002	Weems v. North Franklin School District	Non-sexual
2003	Ballard v. Independent School District	Non-sexual
2003	Boguslawski v. Department of Education	Non-sexual
2003	Grieb v. Unemployment Compensation Board of Review	Non-sexual
2003	Younge v. Board of Education of City of Chicago	Non-sexual
2004	Loeffelman v. Board o Education of Crystal City District	Non-sexual
2004	Rivers v. Board of Trustees, Forest County Agri. High School	Sexual
2004	Winters v. Arizona Board of Education	Non-sexual
2005	Green v. New York City Department of Education	Non-sexual
2005	Walthart v. Board o Director of Edgewood-Colesbury School	Non-sexual
2006	Ahmad v. Board of Education of the City of Chicago	Non-sexual
2006	Binghampton City School District v. Peacock	Sexual
2007	Dixon v. Clem	Sexual
2007	Leban v. Orleans Parrish School Board	Sexual

Of the 114 cases involving teacher misconduct, a total of 48 (42%) cases were sexual-related. The remaining 66 (58%) cases were non-sexual related offenses. Table 4 lists the ruling favor of each court decision. In 20 (18%) of the cases, the teacher prevailed. Overwhelmingly, school boards prevailed in 94 (82%) of the court decisions.

Table 4

Case Law 1977-2007: Ruling Favor

Year	Case name	Ruling favor
1977	Board of Education of Long Beach v. Jack M	Teacher
1977	Carrao v. Board of Education, City of Chicago	School Board
1977	Kilpatrick v. Wright	School board
1978	Cochran v. Chidester School District of Ouchita County	Teacher
1978	Penn-Delco v. Urso	School Board
1979	Wissahickon School District v. McKown	School Board
1980	Thompson v. Southwest School District	Teacher
1981	Chicago Board of Education v. Payne	School Board
1981	Golden v. Board of Education of Harrison	Teacher
1982	Bethel Park School District v. Krall	School Board
1982	Lang v. Lee	School Board
1982	Potter v. Kalama Public School District, No. 402	School Board
1982	Shurgin v. Ambach	Commissioner
1982	Yanzich v. School District No. 23, Lake County	School Board
1983	Clark v. Board of Education of School District of Omaha	School Board
1983	Dupree v. School Committee of Boston	School Board
1983	Florian v. Highland Local School District Board of Education	School Board
1983	Ross v. Robb	School Board
1984	Baker v. School Board of Marion County	Teacher
1984	Balog v. McKeesport Area School District	School Board
1984	Kenai Peninsula Borough Board of Education v. Brown	School Board
1984	Kimble v. Worth County R-III Board of Education	School Board
1984	National Gay Task Force v. Board of Education of Oklahoma	National Gay Task Force
1985	Downie v. Independent School District No. 141	School Board
1985	Lile v. Hancock Place School District	School Board
1985	Madril v. School District No. 11, El Paso County	Teacher
1986	Board of Education of Hopkins County v. Wood	School Board
1986	Board of Education of Laurel County v. McCollum	School Board
1986	McBroom v. Board of Education District, No. 205	School Board
1986	Mott v. Endicott School District	School Board
1986	Rogliano v. Fayette County Board of Education	Teacher
1986	Ross v. Springfield School District, No. 19	Teacher
1986	Schmidt v. Board of Education of Raytown	School Board
1987	Barcheski v. Board of Education of Grand Rapids	School Board
1987	Fadler v. Illinois State Board of Education	School Board
1987	Fiscus v. Board of School Trustees of Cent. School District	School Board
1987	Fowler v. Board of Education of Lincoln County	School Board
1987	Matter of Shelton v. School Board	School Board
1987	Norton v. Board of Education of Jefferson County	School Board
1987	Weaver v. Board of Education of Pine Plains Central	School Board

(table continues)

Year	Case name	Ruling favor
1988	Everett Area School District v. Ault	Teacher
1989	Johnson v. Board of Trustees, Beaverhead County	School Board
1990	McCullough v. Illinois State Board of Education by Feuille	School Board
1990	Rado v. Board of Education	School Board
1990	Sauter v. Mount Vernon School District, No. 320	School Board
1991	Board of Education of Sparta School District v. Illinois	School Board
1991	Cochran v. Board of Education of Mexico School District	School Board
1991	Jefferson County School District No. 509-J v. Fair Dismissal	School Board
1991	Stelzer v. State Board of Education	School Board
1992	Gerig v. Board of Education of Central School District	School Board
1992	Vukadinovich v. Board of School Trustees of Michigan	School Board
1993	Morris v. Clarksville-Montgomery County Consolidated	School Board
1993	Scheiber v. New York City Board of Education	School Board
1994	Governing Board v. Haar	School Board
1994	Riverview School District v. Riverview Education Assn.	School Board
1994	Toney v. Fairbanks North Star Boroughs	School Board
1994	Tuffli v. Governing Board	Teacher
1994	Youngman v. Doerhoff	Teacher
1995	Dubuclet v. Home Insurance Company	School Board
1995	Howard v. Missouri State Board of Education	School Board
1995	James v. Trumbull County Board of Education	Teacher
1996	Alford v. Ingram	School Board
1996	Barringer v. Caldwell County Board of Education	School Board
1996	In re Thomas	School Board
1996	McNeil v. Pinellas County School Board	Teacher
1996	Kinniry v. Abington School District	School Board
1996	Satterfield v. Board of Education of Grand Rapids	School Board
1996	Ysleta Independent School District v. Meno	School Board
1997	Baldrige v. Board of Trustees, Rosebud School District	School Board
1997	Gedney v. Board of Education of Town of Giston	School Board
1997	Hamm v. Poplar Bluff R-1 School District	School Board
1997	Wright v. Mead School District	School Board
1998	Forte v. Mills	Commissioner
1998	Harry v. Marion County Board of Education	School Board
1998	Parker v. Board of Education of Byron Center Public Schools	School Board
1998	State v. DeGueurce	School Board
1998	Woo v. Putnam County Board o Education	School Board
1999	DeMichele v. Greenburgh Central School District, No. 5	School Board
1999	Johanson v. Board of Education of Lincoln County School	School Board
1999	Montefusco v. Nassau County	School Board
2000	Andrews v. Independent School District	School Board
2000	Baltrip v. Norris	School Board

(table continues)

Year	Case name	Ruling favor
2000	Board of Ed. of East Hampton School District v. Yusko	Teacher
2000	Canipe v. Memphis School Board of Education	School Board
2000	Hawzipta v. Independent School No. I-004 of Noble County	Teacher
2000	Hierlmeier v. North Judson-San Pierre Bd. of School Trustees	School Board
2000	McKnight v. School District of Philadelphia	School Board
2000	Panzella v. River Trails School District	School Board
2000	Purvis v. Marion County School Board	School Board
2001	Barrett v. Charleston County School District	School Board
2001	Bogosian v. Board of Education of Community Unit	School Board
2001	Ft. Wayne Education Assn. v. Ft. Wayne Community Schools	Teacher
2001	In re Appeal of Morrill	School Board
2001	Lafferty v. Board of Education	School Board
2001	Oleska v. Hilliard City School District of Education	School Board
2001	Peaster Independent School District v. Glodfelty	Teacher
2001	Rivera v. Community School District	School Board
2001	Zelno v. Lincoln Intermediate Unit No. 12	School Board
2002	Arriola v. Orleans Parrish School Board	School Board
2002	Hill v. Independent School District	School Board
2002	Weems v. North Franklin School District	School Board
2003	Ballard v. Independent School District	Teacher
2003	Boguslawski v. Department of Education	School Board
2003	Grieb v. Unemployment Compensation Board of Review	Teacher
2003	Younge v. Board of Education of City of Chicago	School Board
2004	Loeffelman v. Board of Education of Crystal City District	School Board
2004	Rivers v. Board of Trustees, Forest County Agri. High School	School Board
2004	Winters v. Arizona Board of Education	School Board
2005	Green v. New York City Department of Education	School Board
2005	Walthart v. Board o Director of Edgewood-Colesbury School	School Board
2006	Ahmad v. Board of Education of the City of Chicago	School Board
2006	Binghampton City School District v. Peacock	School Board
2007	Dixon v. Clem	School Board
2007	Leban v. Orleans Parrish School Board	Teacher

Issues

In the 114 cases involving teacher dismissal for immorality, several legal issues were mentioned repeatedly. For each individual case, the most important legal issues were listed (see Table 5). Of the 114 cases, several issues were addressed: 45 (40%) involved due process complaints, 42 (37%) involved substantial or sufficient evidence complaints, 12 (11%) involved

abuse of discretion complaints, 9 (8%) involved fitness to teach or nexus complaints, 7 (6%) involved remediability issues, 6 (5%) involved vagueness issues and 5 (4%) involved a right to privacy issues.

Table 5

Case Law 1977-2007: Fact Patterns and Legal Issues

Year	Case name	Reason for dismissal	Legal issue
1977	Board of Education of Long Beach v. Jack M	Fitness to teach	Substantial evidence
1977	Carrao v. Board of Education, City of Chicago	Conduct unbecoming	Due process
1977	Kilpatrick v. Wright	Conduct unbecoming	Due process
1978	Cochran v. Chidester School District of Ouchita County	Unwed pregnancy	Due process Equal protection Right to privacy
1978	Penn-Delco v. Urso	Immorality	Substantial evidence
1979	Wissahickon School District v. McKown	Immorality	Due process Substantial evidence
1980	Thompson v. Southwest School District	Immorality	Due process Right to privacy Vagueness
1981	Chicago Board of Education v. Payne	Fitness to teach	Due process Equal protection
1981	Golden v. Board of Education of Harrison	Immorality	Due process Nexus
1982	Bethel Park School District v. Krall	Immorality	Immorality
1982	Lang v. Lee	Immoral conduct	Due process Sufficient evidence
1982	Shurgin v. Ambach	Conduct unbecoming	Due process Substantial evidence
1982	Potter v. Kalama Public School District, No. 402	Sufficient cause	Due process Remediability
1982	Yanzich v. School District No. 23, Lake County	Fitness to teach	Due process Standard of review
1983	Clarke v. Board of Education of School District of Omaha	Immorality	Immoral conduct
1983	Dupree v. School Committee of Boston	Misconduct	Constitutionality
1983	Florian v. Highland Local School District Board of Education	Immorality	Due process Vagueness
1983	Ross v. Robb	Immorality	Due Process Substantial evidence
1984	Baker v. School Board of Marion County	Immorality	Substantial evidence Teaching effectiveness

(table continues)

Year	Case name	Reason for dismissal	Legal issue
1984	Balog v. McKeesport Area School District	Sufficient cause	Due process Abuse of discretion
1984	Kenai Peninsula Borough Board of Education v. Brown	Moral turpitude	Due process Sufficient evidence
1984	Kimble v. Worth County R-III Board of Education	Fitness to teach	Substantial evidence Vagueness
1984	National Gay Task Force v. Board of Education of Oklahoma	Immorality	Equal protection Right to privacy Vagueness
1985	Downie v. Independent School District No. 141	Unprofessional conduct	Constitutionality Substantial evidence
1985	Lile v. Hancock Place School District	Immoral conduct	Due process Right to privacy Substantial evidence
1985	Madril v. School District No. 11, El Paso County	Immorality and Neglect of Duty	Due process Substantial evidence
1986	Board of Education of Hopkins County v. Wood	Conduct unbecoming	Right to privacy Nexus
1986	Board of Education of Laurel County v. McCollum	Misconduct	Sufficient documentation
1986	McBroom v. Board of Education District, No. 205	Just cause	Remediability
1986	Mott v. Endicott School District	Sufficient cause	Remediability
1986	Rogliano v. Fayette County Board of Education	Misconduct	Nexus
1986	Ross v. Springfield School District, No. 19	Immorality	Interpretation of immorality
1986	Schmidt v. Board of Education of Raytown	Immoral conduct Fitness to teach	Sufficient evidence Arbitrary and capricious abuse of discretion
1987	Barcheski v. Board of Education of Grand Rapids	Reasonable and just case	Due process Substantial evidence
1987	Fadler v. Illinois State Board of Education	Immoral conduct	Abuse of discretion Remediability
1987	Fiscus v. Board of School Trustees of Cent. School District	Immorality	Abuse of discretion Immorality
1987	Fowler v. Board of Education of Lincoln County	Conduct unbecoming Insubordination	First and Fourteenth Amendments Vagueness
1987	Matter of Shelton v. School Board	Conduct unbecoming	Due process Constitutionality Remediability
1987	Norton v. Board of Education of Jefferson County	Immorality Neglect of duty	Sufficient evidence

(table continues)

Year	Case name	Reason for dismissal	Legal issue
1987	Weaver v. Board of Education of Pine Plains Central	Conduct unbecoming Insubordination	Substantial evidence Arbitrary Capricious
1988	Everett Area School District v. Ault	Immorality	Immorality
1989	Johnson v. Board of Trustees, Beaverhead County	Fitness to teach	Due process
1990	McCullough v. Illinois State Board of Education by Feuille	Immorality Negligence	Sufficient evidence Remediability
1990	Rado v. Board of Education	Misconduct	Insufficient evidence
1990	Sauter v. Mount Vernon School District, No. 320	Sufficient cause	Sufficient evidence
1991	Board of Education of Sparta School District v. Illinois	Unprofessional conduct	Remediability
1991	Cochran v. Board of Education of Mexico School District	Immoral conduct	Due process Substantial evidence
1991	Jefferson County School District No. 509-J v. Fair Dismissal	Neglect of duty	Standard of review
1991	Stelzer v. State Board of Education	Conduct unbecoming	Sufficient evidence
1992	Gerig v. Board of Education of Central School District	Immoral conduct	Substantial evidence
1992	Vukadinovich v. Board of School Trustees of Michigan	Neglect of duty	Due process Breach of contract
1993	Morris v. Clarksville Montgomery County Consolidated	Conduct unbecoming	Substantial evidence
1993	Scheiber v. New York City Board of Education	Misconduct	Substantial evidence
1994	Governing Board v. Haar	Immoral conduct	Abuse of discretion
1994	Riverview School District v. Review Education Assn.	Improper conduct	Substantial cause
1994	Toney v. Fairbanks North Star Boroughs	Immorality	Conduct prior to employment
1994	Tuffli v. Governing Board	Immorality	Due process
1994	Youngman v. Doerhoff	Immoral conduct	Abuse of discretion Substantial evidence
1995	Dubuclet v. Home Insurance Company	Immorality	Due process
1995	Howard v. Missouri State Board of Education	Immorality	Due process
1995	James v. Trumbull County Board of Education	Immorality	Due process Abuse of discretion
1996	Alford v. Ingram	Immoral conduct	Due Process Vagueness
1996	Barringer v. Caldwell County Board of Education	Immoral conduct	Due process Vagueness
1996	In re Thomas	Immoral conduct	Due process Sufficient evidence Nexus
1996	McNeil v. Pinellas County School Board	Immoral conduct	Insufficient evidence
1996	Kinniry v. Abington School District	Immoral conduct	Due process Substantial evidence

(table continues)

Year	Case name	Reason for dismissal	Legal issue
1996	Satterfield v. Board of Education of Grand Rapids	Moral turpitude	Nexus
1996	Ysleta Independent School District v. Meno	Immoral conduct	Abuse of discretion Substantial evidence
1997	Baldrige v. Board of Trustees, Rosebud School District	Fitness to teach	Standard of review
1997	Gedney v. Board of Education of Town of Giston	Moral misconduct	Due process
1997	Hamm v. Poplar Bluff R-1 School District	Immoral conduct	Insufficient evidence
1997	Wright v. Mead School District	Sufficient cause	Sufficient cause
1998	Forte v. Mills	Conduct unbecoming	Arbitrary Capricious
1998	Harry v. Marion County Board of Education	Violation of policy	Sufficient evidence
1998	Parker v. Board of Education of Byron Center Public Schools	Misconduct	Substantial evidence
1998	State v. DeGueurce	Carnal knowledge of juvenile	Due process Constitutionality
1998	Woo v. Putnam County Board of Education	Immorality	Nexus
1999	DeMichele v. Greenburgh Central School District, No. 5	Immoral conduct	Insufficient evidence
1999	Johanson v. Board of Education of Lincoln County School	Unprofessional conduct	Insufficient evidence
1999	Montefusco v. Nassau County	Conduct unbecoming	Due process
2000	Andrews v. Independent School District	Moral turpitude	Due process
2000	Baltrip v. Norris	Unprofessional conduct	Arbitrary Capricious
2000	Board of Education of East Hampton School District v. Yusko	Conduct unbecoming	Abuse of discretion Standard of review
2000	Canipe v. Memphis School Board of Education	Conduct unbecoming	Due process
2000	Hawzipta v. Independent School No. I-004 of Noble County	Moral turpitude	Sufficient evidence
2000	Hierlmeier v. North Judson-San Pierre Board of School Trustees	Good and just cause	Due process Substantial evidence
2000	McKnight v. School District of Philadelphia	Gross misconduct	Title VII Breach of contract
2000	Panzella v. River Trails School District	For cause	Due process
2000	Purvis v. Marion County School Board	Misconduct	Insufficient evidence
2001	Barrett v. Charleston County School District	Dishonesty	Substantial evidence
2001	Bogosian v. Board of Education of Community Unit	Unprofessional conduct	Due process Defamation of character
2001	Fort Wayne Education Assn. v. Fort Wayne Community Schools	Inappropriate conduct	Abuse of discretion
2001	In re Appeal of Morrill	Immoral conduct	Insufficient evidence Nexus

(table continues)

Year	Case name	Reason for dismissal	Legal issue
2001	Lafferty v. Board of Education	Immorality	Due process
2001	Oleska v. Hilliard City School District of Education	Good and just cause	Due process
2001	Peaster Independent School District v. Glodelty	Teaching effectiveness	Insufficient evidence
2001	Rivera v. Community School District	Misconduct	Due process
2001	Zelno v. Lincoln Intermediate Unit No. 12	Immorality	Teaching effectiveness
2002	Arriola v. Orleans Parrish School Board	Immorality	Due process Substantial evidence
2002	Hill v. Independent School District	Moral turpitude	Due process
2002	Weems v. North Franklin School District	Misconduct	Sufficient cause
2003	Ballard v. Independent School District	Moral turpitude	Inappropriate dismissal
2003	Boguslawski v. Department of Education	Immorality	Due process Substantial evidence
2003	Grieb v. Unemployment Compensation Board of Review	Willful misconduct	Denial of unemployment
2003	Younge v. Board of Education of City of Chicago	Conduct unbecoming	Sufficient cause Remediability
2004	Loeffelman v. Board of Education of Crystal City District	Willful misconduct	Substantial evidence
2004	Rivers v. Board of Trustees, Forest County Agri. High School	Misconduct	Arbitrary Capricious Substantial evidence
2004	Winters v. Arizona Board of Education	Unprofessional conduct	Sufficient evidence
2005	Green v. New York City Department of Education	Misconduct	Inappropriate dismissal
2005	Walthart v. Board of Director of Edgewood-Colesbury School	Just cause	Insufficient evidence
2006	Ahmad v. Board of Education of the City of Chicago	For cause	Standard of review
2006	Binghampton City School District v. Peacock	Conduct unbecoming	Abuse of discretion
2007	Dixon v. Clem	Conduct unbecoming	Due process
2007	Leban v. Orleans Parrish School Board	Willful neglect	Arbitrary Capricious

Due process. The majority of the cases studied addressed due process issues, which comprised 40% of the cases. The Due Process Clause of the Fourteenth Amendment provides that a person may not be deprived of life, liberty, or property, without due process of law. This clause applies to public school districts and provides the minimum procedural requirements that

each public school district must satisfy when dismissing a teacher who has attained tenure or who is in the middle of an existing term contract. Due process does not prescribe the reasons why a teacher may be dismissed, but rather it prescribes the procedures a school district must follow to dismiss a teacher. The United States Supreme Court case of *Cleveland Board of Education v. Loudermill* (1985) is the leading case involving the question of what process is due under the Constitution. This case provides that a tenured teacher must be given oral or written notice of the dismissal and the charges against him or her, an explanation of the evidence obtained, and an opportunity for a fair and meaningful hearing.

Of the 45 cases involving due process issues, 39 of those decisions ruled in favor of the school board, and 6 ruled in favor of the teacher (see Table 4). Twenty-three (51%) of the cases involved sexual-related reasons and 22 (49%) cases were non-sexual related reasons. In the 23 cases related to sexual-related charges, the teachers were dismissed for conduct unbecoming or immorality (see Table 3). Teachers who committed non-sexual related acts were also dismissed for immorality, moral turpitude, or conduct unbecoming.

In the 6 cases that were won by the teacher, only 1 of them was categorized totally as a due process case: *Tuffli v. Governing Board* (1994). Charges against a teacher were dismissed for oral copulation with a student. The court ruled that the school board was justified in dismissing the teacher, based on the facts; however, when the charges were dismissed, the teacher became eligible once again for continued employment and was entitled to the protections of the dismissal for cause. Because the teaching certificate was reissued, it was required that the teacher be provided equal protection and a hearing like any other permanent employee charged with misconduct.

The following cases also involved due process issues. Other violations such as abuse of discretion, equal protection, right to privacy, substantial evidence, nexus, and vagueness were addressed in these cases: *Cochran v. Chidester School District of Ouchita County* (1978), *Thompson v. Southwest School District* (1980), *Golden v. Board of Education of Harrison* (1981), and *James v. Trumbull County Board of Education* (1995).

In *Cochran* (1978), the teacher won the case because the school board did not meet the due process standards. The school board voted to terminate the teacher's contract based on her becoming pregnant out of wedlock, in spite of satisfactory job performance. The court ruled that the teacher was deprived of a liberty interest by lack of a pre-termination hearing. The court ordered that the school board award the teacher damages for the remaining balance on her contract in addition to the impact of constitutional deprivation upon her future employment. The *Thompson* (1980) case involved claims of due process, right to privacy, and vagueness. A teacher was charged with immorality for living with a man to whom she was not married. The court ruled that there was no evidence that indicated that the teacher's ability to teach had been adversely affected. The substantive due process claim was sufficient because the school board had not sufficiently developed a nexus between the educational process and the teacher's conduct. In *Golden* (1981), the teacher was dismissed for shoplifting. The case involved a due process and a nexus claim. The court found that the board's initial attempts to dismiss the teacher were not correctly implemented; however, the board subsequently compensated the teacher and conducted the required hearing. The court ruled that there was not a showing of a nexus that adversely affected the teacher's ability to teach; therefore, the teacher was reinstated.

In *James* (1995), there were due process and abuse of discretion claims by the teacher. The teacher was terminated by the school board for using aversives to correct students' behavior.

The referee recommended that the contract not be terminated but the school board did not accept the recommendation. The court ruled that statutory and case law requires that school boards inform teachers of their expectations before terminating them. The court rejected the specific grounds for dismissal by the school board and ruled that the school board failed to produce any written or verbal policy allegedly violated by the teacher. The court was unable to deduce that the trial court abused its discretion by reversing the decision of the school board.

Kenai Pensinsula Borough Board of Education v. Brown (1984) and *Bogosian v. Board of Education of Community Unit* (2001) are two cases that involved due process and substantial evidence concerns along with defamation of character concerns. In both cases, the teachers received either a monetary award or reinstatement to a comparable teaching position.

It was determined in *Kenai* (1984) that the teacher who was terminated for diverting electricity in violation of the Alaska state statute was entitled to back pay from his initial dismissal until such hearing, although the evidence indicated that the school board properly determined that the teacher had committed an act which under state laws constituted a crime involving moral turpitude.

In *Bogosian* (2001), the school board issued two press releases about the teacher's employment troubles without first giving him written notice. The Illinois Personnel Record Review provides a private action for employees who are denied access to personnel records or whose records are divulged without written notice. The teacher also brought two due process claims against the school board. To prevail on procedural due process claim under §1983, the teacher must show a deprivation of a constitutionally protected interest and that the deprivation was achieved by means of constitutionally insufficient procedures. The teacher claimed that he was deprived of a liberty interest in his reputation when the school board issued the press

releases about his investigation, and that he was deprived of a property interest when he was fired without the procedures required by state law. The court ruled that the due process procedures were followed. The court granted summary judgment to the teacher on his Illinois Personnel Review Act claim; however, the school board was granted summary judgment on the due process claims. The teacher was reinstated as a physical education teacher with the school district because it was determined that the school district had indeed not followed the state adopted Personnel Record Review by disclosing reasons to the media regarding Mr. Bogosian's termination and ultimately reinstatement.

Courts ruled in favor of the school boards in many of the due process cases. Some of those cases include: *Johnson v. Board of Trustees, Beaverhead County* (1989), *Gedney v. Board of Education of Town of Giston* (1997), *Andrews v. Independent School District* (2000), and *Panzella v. River Trails School District* (2000).

In *Johnson* (1989), a tenured teacher who had worked as an arts teacher with the Beaverhead County High School from 1970 until August of 1984. In August, 1984, Mr. Johnson was suspended pending a hearing before the board of education regarding charges of sexual contact with two female students during the 1983-1984 school year. The specific facts include the following: (1) Mr. Johnson admitted that he gave back rubs and placed his hands upon female students in a locked storage room during the 1983-1984 school year; (2) Mr. Johnson engaged in acts of sexual contact with a student under the age of 16 years at various places within the high school, during class periods, and at other times, which sexual contact amounted to sexual intercourse or attempted sexual intercourse; and (3) Mr. Johnson engaged in acts of sexual contact with an additional student, during school hours and on school premises. This contact consisted of fondling and kissing the students' breasts. The Board subsequently

dismissed Johnson on March 21, 1985, for immorality and unfitness after a full hearing on the charges. Johnson appealed this dismissal.

The tenured teacher challenged his dismissal on claims of due process violations and the right to a new trial before the superintendent. The court supported the superintendent's decision to dismiss the teacher. The admission of the videotaped testimony or the board transcripts did not deprive the teacher of the right to a new trial before the superintendent. The court ruled in favor of the school district.

In Gedney v. Board of Education of Town of Groton (1997), a tenured fourth grade teacher in the Groton public school system, was arrested and charged with possession of cocaine, which is a felony in violation of §21a-279 (a), and possession of drug paraphernalia, a misdemeanor. The school board notified the teacher that termination of his contract for immoral conduct and other due and sufficient cause was under consideration. He requested a hearing, which was held over the course of 8 days. The school board voted to terminate him for moral misconduct and other due and sufficient cause. The teacher claimed that the dismissal violated both federal law and Connecticut constitution.

The court held that (1) the teacher was arrested for possession of narcotics was properly terminated for moral misconduct within meaning of statute governing tenured teachers, and, thus, was not terminated solely by reason of his recovering cocaine addict disability within meaning of Rehabilitation Act; and (2) the teacher failed to show that he was discriminated against based on his disability within meaning of equal protection provision.

The court concluded that the termination was proper and the teacher was not entitled to protection of the Rehabilitation Act. Nor did the dismissal indicate any discrimination based on

religion, race, color, ancestry, national origin, sex, or physical or mental disability. The claim of a violation of constitutional rights had no merit. The school board won this case.

Andrews v. Independent School District (2000) involved a tenured special education teacher who was dismissed on grounds of moral turpitude. Ms. Andrews was found guilty of engaging in a romantic relationship with a 17-year-old student who attended the local high school. She had been warned by the school administrators as well as the student's parents' lawyer not to have any contact with the student.

The student's mother installed a recording device on an extension telephone located in the family house. The conversations between Ms. Andrews and the students were admitted as evidence.

An issue was whether the teacher's due process rights were violated when the trial court allowed evidence beyond the scope of the issues framed by the notice of termination and the admission of the handwritten notes. The court held that (1) the teacher waived any objection to admission of tapes of recorded telephone conversations between herself and minor student; (2) the teacher's due process rights were not violated by admission of evidence concerning her prior contacts with minor student; (3) any error committed by trial court in admitting handwritten notes of individual who observed teacher and minor student kissing was harmless; and (4) the testimony of man who claimed that he had sexual affair with teacher when he was a minor student 15 years ago was properly admitted for purpose of impeaching teacher.

The court found that there were no violations committed when determining that the telephone conversations could be admitted for evidence. The evidence concerning Ms. Andrews's behavior was within the scope of the notice. Although there was no clear evidence of a mature sexual relationship, the record is clear that there was a romantic relationship between

the 39-year-old teacher and the 17-year-old male student which had endured for a couple of years. The court concluded that a teacher having a romantic relationship with a minor student is contrary to good morals. The court ruled that the school district did not violate any due process rights. The school district was success in dismissing the teacher.

Panzella v. River Trails School District 26, Cook County (2000) involved a tenured special education teacher with River Trails School District 26 who was terminated based on findings that he sexually abused his child. He contested the dismissal and was held by a hearing officer, who upheld the decision of the school board.

Mr. Panzella contends that the allegations were a result of his divorce. He was placed on leave pending the adjudication of the charges. While Mr. Panzella was on leave, Public Act 90-566 became effective. This act added language that prohibited a school board from knowingly employing a person who has been found guilty by a court to be the perpetrator of sexual or physical abuse of a minor. The superintendent recommended termination and the board voted to dismiss Mr. Panzella. An administrative hearing was conducted. The hearing officer conducted that the school board was correct in dismissing Mr. Panzella. He appealed this decision.

The teacher had a concern with the application of the state statute to his case. He questioned whether the legislature intended for the amendment to section 10-21.9(c) to apply to teachers who entered into contractual continued service prior to January 2, 1998; and (2) whether the amendment required dismissal of a teacher in contractual continued service based on a juvenile court adjudication order for which appeals were not yet exhausted.

The court ruled that (1) the statutory amendment barring a school board's knowing employment of a person found by a juvenile court to have sexually abused a minor requires dismissal prior to the exhaustion of appeals of the juvenile court's order; (2) the application of

the amendment to the teacher did not impermissibly impair vested rights flowing from his employment contract; and (3) the amendment did not substantially impair any of the teacher's contractual rights.

The amendment to the code provided the school board with a ground for dismissal cause based on the juvenile court's finding that a person sexually or physically abused a minor. Mr. Panzella's tenure rights were fully protected by a pre-termination opportunity to be heard in person by the school board, which he declined, and a post-termination hearing; therefore, the amendment to the code did not impair his due process rights. The court ruled in favor of the school.

Substantial and sufficient evidence. There were a total of 42 (37%) cases involving substantial or sufficient evidence claims or lack thereof in this study (see Table 5). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Many of the teachers in the cases filed an appeal regarding the school district not having substantial evidence to support their dismissal. To determine whether there is substantial evidence, the courts have often applied the "reasonable man" test. This test poses the question: Would a reasonable man have reached the same decision upon examination of the record as a whole (Laudauer et al., 1983)?

A total of 23 (55%) of the 42 substantial evidence cases were non-sexual related misconduct dismissals (see Table 3). Nineteen (45%) of the cases were sexual-related misconduct dismissals. In 7 of the cases, the court ruled in favor of the teacher. Five of the seven cases were sexual-related. The remaining two cases were non-sexual related. In all of the cases where the teacher was successful, the school board failed to establish a nexus between the alleged immoral act and the effect on the teaching and learning environment. The cases include

the following: *Board of Education of Long Beach Unified School District v. Jack M* (1977), *Baker v. School Board of Marion County* (1984), *Madril v. School District No. 11, El Paso County* (1985), *Youngman v. Doehoff* (1994), *McNeil v. Pinellas County School Board* (1996), *Hawzipta v. Independent School District No. I-004 of Noble County* (2000) and *Peaster Independent School District v. Glodfelty* (2001).

In *Board v. Jack M* (1977), the school board filed a complaint against the teacher who had been arrested, but not charged, for homosexual solicitation. The court ruled that there was not any evidence that supported that the teacher was unfit to teach. The teacher was reinstated to his position with back pay. Several factors were relied upon by the court to determine the teacher's fitness to teach: (1) The teacher's conduct did not come to the attention of the public, students, parents, fellow teachers, and other staff members other than the principal, to whom the teacher reported the incident; (2) The teacher's conduct was an isolated act precipitated by an unusual accumulation of pressure and stress. There was no danger that the conduct would be repeated; (3) The teacher did not pose a threat to students or fellow teachers; and (4) The teacher's conduct did not demonstrate an unfitness to teach.

In the case of *Baker* (1984), the court found that there was not substantial evidence to support the dismissal of the teacher for possession of marijuana. The teacher's brother acknowledged that he was the one in possession of the illegal drug. The court rejected the school board's claim that the effectiveness of the teacher was impaired as a result of this arrest and this point alone did not justify the dismissal. The court reversed the order of the school board to dismiss the teacher.

In *Madril* (1985), the school board voted to terminate the teacher because he made the comment "I know you are here for me, and I know you are here to see me" to a female student.

The school board considered the comment to be inappropriate as well as the teacher's negligence in properly providing supervision to students on a field trip in Mexico. The court ruled that the words that were used by the teacher did not constitute substantial evidence of sexually provocative or exploitive conduct. Because of these reasons, the court could not support a dismissal for immorality. The court remanded the case to the school board for further proceedings.

The *Youngman* (1994) case involved a middle school teacher who comforted an upset male middle school student by hugging and rubbing his back. The teacher also proceeded to kiss the student. The teacher argued that the school board improperly relied on a minor's perception to determine the appropriate standard of conduct and arbitrarily and capriciously found him guilty of immoral conduct. The court ruled that the school board did not have competent and substantial evidence to support the teacher's termination. The court found that the evidence presented supported a finding that Mr. Youngman's actions were motivated by his caring and concern for the student's apparent distress. The court reversed the lower court's ruling and remanded for entry of an order that the teacher be reinstated to his position.

In *McNeil* (1991), the teacher was arrested for criminal battery when he allegedly touched an undercover law enforcement officer in a sexually suggestive manner. The hearing officer recommended that the school board reinstate the teacher without back pay and benefits lost during his suspension. The school board refused the recommendation and dismissed the teacher. The court ruled that there was not sufficient evidence for the school board to dismiss the teacher for immoral conduct. The school board failed to meet its burden of showing that the teacher's ability to teach was impaired. The school board's action of findings was unsupported by

competent substantial evidence. The court set aside the school board's decision and remanded the case for the teacher's reinstatement.

The case of *Hawzipta* (2000) involved a teacher who had been reprimanded by his principal and required to complete a plan of action to improve his teaching performance. Six months later, two students informed the teacher that they had found some pornographic material in the school dumpster. The teacher instructed the students to bring him the material. He later called the company to inquire into who ordered the material. The teacher told the superintendent that he was informed by the company representative that the principal ordered the material. After an investigation, it was revealed that another district employee who resided on campus had ordered the material. The superintendent recommended that the teacher be dismissed for supplying false information. The school board terminated the teacher. The court ruled that the school board had insufficient evidence to establish that the teacher was guilty of moral turpitude. The court ordered that the teacher be reinstated.

The *Peaster* (2001) case involved two high school teachers who were accused of sexual improprieties with a student who had been out of high school for 1 year. The 19-year-old student shared with the superintendent that he had been involved in a consensual relationship with both teachers. The superintendent recommended that the teachers be terminated based on the widespread publicity of the allegations and their effectiveness to teach. The board voted to dismiss the teachers who later appealed their case to the Commissioner of Education. The Commissioner denied the appeal. The teachers then appealed to the District Court. The District Court reversed the Commissioner's decision due to a lack of substantial evidence. There was not any solid evidence that the teachers engaged in an inappropriate activity with the nineteen year

old student; although there were the student's allegations. The reason given to the teachers for nonrenewal was that of engaging in an "activity," not allegations of an activity.

The study included many cases where the school board was successful in terminating teachers for immorality. The courts ruled that the school board had sufficient or substantial evidence to justify the termination. The following cases are a small sampling of those won by the school board based on having substantial evidence and sufficient evidence: *Kimble v. Worth County* (1984), *Scheiber v. New York* (1993), and *Barrett v. Charleston* (2001).

In *Kimble v. Worth County* (1984), a tenured teacher-librarian, was dismissed from The Worth County R-III Board of Education for engaging in immoral conduct as noted in §168.114.1 (2) of the Missouri state statute. Ms. Kimble appealed the dismissal with the Circuit Court, who ordered that the school board restate Ms. Kimble as a tenured teacher and compensate her for the suspended period. The school board appealed this ruling.

Ms. Kimble was charged with three instances of immoral conduct. The first incident involved her taking a teapot during the 1973-1974 school year and returning it after word was disseminated that it was missing; secondly, during the 1976-1977 school year, Ms. Kimble took \$20 from gate receipts collected from a basketball game, although she refunded the money after being confronted with the matter; and, finally, in February 1982, she took a set of books belonging to the school district, indicated that she never received the books from the vendor, and when she was confronted with the situation, she returned the books to the school library. The school board voted to terminate the teacher.

There were several issues cited for this case, including whether the school board had competent and substantial evidence to support its decision to dismiss the tenured teacher. The court ruled that the school board's decision was supported by competent and substantial

evidence. Secondly, it was held that Ms. Kimble's conduct was immoral rendering her unfit to teach. The court ruled in favor of the school district.

In *Scheiber v. New York City Board of Education* (1993), a tenured high school math teacher, was dismissed after a hearing for 14 specifications of misconduct. The charges included his solicitation of a student to vandalize the automobile of an assistant principal. The teacher claimed that the school board did not have substantial evidence to support his dismissal.

The court held that substantial evidence supported the finding of the board of education that the teacher was guilty of 14 specifications of misconduct. It was also held that the penalty of dismissal was not shocking to one's sense of fairness. The school board was successful in dismissing the teacher.

Barrett v. Charleston County (2001), involved a tenured computer and drama teacher at the middle school. Ms. Barrett was terminated from her teaching position for her dishonesty in handling an ice cream sales account and her representations on a grant application form to Wal-Mart to fund a drama club trip and related activities.

The school and the Parent Teacher Student Organization (PTSO) began a program selling ice cream to students after lunch. A checking account was opened that was solely dedicated to handling the ice cream proceeds and expenditures. The profits were initially earmarked for technology upgrades and Ms. Barrett was involved because she was the computer teacher.

Her initial role was limited to rolling coins, counting the money, and making deposits into the account. Over a period of time, the individual responsible for maintaining the bookkeeping for the account changed. However, according to two former bookkeepers, the account always made substantial profits. After the PTSO had spent a substantial amount of money on technology upgrades, a discussion about the future of the use of the monies was held.

Because Ms. Barrett had transitioned to the role of a drama teacher, a meeting was held where Ms. Barrett assumed total control over the ice cream account. In addition to collecting and counting money, her duties now included making the deposits, writing the checks, and accounting for the funds.

After 2 years of having complete control over the account, the principal informed Ms. Barrett that the PTSO wanted a more active role with the ice cream account. All of the funds would now be deposited into the PTSO account rather than a separate dedicated ice cream account.

The district auditor was asked to audit the account for the years 1996-1998, the period of time where Ms. Barrett had exclusive control over the account. The auditor determined that the account revealed a \$19,000 difference between actual money taken in and the amount of the expected profit. It was discovered that Ms. Barrett had written personal checks to the account on several occasions. Her first act when taking over the account was to write a \$2,000 check out of the ice cream account, completely depleting all funds in the account. The \$2,000 check was written to her mother-in-law's account, over which Barrett had the power to withdraw money.

Ms. Barrett was also the drama club teacher. She wanted to take the students on a field trip to New York City, but the principal denied her request for the trip to be a school-sponsored trip. To independently raise money, Ms. Barrett and her students began selling candy outside the local Wal-Mart. She learned from the school manager that Wal-Mart had a matching grant program. When she completed the application, she checked the box stating she was representing a school organization, which was the closest option to a drama club.

She was awarded \$1,000 based on the grant application. Ms. Barrett took the money and deposited it into her personal account rather than the school account. She kept accurate records

of the proceeds and their distribution from her personal account. Each student received a credit of \$50.00 and Ms. Barrett kept receipts that showed the remaining \$500.00 was spent on a production given at a local nursing home. The school board cited the handling of the grant application and the discrepancies in the ice cream account as grounds for dishonesty warranting immediate termination. Ms. Barrett claimed that the school board did not have substantial evidence to support the finding that Ms. Barrett was dishonest in her dealings with the ice cream account; however, the court held that substantial evidence supported the school board's decision to terminate Ms. Barrett.

The state statute provided that a school board can immediately terminate a teacher for dishonesty. The school board provided substantial evidence to support the fact that Ms. Barrett was taking the money home and only putting enough money in to pay the bills, thus ensuring the ice cream account would break even while enabling her to keep any excess for herself.

Ms. Barrett's handling of the grant money was substantial evidence that she could keep adequate financial records when it suited her to do so. The contrast in her handling of the grant money in combination with her lack of keeping adequate records of the ice cream account, especially her failure to record her personal checks made to the ice cream account as deposits, is substantial evidence that supported the school board finding that Ms. Barrett was seeking to conceal her activities regarding the ice cream account. The court ruled in favor of the school board based on the findings of substantial evidence.

Abuse of discretion. Abuse of discretion claims have been made when one party feels that the judge's decision was clearly against reason, authority, and evidence. This study included 12 cases involving abuse of discretion issues. The teacher prevailed in 3 of the abuse of discretion claims: *Youngman v. Doerhoff* (1994), *James v. Trumbull County Board of Education* (1995), and *Fort Wayne Education Association v. Fort Wayne Community Schools* (2001).

In *Fort Wayne* (2001), Patrick McKinney was a long-term substitute teacher. While supervising a basketball practice in the school gym, Mr. McKinney placed his hand in his shorts and told an eighth grade female student that he did not like the underwear that he was wearing. Several minutes after this comment, Mr. McKinney told the same student that he had something "cool" to show her but she could not tell her parents. Mr. McKinney lifted his shirt and revealed to the student that his nipple was pierced. The next day, the student told the basketball coach about the incident and said that she felt uncomfortable. The school board sent Mr. McKinney a letter informing him that his employment would be terminated based on "inappropriate conduct by a teacher to a student and a confirmed allegation of sexual harassment." Mr. McKinney waived his rights to a hearing and proceeded to binding arbitration. The arbitrator ruled that the conduct was inappropriate and warranted a 1-week suspension but not dismissal. He recommended that Mr. McKinney be reinstated to his long-term substitute position with 1 week less back pay. The school board felt that the arbitrator exceeded his powers.

The school board has the burden of proving that the arbitrator exceeded his power or abused his discretion. The court ruled that Mr. McKinney's conduct was not immoral, but rather poor judgment; however, because Mr. McKinney was a long-term substitute teacher, it had no rights or security for the succeeding school year. The arbitrator was within his authority to order back pay for the remainder of the year, less the 1-week unpaid suspension.

Two of the cases that the school board prevailed in were *Fadler v. Illinois State Board of Education* (1987) and *Fiscus v. Board of School Trustees of Cent. School District* (1987). The teacher in both cases raised concerns regarding abuse of discretion.

In *Fiscus v. Board of School Trustees of Central School District of Greene County* (1987) a tenured art, physical education, and library skills teacher, was dismissed from her position with the school district because of immorality. She had taught for 12 years and was accused of uttering a single profanity word before her fifth grade art students.

On May 23, 1984, the school board, having found that Mrs. Fiscus uttered this remark, canceled the indefinite contract on the basis of immorality. The school board found that the use of profanity was detrimental to the school and an inappropriate model to the students. In addition, the teacher's effectiveness is weakened by the use of the profanity.

The teacher claimed that the school board abused its discretion in finding that she uttered the remark, that the utterance constituted immorality, and that the penalty was too severe.

The court ruled that the teacher's conduct constituted "immorality" was not an abuse of discretion. In addition, the court made a decision that the cancellation of the permanent teacher's indefinite contract was not an abuse of discretion.

Given the facts that the phrase was spoken during the class but not for educational purposes, the court did not believe the school board abused its discretion in concluding that Mrs. Fiscus's conduct constituted immorality. Lastly, the court ruled that the board's ruling was neither arbitrary nor capricious, and therefore the board did not abuse its discretion. The ruling was in favor of the school board.

A tenured teacher in *Fadler v. Illinois State Board of Education* (1987) was charged with immoral conduct based on two alleged incidents. According to the bill of particulars, on October

22 and 23, 1984, the teacher placed his hand beneath the waistband of the jeans and undergarment worn by one of his students, K. M., in the area of her buttocks while she was standing on the floor leaning over her desk. The second incident allegedly occurred on October 31, 1984, at the end of recess. Another student was returning a ball to the first grade classroom and upon entering the outside door of the building, and found Mr. Fadler standing inside the door. As the student approached the Mr. Fadler put his hand out and squeezed her breast several times. The hearing officer sustained the dismissal. The hearing officer found that the two fondling incidents were “proven by competent testimony and by preponderance of the evidence.” The hearing officer also found that the conduct was irremediable, having caused damage to the students and to the school as a whole. The trial court upheld the teacher’s dismissal.

The teacher claimed that the trial court abused its discretion in sustaining the hearing officer’s findings that the conduct was immoral with the meaning of section 10-22.4 of the School Code.

The court concluded that Mr. Fadler took advantage of his position of authority to the detriment of the students’ trust and confidence. Mr. Fadler questioned whether the court used an objective standard in determining immoral conduct. The court noted that no one should need a definitional list to realize that placing one’s hand inside the undergarments of a 9-year-old student or squeezing the breast of a young girl is acceptable conduct for a teacher.

It was clearly evident that Mr. Fadler’s conduct caused irreparable damage to the students and the school itself and could not be remedied by a simple written warning. It was clear that he took advantage of his special position in society in taking sexual liberties with his students. The dismissal was successful.

Remediability. In some states, immediate termination on certain grounds, even with a hearing, is proper only if the conduct is not remediable. If the conduct is remediable, the teacher must be given an opportunity to correct the problem prior to any dismissal. A dismissal charge is irreparable when there is harm to the students, faculty, or the school and the conduct could not have been corrected through the warnings of superiors. There were 7 cases involving remediability issues: *Potter v. Kalama Public School District, No. 402* (1982); *McBroom v. Board of Education District, No. 205* (1986); *Mott v. Endicott School District* (1986); *Fadler v. Illinois State Board of Education* (1987); *McCullough v. Illinois State Board of Education by Feuille* (1990); *Board of Education of Sparta School District v. Illinois* (1991); and *Younge v. Board of Education of City of Chicago* (2003).

Three out of the 7 cases were non-sexual related misconduct dismissals due to criminal activities. The school board prevailed in 100% of the cases that had a remediability issue. In *McBroom* (1986), the physical education teacher was straightening the locker room and found an endorsed check in the amount of \$290.00 in the wastebasket. She placed the check in her desk drawer. She later attempted to cash the check at her bank; however, a teller intercepted and reported the incident. The school board terminated the teacher on grounds of immorality. Ms. McBroom claimed that her conduct was remediable. However, criminal activity such as the one that she committed cannot be remedied by a warning. The court relied on the two prong analysis of whether damage had been done to the students, faculty, or school and whether the conduct resulting in the damage could have been corrected had the teacher's superiors warned her. The court ruled that the conduct was irreparable.

McCullough (1990) involved a teacher who pled guilty to three misdemeanor counts of failure to file income tax returns during 1980-1982. The three felony charges were dismissed.

Mr. McCullough was ordered to serve 5-years probation, make an immediate payment of \$100,000.00 to the IRS, a payment of \$25,000.00 in 6 months to the IRS, continued professional counseling, and prohibition of engaging in the teaching profession during his 5-years probation. The last order was removed. The school board voted to dismiss Mr. McCullough on grounds of incompetency, negligence, immorality, and other sufficient cause. The court ruled that Mr. McCullough's conduct was not remediable. The criminal activity warranted the dismissal.

The final non-sexual related misconduct case presenting a remediability issue involved two teachers' use of illegal drugs. In *Younge* (2003), two elementary teachers were terminated for illegal use of drugs, specifically marijuana use. The superintendent charged both teachers with several board policy violations relating to their alcohol and drug use. A hearing was held before a hearing officer. The hearing officer concluded that both teachers had used marijuana and that the use of marijuana was criminal conduct. He concluded that the conduct was irreparable, a written warning was not required, and the circumstances supported the dismissals. The court held that reporting to work under the influence of marijuana was irreparable per se, warranting discharge without a written warning or progressive discipline. The court reasoned that a warning serves no purpose for conduct that is criminal or immoral. A warning in these cases would not have served a purpose. The teachers were already aware that reporting to work under the influence of an illegal drug was proscribed conduct under relevant sections of the Employee Discipline Code and other Board policies. Thus, such conduct could not be remedied by a warning.

Nexus and fitness to teach. Most courts require the school district to show some connection between the conduct in question and the teacher's professional duties. Due process requires that the dismissal of a teacher or other limitation of property or liberty be justified by

demonstration of a rational nexus between the proscribed activity and a serious limitation of the education process. After the court finds the teacher's conduct to be sufficiently immoral, those jurisdictions which require a nexus typically focus on how the conduct may affect the teacher's ability to teach. Courts tend to find a nexus only if (1) the conduct involved a student or school-age individual; (2) the act was widely publicized; (3) the event took place in public, thereby negating the teacher's right to privacy; or (4) the conduct was a result of a larger, irremediable problem or condition (Hooker, 1994). Immoral or unprofessional conduct or conduct involving moral turpitude justifies a teacher's removal only if it demonstrates a lack of fitness to teach. There were a total of 9 cases involving a nexus and a fitness to teach. The teacher prevailed in 3 of the cases: *Golden v. Board of Education of Harrison* (1981), *Baker v. School Board of Marion County* (1984), and *Rogliano v. Fayette County Board of Education* (1986).

The *Golden* (1981) case involved a tenured high school guidance counselor who challenged her dismissal from the school board because of a conviction of misdemeanor shoplifting. The court stated that the conduct of a public employee outside the job may be examined, but disciplinary action against the employee can only be based on whether there is a nexus between the conduct and the duties performed. The conduct in question must indicate unfitness to teach. Because the state statute does not define immorality, the court reasoned that the conduct must indicate unfitness to teach. The evidence provided by the teacher's fellow teacher concluded the opposite. The court reversed the decision of the circuit court and remanded for reinstatement of the teacher with full back pay for the period of the dismissal.

In *Baker* (1984), the teacher was arrested for possession of illegal alcohol and marijuana. Marijuana seeds were found by beverage agents in a dresser drawer in the office of the nightclub that was operated by the teacher and his brother. The judge dismissed the alcohol charges

because there was an absence of evidence that the alcohol belonged to Mr. Baker. The school board still dismissed the teacher from his teaching duties based on the opinion that Mr. Baker's effectiveness as a teacher had been impaired. The court ruled that there was insufficient evidence to support the finding that Mr. Baker was guilty of immorality or misconduct in office. Also, the possibility that Mr. Baker's effectiveness was impaired by his arrest did not justify his termination; thus failing to show a nexus between his misconduct and teaching performance. The court reinstated him to his teaching duties and reversed the decision of the school board to terminate his employment.

Rogliano (1986) is a case that involved a permanent substitute teacher who was arrested and charged with possession of marijuana, a misdemeanor, following a police search of his home. The teacher was suspended without pay from his teaching position. The superintendent later recommended to the board that Mr. Rogliano's suspension be extended until the disposition of the drug charge. The drug charges were dismissed against Mr. Rogliano due to a technicality with the search warrant; however, the school board voted to have a hearing about the matter. A representative from the education association appeared on the teacher's behalf and challenged the validity of the proceedings on procedural grounds, alleging that the school board had no authority to dismiss the teacher because the evidence had not shown a correlation between the alleged misconduct and his ability to teach. The school board voted to dismiss the teacher. Mr. Rogliano appealed the decision. The court concluded that the teacher did possess marijuana, but the school board had no evidence to indicate that the misconduct impaired his ability to teach and ordered the case remanded for further proceedings before the board. The court ruled that a misdemeanor possession of a small amount of marijuana, resulting in arrest of teacher but ultimately resulting in dismissal of charge, did not make teacher such a subject of notoriety in

community as to impair, indirectly, his ability to function as a teacher, and, hence did not warrant dismissal. The court held that the above average teacher was well-liked by his students, misconduct occurred in private and did not directly involve any student or school personnel, and the school board unnecessarily protracted proceedings against teacher, thereby contributing to whatever notoriety he may have attained in community as a result of his arrest. There was no evidence that the teacher's alleged misconduct had directly affected his performance of his teaching responsibilities. The teacher was reinstated to his former teaching position.

Many courts are ruling in favoring of school boards when presented with the nexus standard. School boards have been successful with proving that the immoral act has had a negative impact on the teaching and learning environment.

In *Board of Education of Hopkins County v. Wood* (1986), two 15-year-old girls informed the Hopkins County grand jury that 2 days prior to a murder, they purchased 10 marijuana cigarettes and had taken the marijuana to the apartment of the Wood brothers where they and the brothers smoked some of the marijuana. The Wood brothers were employed as teachers with the Hopkins County Board of Education. The brothers were arrested and charged with a misdemeanor of contributing to the delinquency of a minor.

On September 1, 1983, the school board took the testimony of the girls, and the Wood brothers were suspended from their teaching position on September 6 for immoral character and conduct unbecoming a teacher. A hearing was conducted on September 28. The brothers denied smoking marijuana and three other witnesses testified that they did not see any marijuana smoking. At the conclusion of the hearing, the school board voted unanimously to terminate the Wood brothers. The brothers had tenured and claimed that their contracts of tenured teachers could not be terminated for immoral conduct or conduct unbecoming a teacher for off-campus

activities involving students, when no written records of such conduct are in the personnel file.

The court concluded that the evidence indicated that there was a serious misconduct of an immoral and criminal nature and a direct connection or nexus between the misconduct and the teachers' work. The court ruled in favor of the school board.

Satterfield v. Board (1996) involved a special education teacher who had worked for the Grand Rapids Public Schools for 9 years. Mr. Satterfield was also employed part-time at a Witmark Catalog Showroom. After an investigation by Witmark, it was discovered that Mr. Satterfield had embezzled \$10,000 to \$15,000 in 1 year. He pled guilty to embezzling over \$100 and received 5 years probation, was ordered to perform community service, and had to make full restitution. Because of the conviction, the school board terminated his employment.

A hearing was conducted, which concluded that the school district had sustained its burden of proving just and reasonable cause for the discharge. The commission agreed and ruled that Mr. Satterfield had been convicted of a crime involving moral turpitude and the conviction raised a presumption that his conduct made him unfit to teach. It was also determined that Mr. Satterfield failed to provide evidence that his continued employment would have had an insignificant effect upon his students, their parents and the staff, and the school district would be adversely affected as a result of the conviction.

One issue in this case related to whether the dismissal was proper because the teacher claimed that there was not a "rational nexus" between his act of embezzling funds and his job performance.

The court held that the *Kenai* presumption, rebuttable presumption that a teacher who is convicted of crime involving moral turpitude is unfit to teach, places burden on the teacher to come forward with evidence to rebut the presumption of unfitness; the burden of persuasion,

burden of proving reasonable and just cause of termination of tenured teacher, remains with the school district. The court concluded that a rational nexus existed between the teacher's act of embezzling funds from his part-time employer and performance of his job duties as a special education teacher. The school district proved that there was reasonable and just cause for the dismissal.

A review of the commission's decision showed that it addressed the adverse effect of Mr. Satterfield's embezzlement conviction and that the finding was supported by competent, material, and substantial evidence. In addition, there was testimony from several parents and school employees who stated that his retention would have an adverse effect on the school, the parents, and the children, not to mention the school's reputation. The school board prevailed in this case.

In *Woo v. Putman County Board of Education* (1998), a tenured math teacher appealed his termination on admission of regularly smoking marijuana during off-duty hours.

A trial was held where Mr. Woo successfully asserted the defense of entrapment and the jury found him not guilty. However, he did admit to smoking marijuana at his home on a regular basis, but never during work hours or school activities.

The local newspaper published articles relating to the case; thereby causing a parent to begin the circulation of a petition protesting Mr. Woo's return to his teaching position at the high school. The school board explored a possible solution to transfer him to another school; however, another new petition was circulated and delivered to the school board.

The school board sent a letter to Mr. Woo regarding his possible dismissal. On October 4, 1993, the school board voted 3-2 to terminate Mr. Woo on the grounds of immorality.

The issue was whether there was a rational nexus between Mr. Woo's off-duty conduct outside his job and his job performance. The court concluded that was a finding that the teacher's off-duty conduct had become subject of such notoriety as to warrant termination was supported by evidence.

The court concluded finally that the Administrative Law Judge's findings were supported by substantial evidence. It was determined that the board had shown that there was a rational nexus between Mr. Woo's off-duty conduct outside his teaching position and his ability to perform that job because of the notoriety which had been attached. The termination was successful.

Right to privacy. Teachers whose positions or credentials have been attacked on the grounds of inappropriate sexual conduct or the like have relied not only on vagueness and overbreadth arguments but also on their right to privacy. There were 5 cases involving a right to privacy. Teachers enjoy limited rights to personal privacy, though courts will often support disciplinary action taken by a school district when a teacher's private life affects the integrity of the school district or the effectiveness by which a teacher can teach. The teacher prevailed in 2 of the cases with right to privacy issues: *Cochran v. Chidester School District of Ouchita County* (1978) and *Thompson v. Southwest School District* (1980). One case dealt with an unwed pregnant teacher and the other case involved an unmarried teacher who was cohabitating with a man.

In *Cochran v. Chidester School District* (1978), June Nelson Cochran, a non-tenured music teacher filed an action against the school board alleging that terminating and non-renewing her employment contract was a violation of her constitutional rights. She was verbally informed that she was dismissed based on becoming pregnant out of wedlock. Ms. Cochran's job

performance was of a satisfactory manner. Ms. Cochran was deprived of her liberty interest by lack of a pretermination hearing. Due process standards were not met by the school board. Lastly, the teacher was entitled to a monetary award of damages for the unpaid balance of her contract in addition to \$7,500 damages for stigma and impact of constitutional deprivation upon her professional future. The court also ordered the board to adopt nondiscriminatory standards with regard to their hiring and dismissal practices.

The court ruled in favor of the school board in *Lile v. Hancock* (1985). Charles Lile, a tenured fourth grade teacher, was terminated by the board of education for engaging in immoral conduct as outlined in §168.114.0 (2). Mr. Lile began dating the mother of one of his fourth grade students. The mother also had another daughter, age 14. The two girls and their mother moved into Mr. Lile's home.

The mother became ill and was hospitalized for a period of time. During the hospitalization, the girls moved out of Mr. Lile's home and began living with their biological father. The girl's father filed a complaint with the St. Louis Police Department charging Mr. Lile with sexual abuse. The officers questioned both girls about the alleged sexual abuse. Mr. Lile was notified the following day of the charges.

Mr. Lile admitted to the following charges: walking in the bathroom on several occasions when the girls were taking baths; taking nude photographs of the girls; sleeping with both girls while their mother was hospitalized; walking around the house nude; taking baths with the girls when they were younger; and on one occasion removing the bra of one of the girls to examine sores on her body.

S. H., the initials of the fourth grade student, made the following allegations to the police: Mr. Lile was sleeping with her and reached over and around her and touched her breast. When

Mr. Lile walked into the bathroom while the girls were bathing, he would sometimes go to the bathroom; and when Mr. Lile took nude photographs of them, they did not consider it a joke.

The superintendent learned of the sexual charges and interviewed both girls. The news media became involved and the superintendent told Mr. Lile not to return to his classroom. Mr. Lile was suspended for the remainder of the school year. After reviewing the facts, the Board concluded that Mr. Lile's actions constituted immoral conduct, rendering him unfit to teach children. The Board voted to terminate his contract.

Mr. Lile claimed that his right to privacy was violated in addition to his due process rights. The court ruled that the termination was supported by sufficient evidence. It was also concluded that the school board showed sufficient nexus between the alleged activity and the school community. Finally, the court determined that the teacher was not deprived of his due process rights nor was the right of privacy.

Using the factors from *Thompson v. Southwest South District*, the age and the maturity of Mr. Lile's fourth grade students rendered them susceptible to psychological harm. Mr. Lile's conduct did have a substantial adverse impact upon students and other teachers, given the sexual abuse charge that had been publicized locally.

The court also ruled that the school board may terminate a teacher for conduct outside the school if it can establish a sufficient nexus between such conduct and the board's legitimate interest in protecting the school community from harm. The Board established a sufficient nexus and that harm was likely to occur if Mr. Lile remained as a teacher.

Finally, it was reasoned that Mr. Lile's conduct is not protected by the right of privacy created under the Fourth and Fourteenth Amendments. The school board had an important

interest in protecting the well-being of its students and the integrity of the school system. The school board was successful in dismissing the tenured teacher.

Vagueness. A common challenge to termination or certificate revocation based on “immorality” is that the term is unconstitutionally vague. A key issue in the discipline of teachers for their misconduct concerns, whether the statutory or regulatory provisions under which they work, provide sufficient notice that such activity is prohibited, notice required by the due process clause of the Fourteenth Amendment. Courts have generally rejected this argument as long as the alleged misconduct is tied to the teacher’s fitness to teach. There were 6 cases involving the issue of vagueness with the term immorality. The teacher prevailed in 1 of the cases: *Thompson v. Southwest District* (1980).

The *Thompson* (1980) case, which involved due process, right to privacy, and vagueness issues has been discussed previously. Ms. Thompson, a tenured second grade teacher, filed action against the school district. She alleged in her complaint that she was asked to sign a statement on her performance evaluation indicating that she was living with a man to whom she was not married but that she did plan on marrying in the future. The school officials informed her that she could resign and be provided with a favorable recommendation for employment or she would be fired and her credentials as an educator revoked. She married the man she had been living with and notified the school board of the marriage. The school board sent her a letter informing her of a suspension with pay because of a charge of immorality. The court ruled that the state statute permitting termination of employment for tenured teachers for engaging in immoral conduct would only apply to conduct that adversely affects the teacher’s performance. There was no evidence that showed that the teacher’s conduct affected her teaching performance. Also, there was insufficient evidence to support that any “immoral conduct” on the part of the

teacher affected her performance as to permit termination of her contract. There must be a nexus between the teacher's conduct and the workings of the educational system must be demonstrated. The court ruled in favor of the teacher and ordered the school board to restrain from suspending or terminating her employment based on an immoral conduct charge.

Table 6

Tenure Status

Year	Case name	Tenure status
1977	Board of Education of Long Beach v. Jack M	Tenured
1977	Carrao v. Board of Education, City of Chicago	Tenured
1977	Kilpatrick v. Wright	Tenured
1978	Cochran v. Chidester School District of Ouchita County	Non-tenured
1978	Penn-Delco v. Urso	Tenured
1979	Wissahickon School District v. McKown	Tenured
1980	Thompson v. Southwest School District	Tenured
1981	Chicago Board of Education v. Payne	Tenured
1981	Golden v. Board of Education of Harrison	Tenured
1982	Bethel Park School District v. Krall	Tenured
1982	Lang v. Lee	Tenured
1982	Potter v. Kalama Public School District, No. 402	Non-tenured
1982	Shurgin v. Ambach	Tenured
1982	Yanzich v. School District No. 23, Lake County	Tenured
1983	Clark v. Board of Education of School District of Omaha	Unknown
1983	Dupree v. School Committee of Boston	Non-tenured
1983	Florian v. Highland Local School District Board of Education	Tenured
1983	Ross v. Robb	Tenured
1984	Baker v. School Board of Marion County	Tenured
1984	Balog v. McKeesport Area School District	Tenured
1984	Kenai Peninsula Borough Board of Education v. Brown	Tenured
1984	Kimble v. Worth County R-III Board of Education	Tenured
1984	National Gay Task Force v. Board of Education of Oklahoma	Unknown
1985	Downie v. Independent School District No. 141	Tenured
1985	Lile v. Hancock Place School District	Tenured
1985	Madril v. School District No. 11, El Paso County	Tenured
1986	Board of Education of Hopkins County v. Wood	Tenured
1986	Board of Education of Laurel County v. McCollum	Tenured
1986	McBroom v. Board of Education District, No. 205	Tenured
1986	Mott v. Endicott School District	Non-tenured

(table continues)

Year	Case name	Tenure status
1986	Rogliano v. Fayette County Board of Education	Tenured
1986	Ross v. Springfield School District, No. 19	Unknown
1986	Schmidt v. Board of Education of Raytown	Unknown
1987	Barcheski v. Board of Education of Grand Rapids	Tenured
1987	Fadler v. Illinois State Board of Education	Tenured
1987	Fiscus v. Board of School Trustees of Cent. School District	Tenured
1987	Fowler v. Board of Education of Lincoln County	Tenured
1987	Matter of Shelton v. School Board	Tenured
1987	Norton v. Board of Education of Jefferson County	Tenured
1987	Weaver v. Board of Education of Pine Plains Central	Tenured
1988	Everett Area School District v. Ault	Unknown
1989	Johnson v. Board of Trustees, Beaverhead County	Tenured
1990	McCullough v. Illinois State Board of Education by Feuille	Tenured
1990	Rado v. Board of Education	Tenured
1990	Sauter v. Mount Vernon School District, No. 320	Tenured
1991	Board of Education of Sparta School District v. Illinois	Tenured
1991	Cochran v. Board of Education of Mexico School District	Tenured
1991	Jefferson County School District No. 509-J v. Fair Dismissal	Tenured
1991	Stelzer v. State Board of Education	Unknown
1992	Gerig v. Board of Education of Central School District	Tenured
1992	Vukadinovich v. Board of School Trustees of Michigan	Tenured
1993	Morris v. Clarksville-Montgomery County Consolidated	Tenured
1993	Scheiber v. New York City Board of Education	Tenured
1994	Governing Board v. Haar	Tenured
1994	Riverview School District v. Riverview Education Assn.	Tenured
1994	Toney v. Fairbanks North Star Boroughs	Tenured
1994	Tuffli v. Governing Board	Tenured
1994	Youngman v. Doerhoff	Tenured
1995	Dubuclet v. Home Insurance Company	Tenured
1995	Howard v. Missouri State Board of Education	Unknown
1995	James v. Trumbull County Board of Education	Tenured
1996	Alford v. Ingram	Tenured
1996	Barringer v. Caldwell County Board of Education	Tenured
1996	In re Thomas	Tenured
1996	McNeil v. Pinellas County School Board	Unknown
1996	Kinniry v. Abington School District	Unknown
1996	Satterfield v. Board o Education of Grand Rapids	Tenured
1996	Ysleta Independent School District v. Meno	Tenured
1997	Baldrige v. Board of Trustees, Rosebud School District	Tenured
1997	Gedney v. Board of Education of Town of Giston	Tenured
1997	Hamm v. Poplar Bluff R-1 School District	Non-tenured
1997	Wright v. Mead School District	Tenured
1998	Forte v. Mills	Tenured
1998	Harry v. Marion County Board of Education	Unknown

(table continues)

Year	Case name	Tenure status
1998	Parker v. Board of Education of Byron Center Public Schools	Tenured
1998	State v. DeGueurce	Unknown
1998	Woo v. Putnam County Board of Education	Tenured
1999	DeMichele v. Greenburgh Central School District, No. 5	Tenured
1999	Johanson v. Board of Education of Lincoln County School	Unknown
1999	Montefusco v. Nassau County	Tenured
2000	Andrews v. Independent School District	Tenured
2000	Baltrip v. Norris	Tenured
2000	Board of Ed. of East Hampton School District v. Yusko	Unknown
2000	Canipe v. Memphis School Board of Education	Tenured
2000	Hawzipta v. Independent School No. I-004 of Noble County	Tenured
2000	Hierlmeier v. North Judson-San Pierre Bd. of School Trustees	Tenured
2000	McKnight v. School District of Philadelphia	Tenured
2000	Panzella v. River Trails School District	Tenured
2000	Purvis v. Marion County School Board	Tenured
2001	Barrett v. Charleston County School District	Tenured
2001	Bogosian v. Board of Education of Community Unit	Tenured
2001	Ft. Wayne Education Assn. v. Ft. Wayne Community Schools	Non-tenured
2001	In re Appeal of Morrill	Tenured
2001	Lafferty v. Board of Education	Tenured
2001	Oleska v. Hilliard City School District of Education	Tenured
2001	Peaster Independent School District v. Glodfelty	Non-tenured
2001	Rivera v. Community School District	Non-tenured
2001	Zelno v. Lincoln Intermediate Unit No. 12	Tenured
2001	Arriola v. Orleans Parish School Board	Tenured
2002	Hill v. Independent School District	Tenured
2002	Weems v. North Franklin School District	Unknown
2003	Ballard v. Independent School District	Tenured
2003	Boguslawski v. Department of Education	Tenured
2003	Grieb v. Unemployment Compensation Board of Review	Unknown
2003	Younge v. Board of Education of City of Chicago	Tenured
2004	Loeffelman v. Board o Education of Crystal City District	Tenured
2004	Rivers v. Board of Trustees, Forest County Agri. High School	Unknown
2004	Winters v. Arizona Board of Education	Unknown
2005	Green v. New York City Department of Education	Tenured
2005	Walthart v. Board o Director of Edgewood-Colesbury School	Tenured
2006	Ahmad v. Board of Education of the City of Chicago	Tenured
2006	Binghampton City School District v. Peacock	Tenured
2007	Dixon v. Clem	Tenured
2007	Leban v. Orleans Parrish School Board	Tenured

Tenure. In every state with the exception of Georgia, Mississippi, and Texas, a teacher has the opportunity to gain tenure after the successful completion of a probationary period. The number of years to acquire tenure varies with each state. Eighty-nine (78%) of the teachers in this study had gained tenure. Eight (7%) of the teachers were non-tenured or probationary. The status of 17 (15%) of the teachers was unknown. Twelve of the teachers who prevailed against the school board had gained tenure or non-probationary status, 2 teachers were probationary, and the status of 6 of the teachers was unknown. It can be concluded from this data that attaining tenure ensures that an individual will receive guaranteed due process proceedings; however, tenure statute does not protect a teacher who has violated a board policy or committed an immoral act as determined by state statute.

Table 7

Gender

Year	Case name	Gender
1977	Board of Education of Long Beach v. Jack M	Male
1977	Carrao v. Board of Education, City of Chicago	Male
1977	Kilpatrick v. Wright	Male
1978	Cochran v. Chidester School District of Ouchita County	Female
1978	Penn-Delco v. Urso	Male
1979	Wissahickon School District v. McKown	Male
1980	Thompson v. Southwest School District	Female
1981	Chicago Board of Education v. Payne	Male
1981	Golden v. Board of Education of Harrison	Female
1982	Bethel Park School District v. Krall	Female
1982	Lang v. Lee	Male
1982	Potter v. Kalama Public School District, No. 402	Male
1982	Shurgin v. Ambach	Male
1982	Yanzich v. School District No. 23, Lake County	Male
1983	Clark v. Board of Education of School District of Omaha	Male
1983	Dupree v. School Committee of Boston	Male
1983	Florian v. Highland Local School District Board of Education	Male
1983	Ross v. Robb	Male

(table continues)

Year	Case name	Gender
1984	Baker v. School Board of Marion County	Male
1984	Balog v. McKeesport Area School District	Male
1984	Kenai Peninsula Borough Board of Education v. Brown	Male
1984	Kimble v. Worth County R-III Board of Education	Female
1984	National Gay Task Force v. Board of Education of Oklahoma	Unknown
1985	Downie v. Independent School District No. 141	Male
1985	Lile v. Hancock Place School District	Male
1985	Madril v. School District No. 11, El Paso County	Male
1986	Board of Education of Hopkins County v. Wood	Male
1986	Board of Education of Laurel County v. McCollum	Male
1986	McBroom v. Board of Education District, No. 205	Female
1986	Mott v. Endicott School District	Male
1986	Rogliano v. Fayette County Board of Education	Male
1986	Ross v. Springfield School District, No. 19	Male
1986	Schmidt v. Board of Education of Raytown	Male
1987	Barcheski v. Board of Education of Grand Rapids	Male
1987	Fadler v. Illinois State Board of Education	Male
1987	Fiscus v. Board of School Trustees of Cent. School District	Female
1987	Fowler v. Board of Education of Lincoln County	Female
1987	Matter of Shelton v. School Board	Male
1987	Norton v. Board of Education of Jefferson County	Female
1987	Weaver v. Board of Education of Pine Plains Central	Male
1988	Everett Area School District v. Ault	Female
1989	Johnson v. Board of Trustees, Beaverhead County	Male
1990	McCullough v. Illinois State Board of Education by Feuille	Male
1990	Rado v. Board of Education	Male
1990	Sauter v. Mount Vernon School District, No. 320	Male
1991	Board of Education of Sparta School District v. Illinois	Male
1991	Cochran v. Board of Education of Mexico School District	Male
1991	Jefferson County School District No. 509-J v. Fair Dismissal	Female
1991	Stelzer v. State Board of Education	Female
1992	Gerig v. Board of Education of Central School District	Male
1992	Vukadinovich v. Board of School Trustees of Michigan	Male
1993	Morris v. Clarksville-Montgomery County Consolidated	Male
1993	Scheiber v. New York City Board of Education	Male
1994	Governing Board v. Haar	Male
1994	Riverview School District v. Riverview Education Assn.	Female / Male
1994	Toney v. Fairbanks North Star Boroughs	Male
1994	Tuffli v. Governing Board	Male
1994	Youngman v. Doerhoff	Male
1995	Dubuclet v. Home Insurance Company	Male
1995	Howard v. Missouri State Board of Education	Female
1995	James v. Trumbull County Board of Education	Female
1996	Alford v. Ingram	Female / Male

(table continues)

Year	Case name	Gender
1996	Barringer v. Caldwell County Board of Education	Male
1996	In re Thomas	Female
1996	McNeil v. Pinellas County School Board	Male
1996	Kinniry v. Abington School District	Male
1996	Satterfield v. Board of Education of Grand Rapids	Male
1996	Ysleta Independent School District v. Meno	Male
1997	Baldrige v. Board of Trustees, Rosebud School District	Male
1997	Gedney v. Board of Education of Town of Giston	Male
1997	Hamm v. Poplar Bluff R-1 School District	Male
1997	Wright v. Mead School District	Male
1998	Forte v. Mills	Male
1998	Harry v. Marion County Board of Education	Male
1998	Parker v. Board of Education of Byron Center Public Schools	Male
1998	State v. DeGueurce	Female
1998	Woo v. Putnam County Board of Education	Male
1999	DeMichele v. Greenburgh Central School District, No. 5	Male
1999	Johanson v. Board of Education of Lincoln County School	Male
1999	Montefusco v. Nassau County	Male
2000	Andrews v. Independent School District	Female
2000	Baltrip v. Norris	Male
2000	Board of Ed. of East Hampton School District v. Yusko	Male
2000	Canipe v. Memphis School Board of Education	Male
2000	Hawzipta v. Independent School No. I-004 of Noble County	Male
2000	Hierlmeier v. North Judson-San Pierre Bd. of School Trustees	Male
2000	McKnight v. School District of Philadelphia	Male
2000	Panzella v. River Trails School District	Male
2000	Purvis v. Marion County School Board	Male
2001	Barrett v. Charleston County School District	Female
2001	Bogosian v. Board of Education of Community Unit	Male
2001	Ft. Wayne Education Assn. v. Ft. Wayne Community Schools	Male
2001	In re Appeal of Morrill	Male
2001	Lafferty v. Board of Education	Male
2001	Oleska v. Hilliard City School District of Education	Female
2001	Peaster Independent School District v. Glodfelty	Female
2001	Rivera v. Community School District	Female
2001	Zelno v. Lincoln Intermediate Unit No. 12	Female
2002	Arriola v. Orleans Parrish School Board	Male
2002	Hill v. Independent School District	Female
2002	Weems v. North Franklin School District	Male
2003	Ballard v. Independent School District	Male
2003	Boguslawski v. Department of Education	Male
2003	Grieb v. Unemployment Compensation Board of Review	Female
2003	Younge v. Board of Education of City of Chicago	Female
2004	Loeffelman v. Board of Education of Crystal City District	Female

(table continues)

Year	Case name	Gender
2004	Rivers v. Board of Trustees, Forest County Agri. High School	Male
2004	Winters v. Arizona Board of Education	Male
2005	Green v. New York City Department of Education	Female
2005	Walthart v. Board of Director of Edgewood-Colesbury School	Female
2006	Ahmad v. Board of Education of the City of Chicago	Female
2006	Binghampton City School District v. Peacock	Male
2007	Dixon v. Clem	Male
2007	Leban v. Orleans Parrish School Board	Male

Gender. Out of the 114 cases included in this study, 31 (27%) were females and the remaining 83 (73%) were males. An examination of recent cases across the country has found a substantially higher proportion of females who have committed acts of sexual misconduct, especially with middle and high school males (Hendrie, 1998). The conclusions from this data indicated that the number of teachers who have been terminated for immorality were male educators; although the incidences of female perpetrators seem to be increasing.

Table 8

Educational Level

Year	Case name	Level
1977	Board of Education of Long Beach v. Jack M	Elementary
1977	Carrao v. Board of Education, City of Chicago	Elementary
1977	Kilpatrick v. Wright	Unknown
1978	Cochran v. Chidester School District of Ouchita County	Unknown
1978	Penn-Delco v. Urso	High School
1979	Wissahickon School District v. McKown	Unknown
1980	Thompson v. Southwest School District	Elementary
1981	Chicago Board of Education v. Payne	Elementary
1981	Golden v. Board of Education of Harrison	High School
1982	Bethel Park School District v. Krall	Unknown
1982	Lang v. Lee	Unknown
1982	Potter v. Kalama Public School District, No. 402	Elementary
1982	Shurgin v. Ambach	High School
1982	Yanzich v. School District No. 23, Lake County	Middle

(table continues)

Year	Case name	Level
1983	Clark v. Board of Education of School District of Omaha	Middle
1983	Dupree v. School Committee of Boston	Middle
1983	Florian v. Highland Local School District Board of Education	High School
1983	Ross v. Robb	High School
1984	Baker v. School Board of Marion County	Elementary
1984	Balog v. McKeesport Area School District	High School
1984	Kenai Peninsula Borough Board of Education v. Brown	Elementary
1984	Kimble v. Worth County R-III Board of Education	Unknown
1984	National Gay Task Force v. Board of Education of Oklahoma	Middle
1985	Downie v. Independent School District No. 141	Elementary
1985	Lile v. Hancock Place School District	Elementary
1985	Madril v. School District No. 11, El Paso County	High School
1986	Board of Education of Hopkins County v. Wood	Unknown
1986	Board of Education of Laurel County v. McCollum	Unknown
1986	McBroom v. Board of Education District, No. 205	High School
1986	Mott v. Endicott School District	K-12
1986	Rogliano v. Fayette County Board of Education	Unknown
1986	Ross v. Springfield School District, No. 19	Unknown
1986	Schmidt v. Board of Education of Raytown	High School
1987	Barcheski v. Board of Education of Grand Rapids	High School
1987	Fadler v. Illinois State Board of Education	Elementary
1987	Fiscus v. Board of School Trustees of Cent. School District	Elementary
1987	Fowler v. Board of Education of Lincoln County	High School
1987	Matter of Shelton v. School Board	High School
1987	Norton v. Board of Education of Jefferson County	Unknown
1987	Weaver v. Board of Education of Pine Plains Central	High School
1988	Everett Area School District v. Ault	High School
1989	Johnson v. Board of Trustees, Beaverhead County	High School
1990	McCullough v. Illinois State Board of Education by Feuille	Middle
1990	Rado v. Board of Education	High School
1990	Sauter v. Mount Vernon School District, No. 320	High School
1991	Board of Education of Sparta School District v. Illinois	High School
1991	Cochran v. Board of Education of Mexico School District	High School
1991	Jefferson County School District No. 509-J v. Fair Dismissal	Unknown
1991	Stelzer v. State Board of Education	Unknown
1992	Gerig v. Board of Education of Central School District	High School
1992	Vukadinovich v. Board of School Trustees of Michigan	High School
1993	Morris v. Clarksville-Montgomery County Consolidated	High School
1993	Scheiber v. New York City Board of Education	High School
1994	Governing Board v. Haar	Middle
1994	Riverview School District v. Riverview Education Assn.	Elementary
1994	Toney v. Fairbanks North Star Boroughs	High School
1994	Tuffli v. Governing Board	Unknown
1994	Youngman v. Doerhoff	Middle

(table continues)

Year	Case name	Level
1995	Dubuclet v. Home Insurance Company	Unknown
1995	Howard v. Missouri State Board of Education	Middle
1995	James v. Trumbull County Board of Education	Elementary
1996	Alford v. Ingram	Elementary / High
1996	Barringer v. Caldwell County Board of Education	High School
1996	In re Thomas	High School
1996	McNeil v. Pinellas County School Board	Unknown
1996	Kinniry v. Abington School District	Unknown
1996	Satterfield v. Board of Education of Grand Rapids	Unknown
1996	Ysleta Independent School District v. Meno	Middle
1997	Baldrige v. Board of Trustees, Rosebud School District	High School
1997	Gedney v. Board of Education of Town of Giston	Elementary
1997	Hamm v. Poplar Bluff R-1 School District	Unknown
1997	Wright v. Mead School District	Middle
1998	Forte v. Mills	Elementary
1998	Harry v. Marion County Board of Education	High School
1998	Parker v. Board of Education of Byron Center Public Schools	Unknown
1998	State v. DeGueurce	Unknown
1998	Woo v. Putnam County Board o Education	High School
1999	DeMichele v. Greenburgh Central School District, No. 5	High School
1999	Johanson v. Board of Education of Lincoln County School	Elementary
1999	Montefusco v. Nassau County	High School
2000	Andrews v. Independent School District	Middle
2000	Baltrip v. Norris	Unknown
2000	Board of Ed. of East Hampton School District v. Yusko	Unknown
2000	Canipe v. Memphis School Board of Education	Unknown
2000	Hawzipta v. Independent School No. I-004 of Noble County	Unknown
2000	Hierlmeier v. North Judson-San Pierre Bd. of School Trustees	Unknown
2000	McKnight v. School District of Philadelphia	Unknown
2000	Panzella v. River Trails School District	Unknown
2000	Purvis v. Marion County School Board	High School
2001	Barrett v. Charleston County School District	Middle
2001	Bogosian v. Board of Education of Community Unit	Elementary
2001	Ft. Wayne Education Assn. v. Ft. Wayne Community Schools	Middle
2001	In re Appeal of Morrill	High School
2001	Lafferty v. Board of Education	Middle
2001	Oleska v. Hilliard City School District of Education	Middle
2001	Peaster Independent School District v. Glodfelty	High School
2001	Rivera v. Community School District	Elementary
2001	Zelno v. Lincoln Intermediate Unit No. 12	High School
2002	Arriola v. Orleans Parrish School Board	High School
2002	Hill v. Independent School District	High School
2002	Weems v. North Franklin School District	District
2003	Ballard v. Independent School District	Unknown

(table continues)

Year	Case name	Level
2003	Boguslawski v. Department of Education	Elementary
2003	Grieb v. Unemployment Compensation Board of Review	Unknown
2003	Younge v. Board of Education of City of Chicago	Elementary
2004	Loeffelman v. Board of Education of Crystal City District	Middle
2004	Rivers v. Board of Trustees, Forest County Agri. High School	High School
2004	Winters v. Arizona Board of Education	High School
2005	Green v. New York City Department of Education	Unknown
2005	Walthart v. Board of Director of Edgewood-Colesbury School	Unknown
2006	Ahmad v. Board of Education of the City of Chicago	Unknown
2006	Binghampton City School District v. Peacock	High School
200	Dixon v. Clem	High School
2007	Leban v. Orleans Parrish School Board	High School

Educational level. All of the teachers in the study were employed in a K-12 public school system. The educational level of 34 (30%) of the teachers was unknown, while 43 (38%) of the teachers were high school teachers, 19 (17%) were at the elementary level, 15 (13%) were at the middle school level, and 2 (2%) were district-level employees. Based on the high percentage of unknown data (30%) relating to the particular educational level of the teachers, it is difficult to determine what level of education that teacher dismissal for immorality occurs. It may be inferred that because there is a higher percentage (38%) of high school teachers who have been dismissed for immoral acts, it is likely that a portion of the unknown would increase this number.

Judicial Authority

In the examination of case law, the value of the decision was weighed by the authority of the court who issued the ruling. Although the United States Supreme Court has authority over all other courts, the United States Supreme Court did not rule on any of the cases included in this study regarding dismissal of a teacher for immorality. Therefore, it will not contribute to the legal doctrine developed as a result of this study. The courts represented in this study are the

United States Court of Appeals, United States District Courts, State Supreme Courts, State Supreme Court of Appeals, and State Appellate Courts.

There were 6 decisions from the United States Court of Appeals (see Table 9), 10 decisions from the United States District Courts (see Table 10), and 24 decisions from the State Supreme Courts (see Table 11). There were 6 decisions from the State Supreme Court of Appeals (see Table 12) and 68 decisions from the State Appellate Courts (see Table 13). Binding authority from the United States District Court was represented by Alabama, Arkansas, Illinois, Kentucky, Missouri, New York, Ohio, and Pennsylvania. Binding authority from the State Supreme Courts was represented by 16 of the 50 states. Binding authority from the State Appellate Courts was represented by 22 of the 50 states. The state judicial system, which included state appellate courts, state Supreme Court of Appeals, and state Supreme Courts, dominated the relevant cases in this study. The decisions from these courts were derived using its state constitution and state statutes as a guide.

The legal guidelines offered in the subsequent chapter were developed after consideration of the binding authority of each court opinion. In absence of a United States Supreme Court decision and limited review from the intermediate level of the federal judiciary, many cases included in the study reflect opinions from the state appellate courts and State Supreme Courts. In the analysis of 114 court opinions, patterns and trends emerged to serve as legal guidelines for K-12 school and district-level administrators.

Rulings

Table 9

Federal Case Law: United States Court of Appeals

Year	Case name	Federal Court of Appeal
1984	National Gay Task Force v. Bd. of Oklahoma City	Tenth
1987	Fowler v. Board of Education of Lincoln County	Sixth
1992	Vukadinovich v. Board of School Trustees of Michigan	Seventh
1999	DeMichele v. Greenburgh Cent. School District, No. 5	Second
2003	Ballard v. Independent School District	Tenth
2007	Dixon v. Clem	Sixth

Table 10

Federal Case Law: United States District Courts

Year	Case name	Federal District Court
1977	Kilpatrick v. Wright	Alabama Northern District
1978	Cochran v. Chidester School District of Ouchita County	Arkansas, Western
1980	Thompson v. Southwest School District	Missouri--Western District
1983	Florian v. Highland Local School District Board of Education	Ohio--Eastern District
1996	Alford v. Ingram	Alabama--Middle
1999	Montefusco v. Nassau County	New York--Eastern District
2000	McKnight v. School District of Philadelphia	Pennsylvania--Eastern District
2001	Bogosian v. Board of Education of Community Unit	Illinois--Northern District
2001	Lafferty v. Board of Education of Floyd County	Kentucky--Eastern District
2001	Rivera v. Community School District	New York--Southern District

Table 11

State Case Law: State Supreme Courts

Year	Case name	State Supreme Court
1977	Bd. of Education of Long Beach Unified School v. Jack M.	California
1982	Yanzich v. School District No. 23, Lake County	Montana
1983	Clarke v. Board of Education of Omaha	Nebraska
1984	Kenai Peninsula borough Bd. of Ed. v. Brown	Alaska
1986	Board of Education of Hopkins County v. Wood	Kentucky
1986	Board of Education of Laurel County v. McCollum	Kentucky
1986	Mott v. Endicott School District, No. 19	Washington
1986	Ross v. Springfield School District, No. 19	Oregon
1987	Weaver v. Board of Education of Pine Plains Central	New York
1989	Johnson v. Bd. of Trustees, Beaverhead County High	Montana
1990	Rado v. Board of Education	Connecticut
1991	Jefferson County School Dist. v. Fair Dismissal	Oregon
1993	Scheiber v. New York City Board of Education	New York
1994	Toney v. Fairbanks North Star Boroughs	Alaska
1997	Baldrige v. Board of Trustees, Rosebud School Dist.	Montana
1999	Johanson v. Board of Education of Lincoln County	Nebraska
2000	Canipe v. Memphis School Board of Education	Tennessee
2001	In re Appeal of Morrill	New Hampshire
2002	Arriola v. Orleans Parrish School Board	Louisiana
2003	Greib v. Unemployment Compensation Board	Pennsylvania
2005	Green v. New York City Dept. of Education	New York
2005	Walthart v. Bd. of Directors of Edgewood-Colesbury	Iowa
2006	Binghampton City School District v. Peacock	New York

Table 12

State Case Law: State Supreme Courts of Appeal

Year	Case name	State Supreme Courts of Appeal
1981	Golden v. the Board of Education of Harrison	West Virginia
1986	Rogliano v. Fayette County Bd. of Education	West Virginia
1998	Forte v. Mills	New York--Appellate
1998	Harry v. Marion County Board of Education	West Virginia
1998	Woo v. Putnam County Board of Education	West Virginia
2000	Board of Education v. Yusko	New York--Appellate

Table 13

State Case Law: Appellate Courts

Year	Case name	State Court of Appeal
1977	Carrao v. Board of Education, City of Chicago	Illinois, District 1
1978	Penn-Delco School District v. Urso	Pennsylvania Commonwealth
1979	Wissahickon School District v. McKown	Pennsylvania Commonwealth
1981	Chicago Board of Education v. Payne	Illinois, District 1
1982	Bethel Park School District v. Krall	Pennsylvania Commonwealth
1982	Lang v. Lee	Missouri, Western
1982	Potter v. Kalama Public School District, No. 402	Washington, Division 2
1982	Shurgin v. Ambach	New York
1983	Dupree v. School Committee of Boston	Massachusetts
1984	Baker v. School Board of Marion County	Florida, District 5
1984	Balog v. McKeesport Area School District	Pennsylvania Commonwealth
1984	Kimble v. Worth County R-III Board of Education	Missouri, Western
1985	Downie v. Independent School District No. 141	Minnesota
1985	Lile v. Hancock Place School District	Missouri, Eastern Division 2
1985	Madril v. School District No. 11, El Paso County	Colorado, Division 3
1986	McBroom v. Board of Education Dist. No. 205	Illinois, Division 2
1986	Schmidt v. Board of Education of Raytown	Missouri, Western
1987	Barcheski v. Board of Education of Grand Rapids	Michigan
1987	Fadler v. Illinois State Board of Education	Illinois, District 5
1987	Fiscus v. Board of School Trustees of Cent. School	Indiana, Division 1
1987	Matter of Shelton v. School Board	Minnesota
1987	Norton v. Board of Education of Jefferson County	Colorado
1988	Everett Area School District v. Ault	Pennsylvania Commonwealth
1990	McCullough v. Illinois State Board of Education	Illinois, Division 5
1990	Sauter v. Mount Vernon School District No. 320	Washington, Division 1
1991	Bd. Of Education of Sparta v. Illinois State Board of Education	Illinois, District 5
1991	Cochran v. Board of Education of Mexico School	Missouri
1991	Stelzer v. State Board of Education	Ohio
1992	Gerig v. Board of Education of Cent. School District	Missouri, 1
1993	Morris v. Clarksville-Montgomery County	Tennessee
1994	Governing Board v. Haar	California
1994	Riverview School District v. Riverview Ed. Assn.	Pennsylvania Commonwealth

(table continues)

Year	Case name	State Court of Appeal
1994	Tuffli v. Governing Board	California
1994	Youngman v. Doerhoff	Missouri
1995	Dubuclet v. Home Insurance Company	Louisiana
1995	Howard v. Missouri State Board of Education	Missouri, Division 2
1995	James v. Trumbull County Board of Education	Ohio, District 11
1996	Barringer v. Caldwell County Bd. Of Education	North Carolina
1996	In re Thomas	Missouri, Division 2
1996	Kinniry v. Abington School District	Pennsylvania
1996	McNeil v. Pinellas County School Board	Florida
1996	Satterfield v. Board of Education	Michigan
1996	Ysleta Independent School District v. Meno	Texas
1997	Gedney v. Board of Education of Town of Giston	Connecticut
1997	Hamm v. Poplar Bluff R-1 School District	Missouri, Division 2
1997	Wright v. Mead School District	Washington, Division 3
1998	Parker v. Board of Education of Bryon Center	Michigan
1998	State v. DeGueurce	Louisiana
2000	Andrews v. Independent School District	Oklahoma
2000	Baltrip v. Norris	Tennessee, Eastern
2000	Hawzipta v. Independent School District	Oklahoma
2000	Hierlmeir v. North Judson-San Pierre Board	Indiana, District 3
2000	Panzella v. River Trails School District	Illinois, District 1
2000	Purvis v. Marion County School Board	Florida
2001	Barrett v. Charleston County School District	South Carolina
2001	Fort Wayne Ed. Assn. v. Fort Wayne Community	Indiana
2001	Oleska v. Hilliard City School District	Ohio
2001	Peaster Independent School District v. Glodfelty	Texas
2001	Zelno v. Lincoln Intermediate Unit No. 12	Pennsylvania Commonwealth
2002	Hill v. Independent School District	Oklahoma
2002	Weems v. North Franklin School District	Washington, Division 3
2003	Boguslawski v. Department of Education	Pennsylvania Commonwealth
2003	Younge v. Board of Education of City of Chicago	Illinois, District 1
2004	Loeffelman v. Board of Education of Crystal City	Missouri, Easter, Division 5
2004	Rivers v. Bd. of Trs., Forest County Agri. High	Mississippi
2004	Winters v. Arizona Board of Education	Arizona
2006	Ahmad v. Board of Education of Chicago	Illinois
2007	Leban v. Orleans Parrish School Board	Louisiana

Out of the 114 cases, the majority of the cases only reached the state appellate or state supreme court level. The cases that reached the federal appeals court level were significantly dominated

by the courts ruling in favor of the school boards. The 6th and 10th circuits represented most of the federal United States Court of Appeals cases.

Legal Trends

The data indicated that litigation involving teacher dismissal for immorality in the last 10 years has risen slightly compared to the previous 20 years. Looking at the data from 1977-1986, there were a total of 33 cases. In 1987-1996, there were 35 cases, and in 1997-2007, there were 46 cases.

The percentage of cases won by teachers remains low, with only 18% or 20 out of 114 cases being in favor of the teacher. In the most recent 1997-2007 data, only 6 (13%) cases have been won by the teacher. Most of the cases have dealt with due process and substantial evidence issues. The courts generally have not ruled in favor of a teacher unless a school board fails to follow due process procedures, lacks substantial evidence, and fails to prove that there's a nexus between the misconduct and the effectiveness to teach.

During the last 10 years, there has been an increase of teacher sexual misconduct with student cases, but surprisingly, in this study the overall type of misconduct was non-sexual-related (58%) offenses. Many of the non-sexual related offenses involved alcohol and illegal drug use, dishonesty, fraud, obscene language, inappropriate discipline strategies, possession of a weapon, and theft. Out of the 66 (58%) cases of dismissals for non-sexual related conduct, only 7 (11%) were in favor of the teacher.

In analyzing the 48 (42%) sexual-related misconduct cases, the teacher prevailed in 13 (27%) of the cases. The sexual-related misconduct cases are those that involved sexual misconduct with a student, inappropriate physical contact with a student, cohabitation,

homosexuality, and unprofessional conduct. Again, many courts have used the nexus test and ruled in favor of the teacher due to a lack of substantiated evidence provided by the school board indicating that the teacher's ability to teach had not been diminished.

Outcomes

There were 10 principles that were developed by the researcher from the cases included in this study. The themes reflect legal standards related to the dismissal of K-12 teachers for immorality and should provide guidance to school and district-level administrators as well as school board attorneys in their decisions and actions. An analysis of cases strongly suggests that courts tend to look favorably on school districts that can provide a preponderance of specific evidence, inclusive of time to remedy behavior, if possible. A court will also look to the nature of the actions leading to the dismissal, as well as how well the school followed the procedural protocols of due process (Permuth & Egley, 2002).

The outcomes of this study revealed that school boards have been successful in terminating teachers for immorality including, but not limited to the following areas: sexual improprieties with students; violation of school policy regarding alcohol and illegal drug use; theft; dishonesty; grand larceny; inappropriate use of computer and internet access; violation of district's corporal punishment/discipline policy; homosexual solicitation; violation of sexual harassment policy; use of profanity; breach of contract; conviction of a criminal act; embezzlement; violation of school district's weapons policy; inappropriate comments to students or co-workers; honesty and integrity; lying about work absences; inappropriate conversations with students; willful disregard and neglect of school board policy and directives from superiors.

The study revealed that school boards must understand that any evidence presented must be substantial, relevant to establish the alleged facts, developed in a constitutionally approved way, documented, and limited to the charges made. Using the nexus test, the evidence should demonstrate that the misconduct has an adverse effect on the teaching and learning environment (*Board of Education Long Beach v. Jack M.*, 1977; *Baker v. School Board of Marion County*, 1984; *Madril v. School District No. 11, El Paso County*, 1985; *Hawzipta v. Independent School No. I-004 of Noble County*, 2000).

Whenever a tenured teacher or a probationary teacher with an existing contract is charged with acts of immorality based on the state statute, school boards are required to extend due process to those teachers. Tenured and probationary teachers have a vested property or liberty interest with the school district. The employee must be granted the appropriate procedural due process rights. (*Cochran v. Chidester School District of Ouchita County*, 1978; *Tuffli v. Governing Board*, 1994; *James v. Trumbull County Board of Education*, 1995).

As guaranteed by the United State Constitution, all citizens have guaranteed constitutional rights, including teachers. A school board does not have the right to infringe upon employees' privacy rights or conduct outside of the work place, unless the misconduct is a criminal act or adversely affects the employee's job performance, according to the state statute. Depending on which legal standard the state has adopted, moral exemplar standard or nexus standard, the disciplining of a teacher for immorality requires proof of the immoral act or that the immorality has a nexus or connection to the misconduct and it clearly impacts the teacher's effectiveness to instruct students (*Thompson v. Southwest School District*, 1980; *Golden v. Board of Education of Harrison*, 1981; *Rogliano v. Fayette County Board of Education*, 1986; *Woo v. Putnam*, 1998).

The message that many courts are sending to school boards is that clear written policies should be established that clearly delineates and prohibits inappropriate relationships and misconduct with students. In addition, school boards should develop and adopt clear policies regarding appropriate use of discipline strategies to correct student misconduct (*Ross v. Springfield School District, No. 19*, 1986; *Everett Area School District v. Ault*, 1988; *Youngman v. Doerhoff*, 1994; *Board of Education of East Hampton School District v. Yusko*, 2000; *Fort Wayne Education Association v. Fort Wayne Community Schools*, 2001; *Peaster Independent School District v. Glodfelty*, 2001, *Mott v. Endicott School District*, 1986; *James v. Trumbull County Board of Education*, 1995).

Many of the law suits included in the study may have been avoided had the school boards required an annual practice that all of their employees receive professional development and an understanding of what constitutes employee misconduct, particularly as it relates to teacher-student relationships. An excellent resource would be the development of an exclusive handbook, pamphlet, or brochure that includes specific guidelines regarding what constitutes employee misconduct in general as well as specifically what is appropriate and inappropriate teacher-student relationships. (*Barcheski v. Board of Education of Grand Rapids Public Schools*, 1987; *Board of Education of Sparta Community Unit School District No. 140 v. State Board of Education*, 1991; *Governing Board of ABC Unified School District v. Harr*, 1994; *Baltrip v. Norris*, 2000).

It is essential that school boards ensure that a proper check-and-balance system is in place for documentation when there is an allegation of employee misconduct, to avoid the loss of the paperwork. More than one person should be assigned the responsibility of receiving and screening complaints. The misconduct should be addressed in a timely manner. Proper

documentation of the alleged misconduct should be maintained in the local school as well as the district-level personnel records. The documentation should include all of the witnesses' statements (*Leban v. Orleans Parish School Board*, 2007).

Overall, the outcome of the court decisions involving teacher-student relationships made it very clear that allegations of employee misconduct with a student should be investigated in a timely manner. Alleged misconduct with a student must always take precedent over any other violation of board policy, i.e. attendance issues (*Leban v. Orleans Parish School Board*, 2007).

With the technological advances in the 21st century and changes in community standards, public education has definitely seen an evolution of teacher practices that once were considered taboo to be very common today in a school setting; however, not ethical. Teaching is a profession that forces teachers to make ethical choices in and outside of the schoolhouse. Unlike most other professions, those who entered the education profession have a difficult time in maintaining two separate lives--that of educator and as a private individual. Teaching, by its nature, encompasses both of these aspects. An educator has the ultimate responsibility to be honest, trustworthy, caring, and fair; and to be one who provides an appropriate educational environment and is a role model for students. It is an honor and duty that should not be taken lightly.

School boards of education are charged with the authority and duty to respond if a teacher's conduct is a threat to the school community. The attitude of the courts is succinctly expressed in the following excerpt:

The power of the school board of education to dismiss and discipline teachers is not merely punitive in nature and is not intended to permit the exercise of personal moral judgment by board members; rather it exists and finds its justification in the state's legitimate interest in protecting the school community from harm, and its exercise can only be justified upon showing that such harm has occurred or is likely to occur. (*Weismann v. Board of Education of Jefferson County*, 1976)

Educator misconduct, particularly misconduct with students, is a real dilemma facing school administrators today. The problem has devastated students, parents, school districts, and entire communities. By acknowledging the problem, providing appropriate education to all stakeholders, and developing and following clear policies, school districts may see a significant decrease in this potentially explosive problem.

School leaders and courts continue to be faced with the issue of educator misconduct. Society continues to hold educators to a higher standard; however, to determine if a teacher should be dismissed on grounds of immorality, courts have adhered closely to their adopted state statutes. Whether the statute supports the moral exemplar or nexus standard varies across the states; although there is a larger grouping of states that have clearly moved to the nexus standard when deciding if it is legal to terminate a teacher based on immorality. While the dominant view historically, the moral exemplar standard is still implemented in some cases, but the specific cases in this study indicate that the nexus standard appears consistently in courts across the nation (see Tables 14-16).

Table 14

States That Are Least Moral Exemplar

1. Alabama	15. Mississippi
2. Arizona	16. Missouri
3. Arkansas	17. Montana
4. California	18. Nebraska
5. Colorado	19. New Hampshire
6. Connecticut	20. New York
7. Florida	21. North Carolina
8. Illinois	22. Ohio
9. Indiana	23. Oklahoma
10. Iowa	24. South Carolina
11. Kentucky	25. Tennessee
12. Louisiana	26. Texas
13. Michigan	27. Washington
14. Minnesota	28. West Virginia

Table 15

States That Are Least Nexus

-
1. Alaska
 2. Massachusetts
 3. Oregon
 4. Pennsylvania
-

Table 16

States with Unknown Legal Standard

-
- | | |
|---------------|------------------|
| 1. Delaware | 10. New Mexico |
| 2. Georgia | 11. North Dakota |
| 3. Hawaii | 12. Rhode Island |
| 4. Idaho | 13. South Dakota |
| 5. Kansas | 14. Utah |
| 6. Maine | 15. Vermont |
| 7. Maryland | 16. Virginia |
| 8. Nevada | 17. Wisconsin |
| 9. New Jersey | 18. Wyoming |
-

CHAPTER V
SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

Introduction

The purpose of this study was to report on and analyze federal and state court cases related to dismissal of K-12 teachers for immorality within the time frame of 1977-2007. This was documented through fact patterns obtained from the case briefs. This study identified trends and areas that need policy development and will assist K-12 school and district-level administrators in understanding and utilizing appropriate disciplinary guidelines to ensure that students are protected from teachers who commit immoral acts as well as legal ramifications for school districts. This chapter includes a summary of the research as it relates to the research questions, conclusions based on the analysis of case law, and recommendations for future studies.

Summary

The following research questions guided the data collection and analysis:

1. What are the issues arising in court cases relating to the dismissal of K-12 teachers for immorality?

According to the research of this study, the issues of due process, right to privacy, substantial and sufficient evidence, abuse of discretion, nexus or fitness to teach, remediability, and vagueness have been addressed by court decisions (see Table 5).

The case law included in this research study was analyzed and eight guiding principles were developed to guide K-12 school and district-level administrators in their decision making.

2. What are the outcomes of court cases relating to the dismissal of K-12 teachers for immorality?

When terminating a teacher's contract on grounds of immorality, a school board is required to demonstrate one of two legal tests, depending on the state statute: the moral exemplar v. the nexus test. State courts have used one of these legal tests in determining if the dismissal is warranted.

This study included court cases that used the moral exemplar standard to dismiss a teacher based solely on an immoral act that was in contradiction to community beliefs; however, a large number of states have moved to towards the nexus standard where there must be a connection, or link to the misconduct and teacher's performance in the classroom. Using the nexus standard sometimes places the school board in a difficult position of establishing total justification for the dismissal of the teacher on grounds of immorality.

The outcomes of cases included in this study revealed that school boards have had a high success rate (82%) in terminating teachers for immorality including, but not limited to the following areas: sexual improprieties with students; violation of school policy regarding alcohol and illegal drug use; theft; dishonesty; grand larceny; inappropriate use of computer and internet access; violation of district's corporal punishment/discipline policy; homosexual solicitation; violation of sexual harassment policy; use of profanity; breach of contract; conviction of a criminal act; embezzlement; violation of school district's weapons policy; inappropriate comments to students or co-workers; honesty and integrity; lying about work absences;

inappropriate conversations with students; willful disregard and neglect of school board policy and directives from superiors.

Of the 114 cases analyzed, 94 decisions (82%) were in favor of school boards. However, 20 (18%) court rulings were in favor of the teachers (see Table 4). Of the cases won by the teacher, 6 (30%) involved due process issues, 7 (35%) involved substantial or sufficient evidence, 3 (15%) involved right to privacy, 1 (1%) involved vagueness, 3 (15%) involved a nexus and fitness to teach. Twelve of the 20 cases won by the teacher involved a sexual-related reason for dismissal (60%), and the other 8 cases involved non-sexual-related issues (40%).

3. What are the trends in court cases relating to the dismissal of K-12 teachers for immorality?

There are many underlying trends that have developed during the 30-year time period that these cases occurred. The courts seem to have moved away from using the moral exemplar standard as noted in early cases in the study to implementing the nexus standard; even though this standard is more difficult to justify a dismissal on grounds of immorality.

Litigation involving inappropriate teacher-student relationships seems to be steadily increasing, considerably with female educators. The data indicated that litigation involving dismissal of K-12 teachers for immorality in the last 10 years has risen slightly compared to the previous 20 years. Looking at the data from 1977-1986, there were a total of 33 cases. In 1987-1996, there were 35 cases, and in 1997-2007, there were 46 cases.

The percentage of cases won by teachers remains low, with only 18% or 20 out of 114 cases being in favor of the teacher. In the most recent, 1997-2007, data, only 6 (13%) cases have been won by the teacher. Overall, there were more cases involving dismissal for non-sexual related matters compared with sexual-related issues. Out of the 114 cases, 66 (58%) were non-

sexual related, and 48 (42%) sexual-related concerns. In cases involving non-sexual related issues, many included alcohol and drug use, dishonesty, obscene language, and theft. Sexual-related dismissals involved misconduct with students, cohabitation, homosexuality, and unprofessional conduct.

The literature revealed, and the outcomes of the cases studied clearly indicate, that over the last 30 years courts have moved from applying the moral exemplar standard to teacher dismissal cases relating to immorality to utilizing the nexus test when considering the dismissal of teachers for immoral acts. It is very clear from reviewing both standards that a teacher's conduct outside of the workplace can result in disciplinary action by the school board.

4. What legal principles for school administrators can be discerned from the court cases relating to the dismissal of K-12 teachers for immorality?

Public school educators in K-12 settings are faced with many dilemmas while trying to provide a safe and positive teaching and learning environment. Educational leaders are charged with the responsibility of ensuring that all students receive a high-quality, equitable educational opportunities. Included in that responsibility is the assurance that teachers, who parents entrust the care of their children, have the resources available to meet the demands and accountability standards as indicated by No Child Left Behind (NCLB). In spite of all the instructional expectations, school leaders are presented with additional personnel issues that may include teacher misconduct. This is an area that cannot be pushed aside and placed on the back burner. When approached with a situation involving a teacher who has committed an alleged immoral act, an administrator must respond. The initial step is to determine the validity of the alleged misconduct by conducting a detailed investigation. This should include obtaining documentation from all stakeholders involved with the issue. Documentation is critical in many courts in

increasing the chances of successfully terminating a teacher who has committed an act of immorality. The teacher must be given an opportunity, known as due process, to respond to the charges; including written or verbal notification of the concern and a hearing. It is critical that school leaders understand what conduct constitutes immorality and if the teacher has violated board policy and state statute, thus, being well versed on the school board policy and state administrative code is critical. A small number of state statutes still retain a moral exemplar standard for educators, while others have moved towards the nexus standard where there need to be a connection between the misconduct and teacher's performance.

If the misconduct is deemed remediable, then school leaders have an obligation to assist the educator in making a concerted effort to correct the deficiencies. In remediation cases, the ultimate goal is to improve the teaching and learning environment. However, it is noted that not all immoral acts can be remediated. Some acts are totally shocking to the conscience and the only proper resolution is termination.

Accepting the responsibility of being an effective school leader is not an easy task. School leaders have a moral obligation to the students and school community to provide the best learning environment that results in the entire school community, including all stakeholders, having trust and respect for the noble profession of public education.

Guiding Principles

The following ten principles were developed by the researcher from the cases included in this study. The themes reflect legal standards related to the dismissal of K-12 teachers for immorality. Themes of the principles were reflective of conclusions drawn from the analysis of

the case briefs. School and district-level administrators as well as school board attorneys may refer to these principles when faced with dismissing a teacher for immorality.

1. School boards must understand that any evidence presented must be substantial, relevant to establish the alleged facts, developed in a constitutionally approved way, documented, and limited to charges made. The evidence should demonstrate that the misconduct has an adverse effect on the teaching and learning environment (*Board of Education Long Beach v. Jack M.*, 1977; *Baker v. School Board of Marion County*, 1984; *Madril v. School District No. 11, El Paso County*, 1985; *Hawzipta v. Independent School No. I-004 of Noble County*, 2000).

2. Courts have used two legal tests to determine whether teachers should be dismissed due to immoral acts: moral exemplar and nexus standard. The selection of which standard to apply depends on specific state statutes. The exemplar standard holds that teachers are role models because of the special role that they play in society. The nexus concept is premised on the professional autonomy and requires that the school board has evidence that the immoral act has a direct negative impact on teacher's job performance (*McBroom v. Board of Education*, 1986; *Board of Education of Hopkins County v. Wood*, 1986; *In re Thomas*, 1996).

3. Teachers are entitled to due process whenever their property or liberty interests are involved. If it is determined that a probationary or tenured employee has committed an immoral act that justifies termination based on state statute, it is imperative that the employee be granted the appropriate procedural due process rights. For tenured employees, these rights include liberty and property rights (*Cochran v. Chidester School District of Ouchita County*, 1978; *Tuffli v. Governing Board*, 1994; *James v. Trumbull County Board of Education*, 1995).

4. School boards do not have the authority to infringe upon employees' privacy rights or conduct outside of the work place, unless the misconduct is a criminal act or adversely affects

the employee's job performance. The disciplining of a teacher for immorality requires proof of the immoral act and that the immorality has a nexus or connection to the misconduct and it clearly impacts the teacher's effectiveness to instruct students (*Thompson v. Southwest School District*, 1980; *Golden v. Board of Education of Harrison*, 1981; *Rogliano v. Fayette County Board of Education*, 1986; *Woo v. Putnam*, 1998).

5. School boards should establish clear written policies that delineate and prohibit inappropriate relationships and conduct with students (*Ross v. Springfield School District, No. 19*, 1986; *Everett Area School District v. Ault*, 1988; *Youngman v. Doerhoff*, 1994; *Board of Education of East Hampton School District v. Yusko*, 2000; *Fort Wayne Education Association v. Fort Wayne Community Schools*, 2001; *Peaster Independent School District v. Glodfelty*, 2001).

6. School boards should develop and adopt clear policies regarding appropriate use of discipline strategies to correct student misconduct (*Mott v. Endicott School District*, 1986; *James v. Trumbull County Board of Education*, 1995).

7. School boards need to mandate that all of their employees receive professional development and an understanding of what constitutes employee misconduct, particularly as it relates to teacher-student relationships. A handbook with specific guidelines should be developed, published, and reviewed with each employee on an annual basis (*Barcheski v. Board of Education of Grand Rapids Public Schools*, 1987; *Board of Education of Sparta Community Unit School District No. 140 v. State Board of Education*, 1991; *Governing Board of ABC Unified School District v. Harr*, 1994; *Baltrip v. Norris*, 2000).

Table 17

Misconduct that Constitutes Grounds for Dismissal on Immorality

1. Sexual Improprieties with Students	11. Breach of contract
2. Violation of Alcohol and Illegal Drug Use School Policy	12. Conviction of a criminal act
3. Theft	13. Embezzlement
4. Dishonesty	14. Violation of district's weapon policy
5. Grand Larceny	15. Lying about absences
6. Inappropriate use of Computer and Internet Access	16. Inappropriate comments to students or co-workers
7. Violation of school district's corporal punishment policy	17. Inappropriate conversations with students
8. Homosexual solicitation	18. Willful disregard of district's policy and directives from superiors
9. Violation of school district's sexual harassment policy	
10. Use of vulgarity or profanity	

8. School boards should ensure a proper check-and-balance system is in place for documentation when there is an allegation of employee misconduct to avoid the loss of the paperwork. More than one person should be assigned the responsibility of receiving and screening complaints. The misconduct should be addressed in a timely manner. Proper documentation of the alleged misconduct should be maintained in the local school as well as the district-level personnel records. The documentation should include all of the witnesses' statements (*Leban v. Orleans Parish School Board, 2007*).

9. All allegations of employee misconduct with a student should be investigated in a timely manner. Alleged misconduct with a student must always take precedent over any other violation of board policy (i.e., attendance issues; *Leban v. Orleans Parish School Board, 2007*).

10. Dismissal for immorality is not solely limited to physical abuse or sexual misconduct with students. Educators may be terminated for behaviors that are shocking to the conscience.

The use of profanity or acts of theft are behaviors that have resulted in teacher dismissal for immorality (*McBroom v. Board of Education*, 1986; *Fiscus v. Board of School Trustees of Cent. School District*, 1987).

Conclusion

Teacher misconduct is a problem that has gained increasing attention, from the headlines to the courts, in the last decade. Sexual-related and non-sexual related types of misconduct are issues of sufficient magnitude that school boards are continuously faced with on a daily basis. Since the beginning of public education, teachers have been held to a much higher standard than other professions. They have always been considered role models who have a great influence on students. Students pay close attention to teachers' behaviors and many times imitate that behavior; therefore, teachers must be especially mindful of their personal and professional conduct.

From 1977-2007, the courts have dealt with many cases that involve teachers who have been dismissed for immorality. The research indicates that school boards have overwhelmingly been successful in terminating teachers on grounds of immorality. It is important to note that school boards must be very careful in considering the dismissal or otherwise of a teacher accused of immorality. Of the utmost importance is that proper due process procedures must be followed. Additionally there must be substantial evidence and a nexus that demonstrates the effectiveness of the teacher's ability to teach has been impaired. Beyond the concern of avoiding undue litigation, school boards have a fundamental duty to protect students and the school community from teachers who commit immoral acts that adversely affect the teaching and learning

environment. In this regard, school and district-level administrators must ensure the moral fitness and instructional competency of every teacher.

School administrators have a duty to protect the best interest of the students and the school community. When teachers demonstrate immoral actions that are not in alignment with the community standards and have an adverse effect on the learning environment, then school boards have the authority to investigate and act within the boundaries of the state statute. The research in this study established ten guidelines and principles for school and district-level administrators as well as school board attorneys to utilize when faced with the dilemma of teachers who are recommended for dismissal because of immorality. These principles should assist school administrators in identifying trends and need areas for policy development relating to teacher dismissal for misconduct. The guiding principles should also allow school administrators to protect the constitutional rights of teachers as well as district policy and procedures.

Recommendations for Further Study

1. Research should be executed to determine if administrators in a supervisory role understand the laws and regulations as they relate to teacher dismissal for misconduct.
2. Research should be conducted to analyze teacher dismissal for immorality as it relates to gender, race, level of education, and age of the individual educator.
3. Research should be conducted to examine teacher dismissal for immorality as it relates to specific content areas of teaching (i.e., physical education, music, vocational education, and science).

4. Research should be conducted to investigate why there's an increase of teacher dismissal for immorality cases in the past 10 years (from 2000-present).

5. Research should be conducted to determine the similarities and differences in the rulings of courts across the different geographical areas in the United States as they relate to the subject of immorality.

6. Research should be conducted to examine the court cases of postsecondary employees who have been dismissed for immorality.

7. A qualitative research study should be conducted to determine the long-term psychological effect on teachers who have been charged then acquitted of immoral acts.

8. Research should be conducted to determine if states with strong educator misconduct policies have seen a significant decrease in the number of employees who have had alleged misconduct charges.

9. Research should be conducted to examine court cases of non-certificated school employees who have been dismissed for immorality.

10. Research should be conducted to ascertain the percentage of teachers who have been dismissed for immorality in urban, inner-city, rural, and suburban school districts.

Overall, school boards have had a high rate of success with the courts in cases of teacher dismissal for immorality. The majority of the cases won by the teachers were due to a lack of substantial evidence. It is evident from the longitudinal study of court cases over the last 30 years that in order to be successful in court, school boards must adhere to the due process standards and have sufficient evidence to support the alleged misconduct. If implemented properly, these principles will result in a favorable outcome for all stakeholders.

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