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THE LEGAL ASPECTS OF STIGMATIZING TEACHERS IN
NONRENEWAL AND DISMISSAL.

THE UNIVERSITY OF NORTH CAROLINA AT
GREENSBORO, ED.D., 1979

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THE LEGAL ASPECTS OF STIGMATIZING
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AND DISMISSAL

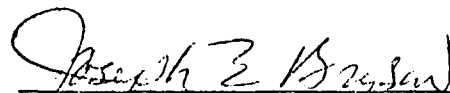
by

Jane K. Carrigan

A Dissertation Submitted to
the Faculty of the Graduate School at
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of the Requirements for the Degree
Doctor of Education

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Approved by


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APPROVAL PAGE

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Teachers are employees of school boards. The employment of teachers has been tempered over the years by various attitudes by the courts as to individual rights relating to employment. During the latter part of the nineteenth century and first half of the twentieth century, teachers were thought to be hired by "grace" of school boards. School boards could, at any time, terminate a teacher for any reason regardless of the teacher's constitutional rights. Maintaining a teaching position was regarded as a privilege instead of a right. This feeling of the courts led to the development of the right-privilege doctrine.

Around the middle of the twentieth century, the attitude of courts changed to view teachers as possessing constitutionally protected interests throughout terms of employment. During the mid-nineteen fifties and sixties the Supreme Court began to rule against the right-privilege doctrine of an earlier period. Court rulings took two distinct approaches. The first one involved the doctrine of unconstitutional conditions while the second spoke to constitutionally protected interests which teachers have in "liberty" and "property" with respect to employment.

As courts changed focus to protecting liberty interests of public employees, teachers became concerned about the possibility of being stigmatized in situations where nonrenewal of a teaching contract or dismissal from employment was the decision of local school boards.

This study: (1) reviews court decisions based on liberty rights of teachers that could possibly lead to stigmatization in nonrenewal and dismissal proceedings; and (2) presents an indepth view of landmark court cases dealing with liberty rights of teachers.

Judicial review indicates that teachers have litigated the liberty interest when nonrenewal or dismissal resulted from: (1) undisclosed reasons, (2) reduction in personnel---financial exigency, (3) mental incapacity, (4) personality and emotional state, (5) racism, (6) incompetency, inadequacy, or neglect of duty, (7) insubordination, (8) dishonesty and immorality, and (9) charges against the teacher are made public.

Teachers are found to suffer stigmatization when nonrenewal or dismissal resulted from: (1) mental incapacities, (2) racism, (3) incompetency, inadequacy or neglect of duty, and (4) insubordination.

Judicial review indicates that administrators and school boards need to have an understanding of two basic concepts of what constitutes a liberty interest for teachers

as designed by Board of Regents v. Roth in relationship to the Fourteenth Amendment. The two basic constitutional imperatives are: (1) reasons given for nonrenewal or dismissal must seriously damage the teacher's standing, reputation, or association in the community; and (2) the publicity given the nonrenewal or dismissal by school officials must foreclose the teacher's future employment opportunities.

The study outlines specific judicial trends that established a violation of liberty for the nonrenewed or dismissed teacher. The study further establishes the best way for administrators and school boards to avoid stigmatizing teachers in nonrenewal and dismissal is to give the teacher no reasons for nonrenewal or dismissal where such reasons are not required by state statutes and/or school board policy. Specific recommendations for administrators and school boards to follow in nonrenewal and dismissal actions are listed.

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CHAPTER I

INTRODUCTION

Teachers are employees of school boards. The employment of teachers has been tempered over the years by various attitudes by the courts as to individual rights relating to employment. During the latter part of the nineteenth century and first half of the twentieth century, teachers were thought to be hired by "grace" of school boards, and employment was conditioned upon and subject to the will of school boards. School boards could, at any time, terminate a teacher for any reason regardless of the teacher's constitutional rights. Maintaining a teaching position was regarded as a privilege instead of a right. This feeling of courts led to development of the right-privilege doctrine.

Around the middle of the twentieth century, the attitude of courts changed to view teachers as possessing constitutionally protected interests throughout terms of employment. During the mid-nineteen fifties and sixties the Supreme Court began to rule against the right-privilege doctrine of an earlier period. Court rulings took two distinct approaches. The first one involved the doctrine of unconstitutional conditions while the second spoke to constitutionally protected interests which teachers have in

"liberty" and "property" with respect to employment. This study deals with courts' attitudes toward liberty interests of teachers.

As courts changed their focus to protecting liberty interests of public employees, teachers became concerned about the possibility of being stigmatized in situations where nonrenewal of a teaching contract or dismissal from employment was the decision of local school boards.

This study: (1) reviews court decisions based on liberty rights of teachers that could possibly lead to stigmatization in nonrenewal and dismissal proceedings; and (2) presents an indepth view of landmark court cases dealing with liberty rights of teachers.

There is a scarcity of published material dealing with the topic of this study. Selected court cases relating to the legal aspects of stigmatizing teachers in nonrenewal and dismissal are reviewed in this study in order that judicial issues can be better interpreted. All cases reviewed fall within the nineteen seventies because this topic has been a recent concern of courts due to the change in courts' attitudes about employment rights of teachers since the middle of the twentieth century.

The overall purpose of this study is to provide teachers, administrators and school boards with appropriate information regarding the legal aspects of stigmatizing

teachers in nonrenewal and dismissal proceedings. This information is necessary in order to fulfill well established obligations to maintain a high level of quality personnel to instruct the children of this nation while, at the same time, not to unduly label or stigmatize the teacher or to violate the teacher's constitutional rights.

Since the question of what constitutes a stigma for the teacher is not easily answered, there is a need to review court cases and literature relating to particular areas where a teacher could be stigmatized in nonrenewal or dismissal proceedings.

STATEMENT OF THE PROBLEM

Administrators and school boards face a specific problem today in renewing or dismissing teachers. This problem is very complex in nature. School boards have to be able to renew or dismiss teachers based on best interests of children, school systems, and the educational process without violating the teachers' constitutional rights. Administrators have to be able to properly identify strengths and weaknesses inherent in individuals as well as those that are a part of situations. Administrators also have to satisfy demands of the public for quality personnel and quality teaching performance. Evaluating teachers is an important part of the school principal's duties. Principals' recommendations will lead to continued

employment or dismissal of a particular teacher based on consenting decisions of superintendents and school boards. Teachers may agree or disagree with evaluations and recommendations of the administration. Teachers are greatly concerned about how individual evaluations and recommendations for employment will affect the ability to obtain jobs in the future.

A disagreement concerning attitudes and evaluations often occurs between administrators and teachers which leads to court action. The judicial process has to determine whether or not the school board has violated the teacher's constitutional rights.

Thus, there is a need for examining legal aspects associated with stigmatizing teachers in nonrenewal and dismissal so administrators and teachers will have appropriate information to use in dealing with this dilemma. Specific recommendations need to be developed for administrators and school boards to use when considering nonrenewal or dismissal. Teachers should be made aware of these recommendations to avoid being put in a position of being subjected to a stigma.

QUESTIONS TO BE ANSWERED

One of the stated purposes of this study is to develop specific legal recommendations for administrators and school boards to use when considering nonrenewal or

dismissal of a teacher to avoid stigmatizing the teacher. Below are listed several key questions which research needs to answer in order for these recommendations to be developed:

1. Under what conditions is a liberty interest challenged when a school board nonrenews or dismisses a teacher?
2. What are the identified categories in which a teacher could possibly suffer stigmatization due to charges and/or lack of charges received in nonrenewal or dismissal proceedings?
3. What should administrators know concerning constitutional rights of teachers before considering nonrenewal or dismissal?
4. Are there any specific trends to be determined from judicial analysis?
5. Based on school board policies and legal precedents, how can administrators and school boards avoid stigmatizing teachers in nonrenewal and dismissal actions?

SCOPE OF THE STUDY

This is a historical study of the legal aspects of stigmatizing teachers in nonrenewal and dismissal. The research identifies specific categories under which:

- (1) teachers have filed suit against school boards on the basis that information or noninformation presented

constitutes a stigma; (2) results of the litigation are reviewed; and (3) recommendations are presented for administrators and school boards to utilize in teacher employment practices.

This study has relevance for nontenured teachers since all cases reviewed involved nontenured teachers. Some of the references in this study pertain to public employees and to employees in higher education. These references are used because the writer feels cases rendered have sufficient and meaningful impact on public school teachers, as courts rule on the complete liberty right issue. Major court cases related to the concept of stigmatizing teachers in nonrenewal and dismissal are reviewed.

METHODS, PROCEDURES, AND SOURCES OF INFORMATION

The basic research technique of this research study was to examine and analyze the available references concerning the legal aspects of stigmatizing teachers in nonrenewal and dismissal in order to determine if a need exists for such research. A search was made of Dissertation Abstracts for related topics. Journal articles related to the topic were located through use of such sources as Reader's Guide to Periodical Literature, Education Index, and the Index to Legal Periodicals.

General research summaries were found in the Encyclopedia of Education Research, various books on school

law, and in a review of related literature that was obtained through a computer search from the Educational Resources Information Center (ERIC).

Federal and state court cases related to the topic were located through the use of the Corpus Juris Secundum, American Jurisprudence, the National Reporter System, and the American Digest System and through the help of the Institute of Government at the University of North Carolina at Chapel Hill.

DEFINITION OF TERMS

Selected terms which are used throughout this study are defined below:

Dismissal. This is the termination for cause of a nontenured teacher's employment during the contractual period and the termination of a tenured teacher's employment at any time.¹

Nonrenewal. This refers to the failure to renew the contract of a teacher who is still in the probationary period of employment, one to whom tenure has not been granted.²

¹Gene S. Jacobsen, David J. Sperry, and Boyd F. Hensen, "The Dismissal and Non-Reemployment of Teachers," Journal of Law Education, 1 (1972): 435-436.

²Ibid.

Tenured teacher. A tenured teacher is a teacher who has gained permanent status in a school district and who can be dismissed only for a specific cause.³

Stigma. A label imposed on a teacher in nonrenewal and dismissal proceedings that will: (1) seriously damage the teacher's standing, reputation, or associations in the community; and/or (2) when publicized will foreclose the teacher's future job opportunities.⁴

Liberty interest. The constitutional right of an individual to contract (and) to engage in any common occupation of life.⁵

Doctrine of unconstitutional conditions. A system of beliefs advocating the prohibition of conditioning employment upon a rule requiring the employee to abstain from the exercise of constitutional rights.⁶

SIGNIFICANCE OF THE STUDY

Justice Oliver Wendell Holmes typified the status of the law of the land relative to constitutional rights of public employees as it existed not only in 1892 but also through the first half of the twentieth century when he

³Ibid.

⁴Board of Regents v. Roth, 408 U.S. 564 (1972).

⁵Board of Regents v. Roth, p. 572.

⁶William W. Van Alstyne, "The Demise of the Right-Privilege Distinction in Constitutional Law," Harvard Law Review, 81 (1968): 1439, 1445-46.

made the following remarks in McAuliffe v. Mayor of New Bedford:

There are few employments for hire in which the servant does not suspend his constitutional right of free speech, as well as idleness, by the implied terms of his contract. The servant cannot complain, as he takes the⁷ employment on the terms which are offered him.

School boards hired teachers under the suspicious assumption that public employment was a privilege and not a right. Under this assumption, school boards could terminate a teacher for any reason regardless of the teacher's constitutional rights. This underlying judicial philosophy led to sustaining nonrenewals and dismissals to which teachers were subjected by school boards.

As courts began to alter judicial philosophy toward teacher employment to that of identifying: (1) conditions that were unconstitutional; and (2) interests of the teacher which were constitutionally protected by the Fourteenth Amendment to the Constitution, the right privilege doctrine perished.

The doctrine of unconstitutional conditions has been established in terms of prohibiting conditioning of enjoyment of a government-connected interest upon a rule

⁷McAuliffe v. Mayor of New Bedford, 155 Mass. 216, 29 N.E. 517 (1892).

requiring one to abstain from the exercise of some rights protected by an express clause in the Constitution.⁸

The concern for liberty established in the Fourteenth Amendment involves: (1) the condition in which a teacher is nonreappointed resulting in serious damage to the person's standing, reputation, or associations in the community, and (2) the reasons for nonrenewal or dismissal are made public by school officials thereby foreclosing the teacher's future job opportunities.⁹

Perhaps the question of stigmatizing teachers is of greater significance now than it has ever been in the past due to several factors.

I. The job market is flooded with teachers of all kinds of abilities, interests and needs relating to teaching and education. This fact makes the initial attainment of a teaching position very difficult. The problem is even worse for teachers who have been judged by administrators and school boards to possess certain undesirable personal qualities, philosophies or inabilities for a teaching position. Teachers are concerned with unjust labeling or stigmatizing without proper cause. Today teachers are very much factually aware that such labeling will narrow or

⁸William W. Van Alstyne, "The Demise of the Right-Privilege Distinction in Constitutional Law," Harvard Law Review, 81 (1968): 1439, 1445-46.

⁹Board of Regents v. Roth, 408 U.S. 564 (1972).

possibly eliminate possibilities of obtaining future employment in a certain field of experiences and training obtained through college and life.

II. Administrators are faced with the realization that, in order to gain greater security, teachers and teacher organizations will continue to play a major role in the development of the law in this area.

III. Administrators and teachers are being held more and more accountable for the progress of the nation's youth. Therefore, an increased effort is being made to attain excellence in the teaching profession.

It is the duty of school principals to evaluate teachers and to serve as instructional leaders. Principals must be knowledgeable of past and pending cases relating to stigmatization so professional leadership can nurture strengths of individual teachers to improve the personal well being of the profession and the educational process. Professional leadership is also necessary to nonrenew or dismiss teachers whose employment is detrimental to the profession and the educational process. Efforts by administrators and school boards to attain teaching excellence through dismissing perceived undesired teachers cannot displace constitutionally protected rights of teachers.

DESIGN OF THE STUDY

The remainder of the study is divided into three major parts. Chapter two reviews literature related to the

topic of teacher employment and dismissal. Moreover, chapter two traces change in attitudes of courts from viewing teachers as employed under the right-privilege doctrine where constitutional rights of teachers were relinquished when contracts were signed to teachers possessing rights guaranteed by the Constitution after employment.

Chapter three includes a discussion of nine categories in which teachers filed suit against school districts on the basis of a violation of liberty rights under the Constitution. The nine categories include: (1) nonrenewal/dismissal for undisclosed reasons, (2) reduction in personnel---financial exigency, (3) personality and emotional state, (4) racism, (5) mental incapacity, (6) incompetency, inadequacy, or neglect of duty, (7) insubordination, (8) dishonesty and immorality, (9) the charges against the teacher are made public.

Chapter four is a discussion of landmark court decisions relating to the nine categories identified in chapter three. The facts of the cases, decisions of courts, and discussions are presented for each category.

Chapter five contains a summary and review of information obtained in chapters two, three and four. Furthermore, the questions asked in the introductory part of the study are reviewed and answered. Finally, a brief

list of recommendations for administrators and school boards to utilize in contemplating nonrenewal and dismissal of teachers is included.

CHAPTER II

REVIEW OF RELATED LITERATURE

Teachers have been subjected to moral and political injustices over a vast number of years. Even as early as 399 B.C. a teacher chose the taste of the deadly hemlock over relinquishing the practices of discourse with students as to the meaning of "justice."¹ Socrates, acknowledged as one of the great teachers of all times, was willing to give up life for maintaining the personal right to instruct students in scholarly discourse, and to involve students in developing the ability to think and decide on a personal basis the purpose of life and learning. The self-sacrifice Socrates made serves as an excellent beginning for the continuing struggle teachers were to confront for a multitude of years to come.

Later in history, Jesus Christ, acknowledged by many as the greatest teacher of all times, suffered persecution and death due to the content and method of lessons shared with the people of Palestine.² Many teachers before and

¹Louise Ropes Loomis, ed., "The Apology," Five Great Dialogues: Plato (New York: Walter J. Black, 1942), pp. 33-60.

²"The New Testament," Good News Bible (New York: American Bible Society, 1976).

after Christ have endured oppression due to activities in public and/or private life. The fate of a teacher's employment has always rested with the employing agency. Employment from year to year was so uncertain teachers in the twelfth century found a need to organize themselves into universities to "protect their rights against the chancellor, the bishop, the king, the town, or any one else who tried to bring them under control."³

Teachers met with further restrictions of individual freedom in the 1800's. The following statement typifies attitudes of society and school boards toward teacher employment:

Not only were the continuing effects of traditional goals, lack of social status, low professional standards, and inadequate economic rewards always present to harass teachers, but also teachers were subjected to the practice of annual election or appointment by school boards. This often led to the policy of hiring and firing in the same year.⁴

Cremin's statement: "Teachers and administrative posts were bought and sold" speaks of how teachers were employed and dismissed at the whims of local school boards in the 1890's.⁵

³Freeman R. Butts, The Education of the West (New York: McGraw-Hill Book Co., 1973), p. 177.

⁴Joseph E. Bryson, "Academic Freedom and Due Process for Public School Teachers," Educational Horizons 54 (Fall 1975): 46.

⁵Lawrence A. Cremin, The Transformation of the School (New York: Random House, Inc., 1960), p. 21.

The buying and selling of teaching positions presented two kinds of problems for schools and communities. Not only were outstanding teachers dismissed, but inferior teachers were often retained because of political or personal ties with school board members or community pressure. "The office of teacher in the average American school," observed Joseph Mayer Rice in 1893, "is perhaps the only one in the world that can be retained indefinitely in spite of the grossest negligence and incompetency."⁶

Cubberly addressed this idea by writing:

It was not an uncommon thing for a board of education, after much talk about the importance of efficient service, to drop twenty to thirty teachers, and then later, when the relatives, friends, and newspapers began a defense of those dropped, to reinstate all those for whom the greatest pressure has been exerted.⁷

This short passage illustrates the awesome power of school boards. Conclusions can be drawn from school boards' actions that exercising power was more important than making professional and educational decisions relating to employment of teachers. Superintendents and principals had little influence on final decisions of school boards.

⁶Ibid., p. 169.

⁷Ellwood P. Cubberly, Public School Administration (New York: Houghton Mifflin Co., 1916), p. 212.

During the early 1900's teachers were still employed on a year-to-year contract. Many injustices were involved in this type of renewal as echoed by Cubberly in 1916, when the yearly employment of teachers was referred to as "the most disgraceful occurrences associated with the administration of public education in our cities."⁸

Cubberly continues with a portrayal of such injustices in the following passage:

Sometimes the first notice a teacher has that her work has not been satisfactory is when she reads in the morning paper that someone else has been elected to the position she has held. Teachers, too, are sometimes dropped over the protest of the principal and the superintendent. More commonly, however, the injustice is the other way, teachers being retained who have been recommended for dismissal by both principal and superintendent, and others being elected whom the superintendent has opposed. In the annual scramble for places, the interests of the children, for whom the school exists, are at times almost forgotten.⁹

Teachers were hired one year only to be terminated the following year. Teachers were rarely retained more than four or five years because of cost to school boards. New inexperienced teachers were willing to work for less money than their experienced colleagues.

Teacher employment was influenced also by the political whims of school boards. As new political factions rose to power in a community, teachers were terminated to make

⁸Ibid., p. 210.

⁹Ibid., p. 211.

room for friends or relatives of the political power elite. Teacher loyalties often led to termination because of political interplay as described in the following selection.

In one month sixty-eight teachers, all of satisfactory rating and recommended by the superintendent for reengagement, were dismissed without notice in one city. In another city seventy-six teachers and principals were dismissed without notice or reasons at a special meeting after the schools had closed in June. In still another, twenty-one teachers were dismissed because they were loyal to the superintendent, whom political influences were seeking to dismiss.¹⁰

John Dewey reported in 1917: "the trial and dismissal of some teachers in New York was likened to the Inquisition; and the New York Evening Post condemned the Board of Education for its action."¹¹ Educators and some community people recognized the continuing dilemma for teachers, but school boards continued to maintain the following attitude:

As a school teacher, he has not the same rights as other citizens to print, publish, or declare his thoughts and opinions. He is no longer at liberty to freely write, speak, or publish.¹²

Teachers were expected to be superior to all other people in a community.¹³ Dismissal came quickly to teachers

¹⁰Edgar W. Knight, Education in the United States (New York: Ginn and Co., 1929), p. 363.

¹¹Edgar W. Knight, Fifty Years of American Education (New York: The Ronald Press Co., 1952), p. 266.

¹²Ibid.

¹³Louis Fisher and David Schimmel, The Civil Rights of Teachers (New York: Harper and Row, 1973), pp. 3-4.

unwilling to accept the revered image so necessary for a public school teacher. Fischer points out that teachers since the Civil War period have been dismissed for drinking, smoking, attendance at the theater, dancing, divorce, marriage, sexual immorality, gossip, keeping late hours, publicity of the teacher's behavior that brought any unfavorable publicity to the school, poor grooming, racism, membership in certain organizations and failure to do assigned and social duties.¹⁴

The prevailing attitudes of proper teacher behavior during the early 1920's was toward celibacy and purity of thought and conduct as clarified in the following excerpt from a teacher's contract:

I promise to take a vital interest in all phases of Sunday School work, donating of my time, service, and money without stint for the uplift and benefit of the community.

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 men except in so far as it may be necessary to stimulate Sunday School work.

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

I promise not to encourage or tolerate the least familiarity on the part of any of my boy pupils.

I promise to sleep at least eight hours a night, to eat carefully, and to take every precaution to keep in the best of health and

¹⁴Ibid.

spirits, in order that I may be better able to render efficient service to my pupils.

I promise to remember that I owe a duty to the townspeople who are paying me my wages, that I owe respect to the school board and the superintendent that hired me, and that I shall consider myself at all times the willing servant of the school board and the townspeople.¹⁵

Teachers continued to seek constitutional rights even though courts continued to rule in favor of school boards in dismissal proceedings. Perhaps the most celebrated case involving a teacher's rights was the Scopes¹⁶ "Monkey Trial" case. In this case, the Supreme Court of Tennessee stated:

The plaintiff...was a teacher in the public schools... He was under contract with the State to work in an institution of the State. He had no right or privilege to serve the State except upon such terms as the State prescribed... In dealing with its own employees engaged upon its work, the State is not hampered by the limitations of...the Fourteenth Amendment to the Constitution of the United States.¹⁷

The judicial attitudes changed very little during the period from 1920 to 1950. Two cases litigated during the 1950's, Bailey v. Richardson¹⁸ and Barsky v. Board of Regents,¹⁹ respectively, supported the waiver of

¹⁵Ibid., pp. 1-2.

¹⁶Scopes v. State of Tennessee, 289 S.W. 363 (1927).

¹⁷Ibid.

¹⁸Bailey v. Richardson, 182 F. 2d (D.D.C. A50), aff'd. 341 U.S. 918 (1951).

¹⁹Barsky v. Board of Regents, 347 U.S. 442 (1954).

constitutional rights on the part of the employee in accepting governmental employment.

In 1951 the Court of Appeals for the District of Columbia ruled in Bailey:

Government employment is subject to many restrictions upon otherwise unrestricted individual rights in respect to activities, property, ownership, etc.²⁰

Three years later the United States Supreme Court sustained the Bailey ruling in Barsky.²¹ In Barsky the Court insisted a person under government employment was not to be accorded protection of the law, including the Fourteenth Amendment, during the employee's term of employment and the employee must be willing to give up certain constitutional rights in exchange for the privilege of government employment.²²

Throughout history, one of the main arguments underlying teachers being treated differently from other employees is that teaching has always been thought of as a noble profession. Teachers have been viewed as part of the community mainstay and not removed from the functioning whole of the micro-society in any neighborhood. The teacher was the school and the school was the teacher. Teachers

²⁰Bailey v. Richardson, p. 918.

²¹Barsky v. Board of Regents, p. 442.

²²Ibid.

have historically been viewed as statuesque citizens representing life and learning in the fullest sense.

The high expectations of teachers is represented in the following:

As a public school teacher, he must exercise his individual right with due consideration and respect to the effect it will have on others, particularly school children and people in his teaching community. Teaching is a privilege extended to the individual by a governmental agency and not a constitutional right.²³

Teachers occupied a contradictory position in society. On the one hand teachers were expected to be almost super-human, while on the other hand they were expected to relinquish constitutional rights that citizens enjoyed. The United States judicial system tended to perpetuate the waiver of constitutional rights of teachers through the nineteenth century as expressed in Justice Holmes' remarks from McAuliffe:

There are few employments for hire in which the servant does not suspend his constitutional rights of free speech, as well as idleness, by the implied terms of his contract. The servant cannot complain, as he takes the employment on terms which are offered him.²⁴

²³Joseph E. Bryson, Legality of Loyalty Oath and Non-oath Requirement for Public School Teachers (Asheville: The Miller Printing Co., 1963) p. v.

²⁴McAuliffe v. Mayor of New Bedford, 155 Mass. 216, 29 N.E. 517 (1892).

Justice Holmes' remarks typify the feeling of courts and communities in America that teaching is a privilege instead of a right. Since teaching was regarded as a privilege instead of a right, the teacher's continued employment was conditioned upon and subject to the will of the school board.

Throughout history and through the 1950's, citizens and courts alike viewed teaching as a privilege and not a right. Teachers were hired by "grace" of school boards. School boards held absolute control over the teacher's actions both in school and out. As such, teachers had no personhood outside the employment role.

It was not until the latter part of the nineteen fifties and sixties that the United States Supreme Court began to erode the "right-privilege" doctrine. The Court's philosophy took two distinct approaches. The first approach involved the doctrine of unconstitutional conditions while the second spoke to constitutionally protected interests which teachers and governmental employees have in "liberty" and "property" concerning employment.²⁵

In 1967 the United States Supreme Court in Keyishian²⁶ substantiated the premise that a teacher's employment may

²⁵William W. Van Alstyne, "The Demise of the Right-Privilege Doctrine in Constitutional Law," Harvard Law Review 81 (1968): 1439, 1445-46.

²⁶Keyishian v. Board of Regents of the University of the State of New York, 385 U.S. 589 (1967).

not be conditioned upon the surrender of constitutional rights:

The constitutional doctrine which has emerged since that decision has rejected its major premise...the theory that public employment which may be denied altogether, may be subjected to any conditions, regardless of how unreasonable, has been uniformly respected...It is too late in the day to doubt that the liberties of freedom and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege.²⁷

Keyishian marked the turning point for teachers in supporting the exercise of constitutionally guaranteed rights for teachers. The Court's action in Keyishian served as the dawn for a new age of litigation in regard to teacher rights.

In Keyishian, three faculty members of New York State University refused to sign, as the University's regulations required, an individual statement certifying nonmembership in the Communist Party or prior communication to the President of the University of individual enjoyment to the Communist Party.²⁸ Keyishian's one-year contract was not renewed because of failure to sign such a certificate.

The United States Supreme Court emphasized the First Amendment rights of teachers in Keyishian by stating:

Mere knowing membership without a specific intent to further the unlawful aims

²⁷Ibid.

²⁸Ibid.

of an organization is not a constitutionally adequate basis for exclusion from such positions as those held by appellant.²⁹

Keyishian abolished the previously held doctrine toward teachers of being "guilty by association." The court firmly stated actions, rather than membership, or evidence indicative of an unlawful intent would be the only basis for disciplining a teacher because of professed or known associations.³⁰

In another case, Russo, a probationary teacher, exercised his First Amendment rights by standing silently at attention during the daily classroom recitation of the pledge of allegiance. Russo's action brought dismissal by the school board.³¹

The Second Circuit Court of Appeals reversed the school board's dismissal on the following grounds:

It is our conclusion that the right to remain silent in the face of an illegitimate demand for speech is as much a part of First Amendment protection as the right to speak out in the face of an illegitimate demand for silence...To compel a person to speak what is not in his mind offends the very principles of tolerance and understanding which for so long have been the foundation of our great land.³²

²⁹Elfbrandt v. Russell, 384 U.S. 11 (1965); Contra, Gardner v. Board of Public Work, 341 U.S. 716 (1951).

³⁰Ibid.

³¹Russo v. Board of Education, 469 F. 2d 628 (2nd Cir. 1972) cert. denied 411 U.S. 932 (1973).

³²Ibid., p. 634.

In the 1957 Morrison³³ case a teacher's homosexual relationship with another teacher was found to bear no relationship to the teacher's fitness to teach and, therefore, could not be grounds for dismissal. The Court's action in Morrison not only supported the privacy of a teacher's out-of-school life; it also supported the right for a teacher to engage in a relationship that is not widely accepted in the mainstream of society.³⁴ Permitting teachers to participate in a homosexual relationship was a far cry from demanding teachers to take a loyalty oath similar to the one exhibited in an earlier part of this chapter.

In the 1967 Finot³⁵ case teachers earned the right to exercise personal discretion in dress. Finot, a teacher, was involuntarily transferred from a regular classroom teaching duty to home teaching for wearing a beard. The Court upheld constitutional rights of the teacher by declaring since the wearing of the beard is an expression of the teacher's personality, it is "symbolic speech" and is therefore protected by the First and Fourteenth Amendment.³⁶

³³Morrison v. State Board of Education, 1 Cal. 3d 214, 82 Cal Rptr. 175 461 p. 2d 375 (1969).

³⁴Ibid.

³⁵Finot v. Pasadena City Board of Education, 58 Cal. Rptr. 520 (1967).

³⁶Ibid.

In recent years, courts have firmly established that teachers are not divested of fundamental constitutional rights of (extramural speech) freedom of speech while outside the classroom. The commanding First Amendment right for teachers' case is Pickering v. Board of Education.³⁷

Pickering, a tenured teacher, attempted to exercise a legitimate right to free expression by writing a letter to a local newspaper which criticized the manner in which the school board and the district school superintendent had handled tax increase proposals in the past.³⁸ The board dismissed Pickering without a hearing upon grounds that publication of the letter was "detrimental to the efficient administration of the schools of the district."³⁹ The Supreme Court again supported the constitutional rights of the teacher by concluding: "irrespective of the fact that some of the factual information contained in the letter was erroneous, the teacher's First Amendment right to freedom of speech was abridged by the board of education."⁴⁰

During the decade of the later sixties and early seventies, teachers began seeking constitutional protection in their private lives as well as their professional lives.

³⁷Pickering v. Board of Education, 391 U.S. 563 (1968).

³⁸Ibid.

³⁹Ibid., p. 564.

⁴⁰Ibid.

The judicial view that a teacher's private activities are private did not arise out of court rulings until 1973. Not only did courts recognize the right to privacy of a teacher's life away from school, but administrative and school board discipline founded upon such activities was declared prohibitive.⁴¹

Fourteenth Amendment

The Fourteenth Amendment, stated below, became a dominant concern of judicial attitudes relating to employment of teachers in the early nineteen seventies.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, property, without due process of law; nor deny to any person within its jurisdiction, the equal protection of the laws.⁴²

The right to liberty and property in relationship to employment served as the basis for litigation resulting from teacher nonrenewal and dismissal beginning in 1971 with the companion cases of Perry v. Sindermann⁴³ and in 1972 Board of Regents v. Roth.⁴⁴

⁴¹Fisher v. Snyder, 476 F. 2d 375 (1973).

⁴²U.S. Const. Amend. XIV, Sec. 1.

⁴³Perry v. Sindermann, 430 F. 2d 939 (5th Cir. 1971).

⁴⁴Board of Regents v. Roth, 408 U.S. 564 (1972).

The Fifth Circuit Court of Appeals firmly established teachers' "property rights" in relationship to employment in Perry.⁴⁵ The Court concluded based on Perry's ability to establish the retainer of an "expectancy" of continued employment, the following rulings would be held: (1) failure to provide Perry a hearing at the time of nonrenewal deprived Perry of a protected "property" interest; and (2) Perry was denied due process of law even though the University had no formal tenure system.⁴⁶

On June 29, 1972, the United States Supreme Court handed down the landmark decisions in Roth and Sindermann. The Supreme Court addressed teachers' rights to both "property" and "liberty" in Roth.⁴⁷

The Roth decision serves as the compelling case for all categories discussed in chapters three and four of this study. Moreover, since Roth is of such great significance to the overall study, an indepth review of the decision will be presented in the remaining portion of this chapter.

David F. Roth was employed in 1968 as an assistant professor at Wisconsin State University, Oshkosh, for a fixed term for the 1968-69 academic year. During such term appointment Roth did not acquire tenure rights to continued

⁴⁵Perry v. Sindermann, p. 939.

⁴⁶Ibid.

⁴⁷Board of Regents v. Roth, p. 564.

employment in a teaching position. Pursuant to Wisconsin statutory law, a University teacher could acquire tenure as a "permanent" employee only after four years of year-to-year employment. Thereafter, a tenured employee could be discharged for cause only upon written notice and pursuant to certain procedures.

In conformity with existing regulations, Roth was advised in February of 1969 of nonretention for the 1969-70 academic year. Roth was not provided either reasons or a hearing with respect to the University's decision for nonretention for the upcoming school year. Thereafter, Roth initiated legal action against the Board of Regents, alleging the University's decision to not rehire him for the 1969-70 academic year was motivated by constitutionally impermissible reasons in violation of his First Amendment rights. Roth further insisted the Board of Regents violated the Fourteenth Amendment due process rights by refusing to accord a hearing on merits of such decision and also by failure to accord a statement setting forth reasons for nonrenewal.⁴⁸

The United States Supreme Court prefaced the remarks in Roth with the observation that requirement of procedural due process applies only to those situations where a deprivation of either a protected "property" or "liberty"

⁴⁸Board of Regents v. Roth, p. 564.

interest occurs. With respect to the range of constitutionally protected interests, the court noted:

Liberty and property are broad and majestic terms. They are among constitutional concepts...purposely left to gather meaning from experience...they related to the whole domain of social and economic fact, and the statesmen who founded this nation knew too well⁴⁹ that only a stagnant society remains unchanged.

In unequivocally renouncing the "right-privilege" dichotomy and in continuing discussion of the range of protected "property" and "liberty" interests, the Court stated:

The Court has fully and finally rejected the wooden distinction between "rights" and "privilege" that once seemed to govern the applicability of procedural due process rights.⁵⁰

The Court, in attempting to define the term "liberty," indicated "liberty" is a "broad and majestic" term denoting the "right of the individual to contract (and) to engage in any common occupation of life."⁵¹ More specifically, the Court held an "interest in liberty would be implicated" where the school board, in terminating the teacher's services: (1) "imposed upon the teacher a stigma or other disability or (2) made a charge against the teacher

⁴⁹Ibid., p. 571.

⁵⁰Ibid.

⁵¹Ibid., p. 572.

that might seriously damage the teacher's standing and associations in the community."⁵²

The Court then proceeded to enumerate principles upon which teachers and other public employees could establish a possession of constitutionally protected "property" interests in governmental employment:

To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it.⁵³

The property issue of Roth will not be discussed at length since it is the "liberty" issue that this study is based upon.

The Supreme Court promulgated two criteria for determining whether or not a protected "liberty" interest will be implicated when a school board discharges a teacher. They are: (1) to ascertain whether or not the termination is founded upon charges which might seriously damage the teacher's standing and associations in the community; and (2) to ascertain whether the school board's public actions in terminating services of a teacher might impose a stigma or other disability foreclosing the

⁵²Ibid., p. 573.

⁵³Ibid., p. 577.

teacher's freedom to take advantage of other employment opportunities.⁵⁴

In summary, teachers have endured all kinds of personal hardships and constitutional injustices through the early 1950's and 60's. Teachers have continued to struggle for constitutional rights afforded to everyone in the United States.

In the past teachers have suffered at the hands of political minded and power hungry school boards who hired and fired vast numbers of teachers at the end of each contract year. In recent years, the judicial system has become a vital artery pumping life blood of constitutional rights and freedoms to teachers.

The concept of teacher employment has continued to be viewed as a privilege. However, courts have established that teachers possess constitutional rights regarding termination of employment. "As a public school teacher, one must exercise these constitutional rights with concern and consideration for the effect that one's personal activities will have on others, particularly on school children."⁵⁵

The remainder of this study concentrates on judicial decisions in relationship to the concept of administrators

⁵⁴Ibid., p. 573.

⁵⁵Joseph E. Bryson, "Academic Freedom and Due Process for Public School Teachers," Educational Horizons 54 (Fall 1975): 47.

and school boards stigmatizing teachers in nonrenewal and dismissal. Teachers pursuing the liberty interest have initiated an increasing amount of litigation against school systems. The decisions rendered in Roth provide the directions for teachers, administrators, and school boards in determining what constitutes a stigma. Judicial decisions regarding stigmatization rely on two major points: (1) whether the reasons for nonrenewal or dismissal will seriously damage the teacher's standing, reputation, or associations in the community; and/or (2) whether the publicity given the nonreappointment by school officials will foreclose the teacher's future employment opportunities.

CHAPTER III

A FRAMEWORK FOR ANALYZING THE
LEGAL ASPECTS OF STIGMATIZING TEACHERS
IN NONRENEWAL AND DISMISSAL

INTRODUCTION

In the literature researched there were no in-depth discussions dealing with the issue of stigmatizing teachers as identified by Roth. In Roth the two main issues necessary for courts to declare stigmatization were; (1) whether the charges made against the teacher seriously damaged the teacher's standing and associations in the community; or (2) whether the publicity given the nonrenewal foreclosed the teacher's freedom to take advantage of other employment opportunities.¹ Each of the aforementioned circumstances forms the basis for a violation of the teacher's liberty interest. The liberty interest is established by the Fourteenth Amendment of the Constitution of the United States.

This chapter focuses on nine major categories which the writer identified in chapter one. The categories are delineated because these are the reasons teachers were given for nonrenewal or dismissal. The nature of litigation often

¹Board of Regents v. Roth, 408 U.S. 564 (1972).

involves more than one category. For example, a school district may insist the reason for nonrenewal is incompetency. However, the teacher may allege, on the other hand, that the real reason for nonrenewal was racial discrimination.² In reviewing judicial decisions described above, the writer covers pertinent allegations and presents the courts' findings.

The primary focus in all categories, however, will be whether reasons for nonrenewal or dismissal presented by school boards constituted a stigma for the teacher. Definitions of individual categories are generally recognized in broad terms because in several of the categories, i.e., immorality, the definition of the term itself must be decided through litigation. Therefore, the discussion of actual definitions emerging through litigation must be delayed for another researcher and another time. These issues are simply outside the scope of this study.

Forty-four cases have been litigated concerning teacher stigma and each case is umbilically attached to Roth concerning what constitutes a stigma and a liberty interest on part of the teacher. This chapter follows natural sub-headings aiding the flow of discussion. Landmark cases are discussed in greater detail in chapter four.

²Griffin v. Lancaster, 400 F. Supp. 421 (W.D. LA. 1975).

UNDISCLOSED REASONS

In teacher litigation concerning nonrenewal or dismissal for undisclosed reasons, the most crucial fact is whether teacher stigmatization was due to the school board's actions. Such circumstances as: (1) whether information was released to a third party; or (2) whether information relating to the teacher was made public are central issues. For example, in Burdeau v. Trustees of the California State Colleges,³ the Ninth Circuit Court of Appeals found plaintiff's "no reason" nonretention did not constitute a liberty interest. Mere proof that Burdeau's record of nonretention in one job, taken alone, might make the teacher somewhat less attractive for other employers would hardly establish the kind of foreclosure of opportunities amounting to a deprivation of liberty.⁴

In Buhr v. Buffalo Public School District No. 38⁵ the confidentiality issue in handling information relating to the nonrenewal of a teacher is again emphasized. In this case the School Board's decision to nonrenew Buhr included no public stated reason for nonrenewal. Buhr pursued an

³Burdeau v. Trustees of California State Colleges, 507 F. 2d 770 (1974).

⁴Ibid.

⁵Buhr. v. Buffalo Public School District No. 38, 509 F. 1196 (1974).

explanation for nonrenewal and it was only at Buhr's request that the School Board disclosed, in a private hearing, reasons to Buhr. The reasons for nonrenewal were never publicized. Therefore, the Eighth Circuit Court of Appeals found the teacher's liberty interests were not violated.⁶

The Federal District Court of Montana in Cookson v. Lewistown School District No. 1⁷ again decided in favor of the School Board. The Court found no violation of liberty claim because reasons given to Cookson for failure to rehire were not publicized or put on record.⁸ The school superintendent indicated to the teacher that reasons for nonrenewal were: (1) illness during the school year; (2) the teacher's age; and (3) unsuccessful teaching experiences.⁹

Likewise, in Johnson v. Fraley,¹⁰ the dissenting opinion maintained "Mere proof, for example, that a teacher's nonretention in one job taken alone, might make the teacher less attractive to some other employers would hardly establish the kind of foreclosure of opportunities amounting to a deprivation of liberty." This opinion was later

⁶Ibid.

⁷Cookson v. Lewistown School District No. 1, 351 F. Supp. 983 (1972).

⁸Ibid.

⁹Ibid., p. 986.

¹⁰Johnson v. Fraley, 470 F. 2d 179 (1972).

supported by the Fourth Circuit Court of Appeals in deciding on violation of the liberty interest. Johnson was remanded to the lower court to determine violation of liberty.¹¹

REDUCTION IN PERSONNEL---FINANCIAL EXIGENCY

As school boards are faced with declining enrollments and decreasing funds, the importance of avoiding stigmatizing teachers in staff reduction is increasing. All cases included for purposes of discussion in this section are related to another category in this study. Teachers alleged reasons for nonrenewal or dismissal were other than reduction in personnel. Each teacher had other dominant characteristics that were a part of the personnel file which the teacher felt influenced the school board's decision. However, each case was litigated as a result of nonrenewal based on a reduction in personnel.

In Phillippe v. Clinton-Prarie School Corporation,¹² the United States District Court of Indiana ruled there was no damage to professional reputation on the part of teachers

¹¹Ibid., p. 185.

¹²Phillippe v. Clinton-Prarie School Corp., 394 F. Supp. 316 (1975).

filing suit due to nonrenewal relating to reduction in personnel.¹³ In this particular case two plaintiffs alleged nonrenewal was based on activities involving teachers' association and another plaintiff alleged nonrenewal was related to: (1) maternity leave; (2) pregnancy; or (3) already having children. These allegations were struck down by the Court.¹⁴

In Harkless v. Sweeny Independent School District of Sweeny, Texas¹⁵ teachers alleged real reasons for nonrenewal were racial even though the school board's nonrenewal actions were based on reduction in personnel. The United States District Court of Texas maintained that black teachers were not rehired when previously all black and all white schools were integrated. The school board's decision to not rehire black teachers did not harm reputations or interfere with pursuits of black teachers' careers.¹⁶

A similar issue was presented in Kelly v. West Baton Rouge Parish School Board.¹⁷ In this case the Fifth Circuit Court of Appeals reversed the decision of the lower court

¹³Ibid.

¹⁴Ibid.

¹⁵Harkless v. Sweeny Independent School District of Sweeny, Texas, 388 F. Supp. 738 (1975).

¹⁶Ibid.

¹⁷Kelly v. West Baton Rouge Parish School Board, 517 F. 2d 194 (1975).

and ordered teachers reappointed to teaching positions. The School Board had not hired the teachers involved in Kelly to fill positions vacated in the system after their dismissal.¹⁸ The Court found no violation of a liberty interest. However, the teachers alleged the true reason for dismissal was racially motivated. The Court insisted teachers' allegations were false.¹⁹

In another case, Collins v. Wolfson,²⁰ seven college teachers were nonrenewed due to reduction in personnel. This case has pertinence to public school teachers because procedures followed by Miami-Dade Community College Board of Trustees are very similar to established staff reduction procedures followed by many school boards. The Fifth Circuit Court of Appeals mooted the case for two teachers because they had both been reemployed by Miami-Dade pursuant to the college's policy of granting priority in filling subsequent vacancies with faculty members who had been nonrenewed because of staff reduction. The teachers alleged dismissal resulted from unfavorable stigmatizing information in their personnel files. None of the teachers was found to have a violation of liberty.²¹

¹⁸Ibid.

¹⁹Ibid.

²⁰Collins v. Wolfson, 498 F. 2d 1100 (1974).

²¹Ibid.

The United States District Court of Texas supported the school district again in Davis v. Winters Independent School District²² where staff reduction constituted reasons for nonrenewal. The teacher alleged reasons for nonrenewal were due to: (1) activities in local classroom teachers' association; and (2) administering corporal punishment to the school superintendent's son, and to the niece of a school board member. The Court found no validation for teacher's claim and found no violation of the liberty interest.²³

MENTAL INCAPACITY

In dealing with the dismissal question and/or non-renewal due to mental incapacity, courts have unanimously supported the teacher's claim of a denial of the liberty interest. The Ninth Circuit Court of Appeals ruled in Stewart v. Pearce²⁴ the dean's order for Stewart to report for a psychiatric examination implied a mental unfitness for the job.²⁵ Moreover, the dean's order created a "stigma, an official branding" of Stewart. The Court further insisted that Stewart should not have been

²²Davis v. Winters Independent School District, 350 F. Supp. 1065 (1973).

²³Ibid.

²⁴Stewart v. Pearce, 481 F. 2d 1031 (1973).

²⁵Ibid.

placed in a lower personnel position receiving same compensation without prior notice and a proper hearing. The Court took this action because reasons for transfer did impose a stigma and would foreclose the possibility of obtaining employment at a later date.²⁶

The United States Supreme Court in Codd v. Velger²⁷ handed down a major mental stigmatizing decision. Even though this case is outside public education it is applicable to education because of the serious legal directive. Velger, a city policeman, was dismissed without a hearing of reasons. Velger insisted he was dismissed because of stigmatizing material in his personnel file. The Supreme Court maintained that Velger was not denied liberty because: (1) the charges against Velger were not false; (2) Velger gave written permission for information in this personnel file to be released to a future employer; (3) Velger's former employer did not make public dismissal reasons.²⁸

PERSONALITY AND EMOTIONAL STATE

In litigation concerning nonrenewal or dismissal relating to teachers' personality and emotional condition, courts have unanimously ruled that information placed in

²⁶Ibid.

²⁷Codd v. Velger, 429 U.S. 624 (1977).

²⁸Ibid.

personnel files or presented as part of the principal's plea for recommendation for nonrenewal did not constitute a deprivation of liberty. For example, in Gray v. Union County Intermediate Education District²⁹ the Ninth Circuit Court of Appeals maintained a letter from a former director of special education presented at a board hearing that charged the teacher with insubordination, incompetence, hostility toward authority, and aggressive behavior did not indicate serious charges. However, the teacher may have problems in relating to some people. The Court further stated personality differences or difficulty in getting along with others are simply not the kinds of accusations which warrant a hearing, as established in Roth.³⁰

The Seventh Circuit Court of Appeals in Lipp v. Board of Education of the City of Chicago³¹ insisted that a principal's report of a teacher's: (1) having a negative attitude towards the school as an institution; and (2) being ineffective with his pupils "because of his extreme anti-establishment obsession" were not sufficient charges to constitute a stigma on the teacher's part.³²

²⁹Gray v. Union County Intermediate Education District, 520 F. 2d 803 (1975).

³⁰Ibid., p. 806.

³¹Lipp v. Board of Education of the City of Chicago, 470 F. 2d 802 (1972).

³²Ibid.

Furthermore, the United States District Court of Minnesota maintained in Ferris v. Special School District No. 1³³ that nonrenewing a teacher for being "defensive," "rude," "argumentative," and "sullen" and suggesting that the teacher should "seek a physician to evaluate her well being" cannot be considered serious charges. Therefore, the Court found no violation of liberty.³⁴

The United States District Court of Texas in Burnaman v. Bay City Independent School District³⁵ insisted the school board's nonrenewal reasons did not violate the teacher's liberty interest. In this situation specific modifiers were not written in the teacher's personnel file or delivered orally to the Board. Nonrenewal was recommended based on the principal's sudden unfavorable evaluation after nine years of favorable evaluations.³⁶ Moreover, the superintendent failed to follow school board personnel policies. Burnaman is included in this category because the Court determined the Board had hired the new superintendent in Bay City School District with explicit instructions to "shake up" the system and therefore tended to "rubber stamp"

³³Ferris v. Special School District No. 1, 367 F. Supp. 459 (1973).

³⁴Ibid.

³⁵Burnaman v. Bay City Independent School District, 445 F. Supp. 927 (1978).

³⁶Ibid., p. 935.

recommendations of the superintendent relating to personnel matters.³⁷ The Court insisted the School Board maintained little objectivity due to existing situations in the school system.³⁸ Recommendations for appointments and dismissals were firmly attached to personality factors between the superintendent and newly appointed high school principal. The Court decided Burnaman had been wrongfully dismissed due to the above conditions.

RACISM

Wellner v. Minnesota State Junior College Board³⁹

exemplifies the question of racism as a stigmatizing label placed on teachers. In this case the Eighth Circuit Court of Appeals ruled in favor of the teacher by holding:

(1) there was ample evidence to support finding that presence of serious racist charges against the teacher was principle cause of nonreappointment; (2) there was a deprivation of liberty; (3) the teacher was entitled to receive back pay; and (5) all written matter indicating bias or prejudice toward blacks should be expunged from the teacher's record.⁴⁰

³⁷Ibid., p. 939.

³⁸Ibid., p. 931.

³⁹Wellner v. Minnesota State Junior College Board, 487 F. 2d 153 (1973).

⁴⁰Ibid.

INCOMPETENCY, INADEQUACY, NEGLECT OF DUTY

As the job market continues to overflow with teacher applicants of every description, administrators and school boards are more likely to be intolerant of incompetency in teaching staffs. When administrators and school boards move to nonrenew or dismiss teachers on grounds of incompetency, the teacher is inclined to initiate litigation since the label "incompetent" harbors derogatory implications of job performance and limits potentiality for future employment.

The Seventh Circuit Court of Appeals in Jeffries v. Turkey Run Consolidated School District⁴¹ found no violation of the liberty interest where the teacher was dismissed for neglect of duty. The Court's decision was based on the teacher's failure to state a liberty claim.⁴²

Likewise, the Tenth Circuit Court of Appeals in Weathers v. West Yuma County School District R-J-1⁴³ found no violation of liberty rights in relationship to foreclosure of future employment opportunities. The reasons for the teacher's nonrenewal rested in charges of incompetency which when communicated would make applicant "less attractive"

⁴¹Jeffries v. Turkey Run Consolidated School District, 492 F. 2d 1 (1974).

⁴²Ibid.

⁴³Weathers v. West Yuma County School District R-J-1, 530 F. 2d 1335 (1976).

to future employers but was not sufficient to constitute a stigma. Neither did the fact that teacher made two unsuccessful attempts to secure employment establish sufficient evidence to substantiate a foreclosure of employment opportunities.⁴⁴

In another case, Jablon v. Trustees of the California State Colleges,⁴⁵ the Ninth Circuit Court of Appeals reversed the lower court's decision by stating nonrenewal of untenured state college teacher due to inadequacy as an overall teacher and scholar did not impose a stigma. However, the nonretention could reduce future job opportunities.⁴⁶

In another incompetency stigmatizing case, the Fifth Circuit Court of Appeals in La Borde v. Franklin Parish School Board⁴⁷ found that a nontenured teacher did not have a right to a hearing prior to board's decision to nonrenew. The Court's decision was based on the theory that the teacher was not stigmatized since: (1) the school board's reasons for nonrenewal of contract were not serious and

⁴⁴Ibid.

⁴⁵Jablon v. Trustees of the California State College, 482 F. 2d 997 (1973).

⁴⁶Ibid.

⁴⁷La Borde v. Franklin Parish School Board, 510 F. 2d 590 (1975).

merely reflected dissatisfaction with teaching methods and classroom conduct; (2) school officials made none of the charges public; and (3) there was only brief mention in local newspapers that teacher's contract had not been renewed.⁴⁸

The degree of teaching inadequacy is a deciding factor in stigmatization. The Eighth Circuit Court of Appeals in Brouillette v. Board of Directors of Merged Area IX, Alias Eastern Iowa Community College,⁴⁹ maintained where nonrenewal is based on charges that are relatively minor such as tardiness, inability to maintain order, etc., such charges are not sufficient to seriously impair ability to obtain future employment.⁵⁰

The United States District Court of Illinois in Miller v. School District No. 167, Cook County, Illinois⁵¹ found no deprivation of liberty when the teacher was nonrenewed due to charges relating to inadequacy. The Court maintained reasons given by the School Board for not issuing a contract for the succeeding year were not of a nature that might

⁴⁸Ibid.

⁴⁹Brouillette v. Board of Directors of Merged Area IX, Alias Eastern Iowa Community College, 519 F. 2d 126 (1975).

⁵⁰Ibid.

⁵¹Miller v. School District Number 167, Cook County, Illinois, 354 F. Supp. 922 (1973).

seriously damage the teacher's standing in the community or foreclose future employment opportunities.⁵²

Similarly, the Supreme Court of Minnesota in Setty v. Minnesota State College Board⁵³ maintained a charge of having difficulty in relating to students does not create a stigma.⁵⁴

In another case, charges presented in Coen v. Boulder Valley School District No. RE-2, Colorado⁵⁵ of minimal intensity such as inability or unwillingness to put into effect the methods and techniques of a federally funded program were not charges that might seriously damage the teacher's standing in the community.⁵⁶

In another case, Hajduk v. Vocational Technical and Adult Education District No. 13,⁵⁷ the United States District Court of Wisconsin insisted charges such as: (1) failure to meet the required standards of preparation for class; (2) failure to meet the required standard of class control and discipline; (3) failure to meet required

⁵²Ibid.

⁵³Setty v. Minnesota State College Board, 235 N.W. 2d 594 (1975).

⁵⁴Ibid.

⁵⁵Coen v. Boulder Valley School District No. RE-2, Colorado, 402 F. Supp. 1335 (1975).

⁵⁶Ibid.

⁵⁷Hajduk v. Vocational Technical and Adult Education District No. 13, 356 F. Supp. 35 (1973).

standards of articulation of presentation of course materials; (4) failure to meet the required standard of community involvement; etc., were not serious enough to impose a stigma.⁵⁸

Even though the teacher was nonrenewed due to incompetency in Fuller v. Laurens County School District No. 56,⁵⁹ Fuller alleged violation of liberty due to one of the principal's charges for nonrenewal. The principal stated in Fuller's termination letter that she had given the school on three occasions checks which were not honored by the bank because of insufficient funds. The Fourth Circuit Court of Appeals insisted the teacher's allegations were not sufficient to find a violation of liberty since reasons for nonrenewal were not made public by school officials.⁶⁰

The next five cases involve teachers' alleging racial reasons for school boards' actions to nonrenew based on incompetency. For example, in Griffin v. Lancaster⁶¹ the United States District Court of Louisiana maintained that the school board's failure to rehire a nontenured teacher because of alleged inability to maintain classroom

⁵⁸ Ibid.

⁵⁹ Fuller v. Laurens County School District No. 56, 563 F. 2d 137 (1977).

⁶⁰ Ibid.

⁶¹ Griffin v. Lancaster, 400 F. Supp. 421 (1975).

discipline was not serious enough to constitute a deprivation of liberty. Also, the School Board did not, in any way, publicize the teacher's shortcomings in the classroom. Griffin alleged nonretention was based on racial discrimination rather than on grounds of incompetency. The District Court found no basis for racial discrimination.⁶²

The Eighth Circuit Court of Appeals in Clark v. Mann⁶³ insisted where reasons for nonrenewal became public information through the teachers' request for public hearings, there is no violation of liberty. Also, no derogatory reasons were incorporated into any record which would be available to prospective employers which could damage plaintiffs' chances for future employment.⁶⁴ Teachers alleged racial discrimination was the cause for nonrenewal. The Court found no substantiation for this allegation.⁶⁵

In Vance v. Chester County Board of School Trustees⁶⁶ the teacher was found to have no deprivation of liberty. The Fourth Circuit Court of Appeals upheld the lower court's rulings by maintaining the teacher's reputation had not been

⁶²Ibid.

⁶³Clark v. Mann, 562 F. 2d 1104 (1977).

⁶⁴Ibid.

⁶⁵Ibid.

⁶⁶Vance v. Chester County Board of Trustees, 504 F. 2d 820 (1974).

damaged by the School Board due to dismissal for incompetency.⁶⁷ The teacher claimed racial reasons for dismissal. However, the Court found no basis for racial discrimination after a full investigation of circumstances surrounding the case.⁶⁸

In Huntley v. Community School Board of Brooklyn, New York School District No. 14⁶⁹ the Second Circuit Court of Appeals maintained charges that the acting school principal failed: (1) to demonstrate necessary quality leadership; (2) to be responsible for rapid deterioration of the school; (3) to provide for basic safety of children and staff; and (4) to exhibit leadership which had created a climate of confusion and discontent were serious enough to constitute a stigma. Also, public announcement of charges by the School Board without fair hearing deprived the principal of liberty. Huntley claimed reasons for non-renewal were racial. The Court found no justification for his claim.⁷⁰

Confidentiality of reasons for nonrenewal is important in deciding stigmatization as illustrated in Ortwein v.

⁶⁷Ibid.

⁶⁸Ibid.

⁶⁹Huntley v. Community School Board of Brooklyn, New York School District No. 14, 543 F. 2d 979 (1976).

⁷⁰Ibid.

Mackey.⁷¹ Ortwein was nonrenewed for reasons of "non-performance." The Fifth Circuit Court of Appeals found no violation of liberty because the university did not make nor was likely to make public reasons underlying the decision not to renew Ortwein's contract.⁷²

INSUBORDINATION

In situations involving teacher nonrenewal or dismissal due to insubordination, courts emphasized the necessity for stigmatizing information to become public knowledge in order to violate a teacher's liberty. In Cato v. Collins⁷³ a five-year experienced nontenured teacher was dismissed for insubordination and violation of state activities association rules. The Eighth Circuit Court of Appeals found no liberty interest violation since reasons for nonrenewal were not publicized by the School Board nor incorporated into any employment record.⁷⁴ The School Board informed Cato of reasons for nonrenewal in a confidential letter and did not publicly announce reasons. Circumstances surrounding and reasons for nonrenewal became public information through public hearings requested by

⁷¹Ortwein v. Mackey, 511 F. 2d 696 (1975).

⁷²Ibid.

⁷³Cato v. Collins, 539 F. 2d 656 (1976).

⁷⁴Ibid.

Cato. The Court insisted disclosure of reasons for nonrenewal at the teacher's request cannot form basis for an interest in liberty.⁷⁵

In Irby v. McGowan,⁷⁶ the United States District Court of Alabama insisted entry in a school board's minutes that a nontenured teacher had been dismissed as noncooperative did not deprive the teacher of liberty. The teacher's standing and associations in the community were not seriously impaired. Neither did the entry impose a stigma or other disability or foreclose freedom to take advantage of other employment opportunities.⁷⁷ The minutes entry about the teacher's being noncooperative was not published by the School Board but by Irby and associates. The Court plainly stated teachers would not be permitted by personal efforts to create a condition for stigmatization. An interesting fact in this case is the School Board accepted Irby's resignation subsequent to the nonrenewal decision. Thereupon, the Court ordered that the entry in the School Board minutes concerning dismissal of the teacher as being noncooperative be expunged from School Board records.⁷⁸

⁷⁵Ibid.

⁷⁶Irby v. McGowan, 380 F. Supp. 1024 (1974).

⁷⁷Ibid.

⁷⁸Ibid.

In cases involving nonrenewal due to insubordination, it is possible for different courts to rule in different ways. For example, in Love v. Sessions,⁷⁹ there were two trial courts before the case reached the Fifth Circuit Court of Appeals. In the first trial court, the plaintiff, a principal, was found to have been stigmatized by reasons defendants presented for nonrenewal. However, in the second trial court determined that the principal did not suffer stigmatization.⁸⁰ The Fifth Circuit Court of Appeals went further to insist that the nontenured faculty member's denial of insubordination and the questionable accuracy of school board's reasons for dismissal were sufficient to identify a factual dispute between the School Board and the teacher. The Court further determined the dispute had a bearing on the teacher's reputation.⁸¹ In addition, the School Board could not use the jury's determination, made four years earlier, that charges concerning the teacher were true, as complete defense for denial of due process rights.⁸²

⁷⁹Love v. Sessions, 568 F. 2d 357 (1978).

⁸⁰Ibid.

⁸¹Ibid., p. 358.

⁸²Ibid.

Importance of confidentiality of reasons for dismissal or nonrenewal is further emphasized in Morris v. The Board of Education of the Laurel School District.⁸³ The United States District Court of Delaware found many interesting facts in Morris. Morris' nonrenewal of contract for persistent failure to obey administrative directives held potential for severely impairing the teacher's ability to pursue her chosen profession.⁸⁴

Administrative practices in Laurel and other Delaware school districts involved contacting a district which had not renewed a teacher and discussing reasons for termination before employing the teacher. The superintendent in Laurel told an inquiring school district of Morris' insubordination.⁸⁵ Morris' charges of violation of liberty were no less substantial because reasons for termination were communicated orally rather than in writing.⁸⁶

The Court found a violation of the liberty interest because: (1) charges by the School Board were invalid; and (2) administrative practice was to communicate reasons for nonrenewal. Morris alleged charges of insubordination were

⁸³Morris v. Board of Education of the Laurel School District, 401 F. Supp. 188 (1975).

⁸⁴Ibid.

⁸⁵Ibid., p. 211.

⁸⁶Ibid.

a mere cover up on the part of the School Board for racial discrimination. The Court found no basis for racial discrimination.⁸⁷

Likewise, in Johnson v. Harvey,⁸⁸ the teacher was non-renewed for failure to follow administrative directives. However, the United States District Court of Texas found there was no evidence presented demonstrating Johnson's ability to find work was impaired by nonrenewal and termination of contract.⁸⁹ Also, there was no stigma attached to nonrenewal or termination which would seriously damage Johnson's standing in the community.⁹⁰

DISHONESTY AND IMMORALITY

As in situations involving nonrenewal due to insubordination, the school board's public actions in presenting nonrenewal reasons for immorality are a determining factor in deciding violation of the teacher's liberty. The Fifth Circuit Court of Appeals in Wood v. the University of Southern Mississippi⁹¹ maintained the University did not violate the teacher's liberty by basing termination partly

⁸⁷Ibid., p. 202.

⁸⁸Johnson v. Harvey, 382 F. Supp. 1043 (1974).

⁸⁹Ibid.

⁹⁰Ibid.

⁹¹Wood v. University of Southern Mississippi, 539 F. 2d 529 (1976).

on a charge of immorality. The immorality charges surfaced during the judicial process. Thus, injury to the teacher's reputation was not the result of any administrative action taken by the University.⁹²

The United States District Court of Illinois in Weissbaum v. Hannon,⁹³ maintained that a public high school teacher's liberty interest in employment was not violated. The school board's decision for the teacher's dismissal was based on the teacher's ownership of and appearance in an obscene magazine. The Court supported the school board's dismissal decision. Even though dismissal charges were serious, they were well substantiated and not publicized by the School Board.⁹⁴

In another case, the United States District Court of New Jersey, in Mozier v. the Board of Education of the Township of Cherry Hill, County of Camden,⁹⁵ found no violation of the liberty interest since stigmatization was not done by the School Board. In this case the teacher was dismissed because of prior conviction of armed robbery and pendency of criminal charges of illegal possession of a

⁹² Ibid.

⁹³ Weissbaum v. Hannon, 439 F. Supp. 869 (1976).

⁹⁴ Ibid.

⁹⁵ Mozier v. Board of Education of Township of Cherry Hill, County of Camden, 450 F. Supp. 742 (1977).

pistol. These charges were discovered after the teacher had been employed by the school system. The teacher was stigmatized by prior conviction and present pending charges of criminal actions. However, the stigmatization did not result from actions of the School Board. While potential employers could learn of these stigmatizing facts from the teacher or the School Board, the stigma was not imposed as a result of the board's actions. Future employers remain free to evaluate the teacher's criminal conviction and arrest record. The utilization of stigmatizing information in dismissal and/or nonrenewal does not violate the teacher's liberty if the stigma has not been imposed by the School Board.⁹⁶

In another case, Gentile v. Wallen,⁹⁷ stigmatization depended on the publicity of reasons for nonrenewal. The Second Circuit Court of Appeals found no violation of a liberty interest. Information relating to actions of Gentile's principal in falsifying teacher evaluation forms did not mention her involvement. Gentile had applied for unemployment benefits. The state unemployment office called the school board treasurer to determine reasons for Gentile's termination. Verification of termination reasons were required before Gentile could gain unemployment benefits.

⁹⁶Ibid.

⁹⁷Gentile v. Wallen, 562 F. 2d 193 (1977).

The Court maintained the School Board supplied reasons for dismissal to the state unemployment office. This action by the School Board involved publication of derogatory information. However, this publication occurred after the teacher's dismissal and the published information was not serious enough to violate the teacher's liberty.⁹⁸

Insufficient information was a problem in Austin v. Board of Education of Georgetown Community Unit School District No. 3 of Vermilion County, Illinois.⁹⁹ The Seventh Circuit Court of Appeals was unable to determine:

(1) whether there was public disclosure of charges against the teacher; (2) whether the teacher's reputation was stigmatized by charges of taking indecent liberties with female students in the classroom; and (3) whether charges were false. The Court remanded the case back to the lower court to provide the teacher with a fair hearing in order to determine a violation of a liberty interest.¹⁰⁰

In another case, the Tenth Circuit Court of Appeals in McGhee v. Draper¹⁰¹ substantiated the need to give the

⁹⁸ Ibid.

⁹⁹ Austin v. Board of Education of Georgetown Community Unit School District No. 3 of Vermilion County, Illinois, 62 F. 2d 446 (1977).

¹⁰⁰ Ibid.

¹⁰¹ McGhee v. Draper, 564 F. 2d 902 (1977).

teacher reasonable notice of charges where a hearing is granted before the School Board. This step is a necessary one where there is a potential stigma or liberty interest infringement.¹⁰² As in Austin, the Tenth Circuit Court of Appeals sent the case back to the trial court to determine whether there had been a violation of the liberty interest.¹⁰³

THE CHARGES ARE MADE PUBLIC AGAINST THE TEACHER

In situations where charges against the teacher are made public, the United States District Court of Alabama insisted in Swilley v. Alexander¹⁰⁴ that public chastisement of a teacher by the superintendent at a school board meeting covered on local radio and television stations does not automatically create a liberty interest.¹⁰⁵ Swilley failed to show the school board had made a charge that would seriously damage his standing and associations in the community or foreclose future employment opportunities.¹⁰⁶ It is clear in this case as in Roth, that burden of proof

¹⁰²Ibid.

¹⁰³Ibid.

¹⁰⁴Swilley v. Alexander, 488 F. Supp. 702 (1978).

¹⁰⁵Ibid.

¹⁰⁶Ibid., p. 707.

of possible stigmatization must be clearly illustrated to courts by the teacher. The school board must respond to non-renewal reasons only if the teacher is able to prove stated reasons are wholly inappropriate or false. Furthermore, the School Board is discouraged by the Court's attitude in Roth to give reasons for nonrenewal of a nontenured teacher.¹⁰⁷ If reasons are given for nonrenewal, the School Board may become involved in litigation.

Summary

In summary, all nine categories discussed illustrated necessary procedures for administrators and school boards to follow in nonrenewal and dismissal actions. Administrators and school boards must know judicial decisions relating to stigmatizing teachers in nonrenewal and dismissal. A stigma is imposed on the teacher when reasons for nonrenewal or dismissal are serious enough to: (1) damage the teacher's standing and associations in the community; and/or (2) when made public foreclose future employment opportunities.

The burden of proof as to the existence or potential for a stigma lies with the teacher. Teachers must prove nonrenewal has led to foreclosure of future employment

¹⁰⁷Board of Regents v. Roth, 408 U.S. 972, 979, 979-980 (1972).

opportunities. Two attempts to secure employment are not sufficient.¹⁰⁸

Any of the nine categories reviewed can be used as reasons for nonrenewal or dismissal and will stand in court as long as administrators and school boards can substantiate: (1) reasons presented are not false; (2) reasons are not made public; and (3) reasons are not serious enough to damage the teachers' standings or associations in the community. Courts insisted in several cases that filing reasons for nonrenewal in teachers' personnel files does not impose a stigma.¹⁰⁹ Neither does recording of reasons for nonrenewal in board minutes.¹¹⁰ In situations where administrative practice is to communicate reasons for nonrenewal a teacher stigma is imposed.¹¹¹ When reasons for nonrenewal are made public in actions prompted by teachers or stigmatization occurs prior to employment, administrators

¹⁰⁸ Weathers v. West Yuma County School District R-J-1, 530 F. 2d 1335 (1976).

¹⁰⁹ Burdeau v. Trustees of California State Colleges, 507 F. 2d 770 (1974); Buhr v. Buffalo Public School District No. 38, 509 F. 2d 1196 (1974); Cato v. Collins, 539 F. 2d 656 (1976).

¹¹⁰ Irby v. McGowan, 380 F. Supp. 1024 (1974).

¹¹¹ Morris v. Board of Education of the Laurel School District, 401 F. Supp. 188 (1975).

and school boards are found to be not guilty in violating liberty interests of teachers.¹¹²

Administrators and school boards should be prepared for counter arguments in recommending nonrenewal or dismissal for reasons of incompetency, undisclosed reasons, and reduction in personnel.¹¹³ In all cases administrators and school boards have to provide sufficient proof of nonrenewal reasons to avoid litigation relating to a violation of the teacher's liberty.

Teachers, administrators and school boards can draw on information presented in this chapter and more specifically in chapter four to identify conditions and actions that lead to violation of the liberty interest.

Specific recommendations as to what administrators and school boards can do to avoid liberty interest litigation is presented in chapter five.

¹¹²Buhr v. Buffalo Public School District No. 38, 509 F. 2d 1196 (1974); Mozier v. Board of Education of Township of Cherry Hill, County of Camden, 450 F. Supp. 742 (1977); Cato v. Collins, 539 F. 2d 656 (1976).

¹¹³Fuller v. Laurens County School District No. 56, 563 F. 2d 137 (1977); Buhr v. Buffalo Public School District No. 38, 509 F. 2d 1196 (1974); Davis v. Winters Independent School District, 350 F. Supp. 1065 (1973).

CHAPTER IV

AN ANALYSIS OF LANDMARK DECISIONS

INTRODUCTION

This chapter presents an in-depth analysis of landmark court decisions in the nine categories outlined in chapter one. An overview is presented for each category and specific facts and judicial decisions are given. A discussion is written for each of the cases presented. The categories and cases are listed below:

1. Undisclosed Reasons

Buhr v. Buffalo Public School District No. 38
(1974)

Johnson v. Fraley (1972)

2. Reduction in Personnel---Financial Exigency

Davis v. Winters Independent School District
(1973)

Phillippe v. Clinton-Prairie School Corporation
(1975)

3. Mental Incapacity

Stewart v. Pearce (1973)

4. Personality and Emotional State

Ferris v. Special School District No. 1 (1973)

Lipp v. Board of Education of the City of Chicago
(1972)

5. Racism

Wellner v. Minnesota State Junior College Board
(1973)

6. Incompetency, Inadequacy, Neglect of Duty

Huntley v. Community School Board of Brooklyn, Etc. (1976)

Weathers v. West Yuma County School District R-J-1 (1976)

Griffin v. Lancaster (1975)

7. Insubordination

Irby v. McGowan (1974)

Morris v. Board of Education of Laurel School District (1975)

8. Immorality

Mozier v. Board of Education of the Township of Cherry Hill, Etc. (1977)

McGhee v. Draper (1977)

9. Charges Are Made Public

Swilley v. Alexander (1978)

The above cases were chosen because these judicial decisions established legal precedents influencing later decisions relating to liberty interest conditions necessary to constitute a stigma. In each case the court presented a discussion of the plaintiff's (the teacher's) liberty interest and ruled on the question of whether charges presented created a stigma.

Undisclosed Reasons

Overview

Neither case presented in this category revealed a liberty interest violation on part of the school board. A significant factor in each case was the practice of the school board to keep reasons for dismissal confidential. The teacher(s) in both instance(s) were simply nonrenewed--no reasons were given. In Buhr, the teacher pursued reasons for nonrenewal and eventually was given specific reasons by the School Board. In Johnson, the teacher did not pursue specific reasons for nonrenewal but merely contested the decision of nonrenewal on the basis of a liberty interest.

Buhr v. Buffalo Public School District No. 38
509 F. 2d 1196 (1974)

Facts

Dolores Buhr was a fifth grade teacher in North Dakota's Buffalo Public School District No. 38. Buhr had been a nontenured teacher for seven years. North Dakota law has no formal tenure system. Each teacher who is employed under a yearly contract may or may not be renewed. Buhr's contract had been renewed each year prior to March, 1973. On this date the School Board notified Buhr of possible nonrenewal. The notification contained no reasons for proposed discharge but indicated, as required by state statutes, that

Buhr could appear at a meeting of the School Board to discuss the matter. At the closed school board meeting Buhr alleged reasons for nonrenewal were accusations by community persons that "she was the cause of certain students' emotional and nervous stress and tension."¹

Nine days later Buhr was notified by letter that the School Board had reached a decision of nonrenewal. Buhr therefore filed suit alleging violations of Fourteenth Amendment rights to both procedural and substantive due process of law.²

Drawing on Roth, Buhr contended nonrenewal for reasons cited in the school board's executive meeting deprived her of a liberty interest foreclosing future employment opportunities in professional education. She insisted being named as cause of certain students' nervous tensions not only imposed a stigma on her professionally but also injured her standing in the small community in which she lived.³

Decision

The Eighth Circuit Court of Appeals affirmed the ruling of the lower court by dismissing the complaint of

¹Buhr v. Buffalo Public School District No. 38, 509 F. 2d 1198 (1974).

²Ibid., p. 1199.

³Ibid.

violations of Fourteenth Amendment rights to both procedural and substantive due process of law. The Court maintained reasons for nonrenewal were never publicized. Moreover, Buhr was confidentially informed of reasons only upon request and then at a closed school board meeting. The confidential nature of charges was guaranteed even during the trial court proceedings. Since Buhr was not a tenured teacher, she had no right to procedural due process and had no established claim to liberty or property.⁴

Discussion

The Court's attitude in Buhr would discourage administrators and school boards from offering reasons for nonrenewal where such reasons are not required by state statutes and/or board policy. The Court in Buhr recognized this possibility by stating:

Without wishing to encourage school boards to retreat behind a veil of silence in such situations, we must conclude that a teacher can constitutionally be dismissed for no reason, he or she can be dismissed for reasons unsupported by factual evidence.⁵

Teachers have no formal tenure under North Dakota law. Therefore, Buhr was not entitled to a listing of reasons or to due process. School boards must follow statutory mandates to determine the need for disclosing reasons for

⁴Ibid.

⁵Ibid., p. 1202.

nonrenewal or dismissal. Certainly, the legal requirement for presenting the teacher with reasons for nonrenewal would preclude the development of litigation based on nonrenewal for undisclosed reasons. In states where teachers may be nonrenewed or dismissed for undisclosed reasons and reasons are not made public, litigation on the part of the teacher will be ineffective in maintaining employment.

Nonrenewal for undisclosed reasons negates the possibility of the teacher's charging that the reasons: (1) are false; (2) damage the teacher's standing in the community; or (3) foreclose future employment. The courts have ruled repeatedly that mere nonretention does not constitute a stigma for teachers.

Johnson v. Fraley, 470 F. 2d 179 (1972)

Facts

Evelyn Johnson had taught in the Russell County school system for twenty-nine years of continuous service. Johnson claimed: (1) violations of both elements of the liberty interest; (2) nonrenewal of her contract after twenty-nine years in the system irreparably damaged her professional reputation; and (3) her ability to earn a livelihood was irreparably impaired since teaching was the only occupation in which she had substantial experience.⁶

⁶Johnson v. Fraley, 470 F. 2d 186 (1972).

Decision

The Fourth Circuit Court of Appeals maintained to sufficiently state a constitutional claim of denial of liberty, a nontenured teacher whose contract had not been renewed must plead: (1) the teacher's "good name, reputation, honor or integrity" has been damaged by, in addition to the nonrenewal, the assignment of reasons for nonrenewal, or (2) the School Board has imposed on the teacher some "stigma" or "other disability," in addition to the nonrenewal, which foreclosed the teacher's freedom to take advantage of other employment opportunities. Johnson had alleged nothing which might harm her reputation or which might interfere with her ability to get another job except the nonrenewal. The dissenting opinion in Johnson maintained Roth specifically required more to invade a liberty interest than Johnson had alleged. "Mere proof, for example, that his record of nonretention in one job, taken alone, might make him somewhat less attractive to some other employers would hardly establish the kind of foreclosure of opportunities amounting to a deprivation of liberty."⁷ The case was remanded to the lower court.

The dissenting opinion in Johnson clearly demonstrated the Fourth Circuit's misinterpretation which the Court

⁷Ibid., p. 182, 185.

corrected in Kota v. Little.⁸ There, a nontenured college professor was nonrenewed after five years of experience on year-to-year contracts. He was denied both a statement of reasons for nonrenewal and a hearing. The Court found no violation of the liberty interest because the teacher failed to show any school action, apart from nonrenewal, which might have harmed his reputation or interfered with pursuit of subsequent employment.⁹ Subsequent cases in the Fourth Circuit have consistently adhered to this rationale.¹⁰ At least two other circuits have taken the same position.¹¹

Discussion

Here again as in Buhr, the teacher had to formulate charges that were beyond mere nonrenewal to substantiate a liberty interest. No charges were registered against Johnson. Johnson was left without a job and with no basis to file for relief in the courts.

⁸Kota v. Little, 473 F. 2d 1 (1973).

⁹Edward L. Winn, III, "Teacher Nonrenewal in North Carolina," Wake Forest Law Review 14 (1978): 754.

¹⁰Vance v. Chester County Board of School Trustees, 504 F. 2d 820, 824 (1974).

¹¹Kelly v. West Baton Rouge Parish School Board, 517 F. 2d 194, 199 (1975); Calvin v. Rupp, 471 F. 2d 1346, 1348 (1973).

The validation of the school board's action of non-renewing Johnson for undisclosed reasons after such a long period of employment rested in the 1968 Act of the Virginia Legislature. This act established a uniform and exclusive procedure for the engagement of teachers. This act further established a teacher must serve a probationary term of three years to achieve tenured status.¹²

At the time of her termination, 1970, Johnson had not served the three-year trial period fixed by the 1968 Act. The statute was amended in 1969 to allow (in the discretion of the local school board) service prior to 1969 to satisfy the probationary term. This option was never exercised in favor of any teacher.¹³ The school system was protected under state statutes for refusing to give the teachers reasons for nonrenewal.

Reduction in Personnel---Financial Exigency

Overview

Davis and Phillippe involve situations in which teachers alleged counter reasons for nonrenewal or dismissal. However, litigation ensued after teachers were dismissed due to a reduction in personnel.

¹²Johnson v. Fraley, 470 F. 2d 179 (1972).

¹³Ibid., p. 180.

Davis v. Winters Independent School District
359 F. Supp. 1065 (1973)

Facts

George Davis was employed by the Winters Independent School District in 1964 to teach subjects in the seventh grade in addition to coaching in the sixth, seventh, and eighth grades. Davis graduated in 1964 from North Texas State University. He was certified to teach social studies in grades seven through twelve.

The state of Texas has an optional continuing contract law available for use by school boards. The Winters Independent School District has never adopted or elected to use the continuing contract method of employment for its classroom teachers. Instead, each classroom teacher is employed by the Winters District for a one-year term commencing in August and ending the following May.¹⁴

Davis was employed by the Winters School District as a classroom teacher from the summer of 1964 through May of 1971. His contract was not renewed for the 1971-72 school year.¹⁵

In the late fall of 1970 and the early part of 1971, the superintendent became aware that declining enrollment of

¹⁴Davis v. Winters Independent School District, 359 F Supp. 1065 (1973).

¹⁵Ibid., p. 1066.

students in the school district would probably necessitate reduction in the number of classroom teachers from 27 to perhaps as low as 24 in the grades of kindergarten through grade eight. The declining enrollment in the school district had been present for the last five years as indicated by the average daily attendance. Up until the time of Davis' dismissal, the reduction in staff due to declining enrollment had been accomplished by normal resignations and retirements.

When it became evident to the superintendent that he would have to initiate staff reduction procedures, he advised the teachers as a body of this possibility and urged those who intended to resign or retire to advise him as soon as possible. The superintendent wished to inform any teacher who might not be renewed of this fact as quickly as possible.

Davis was teaching six sections of social studies in one of the grades the superintendent identified as being affected by staff reduction. Davis was certified to teach social studies only. Seven other teachers in his same grade level section were qualified to teach social studies and some other area.¹⁶

The superintendent met with Davis in the principal's office at the elementary school in February, 1971, and told

¹⁶Ibid., p. 1067.

him the reasons he was selected for nonrenewal and the reasons behind the need to reduce staff.¹⁷

Davis learned that another teacher in the social studies department would be retiring and told the superintendent. The retiring teacher was also certified in math and was replaced by a math teacher. Realizing the situation to be almost hopeless, Davis visited all but one member of the School Board soliciting their support for the renewal of his contract for the following year. Davis then proceeded to request permission to appear before the School Board. His request was granted, and he was allowed to state anything he wished with respect to his position. Neither Davis nor the School Board asked any questions. The School Board voted later during the meeting to nonrenew Davis' contract.

After the school board's action, Davis alleged his nonrenewal came about because of: (1) his activities in the local classroom teachers' association; and (2) because he had administered corporal punishment to the son of the superintendent and to the niece of one of the school board members. The School Board denied these charges and reaffirmed the reasons presented earlier by the superintendent.

¹⁷Ibid., p. 1067.

The Court found the superintendent had contacted Davis about bruising his son's legs using corporal punishment which was a violation of school board policy. However, the Court maintained Davis was not dismissed because of his actions. The Court's decision was based on another teacher's being renewed after administering similar punishment to the superintendent's son.¹⁸

Davis had also been consulted by the superintendent, principal and the parents of the young girl. The school board member, the girl's uncle, testified he was not aware of this incident when he voted on nonrenewal.

The evidence was also uncontradicted concerning Davis' involvement with the local teachers' association in its relationship with the School Board. The Court found Davis' nonrenewal was based on the school district's declining average daily attendance and Davis was the most logical one to be selected because of his certification in only one field of teaching.¹⁹

Decision

The United States District Court of Texas maintained the school district followed its own policy and procedures and afforded the teacher rights he had under the law.²⁰

¹⁸Ibid., p. 1068.

¹⁹Ibid.

²⁰Ibid.

The facts further showed the plaintiff made applications to various neighboring school districts for employment but was unable to secure employment. Davis stated he had an opportunity to go before one board and he felt positive he could have gotten a job. Davis' testimony was an indication nothing had been done by the school district to reflect on his professional reputation or moral character to foreclose future employment.²¹

The uncontradicted evidence of all witnesses in Davis established the teacher's competency and efficiency. There was no stigma imposed by the school board's actions in not renewing the teacher's contract that foreclosed his freedom to take advantage of other employment opportunities.²²

Discussion

The superintendent exercised good professional and personal judgment in dealing with the complicated problem of reducing staff. Even though discussion of the case did not indicate whether or not the school district had devised a procedure for staff reduction, the superintendent formulated his decisions and subsequent actions on logical procedures.

²¹Ibid.

²²Ibid., p. 1070.

Davis' applying to other systems and feeling positive about the possibility of employment in at least one system provided further evidence to the Court that nonrenewal did not foreclose future job opportunities. At no time during court proceedings did the school district allege any other reasons for Davis' nonrenewal except staff reduction. The leadership and actions of the superintendent were a decisive factor in guiding the school district away from a violation of the teacher's liberty interest.

Phillippe v. Clinton-Prarie School Corporation

394 F. Supp. 316 (1975)

Facts

This case involved three teachers who were without tenure under the Indiana law. Teachers had a contractual entitlement, either express or implied, to future employment. The teachers' principle allegation was the denial of constitutional rights under the First and Fourteenth Amendments. Phillippe was nonrenewed because the School Board decided to combine the position of guidance and teaching to make a position which was half-time teaching and half-time guidance in order to reduce staff and costs. Smith was nonrenewed because of administrators' concerns for the lack of quality instruction students were receiving in the math department. Behmer was nonrenewed because the

enrollment in the first grade did not necessitate employing two teachers. Evidence presented established staff reductions and enrollment considerations were under review before the Board reached any decisions as to renewal of any teacher's contract. The principal and assistant principal worked together in discussing possible staff changes due to potential staff cuts, financial conditions and a change in emphasis from academic to vocational courses. The principal decided Smith would be the teacher to be replaced in the math department in order to strengthen the staff.²³

Although Smith held licenses in social studies and English, his background was principally in math.

Phillippe's teaching license would not permit teaching full time in the Clinton-Prarie Junior or Senior High School. Therefore, she was not available for consideration for a half-time teaching position in the Junior-Senior High School. In addition, she had not taught in a classroom for ten years.

Smith and Phillippe alleged dismissal was based on the anti-union bias of the School Board. However, the principal's nonrenewal recommendations for Smith and Phillippe occurred prior to a meeting between the School

²³Phillippe v. Clinton-Prarie School Corporation, 394 F. Supp. 316 (1975).

Board and teachers in which the School Board said they would negotiate as to salary and fringe benefits.²⁴

Behmer, who began the 1972-73 year with an extremely large class, requested another teacher be hired to alleviate class load. Another teacher was hired. Behmer then requested and received maternity leave. The School Board informed Behmer renewal would be based on number of students occupying the first grade. Behmer's contract was not renewed the following year. Request for maternity leave was granted prior to nonrenewal due to reduction in personnel. Behmer alleged dismissal was based on: (1) maternity leave; (2) pregnancy; or (3) having children.²⁵

Decision

All counter claims presented by teachers were dismissed by the Court. The United States District Court of Indiana maintained: (1) since a nontenured teacher is not entitled to a school board hearing to determine if there is any basis for the nonrenewal decision, the nontenured teacher is not entitled to a hearing before the federal court; (2) reasons stated for the school board's nonrenewal decision were supported by evidence; (3) nonrenewal of teachers' contracts was not based on activities in behalf of

²⁴Ibid., p. 320.

²⁵Ibid., p. 321.

teachers' association; (4) no evidence was presented to support one teacher's claim that nonrenewal was related to maternity leave or pregnancy or to having children; (5) teachers' professional reputations were not damaged, nor did they suffer any financial damage; and (6) teachers were not denied liberty, property or due process.²⁶

The Court further maintained there was an absence of proof of damage to professional reputation of teachers. Smith allowed his Indiana teaching license to expire and never applied for another teaching position with any other school district. Behmer obtained every teaching position which she had sought after nonrenewal. Behmer was able to obtain a renewal of her Ohio license and a new Idaho license. Phillippe had not sought employment as a teacher with any other school corporation or any recommendation from the School Board. The Court found no evidence to establish any damage to professional reputations of teachers.²⁷

Discussion

Steps in reducing staff in this case were formulated by the school principal and assistant principal. The Court found reasons for selecting the three teachers for non-renewal were well established. There was no particular

²⁶ Ibid., p. 316.

²⁷ Ibid., p. 321.

system to the selection process. Each teacher was selected for a different reason. The Court again supported the School Board as it did in Miller v. School Board when it stated:

In the balancing of interests between the school teacher plaintiffs on the one hand and the school board defendants on the other, the Court was compelled to give consideration to the necessity of permitting duly elected school board members to exercise a reasonable amount of discretion in carrying out their duties.²⁸

Mental Incapacity

Overview

Teachers are expected to exercise strong mental and intellectual characteristics. Teachers may respond to community pressures, inward motivation and beliefs by exhibiting behavior that may appear to be erratic to school administrators. When a teacher is usually composed and collected in stress situations and then becomes hostile and aggressive, administrators may be inclined to conclude the reason for the abrupt change in the teacher's behavior is mental incapacity.

²⁸Miller v. School Board, 500 F. 2d 711 (7th Cir. 1974).

Stewart v. Pearce
484 F. 2d 1031 (1973)

Facts

Stewart was employed as a college instructor in English and was under contract for the 1970-71 academic year. During the 1969-70 school year Stewart participated in several campus protest activities which were critical of the Vietnam war. In one instance, his activities were particularly disparaging of the college administration. Activities included distributing peace literature, carrying signs, and asking students to boycott classes. Stewart was also one of many speakers before a gathering of students in which he sharply criticized both the Vietnam war and the college president. Stewart's final actions included participating in a guerilla theater vignette in which he portrayed a symbolic authority figure who ends his performance by burning a copy of Roberts' Rules of Order.²⁹

On July 28, 1970, the dean of instruction, by letter, ordered Stewart to undergo a psychiatric examination to determine his mental competency to perform his duties. Stewart refused to submit to such an examination. The dean then ordered Stewart to be removed from his classroom teaching duties and to be reassigned to assisting the librarian

²⁹Stewart v. Pearce, 484 F. 2d 1032 (1973).

without reduction in compensation. Stewart undertook grievance procedures established by the college. The faculty senate recommended Stewart be returned to his teaching duties. The dean stood firm in reassigning Stewart. Stewart stopped reporting to the library after six weeks. The college then initiated action to dismiss Stewart for refusal to perform regular assignments without reasonable cause. Mental incompetency proceedings were then dropped.³⁰

Decision

The Ninth Circuit Court of Appeals found the dean's decision was unconstitutionally invalid because of failure to give Stewart prior reasons, notice of a hearing, and a proper hearing. Stewart's working in the library after being ordered to report there pending grievance proceedings did not constitute a waiver of right to a proper hearing. The Court further insisted the dean's order to report for a psychiatric examination implied mental unfitness for the job. Moreover, the order created a stigma, an official branding of Stewart.³¹

³⁰Ibid., p. 1033.

³¹Ibid., p. 1034.

Discussion

Determining a teacher's mental incapacity is a sensitive matter. School administrators cannot easily determine a teacher's mental state without a physician's examination. Based on Stewart v. Pearce, administrators and school boards can know that asking a teacher to have a psychiatric evaluation is evidence enough to impose a stigma.

Personality and Emotional State

Overview

Teachers are becoming more and more individualistic in their work. Each teacher has a different personality and attitude toward himself/herself and toward work. The personality of the principal and/or superintendent in the system may complement or antagonize the personality of the teacher. An administrator has a challenging task of working with a myriad of complex personalities within the school. The two cases under discussion range from labeling a teacher as sullen, defensive, and rude as in Ferris, to accusing the teacher of being anti-establishment as in Lipp.

Ferris v. Special School District No. 1
367 F. Supp. 459 (1973)

Facts

Barbara Ferris was a probationary teacher employed by Special School District No. 1. All of Ferris' evaluations

were highly complimentary with the exception of one report on November 27, 1972. Ferris alleged the unfavorable report was false and was prepared maliciously and without reasonable cause. The principal had not conducted a classroom evaluation of Ferris before the date of the unfavorable evaluation.³²

On February 16, 1973, Ferris was informed during a conference with the principal, Marks, that her teaching performance was inadequate. The severity of the damaging statements contained in the report was confirmed by the principal's statement to Ferris during the evaluation conference when he said, "If you sign this, you will never get a job in the State of Minnesota," or similar words to that effect. Marks further suggested to Ferris that she could sign a resignation form and he would then modify the report in her favor so her record would look better. Ferris refused to sign.³³

In the school principal's final recommendation to the School Board, he described Ferris as "defensive," "rude," "argumentative," and "sullen." The principal even concluded that "perhaps Mrs. Ferris should seek a physician to evaluate her well being." Ferris contested she had been

³²Ferris v. Special School District No. 1, 367 F. Supp. 459 (1973).

³³Ibid., p. 462.

unable to find employment as a teacher in the immediate area since her nonrenewal.³⁴

Decision

The United States District Court of Minnesota insisted the school district had no obligation during the probationary period to: (1) give the teacher any notice except one of nonrenewal before April; (2) state any reasons for noncontinued employment; (3) write any letter justifying or attempting to justify its action; nor (4) establish or make a showing of cause for nonrenewal. Employment during the probationary period "may or may not be renewed as the School Board shall see fit." Falsity of the unfavorable evaluation is verified by the principal's not making a classroom observation and by compromising conditions he presented to Ferris. Labeling the teacher as "defensive," "rude," "argumentative," and "sullen" are not the type of labels that would seriously damage the teacher's standing in the community. Describing a teacher as quoted above and recommending she see a doctor were not serious charges.³⁵

In regard to Ferris' alleged inability to secure further employment, the Court insisted the teacher's

³⁴Ibid., p. 463.

³⁵Ibid., p. 460-463.

failure to find a new teaching position was not related to nonrenewal and testimonies presented at trial verified no one had inquired concerning Ferris' past employment records. Ferris' nonrenewal may have made her less desirable to potential employers, but did not entitle her to a predetermination hearing.³⁶

Discussion

As in previous cases, the school district could have avoided liberty interest litigation by simply nonrenewing the teacher and not stating any specific reasons for nonrenewal. Labels applied to the teacher of being "defensive," "rude," "argumentative," and "sullen" are not severe enough to violate a liberty interest.

Teachers often exhibit behavior of the above nature after receiving unfavorable evaluations. Teachers are even more inclined to exhibit such behavior when they feel the evaluation was done improperly. The principal in Ferris created an environment which encouraged the teacher to act or react in a defensive or argumentative manner.

Abrupt changes in the evaluation process cause teachers to become very defensive. This fact emphasizes the importance of principals being trained to improve and

³⁶Ibid., p. 463.

maintain consistency in evaluating teacher performance. Specific criteria for teacher evaluations would enable administrators to avoid situations presented in Ferris.

Lipp v. Board of Education of the City of Chicago
470 F. 2d 802 (1972)

Facts

David A. Lipp was a full-time substitute teacher with temporary certification employed by the Chicago Board of Education at the John T. Pirie Elementary School in Chicago. On June 7, 1970, the school board's Bureau of Teacher Personnel received from the principal an efficiency rating of Lipp. This rating found Lipp's work to be generally satisfactory but reported his appearance and practice of following school policies were unsatisfactory. This rating also contained the principal's comments that Lipp "had a negative attitude towards the school as an institution" and Lipp was ineffective with his pupils "because of his extreme anti-establishment obsession." The principal responded negatively to the possibility of requesting Lipp's return as a temporarily certified teacher.³⁷

Lipp did not receive a copy of this evaluation before it went to the Bureau of Teacher Personnel. After Lipp

³⁷Lipp v. Board of Education of the City of Chicago,
470 F. 2d 802 (1972).

learned of the unfavorable rating, he filed grievance proceedings because he had not received a copy of the evaluation. The School Board denied the grievance because of the school board's consistent past practices of withholding ratings from temporarily certified teachers. Lipp further stated the rating given him by his principal "damaged his reputation" and "negatively influenced his ability to obtain employment in the future."³⁸

Decision

The Seventh Circuit Court of Appeals insisted facts presented in the case did not reveal Lipp was deprived of a liberty interest. Lipp alleged his reputation was damaged as a result of being labeled "anti-establishment" in the efficiency rating. However, not every remark which may affect one's reputation violates due process if made by a government official without a hearing. The Fourteenth Amendment protects only against charges that "might seriously damage one's standing and associations in his community." The report that a person is "anti-establishment," without other charges, does not constitute a deprivation of liberty which the due process clause was meant to protect.³⁹

³⁸ Ibid., p. 803.

³⁹ Ibid., p. 804.

Discussion

The decision of the Court in Lipp further substantiates the position of the Court in Ferris. Labeling the teacher as being "anti-establishment" is not of severe enough nature to seriously damage the teacher's standing and associations in his community nor foreclose the possibility of obtaining future employment.

Lipp's not having received the information that led to his nonrenewal before going to the Bureau of Teacher Personnel was not a violation of school board policy or contract agreements. The system had never followed the procedure of giving such information to temporarily certified teachers.

Another important fact in this case as in Ferris is that all other circumstances of evaluation had found Lipp to be generally satisfactory in his employment. There is no basis in Lipp for an assumption as to how negative evaluations or a continued displeasure with the teacher's performance would affect the Court's attitude.

Racism

Overview

Wellner typifies the severity of charges that can be alleged against a teacher. Charges of being a racist are certainly the type that are conducive to lowering a

teacher's standing in the community and to foreclosing the opportunity to obtain future employment. The college board labeled Wellner without giving him a chance to clear his name of the charges being brought against him. The Court decided in favor of the teacher.⁴⁰

Wellner v. Minnesota State Junior College Board
487 F. 2d 153 (1973)

Facts

Wellner was a nontenured faculty member of the Metropolitan State Junior College. Wellner joined the faculty during the 1969-70 academic year as a physical education instructor and wrestling coach. Pursuant to the recommendation of the faculty review committee, the college's president reappointed Wellner for the position of permanent athletic director, but another person outside the college faculty was appointed by the dean of students. Problems arose during the 1970-71 academic year between Wellner and other faculty members. These problems were thought to be the basis for the dean's recommending to the president in writing that Wellner not be reappointed "because of lack of cooperation and the ill feelings that had developed in the Athletic Department as a result of Wellner's attitude and actions."

⁴⁰Wellner v. Minnesota State Junior College Board, 487 F. 2d 153 (1973).

The dean also gathered further information which was placed in Wellner's file that charged Wellner with having a hatred toward blacks. The faculty committee recommended to the president that Wellner be reappointed. The president decided to support the dean's recommendation for Wellner's nonreappointment.⁴¹

During the court proceedings further information relating to the charges of racism against Wellner were disclosed. The faculty committee had received written anti-Wellner memoranda from the dean and written charges of racism from the Black Student Union Basketball Team. The dean also collected additional material adverse to Wellner and placed this material in Wellner's activity file which was given to the president.⁴²

Decision

The Eighth Circuit Court of Appeals affirmed the lower court's ruling that accusations contained in adverse memoranda were without foundation. The Court further found the evidence showed presence of written racist charges in Wellner's file at Metro clearly reduced and diminished chances of obtaining another teaching position since future employers would probably have access to the file. Ample

⁴¹Ibid., p. 154.

⁴²Ibid., p. 155.

evidence was provided in the trial court's proceedings that presence of racist charges against Wellner was the principle cause of nonreappointment and thus deprived Wellner of a liberty interest which would have called for a prior hearing, despite being a nontenured teacher.⁴³

The Circuit Court affirmed the lower court's ruling of expunging from Wellner's file all matter relating to Wellner's actions or attitudes toward black people which indicated the holding of a bias or prejudice against blacks.⁴⁴ The Circuit Court insisted Wellner was entitled to a proper hearing and to the opportunity to address charges brought by the college. When a liberty interest is determined to have been violated, a proper hearing allowing the teacher due process is mandated since Roth.⁴⁵

Discussion

Charges as severe as labeling the teacher a racist have been determined to foreclose future job opportunities. Contradictory recommendations of the faculty committee and the dean should have served to indicate the possibility of Wellner's challenging the nonrenewal decision.

⁴³Ibid., p. 155.

⁴⁴Ibid., p. 157.

⁴⁵Ibid., p. 154.

Incompetency, Inadequacy, Neglect of Duty

Overview

The charge of incompetency as reason for nonrenewal would appear to be of damaging enough nature to stigmatize the teacher. However, courts have unanimously ruled that minor charges against a teacher as to areas of incompetency are not sufficient to violate a liberty interest as long as charges are not made public nor found to be false. Non-renewal resulting from charges of incompetency makes a teacher less attractive but does not necessarily substantiate a liberty claim.

Huntley v. Community School Board of Brooklyn, Etc.
543 F. 2d 979 (1976)

Facts

Claude Huntley was a black, acting principal in the Intermediate School 33 in Brooklyn, New York. The position of acting principal carried neither tenure nor any contractual right to continued employment under New York law. The student enrollment at I.S. 33 was approximately 90 percent black and Hispanic. The faculty at I.S. 33 was overwhelmingly white. Huntley was the first black

principal in any of the schools in District 14 in which I.S. 33 was located.⁴⁶

Huntley's appointment to acting principal came as part of the school district's affirmative action program. Huntley held a public school principal's certificate. Community involvement and teaching occupied a large part of Huntley's life.⁴⁷

Shortly after Huntley became principal at I.S. 33, the school became plagued with fires, hallway incidents, teacher complaints and other problems. During the three years of Huntley's principalship, the school had 39 reported fires. The school had no reported fires the year before Huntley took over and only one the year after Huntley was dismissed. The number of hallway incidents--caused by students and outsiders--was also higher during Huntley's principalship. The number of parents requesting to transfer children from I.S. 33 to another school rose from 5 to 132 during Huntley's employment. A large number of teacher grievances, most of which were upheld, were also filed against Huntley.⁴⁸

Witnesses representing Huntley at the trial, including teachers, parents, and a member of the school board,

⁴⁶Huntley v. Community School Board of Brooklyn, Etc., 543 F. 2d 979 (1976).

⁴⁷Ibid., p. 980.

⁴⁸Ibid., p. 981.

testified Huntley had developed close rapport with students and parents, and had won community-wide approval. These testimonies were sharply disputed by the school board's representatives.⁴⁹

Evidence presented in the trial affirmed conflict existed between the superintendent and Huntley. These two people had disagreements over the large number of fires, teacher grievances, disruptions and educational philosophy.⁵⁰

Huntley attributed the large number of fires and disruptive incidents to insufficient staffing, and the large number of teacher grievances to racial prejudice.⁵¹

Huntley appeared before the Board on May 25, 1973 to discuss plans for reorganizing I.S. 33. After Huntley returned home one of the minority board members called Huntley to tell him of the board's vote to nonrenew.⁵²

A Parents Association filed a grievance on Huntley's behalf with the Chancellor of the New York City Public School System. The grievance asserted the board's vote was invalid because the vote was taken at an executive session rather than at a public meeting. The Chancellor called for

⁴⁹Ibid.

⁵⁰Ibid.

⁵¹Ibid.

⁵²Ibid., p. 982.

a ratification of the board's vote in a special meeting set for June 5, 1973.⁵³

At the special meeting the board's secretary read the superintendent's letter of June 1, 1973 which outlined charges against Huntley. There were approximately 300 people at this meeting. Huntley had not received a copy of the letter even though one board member showed Huntley a copy. Huntley was provided no opportunity to respond to charges, or to call any supportive witnesses because he was nontenured.⁵⁴

The meeting resulted in bedlam. Police officers had to break up the chaos. A hurried school board vote of 7-2 was taken to affirm Huntley's dismissal.⁵⁵

After the June 5th meeting parents and students staged a boycott of I.S. 33 which resulted in closing the school for several days and cancelling the graduation exercises. Thereupon, Huntley filed suit against the School Board alleging racial discrimination and violation of due process afforded in the Fourteenth Amendment.⁵⁶

⁵³Ibid.

⁵⁴Ibid., p. 983.

⁵⁵Ibid.

⁵⁶Ibid.

Decision

The Second Circuit Court of Appeals overruled Huntley's allegations of racial discrimination since the black principal following Huntley solved some of the problems with students, teachers and parents with no more money and less staff.⁵⁷ However, the Court affirmed Huntley's contention of a violation of the liberty interest.⁵⁸

The Court stated, "the charges which were the basis for discharging Huntley as set forth in the superintendent's letter of June 1, 1973, and which were publicly read at the June 5 meeting, were sufficient to stigmatize Huntley within the meaning established in Roth." The charges included statements that Huntley: (1) "failed to demonstrate that quality of leadership necessary to effectively deal with the educational program;" (2) was "responsible for the rapid demoralization of the school;" (3) "had not provided for the basic safety of the children and staff;" and (4) had "created a climate of confusion and discontent." Huntley's dismissal for the above reasons foreclosed future employment opportunities in a supervisory position.⁵⁹ Therefore, Huntley was deprived of the liberty right. The

⁵⁷Ibid., p. 984.

⁵⁸Ibid., p. 985.

⁵⁹Ibid.

Court insisted Huntley was entitled to a fair hearing prior to the board's public announcement of reasons for dismissal. Dismissal reasons impaired future employment as a school supervisor and damaged Huntley's professional reputation.⁶⁰

Discussion

Huntley was a minority principal who served in a community dominated by blacks and Hispanics. Huntley was well respected in the minds of the community even though I.S. 33 was marked with strife and trouble.

Mistakes can easily be made in dismissal where there is a lot of community involvement and community pressure directed toward the superintendent and the school board. These mistakes often lead to a violation of the teacher's liberty interest. Then the teacher initiates litigation.

The superintendent had reasons to be distressed over the situation at I.S. 33. Since the principal is held responsible for the school program and operation, Huntley was the logical person to bear the brunt of charges as to reasons for I.S. 33's present state.

Since charges were formally written in the June 1st letter, the superintendent erred in not providing Huntley with a copy. The superintendent erred again by allowing the secretary to read charges against Huntley in a public

⁶⁰Ibid.

meeting and not allowing Huntley to rebut charges or to call witnesses.

The charges were substantial enough to constitute a stigma for Huntley. The superintendent cited many deficiencies in Huntley's performance.

In Huntley, if the board members or the superintendent had been aware of rulings in Roth some of the procedures for nonrenewing Huntley would have been modified. The evidence could substantiate inadequacy on Huntley's part due to past and present success of the principal at I.S. 33. Huntley's successor was also black and able to gain control of the situation. Therefore, Huntley's allegation of racial discrimination was not substantiated.

If the superintendent had followed sound administrative policies of: (1) informing Huntley of noticed deficiencies throughout the year, (2) recommending possible means of improvement; (3) securing support services; and (4) recommending dismissal, the School Board could have possibly avoided liberty interest litigation. Based on prior litigation, the severity of dismissal charges and a need for due process should have been apparent to the superintendent and the School Board.

Weathers v. West Yuma County School District R-J-I
530 F. 2d 1335 (1976)

Facts

Donald Weathers was a teacher employed by the West Yuma County School District under a one-year contract for the 1970-1971 school year. The contract was renewed for the 1971-1972 school year. During the board meeting in which renewals of probationary teachers were discussed for the 1972-1973 school year, the School Board discussed communications from students and parents regarding Weathers' teaching performance. The next day after the board meeting Weathers' principal told Weathers he might not be renewed. The principal showed Weathers the minutes he had taken at the board meeting. The minutes contained reasons for Weathers' nonrenewal. Weathers also received a copy of the notes. Weathers was accused of calling a boy a bad name, giving too much busy work in class, not correcting homework assignments, and giving the same grade to all students regardless of individual participation in group contest discussion.⁶¹

The board president met with Weathers the next day and Weathers asked about the source of complaints. The board president did not disclose the source.⁶²

⁶¹Weathers v. West Yuma County School District R-J-I, 530 F. 2d 1335 (1976).

⁶²Ibid., p. 1336.

Weathers met with the Board in executive session on February 29, 1972. In this session, Weathers denied the allegations registered at the February meeting. On March 9, 1972, the Board voted unanimously to nonrenew Weathers' contract. The letter Weathers received from the School Board indicating nonrenewal for the 1972-1973 school year did not contain any charges. The local teachers' association failed to gain a formal hearing before the School Board for Weathers.⁶³

Weathers charged the School Board with violation of established procedures which consequently brought a plea of deprivation of property and liberty without due process of law.⁶⁴

Decision

The Tenth Circuit Court of Appeals gave a lengthy discussion of Weathers' claims. However, this discussion will deal only with the liberty issue due to the nature of this study.

The trial court determined evidence in this case contained nothing that would constitute a deprivation of liberty. The trial court treated this case as one where

⁶³Ibid.

⁶⁴Ibid.

reasons were given for nonrenewal and the Circuit Court affirmed this stand.⁶⁵

The Circuit Court insisted communicating reasons for nonrenewal would make Weathers less attractive to future employers but would not foreclose employment opportunities. Weathers failed to establish the existence of a liberty interest. Therefore, Weathers was not entitled to due process.⁶⁶

Discussion

One of the interesting facts of this case was the decision of the trial court and the Circuit Court to treat Weathers as a case where reasons were given for nonrenewal even though no charges were registered in Weathers' letter. Certain charges were discussed by the School Board and presented to Weathers by the principal. These charges were of the nature that would make Weathers less attractive to future employers but would not foreclose future employment. Since Weathers was a nontenured teacher the School Board did not have to provide a hearing or stated reasons for nonrenewal due to existing state statutes. The local teachers' organization's request for a hearing was not accepted by the School Board.

⁶⁵Ibid., p. 1339.

⁶⁶Ibid.

One of the functions of teachers' organizations is to insure teachers of constitutionally protected rights and to make sure all teachers do not receive mistreatment due to improper school board procedures. However, Weathers points out where a hearing is not required by state statutes and/or board policy and where reasons for nonrenewal are of a minor nature, no hearing or right to due process is implied or granted.

Griffin v. Lancaster
400 F. Supp. 421 (1975)

Facts

John Griffin was employed by the Ouachita Parish School Board to teach social studies at Richardson High School, an all-black facility, for the 1968-69 school year. Later, due to court-ordered integration, Griffin volunteered to be transferred to West Monroe High School, formerly an all-white or predominately white facility, to teach geography.⁶⁷

School officials informed Griffin on May 28, 1970 of nonrenewal for the 1970-1971 school year because of unsatisfactory performance as a probationary teacher. Griffin

⁶⁷Griffin v. Lancaster, 400 F. Supp. 421 (1975).

alleged reasons for nonrenewal were based on racial discrimination.⁶⁸

Griffin further contended the charge of incompetency for nonrenewal imposed a stigma which would badly damage his reputation and standing in the community. The existence of such a stigma entitled Griffin to a hearing in Griffin's opinion.⁶⁹

Decision

The United States District Court of Louisiana ruled Griffin's claim of racial discrimination was invalid. The sole cause of Griffin's nonrenewal was found to be incompetency. Griffin was found to have no violation of liberty because the School Board did not publicize Griffin's shortcomings in the classroom. Neither were the reasons for nonrenewal of a serious nature. The Court further maintained the school board's nonrenewal due to incompetency might make a teacher less attractive to other school systems. However, nonrenewal did not constitute a deprivation of liberty which would entitle the teacher to a pretermination hearing.⁷⁰

⁶⁸Ibid., p. 422.

⁶⁹Ibid., p. 423.

⁷⁰Ibid., p. 423.

Discussion

The School Board in Griffin avoided a liberty violation by maintaining the teacher's confidentiality in nonrenewal actions. Since Griffin was a nontenured teacher, state statutes did not require a hearing before nonrenewal. Information and decisions of the Court in Griffin as in Weathers suggest school boards can nonrenew or dismiss teachers on grounds of incompetency without violating a liberty interest as long as reasons are kept confidential and not publicized.

Even though a teacher will probably have difficulty securing employment after having been dismissed or nonrenewed for reasons of incompetency, being less attractive as a teacher applicant is not sufficient evidence to establish a liberty claim.

Insubordination

Overview

The following cases involving nonrenewal due to reasons of insubordination establish the need for school boards to respect and maintain confidentiality in dealing with the teacher. The teacher in Irby was found to possess no violation of the liberty interest because reasons for nonrenewal were not made public by the School Board. The teacher in Morris clearly established a violation of

the liberty interest due to the common practice of the School Board to communicate reasons for nonrenewal to future employers.

Irby v. McGowan
380 F. Supp. 1024 (1974)

Facts

Paula Irby was employed on a one year contract as a nontenured teacher for the Baldwin County Board of Education. Irby was employed as an English teacher during the first year of a federally funded experimental English project that was to continue for three years. On May 23, 1972, Irby received a letter from the School Board stating dismissal as of May 23, 1972. Upon recommendation of Irby's husband, Irby mailed a letter dated May 23, 1972 to the School Board in which she resigned as of May 23, 1972. The School Board accepted Irby's resignation but did not remove from the board's minutes the stated reasons for dismissal discussed at an earlier date.⁷¹

The School Board did not provide Irby with a hearing before her dismissal. The superintendent of Baldwin County prepared the minutes of a special meeting held May 11, 1972

⁷¹Irby v. McGowan, 380 F. Supp. 1024 (1974).

which contained the following statement: "Fairhope---Mrs. Paula Irby---Dismissed---Noncooperative."⁷²

Irby had objected to an assignment to a different grade level and a different phase of the program during the last six weeks of the school year. Irby openly expressed her objections to the new assignment and accepted the assignment only after a conference with the principal. Irby persisted in requesting a change of teaching assignments and finally brought about changes.⁷³

Irby claimed a violation of the liberty interest due to the labels "Dismissed---Noncooperative" in the board minutes.⁷⁴

Irby made application for a teaching position in a nearby school system, Mobile. The application form from this system contained the following question: "Why did you leave your last employment?" Irby answered: "Resigned to stay home with daughter." Irby also made oral inquiry into possible employment at a private school in Baldwin County and Mobile.⁷⁵

⁷²Ibid.

⁷³Ibid.

⁷⁴Ibid.

⁷⁵Ibid.

Decision

The United States District Court of Alabama found Irby turned in the name for a scholastic award after the deadline and on the day the awards were to be made. Irby's delinquency was overlooked in this situation. The Court also found Irby was a competent subject-matter teacher but reluctantly performed paper-work chores and established procedures. She also reluctantly accepted and performed assigned duties. The Court further found Irby's contract was not renewed because of: (1) an inability to accept direction and supervision from superiors; (2) an unwillingness to follow guidelines of the English program; and (3) possessing an unusual argumentative attitude.⁷⁶

The Court found no violation of the liberty interest. Irby failed to show that the board minutes entry stating she was noncooperative damaged her good name, reputation, honor or integrity in such a way as to impair her standing and associations in the community. Irby also failed to show that the entry imposed a stigma which foreclosed future employment.⁷⁷

The Court maintained nonrenewal reasons would not be communicated to prospective employers except through Irby's own actions. The School Board testified that inquiries as to

⁷⁶Ibid.

⁷⁷Ibid., p. 1029.

Irby's nonrenewal would reveal only nonretention and no stated reasons.⁷⁸

The Court further stated:

School authorities should have some right to make subjective evaluations of a work record of a person. Although the remark may detract somewhat from the desirability for employment, as long as it does not foreclose that teacher's employability or substantially detract from it, a due process hearing should not be required.⁷⁹

The Court further maintained that publication of reasons for nonrenewal was done by Irby and associates. A teacher cannot create a condition for violating liberty rights in order to claim injury. Since Irby filed notice of resignation and the resignation was accepted by the School Board, the Court ordered the minutes entry "Fairhope---Mrs. Paula Irby---Dismissed---Noncooperative" to be expunged from the board's records.⁸⁰

Discussion

The Court maintained the right of school authorities to make subjective evaluations of work records of employees. Irby's liberty interest was not violated. The School Board did not publicize reasons for dismissal. The reasons for nonrenewal were included in a minutes entry and not openly

⁷⁸Ibid.

⁷⁹Ibid.

⁸⁰Ibid.

read before an audience. The established practice of the School Board of not communicating reasons for nonrenewal to other school districts enabled the School Board to avoid violation of the teacher's liberty.

Irby's actions apparently existed over an extended period of time and did not improve through the school year. There was no information in the case that administrators told Irby about her unacceptable performance prior to dismissal. Administrators and the School Board could have avoided violating the teacher's liberty rights by:

(1) informing Irby of unacceptable performance; (2) making suggestions for improvement; (3) securing support services; and (4) initiating dismissal.

Reasons for nonrenewal were substantiated by repeated episodes of Irby's noncooperative behavior throughout the school year. In situations such as Irby, school boards can avoid litigation by accepting a teacher's voluntary resignation and dropping charges for dismissal. Accepting resignations would eliminate school boards having to give reasons for teachers leaving or risking infringement of the teacher's liberty interest.

Any time a teacher makes public reasons for nonrenewal or dismissal by personal volition, no claim of a deprivation of liberty can be made. In a desperate attempt to retain employment, a teacher may publicize reasons for

nonrenewal hoping to prove a violation of liberty by the school board. The courts have ruled repeatedly that reasons publicized by the teacher cannot be used as a claim for a violation of liberty.

Morris v. Board of Education of
Laurel School District
401 F. Supp. 188 (1975)

Facts

Margo Morris was a black, physical education and health teacher, and a coach for the Laurel School District. Morris taught in the school district for three years. During the first two years Morris' performance as a teacher and a coach was evaluated as average or better than average. No serious community complaints against Morris were registered during the first two years of employment.⁸¹

The only questionable episode during Morris' first two years of employment occurred one night when Morris' boy friend, Long, sat on the bench at one of the basketball games. This action was noticed by both principal and superintendent. The principal informed Morris of the school board policy restricting nonteam members from sitting on

⁸¹Morris v. Board of Education, 401 F. Supp. 188 (1975).

the bench. After Morris learned of this policy Long did not sit on the bench.⁸²

Morris' teaching performance during the third year of employment again received above average evaluations even though Morris moved to another school and worked with another principal. Morris' continual practice of dating Long caused problems to arise with administrators. Long brought Morris to school, picked her up and, at least on one occasion, came into the middle of the school building to watch the end of a basketball practice. Morris' principal at the new school told her through a memorandum of the school board regulation of allowing no one to attend practices except coaches, players, or other staff members. After receiving the memorandum Long did not attend any more practices even though he did attend the regular games.⁸³

Several of the girls' parents complained that Morris was prejudiced toward blacks and did not give all players an equal chance to play. Parents also complained that Morris was "associating with a boy who appeared somewhat drunk."⁸⁴

⁸²Ibid., p. 194.

⁸³Ibid., p. 195.

⁸⁴Ibid., p. 196.

Long came to another practice to pick up Morris and the janitor let him enter the building. The principal found out about this incident and reminded Morris of his earlier memorandum. The principal further shared this information with the superintendent. The superintendent called a meeting with Morris and the principal the following day. Various community rumors concerning Morris were discussed at the meeting. Morris clarified the situation under question and denied the rumors.⁸⁵

A few days after the above conference, Morris' team had a basketball game and Morris did not play some of the first-string girls. One of the player's father, a staff captain with the state police, became upset and demanded a conference with Morris and the superintendent.⁸⁶

In the conference Morris told the police captain his daughter did not play because of the need for additional rebounding strength. The captain felt the reason for his daughter's not being allowed to play was due to Morris' suspecting his daughter complained about Long. The captain announced his daughter's resignation from the team. Another girl resigned from the team for identical reasons.

⁸⁵Ibid.

⁸⁶Ibid., p. 197.

However, the second girl's parents were satisfied with Morris' explanation as to choice of players.⁸⁷

The superintendent instructed the principal to investigate the extent of Morris' questioning members of the team concerning the boy friend incident. The investigation revealed inconclusive evidence.⁸⁸

Following the police captain's conference with Morris and the superintendent, the captain conducted a close watch on Morris and Long. The investigation found Long went from Morris' residence in the morning to a neighboring hospital where he received drug rehabilitation treatments. The captain put the results of the investigation into a letter to the superintendent. The superintendent showed the letter to the school principal and to the school board chairman. At a later time, the superintendent circulated the letter at a meeting of the administrative staff.⁸⁹

The superintendent discussed the contents of the letter with school board members at a special meeting with another school board and members of the legislature. The School Board delayed action on the situation until a later date. The superintendent shared the letter with Morris in his office. The personnel director was also present during this

⁸⁷Ibid., p. 197.

⁸⁸Ibid.

⁸⁹Ibid., p. 198.

meeting. Both of the administrators expressed a feeling of the seriousness of events surrounding Morris. The superintendent informed Morris of the need to take discussed matters before the School Board and the result might be termination of employment. The personnel director suggested Morris might like to resign to avoid blotting her employment record.⁹⁰

The captain's letter was discussed in the board's executive session. The superintendent recommended Morris' nonrenewal at the board's regular monthly meeting. The School Board accepted the superintendent's recommendation. Morris did not receive reasons for nonrenewal. However, insubordination was the underlying cause. If Morris had been renewed she would have gained tenure.⁹¹

The School Board formally voted on Morris' nonrenewal at a public session. Notice of the board's decision was sent to Morris on the following day. The School Board stated no reasons for nonrenewal at the public meeting or in the termination notice.⁹²

Decision

This case is very involved and the Court spoke to

⁹⁰Ibid., p. 199.

⁹¹Ibid.

⁹²Ibid.

many aspects of various constitutional issues. The following discussion will deal only with the liberty interest.

The United States District Court of Delaware found a clear violation of liberty. Morris' nonrenewal for persistent failure to obey administrative directives was serious enough to impair her ability to secure future employment. The Court determined through testimonies that Delaware school officials would not hire a teacher who was nonrenewed due to the circumstances in Morris.⁹³

"Under the practice which prevailed in Laurel and other Delaware school districts, a district which had not renewed a teacher would be contacted before the teacher was hired by another district and the reason for the termination would be discussed." The superintendent in this case told Morris' future employer the reason for nonrenewal was insubordination. Injury to Morris' career was no less real or substantial because reasons for nonrenewal were communicated orally rather than in writing.⁹⁴

Morris was nonrenewed for persistent insubordination. She was not informed of the reasons or given due process. The Court insisted the reasons for nonrenewal were serious

⁹³Ibid., p. 211.

⁹⁴Ibid.

enough to call for a due process hearing. The Court also insisted nonrenewal for insubordination was unfounded.⁹⁵

Morris should have been provided with an opportunity to clear her name. However, the Court ruled legal proceedings were sufficient to fulfill this violation of due process. An additional hearing before the School Board would be unnecessary.⁹⁶

Discussion

This is a very involved case and the fact section is quite long. The long discussion was necessary to explain the invalidation of charges brought against Morris. All charges mentioned by the School Board came about through actions and events of which Morris had no prior knowledge. She was not aware of violating existing school board policies and procedures.

The earlier charges brought against Morris could have been avoided if the school principal had given Morris a handbook on school board policies and procedures governing athletic events and practices during the first year of employment as a coach. Morris could have pleaded on infringement of the right to privacy due to the police captain's actions.

⁹⁵Ibid.

⁹⁶Ibid., p. 213.

Many controversies arise in every middle, junior and senior high school relating to coaches and coaching practices. All of the people involved in Morris tended to forget her performance as a classroom teacher. The circumstances in Morris are similar to many circumstances surrounding a teacher-coach. The teacher's actions as a coach tend to take precedence over actions as a teacher.

This case is another example of the power of public pressure upon superintendents and school boards. This case establishes the need for administrators and school boards to be well versed in constitutional rights of teachers. Concerns expressed in the captain's letter were worrisome to the School Board, but were not substantial evidence for Morris' nonrenewal. Judicial proceedings have firmly established teachers cannot be dismissed due to charges of immorality unless the teacher's private actions are interfering with fitness to teach.

Coaching staffs in every school system provide school boards with continuous community controversy over players and personalities.

Charges of persistent insubordination and the undisputed administrative practice of releasing reasons for nonrenewal to inquiring Delaware school districts substantiated Morris' claim for a violation of liberty interest.

The possibility of the Court's ruling taking another direction in another state is quite probable. Other cases in this study illustrated common administrative practice was to not release reasons for nonrenewal to inquiring systems. When reasons are not communicated, the teacher's liberty is not violated. However, the school board's unfounded reasons for insubordination probably would have brought a reversal of the board's nonrenewal action in any state.

Administrators and school boards need to avoid making nonrenewal decisions based on community pressure. This entire case stemmed from a parent's concern over his daughter's not being allowed to play in one basketball game. The parent's actions and resulting action of the School Board would encourage similar action by parents in later situations when discontentment with the coaching staff arises.

Another troublesome circumstance in this case is that Morris was dismissed from a teaching position due to circumstances surrounding her performance as a coach instead of her performance as a teacher. This method of disciplining teachers is unfair. A more justified form of discipline for Morris would have been to nonrenew her coaching contract and to grant her tenure since her teaching performance was not in question. Evidence presented in

Morris was not sufficient for nonrenewal based on insubordination since Morris' noncompliance with school board policies and procedures occurred strictly from her lack of knowledge.

Another significant fact in this case is the Court's ruling that oral communication of reasons for nonrenewal is no less damaging than written communication. This ruling establishes the judicial imperative that administrators and school boards must avoid communicating reasons for nonrenewal in any form.

If Morris had been given a proper hearing before the School Board, formal litigation possibly could have been avoided. A proper hearing probably would have found Morris not guilty of insubordination and no violation of liberty would have resulted. The hearing before the School Board would have been much less expensive and involved than litigation.

Immorality

Overview

The whole concept of immorality has been debated in courts on many occasions. Cases included in this section focus on whether or not the liberty interest of the teacher was violated when the teacher was nonrenewed or dismissed due to immorality. Mozier and McGhee emphasize two major

factors necessary for stigmatizing teachers in nonrenewal and dismissal. Mozier emphasizes the School Board must be the originator of stigmatizing information to violate the teacher's liberty interest. McGhee emphasizes the School Board must make nonrenewal reasons public to violate the teacher's liberty interest.

Mozier v. Board of Education of the
Township of Cherry Hill, Etc.

450 F. Supp. 724 (1977)

Facts

Dennis Mozier was employed as a nontenured science teacher by the Township of Cherry Hill for two years. Mozier received three evaluations during the first year and none during the second year of employment. On November 17th of the second year Mozier was called to the superintendent's office and was dismissed without pay, effective immediately. Mozier was told not to report back to work. Later during the day of Mozier's dismissal the superintendent hand-delivered a letter to Mozier requesting a meeting to discuss reasons for dismissal.⁹⁷

The above meeting was held on December 3, 1976. At the meeting the superintendent told Mozier of intentions

⁹⁷Mozier v. Board of Education of the Township of Cherry Hill, Etc., 450 F. Supp. 724 (1977).

to recommend dismissal to the School Board for Mozier's prior conviction for armed robbery and pendency of charges of illegal possession of a pistol.⁹⁸

Mozier's lawyer explained in the meeting that since prior conviction Mozier had undergone a complete change of life style. The lawyer further stated Mozier would probably be acquitted for charges of illegal possession of a pistol because his roommate had testified to owning the pistol. The superintendent told Mozier of two alternatives: (1) suspension with or without pay and termination, or (2) resignation and requesting a leave of absence without pay pending disposition of the present charges. The superintendent expressed doubt about the request for leave being granted by the Board. Mozier was left to consider the alternatives and to inform the superintendent within ten days of his decision.⁹⁹

Mozier decided not to resign. Mozier further requested permission to attend any board meetings in which his termination would be discussed. Mozier made this request: (1) in a hand-delivered letter; and (2) through a mailed letter. The superintendent wrote Mozier concerning the school board's scheduled meeting on December 20, 1976. The letter also informed Mozier the superintendent would

⁹⁸Ibid., P. 744.

⁹⁹Ibid.

recommend Mozier receive pay for sixty days and be directed not to report for teaching duty. Mozier attended the school board meeting on December 20th but was not allowed to attend the board's executive session where his termination was discussed. The School Board reconvened and publicly voted to terminate Mozier. The termination notice was mailed to Mozier and dismissal conditions identified above as recommendations by the superintendent were written in the notice.¹⁰⁰

Another teacher in the same school district had been arrested for contributing to the delinquency of a minor. The superintendent had suspended this teacher with pay, pending judicial resolution of charges. Charges were dropped and the teacher was reinstated upon the superintendent's recommendation and the board's approval.¹⁰¹

The reason for the differential treatment of the two teachers was determined to be due to Mozier's prior criminal conviction.

Mozier had an interview with a principal in another school district. The principal asked Mozier why he was

¹⁰⁰Ibid., p. 745.

¹⁰¹Ibid.

available for employment in mid-year. Mozier told the principal reasons for dismissal.¹⁰²

A teacher's employment bureau director testified in court Mozier would probably not be hired if an inquiring school system learned of suspension and dismissal for prior felony conviction and pending criminal charges.¹⁰³

Decision

The United States District Court of New Jersey maintained that even though the School Board did not publicly communicate reasons for Mozier's dismissal, reasons would be communicated to inquiring employers. Mozier had already communicated reasons for termination to a potential employer. However, the School Board was not the original source of the stigmatizing information.¹⁰⁴

The Court also concluded Mozier was not entitled to a hearing to clear his name because the School Board was not the original source of the stigma. Information as to Mozier's prior conviction and pending charges was obtained from the local police. Even though potential employers could learn of these stigmatizing facts from the School Board, the School Board did not cause the stigma to exist.

¹⁰²Ibid., p. 746.

¹⁰³Ibid.

¹⁰⁴Ibid., p. 751.

Future employers would still be free to evaluate personally Mozier's criminal conviction and arrest record.¹⁰⁵

At no point did Mozier contest the facts asserted by the School Board. Therefore, no due process hearing was mandated to allow Mozier to clear his name.¹⁰⁶

Discussion

The most significant fact in this case is the School Board did not originate the stigma. Stigmatization was done by police authorities.

Based on Mozier, when school boards determine that teachers hold criminal records and initiate dismissal proceedings, such actions can be done without violating the teacher's liberty interest. If a stigma has already been imposed on a teacher, the stigmatizing information can be used as reasons for dismissal without violating a teacher's liberty.

Even though Mozier had a witness to testify to the improbability of being able to secure future employment due to dismissal reasons, the Court found this phase of the liberty interest not to be affected because the School Board did not originate the stigma. Therefore, the School

¹⁰⁵Ibid.

¹⁰⁶Ibid.

Board did not have to bear the penalty for a violation of liberty.

McGhee v. Draper
564 F. 2d 902 (1977)

Facts

Janie McGhee was a nontenured second year teacher in Colcord, Oklahoma. In November of the second year of employment McGhee was summoned to the board meeting where public accusations were made against her. One man called McGhee a "sexpot" and accused McGhee of teaching sex in the classroom. Another person said McGhee was unfit to teach and another couple labeled McGhee as immoral and unfit to teach as well as being a liar. McGhee denied all of the above charges.¹⁰⁷

The superintendent asked McGhee on March 19th to resign since the superintendent felt the School Board would not honor renewal. McGhee refused to submit to gossip and appeared with a representative of the educational association at the March 21st School Board meeting. The School Board voted to renew McGhee's contract at this March meeting.¹⁰⁸

¹⁰⁷McGhee v. Draper, 564 F. 2d 902 (1977).

¹⁰⁸Ibid., p. 906.

At the next regular board meeting a large number of patrons and students appeared to protest the renewal of McGhee's contract. The students told the School Board of being allowed to check out a book which contained four-letter words from McGhee's personal books in the English class library. The students also told the School Board of McGhee's changing grades on report cards.¹⁰⁹

The minutes of the above meeting stated the School Board voted to rescind the earlier renewal of McGhee's contract. McGhee was not present for this board meeting.¹¹⁰

The Board voted to recess and continue the following evening. The superintendent asked McGhee to come to the board meeting on this second evening. Students were questioned privately by the School Board and McGhee was questioned last. McGhee denied statements of students. The School Board denied her an opportunity to see written affidavits concerning alleged charges. The School Board recessed again. McGhee asked to be informed of the next board meeting. She was told this would be done. However, the School Board met again on April 5th without informing McGhee.¹¹¹

¹⁰⁹Ibid.

¹¹⁰Ibid., p. 907.

¹¹¹Ibid.

The School Board voted unanimously to discontinue McGhee's contract as of June 30, 1974. When McGhee received a letter stating the decision of the School Board no reasons were listed for nonrenewal.¹¹²

McGhee requested a hearing before the School Board. The School Board acknowledged the request. McGhee's attorney questioned the School Board at the hearing and was unable to uncover the reasons for nonrenewal. The superintendent emphasized the power of public opinion in this situation by stating "(there would be) seventy-five people the next night if the board rescinded itself and (we) work with public opinion." One of the board members stated the information he knew about McGhee's moral character were enough to "make him sick." There were some responses by board members suggesting moral improprieties, but no charge or finding were given for the board's nonrenewal action.¹¹³

McGhee testified of making application to approximately twelve schools for a teaching position and to one school system for a substitute teaching position. McGhee had been unable to secure either position because of the answer she gave for leaving previous employment: "(I) was nonrenewed,

¹¹²Ibid.

¹¹³Ibid., p. 908.

...there (was) a lot of gossip in the community, and that issue was still being settled."¹¹⁴

McGhee also denied charges presented in affidavits relating to being drunk, having a knowledge of the books in question, indulging in misconduct in connection with dope, abortion and approval of Playboy magazine.¹¹⁵

Decision

The Tenth Circuit Court of Appeals reversed and remanded the lower court's decision concerning a violation of liberty. The Court insisted the contents of the April 2nd board meeting contained serious charges against McGhee. The superintendent stated 200 copies of the minutes were circulated to the public and one copy went to every employee of the school district. Copies were also left at the post office and at stores in the area. Even though McGhee's letter contained no charges and reasons for non-renewal the minutes did contain serious charges.¹¹⁶

The Court sent the case back to the lower court for further proceedings concerning the liberty interest.¹¹⁷

¹¹⁴Ibid.

¹¹⁵Ibid., p. 909.

¹¹⁶Ibid., p. 910.

¹¹⁷Ibid.

Discussion

Based on information obtained in other cases in this study, the lower court will probably find a violation of the liberty interest on second inspection because of the wide circulation of the board minutes among the community as well as school officials.

This particular case did not address the normal procedures followed by the School Board as to releasing to prospective employers information relating to the non-renewal of teachers. Again, drawing on the court's findings in other cases, a violation of the liberty interest could be established if administrative practices were to communicate reasons for nonrenewal to prospective employers.

Based on previous cases in this study, McGhee's sharing reasons for leaving previous employment would not constitute a liberty interest. No reasons were given in the formal letter of nonrenewal. McGhee's choice to tell prospective employers reasons for nonrenewal was strictly her own. The communication of nonrenewal reasons by McGhee could not be used to substantiate violation of the liberty interest. The School Board has to be the party releasing the nonrenewal reasons to violate a liberty interest.

Charges Are Made Public

Overview

In situations like Swilley, where a teacher is publicly chastized by the superintendent, the teacher must prove charges made by school officials will seriously damage community standings and associations or foreclose opportunities of securing future employment. In other words, the burden of proof in substantiating a violation of liberty interest lies solely with the teacher. Speculation and seemingly obvious reasons for a deprivation of liberty are not sufficient for the courts. Also, charges must be made during nonrenewal or dismissal to substantiate a violation of the liberty interest.

Swilley v. Alexander
448 F. Supp. 702 (1978)

Facts

James Swilley was a teacher in the Mobile County School District and also president of the Mobile Federation of Teachers, AFL-CIO, Local 777. Swilley attended the July 27th board meeting acting in his capacity as president of the teachers' group. The purpose of Swilley's attending the board meeting was to register complaints against a certain unnamed principal in the school system. Swilley was told the School Board would investigate the matter and

take proper action. Swilley was also told not to do anything else until the School Board had completed the investigation. Swilley did not comply with the board's request and disseminated the specific charges against the principal to the news media.¹¹⁸

Swilley was publicly chastised by the superintendent for actions with the news media at the August 10th board meeting. This meeting was covered by local radio and television stations. Swilley also received a formal reprimand from the superintendent stating displeasure with Swilley's actions. This reprimand was placed in Swilley's personnel file.¹¹⁹

Swilley charged the School Board with a violation of the liberty interest due to the public nature of the board meeting and filing the reprimand in his personnel file.¹²⁰

Decision

The United States District Court of Alabama insisted there was no violation of the liberty interest. The public chastisement received was not of a serious nature. The Court further insisted the mere presence of derogatory information in confidential files is not sufficient to

¹¹⁸Swilley v. Alexander, 448 F. Supp. 702 (1978).

¹¹⁹Ibid., p. 704.

¹²⁰Ibid.

infringe liberty. Neither was the teacher being nonrenewed or dismissed.¹²¹

Discussion

Today most school board meetings are covered by some representative of the news media. Therefore, the potential for a situation in Swilley is increased. As parents and citizens in the community become more involved in the operation and happenings in schools, more and more people are following actions of school boards through the mass media.

Television coverage of board meetings automatically publicizes the superintendent's and the board's actions. Newspaper coverage often comments on the superintendent's and the board's behavior.

Based on Swilley, publicizing administrators' chastisement of a teacher is not sufficient grounds to damage the teacher's standing and associations in the community or foreclose future employment.

Since tempers can become short during board meetings involving controversial subjects and/or employees, administrators and school boards must be aware of the possibility of liberty interest litigation. However, teachers, administrators and school boards must realize a violation

¹²¹Ibid., p. 707.

of liberty can occur only in conjunction with nonrenewal or dismissal. Swilley was not being nonrenewed or dismissed.

CHAPTER V

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

SUMMARY

Teachers are employees of school boards. The employment of teachers has been tempered over the years by various attitudes on part of courts as to individual rights relating to employment. During the latter part of the nineteenth century and first half of the twentieth century, teachers were thought to be hired by "grace" of school boards, and employment was conditioned upon and subject to the will of school boards. School boards could, at any time, terminate a teacher for any reason regardless of the teacher's constitutional rights. Maintaining a teaching position was regarded as a privilege instead of a right. This feeling of courts led to development of the right-privilege doctrine.

Around the middle of the twentieth century, the attitude of courts changed to view teachers as possessing constitutionally protected interests through terms of employment. During the mid-nineteen fifties and sixties the Supreme Court began to rule against the right-privilege doctrine of an earlier period. Court rulings took two distinct approaches. The first one involved the doctrine of

unconstitutional conditions while the second spoke to constitutionally protected interests which teachers have in "liberty" and "property" with respect to employment.

As courts changed focus to protecting liberty interests of public employees, teachers became concerned about the possibility of being stigmatized in situations where nonrenewal of a teaching contract or dismissal from employment was the decision of local school boards.

This study: (1) reviewed court decisions based on liberty rights of teachers that could possibly lead to stigmatization in nonrenewal and dismissal proceedings; and (2) presented an indepth view of landmark court cases dealing with liberty rights of teachers.

CONCLUSIONS

One of the stated purposes of this study was to develop specific legal recommendations for administrators and school boards to use when recommending nonrenewal or dismissal of a teacher to avoid stigmatizing the teacher. Five major questions were identified in chapter one of this study. The questions and conclusions drawn from the literature and legal proceedings reviewed in this study are listed below:

Question 1. Under what conditions is a liberty interest challenged when a school board nonrenews or dismisses a teacher?

Judicial review indicates that teachers have litigated the liberty interest when nonrenewal or dismissal resulted from the following reasons: (1) undisclosed reasons, (2) reduction in personnel---financial exigency, (3) mental incapacity, (4) personality and emotional state, (5) racism, (6) incompetency, inadequacy, or neglect of duty, (7) insubordination, (8) dishonesty and immorality, and (9) charges against the teacher are made public.

Question 2. What are the identified categories in which a teacher could possibly suffer stigmatization due to charges and/or lack of charges received in nonrenewal or dismissal proceedings?

Judicial review indicates the following categories emerge concerning stigmatizing the teacher in nonrenewal or dismissal proceedings: (1) mental incompetency, (2) racism, (3) incompetency, inadequacy or neglect of duty, and (4) insubordination.

Question 3. What should administrators know concerning constitutional rights of teachers before recommending non-renewal or dismissal?

Judicial review indicates that administrators and school boards need to have an understanding of two basic concepts of what constitutes a liberty interest for teachers as defined by Roth in relationship to the Fourteenth

Amendment. The two basic constitutional imperatives are: (1) reasons given for nonrenewal or dismissal must seriously damage the teacher's standing, reputation, or associations in the community; and (2) the publicity given the nonrenewal or dismissal by school officials must foreclose the teacher's future employment opportunities.

Question 4. Are there any specific trends to be determined from judicial analysis?

Judicial analysis indicates the following trends:

- a. Were the charges against the teacher made public? If so, the teacher was stigmatized. If not, no stigma was imposed.
- b. Did reasons for nonrenewal or dismissal become public through the school board's actions or through the actions of the teacher or his/her associates? If the school board made reasons public, a stigma was imposed. If the teacher or his/her associates made the reasons public, no stigma was imposed.
- c. Were the charges serious enough to do more than make the teacher less attractive to future employers? A judicial review must determine the meaning of serious.

- d. A serious question for administrators and school board members is were charges against the teacher false? If they were, a stigma was imposed. If charges were well substantiated, no stigma was imposed.
- e. Were state statutes followed in teacher nonrenewal or dismissal? If reasons for nonrenewal or dismissal were not mandated by state statutes, administrators and school boards can avoid constitutional violation of liberty by simply not giving the teacher any reasons for nonrenewal. No conclusions can be drawn from this study relating to state statutes mandating giving reasons for nonrenewal since no case reviewed dealt with such a mandate for nontenured teachers.
- f. Did board policy or administrative practices require reasons for nonrenewal or dismissal be given to the teacher's future employers? If so, a stigma was imposed. If not, no stigma was imposed.
- g. How many times must a nonrenewed or dismissed teacher seek employment with other school systems without success to establish sufficient validation of foreclosing employment opportunities? In the cases reviewed teacher(s) made two attempts and

the courts indicated these efforts were insufficient. The courts did not specify the number of attempts necessary to substantiate foreclosure of employment opportunities. Apparently, none of the teachers involved made an exhaustive search for employment.

- h. Was the stigmatizing information used in non-renewal or dismissal originated by the school board or by some other governmental agency? When school boards base nonrenewal or dismissal action on information obtained from another governmental agency, no stigma was imposed. School boards must originate stigmatizing information in order for a liberty interest to be established by the teacher.

Question 5. Based on school board policies and legal precedents, how can administrators and school boards avoid stigmatizing teachers in nonrenewal and dismissal actions?

All cases reviewed in this study involved nontenured and/or probationary teachers. Judicial analysis of all cases indicates: (1) The best legal way for administrators and school boards to avoid stigmatizing teachers in non-renewal and dismissal action is to not give the teacher reasons for the decision. (2) Of course, where state statutes mandate otherwise, the statutes must be followed.

At this writing every case in this study involved states with no statutory mandate concerning giving reasons for nonrenewal or dismissal to nontenured teachers. (3) In absence of state statutes and where school board policy mandates reasons for nonrenewal and dismissal be given the teacher school board policy must be carried out.

RECOMMENDATIONS

Based on the results of this study, the following recommendations concerning the avoidance of stigmatizing teachers in nonrenewal and dismissal are formulated. The recommendations are based on legal principles established in landmark court decisions and on discernible judicial trends related to school boards' nonrenewal and dismissal actions. Even though these criteria appear to be legally acceptable to follow, administrators and school boards must remember teachers who feel their constitutional rights have been abridged may still initiate judicial grievances.

1. Administrators must be aware of the possibility of a liberty interest litigation when a teacher is nonrenewed or dismissed.

2. The school principal's primary responsibility is the instructional program. Appropriate teacher evaluation is an imperative feature of maintaining a quality instructional program. Most litigation begins when there has been

an inappropriate teacher evaluation. The quality of the learning environment in each school is directly proportionate to the quality of the teaching faculty.

3. When the school principal has exhausted all administrative and supportive services available to assist a teacher and the teacher still does not meet established minimum requirements, nonrenewal should be the final step in maintaining a quality instructional program for school children.

4. As already indicated, a serious school principal's task is evaluating teachers. The principal and/or other school administrators must always exercise professional care in seeing that charges against teachers are well justified, documented and contain no distorted information.

5. Administrators and school boards must have a strong commitment to improve teacher performance. There must be established school board policies and procedures for employment and dismissal of teachers. School administrators and school boards must protect teachers from political pressure groups seeking to influence the evaluation process.

6. Community complaints about teachers and/or teaching practices should be addressed: (1) at the school building level; (2) by the school principal; and (3) the central office administration should not become involved until a

recommendation is made by the school principal and/or following mandates of state statutes and/or board policy.

7. Principals should make every effort to keep teachers informed concerning school board policies and administrative rules and regulations concerning expected teacher performance and activities. When teachers are nonrenewed or dismissed for insubordination they allege they were unaware of established expectations.

8. School principals, superintendents and school boards must follow state statutory mandates in nonrenewing and dismissing teachers.

9. Principals and superintendents must follow school board policies if policies exist in nonrenewing and dismissing teachers.

10. In the absence of state statutes and/or school board policies, recommendations for nonrenewal and dismissal should be made by the school principal to the superintendent and the superintendent to the school board. Based on the cases in this study, school superintendents should not initiate dismissal proceedings without the school principal's recommendation and support.

11. In order to avoid liberty interest litigation, no reasons should be given to nonrenewal or dismissal of teachers where such reasons are not mandated by state statutes and or board policies.

12. If school administrators and/or school boards choose to give the nonrenewed or dismissed teacher reasons, appropriate procedures must be established to maintain confidentiality of the reasons. Absolutely no publicity must be given to nonrenewal.

13. School administrators and school boards should develop a system-wide policy establishing procedures for releasing information to other school systems concerning reasons for nonrenewal or dismissal of teachers who are prospective employees. The following procedures should be followed to avoid liberty interest litigation: (1) all that should be transmitted to another system is the teacher was nonrenewed or dismissed; (2) if the system wants to know more information they can ask the teacher; and (3) if the school system further insists on more information they should have the teacher make written request through a registered letter for his/her personal data file to be sent to the inquiring system.

14. Administrators and school boards must become aware of the ever-changing constitutional status of teacher employment and dismissal. Judicial decisions have established that teachers "do not shed their constitutional rights at the schoolhouse gate." A changing social, political and professional scene mandates a broader understanding of constitutional rights of teachers.

15. School administrators and school boards in non-renewing and dismissing teachers must understand the circumstances which lead to stigmatizing teachers. School administrators and school boards must develop board policy and administrative procedures that will satisfy judicial imperatives in teacher nonrenewal and dismissal.

16. In a tight, professional-education, teaching market, teachers are more likely to be more determined to maintain employment. Thus, when the threat of nonrenewal or dismissal appears, teachers are more likely to initiate litigation.

POST SCRIPT

This study does not concern the liberty interest of the tenured teacher. This question must be addressed through future study. However, it is hoped this study will serve as a guide for school administrators, school boards and teachers to develop a better relationship and understanding in teacher employment practices.

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