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LEGAL ASPECTS OF TEACHER TENURE LAWS, TEACHER
INCOMPETENCY, AND DUE PROCESS.

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LEGAL ASPECTS OF TEACHER TENURE
LAWS, TEACHER INCOMPETENCY,
AND DUE PROCESS


by

Edward R. Lakey

A Thesis Submitted to
the Faculty of the Graduate School at
The University of North Carolina at Greensboro
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of the Requirements for the Degree
Doctor of Education

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Approved by


Dissertation Adviser

APPROVAL PAGE

This dissertation has been approved by the following
committee of the Faculty of the Graduate School at the University
of North Carolina at Greensboro.

Dissertation
Adviser

Joseph E. Bensen

Committee Members

Robt. D. Smith
Robert M. ...
Arthur L. ...
Donald W. Russell

March 25, 1976
Date of Acceptance by Committee

ABSTRACT

LAKEY, EDWARD R. Legal Aspects of Teacher Tenure Laws, Teacher Incompetency, and Due Process. (1976)
Directed by: Dr. Joseph E. Bryson. Pp. 330

This study attempts to identify and clarify the protective aspects to teachers of state tenure laws and of the Constitution of the United States as well as to aid school boards and administrators in the identification of teacher incompetency, per definitions and rulings of the courts. This process involved in-depth study of tenure laws of the fifty states with regard to grounds for dismissal, personnel included, year of employment in which tenure is granted, steps in the dismissal proceedings, requirements of a formal hearing, sources of appeal, and who initiates dismissal proceedings. Also considered in the study were the purposes of the laws, their general development, and legislative powers relative to them.

An extensive search was made for relevant cases which have come before the courts of the United States. Case citations were located by consulting The American Digest System, American Law Reports Annotated, The National Reporter System, and other legal bibliographical aids. Study of these cases proved that courts have upheld the legality of teacher tenure laws.

Tenure laws primarily protect teachers. As teachers advance into administrative positions, their job security becomes more precarious. Supervisors, principals, and superintendents are not included in many of the laws.

Incompetency, a commonly used ground for dismissal, has not been clearly defined, either in the literature or by the courts. However,

review of court cases charging teacher incompetency reveals at least twelve recurring categories which the courts have upheld as evidence of incompetency. These categories are as follows: lack of discipline, failure to supervise athletic contests, physical disability, lack of knowledge of subject matter, improper teaching methods, failure to keep up with the times, failure to coordinate teaching with that of other teachers, inability to get along with parents and students, inability to motivate students, failure to follow guidelines, unsatisfactory progress of pupils, and inability to get along with other teachers. Most cases charging incompetency are based on more than one of these indications however.

The concept of due process, both substantive and procedural, is considered. The essence of substantive due process is protection from arbitrary action. Procedural due process specifies procedures to be followed in proceedings which may deprive one of life, liberty, or property. Because the administrator must be certain that due process rights of a teacher being dismissed are not infringed upon, certain recommended procedures for dealing with such a situation are delineated:

1. Send the teacher, well in advance of the hearing, a detailed letter specifying the time and place for the hearing, the charges against the teacher, names and addresses of witnesses and a brief resume of their anticipated testimony.
2. Establish rules to govern the hearing prior to the proceedings and make them known to the teacher.
3. Provide separate counsel for the superintendent and for the school board.

4. Have proper and complete documentation of the grounds for the dismissal action.
5. Inform the teacher of his/her right to present evidence, to be represented by counsel, and to subpoena witnesses.
6. Provide a guaranty that the evidence shall be recorded and that the board will make written findings.

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To Lou Bradley, Grady Barnhill, Charlotte Norris, Ella Stewart, Jean Stewart, Jo White, and Virginia Scott, I express my debt of gratitude for their continued support and assistance during the time of this writing.

Finally, this dissertation would not have been possible without the support and understanding of my wife, June; son, Laddin; and daughter, Heather.

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CHAPTER I

BACKGROUND

This dissertation emerges from four interrelated convictions: (1) that the quality of public school teaching is in direct proportion to the competency of the classroom teacher; (2) that local school boards for many years arbitrarily defined "teacher incompetency" and often dismissed teachers without "cause" and "due process"; (3) that state legislatures have the authority to, and do in fact, enact tenure laws; and (4) that the courts have, through litigation, defined to some extent both teacher incompetency and what constitutes procedural due process.

The purpose of the concentrated study and this subsequent dissertation on the subject of teacher tenure laws was two-fold. The study was an attempt to determine, through historical and judicial review, the raison d'être of tenure laws and the extent of protection, under law, which they afford to both the teacher and the administrator. Superficial examination of these laws reveals certain areas of protection to the teacher, but in-depth study unveils protection of far greater magnitude. Equally important, though less obvious, perhaps, is the protection provided by the laws to administrators and school boards as well as the restrictions placed upon them.

This dissertation then endeavors to inform teachers of the protective aspects of the various tenure laws and of rights guaranteed

under the Constitution of the United States. On the other hand, it seeks to assist the administrator or school board in identifying teacher incompetency, as defined and upheld by the courts, and to specify procedures to be followed in discharging incompetent teachers, whether probationary or tenured. Data provided herein should provide a strong foundation upon which the public school administrator might base his precepts and concepts relative to improved teacher performance, teacher demotions, and/or dismissals.

STATEMENT OF THE PROBLEM

Today, perhaps more than at any other time, there is need for an educational environment which will afford each child, within the limits of his/her ability, the opportunity to realize optimum educational achievement and self-actualization. One important requisite of such an environment is a competent teacher.

Competency, or incompetency, is quite difficult to define. It is an elusive, ambiguous word that has created arduous problems for both educators and the courts.

In recent years, teachers and administrators, in an attempt to put a handle on the word, have turned to the judiciary. The courts have responded by providing guidelines relative to teacher incompetency, teacher tenure laws, and procedural due process. The guidelines have emerged from various court decisions involving primarily one question:

Does the evidence support the specific charge of incompetency?

Some teachers do an outstanding teaching job; others seem to lack the ability to provide an adequate instructional program, much less a good one. What, then, is the school official to do when he/she faces the problem of inadequate teaching performance? Should he/she conduct formal evaluations? What about a counseling period wherein a sincere effort is made to help the teacher do a better job in the classroom? What should be the action of the school official if the teacher fails to improve the quality of his/her teaching? What does the law demand with regard to the demotion or dismissal of a teacher? What constitute the requirements of due process?

These questions are but a few of many questions that make imperative an in-depth examination of the sometimes conflicting rules of state teacher tenure laws and the interpretations which courts have given to accommodate the diverse viewpoints of teacher incompetency.

NEED FOR THE STUDY

Although all fifty states have legislated teacher tenure laws, a debate centering around educational and professional purposes achieved through tenure legislation has endured for approximately ninety years. One reason for this debate is the wide variance in the tenure laws. By way of example, tenure law dismissal reasons range

from the ambiguous "just and good cause" to the comprehensive delineation of twelve specific reasons stated in the North Carolina Tenure Law.

Also, during the history of public education in America, the question of what constitutes teacher incompetency has been one of paramount disquietude. For years, school boards and administrators made decisions regarding teacher dismissal simply and solely at the will of the board or administrator. These decisions were often politically motivated. This practice frequently resulted in a high percentage of annual faculty turnover, which actually had the effect of being wasteful of teacher experience and of causing real damage, both to children and to the educational purposes.

The judicial history of teacher tenure laws and interpretation of what constitutes teacher incompetency have not answered all of the many questions regarding these areas, but have provided a basis upon which school officials might make sound judgment decisions. Therefore, in-depth historical and judicial review of teacher tenure laws and teacher incompetency is exigently needed to provide the necessary information for school boards and school administrators to make sound decisions concerning classroom instruction, teacher demotions, and dismissals.

QUESTIONS TO BE ANSWERED

This study has as its primary objective the development of a potential guide which may be followed by school officials, school boards, and board attorneys when making decisions relative to teacher demotions and dismissals. In the process of the development of this guide, certain questions will be answered. It should be pointed out, however, that these questions are not intended to be all inclusive, but to provide the readers with a reasonable expectation of the scope of the dissertation.

1. Is it possible for a teacher, due to statutory and school board policy vagueness, not to know when his behavior will make him subject to statutory penalties?
2. What is the historical and judicial evaluation of teacher tenure laws in the United States?
3. What magnitude of discrepancies would a comparison of the fifty state tenure laws reveal?
4. What is the judicial history of incompetency?
5. What are the specific areas the courts have identified in considering charges of incompetency?
6. What factors would reasonably lead a teacher to expect reemployment, thereby acquiring a property interest?
7. What are the recognized court-approved procedures to be followed by a school board or school official in seeking the demotion or dismissal of a teacher?

8. When is a teacher entitled to a due process hearing, and what are the requirements of this kind of hearing?
9. Does the tenured teacher enjoy a distinct advantage over the non-tenured teacher in regard to procedural rights?
10. Who has the authority to determine the school curriculum?
11. Does a teacher have the right to teach what he wants, despite a prohibition in state law or school board policy?

BASIC ASSUMPTIONS

The researcher identifies the following basic assumptions and beliefs which he holds concerning this dissertation:

1. School boards for years have arbitrarily defined teacher incompetencies and have often dismissed teachers without "cause" and "due process."
2. State legislatures have the power to enact teacher tenure laws.
3. In addition to a humane approach, the court now requires a sincere, honest effort on the part of school officials to help teachers improve their classroom instruction. Such effort includes, but is not limited to, formal evaluations and counseling periods.
4. The primary obligation of both the teacher and the school official is to "act in good faith" at all times.

5. The courts have pretty well defined teacher incompetency and what constitutes procedural due process.

METHODS OF PROCEDURE

The literature relating to teacher tenure laws, teacher incompetency and procedural due process was reviewed for background information. The writer used the normal procedures for locating articles pertaining to the subjects, employing the following sources: Education Index, Reader's Guide to Periodical Literature, Index to Legal Periodicals, Index to Periodical Articles Related to Law, Review of Educational Research, Encyclopedia of Educational Research, Dissertation Abstracts, and Research Studies in Education.

Court decisions related to the topics were located by consulting the legal encyclopedias American Jurisprudence, Corpus Juris, and Corpus Juris Secundum. A bibliography of all cases in point was compiled by examining the topics in the Century, Dicennial, and General Digests of the American Digest System. The cases were then read in their entirety as reported in the state reports and in the National Reporter System. Additional citations were obtained from the latter reading and from American Law Reports Annotated.

Professor Hugh DeVine of the Wake Forest School of Law and Grady Barnhill, Attorney with the firm Womble, Carlyle, Sandridge and Rice, were consulted concerning recent court decisions.

All cases were analyzed, briefed, and categorized. The judicial history of each case was traced by referring to Shepard's Citations.

Supplementary materials and information were obtained through correspondence with such organizations as the National Education Association, the American Council on Education, the United States Office of Education, the American Civil Liberties Union, and the American Federation of Teachers.

DESIGN OF THE STUDY

Chapter II, An Analysis of Fifty States' Tenure Laws, deals with the tenure laws of the various states. This review is descriptive in nature, and pertinent elements of each state tenure law are detailed and compared with elements contained in other tenure laws. A major portion of this chapter is devoted to answering the following questions:

1. What are the grounds for dismissal or demotion of school personnel?
2. What states include incompetency, inefficiency, and inadequate performance as grounds for dismissal?
3. Which school personnel are included in the tenure laws?
4. In which year of employment may the employee be granted tenure?
5. What are the steps for dismissal proceedings?

6. What are the requirements for a formal hearing prior to discharging a tenured teacher?
7. What are the sources of appeal for professional personnel?
8. Who initiates dismissal proceedings?

Chapter III, Legality of Tenure Laws and Teacher Incompetency, reviews the purpose of tenure laws; the legal basis of tenure laws, including selected court cases; the judicial history of teacher incompetence, including what is teacher incompetence; specific cases of incompetency as they relate to categories of incompetency, lack of discipline, failure to supervise athletic contests, physical disability, lack of subject matter, improper teaching methods (lack of proper organization and preparation, inability to control emotions, and teaching inappropriate subject matter), failure to keep up with the times, failure to coordinate teaching with that of other teachers, inability to get along with parents and students, inability to motivate students, failure to follow guidelines, unsatisfactory progress of pupils, and inability to get along with other teachers.

Chapter IV, Due Process and the Teacher, reviews both the Fifth and Fourteenth Amendments to the Federal Constitution and the implications therein. In this process an effort is made to define "due process of law." Selected court cases are used in this endeavor, with special emphasis given to the Roth, infra, and Sindermann, infra, cases.

Chapter V. A Review of Appropriate Landmark Cases, examines landmark cases dealing with teacher incompetency and "due process." These cases, identified by the researcher of this dissertation, are as follows:

1. Pickering V. Board of Education, Lp High School District
391 U. S. 563 (Illinois, 1968).
2. Epperson V. Arkansas 393 U. S. 97 (1968).
3. Tinker V. Des Moines Community School District, 393 U. S. 503
(1969).
4. Beilan V. Board of Education of Philadelphia, 357 U.S. 399
(1958).
5. Board of Regents V. Roth, 408 U. S. 564 (1972).
6. Perry V. Sindermann, 408 U. S. 593 (1972).
7. Meyer V. Nebraska, 262 U. S. 390 (1923).
8. Hamilton V. Regents of the University of California,
293 U. S. 245 (1934).
9. Horosko V. School Dist. of Mount Pleasant, 6 A. 2d
866 (Pa. 1939).

Chapter VI, Summary and Conclusions does the following: (1) reviews the purposes of the study, (2) answers the question asked in the study, and (3) offers certain recommendations or guidelines relative to "due process of law."

CHAPTER II
AN ANALYSIS OF TENURE STATUTES
OF FIFTY STATES

As of January 1, 1976, all fifty states, as indicated in Tables I-IX (and recorded in Appendices A), have statutes pertaining to employment and dismissal of public school employees. The statutes vary from simple dismissal for just cause to a comprehensive delineation of reasons and procedural due process steps mandated when granting a hearing to the employee.

Grounds common to at least eighteen state statutes concerning teacher dismissal are these: (a) inefficiency, (b) immorality, (c) insubordination, (d) neglect of duty, (e) failure to perform duties as prescribed by the state, superintendent of administrative units, and school boards, (f) and decreased teacher allotment. Specifically, forty-two state statutes (see Table II) establish incompetency, inefficiency, and inadequate performance as professional rationale for teacher dismissal. "Incompetency," "inefficiency," and "inadequate performance" for purposes of this dissertation (primarily because definitions of terms and judicial application) are used synonymously.

Table I establishes grounds for dismissal on a state-by-state basis. Grounds range from the concise "other good and just cause" of Arizona, New Mexico, and Washington to the detailed twelve categories outlined in North Carolina's Teacher Tenure Law. Whether there should be a more descriptive delineation of reasons for dismissal than the

general "just cause" reason is highly debatable. In any event, the law is clear that whether the grounds are specified or general, the action of the governing school body or authority was made in good faith and not arbitrarily, irrationally, unreasonably, or capriciously.

As indicated earlier, the most detailed delineation of grounds for career teacher dismissal or demotion appears in the North Carolina Tenure Statute. The Statute contains twelve specific reasons which can be used in dismissal proceedings:

1. Inadequate performance
2. Immorality
3. Insubordination
4. Neglect of duty
5. Physical or mental incapacity
6. Excessive use of alcohol or narcotics
7. Conviction of a felony or a crime involving moral turpitude
8. Engaging in an act to overthrow the government
9. Failure to fulfill responsibilities of the general statutes and the requirements of the board of education
10. Revocation of certificate
11. Reduction in teacher allotment
12. Change in certificate status¹

In contrast, South Dakota's Tenure Law lists only a limited number of justifications for teacher dismissal, i.e., immorality, neglect of duty, the failure to fulfill responsibilities as outlined by school

¹ North Carolina Tenure Law, Subchapter VII, Sec. 115-142.

TABLE I
 GROUNDS FOR DISMISSAL OR DEMOTION OF SCHOOL PERSONNEL

State	Excessive absence	Cruelty	Immorality	Insubordination	Neglect of duty	Physical or mental capacity	Excessive use alcohol, narcotics	Felony or moral turpitude	Overthrow of government	Failure to fulfill responsibilities	General statutes	Requirements of board	Revocation of certificate	Decreased teacher allotment	Certificate status	Other good and just cause	Give reasons	Dishonesty	Misconduct in office	Discipline	Encouraging students to violate rules	Violation of contract	Willful failure to pay debts
Ala.			X	X	X									X		X							
Alas.			X					X		X				X		X							
Ariz.																							
Ark.																							
Calif.			X			X		X	X	X							X						
Colo.			X	X	X	X		X						X		X							
Conn.			X	X	X	X		X						X		X							
Del.			X	X	X	X		X		X				X		X							
Fla.			X	X	X	X	X	X						X		X							
Ga.			X	X	X	X		X		X				X		X					X		
Haw.			X					X		X				X		X							
Ida.								X		X				X		X						X	
Ill.	X		X		X					X				X		X							
Ind.			X	X	X					X				X		X							
Iowa					X											X							
Kan.			X	X	X	X				X				X		X							
Ky.			X	X	X	X				X				X		X							
La.			X		X					X				X		X							
Me.														X		X							

TABLE I (continued)
 GROUNDS FOR DISMISSAL OR DEMOTION OF SCHOOL PERSONNEL

State	Excessive absence	Cruelty	Immorality	Insubordination	Neglect of duty	Physical or mental capacity	Excessive use alcohol, narcotics	Felony or moral turpitude	Overthrow of government	Failure to fulfill responsibilities	General statutes Requirements of board	Revocation of certificate	Decreased teacher allotment	Certificate status	Other good and just cause	Give reasons	Dishonesty	Misconduct in office	Discipline	Encouraging students to violate rules	Violation of contract	Willful failure to pay debts
Md.			X	X	X													X				
Mass.				X									X		X			X				
Mich.															X			X				
Minn.			X	X	X	X		X		X	X				X			X				
Miss.		X	X	X			X	X		X	X		X		X							
Mo.	X		X	X		X		X		X	X				X							
Mont.																						
Neb.			X	X	X	X				X	X		X	X	X							
Nev.			X	X	X	X		X					X	X	X			X				
N.H.		X				X				X					X			X				
N.J.															X			X				
N.M.															X							
N.Y.				X	X	X		X				X		X	X							
N.C.			X	X	X	X	X	X	X	X	X	X	X	X	X							
N.D.		X	X	X		X		X		X	X	X	X	X	X			X				

TABLE I (continued)
 GROUNDS FOR DISMISSAL OR DEMOTION OF SCHOOL PERSONNEL

State	Excessive absence	Cruelty	Immorality	Insubordination	Neglect of duty	Physical or mental capacity	Excessive use alcohol, narcotics	Felony or moral turpitude	Overthrow of government	Failure to fulfill responsibilities General statutes Requirements of board	Revocation of certificate	Decreased teacher allotment	Certificate status	Other good and just cause	Give reasons	Dishonesty	Misconduct in office	Discipline	Encouraging students to violate rules	Violation of contract	Willful failure to pay debts
Ohio		X	X	X						X				X							
Oklahoma		X	X	X				X		X				X							
Oregon			X	X	X	X				X	X										
Pennsylvania		X	X		X	X				X											
Rhode Island														X							
South Carolina			X		X		X	X		X				X							
South Dakota			X		X									X							
Tennessee				X	X												X				
Texas			X		X	X	X	X		X		X									X
Utah																	X				
Vermont										X				X							
Virginia			X			X				X				X							
Washington																					
West Virginia		X	X	X	X					X		X									
Mississippi			X		X					X				X							
Wyoming			X	X	X									X							

boards, and other good and just cause.²

Some state statutes are ambiguous and arbitrary. Arizona, New Mexico, and Washington require only that "good and just cause" be given to career teachers for dismissal or demotion.

Georgia is the only state whose statutes list "encouraging students to violate rules" as basis for dismissal. The statutes of this state also include as reasons for dismissal or demotion immorality, neglect of duty, conviction of a felony or moral turpitude, failure to fulfill responsibilities as outlined in the requirements of school boards and the specified state laws, insubordination, and good and just cause.³

Missouri's Tenure Law includes excessive teacher absence as a mandate for dismissal. This is the only state that expressly gives teacher absence as a reason for dismissal.

Table II indicates thirty-two states having incompetency as a ground for dismissal, eighteen states having inefficiency as a ground for dismissal, nine states having both incompetency and inefficiency as reasons, and seven states with inadequate performance as a reason. Moreover, North Carolina, while not including incompetency or inefficiency as grounds for career teacher dismissal or demotion, specifies inadequate performance instead. •

² South Dakota CL 1975, section 13-43-9.1.

³ Georgia Code Ann. 32-210C.

TABLE II
STATES INCLUDING INCOMPETENCY, INEFFICIENCY,
AND INADEQUATE PERFORMANCE AS GROUNDS FOR DISMISSAL

State	Inadequate Performance	Inefficiency	Incompetency
Alabama	X		X
Alaska			X
Arizona			
Arkansas			
California	X		X
Colorado			X
Connecticut		X	X
Delaware			X
Florida			X
Georgia		X	X
Hawaii		X	
Idaho			X
Illinois			X
Indiana			X
Iowa			X
Kansas		X	X
Kentucky		X	X
Louisiana			X
Maine			
Maryland			X
Massachusetts	X	X	
Michigan			
Minnesota		X	
Mississippi		X	X
Missouri		X	X
Montana.			
Nebraska			X
Nevada	X	X	
New Hampshire			X
New Jersey	X	X	
New Mexico			
New York		X	X
North Carolina	X		
North Dakota		X	
Ohio		X	
Oklahoma			X

TABLE II (continued)

STATES INCLUDING INCOMPETENCY, INEFFICIENCY,
AND INADEQUATE PERFORMANCE AS GROUNDS FOR DISMISSAL

State	Inadequate Performance	Inefficiency	Incompetency
Oregon	X	X	
Pennsylvania			X
Rhode Island			
South Carolina			X
South Dakota			X
Tennessee		X	X
Texas		X	X
Utah			X
Vermont			X
Virginia			X
Washington			
West Virginia			X
Wisconsin		X	
Wyoming			X

As seen in Table III, the states are also at variance regarding the question, "Which school personnel are covered by state tenure laws?" Statutes of all states specify that career teachers are included. Twenty-six states include probationary teachers as well.

It is interesting to note the lack of uniformity in extending coverage to include principals and supervisors. Twenty-eight states include principals in their tenure law; whereas only twenty-five states include supervisors. Both principals and supervisors are protected by statutes in twenty-four states. Hawaii, Montana, and Missouri include principals, but not supervisors. Conversely, only Arizona includes supervisors, but not principals. Four states (Arizona,

Connecticut, Florida, and Nebraska) list principals teaching 50 per cent of their work day as eligible for tenure protection. Only Arizona extends coverage to teaching principals, but not to full-time principals, however.

Twenty-one state tenure laws also cover vice-principals. Idaho and Nebraska specifically extend tenure to school nurses and librarians.

Missouri has an interesting and unique section in its tenure law regarding principals and vice-principals. Principals and vice-principals cannot earn tenure for those positions, but they can acquire tenure as permanent teachers after having served two years as a principal or vice-principal. A teacher in that state would have to teach five years prior to achieving career status.

Virginia reserves the right to assign principals and supervisors to teaching positions, without assignment to such positions being regarded as demotions, if notice is given by April 15 of any year.

The question of whether to grant tenure to superintendents is another one upon which the states are not in agreement. Seventeen states include superintendents in their tenure laws. Florida, while not including superintendents directly in its legislation, does authorize the local school boards, at their option, to extend tenure to superintendents.

It could be said that Massachusetts includes superintendents in its tenure laws in a limited way. While not explicitly extending tenure to them, the law does state that superintendents cannot be dismissed except for "good cause" and that they must be granted a hearing, if so requested.

TABLE III
SCHOOL PERSONNEL INCLUDED IN STATE TENURE LAWS

State	Probationary	Career	Principal	Supervisors	Principal teaching 50%	Administrator	Superintendent	Vice-Principal	School nurse	Librarians	Assistant superintendent	Other employee having contract for definite term
Ala.		X	X	X								
Alas.		X										
Ariz.	X	X		X	X							
Ark.	X	X	X	X			X	X			X	
Calif.	X	X										
Colo.	X	X		X	X			X			X	
Conn.	X	X	X	X								
Del.		X										
Fla.	X	X	X	X	X		X					
Ga.	X	X	X	X		X						X
Hawaii		X	X					X				
Ida.	X	X						X	X			
Ill.	X	X	X	X			X	X			X	
Ind.	X	X	X	X			X	X			X	
Iowa	X	X	X	X			X	X			X	
Kan.		X	X	X			X	X				
Ky.	X	X	X	X			X	X			X	
La.		X										
Me.		X										
Md.		X	X	X				X			X	
Mass.		X	X				X					
Mich.		X										
Minn.	X	X	X	X			X	X			X	
Miss.	X	X	X	X			X	X			X	
Mo.	X	X	X	X				X				
Mont.		X	X									
Neb.	X	X	X	X	X		X	X	X		X	X
Nev.	X	X	X	X			X	X			X	
N.H.	X	X	X									
N.J.												
N.M.		X	X									
N.Y.	X	X	X	X				X				

TABLE III (continued)

SCHOOL PERSONNEL INCLUDED IN STATE TENURE LAWS

State	Probationary	Career	Principal	Supervisors	Principal teaching 50%	Administrator	Superintendent	Vice-Principal	School nurse	Librarians	Assistant superintendent	Other employee having contract for definite term
N.C.	X	X	X	X								
N.D.		X										
Ohio		X										
Okla.		X										
Oreg.	X	X	X	X		X		X				
Pa.	X	X	X	X			X	X			X	
R.I.		X										
S.C.		X										
S.D.	X	X	X	X			X	X			X	
Tenn.		X										
Texas		X										
Utah	X	X	X	X			X	X			X	
Vt.	X	X										
Va.		X	X	X								
Wash.		X	X	X			X	X			X	
W.Va.		X										
Wis.		X	X	X				X				
Wyo.	X	X	X	X			X	X			X	

Montana and Wisconsin tenure statutes directly state that district superintendents are excluded from tenure coverage. The Montana statute reads:

Whenever a teacher has been elected by the offer and acceptance of a contract for the fourth consecutive year of employment by a district in a position requiring teacher certification, except as a district superintendent, the teacher shall be deemed to be reelected from year to year thereafter as a tenure teacher at the same salary

and in the same or a comparable position of employment as that provided last executed contract with such teacher....⁴

Although the Wisconsin tenure statute specifically excludes superintendents and assistant superintendents, it applies only to school systems operating in counties in an excess of 500,000 population.

Table IV indicates that a probationary period of two years is required in six states prior to attainment of tenure status, and a five-year probationary period is required in three states. Only one state, Iowa, executes a contract with a teacher on a yearly basis, unless otherwise authorized by the school board. Although there is some division among the states as to when tenure status may be attained, more than half of the states, twenty-seven, use the end of the third year of employment as the determination point and the fourth year as the beginning of tenure year.

TABLE IV
YEAR OF EMPLOYMENT
IN WHICH EMPLOYEE IS GRANTED TENURE

State	1 year	2 year	3 year	4 year	5 year	6 year	Certificated Personnel	Contract for 1 year unless otherwise authorized
Alabama				X				
Alaska			X					
Ariz.				X				
Ark.							X	
Calif.								
Colo.				X				
Conn.					X			
Dela.				X				
Fla.				X				
Ga.				X				
Hawaii			X					

4

Revised Code of Montana, Tit. 75, sec. 6103.

TABLE IV (continued)
 YEAR OF EMPLOYMENT
 IN WHICH EMPLOYEE IS GRANTED TENURE

State	1 year	2 year	3 year	4 year	5 year	6 year	Certificated Personnel	Contract for 1 year unless otherwise authorized
Ida.				X				
Ill.			X					
Ind.								
Iowa								X
Kan.				X				
Ky.					X			
La.				X				
Me.				X				
Md.			X					
Mass.				X				
Mich.			X					
Minn.			X					
Miss.								
Mo.						X		
Mont.				X				
Neb.				X				
Nev.								
N.H.				X				
N.J.								
N.M.				X				
N.Y.				X				
N.C.				X				
N.D.								
Ohio				X				
Okla.				X				
Oreg.				X				
Pa.								
R.I.				X				
S.C.								
S.D.				X				
Tenn.				X				
Texas					X			
Utah								
Vt.								X
Va.				X				
Wash.								X
W.Va.				X				
Wis.				X				
Wyo.				X				

Examination of state tenure laws reveals some discrepancies with regard to the continuing contract and the tenure determination point. In Arkansas it is granted, upon employment, to any person who holds a teaching certificate. The Arkansas statute interprets the term "teacher" in a broad sense to include administrative and supervisory personnel:

For the purposes of this Act, the term teacher shall mean and include any person employed by a school district in this state in a teaching, instructional, administrative or supervisory capacity, for which a teaching certificate issued by the Arkansas State Education Department is required as a condition of employment in such position.⁵

Florida teachers may receive a continuing contract after a probationary period of three years, but principals and supervisors are limited to three-year contracts. Moreover, school boards are not required to give cause if they elect not to renew contracts of principals and supervisors.

According to Hawaii Tenure Law, school personnel may attain tenure status after completion of a two-year probationary period. However, the State Department of Education may, at its discretion, extend this probationary period to a maximum of five years:

Effective 1, 1965 all teachers, principals, and vice-principals entering the service of the Department of Education for the first time shall serve as probationary employees of the Department for a minimum period of two consecutive years; provided that such consecutive employment may be interrupted by maternity leave, sick leave, or any other leave approved by the Department, not exceeding a period of three years, or by military leave not exceeding a period of five years, without loss of credit

5

Ark. Stat. Ann. sec. 80-1245.

for the probationary employment; and provided further that at, or prior to the end of the two years of probation, the department may extend the probationary period of a teacher, principal, or vice-principal for additional periods not to exceed a total of five years.⁶

North Dakota Statute does not stipulate a specific time point for granting tenure. However, it does require school boards contemplating teacher dismissals to hold special meetings (hearings) for those teachers prior to expiration of their contracts.

South Carolina and Vermont have essentially a continuing contract policy, without a probationary period. South Carolina maintains that any teacher who will not be reemployed for the ensuing year, has a right to notice and a hearing. Vermont requires that "just and sufficient cause" be given if a teacher's contract is not to be renewed and entitles the teacher to the right of hearing.

Wyoming has a continuing contract on a year-to-year basis, following a three-year probationary period. Teachers under this contract have a "reasonable expectation of continued employment."⁷

Table V indicates that only three states employ any kind of professional review committee. North Carolina provides tenured personnel the option of requesting an immediate hearing before the local school board or a review of the superintendent's proposed dismissal recommendation by the State's Professional Review Committee. If the person being considered for dismissal elects to choose a hearing before the school

6

Hawaii Rev. Stat., Tit. 18, sec. 297-9.

7

Wyoming W.S. 1975 Cum. Supply, sec. 21.1-152.

board, he forfeits his right to a hearing before the Professional Review Committee. If he elects to have the Professional Review Committee review the superintendent's recommendation, the Committee will examine the charges and the evidence. After the investigation, the Committee will submit a recommendation of action to the superintendent of the administrative unit.

Oklahoma makes use of a Professional Practices Commission by allowing the person to appeal the dismissal decision of the school board to it. California's statute provides that:

No report on the fitness of a teacher in a dismissal proceeding shall be received from a statewide professional organization by a governing board unless the teacher shall have been given, prior to the preparation of the report in its final form, the opportunity to submit in writing his or her comments on the report

TABLE V
PROFESSIONAL REVIEW COMMITTEE OR OTHER SUCH BODY
REQUIRED BY LAW

State	Has professional review committee
Alabama	
Alaska	
Arizona	
Arkansas	
California	X
Colorado	
Connecticut	
Delaware	
Florida	
Georgia	
Hawaii	
Idaho	
Illinois	
Indiana	

TABLE V (continued)

PROFESSIONAL REVIEW COMMITTEE OR OTHER SUCH BODY
REQUIRED BY LAW

State	Has professional review committee
Iowa	
Kansas	
Kentucky	
Louisiana	
Maine	
Maryland	
Massachusetts	
Michigan	
Minnesota	
Mississippi	
Missouri	
Montana	
Nebraska	
Nevada	
New Hampshire	
New Jersey	
New Mexico	
New York	
North Carolina	X
North Dakota	
Ohio	
Oklahoma	X
Oregon	
Pennsylvania	
Rhode Island	
South Carolina	
South Dakota	
Tennessee	
Texas	
Utah	
Vermont	
Virginia	
Washington	
West Virginia	
Wisconsin	
Wyoming	

As will be demonstrated in Chapter Three, the Supreme Court of the United States has established rules requiring and governing teacher dismissal hearings. The procedures outlined in the statutes of various states range from no established procedure to a comprehensive due process procedure. At least seventeen states have what appear to be adequate due process procedures governing dismissal hearings included in their tenure laws. Part, or all, of the following procedures appear in those laws:

- a. Teacher notification of time and place of hearing
- b. Description of the nature of the charges
- c. Statement of rules and regulations governing the hearing
- d. List of witnesses and statement of the nature of their testimonies
- e. Assurance of right for teacher to present evidence
- f. Guarantee of right to be represented by counsel
- g. Guarantee of right to subpoena witnesses
- h. Guarantee of right to cross-examine witnesses
- i. Provision for recording and transcribing evidence
- j. Written report supported by evidence given to teacher by board upon conclusion of the hearing
- k. Provision for teacher to appeal the board decision

New Mexico conducts a hearing based on regulations prescribed by the State Board. Another state, Arizona, affords the teacher the right to present evidence and to be represented by counsel, to present witnesses, to give depositions, and to receive the finding of facts but

does not delineate other rules and rights concerning a hearing. Table VI outlines the procedures followed by the various states.

TABLE VI
 REQUIREMENTS OF A FORMAL HEARING
 PRIOR TO DISCHARGING A TENURED TEACHER

State	Suspension	Private Hearing	Public Hearing	Present evidence	Present witnesses	Right to counsel	Cross-examine witnesses	Require oaths	Give depositions	Issue subpoenas	Receive a transcript of hearing	Finding of facts
Ala.		X	X		X	X	X	X	X	X	X	X
Alas.		X	X	X	X	X	X	X		X	X	X
Ariz.				X	X	X			X			X
Ark.	X	X	X			X					X	
Calif.				X	X	X	X	X				X
Colo.	X	X	X	X	X	X	X	X	X	X	X	X
Conn.		X	X			X					X	X
Dela.		X	X	X	X	X	X	X		X	X	X
Fla.	X	X	X									
Ga.	X				X	X		X		X	X	X
Hawaii		X	X	X	X	X	X	X		X	X	X
Ida.				X		X	X					X
Ill.		X	X	X	X	X	X	X		X	X	X
Ind.					X	X						
Iowa			X			X						X
Kansas					X	X	X	X	X	X	X	X
Ky.		X	X	X	X	X		X		X	X	
La.		X	X		X	X		X		X		
Me.		X	X			X						
Md.		X	X	X	X	X	X					

TABLE VI (continued)
 REQUIREMENTS OF A FORMAL HEARING
 PRIOR TO DISCHARGING A TENURED TEACHER

State	Suspension	Private hearing	Public hearing	Present evidence	Present witnesses	Right to counsel	Cross-examine witnesses	Require oaths	Give depositions	Issue subpoenas	Receive a transcript of hearing	Finding of facts
Mass.		X	X	X	X	X	X				X	X
Mich.		X	X	X	X	X				X	X	X
Minn.		X	X	X	X	X	X	X		X	X	X
Miss.			X	X	X	X	X	X		X	X	X
Mo.			X	X	X	X	X	X		X	X	X
Mont.												
Neb.						X						
Nev.												X
N.H.												
N.J.												
N.M.				X	X	X						X
N.Y.				X	X	X	X	X			X	X
N.C.		X		X	X	X	X	X	X		X	X
N.D.		X	X	X	X	X	X	X			X	X
Ohio	X	X	X	X	X	X	X	X		X	X	X
Okla.		X	X	X	X	X	X			X		
Oreg.		X	X	X	X	X						X
Pa.		X	X	X	X	X					X	
R.I.		X	X	X	X	X					X	
S.C.		X	X	X	X	X	X	X		X	X	X
S.D.				X	X	X						X
Tenn.		X	X	X	X	X		X		X		X
Texas		X	X	X	X	X	X					
Utah				X	X	X	X					X
Vt.		X	X	X	X	X						X
Va.		X	X	X	X	X					X	X
Wash.		X	X	X	X	X	X				X	X
W.Va.												
Wis.		X	X	X	X	X					X	X
Wyo.				X	X	X	X	X			X	X

As seen in Table VII, the requirements set forth in the individual state laws regarding steps in the dismissal procedure are also at variance. For example, New Jersey's Tenure Statute includes no specific steps. On the other hand, other states outline detailed sequences including making evaluations, conducting counseling periods, presenting recommendations by the superintendent, and giving written notice regarding the nature and intent of the charges to the teacher. In these states, the school board must grant a hearing if the teacher so requests.

Michigan's dismissal procedure is unique in that a tenured teacher can be dismissed or demoted for "reasonable and just cause" only. Such dismissal must be preceded by a statement of charges and hearing. The statute further states that the correct contract must be equally applied to all teachers and must be on a year-to-year basis.

New Jersey statute dictates that the hearing be held by the Commissioner of Education rather than the local school board. The statute also stipulates that written charges be made, and further that these charges may be brought by persons other than members of the board of education.

Teachers are not the only group deemed eligible to request hearings before the local board of education under the Washington Tenure Statute. Any public school employee, including the superintendent, has the same right.

TABLE VII
STEPS IN DISMISSAL PROCEEDINGS

State	Superintendent makes decision	Superintendent gives written notice	Teacher requests review committee or hearing	If request for review, superintendent notifies state superintendent	Superintendent and teacher meet with committee	Superintendent gives recommendation to board	Teacher requests hearing	Board holds hearing	Board gives written dismissal notice	Board gives written notice of intent	Counseling period held	Names and nature of testimony given	Teacher has private conference with board	Evaluations made	Hearing by Commissioner held
Ala.							X	X	X						
Alas.							X		X						
Ariz.	X							X	X						
Ark.							X	X	X						
Calif.							X	X	X	X	X				
Colo.	X						X	X	X	X		X			
Conn.							X	X	X	X					
Del.							X	X	X	X					
Fla.		X					X	X	X	X					
Ga.							X	X	X	X					
Hawaii		X					X	X	X	X					
Ida.							X	X	X	X					
Ill.							X	X	X	X					
Ind.	X						X	X	X	X					
Iowa															
Kan.							X	X							
Ky.			X				X	X							

TABLE VII (continued)
 STEPS IN DISMISSAL PROCEEDINGS

State	Superintendent makes decision	Superintendent gives written notice	Teacher requests review committee or hearing	If request for review, superintendent notifies state superintendent	Superintendent and teacher meet with committee	Superintendent gives recommendation to board	Teacher requests hearing	Board holds hearing	Board gives written dismissal notice	Board gives written notice of intent	Counseling period held	Names and nature of testimony given	Teacher has private conference with board	Evaluations made	Hearing by Commissioner held
La.							X	X		X		X			
Me.		X					X	X		X					
Md.								X		X					
Mass.							X	X		X					
Mich.							X	X	X						
Minn.							X	X		X					
Miss.		X					X	X		X					
Mo.		X					X	X	X	X	X		X	X	
Mont.							X	X	X	X					
Neb.							X	X	X	X					
Nev.															
N.H.							X	X	X	X					
N.J.									X	X					X
N.M.							X	X	X	X					
N.Y.							X	X	X	X					
N.C.	X	X	X	X	X	X	X	X	X	X					

TABLE VII (continued)
 STEPS IN DISMISSAL PROCEEDINGS

State	Superintendent makes decision	Superintendent gives written notice	Teacher requests review committee or hearing	If request for review, superintendent notifies state superintendent	Superintendent and teacher meet with committee	Superintendent gives recommendation to board	Teacher requests hearing	Board holds hearing	Board gives written dismissal notice	Board gives written notice of intent	Counseling period held	Names and nature of testimony given	Teacher has private conference with board	Evaluations made	Hearing by Commissioner held
N.D.							X	X	X	X					
Ohio							X	X	X	X					
Okla.							X	X	X	X					
Oreg.							X	X	X	X					
Pa.								X	X	X				X	
R.I.							X	X	X	X					
S.C.							X	X	X	X					
S.D.							X	X	X	X				X	
Tenn.							X	X	X	X					
Texas							X	X	X	X					
Utah							X	X	X	X				X	
Vt.									X	X					
Va.							X	X	X	X					
Wash.							X	X	X	X					
W.Va.							X	X	X	X			X		
Wis.							X	X	X	X					
Wyo.							X	X	X	X					

Table VIII indicates those states that include in the tenure law the right to appeal a dismissal or demotion decision and shows to whom the decision may be appealed. Sixteen states fail to provide the teacher with the right to appeal a dismissal decision. However, in view of recent court decisions, virtually every dismissed or demoted tenured teacher has the right to appeal an administrative or school board dismissal or demotion decision to the courts. One state, Oklahoma, provides the teacher with the right to appeal a dismissal decision of the board of education to the Professional Practices Commission. Also, eight states provide the opportunity for the teacher to appeal a dismissal decision to the State Department of Public Education and/or State Superintendent.

TABLE VIII

SOURCES OF APPEAL FOR PROFESSIONAL PERSONNEL

State	State Board	Court	Department of Education	Superintendent	State superintendent	Professional Practices Commission
Ala.		X				
Alas.						
Ariz.						
Ark.		X				
Calif.		X				
Colo.		X				
Conn.		X				
Dela.		X				
Fla.			X			
Ga.	X					
Hawaii		X				
Ida.						
Ill.		X				
Ind.						

TABLE VIII (continued)
SOURCES OF APPEAL FOR PROFESSIONAL PERSONNEL

State	State Board	Court	Department of Education	Superintendent	State superintendent	Professional Practices Commission
Iowa						
Kan.						
Ky.		X				
La.		X				
Me.		X				
Md.			X			
Mass.		X				
Mich.						
Minn.		X				
Miss.		X				
Mo.		X				
Mont.						
Neb.						
Nev.						
N.H.			X			
N.J.						
N.M.	X					
N.Y.			X			
N.C.		X				
N.D.						
Ohio		X				
Okla.		X	X			X
Oreg.						X
Pa.						
R.I.		X	X			
S.C.		X				
S.D.		X				
Tenn.		X				
Texas		X	X			
Utah						
Vt.		X				
Va.						
Wash.		X				
W.Va.					X	
Wis.						
Wyo.						

Table IX identifies the person or body who initiates dismissal proceedings. In most states either the superintendent or local board, or both, initiates the proceedings. In one state, Mississippi, the principal, in addition to the superintendent of the administrative unit, initiates the proceedings. The New Jersey statute provides that the person who prefers charges and signs the statement of charges against the teacher is the one who initiates dismissal proceedings.

TABLE IX
WHO INITIATES DISMISSAL PROCEEDINGS

State	Teacher	Principal	Superintendent	Board
Ala.				X
Alas.				X
Ariz.				X
Ark.				X
Calif.			X	
Colo.			X	
Conn.				X
Dela.				X
Fla.			X	
Ga.			X	X
Hawaii			X	
Ida.				X
Ill.				X
Ind.				X
Iowa				X
Kan.				X
Ky.			X	X
La.				X
Me.			X	X
Md.			X	
Mass.				X

TABLE IX (continued)
WHO INITIATES DISMISSAL PROCEEDINGS

State	Teacher	Principal	Superintendent	Board
Mich.				X
Minn.				X
Miss.		X	X	
Mo.			X	X
Mont.				X
Neb.				X
Nev.				
N.H.				X
N.J.				X
N.M.				X
N.Y.			X	
N.C.			X	
N.D.				X
Ohio				X
Okla.				X
Oreg.			X	
Pa.				X
R.I.				X
S.C.				X
S.D.				X
Tenn.			X	
Texas				X
Utah				X
Vt.			X	
Va.			X	
Wash.				X
W.Va.			X	
Wis.			X	X
Wyo.			X	X

CHAPTER III
LEGALITY OF TENURE LAWS AND
TEACHER INCOMPETENCE

The Massachusetts General Assembly passed the first tenure law for public school teachers in 1886.¹ But as early as 1873, state courts were very much concerned with teacher incompetency.² The embryonic public education institutions were already heavily embroiled in a controversy which, one hundred years later, would provide school boards and administrators with their single, most crucial, personnel problem. Moreover, tenure laws and teacher incompetency constitute the most litigated issues with respect to teachers during the decade of the '70's.³

Purpose of Tenure Laws

Although Massachusetts was the first state to legislate a teacher tenure law (1886), other states followed slowly. As of January 1, 1976, (as recorded in Chapter II), all fifty states had legislated teacher tenure prescriptions. Major debate has raged during approximately ninety years of tenure legislation, centering around educational and professional purposes achieved through tenure legislation; and that

¹ Commonwealth of Massachusetts 1886, Ch. 313.

² City of Crawfordsville V. Hays, 42 Ind. 200 (Ind. 1873).

³ (Analysis of Teacher Dismissal Cases). NOLPE School Law Reporter December 1970 to December 1975, Topeka, Kansas.

debate still continues today.

One contention is that teacher tenure laws, similar to the Federal Civil Service System (1883), were attempts to purge abuses of the spoils system from education by school boards and administrators.⁴ The distinguished education historian, Dr. Edgar W. Knight, alleges "wastefulness and actual damage" to children and educational purpose in continuing change in teaching faculties, as was so prevalent during the nineteenth and twentieth centuries.⁵ With the "hire and fire" policy, it was not uncommon for an administrative unit to have 50 percent, or higher, faculty turnover every year.⁶ Moreover, some school boards had established practices of firing teachers with five, six, or seven years' experience in order to hire first year teachers who would work cheaper.⁷

Whereas many proponents defend tenure laws from the teacher's standpoint, Professor Knight argued from the pupil's viewpoint. Professor Knight maintained, "The injury to helpless children thoughtlessly placed under the charge of young and inexperienced instructors who replace, and are likely to be replaced by, others singularly young and inexperienced, is often tragic."⁸ Building an experienced and

⁴ McSherry v. City of St. Paul, 277 N. W. 541 (Minn. 1938).

⁵ Edgar W. Knight, Education in the United States, Third Edition, (New York: Ginn and Company, 1951). p. 361.

⁶ Ibid., p. 363.

⁷ Ibid., p. 361.

⁸ Ibid., p. 361.

successful teaching faculty was a crucial task, and this task could be accomplished only when teachers achieved employment status stability - tenure.⁹

The most ardent supporters of tenure statutes have been professional organizations. In 1885, the National Education Association raised the issue of tenure for school officials.¹⁰ Approximately seventy years of continuous effort culminated in 1957, when the Committee on Tenure and Academic Freedom of that association set forth the following objectives of tenure laws:

1. To protect the classroom teacher and other members of the teaching profession against unjust dismissal of any kind--political, religious, or personal;
2. To prevent the management or domination to schools by political or non-educational groups for selfish and other improper reasons;
3. To secure for the teacher employment conditions which would encourage him to grow in the full practice of his profession, unharried by a constant pressure in fear;
4. To encourage competent, independent thinkers to enter and to remain in the teaching profession;
5. To encourage school management, which might have to sacrifice the welfare of the schools to fear and favor, to devote itself to the cause of education;
6. To set up honest, orderly, and definite procedures by which undesirable people may be removed from the teaching profession;
7. To protect educators in their efforts to promote the financial and educational interests of public school children;

⁹ Ibid., p. 363.

¹⁰ McSherry V. City of St. Paul, 277 N. W. 541 (Minn. 1938).

8. To protect teachers in the exercise of their rights and duties of American citizenship; and

9. To enable teachers, in spite of reactionary minorities, to prepare children for life in a republic under changing conditions,¹¹

Three years later, the same National Education Association Committee set forth standards and procedures tenure laws should encapsulate.

These standards and procedures included:

1. Adequate notice would be given and a written statement of charges provided;

2. The teacher would be represented by counsel in all cases;

3. Testimony of witnesses at the hearing would be taken under oath or affirmation;

4. The teacher would have the right to subpoena witnesses;

5. Admissible evidence would be restricted to that bearing directly on the charges presented;

6. The teacher would have the right to argument on evidence and the law;

7. Stenographic transcripts of evidence and argument would be available;

8. The hearing would be held before the entire school board, and arguments would be presented before the board as a whole; and

9. A vote of at least a majority of the entire board would be necessary before any action to dismiss would be final.¹²

¹¹ National Education Association, Trends in Teacher Tenure Through Legislation and Court Decision, (Washington: The Association, 1957) p. 8.

¹² National Education Association, "Teacher Tenure Laws," Research Bulletin, (October, 1960), pp. 84-85.

Proponents of teacher tenure statutes were having influence. In 1959 at least thirty-seven states had some form of teacher tenure prescription.¹³

Perhaps the greatest supporters of tenure law, particularly in the development of their philosophical rationale (also judicial concreteness), were state courts. Their support was partly due to the derogation of the common law. State courts were justified tenure statutes on the fundamental ground that such statutes provided rational order and promoted the best interest in both the welfare of children and state school systems. The Minnesota Supreme Court waxed eloquently in supporting the state tenure law. After a lengthy historical review of tenure legislation the court said:

Foreign countries have long recognized the principle of teacher's tenure. . . . Since 1900 the principle of teacher's tenure in this country has developed more rapidly. In a general way it has followed the civil service pattern. The objectives sought have been to protect the teachers against unjust removal after having undergone an adequate probationary period; that the movement itself has for its basis public interest, in that most advantages go to the youth of the land and to the schools themselves, rather than the interests of the teachers as such.¹⁴

A Louisiana court insisted that this state's tenure law accomplished a noble and sincere objective. If the statute were administered intelligently it would:

¹³ M. Chester Holte and John Phillips Finn, School Law For Teachers, (Danville, Ill.: The Interstate Printers and Publishers, Inc., 1963), p. 114.

¹⁴ McSherry V. City of St. Paul, 277 N. W. 541 (Minn. 1938).

. . . protect the worthy instructor, the youth of the parish, from enforced yielding to the political preference of those theretofore having the power to grant or withhold employment and to vouchsafe to such teachers employment, after a long term of satisfactory service to the public, regardless of the vicissitudes of politics or the likes or dislikes of those charged with the administration of school affairs.¹⁵

A Pennsylvania court was just as descriptive and supportive in affirming that state's tenure prescription. The court maintained that tenure laws made it possible:

To maintain an adequate and competent teaching staff, free from political and personal and arbitrary interference, whereby capable and competent teachers might feel secure, and more efficiently perform their duties of instruction.¹⁶

Professional educators and judicial reviewers justify tenure laws.

They claim that the laws:

1. Promote interest in welfare of children;
2. Maintain an adequate and competent teaching faculty;
3. Free teachers from politics in arbitrary decisions, school boards, administrators;
4. Enhance the instructional program through teacher security;
5. Encourage professional developments;
6. Create an atmosphere of academic freedom and free teacher thinking;
7. Establish subsidy of procedure process for teacher dismissal.

¹⁵ Andrews V. Union Parish School Board, 184 So. 574 (1a. 1938).

¹⁶ Bragg V. School District of Swarthmore, 11A. 2d 152 (1940).

Legal Basis of Tenure Laws

The question of the legality of states to enact tenure laws is important. In Associated Schools of Independent Dist. No. 63 of Hector, Renville County V. School Dist. No. 83 of Renville County it was argued that "the maintenance of public schools is a matter, not of local, but of state, concern."¹⁷ In Board of Education of Aberdeen-Huntington Local School Dist. V. State Board of Education, the court of Appeals of Brown County, Ohio, took the position that ". . . the control of schools, be they public or private, providing elementary and secondary education for the youth of Ohio, reposes in the Legislature of our state."¹⁸

Michael S. Sorgen, et al., when making reference to the Aberdeen-Huntington and Independent District of Hector cases stated:

The principles of state control of education embodied in the Aberdeen-Huntington and Independent District of Hector cases have long been generally accepted in American Law. Hundreds of cases regarding the various states have adhered to the principles which these decisions espouse. Under this prevailing theory of state control state governments, through their legislators, have been accorded ultimate authority over the educational systems within their respective states; and this authority has extended to all matters of educational governance, including curriculum, teacher certification, raising and allocating public funds for education, creation and administrative structure of local school districts, and the establishment and modification of boundaries for such districts. In practice much of this authority is delegated

¹⁷ Associated Schools of Independent Dist. No. 63 of Hector, Renville County V. School Dist. No. 83 of Renville County, 142 N. W. 325 (Minn. 1913).

¹⁸ Board of Education of Aberdeen-Huntington Local School Dist. V. State Board of Education, 189 N. E. 2d 81 (Ohio 1962).

to school boards or other local agencies, but such agencies exercise their delegated authority only at the pleasure of the state and subject to its direction.¹⁹

Edward C. Bolmeier maintained that:

any state constitution is out of tune with the times, as far as education is concerned, if it does not conform to the following stated principles:

(1) The state constitution should contain the basic provisions for the organization, administration, and support of state program of education.

(2) It should empower and direct the legislature to establish the general plan for carrying out the basic provisions set forth.

(3) It should be broad enough to include all of the essentials for an educational program.

(4) It should exclude details which tend to limit or handicap the legislature in developing an adequate school system to meet emerging needs. . . .²⁰

Thus, it would appear from the above discussion, that it is abundantly clear that state legislatures have the authority to enact those laws necessary for the governance of public education, including tenure laws.

As previously pointed out, tenure laws have been the most litigated issue with respect to teachers during the decade of the '70's. One reason for this is that school boards have often misinterpreted the provision giving the board the right to employ teachers; it also confers upon it the right to discharge them at will. Therefore, over the

¹⁹ Michael S. Sorgen, et al., State, School and Family, (New York: Matthew Bender and Company, Inc., 1973). p. 10.

²⁰ Edward C. Bolmeier, School in the Legal Structure, (Cincinnati, Ohio: The W. H. Anderson Co., Inc., 1968). pp. 75-76

years, school boards have, for the most part, discharged teachers at will. Often, the discharge has been for reasons that were arbitrary, irrational, unreasonable, or capricious.

In the course of the history of the United States, the public has expected more in the way of conduct of its teachers than of the average citizen. Illustrative of this point is Elsbree's statement that the public was especially critical of teachers during the first half of the nineteenth century when it invoked the most rigid moral and religious standards²¹ and Beale's citing of incidents recorded during the mid-nineteenth century in which teachers were reprimanded, dismissed, fined, imprisoned, and subjected to mob harrassment for real or imagined violations of prevailing public standards.²² Among these violations were the teaching of Negro children²³ and advocating abolition of slavery.²⁴

Due to teacher dismissals by school boards without "good and just cause," various questions have arisen concerning public education. One question is, "Who controls American education?"

Until recently American education received little political analysis.²⁵ Now, however, the whole matter of policy making is of

²¹ William S. Elsbree, The American Teacher, (American Book Company, 1939). p. 296.

²² Howard K. Beale, A History of Teaching in American Schools, (New York: American Book Company, 1941). pp. 3-11.

²³ Ibid., p. 131,

²⁴ Ibid., pp. 143-156.

²⁵ Michael S. Sorgen et. cl., State School and Family, op. cit.

paramount interest to educators, sociologists, politicians, and the general public. This increased interest has resulted in the enactment of teacher tenure laws in an effort to maintain an adequate and competent teaching staff, free from political or arbitrary interference, whereby capable and competent teachers might feel secure and might more efficiently perform their duty of instruction.

The court in Bragg V. School District of Swarthmore explicitly set out that unless the complaint or charges of a school board against a teacher are grounded upon "just and good cause," the employee may not be discharged. This case involved an attempt on the part of the school board to dismiss a teacher because of a decrease of student population in the teacher's room, a reason not included in the tenure law. Moreover, the action of the school district completely disregarded the seniority rights of the teacher. The court's invalidation of this dismissal said to school boards that there must exist good and just cause when dismissal takes place and that it cannot be arbitrary and capricious.

A similar line of reasoning was used in Arizona. There the Court of Appeals ruled that the tenure law barred reducing a teacher's annual salary to an annual salary less than that stated in his prior contract. However, the Court did state that such reduction is justified if the reduction applies to all personnel, or if it applies to the whole district.²⁶

²⁶ Board of Education, Tucson High School District No. 1 V. Williams, 403 P. 2d 324 (Ariz. 1965).

The power of the state legislature to delineate conditions, agreements, and qualifications relative to public school education is limited only by the state constitution. In addition, the state legislature may delegate, within the constitution, power to the state board of education and to local school boards.

In Board of Education, Tucson High School No. 1 V. Williams, the Arizona Court of Appeals concluded that the public school system exercises not only administrative functions, but others of a legislative character, and still others of a quasi judicial character. The administrative function consists of the hiring of teachers, assigning them, and discharging them. The legislative function involves the making of rules and the determination of policies concerning the hiring, assignment, and discharge of teachers. The quasi judicial function has to do with the power to hear and determine proceedings for the removal of teachers for cause.²⁷

In a 1938 case, the court interpreted the function of a legislative body as being: "not to make contracts but to make laws which declare the policy of the state. . ."²⁸

A look at the following cases reveals the power of state legislatures to establish policy regarding public school education and the prerogative of delegating such power to state boards and local boards of education.

²⁷ Ibid., p. 330.

²⁸ Indiana Ex. Rel. Anderson V. Brand, 303 U. S. 95 (1938).

In a New Jersey Supreme Court case, a teacher who would have served her probationary term (three full years) by November 19, 1965, was notified by the Board on November 15, 1965, that it was terminating her teaching contract, effective immediately, giving her two month's pay. In upholding the dismissal, the Supreme Court held:

that mere execution of a teacher's contract of employment to run for a period which would encompass tenure does not give tenure to the teacher discharged before he has served the period fixed by statute.²⁹

Whether or not the tenure law intends the probationary term to be reckoned from the date of the teacher's first appointment in a school district or the probationary term to commence at the ratification date of such law, is sometimes an important factor. In a Louisiana case the court interpreted the tenure law's probationary term to be reckoned from the date of first appointment and, furthermore, accepted the language as being susceptible to being given retroactive effect.³⁰ This question of probationary term commencement would need to be ascertained through a careful study of the tenure law under which one is covered.

A Pennsylvania court ruled that two nurses, certified by the Pennsylvania State Board of Education, were entitled to receive professional status.³¹ Both nurses had served the prescribed probationary

²⁹ Canfield V. Board of Education of the Borough of Pine Hill, 241 A. 2d 233 (N. J. 1968).

³⁰ Andrews V. Union Parish School Board

³¹ Elias V. Board of School Directors of the Windber Area, 421 P. 2d 324 (Ariz. 1965).

term. One nurse had received one evaluation during her term of employment; the other nurse had received no evaluations. Following their dismissal, the court maintained that the lack of evaluations indicated satisfactory performance, and to hold otherwise would permit unlawful dismissal of a temporary professional employee.

A question presented to a New York City court concerned the validity of (added conditional) qualifications attached to the permanent appointment certificate of a teacher who had served a satisfactory period.³² In this case the teacher was notified that certification of satisfactory service during the probationary term earned her permanent status. However, in smaller type was added a statement saying that the appointment was subject to the conditions, if any, which the Board of Examiners had recommended in the issuance of the teacher's license. The court took the position that the teacher's acquisition of tenure was not affected by the conditional language contained in the certificate of permanent appointment which she received.

Judicial History of Teacher Incompetence

As indicated in Table II, several states have statutes listing "incompetence," "inefficiency" and "inadequate performance" as grounds for dismissal or demotion of teachers. Yet, no statute addresses itself to a direct clarification of term definition. Study of the decisions rendered, however, does lead one toward an interpretation of "incompetence."

³² Mannix V. Board of Education of City of New York, 235 N. E. 2d 892 (N. Y. 1968).

Recent court decisions relating to due process requirements tend to complicate further the definition process. The number of cases concerning "incompetency" is too numerous to permit an analysis of each decided case. However, a review of some of the leading cases will serve to illustrate the varying interpretations by the courts of "incompetency" and should be useful in giving some indication of probable rulings in given situations which may confront the school administrator. Many of the cases here considered cover, directly or indirectly, other points of interest such as due process, burden of proof, procedure, notice, and sufficiency of charge. These points are covered in more detail in other sections.

What Is Teacher Incompetence?

The word "incompetence", as used in teacher discharge-demotion cases, is not a consistent technical term. It has received varied and broad definitions to cover the multi-faceted factual situations facing the courts. Some understanding of the various definitions can best be achieved through analysis of the typical cases dealing with teacher incompetence.

An Overview

The possession of technical knowledge in itself does not insure competence. In its decision in an early case, Briggs v. School City of Mt. Vernon, the Court said:

A teacher in accepting employment, impliedly agrees that he has the learning necessary to enable him to

teach. . .and that he has the capacity in a reasonable degree of imparting that learning to others.³³

In this particular case the students were viewed as being so undisciplined that no learning could take place, and the Court ruled that the teacher therefore could be dismissed for incompetence.

The suggested definition of incompetency in Fresno City High School V. DeCaristo is more precise and limited.³⁴ Moreover, implicit in this opinion is the belief that factors other than lack of knowledge contribute to one's degree of competence. However, the definition is confined to having educational qualifications and the ability to convey knowledge to students:

Thus "incompetency" could be held to refer to a lack of educational qualifications, or, to a possession of educational qualifications but³⁵ with a lack of ability to transmit knowledge to pupils.

In a more recent case, Tichenor V. Orleans Parish School Board, a Louisiana Court discussed possible definitions of incompetency at length.³⁶ The case involved a teacher's refusal to allow supervisory administrative personnel to enter his classroom to observe class conduct. Since he was a tenured teacher, he would be dismissed only for cause, including "willfull neglect of duty, or incompetency or dishonesty."³⁷

³³ Briggs V. School City of Mt. Vernon, 90 N. E. 105 (Ind. 1909).

³⁴ Fresno City High School V. DeCaristo, 92 P. 2d 668 (Cal. 1939).

³⁵ Ibid.

³⁶ Tichenor V. Orleans Parish School Board, 144 So. 2d 603 (La. 1963.)

³⁷ Ibid.

The court commented on the lack of definition within the meaning of the state's Teacher Tenure Act. It cited, however, a definition used in a case involving a school board member:

Incompetency as a ground for suspension and removal has reference to any physical, moral, or intellectual quality, the lack of which incapacitates one to perform the duties of his office. Incompetency may arise from gross ignorance of official duties or gross carelessness in the discharge of them. It may also arise from lack of judgment and discretion or from a serious physical or mental defect not present at the time of election, though we do not imply that all physical and mental defects so arising would give ground for suspension.³⁸

The Louisiana Court then referred to an Alabama case concerning incompetency. In this case incompetency was defined as follows:

Incompetency is a relative term which may be employed as meaning disqualification, inability or incapacity. It can refer to lack of legal qualifications or fitness to discharge the required duty. It may be employed to show want of physical or intellectual or moral fitness.³⁹

Subsequently, in the same case, the court cites language found in Horosko V. School District of Mount Pleasant Twp.⁴⁰ That case contained this discussion of the term:

The term "incompetency" has a "common and approved usage." The context does not limit the meaning of the word to lack of substantive knowledge of the subjects to be taught. Common and approved usage give a much wider meaning. For example, in 31 CJ, with reference to a number of supporting decisions, it is defined: "A

³⁸ Ibid.

³⁹ County Board of Education of Clark County V. Oliver, 116 So. 2d 566 (Ala. 1959).

⁴⁰ Horosko V. School District of Mount Pleasant Twp. 6A 2d 866 (Pa. 1939).

relative term without technical meaning. It may be employed as meaning disqualification, inability, incapacity, lack of ability, legal qualifications, or fitness to discharge the required duty." In Black's Law Dictionary, 3rd edition, page 945, and in 1 Bouv Law Dict., Rawle's Third Revision, p. 1528, it is defined as "Lack of ability or fitness to discharge the required duty." Cases construing the word to the same effect are found in 4 Words and Phrases, First Series, page 3510, and 2 Words and Phrases, Second Series, page 1013. (*) Webster's New International Dictionary defines it as "want of physical, intellectual, or moral ability; insufficiency, inadequacy: specif., want of legal qualifications or fitness." Funk & Wagnall's Standard Dictionary defines it as "General lack of capacity of fitness, or lack of the special qualities required for a particular purpose."⁴¹

Inefficiency has been used as a synonym for incompetency. In Green V. Bd. of Ed., the court says that it will treat the word "inefficiency" in the school board's resolution as the equivalent of "incompetency."⁴² In 4 American Law Report 3, 1090 (1965), the author summarizes:

The cases would seem to indicate that the term "incompetency" and "inefficiency" are closely allied, if not synonymous, and that both terms connote a lack of some requisite ability, which is not to say, however, that incompetency or inefficiency encompasses all those defects which might be said, broadly speaking, to render a teacher unfit to continue as a teacher.⁴³

In Conley V. Board of Education of New Britain, plaintiff claimed that the evidence did not support the findings and conclusions of the board.⁴⁴ "Gross inefficiency," one of the grounds for dismissal

⁴¹Ibid.

⁴²Green V. Bd. of Ed., 56 S. E. 2d 100 (W. Va. 1949).

⁴³"What Constitutes 'Incompetency' or 'Inefficiency' as a Grounds for Demotion or Dismissal of a Public School Teacher," 4 American Law Report 3rd 1090.

⁴⁴Conley V. Board of Education of New Britain, 123 A. 2d 747 (Conn. 1956).

specified in the tenure act, was the charge in the case. In reviewing the case, the court put the burden of proving "gross inefficiency" squarely on the school board. It defined a grossly inefficient person thusly:

A grossly inefficient person would be one whose efforts were failing, to an intolerable degree, to produce the effect intended or desired--a manifestly incompetent or incapable person. . .

Special notice should be given the case of County Board of Education V. Oliver, a case involving a dispute as to the sufficiency of the written notice given a teacher. The Alabama statute provided for "notice in writing to the teacher stating in detail the reasons for the proposed cancellation. . . ." The notice given stated only that the teacher's services "had been unsatisfactory and incompetent."

In commenting on the Board's letter and its failure to inform Effie Mae Oliver of the specificity of her inadequacies, the court stated that the Board had merely told the defendant that she was incompetent. The court then went on to say:

The term 'incompetent' is generic in its meaning and of itself conveys no information of the particular act of commission or omission, or want of qualification which will authorize the conclusion that the individual having such status or guilty of such act or omission is incompetent. Ridgway V. City of Fort Worth, Tex., Civ. App., 243 S. W. 740.

"Incompetency" is a relative term which may be employed as meaning disqualification, inability, or incapacity. It can refer to lack of legal qualifications or fitness to discharge the required duty. It may be employed to show want of physical or intellectual or moral fitness.

Pennsylvania courts have allowed broad interpretation of the term incompetency. Due to lack of a catch-all phrase, such as "conduct unbecoming a teacher" to cover disqualifying conduct not specifically defined in the Tenure Statute, the term serves that function. Grounds

for dismissal in Pennsylvania include immorality, intemperance, cruelty, mental derangement persistent and willful violation of the school laws, and incompetency.

In the landmark case of Beilan V. Board of Education, the Court referred to the case, Horosko V. Mt. Pleasant Twp. School District, supra, in which Pennsylvania Supreme Court held that "incompetency includes petitioner's deliberate and insubordinate refusal to answer the questions of his administrative superior in a vitally important matter pertaining to his fitness."⁴⁵ The United States Supreme Court, commenting on the Pennsylvania court's interpretation, maintained that this interpretation is not inconsistent with the Federal Constitution.

This same case (Horosko) elicited the opinion that conduct outside school which would adversely affect the teacher's required classroom effectiveness would amount to incompetence. This opinion is reflected in the following statement:

If the fact be that she now commands neither the respect nor the good will of the community, and if the record shows that effect be the result of her conduct within the clause quoted, it will be conclusive evidence of incompetence.⁴⁶

Specific Cases of Incompetence

1. In General

Experience indicates that rarely does only one cause for dismissal or demotion exist; in most cases there are multiple, intertwining

⁴⁵ Beilan V. Board of Education, 357 U. S. 399 (1958).

⁴⁶ Ibid,

causes. For example, a frequent charge is lack of discipline in the classroom. This problem may well be caused, or contributed to, by lack of teacher knowledge, inability to communicate, poor organization and planning, or multiple other causes. Thus, it may be generalized that cases involving teacher dismissal fall into the categories of knowledge of subject matter, teaching methods, effect on pupils, and personal attitude and demeanor. However, in almost every instance, the cases involve multiple causes. This multiple cause theory should not be overlooked in consideration of the teacher dismissal or demotion problem.

There are a number of specific cases pertaining to this theory. One of the best examples is Blunt V. Marion County School Board.⁴⁷ In this case the Court held that Mrs. Blunt was in fact incompetent as charged by the superintendent in a letter to the Marion County Board of Public Instruction:

Mrs. Blunt has exhibited inadequate knowledge of subject matter. She has not exhibited good teaching practices in the conduct of her classes. As a direct result of poor planning and poor organization, student motivation has been poor. Her management of students has not met acceptable standards.⁴⁸

The difficulty of establishing the exact basis of a decision is demonstrated by the Fahl decision in which the teacher was charged with being inefficient, incompetent, and unsatisfactory as a teacher.⁴⁹

⁴⁷ Blunt V. Marion County School Board, 306 F. Supp. 727 (D. C. Fla, 1973).

⁴⁸ Ibid.

⁴⁹ Fahl V. School District No. 1, 180 P. 2d 532 (Colorado 1947).

Upon request for more specific charges, an administrator wrote the teacher that "the facts consisted of poor discipline, bad judgment, disregard of corrections, instability resulting in lack of confidence of teachers and pupils, intemperate verbal attacks on certain racial groups, failure to care for materials and substitution of extreme and erroneous personal ideas in regard to health for adopted and required standards."⁵⁰ The court held that the evidence established the charge and upheld the teacher's dismissal.

In the Fox decision, a teacher was charged with nineteen counts of incompetence.⁵¹ The court upheld the dismissal, based on these charges.

2. Lack of Discipline

Guthrie is a classic case citing lack of discipline as evidence of incompetency and inefficiency.⁵² The following charges had been brought to the Board of Education by the Superintendent:

Not only was she [Ms. Guthrie] unable to preserve proper order in the classrooms over which she presided, but she was deficient in controlling pupils on the playground. Her pupils were unhappy and ill at ease, her classroom was full of tension and confusion with the result that group work and individual incentive were lacking.

⁵⁰ Ibid.

⁵¹ Fox V. San Francisco Unified School District, 245 P. 2d 603 (Cal. 1952),

⁵² Guthrie V. Board of Education of Jefferson County, 298 S. W. 2d 691 (K6, 1957).

She was transferred to five different schools in an effort to get her into an atmosphere in which she could instruct effectively, but the transfers failed to bring results. Wherever she taught, demands by telephone and letter were made that she be transferred or that children be moved⁵³ to another teacher before she was finally dismissed.

The evidence clearly supported the finding of incompetence, since the learning process would be completely defeated in an atmosphere of disorder.

One of many charges in the Fox V. San Francisco Unified School District was that "he failed to maintain discipline in his classes and that the classes frequently were not orderly." Dismissal was upheld in this case. However, there were eighteen other charges of incompetence also.

The case of Board of Education V. Ballou also cites lack of discipline as one allegation of incompetence.⁵⁴ It was stated that the defendant "lost control of the class, etc."

Inability to maintain discipline was a grounds for termination of contract given by the Board of Education in Fowler V. Young.⁵⁵

Two other cases maintaining lack of discipline as evidence of incompetency are Fahl and Applebaum.⁵⁶ In the latter case, the primary contentions revolved around the teacher's lack of leadership,

⁵³ Ibid.

⁵⁴ Board of Education V. Ballou, 68 P. 2d 389 (Cal. 1937).

⁵⁵ Fowler V. Young, 65 N. E. 2d 399 (Ohio 1945).

⁵⁶ Applebaum V. Wulff, 95 N. E. 2d 19 (Ohio 1950).

lack of pupil progress, and continued poor performance. However, another charge was failure to maintain good order in the classroom.

In Singleton V. Iberville Parish School Board, a multiple charge case, lack of discipline was among many charges alleged by the school board.⁵⁷ The dismissal order of the lower court was affirmed. In another judicial decision the reasons given for failure of the Kenosha School Board to renew Colin Spaight's contract was Spaight's alleged lack of discipline in the classroom.⁵⁸ Permitting children to damage or destroy furniture was held to be lack of proper discipline in Knox City Board of Education V. Willis.⁵⁹ The Kentucky Supreme Court upheld dismissal in this case also.

The aforementioned cases indicate that a complex legal definition of neither "discipline" nor "incompetence" is used by the courts. Rather, each case turns specifically on what the teacher has done, or has failed to do, to suggest incompetency.

3. Failure to Supervise Athletic Contests

In at least one case, failure to supervise students during athletic contests has been equated with incompetence. The Potter case was one in which the teacher was dismissed for failure to give

⁵⁷ Singleton V. Iberville Parish School Board, 136 So. 2d 809 (La, 1961).

⁵⁸ Kenosha Teacher's Union Local 557 V. Wisconsin Employment Relations Board, 158 N. W. 2d 914 (Wisconsin 1968).

⁵⁹ Knox City Board of Education V. Willis, 405 S. W. 2d 952 (Ky. 1966).

supervision to band members during an athletic contest, as required in his contract.⁶⁰ Although the term "incompetent" did not appear in the statute, the court decreed that failure to supervise properly should be the equivalent of failure to produce required results and is similar in effect to results usual when there is incompetence.

4. Physical Disability

Incompetence may result from physical disability. With regard to duties which require physical action by a teacher, such as supervising playground activities, physical inability may prohibit the teacher from performing those duties.

The case of Singleton was an example of dismissal in which physical disability was among the many grounds for dismissal given. Physical disability was charged because the teacher was five feet three inches tall and weighed over three hundred pounds. The court ruled against the teacher.

There is one particularly significant exception which should be noted at this point, however. The United States Supreme Court ruled in Cleveland Board of Education V. LaFleur that if physical disability is to be the basis of inability of a teacher to perform his/her duties and thus grounds for dismissal, a school may not be permitted to set up general policies which would require all pregnant teachers to take a leave of absence, whether incapacitated or not.⁶¹ The Court declared

⁶⁰ Potter V. Richmond School District, 534 P. 2d 577 (Wash. 1975).

⁶¹ Cleveland Board of Education V. LaFleur, 414 U. S. 632 (1974).

that a school requirement for mandatory leave five months before the expected birth of a child, whether the teacher was incapacitated or not, is unconstitutional.

The court went on to say:

We conclude, therefore, that neither the necessity for continuity of instruction nor the state interest in keeping physically unfit teachers out of the classroom can justify the sweeping mandatory leave regulations that the Cleveland and Chesterfield Boards have adopted.⁶²

Presumably then, a rule related to the actual physical fitness of the teacher with regard to competency would be valid. However, the case of Blodgett V. Board of Trustees, Tonalpais Union High School District evoked the opinion that obesity, standing alone, is not reasonably and rationally related to the ability to teach or to maintain discipline.⁶³

5. Lack of Knowledge of Subject Matter

Several cases which cite lack of knowledge of subject matter have gone through the courts and dismissals have been upheld. The Appeal of Mulhollen is an example of such a case and is reviewed here because it illustrates the type of evidence often used in such cases.⁶⁴

An Assistant County Superintendent, in her testimony, stated that she had observed the teacher on numerous occasions over the years of her employ. She testified that the teacher:

⁶² Ibid.

⁶³ Blodgett V. Board of Trustees, Tonalpais Union High School District, 97 Cal. Rpts. (Ct. App., 1971).

⁶⁴ The Appeal of Mulhollen, 39 A. 2d 283 (Pa. 1944).

- a. showed little evidence of technical knowledge and skill
- b. showed little evidence of preparation of lessons
- c. had not organized the lessons
- d. used poor spoken English
- e. failed to correct the pupils' use of poor English

Another Assistant County Superintendent attested to virtually the same criticisms. He added that the teacher also had made many errors in a history test prepared in her own handwriting.

The principal's testimony focused on an incredible series of errors related to grading the forty-four pupils' work. He noted that a list of scores for the end of the term examination contained the following errors:

- a. Twelve pupils received lower marks than those to which they were entitled.
- b. Thirty pupils were given higher marks than those to which they were entitled.
- c. Only two pupils received a correct mark.

Although the teacher's dismissal was upheld, the courts discussed at length the use of a rating system, as well as the possible dereliction of the administration in failing to discover the weaknesses of the teacher during her prior twenty-three years of service.

The Singleton case, referred to previously, cited lack of knowledge on the teacher's part among its charges. Another case, Jennings, alleged "a lack of knowledge of the subject matter of

architectural drawing, which subject he was assigned to teach."⁶⁵ A similar allegation was made in Ballou. It is interesting to note that incorrect grammatical usage has also been used against teachers (e. g. Lane,⁶⁶ Singleton, supra, Mulhollen, infra). It would appear that expected knowledge for teachers includes a command of the English language.

6. Improper Teacher Methods

As has already been established, failure to establish and maintain discipline has been upheld by the courts as grounds for teacher dismissal (Section two above). Certainly a good case can be made for classifying this deficiency as an improper teaching method. However, other types of situations and classroom procedures are encompassed by this category also:

a. lack of proper organization and preparation

Complaints alleging poor organization and inadequate planning by teachers have faced the courts many times. The cases of Singleton, supra, Mulhollen, infra, Tucker,⁶⁷ Ballou, supra, Powell,⁶⁸ Fox, supra, and Applebaum, supra, all include this allegation.

⁶⁵ Jennings V. Caldo Parish School Board, 276 So. 2d 386 (La. 1973).

⁶⁶ Re Lane, 14 A. 2d 573 (Pa. 1940).

⁶⁷ Tucker V. San Francisco Unified School District, 245 P. 2d 597 (Cal. 1952).

⁶⁸ Powell V. Young, 74 N. E. 2d 261 (Ohio 1974).

b. inability to control emotions

Three cases referred to previously also cite loss of temper as evidence of incompetency. The Ballou case charged that the defendant "lost his temper in the presence of the class."

Evidence in another case, Singleton, supported contentions that:

Her voice and attitude frequently exhibited a feeling of irritation, displeasure, and impatience toward the pupil in that she shouted instructions and ordered them about. Her general demeanor was such that she demanded rather than earned the respect of her pupils with the result they appeared to fear and dread rather than respect her.

Loss of temper was charged in Powell also. In addition, evidence was presented that the teacher behaved in such a way as to suggest emotional instability by constantly harassing the superintendent and members of the board of education and by writing anonymous letters to the principal. The court ruled against the teacher, and she was discharged.

c. teaching inappropriate subject matter

Teaching inappropriate subject matter is among the most complex facets of the incompetency concept. Establishing what constitutes inappropriate subject matter becomes easily entangled with the First Amendment rights of a teacher. There are, however, a number of cases which should give the reader some insights into the nature of the problems involved and the court's attitudes toward those problems.

A Florida case, Moore, seeking reinstatement of a tenured teacher, involved charges of extensive in-class criticism by the teacher of the district superintendent and the board of education and also discussion

of the teacher's personal sexual experiences.⁶⁹ Mr. Moore, in his suit, claimed violation of his First Amendment rights. In dealing with the First Amendment claim, the court reaffirmed Mr. Moore's rights of freedom speech outside the classroom and cited precedents dealing with protection afforded under the First Amendment (Sindermann,⁷⁰ Tucker, supra, Keyishian⁷¹). The Court also cited precedent establishing the plaintiff's right to criticize his employer in Pickering.⁷²

The salient point working against Mr. Moore in this case, however, was that the statements were not made outside the classroom, but within. Speaking to this most important point, the Court said:

It is clear that this case does not concern First Amendment utterances nor statements made by a teacher outside the classroom. It is imperative to note here if that were the case Mr. Moore in all probability would be entitled to relief.

Another factor in this case to which the Court addressed itself was the right and freedom of students in the class not to listen to the statements of the teacher. Their right to expect protection as a captive audience from improper classroom activities was emphasized. The Court also commented on the distinction between "robust exchange of ideas which discovers truth out of a multitude of tongues (rather) than through any kind of authoritative selection" and one-sided straight criticism by a teacher of an educational system.

⁶⁹ Moore V. School Board of Gulf City, Florida, 364 F. Supp. 355 (D.C. Fla. 1973).

⁷⁰ Sindermann V. Perry, 408 U. S. 593 (1972).

⁷¹ Keyishian V. Board of Regents, 385 U. S. 589 (1967).

⁷² Pickering V. Board of Education of Lp. High School District, 391 U. S. 563 (Ill. 1968).

Mr. Moore's imprudence in discussing his personal sexual experiences also drew comment from the Court. It said:

. . . for Mr. Moore abused his authority and left legitimate areas of discussion when he began relating personal experiences with Japanese prostitutes who were "innocent," among other illegitimate topics.

It should be noted here that this case did not involve either dismissal or demotion of the teacher. Rather, it centered around his tenure status. Mr. Moore had been given two options by the board: (1) to accept a fourth year annual contract with the condition that he not discuss subjects other than biology in his classroom or, (2) to seek employment elsewhere.

Mr. Moore chose the latter of the two options before beginning to litigate the matter. The Court ruled against the plaintiff.

Not only First Amendment rights but also rights under the Fourteenth Amendment are considered by the courts in teacher dismissal cases. The judiciary ruling in a Massachusetts case, Mailloux, focused on the plaintiff's constitutional rights under both of these amendments.⁷³ The plaintiff claimed that both his substantive and procedural academic freedom rights were violated by the school board when it discharged him.

Plaintiff, an English teacher, had been dismissed for "conduct unbecoming a teacher." The dismissal resulted from a situation in which the teacher had written a four-lettered slang word on the

⁷³ Mailloux v. Killey, 323 F. Supp. 1387 (D.C. Mass. 1971).

chalkboard during a discussion of taboo words and had asked for a definition of the word. A boy in the class had volunteered that it meant "sexual intercourse."

Without using the word orally, the teacher then said:

We have two words, sexual intercourse and this word on the board. . . . One is acceptable by society. . . . , the other is not accepted. It is a taboo word.

In weighing the evidence in the case, the Court, in a lengthy opinion, cited two cases Keefe⁷⁴ and Pardueci which upheld two kinds of academic freedom: (1) the right of the teacher to choose a teaching method which serves a demonstrated educational purpose and (2) the procedural right of a teacher not to be discharged for use of a teaching method which was not prescribed by a regulation.

Probably the most significant point in the plaintiff's favor in Mailloux, supra, was the fact that he had not been notified that he could not use the teaching method in dispute. The court ruled that a school board may suspend or discharge a secondary school teacher for using a teaching method which he cannot prove has the support of the preponderant opinion of the teaching profession, or of the part of it to which he belongs. However, such drastic action cannot be resorted to "unless the state proves he was put on notice either by a regulation or otherwise that he should not use that method."⁷⁵

⁷⁴ Keefe V. Geanakos, infra. 379 F. Supp. 678.

⁷⁵ Mailloux V. Killey, op. cit.

In explaining its position regarding this procedural protection to teachers, the court acknowledged that the teacher, in his teaching capacity, is engaged in the exercise of what may plausibly be considered "vital First Amendment Rights" and stated that he is not required to "guess what conduct or utterance may lose him his position. The ruling further went on to say,

If he did not have the right to be warned before he was discharged, he might be more timid than it is in the public interest that he should be, and he might steer away from reasonable methods with which it is in the public interest to experiment.

Thus, the Board was ordered to reinstate the plaintiff. His discharge was ruled a violation of due process.

7. Failure to Keep Up With the Times

In a previously referred to case, Blunt, the charge of incompetency resulted in the discharge of the teacher, and the court upheld the dismissal. There is an aspect of this case which bears scrutiny at this point, however, in connection with the above topic. The teacher contended that her dismissal represented an attempt by the board to free a position to be filled by a black in order to achieve faculty desegregation. Further, she brought out that in her twenty-five years of teaching in the system, she had never received an unfavorable evaluation and that her teaching methods had not substantially changed over the period.

The last portion of the preceding statement could have been self-incriminating to the plaintiff. She clearly acknowledged failure to keep up with changing times during a twenty-five year span in saying

that her teaching methods had not substantially changed. Significantly, perhaps, the court chose not to deal directly with this point. However, in giving its opinion, and addressing itself to the competency charge, the court implied, certainly, some conviction that a changing standard for performance had evolved through the years in its finding that "the plaintiff was not competent to meet the modern demands of teaching."

8. Failure to Coordinate Teaching With That of Other Teachers

The Shirck case is one which raises a number of questions.⁷⁶

This case concerned a probationary teacher whose contract was not renewed. The reason given for the non-renewal was:

... her failure to coordinate her teaching with that of the other German teacher so that students who needed to transfer at the end of a semester would not be handicapped.⁷⁷

Mrs. Shirck appealed the dismissal charging that her Fourteenth Amendment rights had been violated. The Court chose not to address itself directly to that charge, however. The Court replied only:

First, plaintiff argues that the defendants could not rely on the reason stated with respect to failure to coordinate her teaching with that of her colleague unless the defendants could also show that they had defined in advance the standard of conduct to be followed and informed plaintiff of it. We think, however, that a teacher may be assumed to be competent in matters of classroom performance, and the school must have considerable freedom to refuse to retain a probationary

⁷⁶ Shirck V. Thomas, 447 F. 2d 1025 (7th Cir. 1971).

⁷⁷ Ibid.

teacher who does not meet imprecise, though nonetheless valid, standards of competence.⁷⁸

Clearly the fact that the plaintiff was a probationary teacher had strong bearing on the ruling. The ruling leaves unanswered the question, what would have been the court's response to a similar claim by a tenured teacher? Another question which arises is, do the rights of due process not apply to probationary teachers? A discussion of Roth, *infra*, will provide additional insights into the latter question.

9. Inability To Get Along With Parents and Students

No clear cut precedent of a court ruling on the sole charge, inability to get along with parents and students, exists. The charge, however, has appeared in at least three multiple-charge cases Lusk,⁷⁹ Applebaum, *supra*, and Fox, *supra*. The rulings in these cases were not consistent. In the Lusk, *supra*, case, the court overturned the dismissal action taken against the teacher, based on its findings that "statutory legal grounds for dismissal of plaintiff teacher and evidence to support such grounds are notably absent from the record in this case." The evidence against the teacher in Applebaum, *supra*, was much stronger, and the court upheld her dismissal. The Fox, *supra*, case which included nineteen charges of incompetency, also was decided in the school board's favor.

⁷⁸ *Ibid.*

⁷⁹ Lusk V. Community Consolidated School Dist. No. 95, 155 N.E. 2d 650 (Ill. 1959).

The case of Compton, while not containing specifically the charge, inability to get along with parents and students, elicited a pertinent judiciary comment.⁸⁰ Only the general charges of incompetency and insubordination were filed in this case. Speaking to the charges, the judge observed in his review, "At this point, it may be observed that there is no evidence of any pupil or parent complaint against, or dissatisfaction with, the plaintiff."

10. Inability to Motivate Students

Cases Citing inability to motivate students often are, in fact, multiple-cause cases. The case of Applebaum is typical of such cases.

The superintendent's letter to Mrs. Applebaum defining the grounds for her dismissal stated that "pupils have not progressed in your classes in accordance with their abilities." It further stated that she had never been rated better than "fair" by any principal under whom she had worked in the last ten years of her employ by the school system. It is interesting to note, at this point, that the teacher had a total of twenty-two years of teaching in the system at the time that dismissal proceedings were instigated.

Charges against Mrs. Applegaum included the following: (1) being ineffective and uninspiring in the classroom, (2) making little or no contribution to school activities, (3) failing to maintain good order in the classroom, and (4) having such a relationship with students as to evoke attitudes of bitterness on the part of pupils and parents.

⁸⁰ Compton V. School Directors of Dist. No. 14, 131 N.E. 2d 544 (Ill. 1956).

Evidence against the teacher was strong. Principals and supervisors attested to her ineffectiveness as a teacher. Many witnesses cited her inability to motivate students. The board's dismissal of Mrs. Applebaum was sustained by the court.

Two other previously mentioned cases Powell, supra, and Guthrie, supra, and also the Hapner case upheld similar findings by the court.⁸¹

11. Failure to Follow Guidelines

Evidence of incompetency in the Kenosha case, supra, included instances of the teacher's failure to comply with local guidelines. The major controversy in the case was whether or not the probationary teacher's union participation motivated the school board to refuse to renew his contract, thus denying him tenure status. The Supreme Court of Wisconsin rules that the nonrenewal was not based on the teacher's union activities, but on his performance and behavior in relation to his teaching position.

The recommendation of the teacher's principal against renewal of the teacher's contract bears examination at this point. The principal concluded that "the teacher's philosophy of teaching and his conception of what a teacher is are not in harmony with what is expected at this school and school system." Among the supporting reasons given by the principal for his recommendation were three which state, or imply, failure to comply with guidelines: (1) inappropriate dress, (2) class control inconsistent with handbook guidelines, and

⁸¹ Hapner V. Carlisle County Board of Education, 205 S.W. 2d 325 (Kentucky 1947).

(3) a philosophy of grading inconsistent with stated guidelines for evaluating and grading student progress.

12. Unsatisfactory Progress of Pupils

A series of older cases charge lack of learning or lack of progress by the students as grounds for dismissal. Some of these cases have been referred to elsewhere in this chapter; e.g., Fox, supra, Hapner, supra, Applebaum, supra. In those cases, the court ruled in favor of the boards of education.

The case of Scheelhouse also contains the charge of incompetence as evidenced by insufficient pupil achievement.⁸² The specific reason given a ten-year teacher for non-renewal of her contract was "her professional incompetence as indicated by the low scholastic accomplishment of her students on the Iowa Tests of Basic Skills (ITBS) and Iowa Tests of Educational Development (ITED)."

There are some very significant points in this case which bear discussing. First, due to the fact that an Iowa teacher tenure law was not in effect at that time, the teacher was not classified as a tenured teacher, despite her ten-year teaching experience background. This fact was to be critical in the appeal of the case to the Circuit Court of Appeals.

In appealing the school board's dismissal to the lower court, the teacher received the court's backing, and the dismissal was revoked. The court held that the teacher had a property right in a contract of

⁸² Scheelhouse v. Woodbury Central Community School Dist., 349 F. Supp. 988 (D.C. Iowa 1972).

employment; that the right of renewal may not be denied without due process of law, such due process demanding that the reasons for termination not be arbitrary and capricious, but must have basis in fact. In its opinion, the court held:

A teacher's professional competence cannot be determined solely in the basis of her students' achievement on the ITBS and ITED, especially where the students maintain normal educational growth rates.

On appeal, the Circuit Court reversed the lower court's decision. It noted that the teacher did not have tenure; that upon notice of nonrenewal, she was entitled to both a private and public hearing, both of which she had; and that the situation concerned nonrenewal, not a discharge for cause.

The key to the reversal of the lower court's decision, however, was the absence of a teachers' tenure law. The court declared: "In this case we find no violation of appellee's Civil Rights, nor a Federal due process issue." The court pointed out that this was also the findings in Harnett V. Ulett.

Roth, *infra*, and Sindermann, *infra*, adhere to the principle that absent contractual, legislative or constitutional provision on the subject, the power of renewal is incident to the power of appointment, and government employment can be revoked at the will of the appointing officer.

13. Inability to Get Along With Other Teachers

The notable precedent with regard to "inability to get along with other teachers" as proof of incompetence is the case of Compton. Action in this case was brought by a discharged teacher for breach of contract.

The judicial finding in the case sustained the finding of a lower court that the charge of incompetency leveled at the teacher was not sustained by evidence.

The defendants claimed that the teacher's incompetency was evident by her inability to be harmonious with the other teachers in the school. Jusicial opinion, however, held that:

. . .the sole cause of any lack of harmony; beyond that, such lack of harmony as may have existed as this school cannot, on this record, properly be laid entirely at the plaintiff's door, but was rather obviously the fault of all concerned, including the plaintiff, Mr. Keefe, the other two teachers, and the Directors.

When considering filing charges against a teacher for incompetency, the administrator is cautioned to bear in mind that the burden of proof rests with him. The administrator must be prepared to show that grounds in fact exist. An 1887 ruling, Ewing V. School Director, addressed itself directly to this point:

Incompetency, or any of the other statutory grounds, are questions of fact to be found or not found by the jury, or the court sitting without a jury, from all the evidence when the matter gets into a suit, as here; one or more of the grounds must in fact so exist and be so found by the trier of the facts; a plaintiff teacher is not barred simply because the directors thought her incompetent (if they did).⁸³

14. Miscellaneous

A case which does not specifically fall in either the incompetency or the due process category is included, nevertheless, as a reference for administrators. Many aspects of the case are likely to be of

⁸³ Ewing V. School Directors, 2 App. 458 (Ill. 1877).

interest and to indicate judicial sentiment regarding them.

The Acanfora case was filed under the Civil Rights Act and involved a homosexual teacher who was transferred to a non-teaching position when knowledge of his homosexuality became known.⁸⁴ The teacher alleged that he was arbitrarily transferred.

The District Court held that mere knowledge that a teacher is a homosexual is insufficient grounds for either dismissal or transfer. However, in this case, the court upheld the non-renewal of his contract because of the public behavior of the teacher in his own self-defense subsequent to his transfer. The court concluded that Acanfora

. . . went beyond the needs of his defense in his activities such as radio and television appearances, and thereby tended to spark controversy and to incite or produce imminent effects deleterious to the education process, such public activities were not within constitutional protection, and the refusal to reinstate or renew his contract was not arbitrary or capricious.⁸⁵

The case went to the United States Supreme Court which disagreed with the opinion of the District Court regarding Acanfora's public statements. The Court declared:

There is no evidence that the interviews disrupted the school, substantially impaired his capacity as a teacher, or gave the school officials reasonable grounds to forecast that these results would flow from what he said. We hold, therefore, that Acanfora's public statements were protected by the First Amendment, and that

⁸⁴ Acanfora v. Board of Education of Montgomery County, 491 F. 2d 498 (4th Cir. 1974).

⁸⁵ *Ibid.*

they do not justify either the action taken by the school system or the dismissal of his suit.⁸⁶

However, the refusal of the Board to reassign the teacher to a teaching position was upheld. The basis for the court's decision was the teacher's conscious withholding of the information on his application.⁸⁷

In summary, the courts have supported the concept of teacher tenure laws. Numerous cases have been decided on the basis of such individual state laws.

Incompetency is a common charge in teacher dismissal cases. The term defies specific, clearcut definition, but the burden of proof to establish incompetency rests clearly on the board of education. Usually there are multiple charges to substantiate such a charge. Due to this phenomenon, it is difficult to anticipate how the courts will accept specifics of the term. Courts have upheld incompetency charges based on the following evidences, however: lack of discipline, failure to supervise athletic contests, physical disability, lack of knowledge of subject matter, improper teaching methods (including lack of organization and preparation, inability to control emotions, and teaching inappropriate subject matter), failure to keep up with the times, failure to coordinate teaching with that of other teachers, inability to get along with parents and teachers, inability to motivate students, failure to follow guidelines, and unsatisfactory progress of pupils.

⁸⁶ Ibid.

⁸⁷ Ibid.

CHAPTER IV
DUE PROCESS AND THE TEACHER

The Fifth Amendment to the federal Constitution declares that no person shall be "deprived of life, liberty, or property without due process of law." The Fourteenth Amendment states, in part, ". . . nor shall any state deprive any person of life, liberty, or property, without due process of law." Reutter says that this clause, the well-known "due process clause", has possibly been misconstrued more frequently than any other provision of the Constitution,¹ and Alexander notes, "Stated positively, a state may deprive a person of his life, liberty, or property so long as the person is given due process."² Some understanding of both the term and the process would, therefore, appear to be critical.

Perhaps the basic significance of the Fourteenth Amendment is best summarized by Bolmeier. He states, "Not until the Fourteenth Amendment was adopted in 1868 did it become possible for the federal courts and Congress to 'put the brakes' on state action governing human life."³

¹E. Edmond Reutter, Jr., and Robert R. Hamilton, The Law of Public Education, (Mineola, New York, Foundation Press, 1970) p. 78.

²Kern Alexander, Ray Corns, and Walter McCann, Public School Law, St. Paul, Minnesota, West Publishing Company, 1969) p. 148.

³Edward C. Bolmeier, The School in the Legal Structure, op. cit., p. 55.

The Fifth and Fourteenth Amendments guarantee basically the same right. See Hibben v. Smith⁴ and Hallinger v. Davis.⁵

"Due process of law" is a term most difficult to define. The United States Supreme Court has never attempted to define precisely the words, and in fact the phrase probably never can be defined so as to draw a clear line, applicable to all cases, between proceedings which constitute due process and those which do not.⁶ In short, "due process" is a slippery concept; its boundaries are undefinable, and its content varies according to specific factual situations.

Although difficult to define, one Justice, Felix Frankfurter, in 1951, delineated constitutional dimensions of due process as:

Fairness of procedure is due process in the primary sense. . . . 'due process' cannot be imprisoned within the treacherous limits of any formula Due process is not a mechanical instrument. It is not a yardstick. It is a process. It is a delicate process of adjustment inescapably involving the exercise of judgment The precise nature of the interest that has been adversely affected, the manner in which this was done, the reasons for doing it, the available alternatives to the procedure that was followed, the protection implicit in the office of the functionary

⁴Hibben v. Smith, 191 U. S. 310 (1903).

⁵Hallinger v. Davis, 146 U. S. 314 (1892).

⁶Am. Jur. 2d, Constitutional Law, 16, 545; Freeland v. Williams, 131 U. S. 405 (1889).

whose conduct is challenged, the balance of hurt complained of and good accomplished--these are some of⁷ the considerations that must enter into the judicial judgment.

In thinking about due process one should keep in mind that in addition to due process--to which each teacher is fully entitled-- other constitutionally protected rights of the teacher such as free speech (First Amendment to Federal Constitution) exist. Many of the cases dealing with "due process" also deal with other constitutional rights, and a blend or blur of the various rights may appear in the decisions.

In its present stage of development, the concept of due process of law has a dual aspect: procedural and substantive. Procedural due process relates primarily to the necessary requirements (such as notice, opportunity to be heard, right to defend oneself) of a proceeding directed toward depriving a person of life, liberty or property.⁸ What procedural due process requires in a given case, and the requirements vary as the facts of cases vary, begins with a determination of the precise nature of the government function involved as well as of the private interest that has been, or may be, affected by government action.⁹

⁷Joint Anti-Fascist Refugee Committee V. McGrath, 341 U. S. 123 (1951).

⁸Hannah V. Larche, op. cit.

⁹Cafeteria and Restaurant Workers Union V. McElroy, 367 U. S. 886 (1961).

Substantive due process may be roughly defined as the constitutional guaranty that no person shall be deprived of his life, liberty, or property for arbitrary reasons, such a deprivation being constitutionally supportable only if the conduct from which the deprivation flows is proscribed by reasonable legislation (that is, legislation the enactment of which is within the scope of legislative authority) reasonably applied (that is, for a purpose consonant with the purpose of the legislation itself).¹⁰

Protection from arbitrary action is the heart of substantive due process.¹¹ It is "a guaranty against arbitrary legislation, demanding that the law shall not be unreasonable, arbitrary, or capricious and that the means selected shall have a real and substantial relation to the object sought to be obtained."¹²

At times the Court refers to other constitutional rights of the teacher, such as First Amendment rights (free speech) as "substantive" rights. However, "substantive due process" relates primarily to the voiding of arbitrary legislation by the legislative body.

For example, in Keyishian Supra, the Supreme Court held unconstitutional a state statute requiring a loyalty oath of a teacher and expressly rejected the idea "that public employment, including academic employment, may be conditioned upon the surrender of constitutional rights"¹³ This principle was affirmed in Pickering where the Court stated:

¹⁰ Am. Jur., op. cit., p. 109.

¹¹ Jack Lincoln Shops, Inc. V. State Dry Cleaners Board, 135 P. 2d 332 (Ill., 1943).

¹² Am. Jur., op. cit., 550, Note 17, and the many cases there cited.

To suggest that teachers may constitutionally be compelled to relinquish the First Amendment rights . . . (is to proceed) on a premise that has been unequivocally rejected in numerous prior decisions of this Court.

This Pickering case, supra, involved a nontenured teacher who was dismissed after publication of a letter that was critical of his employers.

In examination of the cases below, the reader should keep sharply in mind those cases involving discharge or nonrenewal for exercise of constitutionally protected rights such as Pickering, supra; Hetrick v. Martin,¹³ (freedom of speech); Slochower v. Board,¹⁴ (privilege against self incrimination); Shelton v. Tucker,¹⁵ (right to freedom of association). Also the reader should keep in mind those cases dealing with the right of a teacher to notice and hearing prior to discharge or nonrenewal. This latter class of cases deals with constitutional rights, but keeping in mind the distinction in the two classes of acases eases understanding.

In almost every teacher dismissal or contract nonrenewal case, whether the teacher is tenured or nontenured, questions of constitutional

¹³Hetrick V. Martin, 322 F. Supp. 545 (D. C. Ky. 1971).

¹⁴Slochower V. Board, 350 U. S. 551 (1956).

¹⁵Shelton V. Tucker, 364 U. S. 479 (1960).

rights, such as First Amendemnt rights or due process rights arise. The administrator must be cognizant of these rights so as not to infringe upon them. To infringe upon the rights may invalidate the dismissal or nonrenewal and subject the administrator and Board to damage awards, including counsel fees as seen in Bradley v. School Board of Richmond, Virginia; ¹⁶ Williams v. Kimbrough; ¹⁷ Wall v. Stanly County Board of Education; ¹⁸ Smith v. Board of Education; ¹⁹ Johnson v. Branch; ²⁰ and Rolfe v. County Board of Education.²¹

Also the reader should keep in mind that the cases in Chapter III hereof must be evaluated and considered in light of the evolving concepts of due process and constitutional rights. Note that the constitutional rights such as freedom of speech, freedom of association, privilege against self-incrimination, are not affected by the tenure or nontenure

¹⁶Bradley V. School Board of Richmond, Virginia, 345 F. 2d 310 (4th Cir. 1965).

¹⁷Williams V. Kimbrough, 395 F. Supp. 578 (D. C. La. 1969).

¹⁸Wall V. Stanly County Board of Education, 378 F. 2d 275 (4th Cir. 1967).

¹⁹Smith V. Board of Education, 365 F. 2d 770 (8th Cir. 1966).

²⁰Johnson V. Branch, 364 F. 2d 177 (4th Cir. 1966).

²¹Rolfe V. County Board of Education, 282 F. Supp. 192 (D. C. Tenn. 16966); aff'd. 391 F, 2d 77 (6th Cir. 1968); see also Wood V. Strickland, 416 U. S. 935 (1975).

status of the teacher, but that procedural due process rights may be, and usually are, sharply affected by whether it is a tenure or nontenure situation.

Procedural due process, a notice and a hearing apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protections of life, liberty, and property. The Court has specified that "when protected rights are implicated, the right to some kind of prior hearing is paramount. But the range of interests protected by the procedural due process is not infinite."²²

The case of Board of Regents v. Roth drew clarification of this point. The case concerned David Roth, hired as an assistant professor at Wisconsin State University for a fixed period of one academic year, who was not rehired for the following year. Because he had not acquired tenure at the University, no reason for the decision not to rehire him was given Roth; nor was he given a hearing. This procedure was consistent with the rules and regulations of the University.

Roth filed suit in the U. S. District Court, alleging that the decision not to rehire him was based on statements made by Roth which were critical of the University Administration and that the University's failure to provide him with notice of the reason for his non-retention and a hearing was in violation of his right to procedural due process. The District Court ruled in Roth's favor, and the Court of Appeals upheld

²² Board of Regents v. Roth, op. cit.

the ruling. However, the U. S. Supreme Court reversed the decision, declaring that no liberty of Roth had been infringed upon by the University's actions. Had the failure of the University to rehire him involved his good name, reputation, honor or integrity, the due process requirement would have applied. If the actions of the University had imposed upon him a stigma or other disability which would have foreclosed his freedom to take advantage of other employment opportunities, due-process would have been required. However, the mere fact of failure to reemploy Roth did not adversely affect or preclude future employment prospects. Thus, there was no infringement of Roth's liberty.

Additionally, the Court found no infringement of property interest. Roth's non-tenured status was significant with regard to this point. Tenure status would have vested Roth with a property right. Lacking tenure, Roth's property rights ceased with the expiration of his contract.

Another case, Perry v. Sindermann, supra, elicited from the Supreme Court the opinion that the lack of a contractual or tenure right to reemployment, taken alone, does not negate the right to a hearing prior to dismissal. In other words, the showing of a property right in continued employment is not dependent solely upon the existence of written contract or a tenure system.

In this case, Robert Sindermann, a teacher in the state college system of the State of Texas from 1959-1969, had been employed at Odessa Junior College on four successive contracts. During the 1968-1969 academic year, a controversy arose at the institution regarding the ele-

vation of the college to four-year college status. The change was opposed by the Board of Regents, but Sindermann aligned himself with a group supporting the change. The Board voted not to renew his contract, giving no statement of reasons for the non-renewal and not allowing a hearing in which a challenge to the basis for the non-renewal could be made.

Odessa Junior College had no tenure system. However, the Faculty Guide contained the statement that, "The administration of the college wishes the faculty member to feel that he has permanent tenure as long as his teaching services are satisfactory" ²³ Moreover, guidelines for the state-supported university system indicated that a person teaching in that system for more than seven years had tenure. The Supreme Court held that the allegation of these facts by Sindermann were such as to present a showing of an expectancy of continued employment and that any person with such an expectancy must have notice and a hearing before being dismissed.

Since the decision in Perry v. Sindermann, the lower courts have clearly indicated that "de facto tenure" exists only where the teacher and the school have some "mutually explicit understanding," whether written or oral, that the teacher has the right to continued employment. The key word here is "mutually." A mere allegation by a teacher that he/she thought he/she would continue to be employed, without some corresponding indication of continued employment from the administration, does not amount to "de facto tenure."

²³ Perry v. Sindermann, op. cit.

Both the Sindermann and Roth cases give guidance in answering questions regarding the substantive and procedural rights of public school teachers, both tenured and nontenured. Although both cases concern college faculty members, the implications for public school teachers should be obvious.

Due process rights are more obvious in tenure situations. In these cases, such rights are a major consideration.²⁴

The administration considering discharge or nonrenewal of a teacher must be cautious not to infringe upon either Constitutional (such as First Amendment) or due process rights. The safest route is to afford a hearing to any teacher who is being discharged or whose contract is not renewed.

If the teacher is to be afforded a hearing, either because of due process requirements or because the board deems it a prudent procedure, what type hearing is required to meet due process requirements? Obviously, the first step must be followed. However, if there are no such state statutes, or if the statutes require less than the Thomas case, the rule of Thomas must be followed.²⁵ The specifics of that rule are as follows:

Minimal procedural due process has been defined to include: (1) adequate notice, (2) a sufficient specification of the charges to permit the showing of error, if any, (3) an opportunity

²⁴Slochower V. Board of Education of N. Y., op. cit.

²⁵Thomas V. Ward, 374 F. Supp. 206 (D. C. N. C. 1974).

to confront and cross-examine one's accusers, (4) a list of the names and the nature of their testimony of witnesses testifying against him, (5) a hearing before an impartial board with sufficient expertise, where the employee may present evidence in his own defense. *Ferbuson v. Thomas*, 430 F. 2d 852 (5th Cir. 1970); *Grimes v. Nottoway County School Board*, 462 F. 2d 650 (4th Cir. 1972). These procedures at times confer by implication additional safeguards such as: (6) the right to have one's attorney present, (7) the right to have findings based on substantial evidence before a tribunal making written findings. *Goldberg v. Kelly*, 397 U. S. 254, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970); *Allen v. City of Greensboro, N. C.*, 452 F. 2d 489 (4th Cir. 1971); *Keene v. Rodgers*, 316 F. Supp. 217 (D. Me. 1970); *Johnson v. Angle*, supra; *Ramsey v. Hopkins*, 320 F. Supp. 477 (N. C. Ala. 1970), modified on other grounds, 447 F. 2d 128 (5th Cir. 1971). While these rights may be basic to every due process hearing, still, in every case the adequacy of the hearing must be judged on its own facts.²⁶

The requirements are simple to state; the administrators' problem is in deciding how to meet the requirements. For example, can the board, which may have received some information about a teacher during the year, hear evidence at a discharge or nonrenewal hearing and render a "fair" hearing? That is, can a teacher get a fair hearing when the board members may have advance knowledge of the case?

.....
 In order to ascertain the facts relied upon by the school system and to have a chance to test their validity as a basis for formulating an opinion, plaintiff needed the right to confront and cross-examine his accusers.²⁷

²⁶ Ibid.

²⁷ Ibid.

The case of Simard v. Board of Education drew pertinent comments on this question from the court.²⁸ Appellant had contended, among other charges, that the Board of Education was an insufficiently neutral decision-maker and that the Board had prejudged the merits of his case three weeks before the hearing by, as recorded in the minutes, concurring in the superintendent's initial nonrenewal decision.

The Court ruled against appellant, finding the school board's prior involvement in the case entirely consistent with due process and choosing not to mandate individual disqualifications by board members. However, it acknowledged:

An impartial decision-maker is a basic constituent of minimum due process Any other collateral procedural guarantees are largely without meaning if the deciding tribunal has in some way adversely prejudged the merits of the case.²⁹

The case involved other contentions of denial of due process. Appellant claimed that the Connecticut statute mandated the right to a hearing by the entire Board of Education and maintained that the nonrenewal procedure was Constitutionally deficient because all members were not present at the hearing. The Court responded thusly:

Appellant misreads the language of the statute. Moreover, the Constitution does not require that all members of an administrative board must take part in every decision, or that the failure of one participating member to attend one hearing vitiates the entire process. Cf. Gearhart & Otis, Inc. v. SEC, 121 U. S. App. D. C. 186, 348 F. 2d 798, 801 (1965).³⁰

²⁸Simard v. Board of Education, 473 F. 2d 988 (2nd Cir. 1973).

²⁹Ibid.

³⁰Ibid.

Another claim of denial of procedural due process was the Board's alleged failure to comply with its own regulations by failing to make periodic evaluations with respect to likelihood of tenure. To this claim, the Court observed:

Finally, appellant observes that the school board evidently diverged from its "Plan for Evaluation of Teachers" by failing to make certain periodic assessments of his virtues and faults with respect to likelihood of tenure; he urges that the Board's failure to comply with its own regulations constitutes a denial of procedural due process. We agree with the district court, however, that any such failure was harmless. Most of the required "Evaluation" is directed toward classroom competence; because appellant was denied tenure for reasons of conduct other than classroom performance, the substance of any required evaluation would have had little bearing on the Board's decision. And to the extent that the evaluation focuses on qualities found wanting in appellant, whatever notice and opportunity for correction these evaluations might normally have provided was in fact provided by less formal means.³¹

Simard's other claims of denial or procedural due process were equally fruitless. They elicited this comment from the Court:

The remaining procedural due process claims are still less substantial. The statement of reasons sent to Simard was more than adequate to put him on notice as to the nature of the objections to his conduct. While the district judge found some of the "charges" to be "vague and some . . . erroneously or insufficiently dated," he also found that these inadequacies had been corrected at the hearing and in no way prejudiced appellant's ability to rebut adverse allegations. Appellant further argues that he was denied his right to learn, before the hearing, the names of adverse witnesses and the substance of their testimony. Assuming arguendo that appellant was entitled to such discovery, see Ferguson v. Thomas, 430 F. 2d 852 (5th

³¹Ibid.

Cir. 1970), he is unable to show that his defense was in any way impeded by his failure to learn names of adverse witnesses until the hearing commenced.³²

In addition to his claims of denial of procedural due process, Simard also contended denial of substantive due process. Once again, however, the Court's findings were not favorable to him.

Appellant groups a number of disparate contentions under a generalized assertion that he was denied substantive due process. He asserts that the reasons proffered for contract nonrenewal may not be so totally unrelated to legitimate educational interests of the school district as to be capricious and irrational, e.g., Wieman v. Updegraff, 344 U. S. 183, 192, 73 S. Ct. 215, 97 L. Ed. 216 (1952); that a teacher may not be disciplined or denied tenure for violating rules of which he had no adequate notice, see Keefe v. Geanakos, 418 F. 2d 359, 362 (1st Cir. 1969); and that the decision of the Board, even if its reasons are perfectly proper, must not be "wholly unsupported by evidence else it would be so arbitrary as to be a constitutional violation," Lucas v. Chapman, 430 F. 2d 945, 948 (5th Cir. 1970). We agree with these splendid principles, but they have little to do with the facts of this case.³³

At all costs be sure that the teacher has been advised of the school rules and that proof exists that he/she was so advised. The administrator must keep in mind the adage, "Some poor dope never gets the word."

Based on the findings in these cases, therefore, it would appear mandatory that where nonrenewal or discharge is anticipated and a hearing will be required, the superintendent should be the moving force and information gatherer. The school board members should be instructed to

³² Ibid.

³³ Ibid.

remain out of the situation and to receive no information about the matter from any source. If contacted by concerned parents, board members should refer the parents to the superintendent, pointing out their need to approach a possible hearing without bias. In this way, any "taint" on the impartiality of the hearing can be avoided. The cases of Flunker³⁴ and Jones³⁵ support this position.

The recommended procedure for setting up the hearing is to send to the teacher, well in advance of the hearing, a detailed letter specifying the charges, listing the names and addresses of the witnesses and a brief resumé of their anticipated testimony. This is not a difficult task - it is much akin to the procedure followed in the pre-trial procedure in Federal Court (see Rules of Practice in the United States District Court for the Middle District of North Carolina, Rule 21) and has the benefit of forcing the administrator and his counsel to prepare the case well in advance of the hearing.

The teacher is entitled to reasonable notice and time to prepare a defense as indicated in Ferguson v. Thomas³⁶ and Thomas v. Ward, supra. Therefore, it is wise to serve the notice of hearing by registered mail, fix the hearing date at least five full days (if there are no statutory

³⁴Flunker v. Ala. St. Bd. of Ed., 441 F. 2d 201 (5th Cir. 1971).

³⁵Jones v. Board of Education, 279 F. Supp. 190 (1968).

³⁶Ferguson v. Thomas, 430 F. 2d 852 (5th Cir. 1970).

requirements) after notice, and grant a continuance if requested. Shirck V. Thomas.³⁷

The necessity for having board rules to govern hearings should be evident. These rules should spell out the procedures for the hearing and specify how many board members must be present. A set of proposed rules can be found in Appendix C. The reader is cautioned to remember that if board rules exist, the board must follow those rules explicitly, or risk reversal.

Obviously, the teacher is entitled to counsel and the right to cross-examination of witnesses. In Goldberg V. Kelly, the court said:

. . . the right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel.³⁸

While it is true that a discharge or nonrenewal hearing is not a strict judicial proceeding, there are certain judicial type problems which arise. For example, the superintendent is usually the moving force and has conferred with board counsel before recommending nonrenewal or discharge. In presenting the case to the board at the hearing, the superintendent may desire help of counsel, particularly if the teacher has counsel. Now, if board counsel assists the superintendent, who acts as counsel to the board in ruling on procedural matters, objections, motions, making findings of fact? The board counsel cannot present the case for the superintendent and at the same time rule on objections. Yet, obviously, the board needs help in ruling on evidentiary matters. The suggested

³⁷Shirck V. Thomas, 447 F. 2d 1025 (7th Cir. 1971).

³⁸Goldberg V. Kelly, 397 U. S. 254 (1970).

solution is for the board to have its counsel, and to employ separate counsel for the superintendent. Although this procedure may not be absolutely necessary, it is much more likely to result in findings which will not be overturned on appeal.

The findings must be based on competent evidence adduced at the hearing and a transcript of evidence made available to the teacher. This is an age-old requirement regarding trial procedure, and that requirement is based on fair play.

In 123 University of Pennsylvania Law Review 1267, Judge Friendly of the Second Circuit has summarized the preceding cases in an excellent article, "Some Kind of Hearing."³⁹ This is recommended reading for the administrator.

Any administrator who doubts the conviction of the Supreme Court of the United States regarding the due process rights of teachers, has only to read Goss v. Lopez, dealing with the hearings required before suspending students for short terms.⁴⁰ It will be apparent that teachers, having property rights, are due at least equal, and probably more, consideration.

Finally, the reader is directed to a critical area, one in which many administrators fail. This area is documenting the grounds for non-renewal or discharge, particularly in the case of a tenured teacher. The major problem is the incompetent teacher who has been in the system for

³⁹Judge H. Friendly, "Some Kind of Hearing", 123 University of Pennsylvania Law Review 1267 (1972).

⁴⁰Goss v. Lopez, 95 S. Ct. R. 729 (1975).

a number of years. The recommended course of action is to approach the problem through a documentation program consisting of accurate evaluations (a recommended evaluation instrument is in Appendix B), constructive retraining and help to the teacher in overcoming deficiencies, and a diligent effort by the administration to help remedy the situation. If this does not work, and in many cases it will not, then the evidentiary groundwork is laid for discharge.

There have been numerous lower court decisions applying Sindermann, infra, and Roth, infra. It is worthwhile to turn briefly to these cases to see how the District Court judges read the decisions.

In Stewart v. Bailey, the court referred to these cases and summarized important points:

In summary, when a nontenured professor is dismissed or not rehired for cause, and the stated causes attack his good name, reputation or integrity so as to possibly deprive him of future state employment, the college has the burden of initiating a hearing where the teacher may challenge the stated causes. But, where there is dismissal without cause, no cause is stated, or the causes cannot be said to offend the teacher's reputation, the initiative is upon the teacher to assert that the cause for dismissal is for a constitutionally impermissible reason and request a hearing.⁴¹

The case of Browelette v. Board of Directors of Merged Area IX also drew comment on the Roth and Sindermann cases. The Court said:

In Board of Regents v. Roth, 408 U. S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972), and Perry v. Sindermann, 408 U. S. 593, 92 S. Ct. 2694, 33 L. Ed. 2d 570 (1972), the Supreme Court held that a nontenured teacher is entitled to

⁴¹Stewart v. Bailey, 396 F. Supp. 381 (DC 1975).

procedural due process upon termination only if that termination⁴² will deprive him of an interest in property or liberty.

The preceding cases involved nontenured teachers. Obviously, where there is tenure by contract or statute, due process applies in all its vigor.

To summarize, boards of education and administrators are cautioned to become familiar with the complexities of due process and their implications when considering dismissal of teachers. They are further cautioned to be certain that there is no surrender of other constitutional rights such as the freedom of speech, privilege against self incrimination, or the right of freedom of association, all of which are unaffected by the teacher's tenure status.

Tenure status is an important variable in determining whether due process rights have been violated. These rights mandate vigorous application of due process to tenured teachers, but nontenured teachers are not without some due process rights. When stated causes for dismissal attack the good name, reputation, or integrity of the teacher so as to impede efforts at getting new employ, or when there is dismissal without stated cause, deprivation of due process may be claimed. To a steadily increasing degree, courts are rendering decisions which strengthen the teacher's assurance of these rights.

⁴²Browelette v. Board of Directors of Merged Area IX, 519 F. 2d 126 (8th Cir. 1975).

Due process rights are in a critical state of evolution. At this point, there are two aspects of due process, substantive and procedural. Substantive due process is further protection from arbitrary or unreasonable dismissal. It is a guaranty that one shall not be deprived of his life, liberty, or property except for reasons proscribed by law. Procedural due process spells out the steps or procedures to be followed in cases which could deprive one of life, liberty, or property. It is incumbent upon the administrator to adhere strictly to these procedures.

CHAPTER V

A REVIEW OF APPROPRIATE LANDMARK CASES

As previously pointed out in Chapter III, the impact of recent court decisions relating to incompetence has, either directly or indirectly, considered many points of interest of the Fourteenth Amendment to the Constitution of the United States such as due process, burden of proof, procedure, notice, and sufficiency of charge. In addition, many court decisions have involved the freedom of speech provision of the First Amendment to the Constitution.

The provisions of the First, Fifth, and Fourteenth Amendments of the Constitution of the United States are of particular significance to public school law and have been brought to the attention of the Supreme Court. Because of the importance of these amendments, selected cases are reviewed herein to aid the reader in recognizing the problems and the court's attitude towards the problems.

It has been said that too much depends on the context and the teacher's good faith when attempting to arrive at a conclusion as to what constitutes rights of free speech (academic freedom) in the classroom. The United States Supreme Court in Cox v. Louisiana, took the position that the rights of free speech "while fundamental in our democratic society, still do not mean that everyone with opinions or beliefs to express may address a group at any public place and at any time."¹

¹Cox v. Louisiana, 379 U.S. 566 (1965).

On the other hand, in support of a qualified right of a teacher, even at the secondary level, to use a teaching method which is relevant and in the opinion of experts of significant standing has a serious educational purpose is the central rationale of academic freedom.²

First one should consider selected cases relating to the First Amendment.

Pickering v. Board of Education
United States Supreme Court
291 U.S. 563 (Ill. 1968).

A few days after a proposal to increase school taxes was defeated by local voters, Marvin Pickering, a school teacher in the system, wrote a letter to the editor of a local newspaper criticizing the way in which the Board of Education and superintendent of schools had handled past proposals to raise new revenue for the schools. Some of the statements were false. After the letter was published, the Board of Education determined that its publication was detrimental to the efficient operation and administration of the schools of the district and that the interest of the schools required the teacher's dismissal. The teacher filed suit in state court. The dismissal was upheld by both the trial court and the Supreme Court of Illinois. Pickering appealed to the U. S. Supreme Court.

The Supreme Court found that the particular statements contained in the letter were protected by the First Amendment and that, consequently, the teacher should be reinstated. The Court employed the balancing test

² Stephen R. Goldstein, Law and Public Education, (New York: The Bobbs-Merrill Company, Inc., 1969), pp. 92-93.

used in all First Amendment cases. This test is:

The problem in any case is to arrive at a balance between the interest of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the state, as an employer, in promoting the efficiency of the public services it performs through its employees.³

The Court laid down the following guidelines to be used in balancing the interests of the teacher against the Board of Education:

1. Are the statements directed toward a person with whom the speaker would normally be in contact in the course of his daily work, thus adversely affecting this one by immediate superiors or harmony among co-workers?
2. What, if any, effect does the exercise of the right of free speech have upon the community as a whole - is it disruptive?
3. Do the particular comments deal with a matter of legitimate public concern, regardless of the truth or veracity, or are the comments false statements about matters so closely related to the day to day operation of the school that any harmful impact upon the public would be difficult to counter because the teacher's greater presumed access to the real facts?
4. Are the particular comments so without a basis in fact as to call into question the particular individual's fitness to perform duties in the classroom?⁴

³ Pickering V. Board of Education, supra.

⁴ Ibid.

Epperson v. Arkansas
United States Supreme Court
393 U.S. 97 (1968).

An Arkansas statute made it a misdemeanor for any teacher in a state supported school or university "to teach the theory or doctrine that mankind ascended or descended from a lower order of animals," or "to adopt or use in any such institution a textbook that reaches this theory".⁵ Susan Epperson, a tenth grade biology teacher, was given a newly-adopted textbook in biology to use at the beginning of the school year. This textbook set forth Darwin's Theory of Evolution. The teacher, in order to avoid possible prosecution, sought a declaratory judgment from the state courts that this particular Arkansas statute was void and unenforceable. The trial court held the statute to be void as violative of the Fourteenth Amendment and the First Amendment, but that decision was reversed by the Supreme Court of Arkansas. Mrs. Epperson appealed to the U. S. Supreme Court.

Three issues were raised before the Supreme Court. First, that the statute was unconstitutionally vague; second, that it violated the First Amendment's protection of free speech; and third, that it violated the First Amendment's prohibition of laws respecting an establishment of religion or prohibiting the free exercise thereof. The Court, while clearly indicating the statute to be a violation of the First Amendment right of freedom of speech, did not decide the case on that ground. The case was decided on the First Amendment's freedom of religion clause.

5

Epperson v. Arkansas, 393 U.S. 97 (1968).

The Court said:

There is and can be no doubt that the First Amendment does not permit the State to require that teaching and learning must be tailored to the principles or prohibitions of any religious sect or dogma . . . Neither a state nor the federal government can pass laws which aid one religion, aid all religions, or prefer one religion, or prefer one religion over another.

In the present case there can be no doubt that Arkansas has sought to prevent its teachers from discussing the theory of evolution because it is contrary to the belief of some that the Book of Genesis must be the exclusive source of doctrine as to the origin of man.

A study of religions and of the Bible from a literary and historic viewpoint, presented objectively as part of a secular program of education, need not collide with the First Amendment's prohibition. The state must not, however, adopt programs or practices in its public schools or colleges which aid or oppose any religion. This prohibition is absolute.

Tinker v. Des Moines Community
School District
United States Supreme Court
393 U.S. 503 (1969).

Although this case involves high school students, it is nevertheless a propos when one considers the decision of the court in James v. The Board of Education of Central District No. 1 of the Towns of Addison.⁶ In this case (James), a teacher, wore a black armband to class. As in the Tinker Case, the court held that the board of education could not,

⁶James v. The Board of Education of Central District No. 1 of the Towns of Addison, 461 F. 2nd 566 (1972) cert. denied 409 U.S. 1042.

without transgressing the First Amendment, discharge an 11th grade English teacher who did no more than wear a black armband in class in symbolic protest against the Vietnam War.

In the Tinker Case it is seen that as a part of a plan formulated by a group of adults and students in Des Moines, Iowa, two public high school and one junior high school student petitioners, publicized their objections to the hostilities in Vietnam and their support for a truce by wearing black armbands to school. Aware that a recently adopted policy prohibited students from wearing an armband to school, the students risked suspension by ignoring the policy. As a result of their action, the petitioners were all sent home and suspended from school until they returned without the armbands.

The petitioners filed a complaint in the U. S. District Court asking for an injunction restraining the school authorities from disciplining them and to recover nominal damages. The District Court dismissed the complaint. The Court of Appeals affirmed the District Court. The U. S. Supreme Court reversed the decision and remanded the case to District Court for further consideration in light of its opinion. The sole issue in this case was whether or not the First Amendment freedom of speech rights of the students had been violated by the school authorities by suspending them for wearing the armbands. The Court held that neither students nor teachers "shed their constitutional rights to freedom of speech or expression at the school hours gate."⁷ The Court held that these actions

⁷ Tinker V. Des Moines Community School District, 393 U.S. 503 (1969).

of the petitioners were clearly protected by the First Amendment and that they could not be suspended for such actions unless there was a clear showing that the school authorities had reason to anticipate that the wearing of the armbands would substantially interfere with the work of the school or impinge upon the rights of other students. The Supreme Court found no such evidence in this case. The fact that the school authorities feared that a disturbance might result from the wearing of the armbands was not sufficient.

The Court said:

In our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression. Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any work spoken in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk, and our history says that it is this sort of hazardous freedom - this kind of openness - that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious society. In order for the state in the person of school officials to justify a prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.⁸

The Court has applied the due process clause of the Fourteenth Amendment to provide protection against arbitrary state legislation and administrative decisions affecting life, liberty, and property.

8
Ibid.

Illustrative of this point are the following:

Beilan v. Board of Education
of Philadelphia
United States Supreme Court
357 U.S. 399 (1958).

This case is directly concerned with the Fourteenth Amendment, however, it also involves the First and Fifth Amendments. Herman A. Beilan, the petitioner, had been employed by the Philadelphia School System for twenty-two years. On June 25, 1952, the superintendent summoned Beilan to his office and informed Beilan that he had certain information which reflected adversely on Beilan's loyalty and that he wanted to determine the truth or falsity of such information. The superintendent then asked Beilan whether or not he had been the press director of the Communist Political Association in 1944. Beilan refused to answer the question. On several subsequent occasions, Beilan refused to answer other similar questions. On November 25, 1953, the Board of Education instituted dismissal proceedings against the petitioner on the grounds that refusal to answer the superintendent's questions constituted incompetency. After several administrative appeals and review by the lower trial courts of the State of Pennsylvania, the Supreme Court of Pennsylvania determined that refusal to answer questions such as those posed to petitioner by the superintendent constituted incompetency within the meaning of the laws of the State of Pennsylvania and affirmed the dismissal. Beilan appealed to the U. S. Supreme Court.

The U. S. Supreme Court in a 6-3 decision affirmed the decision of the Pennsylvania Supreme Court. The Court stated:

By engaging to and teaching in the public schools petitioner did not give up his right to freedom of belief, speech or association. He did, however, undertake obligations of frankness, candor and cooperation in answering inquiries made of him by his employing school board examining into his fitness to serve as a public school teacher.

The Court also made several other interesting statements. The Court found that the Federal Constitution does not require that a teacher's classroom conduct be the sole basis for determining his fitness. The Court further stated:

It has always been the recognized duty of the teacher to conduct himself in such way as to command the respect and goodwill of the community, though one result of the choice of the teacher's vocation may be to deprive him of the same freedom of action enjoyed by persons in other vocations. Educators have always regarded the example set by the teacher as of great importance.

As you will note, this case arose during the "Red Scare" of the early 50's. This case was decided on a very narrow ground. Because of the involvement of free speech in this particular case, it is entirely possible that a court today faced with the same issue might reach a contrary result.

The Sindermann case and the Roth case give much guidance in answering questions as to the substantive and procedural rights of public school teachers, both tenured and non-tenured. Although both cases concern college faculty members, the implications for public school teachers should be obvious.

Sindermann v. Perry
United States Supreme Court
408 U.S. 593 (1972).

Robert Sindermann had been employed for ten years in the Texas State College system, the last four under a series of one-year contracts. There was no formal tenure system at the college, but there was evidence on which de facto tenure could be found--the official faculty guide indicating permanent tenure as long as the teaching services were satisfactory and a proper cooperative attitude was displayed. Sindermann became involved in public disagreements with the Board of Regents, who voted not to renew his contract. The Board never informed Sindermann of the reasons, nor granted him a hearing. Sindermann charged that the action violated his right to free speech and that the failure to grant him a hearing violated procedural due process.

The Board moved for summary judgment, contending that no hearing was required, and in supporting affidavit said the ground for nonrenewal was insubordinate conduct. The motion was allowed.

The Court of Appeals reversed the ruling, holding that (1) despite the lack of tenure, the nonrenewal of the contract would violate the Fourteenth Amendment if it in fact was based on his protected free speech and (2) despite the lack of tenure, the failure to allow a hearing would violate procedural due process if Sindermann could show he had an "expectancy" of renewal.

The Supreme Court granted a writ of certiorari, and considered this case along with Roth v. Board of Regents, supra.

The Court first held, relying on Keyishian v. Board of Regents, supra, and Shelton v. Tucker, supra, that the lack of tenure, standing alone, did not defeat the claim that nonrenewal violated the First and Fourteenth Amendments. The Court then held that allowance of the summary judgment, without allowing the teacher to attempt to show that the nonrenewal was in retaliation for his exercise of free speech, was in error:

. . . For this Court has held that a teacher's public criticism of his superiors on matters of public concern may be constitutionally protected and may, therefore, be an impermissible basis for termination of his employment.
Pickering v. Board of Education, supra.⁹

Turning to the procedural due process claim, the Court noted that while lack of tenure was not relevant to the free speech claim, it was relevant, though not necessarily entirely dispositive of, the procedural due process claim, saying:

⁹ Sindermann, op. cit.

The respondent's lack of formal contractual or tenure security in continued employment at Odessa Junior College, though irrelevant to his free speech claim, is highly relevant to his procedural due process claim. But it may not be entirely dispositive.

We have held today in Board of Regents v. Roth, 408 U.S., p. 564, 33 L. Ed. 2d p 548, 92 S. Ct. 2701, that the Constitution does not require opportunity for a hearing before the nonrenewal of a nontenured teacher's contract, unless he can show that the decision not to rehire him somehow deprived him of an interest in "liberty" or that he had a "property" interest in continued employment, despite the lack of tenure or a formal contract. In Roth the teacher had not made a showing on either point to justify summary judgment in his favor.

Similarly, the respondent here has yet to show that he has been deprived of an interest that could invoke procedural due process protection. As in Roth, the mere showing that he was not rehired in one particular job, without more, did not amount to a showing of a loss of liberty. Nor did it amount to showing of a loss of property.

The Court then pointed out that the teacher's allegations that he relied on the language of the Faculty Guide ("The Administration of the College wishes the faculty member to feel that he has permanent tenure as long as his teaching services are satisfactory . . .") and long service, raised a genuine issue as to his interest in continued employment, saying:

Thus, the respondent offered to prove that a teacher with his long period of service at this particular State College had no less a 'property' interest in continued employment than a formerly tenured teacher at other colleges, and had no less a procedural due process right to a statement of reasons and a hearing before college officials upon their decision not to retain him.

We have made clear in Roth, supra, at 577, 33 L. Ed. 2d at 561, that 'property' interests subject to procedural due process protection are not limited by a few rigid, technical forms. Rather, property denotes a broad range of interests that are secured by existing rules or understandings. Id., at 577 33 L. Ed. 2d at 561. A person's interest in a benefit is a "property" interest for due process purposes if there are such rules or mutually explicit understandings that support his claim of entitlement to the benefit and that he may invoke at a hearing.¹⁰

A written contract with an explicit tenure provision clearly is evidence of a formal understanding that supports a teacher's claim of entitlement to continued employment unless sufficient 'cause' is shown. Yet absence of such an explicit contractual provision may not always foreclose the possibility that a teacher has a 'property' interest in re-employment. For example, the law of contracts in most, if not all, jurisdictions long has employed (408 U.S. 602) a process by which agreements, though not formalized in writing, may be 'implied'. 3 A. Corbin on Contracts 561-572A (1960). Explicit contractual provisions may be supplemented by other agreements implied from 'the promisor's words and conduct in the light of the surrounding circumstances'. Id., at 562. And, '(t)he meaning of (the promisor's) words and acts is found by relating them to the usage of the past.'

A teacher, like the respondent, who has held his position for a number of years, might be able to show from the circumstances of this service--and from other relevant facts--that he had a legitimate claim of entitlement to job tenure. Just as this Court has found there to be a 'common law of a particular industry or of a particular plant' that may supplement a collective-bargaining agreement, Steelworkers v. Warrior & Gulf Co., 363 U.S. 574, 579, 4 L. Ed. 2d 1409, 1415, 80 S. Ct. 1347, so there may be an unwritten 'common law' in a particular university that certain employees shall have the equivalent of tenure. This is particularly likely in a college or university, like Odessa Junior College, that has no explicit tenure system even for senior members of its faculty, but that nonetheless may have created such a system in practice. See C. Byse & L. Joughin, Tenure in American Higher Education 17-28 (1959).

¹⁰ Ibid.

In this case, the respondent has alleged the existence of rules and understandings, promulgated and fostered by state officials, that may justify his legitimate claim of entitlement to continued employment absent 'sufficient cause'. (408 U.S. 603) We disagree with the Court of Appeals insofar as it held that a mere subjective 'expectancy' is protected by procedural due process, but we agree that the respondent must be given an opportunity to prove the legitimacy of his claim of such entitlement in light of 'the policies and practices of the institution.' 430 F. 2d, at 943. Proof of such a property interest would not, of course, entitle him to reinstatement. But such proof would obligate college officials to grant a hearing at his request, where he could be informed of the grounds for his nonretention and challenge their sufficiency.

One should note an important footnote in the opinion. In it the Court said:

We do not now hold that the respondent has any such legitimate claim of entitlement to job tenure. For '(p)roperty interests ... are not created by the Constitution. Rather they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law' Board of Regents v. Roth, supra, at 577, 33 L. Ed. 2d at 561. If it is the law of Texas that a teacher in the respondent's position has no contractual or other claim to job tenure, the respondent's claim would be defeated.

Chief Justice Burger, in a concurring opinion, highlighted the importance of the footnote. His statement said:

I concur in the Court's judgment and opinions in Perry and Roth, but there is one central point in both decisions that I would like to underscore since it may have been obscured in the comprehensive discussion of the cases. That point is that the relationship between a state institution and one of its teachers is essentially a matter of state concern and state law. The Court holds today only that a state-employed teacher who has a right to re-employment under state law, arising from either an express or implied contract, has, in turn,

a right guaranteed by the Fourteenth Amendment to some form of prior administrative or academic hearing on the cause (408 U.S. 604) for nonrenewal of his contract. Thus whether a particular teacher in a particular context has any right to such administrative hearing hinges on a question of state law. The Court's opinion makes this point very sharply

'Property interests . . . are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law ...' Board of Regents v. Roth, 408 U.S. at 577, 33 L. Ed. 2d at 561. ¹¹

Boiled down, the thrust of this case is that:

- (1) Nonrenewal may not be based on a violation of the right of free speech; and
- (2) If there were evidence of de facto tenure, this would provide a property right protected by procedural due process.

Board of Regents v. Roth
United States Supreme Court
408 U.S. 564 (1972).

David Roth was hired as assistant professor of political science at Wisconsin State University for a term of one year. He was informed he would not be rehired. He had no tenure rights under Wisconsin law. Under Wisconsin law, a tenured teacher cannot be discharged except for cause and pursuant to procedures. Rules promulgated by the Regents provided a nontenured teacher "dismissed" before the end of the year with some opportunity for review, but no such opportunity for a nontenured teacher who was simply not re-employed.

Roth contended that the nonrenewal was intended to punish him for statements critical of the administration and that the lack of hearing violated procedural due process.

¹¹ Ibid.

Motion for summary judgment allowed for the teacher, directing that a hearing be held. The Court of Appeals affirmed. Certiorari granted.

Initially, the Supreme Court noted that the only question at this stage was whether the teacher had a Constitutional right to a statement of reasons and a hearing. The Court held he did not.

The Court first pointed out the necessity of ascertaining if the interest in controversy falls within the Fourteenth Amendment, saying:

The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property. When protected interests are implicated, the right (408 U.S. 570) to some kind of prior hearing is paramount. But the range of interests protected by procedural due process is not infinite.

.....

We must look to see if the interest is within the Fourteenth Amendment's protection of liberty and property.

In holding that the "liberty" of the teacher had not been infringed, the Court said:

There might be cases in which a State refused to re-employ a person under such circumstances that interests in liberty would be implicated. But this is not such a case.

The state, in declining to rehire the respondent, did not make any charge against him that might seriously damage his standing and associations in his community. It did not base the nonrenewal of his contract on a charge, for example, that he had been guilty of dishonesty, or immorality. Had it done so, this would be a different case. For ' (w)here a person's good name, reputation, honor,

or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential.'

In such a case, due process would accord an opportunity to refute the charge before University officials. In the present case, however, there is no suggestion whatever that the respondent's interest in his 'good name, reputation, honor, or integrity' is at stake.

Similarly, there is no suggestion that the State, in declining to re-employ the respondent, imposed on him a stigma or other disability that foreclosed his freedom to take advantage of other employment opportunities. The state, for example, did not invoke any regulations to bar the respondent from all other public employment in state universities. Had it done so, this, again, would be a different case . . .

The Court rejected the motion that the nontenured teacher had a property interest in renewal (nothing else appearing), saying:

Certain attributes of 'property' interests protected by procedural due process emerge from these decisions. 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. It is a purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined. It is a purpose of the constitutional right to a hearing to provide an opportunity for a person to vindicate those claims.

Property interests, of course, are not created by the Constitution. Rather they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law--rules or understandings that secure certain benefits and that support claims of entitlement to those benefits. Thus, the welfare recipients in Goldberg v. Kelly, supra, had a claim of entitlement to welfare payments that was grounded in the statute defining eligibility for them. The recipients had not yet shown that they were, in fact, within the statutory terms of eligibility. But we held that they had a right to a hearing at which they might attempt to do so.

Just as the welfare recipient's 'property' interest in welfare payments was created and defined by statutory terms, so the respondent's 'property' interest in employment at Wisconsin State University-Oshkosh was created and defined by the terms of his appointment. Those terms secured his interest in employment up to June 30, 1969. But the important fact in this case is that they specifically provided that the respondent's employment was to terminate on June 30. They did not provide for contract renewal absent 'sufficient cause'. Indeed, they made no provision for renewal whatsoever.

Thus, the terms of the respondent's appointment secured absolutely no interest in re-employment for the next year. They supported absolutely no possible claim of entitlement to re-employment. Nor, significantly, was there any state statute or University rule or policy that secured his interest in re-employment or that created any legitimate claim to it. In these circumstances, the respondent surely had an abstract concern in being rehired, but he did not have a property interest sufficient to require the University authorities to give him a hearing when they declined to renew his contract of employment.

Our analysis of the respondent's constitutional rights in this case in no way indicates a view that an opportunity for a hearing or a statement of reasons for non-retention would, or would not, be appropriate or wise in public colleges and universities. For it is a written Constitution that we apply. Our role is confined to interpretation of that Constitution.

We must conclude that the summary judgement for the respondent should not have been granted, since the respondent has not shown that he was deprived of liberty or property protected by the Fourteenth Amendment. The judgement of the Court of Appeals, accordingly, is reversed and the case is remanded for further proceedings consistent with this opinion.¹²

¹² Ibid; See also: "The Effect of Tenure on Public School Teachers' Substantive Constitutional and Procedural Due Process Rights", 38 Missouri Law Review 279 (1973); "Public Employees' Right to a Pretermination Hearing Under the Due Process Clause", 48 Indiana Law Journal 127 (1973).

Thus, some significant conclusions may be drawn from study of the Sindermann and Roth cases. Particularly significant are inferences, pertaining to non-tenured teachers.

1. The mere "expectancy" of renewal is not protected by procedural due process.

2. Due process does not require an opportunity for hearing or statement of reasons before non-renewal, absent a showing that the teacher was deprived of an interest in "liberty" or that he had a "property" interest in continued employment despite the lack of tenure.

3. To amount to a "property" interest, the interest must arise from a contract of employment, an implied promise of continued employment, or statutory of de facto tenure. If there is such a "property" interest, due process must be afforded.

4. If the non-renewal is based on charges that might damage the teacher's standing or foreclose his freedom to seek future employment, and interest in "liberty" would be created, due process must be afforded.

There have been numerous lower court decisions applying Sindermann, supra, and Roth, supra, to which one can briefly turn to see how the District Court judges read the decisions.

In Stewart V. Bailey,¹³ the court said:

The courts of appeal and the Supreme Court have had occasion to speak to a non-tenured teacher's

¹³Stewart V. Bailey, 396 F. Supp. 381 (DC 1975).

rights most often in cases dealing with failure by a school to rehire a teacher, rather than upon dismissal. In those cases dealing with failure to rehire, the courts have concerned themselves with whether the plaintiff did or did not have a 'property right' entitled to the due process protection of the 14th amendment.

The Fifth Circuit has determined that a non-tenured professor can have such an expectancy of re-employment that a constitutionally protected 'property right' is created. Ferguson v. Thomas, supra; Sindermann v. Perry, 430 F. 2d 939 (5 cir. 1970). However, the Supreme Court upon review of Perry v. Sindermann, 408 U.S. 593, 92 S. Ct. 2694, 33 L. Ed. 2d 570 (1972), declared that a mere subjective expectancy of re-employment is not protected by procedural due process, but required instead a positive showing of a de facto type tenure policy which while allowed to some was not allowed to plaintiff. In such a situation the plaintiff may invoke the right to a hearing by proof that such a de facto tenure system existed. Therefore, the burden of initiating the hearing would primarily be on the professor.

On the same day the Supreme Court decided another landmark decision in this field. In Board of Regents v. Roth, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972), it was held that unless it can be shown that the nonrenewal of a nontenured teacher's contract deprived the teacher of an interest in 'liberty' or that he had a 'property interest' in continued employment, the 14th Amendment does not require a due process hearing before nonrenewal. Of course, the theory behind such a rule is the same as the basis for the Fifth Circuit's 'expectancy' concept. Without a constitutionally protected right no due process procedure is required. If plaintiff desires due process he must assert a due process right and a constitutionally impermissible infringement on that right. He must request that he have the opportunity to be heard before that alleged right is violated. Orr v. Trinter, 444 F. 2d 128 (6th Cir. 1971).

A reading of the Sindermann and Roth decisions concertedly indicates that without a formal contract or tenure right a professor is not entitled to due process appellate procedures as a matter of right. He must attack the termination as based on some impermissible reason and request a full hearing at which he could challenge the grounds for dismissal. The burden rests on the professor.

However, the Roth decision indicates that there is one set of circumstances where a due process procedure must be offered a professor. Where the college, in dismissing a professor or in declining to rehire one, does so for cause, the college may be required to initiate the hearing. When the college states its causes and thereby makes any charge against the professor that might seriously damage his standing in the community, it has effectively violated a constitutionally protected right. The Court stated:

(w)here a person's good name, reputation, honor or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential. (Cites omitted.) In such a case, due process would accord an opportunity to refute the charge before University officials. . . . (Emphasis supplied.) Supra 408 U.S. p. 573, 92 S. Ct. p. 2707, 33 L. Ed. 2d. p. 558.

The inherent right to protection of one's 'good name, reputation, honor or integrity,' combined with the possible adverse effect on future employment caused by the charges, requires an opportunity to challenge the charges. The University must offer such a hearing to a professor dismissed for cause. This is in essence the rule of the Ferguson case, wherein it recognizes that a termination for cause presupposes the right to notice and a hearing. Under such circumstances the college must initiate the appellate procedure and hearing.

This is not to say that the school must set up a hearing or committee and wait to see if the professor appears. However, they must offer him the opportunity to be heard as soon as they notify him of his termination. Even in such a situation, according to Flunker v. Alabama State Board of Education, 441 F. 2d 201 (5th Cir. 1971):

. . .The law in this Circuit is crystal clear that a non-tenured teacher alleging that he has been dismissed for constitutionally impermissible reasons 'must bear the burden . . .of proving that a wrong has been done by the collegiate action in not rehiring him.' (Cite omitted.) Supra, p. 205.

In summary, when a nontenured professor is dismissed or not rehired for cause, and the stated causes attack his good name, reputation or integrity so as to possibly deprive him of future state employment, the college has the burden of initiating a hearing where the teacher may challenge the stated causes. But, where there is dismissal without cause, no cause is stated, or the causes cannot be said to offend the teacher's reputation, the initiative is upon the teacher to assert that the cause for dismissal is for a constitutionally impermissible reason and request a hearing.¹⁴

In Browelette V. Board of Directors of Merged Area IX, the non-tenured teacher was hired on a year-to-year basis, with the Iowa law providing that if no affirmative action was taken to terminate the contract, it was renewed.¹⁵ The Iowa law provided the right of hearing. The court said:

In Board of Regents V. Roth, 408 U. S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972), and Perry V. Sindermann, 408 U. S. 593, 92 S. Ct. 2694, 33 L. Ed. 2d 570 (1972), the Supreme Court held that a non-tenured teacher is entitled to procedural due process upon termination only if that termination will deprive him of an interest in property or liberty. Under Iowa law, a non-tenured teacher is hired on a year to year basis. Unless affirmative action is taken to terminate employment, however, teaching contracts are automatically renewed each year. We have recently held that this procedure creates no expectation of continued re-employment and thus, no property interest requiring constitutional protection. Scheelhaase V. Woodbury Central Community Sch. Dist., 488 F. 2d 237 (8th Cir. 1973). However, it is recognized that a teacher's interest in liberty is sufficiently affected to invoke the protections of procedural due process when the threatened termination is the result of a charge which will place a stigma upon him and impair his ability to obtain new employment.

¹⁴ Ibid.

¹⁵ Browelette V. Board of Directors of Merged Area IX, *supra*. See also: Scheelhaase V. Woodbury Central Community School District, *supra*; Kota V. Little, et al, 473 F 2d (La. 1973); Simard V. Board of Education, 473 F. 2d 988 (2nd Cir. 1973).

Roth, *supra*, 408 U.S. at 573, 92 S. Ct. 2701; Buhr v. Buffalo Public Sch. Dist., 509 F. 2d 1196, 1199 (8th Cir. 1974): see also Freeman v. Gould, Special Sch. Dist., 405 F. 2d 1153, 1161-67 (8th Cir. 1969) (dissenting opinion). The allegations of inadequacy against the plaintiff were relatively minor, (e.g., tardiness, inability to maintain order, etc.) and not, we believe, of the sort that would seriously impair his ability to obtain future employment. See Scheelhaase *supra*, at 242. Moreover, the board declined to make them public. See Buhr, *supra*, at 1199. We find no deprivation of liberty here and conclude that plaintiff was not entitled to the protections of procedural due process guaranteed by the Constitution.

Plaintiff's second claim, based upon state law, is premised on the alleged lack of compliance with I.C.A. 279.13 (1972). Relevant here is that provision of the statute which provides that a teacher whose contract has been terminated may protest the decision at a public hearing. In plaintiff's case, a protest was filed and a hearing was held on May 1, 1975. Plaintiff contends the proceedings were inadequate because he was insufficiently informed of the charges against him and was denied the right to confront his accusers. The board contends and the district court found that the plaintiff was well aware of the allegations against him and the names of those who made them and that although he was represented by counsel at the public hearing and the two individuals chiefly responsible were present, that plaintiff made no attempt to question them but rather sought to refute their charges by offering witnesses who attested to his competency. Cf. Swab v. Cedar Rapids Community Sch. Dist., 494 F. 2d 353 (8th Cir. 1974).

(4,5) Section 279.13 does not set forth any form for the required hearing. We have acknowledged that the statute was intended to provide non-tenured teachers with procedural due process. Swab v. Cedar Rapids Community Sch. Dist., 494 F. 2d 353 (8th Cir. 1974). However, this does not mean a formal trial must be held. In the absence of more specific rules and regulations or until further definition by the Iowa Supreme Court, we deem an informal procedure which meets the minimal requirements of fair play and provides

a dismissed teacher with a reasonable opportunity to be heard in compliance with the statute. Minimal requirements of due process are generally recognized to be: (1) clear and actual notice of the reasons for termination in sufficient detail to enable him or her to present evidence relating to them; (2) notice of both the names of those who have made allegations against the teacher and the specific nature and factual basis for the charges; (3) a reasonable time and opportunity to present testimony in his or her own defense; and (4) a hearing before an impartial board or tribunal. Cf. Ferguson v. Thomas, 430 F. 2d 852, 856 (5th Cir. 1970). Both the notice afforded and the opportunity to be heard must be appropriate to the nature of the charges made. Bell v. Burson, 402 U.S. 535, 541-542 91 S. Ct. 1586, 29 L. Ed. 2d 90 (1971).¹⁶

Meyer v. Nebraska
United States Supreme Court
262 U. S. 390 (1923).

On April 9, 1919, the Nebraska Legislature passed an act making it a misdemeanor for any person to teach any subject to any person at any school in any language other than the English language. The statute permitted the teaching of foreign languages in the schools only after a pupil had passed the eighth grade. Robert T. Meyer, an instructor in a parochial school, was arrested on May 25, 1920, and charged with teaching the subject of reading in the German language to a child under the age of ten who had not attained and successfully passed the eighth grade. Meyer was convicted by the trial court. The conviction was affirmed by the Nebraska Supreme Court. Meyer appealed to the United States Supreme Court alleging that this statute, as construed and applied, unreasonably infringed upon the liberty guaranteed him by the Fourteenth Amendment. The Fourteenth Amendment provides that no state shall deprive any person of life, liberty or property without due process of law.

¹⁶ Ibid.

The Supreme Court found the statute in question to be in violation of the Fourteenth Amendment. The Court first defined "liberty."

It said:

Without doubt, it (liberty) denotes not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any other common occupations of life, to acquire useful knowledge, to marry, to establish a home and bring up children, to worship God according to the dictates of his own conscience, and, generally, to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.¹⁷

The Court found the interest of the plaintiff to be within the liberty protected by the Fourteenth Amendment. The Court said:

Plaintiff in error (Meyer) taught this language in school as a part of his occupation. His right thus to teach and the right of the parents to engage him solely to instruct their children, we think, are within the liberties of the Amendment.

The Court next determined whether or not the particular statute unconstitutionally infringed upon Meyer's liberty. In the words of the Court, the test for making this determination is as follows:

The established doctrine is that this liberty may not be interfered with under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the State to effect. Determination by the Legislature of what constitutes proper exercise of police power is not final or conclusive, but is subject to supervision by the courts.

The Court found this statute as applied to be arbitrary and without reasonable relation to any end within the competency of the state. The Court noted that there was no harm in merely knowing the German language and indeed that such knowledge was helpful and desirable. The

¹⁷ Meyer v. Nebraska, 262 U.S. 390 (1923).

Court could find no valid reason for inhibiting the teaching of German and infringing upon the right of Meyer to teach.

As the Court said:

No emergency has arisen which renders knowledge by a child of some language other than English so clearly harmful as to justify its inhibition, with the consequent infringement of rights long freely enjoyed.

It would appear that perhaps the critical factor in this case is that Meyer was a teacher in a parochial school, not in a public school. Had this statute applied only to public schools, another result might have been reached.

Hamilton v. Regents of the University
of California
293 U.S. 245 (1934).

The University of California required compulsory military training (Reserve Officers Training Corp) of all able bodied male students. Hamilton and several other students at the University were members of the Methodist Episcopal Church, a church having as one of its basic tenants opposition to war, preparation for war, and the waging of war. Hamilton and the others in the fall of 1933 petitioned the University of California for exemption from the compulsory military training based upon their religious beliefs. This petition was denied and Hamilton and the others filed suit in the state court alleging that the compulsory military training requirements violated the Fourteenth Amendment and the Kellogg-Briand Peace Pact. The Supreme Court of California found the regulation to be valid and constitutional.

Hamilton and the others appealed to the U. S. Supreme Court. The Supreme Court in an unanimous decision rejected the allegations of the petitioners and found the compulsory military training regulation to be valid and not repugnant to the Fourteenth Amendment. The Court first noted that every state had the undoubted authority to train its able bodied male citizens to serve in the United States Army or in the state militia, so long as not inconsistent with congressional enactments. The Court further noted:

Government, federal, and state, each in its own sphere owes a duty to the people within its jurisdiction to preserve itself in adequate strength to maintain peace and order and to assure the just enforcement of law. And every citizen owes the reciprocal duty according to his capacity to support and defend government against all enemies.¹⁸

The Court then noted that requiring military training as a prerequisite to enrollment at the University of California in no way violated any liberty of the petitioners for the simple reason that there was no constitutional right to be exempt from military duty because of religious scruples. As the Court said:

The conscientious objector is relieved from the obligation to bear arms in obedience to no constitutional provision, express or implied; but because, and only because, it has accorded with the policy of Congress thus to relieve him . . . The privilege of the native born conscientious objector to avoid bearing arms comes not from the Constitution but from the acts of Congress. That body may grant or withhold the exemption as in its wisdom

¹⁸Hamilton V. Regents of the University of California, 293 U.S. 245 (1934).

it sees fit; and if it be withheld, the native born conscientious objector can not successfully assert the privilege. No other conclusion is compatible with the well nigh limitless extent of the war powers as above illustrated, which include, by necessary implication, the power, in the last extremity, to compel the armed service of any citizen in the land, without regard to his objections or his views in respect to the justice or morality of the particular war or of war in general.¹⁹

A review of the following case should provide the reader with the rationale of the Supreme Court of Pennsylvania when applying a broad interpretation to the term "incompetency."

Horosko v. School District of Mount Pleasant
6 A. 2d 866 (Pa. 1939).

The Pennsylvania law permitted a dismissed teacher to obtain a hearing de novo. The law further provided that the "court shall make whatever order it considers just, either affirming or reversing the action of the Board."²⁰ Another statute provided for termination for "immorality."²¹

The teacher was married to one Connors, but used the name of Evelyn Horosko. Connors ran a lunchroom and beer garden about one hundred twenty-five feet from the school. Ms. Horosko acted as a waitress after school and in the summer. In the beer garden and in the presence of some of her students, she took an occasional drink of beer, served beer to customers, shook dice with customers for beer, and showed customers how to play a pin-ball machine located on the

¹⁹ Ibid.

²⁰ Horosko v. School District of Mount Pleasant, 6 A. 2d 866 (Pa. 1939).

²¹ Ibid.

premises.

The trial judge ruled as follows:

Is such a course of conduct immoral or intemperate, and does it--in connection with her scholastic and efficiency rating--amount to incompetency? We hold it to be self evident that, under the intent and meaning of the act, immorality is not essentially confined to a deviation from sex morality; it may be such a course of conduct as offends the morals of the community and is a bad example to the youth whose ideals a teacher is supposed to foster and to elevate. Nor need intemperance be confined strictly to overindulgence in alcoholic liquors--temperance implies moderation, and a person may be intemperate in conduct without being an alcoholic addict. And so as to incompetency; as we take it, this means under the Act incompetency as a teacher--but does this mean that competency is merely the ability to teach the "Three R's?"

On appeal, the Superior Court said, in reversing the decision:

It may be true, as counsel for appellee (the school) argues, that appellant (teacher) now commands neither the respect nor good will of the community, but these are not matters which the statute now recognizes as causes for dismissal.

The Supreme Court, reversing, affirmed the decision of the trial judge, saying:

The provisions of clause (a) which include the words 'incompetency' and 'immorality', are therefore to be construed "according to their common and approved usage", having regard, of course, to the context in which the legislature used them.

Among the definitions of 'immorality' is 'conduct inconsistent with moral rectitude'. A large body of public opinion regards gambling as immoral. Gambling with a pin-ball or a slot machine, or with dice is prohibited by law. We are not prepared to say the learned judge erred in concluding that the teacher's shaking 'dice with customers for drinks' and showing them how to play a pin-ball machine in the presence of school children, supported the finding of incompetency in the circumstance shown.

The term 'incompetency' has a 'common and approved usage'. The context does not limit the meaning of the word to lack of substantive knowledge of the subjects to be taught. Common and approved usage give a much wider meaning. For example, in 31 C.J., with reference to a number of supporting decisions, it is defined: 'A relative term without technical meaning. It may be employed as meaning disqualification; inability; incapacity; lack of ability, legal qualifications, or fitness to discharge the required duty'. In Black's Law Dictionary, 3rd edition, page 945, and in 1 Bouv. Law Dict., Rawle's Third Revision, p. 1528, it is defined as 'Lack of ability or fitness to discharge the required duty'. Cases construing the word to the same effect are found in 4 Words and Phrases, First Series, page 3510, and 2 Words and Phrases, Second Series, page 1013. Webster's New International Dictionary defines it as 'want of physical, intellectual, or moral ability; insufficiency; inadequacy; specif., want of legal qualifications or fitness'. Funk & Wagnalls Standard Dictionary defines it as "General lack of capacity of fitness, or lack of the special qualities required for a particular purpose'.

(5) In the circumstance, therefore, we must conclude that the order made in the Common Pleas was 'just'.²²

²² Ibid.

CHAPTER VI
SUMMARY AND RECOMMENDATIONS

The purposes of this study were multi-faceted. On the one hand, there was an attempt to identify through a comprehensive examination of the fifty state teacher tenure laws statutory requirements concerning grounds for dismissal, personnel included, year of employment tenure is granted, steps in dismissal proceedings, requirements of a formal hearing, sources of appeal, and who initiates dismissal proceedings.

Moreover, an in-depth study, consisting of a historical and judicial review of tenure laws, was made to ascertain the purpose, general development, and legislative power relative to these laws. This study involved a review of appropriate literature and selected court cases.

A third purpose consisted of an attempt to define teacher incompetency. The writer found the most productive effort concerning a definition of this term was a thorough judicial review. Included in this review was an examination of selected court cases relating specifically to the matter of teacher incompetency.

A fourth purpose entailed categorizing the various areas which the courts have considered when speaking to the topic of incompetency. As seen in Chapter III, and as will be discussed later in this chapter, there are at least twelve categories.

A fifth purpose attempted, through an examination of court cases including incompetency charges, to identify certain Constitutional

rights of teachers and to determine what constitutes due process.

A thorough historical and judicial review of teacher tenure laws established that the first tenure law for public school teachers was enacted in 1886 by the Massachusetts General Assembly. Since that time, all fifty states have legislated teacher tenure laws.

The most ardent supporters of tenure statutes, not surprisingly, have been professional organizations. One of the most frequently advanced arguments favoring teacher tenure laws is that these laws enable a school system to maintain a permanent teaching staff. Protected from the political preferences of people holding the power to grant or withhold employment, such permanency would give teachers the security to perform their duties more effectively and efficiently.

The question of the legality of states to enact tenure laws has, for the most part, been decided by court decisions. The Aberdeen-Huntington, supra, and the Independent District of Hector, supra, established the precedent for state legislatures to assume this kind of authority. This precedent has been followed in literally hundreds of succeeding cases.

In order to include an up-to-date analysis of the fifty state tenure laws, two complete sets of teacher tenure statutes were analyzed in this study. The necessity for this action was due to the fact that the first set of tenure laws which was secured did not include any of the changes made in the statutes by 1974 and 1975 state legislatures.

Because the statutes are subject to change at any time, the reader is cautioned to refer to the most current statutes for possible changes.

The changes in many of the tenure statutes were both quantitative and qualitative. By way of example, several states amended tenure statutes to add rules governing a hearing, having included no such rules in their original teacher tenure law. Other states specified additional hearing rules.

In Bragg, supra, the court stated the purpose of teacher-tenure legislation. That purpose, as stated is:

To maintain an adequate and competent teaching staff, free from political and personal and arbitrary interference, whereby capable and competent teachers might feel secure, and more efficiently perform their duty of instruction.

Study of the tenure laws of the various states presented some interesting revelations regarding personnel covered by the laws. All fifty state tenure laws include career teachers, and probationary teachers are included in twenty-six of them.

However, when a teacher advances to the position of supervisor or principal, he/she may lose the security of tenure protection in many states. Only half of the states grant tenure to supervisors, and only slightly more of them give it to principals.

Superintendents are in a more precarious position than supervisors and principals with regard to tenure rights. Only seventeen states specify that superintendents may acquire tenure.

It was somewhat surprising to discover that despite recent court rulings affording virtually every tenured teacher the right to appeal dismissals or demotions, tenure laws of sixteen states do not speak to this point. In addition to the courts, other sources of appeal in some states are a Professional Practices Commission (Oklahoma) and the State Department of Education and/or the State Superintendent of Schools.

Uniformity among the various states regarding the initiation of dismissal proceedings does not exist. However, school boards are involved in these proceedings in most (36) states. In six of these states, the superintendent is also involved. The authority to initiate proceedings resides with the superintendent alone in twelve states. Mississippi authorizes the principal to act in conjunction with the superintendent, and New Jersey requires the person preferring the charges to begin the dismissal proceedings.

Study of the fifty state tenure laws found many states with comprehensive tenure laws. In these states, specific dismissal grounds were delineated. In other states, only the "good and just cause" was given as a reason. Some states' tenure laws mandate, what appears to this writer to be, complete due process; whereas, the tenure laws of other states are

so ambiguous that the teacher would find it most difficult to understand the implications for due process.

Due to what appear to be conflicting court decisions, defining incompetency proved to be a most difficult task. Lacking a clearly-stated definition of the term, courts have interpreted it differently. By way of example, one court held that a female teacher just over five feet tall and weighing over 300 pounds, was incompetent as charged because of her physical condition. Another court, when considering the matter of incompetency because of physical condition, held that obesity alone is not a sufficient reason for dismissal.

The courts are incessantly called upon to decide the legality of a school board's dismissal of a teacher. Due to the diverse range of factors involved in teacher dismissal cases, it is all but impossible to formulate a single rule to define clearly the latitude school boards have in incompetency dismissal cases.

However, an analysis of selected court decisions does provide much insight and might serve as a guide to school administrators and school boards faced with teacher demotion or dismissal decisions involving incompetency. The analysis of court cases revealed that the courts have established at least twelve categories when dealing with teacher incompetency charges. These are:

- a. Lack of discipline
- b. Failure to supervise athletic contest

- c. Physical disability
- d. Lack of subject matter
- e. Improper teaching methods (lack of proper organization and preparation, inability to control emotions, and teaching inappropriate subject matter)
- f. Failure to keep up with the times
- g. Failure to coordinate teaching with that of other teachers
- h. Inability to get along with parents and students
- i. Inability to motivate students
- j. Failure to follow guidelines
- k. Unsatisfactory progress of pupils
- l. And inability to get along with other teachers

Examination of numerous cases of teacher dismissal or nonrenewal reveals the fact that nearly all of them cite more than one cause for the action taken. Thus, in attempting to ascertain the position which the courts have taken on specific charges, one treads on slippery ground. It becomes a sticky matter, to say the least, to guess whether individual charges, standing alone, would elicit the same response from the courts which these same charges have drawn in precedents involving a combination of charges.

The concept of "due process" is an elusive, but important one for the administrator to understand. It is incumbent upon him/her to be cognizant of the due process rights of teachers and to afford them. These

rights are inherent under the Fifth and Fourteenth Amendments to the Constitution. Should these rights be infringed upon, there is risk of invalidating the dismissal or nonrenewal action and of subjecting the administrator or the school board to payment of damage awards.

There are two facets of the process substantive due process and procedural due process. The essence of substantive due process is protection from arbitrary action. This facet generally entails the voiding of legislation deemed arbitrary. However, other constitutional rights, such as First Amendment rights, are sometimes referred to as substantive due process rights. Substantive due process applies to both tenured and nontenured teachers.

Procedural due process focused on the requirements of those proceedings which may deprive one of life, liberty, or property. When constitutionally protected rights are endangered, the right of prior hearing must not be denied. A significant consideration of this facet of due process with regard to teachers is the tenure status of the teacher implicated in the action. The Supreme Court has held that a nontenured teacher is entitled to procedural due process upon dismissal only when that action deprives him/her of an interest in property or liberty (Roth, supra, Sindermann, supra). A tenured teacher would be on firm ground in demanding due process. A hearing is strongly recommended for any teacher being dismissed or not being rehired.

The administrator is likely to experience frustration in attempting to comply with the legal requirements of procedural due process. The

frustration can be diminished somewhat by strict adherence to the following recommended procedures:

1. Send the teacher, well in advance of the hearing, a detailed letter specifying the time and place for the hearing, the charges against the teacher, names and addresses of witnesses and a brief resume of their anticipated testimony.
2. Establish rules to govern the hearing prior to the proceedings and make them known to the teacher.
3. Provide separate counsel for the superintendent and for the school board.
4. Have proper and complete documentation of the grounds for the dismissal action.
5. Inform the teacher of his/her right to present evidence, to be represented by counsel, and to subpoena witnesses.
6. Provide a guaranty that the evidence shall be recorded and that the board will make written findings.

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APPENDIX A

STATE CODES

Alabama

Code of Ala., tit. 52, sec. 351 etc.

351. "Teacher defined.-the term teacher as employed in this chapter is deemed to mean and include all persons regularly certificated by the teacher certificating authority of the state of Alabama who may be employed as instructors, principals or supervisors in the public elementary and high schools of the state of Alabama. (1939, p. 759; 1953, p. 1040, appvd. Sept. 16, 1953.)

352. Teachers who may attain continuing service status.-Any teacher in the public schools, who shall meet the following requirements, shall attain continuing service status: (a) Such teacher shall have served under contract as a teacher in the same county or city school system for three consecutive school years and shall thereafter be re-employed in such county or city school system the succeeding school year. An instructor who has attained continuing service status and who is promoted to principal or supervisor shall serve for three consecutive school years as a principal or supervisor before attaining continuing service status as a principal or supervisor. Such promotion shall in nowise jeopardize the continuing service status of the teacher as an instructor; and, should the promoted instructor not be retained as principal or supervisor, his salary would be reduced to the salary paid instructors in accordance with the prevailing salary schedule in the county or city system. The superintendent shall, by the end of each school term, submit to the employing board a list of teachers recommended for continuing service status. A failure on the part of the superintendent to make such certification shall not in any way prejudice the continuing service status of the teacher. Provided, that when two or more school systems are consolidated under one board of education, or when one or more schools are separated from a school system in order to become a part of or to constitute another school system, the continuing service status of the teachers involved in such changes is in no way jeopardized. (1939, p. 759; 1951, p. 1408, appvd. Sept. 11, 1951; 1953, p. 1040, appvd. Sept 16, 1953.)

353. Contract of employment effective until superseded or cancelled.-The contract of employment of any teacher who shall attain continuing service status shall remain in full force and effect unless superseded by a new contract signed by both parties, or cancelled as provided in section 359 or section 360 of this title; provided that the legislature, or in the absence of legislation, the employing board of education may provide for the retirement of teachers at certain ages. (1939, p. 759; 1953, p. 1041, appvd. Sept. 16, 1953.)

354. Change of compensation for succeeding year.-The salary or compensation of any teacher on continuing service status may be changed for any succeeding year to accord with a general salary schedule adopted by the employing board of education; provided, however, that no salary schedule shall operate to compensate teachers in less sums than the sums contained in a minimum salary schedule, which may be adopted by the state board of education of Alabama for teachers in the public schools of the state. (1939, p. 759; 1953, p. 1041, appvd. Sept. 16, 1953.)

355. Transfer of teacher.-Any teacher on continuing service status, upon the recommendation of the superintendent and the approval of the employing board of education, may be transferred for any succeeding year from one position, school, or grade to another by being given written notice of such intention to transfer by the employing board except that such transfer shall be without loss of status or violation of contract, and such transfer may not be for political or personal reasons. (1939, p. 759; 1953, p. 1041, appvd. Sept. 16, 1953.)

356. Method of contesting a proposed transfer.-After receiving notice of the employing board's intention to effect a transfer, the teacher receiving such notice may obtain a hearing before the employing board by filing a written demand for such hearing within fifteen days after the receipt of such notice. If the teacher does not file such demand within fifteen days after receipt of the notice to transfer, then the transfer shall be final. If the teacher does file a demand for a hearing before the board, the board shall hold such hearing within fifteen days after receipt of the teacher's demand for such hearing. At least five days prior to the hearing the board shall furnish to the teacher by mailing by United States registered mail with postage prepaid thereon to said teacher's last known address the time and place of said hearing and the reasons for the proposed transfer. The procedure at such hearing and the responsibility of the board subsequent to such hearing and the rights of the teacher and the board at such hearing shall be the same as are provided for a contested hearing for cancellation of the teacher's contract as hereinafter set out in section 359 of this chapter. (1953, p. 1041, appvd. Sept. 16, 1953.)

357. Appeal from transfer of teacher.-A teacher on continuing service status shall have the right to appeal within fifteen days after the decision of the employing board to the state tenure commission as hereinafter established to obtain a decision by the commission as to whether such action was in compliance with this chapter and whether such action was taken for political or personal reasons and that such action was not arbitrarily unjust. If said appeal is not taken within fifteen days after the decision of the board, the board's decision shall be final. Such appeal shall be taken by filing a notice of appeal with the commission and a copy with the employing board. Such appeal shall be heard not less than ten days nor more than forty days after such notice of appeal is filed with the commission, and the commission shall give such teacher not less than five days' notice of the time and place of such hearing. Such teacher shall have a right to appear with or without counsel, and shall have a right to present argument to the commission based on the record of the proceedings before the employing board. No transfer shall be effected until the time for filing notice of appeal has expired, and if notice of appeal is filed by said teacher not until after a hearing is held and the state tenure commission has evidenced its approval of the transfer of said teacher. The action of the state tenure commission shall be final and conclusive in determining all questions relative to said transfer, and shall be based on the record of the proceedings before the said board and the evidences as recorded at such hearing. (1953, p. 1042, appvd. Sept. 16, 1953.)

358. Grounds for cancellation of employment contract.-Cancellation of an employment contract with a teacher on continuing service status may be made for incompetency, insubordination, neglect of duty, immorality, justifiable decrease in the number of teaching positions, or other good and just cause; but cancellation may not be made for political or personal reasons. (1939, p. 759; 1953, p. 1042, appvd. Sept. 16, 1953.)

359. Mode of cancellation of employment contracts.-An employment contract with a teacher on continuing service status may be cancelled only in the following manner:

The employing board of education shall give notice in writing to the teacher stating in detail the reasons for the proposed cancellation and naming the exact time and place at which the teacher may appear before the board to answer said notice, which date shall not be less than twenty nor more than thirty days after the service of such notice to the teacher by United States registered mail with postage prepaid thereon, to said teacher's last known address, such notice shall also inform the teacher that in order to contest said cancellation, the teacher must file with the board at least five days prior to the date the matter is set for hearing notice of an intention to contest. Nothing herein provided is intended to prevent the suspension of a teacher pending a hearing on such proposed cancellation and the final determination thereof. No teacher dismissed as the result of such hearing shall receive compensation for the period of such suspension. If the teacher does not file an intention to contest with the board at least five days prior to the date the matter is set for hearing then the employing board may dismiss the teacher by a majority vote and such dismissal shall be final. At a contested hearing, which shall be public or private at the discretion of the teacher, each party shall have a right to appear with or without counsel and shall have a right to be heard and to present the testimony of witnesses and other evidence bearing upon the reasons for the proposed cancellation of such contract and shall have a right to cross-examine the adverse witnesses. The board, or its authorized representative, shall have power to administer oaths, take depositions, and issue subpoenas to compel the attendance of witnesses and production of papers necessary as evidence in connection with the dispute or claim. If requested, the board shall issue subpoenas for witnesses to testify either in support of the charges or on behalf of the teacher, and such witnesses shall be entitled to receive the same mileage and per diem as witnesses called in civil cases in the circuit court of the county where the hearing is held, the same to be paid out of school funds, provided, however, the board shall not be accountable for the witness fees of more than ten of the witnesses subpoenaed by the teacher. In case a person refuses to obey such subpoena the board, or its authorized representative, may invoke the aid of the circuit court in order that the testimony or evidence be produced; and upon proper showing, such court shall issue a subpoena or order requiring such person to appear before the board or its representative and produce evidence and give testimony relating to the matter at issue; a person failing to obey the court's subpoena or order shall be punishable by the

court as for contempt. It shall be the duty of said board to employ a competent stenographer to keep and transcribe a record of the proceedings at such hearing. After each party has presented its case at said hearing, the employing board of education may determine the question of the cancellation of the contract by a majority vote, or it may defer action regarding the decision for a period not to exceed five days. Its action and vote, whether taken immediately following the hearing or within five days thereafter, shall be evidenced by the minute proceedings of the board and shall be only after full compliance with this section. (1939, p. 759; 1951, p. 1191, appvd. Sept. 5, 1951; 1953, p. 1042, appvd. Sept. 16, 1953.)

360. Finality of action of employing board on contract cancellation; review.-The action of the employing board shall be final in its action on cancellation of a teacher's contract provided such action was in compliance with the provisions of this chapter and was not arbitrarily unjust. The teacher shall have the right to appeal to the state tenure commission as hereinafter established to obtain a review by the commission as to whether such action was in compliance with this chapter and whether such action was arbitrarily unjust. Such appeal shall be taken by filing within fifteen days after the decision of the employing board a written notice of appeal with the superintendent or chairman of said board. If said appeal is not taken within fifteen days after decision of the board, the board's decision shall be final. Upon notice of appeal, the board shall cause to be made sufficient copies of the record of proceedings to provide a copy for each of the members of the commission and one for the teacher. The record shall consist of all notices given to the teacher, all papers filed with the board by the teacher in compliance with the provisions of the chapter, transcript of testimony and other evidence, and the findings and decisions of the board. The requisite number of copies of the record shall be delivered to the commission and to the teacher within twenty days from the day of the hearing. The commission shall set a date for the hearing at which the board and the teacher, or a representative of each, shall have an opportunity to be heard. The date of such hearing shall be within forty days after the decision of the board, and the teacher and the board shall be given at least five days' notice of the time and place where the appeal will be considered. On said appeal the commission will consider the case on the record of the proceedings before the said board and the evidence as recorded at such hearing. The commission shall by a majority vote determine the validity of the action by the board, and shall render its decision within five days after its hearing. No action at law shall lie for the recovery of damages for the breach of any employment contract of a teacher in the public schools. (1939, P. 759; 1945, p. 646, appvd. July 7, 1945; 1953, p. 1043, appvd. Sept. 16, 1953.)

361. Finality of action of state tenure commission; review.-The action of the state tenure commission in reviewing transfers of teachers or cancellation of teacher contracts, if made in compliance with the provisions of this chapter, and unless unjust, shall be final and conclusive.

Whether such action complies with the provisions of this chapter and whether such action is unjust, may be reviewed by petition for mandamus filed in the circuit court of the county where said school system is located. (1953, p. 1044, appvd. Sept. 16, 1953.)

361 (1). Cancellation of contract by teacher.-No teacher, whether in continuing service status or not, shall be permitted to cancel his, or her, contract during the school term for which said contract is in effect, nor for a period of forty-five (45) days previous to the beginning of such school term, unless such cancellation is mutually agreed upon; any such teacher shall be permitted to cancel his, or her, contract at any other time by giving five days' written notice to the employing board of education. Any teacher canceling his, or her, contract in any other manner than in this section provided shall be deemed guilty of unprofessional conduct and the state superintendent of education is hereby authorized to revoke or suspend the certificate of such teacher. (1939, p. 759; 1949, p. 373, appvd. July 18, 1949; 1953, p. 1044, appvd. Sept. 16, 1953.)

361 (2). Teacher deemed re-employed for succeeding school year unless notified.-Any teacher in the public schools, whether in continuing service status or not, shall be deemed offered re-employment for the succeeding school year at the same salary, unless the employing board of education shall cause notice in writing to be given said teacher on or before the last day of the term of the school in which the teacher is employed; and such teacher shall be presumed to have accepted such employment unless he, or she, shall notify the employing board of education in writing to the contrary on or before the fifteenth day of June. The employing board of education shall not cancel the contract of any teacher in continuing service status, nor cause notice of non-employment to be given to any teacher whether in continuing service status or not except by a vote of majority of its members evidenced by the minute entries of said board made prior to or at the time of any such action. (1939, p. 759; 1945, p. 646, appvd. July 7, 1945; 1953, p. 1045, appvd. Sept. 16, 1953,)

361. Finality of action of state tenure commission; review.-The action of the state tenure commission in reviewing transfers of teachers or cancellation of teacher contracts, if made in compliance with the provisions of this chapter, and unless unjust, shall be final and conclusive. Whether such action complies with the provisions of this chapter and whether such action is unjust, may be reviewed by petition for mandamus filed in the circuit court of the county where said school system is located. (1973, No. 1079, 1, appvd. Sept. 17, 1973.)

Alaska

Alaska Stat., Sec. 14.20.145

Sec. 14.20.140. Notification of nonretention

(a) If a teacher who has acquired tenure rights is not to be retained for the following school year, the employer shall notify the teacher of the nonretention by writing, delivered before March 16, or by registered mail postmarked before March 16.

(b) If a teacher who has not acquired tenure rights is not to be retained for the following school year the employer shall notify the teacher of the nonretention by writing delivered on or before the last day of the school term or by registered mail postmarked on or before the last day of the school term. (1 ch 92 SLA 1960; am 15 ch 98 SLA 1966)

Sec. 14.20.145. Automatic re-employment

If notification of nonretention is not given according to 140 of this chapter, a teacher is entitled to be re-employed in the same district for the following school year on the contract terms the teacher and the employer may agree upon, or if no terms are agreed upon, the provisions of the previous contract are continued for the following school year, subject to 158 of this chapter. The right to be re-employed according to this section expires if the teacher does not accept re-employment within 30 days after the date on which the teacher receives his contract of re-employment. (16 ch 98 SLA 1966)

Sec. 14.20.147. Transfer of attendance area or federal agency school; absorption.

(a) When an attendance area is transferred from a currently operating district to, or absorbed into, a new or existing school district, the teachers for the attendance area also shall be transferred unless otherwise mutually agreed by the teacher or teachers and the chief school administrator of the new district. Accumulated or earned benefits, including but not limited to, seniority, salary level, tenure, leave, and retirement accompany the teacher who is transferred.

(b) When a school operated by a federal agency is transferred to or absorbed into a new or existing school district the teachers shall also be transferred if mutually agreed by the teacher or teachers and the school board of the new or existing district. A teacher transferred from a federal agency school, which does not have an official salary schedule or teacher tenure in the same manner as a public school district in the state, shall be placed on a position on the salary schedule of the absorbing district; the salary may not be

less than the teacher would have received in the federal agency school. If the teacher taught two or more years in the federal agency school and, at the time of transfer, had a valid Alaska teaching certificate, that teacher shall be placed on tenure in the absorbing district.

(c) On the first day of service in the absorbing school district, a teacher transferred from a federal agency school shall be allowed the actual number of days of accumulated sick leave that the teacher has earned while teaching in Alaska. Consistent with the established district policy the absorbing district may allow credit for any other type of leave. Credit for retirement shall be allowed in accordance with AS 14.25.060. (1 ch 53 SLA 1972, am 1 ch 150 SLA 1975)

Sec. 14.20.148. Intradistrict teacher reassignments.

When a teacher is involuntarily transferred or reassigned to a position for which he is qualified, within the district, his moving expenses shall be paid unless the one-way driving distance is 20 miles or less from the teacher's present place of residence, or unless otherwise mutually agreed by the teacher and chief school administrator of the district. (1 ch 136 SLA 1972)

Sec. 14.20.150. Acquisition of tenure rights.

(a) A teacher acquires tenure rights in a district when he

- (1) possesses a standard teaching certificate;
- (2) has been employed as a teacher in the same district continuously for two full school years and is re-employed for the school year immediately following the two full school years.

(b) The tenure rights acquired under (a) of this section become effective on the first day the teacher performs teaching services in the district during the school year immediately following the two full school years. (1 ch 92 SLA 1960; am 17 ch 98 SLA 1966)

Sec. 14.20.155. Effect of tenure rights.

(a) A teacher who has acquired tenure rights has the right to employment within the district during continuous service.

(b) A teacher who has acquired tenure rights may agree to a new contract at any time. However, if the teacher fails to agree to a new contract, the provisions of the previous contract are continued subject to 158 of this chapter. (18 ch 98 SLA 1966)

Sec. 14.20.158. Continued contract provisions.

Continuation of the provisions of a teacher's contract according to 145 or 155 of this chapter does not

(1) affect the alteration of the teacher's salary in accordance with the salary schedule prescribed by state law, or in accordance with a local salary schedule applicable to all teachers in the district and adopted by bylaws;

(2) limit the right of the employer to assign the teacher to any teaching, administrative, or counseling position for which the teacher is qualified; or

(3) limit the right of the employer to assign the teacher, as is reasonably necessary, to any school in the district.
(19 ch 98 SLA 1966)

Sec. 14.20.160. Loss of tenure rights.

Tenure rights are lost when the teacher's employment in the district is interrupted or terminated, or when the teacher reaches the age of 65. (1 ch 92 SLA 1960; am 1 ch 104 SLA; am 20 SLA 1966)

Sec. 14.20.165. Restoration of tenure rights.

A teacher who held tenure rights and who was retired due to disability under AS 14.25.130, but whose disability (1) has been removed, and the removal of that disability is certified by a competent physician following a physical or mental examination, or (2) has been compensated for by rehabilitation or other appropriate restorative education or training, and that rehabilitation or restoration to health has been certified by the division of vocational rehabilitation of the Department of Education, shall be restored to full tenure rights in the district from which he was retired at such time as an opening for which he is qualified becomes available. (1 ch 71 SLA 1975)

Sec. 14.20.170. Dismissal.

(a) A teacher, including a teacher who has acquired tenure rights, may be dismissed at any time only for the following causes:

(1) incompetency, which is defined as the inability or the unintentional or intentional failure to perform the teacher's customary teaching duties in a satisfactory manner;

(2) immorality, which is defined as the commission of an act which, under the laws of the state, constitutes a crime involving moral turpitude; or

(3) substantial noncompliance with the school laws of the state, the regulations or bylaws of the department, the bylaws of the district, or the written rules of the superintendent.

(b) A teacher may be suspended temporarily with regular compensation during a period of investigation to determine whether

or not cause exists for the issuance of a notification of dismissal according to 180 of this chapter. (2 ch 92 SLA 1960: am 21 ch 98 SLA 1966; am 1, 2 ch 104 SLA 1966)

Sec. 14.20.175. Nonretention.

(a) A teacher who has not acquired tenure rights is subject to nonretention for the school year following the expiration of his contract for any cause which the employer determines to be adequate. However, at his request, the teacher is entitled to a written statement of the cause for his nonretention. The boards of city and borough school districts and regional educational attendance areas shall provide by regulation or bylaw a procedure under which a non-retained teacher may, at his request, be heard informally by the board.

(b) A teacher who has acquired tenure rights is subject to nonretention for the following school year only for the following causes:

(1) incompetency, which is defined as the inability or the unintentional or intentional failure to perform the teacher's customary teaching duties in a satisfactory manner;

(2) immorality, which is defined as the commission of an act, which, under the laws of the state, constitutes a crime involving moral turpitude;

(3) substantial noncompliance with the school laws of the state, the regulations or bylaws of the department, the bylaws of the district, or the written rules of the superintendent; or

(4) a necessary reduction of staff occasioned by a decrease in school attendance. (22 ch 98 SLA 1966; am 1 ch 11 SLA 1968; am 13 ch 46 SLA 1970; am 15 ch 124 SLA 1975)

Sec. 14.20.180. Procedure and hearing upon notice of dismissal or nonretention.

(a) An employer shall include in a notification of dismissal of a teacher who has not acquired tenure rights, or of nonretention or dismissal of a tenure teacher, a statement of cause and a complete bill of particulars.

(b) The tenure teacher may, within 15 days immediately following receipt of the notification, notify the employer in writing that he requests a hearing before the school board. The tenure teacher may require in the notification that

(1) the hearing be either public or private.

(2) the hearing be under oath or affirmation.

(3) he have the right of cross-examination.

(4) he be represented by counsel.

(5) he have the right to subpoena a person who has made allegations which are used as a basis for the decision of the employer.

(c) Upon receipt of the notification requesting a hearing, the employer shall immediately arrange for a hearing, and shall notify the tenure teacher or administrator in writing of the date, time, and place of the hearing. A written transcript, tape, or similar recording of the proceedings shall be kept. Transcribed copies shall be furnished to the tenure teacher for cost upon his request. A final decision of the school board requires a majority vote of membership. The vote shall be by roll call. The final decision shall be written and contain specific findings of fact and conclusions of law. A written notification of the decision shall be furnished to the tenure teacher within 10 days of the date of the decision. (3a ch 92 SLA 1960; am 23 ch 98 SLA 1966; am 2, 3, ch 11 SLA 1968; am 14 ch 46 SLA 1970; am 16, 17 ch 124 SLA 1975)

Arizona

ARTICLE 3. TENURE

15-251. Definitions

- A. In this article, unless the context otherwise requires:
1. "Certificated teacher" means a person holding a certificate from the state board of education to teach in the schools of the state.
 2. "Continuing teacher" means a certificated teacher who is employed under contract in a school district as a full-time classroom teacher, a full-time classroom teacher employed under contract in an accommodation school, a school principal devoting not less than fifty per cent of his time to classroom teaching, or a supervisor of school children's activities, and whose contract has been renewed for his fourth consecutive year of such employment in the district.
 3. "Probationary teacher" means a certificated teacher who is employed under contract by a school district as a full-time classroom teacher, school principal devoting not less than fifty per cent of his time to classroom teaching, or supervisor of school children's activities, and who is not a continuing teacher.
 4. "School board" or "governing board" means the board of trustees of an elementary school district or the board of education of a high school district, or a county superintendent of schools in the case of accommodation schools located in such county.
 5. "Superintendent" means the superintendent of schools of a school district .

5-252. Automatic renewal of contract of probationary or continuing teacher; notice of termination

- A. Subject to the provisions of 15-257, the contract of employment of a probationary or continuing teacher for a school year shall be deemed automatically renewed for the next ensuing school year, unless, on or before March 15 immediately preceding the ensuing school year, the school board, a member thereof acting on behalf of the board, or the superintendent of the school district, gives notice to the teacher

of the termination of his contract. The probationary or continuing teacher shall indicate acceptance of the contract for the ensuing year by signing and returning the contract or by an acceptance in writing which is delivered to the school board within thirty days after receipt of the contract.

- B. Notice of termination of contract shall be by delivering it personally to the teacher or by sending it by registered or certified mail bearing a postmark of on or before March 15, directed to the teacher at his place of residence as recorded in the school district records. As amended Laws 1960, Ch. 127, 15.

15-254. Hearing prior to dismissal of continuing teacher

At the time a continuing teacher's dismissal has been recommended to the board by the administration, the teacher shall receive a written notice specifying the cause or causes for recommendation of dismissal. The board shall set a time of hearing and shall give the teacher five days written notice of the time and place thereof. At the hearing the teacher may appear in person and by counsel, if desired, and may present any testimony, evidence or statements, either oral or in writing, in his behalf. Within three days following the hearing the board shall determine whether there exists good and just cause for dismissal and shall render its decision accordingly. Good and just cause shall not include religious or political beliefs or affiliations unless in violation of the oath of the teacher. If the decision of the board is to dismiss the teacher, notice of termination shall then be given as provided by 15-252 and 15-253.

Arkansas

Ark. Stat. ann. sec. 80-1243 etc.

80-1243. Public school fair employment and dismissal practices act-Short title.-This Act [80-1243-80-1248] shall be known and may be cited as the "Public School Fair Employment and Dismissal Practices Act." [Acts 1970 (Ex. Sess.), No. 74, 1, p. 242.]

80-1244. "Teacher" defined.-For the purposes of this Act [80-1243-80-1248], the term "teacher" shall mean and include any person employed by a school district in this State in a teaching, instructional, administrative or supervisory capacity, for which a teacher certificate issued by the Arkansas State Education Department is required as a condition of employment in such position. [Acts 1970 (Ex. Sess.), No. 74, 2, p. 242.]

80-1245. Method of termination or dismissal of teacher-Decision not to renew contract.-When a local school board terminates or dismisses a teacher, the board shall notify the teacher in writing, and if the board determines not to renew the contract of a teacher for another academic year, it shall notify the teacher thereof in the manner and within the time prescribed by 80-1304, Ark. Stats. The board may include with such notice a statement of the reasons for such termination or dismissal, or for the determination not to renew the contract of the teacher. If the board does not include such statement with the notice, the teacher may file a written request with the board within ten (10) days after receipt of the notice from the board, for a statement of the reasons of the board for such dismissal, termination or refusal to renew the contract. Upon receipt of such request in writing, the board shall, within five (5) days after receipt of the request, furnish to the teacher a written statement of the reasons for such dismissal or termination or decision not to renew the contract of the teacher. [Acts 1970 (Ex. Sess.), No. 74, 3, p. 242.]

80-1246. Request for and conduct of hearing relative to termination or dismissal of teacher.-Any teacher who is dismissed or terminated or whose contract is not renewed for the next academic year, and who is notified thereof by the school board in the manner prescribed by law, may file a written request with the board for a hearing. Such written request for a hearing shall be sent by certified mail to the president of the school board, with a copy to the superintendent, within thirty (30) days after the written notice of dismissal or termination of contract is received by the teacher.

The hearing before the school board shall be conducted in accordance with the following provisions:

(a) The hearing shall take place not less than five (5), nor more than ten (10) days after the written request therefor has been served on the school board, except that the teacher and the school board may, in writing agree to a postponement of such hearing to a date agreed to by the school board and the teacher.

(b) The hearing shall be private unless the school board or the teacher shall request that the hearing be public, in which case a public hearing shall be held at the request of the school board or the teacher.

(c) The teacher and the school board may be represented by legal counsel.

(d) It shall not be necessary that a full record of the proceedings at the hearing be made and preserved unless:

(1) The school board shall elect to make and preserve a record of the hearing, at its own expense, in which event a copy thereof shall be furnished the teacher, upon request, without cost to the teacher.

(2) A request is filed with the school board by the teacher in writing at least 24 hours prior to the time set for the hearing, in which event the school board shall make and preserve, at its own expense, a record of the hearing, and shall furnish a copy thereof to the teacher without cost to the teacher. [Acts 1970 (Ex. Sess.), No. 74, 4, p. 242.]

80-1247. Breach of contract by teacher-Sanctions.-If a teacher quits or refuses to teach in accordance with his or her contract without just cause, or otherwise breaks or violates the contract between the teacher and the school district, and enters into a contract with another district or accepts employment in a position requiring a teacher certificate with another district during the term of the contract violated or broken, the school board of the injured district may, at its discretion, petition the State Board of Education to revoke or suspend the certificate of such teacher for the remainder of the period of the broken contract in order to prohibit such teacher from teaching elsewhere during the time for which he or she has been employed under the contract, as provided in 80-1304, Arkansas Statutes. [Acts 1970 (Ex. Sess.), No. 74, 5, p. 242.]

80-1248. Remedies available at law or equity.-It shall not be necessary that a teacher request a hearing as authorized in this Act [80-1243-80-1248] as a prerequisite to seeking any remedy, at law or equity, that may be available to the teacher, nor shall anything in this Act limit or restrict the right of a teacher to seek any remedy at law or equity now provided by law. [Acts 1970 (Ex. Sess.), No. 74, 6, p. 242.]

California

Cal. Ed. Code Annotated

13401. Acceptance and effective date of resignation

No permanent employee shall be dismissed except for one or more of the following causes:

- (a) Immoral or unprofessional conduct.
- (b) Commission, aiding, or advocating the commission of acts of criminal syndicalism, as prohibited by Chapter 188, Statutes of 1919, or in any amendment thereof.
- (c) Dishonesty.
- (d) Incompetency.
- (e) Evident unfitness for service.
- (f) Physical or mental condition unfitting him to instruct or associate with children.
- (g) Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing him.
- (h) Conviction of a felony or of any crime involving moral turpitude.
- (i) Violation of Section 9031 of this code or conduct specified in Section 1028 of the Government Code, added by Chapter 1418 of the Statutes of 1947.

13404. Charges and notice of intention to discharge employee

Upon the filing of written charges, duly signed and verified by the person filing them, with the governing board of the school district, or upon a written statement of charges formulated by the governing board, charging that there exists cause for the dismissal of a permanent employee of the district, the governing board may, upon majority vote, except as provided in this article if it deems the action necessary, give notice to the permanent employee of its intention to dismiss him at the expiration of 30 days from the date of service of the notice, unless the employee demands a hearing as provided in this article.

13404-5. Teacher's right to comment on fitness report by statewide professional organization; Restricted distribution

No report on the fitness of a teacher in a dismissal proceeding shall be received from a statewide professional organization by a governing board unless the teacher shall have been given, prior to the preparation of the report in its final form, the opportunity to submit in writing his or her comments on the report and unless a copy of the report in final form is given to the teacher investigated at least 10 days prior to its submission to the board.

Such a report shall not be distributed other than to the governing board and those persons participating in its preparation, unless the teacher does not demand a hearing as provided by Section 13406.

13406. Waiver of hearing by permanent employee

If the employee does not demand a hearing by filing a written request for hearing with the governing board, he may be dismissed at the expiration of the 30-day period.

13413. [Hearing by Commission on Professional Competence; decision; costs]

In those causes specified in subdivisions (b), (f), (h), (i), (j), and (k) of Section 13403, the hearing shall be conducted by a hearing officer whose decision shall be binding on the board. In the event the employee is charged with any of the causes specified in subdivisions (a), (c), (d), (e), and (g) of Section 13403, the hearing shall be conducted by a Commission on Professional Competence.

The board may adopt from time to time such rules and procedures not inconsistent with provisions of this section, as may be necessary to effectuate this section.

The governing board and the employee shall have the right to be represented by counsel.

If the governing board orders the dismissal of the employee, the governing board and the employee shall share equally the expenses of the hearing, including the cost of the hearing officer. The employee and the governing board shall pay their own attorney fees.

If the governing board orders that the employee not be dismissed, the governing board shall pay all expenses of the hearing, including the cost of the hearing officer, and reasonable attorney fees incurred by the employee.

13414. [Judicial review of decision of Commission on Professional Competence]

The decision of the Commission on Professional Competence may, on petition of either the governing board or the employee, be reviewed by a court of competent jurisdiction.

Colorado

Col. Rev. Stat., sec. 22-63-110 etc.

22-63-110. Automatic reemployment. A teacher employed by a school district on a full-time basis who has not acquired tenure shall be deemed to be reemployed for the succeeding academic year at the salary which he would be entitled to receive under the general salary schedule unless the board thereof causes written notice to the contrary to be given to said teacher on or before April 15 of the academic year during which said teacher is employed (or, if a school district operates a pilot program approved by the state board of education under section 22-50-103 (2), said notice must be given to the teacher not less than forty-five days before the termination of the employment; but any such reemployment shall be understood to be for the regular school year unless agreed otherwise). Said teacher shall be presumed to have accepted such employment for the succeeding academic year unless he causes written notice to the contrary to be given to said board on or before said April 15 (or, if the district operates a pilot program approved by the state board of education under section 22-50-103 (2), such notice shall be given to said board not less than forty-five days before the termination of the employment contract).

22-63-112. Tenure - required service. (1) Except as otherwise provided in subsection (2) of this section, any teacher employed as a teacher in the same school district, including the time prior to and after July 1, 1967, continuously and without interruption for three full academic years, who is thereafter reemployed for the fourth academic year immediately succeeding in such school district has tenure as a teacher in such school district, without further action on the part of the board or the teacher, during efficiency and good behavior and continuous employment. A teacher employed as a teacher in a pilot program approved by the state board of education under section 22-50-103 (2) is deemed to be employed for an academic year if he performs services for the minimum period during which a pupil must be enrolled in any twelve-month period. No teacher who performs services as a teacher in an approved pilot program for more than the minimum period during which a pupil must be enrolled in any twelve-month period shall be denied credit for such services for the purposes of obtaining tenure, but no such credit for tenure purposes shall be interpreted to shorten the period of three full academic years required by this section for the awarding of tenure. The employment of any teacher employed as a teacher in such a pilot program for such minimum period in successive twelve-month periods shall be deemed continuous. The above provisions of this subsection (1) notwithstanding, a teacher employed after the first day of the academic year shall be deemed to have served the first full academic year if the period of continuous and uninterrupted employment during that year includes the last ninety school days of the academic year. Such tenure shall be effective upon the first day of performance of services by said teacher of the fourth academic year. Sections 22-63-112 to 22-63-117 shall not apply to a person who holds only a letter of authorization, a chief executive officer of a school district, a part-time teacher, a substitute teacher, or any teacher who has attained the age of sixty-five years. In no event shall tenure be withheld if the teacher meets the requirements set forth in this subsection (1).

(2) (a) The three full academic years of continuous service required for the probationary period or the continuous employment required for retention of tenure shall not be deemed to be interrupted by temporary illness. A leave of absence approved by the board of education or a military leave of absence pursuant to article 3 of title 28, C.R.S. 1973, shall not be considered to be an interruption of the continuous employment required for the probationary period or the retention of tenure, but the time of such leaves of absence shall not be included in computing the required probationary period.

(b) The three full academic years of continuous service required for the probationary period shall not be deemed to be interrupted by the acceptance by a teacher of the position of chief executive officer in said school district, but the period of time during which such teacher serves in such capacity shall not be included in computing said probationary period.

(c) The board of education, by resolution, may grant tenure to any teacher who has been under continuous contract for more than thirty-six months in the school district or to any teacher at any time who has previously acquired tenure in that school district or in another school district.

(d) In all cases where a teacher has acquired tenure in a school district and all of said school district becomes a part of another school district through municipal annexation, the tenure status acquired by such teacher shall continue in the successor school district. In all cases where a teacher has acquired tenure in a school district and all or a portion of said school district becomes a part of another school district through reorganization, dissolution and annexation, or detachment and annexation under article 30 of this title, the tenure status acquired by such teacher shall continue in the successor school district. Where a nontenure teacher is affected, the probationary time served by the nontenure teacher shall be recognized by the successor district.

(3) A board may cancel an employment contract with a teacher on continuous tenure without penalty to the school district when there is a justifiable decrease in the number of teaching positions. When a justifiable reduction in the number of teaching positions within a particular endorsement area occurs, the contracts of nontenure teachers who are occupying such positions shall be canceled first.

22-63-116. Dismissal - reasons. The grounds for dismissal of a tenure teacher shall be physical or mental disability, incompetency, neglect of duty, immorality, conviction of a felony, insubordination, or other good and just cause. No tenure teacher shall be dismissed for temporary illness, leave of absence previously approved by the board, or military leave of absence pursuant to article 3 of title 28, C.R.S. 1973.

22-63-117. Dismissal - procedure - judicial review. (1) A tenure teacher shall be dismissed in the manner prescribed by this section.

(2) Upon written recommendation by the chief executive officer of the district or any member of the board, charges against any teacher may be filed with the board of the school district employing the teacher. At its next regular meeting, the board shall either reject the charges or accept the charges for review in the manner prescribed by this section.

(3) If the board accepts the charges for review, then the secretary of the board shall, within seven days, give written notice to the teacher, with a copy of said charges and a copy of this article attached, that charges have been filed against said teacher and that a hearing thereon may be held before a panel of three persons, naming the panel member selected by the board of education. The notice and copy of the charges shall be sent by certified mail to said teacher at his address last known to the secretary. The notice shall advise the teacher of his rights and the procedures under this section. Such teacher shall be entitled to such a hearing before the panel if he files with said secretary a written request therefor within seven days after the date of receipt of the notice. Failure of said teacher to file such written request within said time is a waiver of his right to a hearing. If no hearing is requested, disposition of the charges shall be made at the next regular or special meeting of the board of education. The written request of the teacher shall designate one member of the hearing panel.

(4) If the teacher fails or neglects to request a hearing within the time specified, the board of education may, at any time prior to the entry of its order, permit the holding of a hearing if, in its discretion, it determines that the failure or neglect to request a hearing by the teacher was due to excusable oversight or the inability of the teacher to file the request within the specified time.

(5) If a hearing is requested by the teacher, or permitted by the board of education as provided in subsection (4) of this section, it shall be conducted before a panel, the members of which shall be residents of Colorado and selected as follows: The teacher shall select one member as provided in subsection (3) of this section; the board of education shall select one member as provided in subsection (3) of this section; and the two persons selected shall, within ten days after the filing of the request, meet and choose a third member who shall be the chairman and who shall preside at the hearing. If the persons selected by the teacher and the board of education cannot agree on the third member of the panel within ten days after the filing of the request, either shall so notify the lieutenant governor and he shall appoint the third member of the panel within five days after the expiration of such ten-day period. No school director or employee of the school district shall be selected as a member of a panel. The chairman shall forthwith give the teacher at least seven days' written notice of the hearing, including the place and time therefor, but in no event shall such hearing be held later than twenty-five days after the selection of the third panel member.

(6) The chairman of the panel may receive or reject evidence and testimony, administer oaths, and, if necessary, subpoena witnesses. All testimony shall be given under oath. The chairman may order a continuance subject to subsection (5) of this section, and do all other acts normally performed by an administrative hearing officer. The hearings shall be open to the public unless either the teacher or the board requests a private hearing before the panel, but no findings of fact or recommendations shall be adopted by the panel in any private hearing.

(7) At any hearing, the teacher has the right to appear in person with or without counsel, to be heard and to present testimony of witnesses and all evidence bearing upon the reasons for his proposed dismissal, and to cross-examine witnesses. All district records pertaining to the teacher shall be made available for the use of the panel and/or the teacher.

(8) A record and transcript shall be made of all evidence and testimony received by the panel. The panel shall review the evidence and testimony and make written findings of fact thereon. The panel shall make one of the two following recommendations: The teacher be dismissed or the teacher be retained. The findings of fact and recommendations shall be adopted by the panel in open session not later than thirty days after the selection of the third panel member. The chairman shall forthwith forward to said teacher and to the secretary of the employing board of education a copy of the findings of fact and a copy of the recommendations of the panel. The costs for the recording of evidence shall be paid by the school district.

(9) The secretary of the board shall, immediately upon receiving the report of the panel, notify the teacher of the time and place of the meeting of the board of education at which the findings of fact and recommendations of the panel will be considered.

(10) The board of education shall review the panel's findings of fact and recommendation, and it shall enter its written order within thirty days after the date of the panel's findings and recommendations. The board shall take one of the three following actions: The teacher be dismissed; the teacher be retained; or the teacher be placed on a one-year probation. The secretary of the board of education shall cause a copy of said order to be given immediately to the teacher and a copy to be entered into the teacher's local file. If one or more of the deadlines for holding a hearing, for adoption of findings and recommendations by the panel, or for the board's written order cannot be met for good cause shown, and the procedures required by this section are followed except for compliance with any such deadline, the proceedings under this section shall not be invalidated.

(11) Within sixty days after the date of the order of the board of education, the teacher may file an action for review in the district court of the judicial district in which the administrative office of the

employing school district is located, pursuant to section 24-4-106, C. R.S. 1973, in which action the board of education of the employing school district shall be made the party defendant.

(12) If the board orders the dismissal of the teacher, the teacher's compensation shall be suspended as of the date of such dismissal but in no event earlier than the date of the order.

Connecticut

C.G.S.A. Section 10-151

10-151. Employment of teachers. Notice and hearing on termination of contract

(a) Any board of education may authorize the superintendent or supervising agent to employ teachers. Any superintendent or supervising agent not authorized to employ teachers shall submit to the board of education nominations for teachers for each of the schools in the town or towns in his jurisdiction and, from the persons so nominated, teachers may be employed. Such board shall accept or reject such nominations within thirty-five days from their submission. Any such board of education may request the superintendent or supervising agent to submit multiple nominations of qualified candidates, if more than one candidate is available for nomination, for any supervisory or administrative position, in which case the superintendent or supervisory agent shall submit such a list and may place the candidates on such list in the order in which such superintendent or supervisory agent recommends such candidates. If such board rejects such nominations, the superintendent or supervising agent shall submit to such board other nominations and such board may employ teachers from the persons so nominated and shall accept or reject such nominations within one month from their submission. The contract of employment of a teacher shall be in writing and may be terminated at any time for any of the reasons enumerated in subdivisions (1) to (6), inclusive, of subsection (b) of this section, but otherwise it shall be renewed for a second, third, or fourth year unless such teacher has been notified in writing prior to March first in one school year that such contract will not be renewed for the following year, provided, upon the teacher's written request, such notice shall be supplemental within five days after receipt of such request by a statement of the reason or reasons for such failure to renew. Such teacher may, upon written request filed with the board of education within ten days after the receipt of such notice, be entitled to a hearing before the board to be held within fifteen days of such request. The teacher shall have the right to appear with counsel of his choice at such hearing.

(b) Beginning with and subsequent to the fourth year of continuous employment of a teacher by a board of education, the contract of employment of a teacher shall be renewed from year to year, except that it may be terminated at any time for one or more of the following reasons:

- (1) Inefficiency or incompetence;
- (2) Insubordination against reasonable rules of the board of education;
- (3) Moral misconduct;
- (4) Disability, as shown by competent medical evidence;
- (5) Elimination of the position to which the teacher was appointed, if no other position exists to which he may be appointed if qualified; or

(6) Other due and sufficient cause; provided, prior to terminating a contract, a board of education shall give the teacher concerned a written notice that termination of his contract is under consideration and, upon written request filed by such teacher with such board within five days after receipt of such notice, shall within the next succeeding five days give such teacher a statement in writing of its reasons therefor. Within twenty days after receipt from a board of education of written notice that contract termination is under consideration, the teacher concerned may file with such board a written request for a hearing, which such board shall hold within fifteen days after receipt of such request. Such hearing shall be public if the teacher so requests or the board so designates. The teacher concerned shall have the right to appear with counsel of his choice at such hearing, whether public or private. A board of education shall give the teacher concerned its written decision within fifteen days after such hearing, together with a copy of a transcript of the proceedings, which shall be furnished without cost. Nothing herein contained shall deprive a board of education of the power to suspend a teacher from duty immediately when serious misconduct is charged without prejudice to the rights of the teacher as otherwise provided in this section.

(c) For the purposes of this section, the term "teacher" shall include each employee of a board of education, below the rank of superintendent, who holds a regular certificate issued by the state board of education.

(d) The provisions of any special act regarding the dismissal or employment of teachers shall prevail over the provisions of this section in the event of conflict.

10-151b. Teacher evaluation.

(a) The superintendent of each school district shall, in accordance with guidelines established by the state board of education for the development of evaluation programs and such other guidelines as may be established by mutual agreement between the town or regional board of education and the teachers' representative chosen pursuant to section 10-153b, continuously evaluate or cause to be evaluated each teacher. The superintendent shall report the status of such evaluations to the town or regional board of education on or before June first of each year. For purposes of this section, the term "teacher" shall include each employee of a board of education, below the rank of superintendent, who holds a certificate or permit issued by the state board of education.

(b) On or before January 1, 1975, each town or regional school district shall submit, in writing, to the state board of education a report on existing evaluation procedures and plans for implementing the guidelines established by the state board of education for development of local evaluation programs. (1974, P.A. 74-278, 1, 2; eff. July 1, 1974.)

1411. Reasons for termination.

Termination at the end of the school year shall be for 1 or more of the following reasons: Immorality, misconduct in office, incompetency, disloyalty, neglect of duty, wilful and persistent insubordination, a reduction in the number of teachers required as a result of decreased enrollment or a decrease in education services. The board shall have power to suspend any teacher pending a hearing if the situation warrants such action. (14 Del. C. 1953, 1411; 50 Del. Laws, c. 39, 1.)

1413. Hearing by terminating board.

In the event that a teacher so notified shall within 10 days after the receipt of written notice of intention to terminate services request in writing an opportunity to be heard by the terminating board, the board shall set a time for such hearing to be held within 21 days after the date of receipt of said written request, and the board shall give the teacher at least 15 days notice in writing of the time and place of such hearing. The hearing shall be conducted by a majority of the members of the board and shall be confined to the aforementioned written reasons as stated in the board's written notice of the board's intention to terminate the teacher's services. The conduct of such hearings and such rules of procedure as may be found necessary shall be left entirely to the discretion of the board provided that:

- (1) The teacher shall have the option to indicate whether or not he wishes the hearing to be public, by so stating in his written request for a hearing; otherwise the hearing shall be private;
- (2) The teacher may be represented by counsel;
- (3) The teacher and the board may subpoena witnesses. Subpoenas shall be issued by the secretary of the board upon written request, and such subpoenas shall be directed to the sheriff of the county where the witness resides or is employed within the State, and upon service of such subpoena, the witness shall be compelled to appear subject to the same penalties for failure to appear that govern subpoena proceedings before the Superior Court of the State;
- (4) The teacher and the board and counsel for each may cross-examine witnesses;
- (5) Testimony before the board shall be under oath;
- (6) The testimony to be heard shall be confined to the reasons stated in the written notice of intent to terminate service. Any evidence shall be admissible during the hearing which is adjudged by the board to be pertinent to the reasons contained in the written notice which the teacher received and which stated the reasons for dismissal;
- (7) A stenographic record of the hearing shall be taken and prepared by a qualified court stenographer and paid for by the board, and shall be supplied to the teacher and the board within 10 days following the conclusion of the hearing.

(8) The decision of the board shall be submitted in writing to the teacher within 15 days following the conclusion of the hearing;

(9) If the decision is in favor of the teacher, he shall be fully reinstated and shall receive all salary lost as a result of his temporary dismissal or suspension. (14 Del. C. 1953, 1413; 50 Del. Laws, c. 49,1.)

1414. Judicial review.

A decision of the board shall be final and conclusive unless, within 10 days after a copy thereof has been received by the teacher, the teacher appeals to the Superior Court for the county in which the teacher was employed. In case of every such appeal, the cause shall be determined by the court from the record which shall include a certified copy of the evidence, findings and the decision of the board, without the aid of a jury. The notice of appeal and all other matters regulating the appeal shall be in the form and according to the procedure as shall be provided by the Rules of the Superior Court. The Court shall decide all relevant questions of law and all other matters involved, and shall sustain any board action, findings and conclusions supported by substantial evidence. The Court may reverse, affirm or modify the decision of the board or remand the cause to the board for a rehearing. In case any cause shall be remanded to the board for a rehearing, the procedure and the rights of all parties to such cause shall be the same as in the case of the original hearing before the board. If the decision is in favor of the teacher, he shall be fully reinstated and shall receive all salary lost as a result of his temporary dismissal or suspension. (14 Del. C. 1953, 1414; 50 Del. Laws, c. 39, 1.)

1420. Reasons for termination; rights of teacher.

Termination of any teacher's services during the school year shall be for one or more of the following reasons: Immorality, misconduct in office, incompetency, disloyalty, neglect of duty, or willful and persistent insubordination. Such teacher shall be given the same opportunity to be heard and right of appeal as provided in 1412, 1413, and 1414 of this title and the board shall give notice in writing to such teacher of its intention to terminate the services of such teacher at least 30 days prior to the effective date of termination. Such written notice shall state the reasons for such termination of services. The board shall have the power to suspend any teacher pending a hearing if the situation warrants such action. (14 Del. C. 1953, 1420, 50 Del. Laws, c. 39, 1.)

Delaware

Del. Code Ann., Tit. 14, sec. 1401

1401. Definitions

As used in this chapter:

(1) "Board" means a board of education of a reorganized school district.

(2) "Teacher" means all persons certified to teach who are employed by a board as a teacher. It shall not include persons employed as assistant principal, principal, supervisor, administrative assistant, director, assistant superintendent, or superintendent; except that any such person who has completed 3 years of service in the State, 2 years of which shall have been in the employ of the same board, may at his option elect to be assigned as a teacher in the employ of said board. (14 Del. C. 1953, 1401; 50 Del. Laws, c. 39, 1; 56 Del. Laws, c. 113; 57 Del. Laws, c. 263, 1.)

1403. Application of chapter.

(a) The provisions set forth in 1411, 1413, and 1414 of this title, covering reasons for termination, notice of termination, hearings before a board and judicial review shall apply to all teachers except these employed temporarily to replace professional personnel on leave of absence, those holding temporary certificates, and those not having completed 3 years of service in the State, 2 years of which shall be in the employ of the terminating board and further providing that time spent in military service shall not be counted as years of service for purposes of this chapter.

(b) If a teacher holding a temporary certificate has been in the employ of the terminating board for 10 consecutive years immediately preceding any action commenced under this chapter, the provisions of 1410, 1411, 1412, 1413 and 1414 of this title shall apply. This subsection shall not apply after June 30, 1975. (14 Del. C. 1953, 1403; 50 Del. Laws, c. 39, 1; 55 Del. Laws, c. 80, 1, 2; 57 Del. Laws, c. 529.)

1410. Notice of intention to terminate services.

In the event that any board desires to dispense with the services of any teacher, such board shall give notice in writing to such teacher on or before the 1st day of May of any year of its intention to terminate said teacher's services at the end of such school year. Such written notice shall state the reasons for such intended termination of services and shall be accompanied by a copy of this chapter; provided, however, that this requirement shall not apply to those teachers employed temporarily to replace professional personnel on leave of absence, those holding temporary certificates, and those not having completed 3 years of service in the State, 2 years of which shall be in the employ of the terminating board. (14 Del. C. 1953, 1410; 50 Del. Laws, c. 39, 1; 58 Del. Laws, c. 270.)

Florida

Cit: Fla. Stat. Ann. Sec. 231.36

231.351 Annual contracts under certain conditions

Any teacher who is otherwise entitled to receive a continuing contract under section 231.36, Florida Statutes, may in the alternative be retained on an annual basis if the school board of the particular district upon the recommendation of the superintendent shall by majority vote find that such teacher does not meet the desired standards. Among the criteria to be considered shall be educational qualifications, efficiency, capability, character and capacity to meet the educational requirements of the community. A recommendation to grant such annual contract shall be made by the superintendent and shall be submitted on or before April 1 of the school year, giving good and sufficient reasons for such recommendation. Such annual contract shall be automatically renewed by the school board at least four weeks prior to the close of each successive school year unless the superintendent or such teacher shall, not later than three months prior to the close of the school year, request the school board to reconsider the annual contract. The school board may reconsider any annual contract on its own motion and shall take whatever action that it deems necessary and proper as authorized by this or any other section.

231.36 Contracts with instructional staff

(1) Each person employed as a member of the instructional staff in any district school system or as supervisor or principal shall be properly certificated and shall be entitled to and shall receive a written contract as specified in Chapter 230. A supervisor or principal may receive a written contract for an initial period not to exceed three years, subject to annual review and renewal. After the first three years, the contract may be renewed for a period not to exceed three years and shall contain provisions for dismissal only for just cause, in addition to such other provisions as are prescribed by the school board. Periods of service as a supervisor or principal prior to July 1, 1974, or such service in another district or state, may be recognized by the school board to satisfy the requirements of the initial written contract referred to herein.

(2) Any person so employed on the basis of a written offer of a specific position by a duly authorized agent of the school board for a stated term of service at a specified salary and who accepted such offer by telegram or letter or by signing the regular

contract form who shall violate the terms of such contract or agreement by leaving his position without first being released from his contract or agreement by the school board of the district which he is employed, shall be ineligible for employment in the school system of the state or any district therein for the period of one (1) year from the date of such violation. The school board shall take official action on such violation and furnish a copy of the proceedings to the certification section of the state department of education, whereupon the certificate of the violator shall be considered as invalid for the period of one (1) year from the date of violation.

(3) (a) The school board of each district shall provide continuing contracts as prescribed herein. Each member of the instructional staff, excluding supervisors and principals, in each district school system, except in district operating under local, special or general tenure laws with stated population application, who:

1. Holds a regular certificate based at least on graduation from a standard four-year college, or as otherwise provided by law;

2. Has completed three years of service in the same district of the state during a period not in excess of five successive years, such service being continuous except for leave duly authorized and granted;

3. Has been reappointed for the fourth year; and

4. Has been recommended by the superintendent for such continuing contract based on successful performance of duties and demonstration of professional competence shall be entitled to and shall be issued a continuing contract in such form as may be prescribed by regulations of the state board.

(b) The continuing contract shall be effective at the beginning of the school fiscal year following the completion of all requirements or, starting on July 1, 1968, at the beginning of the school fiscal year in which all requirements are completed on or before September 1.

(c) The period of service provided herein may be extended to four years when prescribed by the school board and agreed to in writing by the employee at the time of reappointment or as provided by section 231.351.

(d) A school board may issue a continuing contract to a new member of the instructional staff provided such individual has previously held a continuing contract in the same or another district within this state.

(e) Each person to whom a continuing contract has been issued as provided herein shall be entitled to continue in his position or in a similar position in the district at the salary schedule authorized by the school board without the necessity for annual nomination or reappointment until such time as the position is discontinued, the person resigns, or his contractual status is changed as prescribed below.

(f) Continuing contract status earned by any member of the instructional staff prior to assuming a position as supervisor or principal shall be retained in the position in which it was attained. Upon release from a position as supervisor or principal, the employee shall be entitled to reassignment to the same or similar position in which continuing contract status was attained, at the classification level and salary range that would have been earned had the position been held continuously.

(g) Any person who has previously earned continuing contract status as a supervisor or principal in the school district shall be continued in that status until such time as the position is discontinued, the person resigns, or his contractual status is changed by mutual agreement or as prescribed below.

(h) School boards are authorized to enter into continuing contracts with principals and supervisors who were employed as principals or supervisors on or before July 1, 1974, and who otherwise meet the requirements of paragraph (a). However, this authorization shall expire July 1, 1977. If a district school board elects not to exercise the authority in this paragraph, no showing of just cause shall be required.

(4) Any member of the district administrative or supervisory staff and any member of the instructional staff, including any principal, who is under continuing contract, may be dismissed or may be returned to annual contract status for another three (3) years in the discretion of the school board, when a recommendation to that effect is submitted in writing to the school board on or before April 1 of any school year, giving good and sufficient reasons therefor, by the superintendent, or by the principal if his contract is not under consideration or by a majority of the school board. The employee whose contract is under consideration shall be duly notified in writing by the party or parties preferring the charges at least five (5) days prior to the filing of the written recommendation with the school board, and such notice shall include a copy of the charges and the recommendation to the school board. If the employee, upon being officially notified in writing by the school board that it will consider the charges filed against him wishes a public hearing,

he shall notify the board in writing within ten (10) days after the date of the official notice. Upon receiving such a request, the school board shall within ten (10) days notify the teacher of the time and place of the public hearing. In the event the teacher does not request a public hearing, the school board shall proceed to take appropriate action. Any decision adverse to the employee shall be made by a majority vote of the full membership of the school board. Any such decision adverse to the employee may be appealed by him in writing to the department of education, through the commissioner of education, for review; provided such appeal is filed within thirty (30) days after the decision of the school board, and provided further that the decision of the department shall be final as to sufficiency or insufficiency for discontinuation of the continuing contract status.

(5) Should the school board have to choose from among its personnel who are on continuing contracts as to which should be retained, among the criteria to be considered shall be educational qualifications, efficiency, compatibility, character, and capacity to meet the educational needs of the community. Whenever a school board is required to or does consolidate its school program at any given school center by bringing together pupils theretofore assigned to separated schools, the school board may determine on the basis of the foregoing criteria from its own personnel, and any other certificated teachers, which teachers shall be employed for service at this school center, and any teacher no longer needed may be dismissed. The decision of the board shall not be controlled by any previous contractual relationship. In the evaluation of these factors the decision of the school board shall be final.

(6) Any member of the district administrative or supervisory staff and any member of the instructional staff, including any principal, may be suspended or dismissed at any time during the school year; provided that no such employee may be discharged or removed during the school year without opportunity to be heard at a public hearing after at least ten (10) days' written notice of the charges against him and of the time and place of hearing; and, provided further, that the charges must be based on immorality, misconduct in office, incompetency, gross insubordination, wilful neglect of duty, drunkenness, or conviction of any crime involving moral turpitude. Whenever such charges are made against any such employee of the school board, the school board may suspend such person without pay, pending a speedy hearing of such charges if requested by the employee, but if charges are not sustained he shall be immediately reinstated, and his back salary shall be paid. In cases of suspension by the school board or by the superintendent, the school board shall hold a public hearing if requested by the employee, after notice as

above provided, to determine upon the evidence submitted whether the charges have been sustained and, if said charges are sustained, either to dismiss said employee or fix the terms under which said employee may be reinstated. If such charges are sustained by a majority vote of the full membership of the school board and such employee is discharged, his contract of employment shall be thereby canceled. If the employee is under continuing contract, any such decision adverse to him may be appealed by him in writing to the department of education, through the commissioner, for review; provided such appeal is filed within thirty (30) days after the decision of the school board, and provided further that the decision of the department shall be final as to sufficiency of the grounds for dismissal.

(7) The school board of any given district may, at its own discretion:

(a) Grant to a person who has served as superintendent in that district, at the completion of his service as superintendent, a continuing contract as a classroom teacher. Service as superintendent shall be construed as continuous teaching service in the public schools of this state.

(b) Grant to a classroom teacher holding a continuing contract status who has served as school board member in that district, at the completion of his service as school board member, a continuing contract as classroom teacher. Service as school board member shall be construed as continuous teaching service in the public schools of this state.

(8) Notwithstanding any other provision of law, any member who has retired may interrupt retirement and be reemployed in any public school. Any member so reemployed by the same district from which he retired may be employed on the same contractual basis that existed immediately prior to retirement; however, he shall not be eligible to renew membership in the teacher retirement system.

(9) Any teacher who is employed in a cooperative educational program in this state may be immediately placed on continuing contract with the school board wherein the cooperative education program is produced if, at the time of employment, such person is on a continuing contract in a district which is participating in support of the particular cooperative education program in which the person is employed; provided that if at the time of reappointment of personnel, during the first three years, said person is not recommended for continued employment in the cooperative educational program, he shall automatically revert to continuing contract status in the district of immediate prior employment; and provided further, that in meeting the requirements for a continuing contract prescribed herein prior successive years of service rendered in any district participating in the support of the particular cooperative education program may be counted as years of probationary service for a continuing contract with the school board wherein the cooperative education program is produced.

Georgia

Cite: Ga. Code Ann. 32-210

CHAPTER 32-21C. TERMINATION OF CONTRACTS OF TEACHERS, PRINCIPALS
AND OTHER EMPLOYEES HAVING CONTRACT FOR DEFINITE TERM

32-2101c. Procedure for termination, suspension or demotion

(a) Grounds for termination, suspension, or demotion

The contract of employment of a teacher, principal or other employee having a contract for a definite term may be terminated or suspended for the following reasons:

- (1) Incompetency;
- (2) Insubordination;
- (3) Wilful neglect of duties;
- (4) Immorality;
- (5) Inciting, encouraging or counseling students to violate any valid State law, municipal ordinance, or policy or rule of the local board of education; and
- (6) For reduction in staff due to loss of students or cancellation of programs;
- (7) For failure to secure and maintain necessary educational training; and
- (8) For any other good and sufficient cause.

(b) Notice

Before the discharge or suspension of a teacher, principal or other employee having a contract of employment for a definite term, written notice of the charges shall be given at least 10 days before the date set for hearing, and shall state:

- (1) The cause or causes for his discharge, suspension, or demotion in sufficient detail to enable him fairly to show any error that may exist therein;
- (2) The names of the known witnesses and a concise summary of the evidence to be used against him; the names of new witnesses shall be given as soon as practicable;
- (3) The time and place where the hearing thereon will be held;
- (4) Notification that the charged teacher or other person, upon request shall be furnished with compulsory process or subpoena legally requiring the attendance of witnesses and the production of documents and other papers as provided by law.

(c) Service

All notices required by this Chapter may be served either personally or by certified mail. Service shall be deemed to be perfected when said notice is deposited in the United States Mail addressed to the last known address of the addressee with sufficient postage affixed thereto.

(d) Counsel; testimony

Any teacher, principal or other person against whom such charges listed in subsection (a) of this section have been brought, shall be entitled to be represented by counsel, and upon request shall be entitled to have subpoenas or other compulsory process issued for attendance of witnesses and the production of documents and other evidence.

Such subpoenas and compulsory process shall be issued in the name of the board of education, and shall be signed by the president or vice-president of the board of education. In all other respects, such subpoenas and other compulsory process shall be subject to the provisions of sections 38-801, 38-802.

(e) Hearing

The hearing shall be conducted before the local board of education or said board may designate a tribunal to consist of not less than three nor more than five impartial persons possessing academic expertise to conduct the hearing and submit its findings and recommendations to the board for its decision thereon, or said board may refer said matter for hearing to a tribunal constituted by the Professional Practices Commission [32-838 through 32-842].

The hearing shall be reported at the board's expense. If the matter is heard by a tribunal, the transcript shall be prepared at the expense of the board and an original and two copies shall be filed in the office of the superintendent. If the hearing is before the board, the transcript need not be typed unless an appeal is taken to the State Board of Education, in which event typing of the transcript shall be paid by the appellant. In the event of an appeal to the State Board of Education, the original shall be transmitted to the State Board as required by its rules.

Oath of affirmation shall be administered to all witnesses by the president, any member of the board, or by the board attorney. Such oath shall be as follows:

"You do solemnly swear (or affirm) that the evidence shall be the truth, the whole truth, and nothing but the truth. So help you God."

All questions relating to admissibility of evidence or other legal matters shall be decided by the president or presiding officer, subject to the right of either party to appeal to the full board or hearing tribunal, as the case may be: Provided, however, the parties by agreement may stipulate that some disinterested member of the State Bar of Georgia shall decide all questions of evidence and other legal issues arising before the board or tribunal. In all hearings, the burden of proof shall be on the school system, and it shall have the right to open and conclude. Except as otherwise provided herein, the same rules governing nonjury trials in the superior court shall prevail.

(f) Decision; appeals

The board shall render its decision at the hearing or within five days thereafter. Where the hearing is before a tribunal, the tribunal shall file its findings and recommendations with the board within five days of the conclusion of the hearing, and the board shall render its decision thereon within 10 days after the receipt of the transcript. Appeals may be taken to the State Board of Education in accordance with section 32-910 and the rules and regulations of the State Board of Education governing appeals.

(g) Superintendent's power to temporarily relieve from duty

The superintendent of a local school system may temporarily relieve from duty any teacher or other school employee as referred to above for any reason specified in subsection (a) of this section, pending hearing by the board, in those cases where the charges are of such seriousness or other circumstances exist which indicate that such teacher or employee could not be permitted to continue to perform his duties pending hearing without danger of disruption or other serious harm to the school, its mission, pupils or personnel. In any such case, the superintendent shall notify the teacher or employee in writing of such action, which notice shall state the grounds thereof and shall otherwise comply with the requirements of the notice set forth in subsection (b) of this section. Such action by the superintendent shall not extend for a period in excess of 10 working days, and during said period it shall be the duty of the board of education to conduct a hearing on said charges in the same manner provided for in subsections (4) through (f) of this section, except that notice of the time and place of hearing shall be given at least three days prior to the hearing. During the period that the teacher or other employee is relieved from duty prior to the decision of the board, the teacher or employee shall be paid all sums to which he is otherwise entitled.

If the hearing is delayed after the 10-day period as set out herein, at the request of the teacher or employee, then said teacher or employee shall not be paid beyond said 10-day period unless he is reinstated by the board, in which case he shall receive all compensation to which he is otherwise entitled.

(Acts 1975, p. 360).

32-2102c Nonrenewal

When a local school superintendent or local board of education proposes not to renew the contract of any teacher or other professional employee certified by the State Board of Education who was on the payroll and under contract on the beginning day of the current school year, written notification of such intention shall be given to the teacher or other certified professional employee by not later than April 15 prior to the ensuing school year. When such notice is not given, the employment of such teacher or employee shall be continued for the ensuing school year, unless such teacher or employee has been removed in the manner previously provided herein, or unless the teacher or certified professional employee elects not to accept such employment by notifying the board or superintendent in writing not later than May 1 thereafter.

(Acts 1975, pp. 360, 364.)

32-2103c Nonrenewal or demotion after three years' service

After a teacher or other professional school employee certificated by the State Board of Education who is employed under a contract for a definite term has been employed for three or more successive school years by the same local board of education, then the nonrenewal of the contract of such teacher or other person or his demotion for the fourth or subsequent years shall be as provided by this section. When the local school superintendent or board of education has tentatively decided not to renew the contract in the third successive year of any such teacher or professional certificated employee, or any subsequent year thereafter, or to demote such a teacher or other professional certificated employee, written notification of such tentative decision shall be given to such teacher or employee not later than April 15 prior to the ensuing school year, and any such teacher or professional certificated employee so notified shall have the right to request the local school superintendent or local board of education, in writing, by not later than May 1, thereafter, to furnish such teacher or certificated professional employee a written statement of the reasons on which the nonrenewal of the contract was based, or the reasons for the demotion, in accordance with the provisions relating to notice as set out herein in subsection (b) of section 32-2101c. Upon receiving such request for a hearing from any such teacher or employee, said hearing shall be in accordance with the provisions of subsections (b) through (f), inclusive, of section 32-2102c. For purposes of this section, a teacher or other employee as hereinbefore referred to shall be deemed to have been employed for three successive school years where the teacher or employee had already completed two years with the system and while serving under his third successive contract has his contract of employment renewed by the board of education for the fourth consecutive year. Only service rendered as an employee of the same local board of education may be counted as service for the purpose of this section.

(Acts 1975, pp. 360, 364.)

32-2105c Letters of reprimand

A superintendent may write a letter of reprimand to a teacher or other school employee for any valid reason. A copy of said letter or reprimand is to remain in the teacher's or employee's permanent personnel file and said teacher or employee receiving such a letter of reprimand shall have the right to appeal the decision of the superintendent to the local board, said hearing to be conducted according to the provisions of this Chapter. The board shall have the right to either affirm the decision of the superintendent or to reverse it. If the decision of the board is to reverse it, said letter of reprimand shall be removed from said teacher's employee's permanent personnel file.

(Acts 1975, pp. 360, 366.)

32-2106c Implementing rules

The State Board of Education and local boards of education may adopt rules and regulations to implement this Chapter not inconsistent herewith.

(Acts 1975, pp. 360, 366.)

Hawaii

Hawaii Rev. Stat., Tit. 18, Sec. 297-9

No legal duty to reappoint teacher whose contract has expired. 24 H. 124. Department need not give reason or hearing to those not rehired. Id.

297-9 Probationary period of employment. Effective September 1, 1965, all teachers, principals, and vice-principals entering the service of the department of education for the first time shall serve as probationary employees of the department for a minimum period of two consecutive years; provided that such consecutive employment may be interrupted by maternity leave, sick leave, or any other leave approved by the department not exceeding a period of three years, or by military leave not exceeding a period of five years, without loss of credit for the period of probationary employment; and provided further that at or prior to the end of two years of probation, the department may extend the probationary period of a teacher, principal, or vice-principal for additional periods not to exceed a total of five years. Any full-time intern teaching period served in the State shall also be credited toward fulfillment of the probationary period. Any annual contract with any teacher, principal, or vice-principal during this probationary period of employment may or may not be renewed as the department shall determine. The department may, during the probationary period, discharge or demote a teacher, principal, or vice-principal. Teachers, principals, and vice-principals who have been in continuous employment in the public schools of Hawaii for a period of two years prior to September 1, 1965, shall be deemed to have completed their probationary period. Teachers, principals, and vice-principals who have entered their probationary period prior to September 1, 1965, but who have not completed such probationary period prior to August 31, 1965, shall be given credit for such prior service in computing their probationary period of employment. (L 1959, c 28, pt. of 2: am L 1961, c 16, 1: am L 1965, c 175, 18; Supp, 38-5; am L 1967, c 162, 1)

297-10 Reemployed teachers rights. After the completion of the probationary period without discharge, such teachers as are thereupon reemployed shall continue in service in the public schools during good behavior and competent service and prior to the age at which such teachers are eligible for retirement, pursuant to section 88-63, and shall not be discharged or demoted except for one or more of the causes specified in section 297-11 and after a notice and hearing as specified in section 297-12. (L 1959, c 28, pt of 2; Supp, 38-5.1)

297-11 Causes for discharge or demotion; preferred eligibility list. Causes for the discharge or demotion of a teacher shall be inefficiency or immorality; wilful violations of policies and regulations of the department of education, or for other good and just cause. The department without a hearing may terminate tenure rights of a teacher who fails to return to service, except when caused by illness, following the expiration of an approved leave of absence. Teachers may also be dismissed because of decrease in number of pupils or for other causes over which the department has no control. Dismissals due to decrease in number of pupils or

for causes over which the department has no control shall begin with those teachers with the least number of years of service, and the teachers so dismissed shall be placed on a preferred eligibility list and shall have the right to be restored to duty in the order of length of service whenever vacancies occur in which the teacher is qualified. (L 1959, c28, pt of 2; am L 1965, c 175, 19; Supp, 38-5.2)

297-12 Demotion or termination of contract by department. In case of demotion or termination of any contract, the department of education shall furnish the teacher a written notice signed by the superintendent of education of its intention to consider the demotion or termination of his contract with full specification of the grounds for such consideration. Unless the teacher so notified, within ten days subsequent to the receipt of the notice, demands in writing an opportunity to appear before the department and offer reasons against the demotion or termination, the department may proceed with formal action for demotion or termination of the contract. If the teacher, within ten days after receipt of notice from the superintendent, demands in writing a hearing before the department, the department shall set a time for the hearing within thirty days from the date of the written demand and the superintendent shall give the teacher at least fifteen days' notice in writing of the time and place of the hearing. Chapter 91 shall apply to the notice and to all other aspects of the hearing. No hearing shall be held during the summer vacation without the teacher's consent. The hearing shall be private unless the teacher requests a public hearing. The hearing shall be conducted by a majority of the board of education and be confined to the grounds given for the termination. In lieu of a hearing by the board, the board may appoint a hearing officer to conduct hearings in any case regarding teacher demotion or termination of contract. The hearing officer shall hear the case in the same manner as if it were before the board and upon conclusion on the hearing, shall report his findings of fact and his conclusions and recommendations based thereon to the board and to the teacher. The board shall render the final decision in accordance with section 91-11. The department may suspend a teacher pending final action to terminate his contract if, in its judgment, the character of the charges warrant such action.

Both parties may be present at the hearing, be represented by counsel, require witnesses to be under oath, cross-examine witnesses, take a record of the proceedings, and require the presence of witnesses in their behalf upon subpoena to be issued by the superintendent. In case of the failure of any person to comply with a subpoena, a circuit court judge of the judicial circuit in which the person resides, upon application of any interested party, shall compel attendance of the person by attachment proceedings as for contempt. The hearing officer or any member of the board of education may administer oaths to witnesses. The board by the vote of a majority of its membership may enter upon its minutes an order of demotion or termination. If the decision of the board is against demotion or termination of the contract, the charges and the record of the hearing shall be physically expunged and, if the teacher has been suspended, he shall be paid his full salary for the period of the suspension.

The findings and decisions of the board shall be subject to review as provided in Chapter 91.

In any hearing or court action the board shall be advised and represented by the attorney general, or may employ other legal counsel if so authorized by the attorney general. (L 1959, c 28, pt of 2; am L 1965, c 96, 26; Supp, 38-5.3; am L 1967, c 174,1)

Attorney General Opinions

Probationary teacher held entitled to a hearing on discharge. Att. Gen. Op. 63-5.

Section only applies to a teacher with tenure. A probationary teacher is not entitled to a notice and hearing subsequent to Act 175, S.L.H. 1965. Att. Gen. Op. 66-7.

Idaho

Idaho Code, Sec. 33-1212

33-1207. Indorsement and registration of certificates.

The board of trustees of each school district shall cause the certificates of each holder thereof to be indorsed (a) prior to beginning service for the first time with the district, or (b) in the first year after a new or renewed certificate is issued, showing the date of service thereunder; and shall cause to be maintained a continuing record of certificates by style and number, of each certificated employee of the district. [1963, ch 13, 149, p. 27; am. 1971, ch 15, 1. p. a8.]

33-1208. Revocation of certificate -- Grounds.

The state board of education may revoke any certificate issued or authorized under section 33-1201 upon any of the following grounds:

- a. Gross neglect of duty;
- b. Incompetency to instruct or govern a class or school;
- c. Breach of the teaching contract;
- d. Making any material statement of fact in the application for a certificate, which the applicant knows to be false;
- e. Revocation, refusal or denial of a certificate in another state for any reason constituting grounds for revocation in this state;
- f. Conviction in this or any other state of a crime involving moral turpitude;
- g. Any disqualification which would have been sufficient grounds for refusing to issue or authorize a certificate, if the disqualification existed or had been known of its issuance or authorization;
- h. Wilful violation of any professional code or standard of ethics or conduct, adopted by the state board of education. [1963, ch. 13, 150, p. 27; am. 1969, ch. 258, 9, p. 794.]

Compiler's notes. Section 8 of S.L. 1969, ch. 258 is compiled as 33-1258.

Section 10 of S.L. 1969, ch. 258 provided that this act should be in full force and effect on and after July 1, 1969.

33-1212. Renewable contract.

During the third full year of continuous employment by the same school district, including any specially chartered district, each certificated employee named in subsection 2 of section 33-1101, Idaho Code, and each school nurse and school librarian shall be evaluated for a renewable contract and shall, upon having been offered a contract for the next ensuing year, having given notice of acceptance of renewal and upon signing a contract for a fourth full year, be placed on a renewable contract status with said school district, until the age of sixty-five (65) years is attained, and subject to the provisions included in this chapter.

Except as otherwise provided, each such certificated employee, school nurse, or school librarian shall have the right to automatic renewal of contract by giving notice, in writing, of acceptance of renewal. Such notice shall be given to the board of trustees of the school district then employing such person not later than the first day of May preceding the expiration of the term of the current contract. Except as otherwise provided by this paragraph, the board of trustees shall notify each person entitled to be employed on a renewable contract of the requirement that such person must give the notice hereinabove and that failure so to do may be interpreted by the board as a declination of the right to automatic renewal or the offer of another contract. Such notification shall be made, in writing, not later than the tenth day of April, in each year, except to those persons to whom the board, prior to said date, has sent proposed contracts for the next ensuing year, or to whom the board has given the notice required by section 33-1213, Idaho.

Any contract automatically renewed under the provisions of this section shall be for the same length of the term stated in the current contract and at a salary no lower than that specified therein, to which shall be added such increments as may be determined by the statutory or regulatory rights of such employee by reason of training, or service, or both.

Nothing herein shall prevent the board of trustees from offering a renewed contract increasing the salary of any certificated person, from reassigning administrative or supervisory employees to classroom teaching duties with appropriate reduction of salaries from pre-existing contracts.

Before a board of trustees can determine not to renew the contract of any certificated person whose contract would otherwise be automatically renewed, or to renew the contract of any

such person at a reduced salary, such person shall be entitled to a probationary period. This period of probation shall be preceded by a written notice from the board of trustees with reasons for such probationary period and with provisions for adequate supervision and evaluation of the person's performance during the probationary period. Such period of probation shall not affect the person's renewable contract status. [1963, ch. 13, 154, p. 27; am. 1973, ch. 126, 2, p. 238.]

Compiler's note. Section 1 of S. L. 1973, ch. 126 is compiled herein as 33-513.

Sec. to sec. ref. This section is referred to in 33-513.

33-1212A. Right to renewable contract when district is divided, consolidated or reorganized.

If by reason of the division of a school district, including any specially chartered district, or by reason of the consolidation of such a district with another district, or other districts, or by reason of the reorganization of such a district, the position held by any teacher entitled to a renewable contract is transferred from the control of one board of trustees to the control of a new or different board of trustees, the right to automatic renewal is not thereby lost, and such new or different board of trustees shall be subject to all of the provisions of this chapter with respect to such teacher in the same manner as if such teacher were its employee and had been its employee during the time such teacher was actually employed by the board of trustees from whose control the position was transferred. [I. C., 33-1212A, as added by 1973, ch. 126, 3, p. 238.]

33-1213. Notice of intent not to renew contract or to reduce salary.

Whenever a board of trustees has determined not to renew the contract of any certificated person whose contract would otherwise be automatically renewed, or to renew the contract of any such person but at a reduced salary, as authorized in section 33-1212, Idaho Code, the board of trustees shall give a written notice of such determination with the reasons therefor, such reasons to show just and reasonable cause, to such person not later than the first day of April preceding the expiration of the term of the current contract. [1963, ch. 13, 154, p. 27; am. 1973, ch. 126, 4, p. 238]

33-1214. Release from contract.

Should any certificated employee desire release from the ensuing contract after the first day of June, the board of trustees of any school district, including any specially chartered district, may at its discretion request a hearing before the professional standards commission, alleging that the certificated employee is guilty of unethical or unprofessional practice. [1963 ch. 13, 154, p. 27; am. 1973, ch. 136, 5, p. 238.]

33-1215. Termination of employment or reduction of salary -
Hearing and review.

Each certificated employee who received a notice as provided in section 33-1213, Idaho Code, shall, upon request filed with the board of trustees within thirty (30) days thereafter, be granted a hearing before the board, said hearing to be held not more than fifteen (15) days following the request therefor. The employee may present evidence, examine any person who may have spoken against his character or competence and be represented by legal counsel and/or by a representative of the local or state teachers association. The board of trustees may also examine witnesses and be represented by counsel. The board shall render a decision, in writing, within fifteen (15) days following the hearing stating whether the board finds that there is just and reasonable cause for its determination not to renew the contract or to reduce the salary of the certificated person who requested the hearing, and if so, what reasons it relies upon in that determination. [1963, ch. 13, 157, p. 27; am. 1973, ch. 126, 6, p. 238.]

Illinois

S. H. A. Chapter 122, Section 24-11.

Boards of Education---Boards of school inspectors---Contractual continued service.

As used in this and the succeeding Sections of this Article, "teacher" means any or all school district employees regularly required to be certified under laws relating to the certification of teachers, "board" means board of directors, board of education or board of school inspectors, as the case may be, and "school term" means that portion of the school year, July 1 to the following June 30, when school is in actual session. This Section and Sections 24-12 through 24-16 of this Article apply only to school districts having less than 500,000 inhabitants.

Any teacher who has been employed in any district as a full-time teacher for a probationary period of 2 consecutive school terms shall enter upon contractual continued service unless given written notice of dismissal stating the specific reason therefor, by registered mail by the employing board at least 60 days before the end of such period. If, however, a teacher has not had one school term of full-time teaching experience before the beginning of such probationary period, the employing board may at its option extend such probationary period for one additional school term by giving the teacher written notice by registered mail at least 60 days before the end of the second school term of the period of 2 consecutive school terms referred to above. Such notice must state the reasons for the one year extension and must outline the corrective actions which the teacher should take to satisfactorily complete probation.

Any full-time teacher who is completing the first year of the probationary period described in the preceding paragraph, or any teacher employed on a full-time basis not later than January 1 of the school term, shall receive written notice from the employing board at least 60 days before the end of any school term whether or not he will be re-employed for the following school term. If the board fails to give such notice, the employee shall be deemed re-employed, and not later than the close of the then current school term the board shall issue a regular contract to the employee as though the board had re-employed him in the usual manner.

Contractual continued service shall cease at the end of the school term following the 65th birthday of any teacher, and any subsequent employment of such a teacher shall be on an annual basis.

Contractual continued service shall continue in effect the terms and provisions of the contract with the teacher during the last school term of the probationary period, subject to this Act and the lawful

regulations of the employing board. This Section and succeeding Sections do not modify any existing power of the board except with respect to the procedure of the discharge of a teacher and reductions in salary as hereinafter provided. Contractual continued service status shall not restrict the power of the board to transfer a teacher to a position which the teacher is qualified to fill or to make such salary adjustments as it deems desirable, but unless reductions in salary are uniform or based upon some reasonable classification, any teacher whose salary is reduced shall be entitled to a notice and a hearing as hereinafter provided in the case of certain dismissals and removals.

The employment of any teacher in a special education program authorized by Section 14-1.01 through 14-14.01, or a joint education program established under Section 10-22.31a, shall be under this and the succeeding Sections of this Article, and such employment shall be deemed a continuation of the previous employment of such teacher in any of the participating districts, regardless of the participation of other districts in the program. Any teacher employed as a full-time teacher in a special education program in which 2 or more school districts participate for a probationary period of 2 consecutive years shall enter upon contractual continued service in each of the participating districts, subject to this and the succeeding Sections of this Article, and in the event of the termination of the program shall be eligible for any vacant position in any of such districts for which he is qualified.

Section 24-12. Removal or dismissal of teachers in contractual continued service.

Notwithstanding the entry upon contractual service, any teacher may be removed or dismissed for the reasons or causes provided in Section 10-22.4 in the manner hereinafter provided. If the removal or dismissal results from the decision of the board to decrease the number of teachers employed by the board or to discontinue some particular type of teaching service, written notice shall be given the teacher by registered mail at least 60 days before the end of the school term, together with a statement of honorable dismissal and the reason therefor, and in all such cases the board shall first remove or dismiss all teachers who have not entered upon contractual continued service before and who are legally qualified to hold a position currently held by a teacher who has not entered upon contractual continued service. If the board within 1 calendar year thereafter increases the number of teachers or reinstates the position so discontinued, the positions thereby becoming available shall be tendered to the teachers so removed or dismissed so far as they are legally qualified to hold such positions. If the dismissal or removal is for any other reason or cause it does not become effective until approved by a majority vote of all members of the board upon specific charges and after a hearing, if a hearing is requested in writing by the teacher within 10 days after the service of notice as herein provided. Written notice of such charges shall be served upon him at least 60 days before the effective date of his dismissal or removal. Such

notice shall contain a statement that a bill of particulars will be provided upon receipt of a written request from the teacher or his attorney within 10 days of receipt of such notice. If so requested, a bill of particulars may be made by certified or registered mail. The effective date of the dismissal or removal shall be after November 1 and before the close of the school term. The hearing shall be held and the decision rendered before the effective date of dismissal or removal but at least 10 days shall intervene between the dates of the request for the hearing and the hearing itself. The hearing shall be public at the request of either the teacher or the board. The teacher has the privilege of being present at the hearing with counsel and of cross-examining witnesses and may offer evidence and witnesses and present defences to the charges. The board may issue subpoenas requiring the attendance of witnesses at any hearing and, at the request of the teacher against whom a charge is made, shall issue such subpoenas, but it may limit the number of witnesses to be subpoenaed in behalf of the teacher to not more than 10. All testimony at any hearing shall be taken under oath. Any member of the board may administer oaths to witnesses. The board shall cause a record of the proceedings to be kept and shall employ a competent reporter to take stenographic or stenotype notes of all of the testimony. One-half of the cost of the reporter's attendance and services at the hearing shall be paid by the board and one-half by the teacher. Either party desiring a transcript of the hearing shall pay for the cost thereof. If in the opinion of the board the interests of the school require it, the board may suspend the teacher pending the hearing, but if acquitted the teacher shall not suffer the loss of any salary by reason of the suspension. Before service of notice of charges on account of causes that are considered remediable, the teacher shall be given reasonable warning in writing, stating specifically the causes which, if not removed, may result in charges. The decisions of the board as to the existence of reasons or causes for dismissal or removal is final unless reviewed as provided in Section 24-16 of this Act.

If the decision of the board is reversed upon review or appeal on a motion of either party the trial court shall order reinstatement and shall determine the amount for which the board is liable including but not limited to loss of income and costs incurred therein.

Indiana

Burns Ind. Stat. ann., tit. 20, ant. 6-12-1

20-6-12-1 [28-4511]. Permanent teachers and indefinite contracts-Terms and conditions-Uniformity.-Any person who has served or who shall serve under contract as a teacher in any school city corporation or in any school town corporation in the state of Indiana for five (5) or more successive years, and who shall at any time hereafter enter into a teacher's contract for further service with such corporation, shall thereupon become a permanent teacher of such school corporation. The term "teacher" as used in this section shall mean and include licensed public school teachers, supervisors and principals of all such public school corporations, and licensed assistant superintendents and superintendents of such school corporations. Upon the expiration of any contract between such school corporation and a permanent teacher, such contract shall be deemed to continue in effect for an indefinite period and shall be known as an indefinite contract. Such an indefinite contract shall remain in force until such permanent teacher shall have reached the age of sixty-six (66) years unless succeeded by a new contract signed by both parties or unless it shall be canceled as provided in section 2 [20-6-12-2] of this act; Provided, That teachers' contracts shall provide for the annual determination of the date of beginning and length of school terms by the school corporation; and Provided further, That teachers' contracts may contain provisions for the fixing of the amount of annual compensation from year to year by a salary schedule adopted by the school corporation and such schedule shall be deemed to be a part of such contract; Provided, further, That such schedule may be changed by such school corporation on or before May first of any year, such changes to become effective at the beginning of the following school year; Provided, That all teachers affected by such changes shall be furnished with printed copies of such changed schedule within thirty (30) days after its adoption; And, provided further, That teachers' contracts shall be uniform and of the form and wording as prescribed by the state superintendent of public instruction. [Acts 1927, ch. 97, 1, p. 259; 1933, ch. 116, 1, p. 716.]

20-6-12-2 [28-4512]. Cancellation of contract-Hearing, causes and procedure-Effective date.-Any indefinite contract with a permanent teacher as defined in section 1 [20-6-12-1] of this act may be canceled only in the following manner: Not less than thirty (30) days nor more than forty (40) days before the consideration by any such school corporation of the cancellation of any such contract, such teacher shall be notified in writing of the exact date, time when and place where such consideration is to take place; and such teacher shall be furnished a written statement of the reasons for such consideration within five (5) days after any written request for such statement; and such teacher shall, upon written request for a hearing, filed within fifteen (15) days after the receipt by said teacher of notice of date, time and place of such consideration, be given such a hearing before the school board of such

school corporation; such hearing shall be held not less than five (5) days after such request is filed and such teacher shall be given not less than five (5) days' notice of the time and place of such hearing. Such teacher, at the hearing shall have a right to a full statement of the reasons for the proposed cancellation of such contract, and shall have a right to be heard, to present the testimony of witnesses and other evidence bearing upon the reasons for the proposed cancellation of such contract. No such contract shall be canceled until the date set for consideration of such contract; nor until after a hearing is held, if such hearing is requested by said teacher; nor until, in the case of teachers, supervisors, and principals, the city or town superintendent shall have given the school corporation his recommendations thereon, and it shall be the duty of such superintendent to present such recommendations upon five (5) days' written notice to him by such school corporation. Nothing contained in this section shall prevent the suspension from duty of any teacher pending a decision of the cancellation of such teacher's contract. Cancellation of an indefinite contract of a permanent teacher may be made for incompetency, insubordination (which shall be deemed to mean a willful refusal to obey the school laws of this state or reasonable rules prescribed for the government of the public schools of such corporation), neglect of duty, immorality, justifiable decrease in the number of teaching positions or other good and just cause, but may not be made for political or personal reasons.

20-6-13-1 [28-4517]. Continual contracts-Automatic renewal-Cancellation-Notice-Hearing-Mutual agreement-Permanent teachers and indefinite contracts law.-Every contract of employment hereafter made by and between a teacher and a school corporation, except contracts with permanent teachers as defined in chapter 97 of the Acts of 1927 [20-6-12-1--20-6-12-6] and acts amendatory thereof, shall be renewed and continue in force on the same terms and for the same wages, unless increased by the provisions of chapter 101 of the Acts of 1907 and acts amendatory thereof, known as the Teachers' Minimum Wage Law, for the school year next succeeding the date of termination fixed therein unless on or before the first day of May, the teacher shall be notified by the school corporation in writing delivered in person or mailed to him or her at last and usual known address by registered mail that such contract will not be renewed for such succeeding year or unless such teacher shall deliver or mail by registered mail to such school corporation his or her written resignation as such teacher or unless such contract is superseded by another contract between the parties. Superintendents, principals, and supervisors shall be deemed to be teachers within the meaning of this act [this section].

Any teacher who shall be refused continuation of contract pursuant to the provision of this act may request from the trustee or board of trustees a written statement showing reason for such dismissal.

After August 15 any teaching contract entered into between a school corporation and a teacher shall be void if the teacher, at the time of

signing said contract, is bound by a previous contract to teach in the public schools, except that another teaching contract may be signed by a teacher to become effective on the furnishing to the township trustee or a board of school trustees of a release by the employers under the first contract, or after proof has been shown that the notice as required under this section has been given the first employers. A teacher may on twenty-one (21) days' written notice, delivered by the teacher to the school trustee or board of school trustees, or by mutual agreement in less than twenty-one (21) days be released from a teaching contract. A township or city school board may if it desires request a written statement from the teacher at the time of the signing of the contract as to whether another teaching contract has been signed by the teacher, but failure to provide the statement shall not be a cause at a later date for voiding the contract.

This act shall be effective for all teachers employed in the public schools of the state of Indiana and all such teachers comprehended within the provisions of this act shall be and are hereby granted all of the rights, privileges, and protections provided by this act and on and after July 1, 1967, by the provisions of chapter 97 of the Acts of 1927 [20-6-12-1--20-6-12-6] and acts amendatory thereof the same as if they were teachers in cities and towns.

Iowa

I. C. A. sec. 279-13 etc.

279.13 Contracts with teachers—automatic continuation—exchange of teachers

Contracts with teachers must be in writing, and shall state the length of time the school is to be taught, the compensation per week of five days, or month of four weeks, and that the same shall be invalid if the teacher is under contract with another board of directors in the state of Iowa to teach covering the same period of time, until such contract shall have been released, and such other matters as may be agreed upon, which may include employment for a term not exceeding the ensuing school year, except as otherwise authorized, and payment by the calendar or school month, signed by the president and teacher, and shall be filed with the secretary before the teacher enters upon performance of the contract but no such contract shall be entered into with any teacher for the ensuing year or any part thereof until after the organization of the board.

Boards of school directors shall have power to arrange for an exchange of teachers in the public schools under their jurisdiction with other public school corporations either within or without the state or the United States on such terms and conditions as are approved by the state superintendent of public instruction and when so arranged and approved the board may continue to pay the salary of the teacher exchanged as provided in the contract between said teacher and the board for a period of one year, and such teacher shall not lose any privileges of tenure, old-age and survivors' insurance, or certification as a result of such exchange. Said contract may be renewed each year as determined by the employing school board provided that the visiting exchange teacher is paid in full for the service rendered by the school authorities with whom his contract is made. Such exchange teachers must have qualifications equivalent to the regular teacher employed by the board and who is serving as the exchange teacher and must secure a special certificate covering the subjects designated for him to teach in the public schools in which the instruction is given. The state superintendent of public instruction is hereby authorized to formulate, establish, and enforce any reasonable regulation necessary to govern the exchange of teachers as provided in this paragraph, including the waiver of Iowa certification requirements for teachers who are regularly certificated or licensed in the jurisdiction from which they come.

Said contract shall remain in force and effect for the period stated in the contract and thereafter shall be automatically continued in force and effect for equivalent periods, except as modified or terminated by mutual agreement of the board of directors and the teacher, until terminated as hereinafter provided, however, no contract shall be tendered by the employing board to a teacher under its jurisdiction prior to March 1, nor be required to be signed by the teacher and returned to the board in less than twenty-one days after being tendered. On or before

April 15, of each year the teacher may file his written resignation with the secretary of the board of directors, or the board may by a majority vote of the elected membership of the board, cause said contract to be terminated by written notification of termination, by a certified letter mailed to the teacher not later than the tenth day of April; provided, however, that at least ten days prior to mailing of any notice of termination the board or its agent shall inform the teacher in writing that (1) the board is considering termination of said contract and that (2) the teacher shall have the right to a private conference with the board if the teacher files a request therefor with the president or secretary of the board within five days; and if within five days after receipt by the teacher of such written information the teacher files with the president or secretary of the board a written request for a conference and a written statement of specific reasons for considering termination, the board shall, before any notice of termination is mailed, give the teacher written notice of the time and place of such conference and at the request of the teacher, a written statement of specific reasons for considering termination, and shall hold a private conference between the board and teacher and his representative if the teacher appears at such time and place. No school board member shall be liable for any damages to any teacher if any such statement is determined to be erroneous as long as such statement was made in good faith. In event of such termination, it shall take effect at the close of the school year in which the contract is terminated by either of said methods. The teacher shall have the right to protest the action of the board, and to a hearing thereon, by notifying the president or secretary of the board in writing of such protest within twenty days of the receipt by him of the notice to terminate, in which event the board shall hold a public hearing on such protest at the next regular meeting of the board, or at a special meeting called by the president of the board for that purpose, and shall give notice in writing to the teacher of the time of the hearing on the protest. Upon the conclusion of the hearing the board shall determine the question of continuance or discontinuance of the contract by a roll call vote entered in the minutes of the board, and the action of the board shall be final. The foregoing provisions for termination shall not affect the power of the board of directors to discharge a teacher for cause under the provisions of section 279.24. The term "teacher" as used in this section shall include all certificated school employees, including superintendents.

Kansas

K.S.A. 1974 Supp. 72-5438.

72-5436. "Teacher" defined; exceptions. "Teacher" as used in this act shall mean any professional employee who is required to hold a teacher's certificate in any public school, except that "teacher" shall not include supervisors, principals, superintendents or any person employed under the authority of K.S.A. 1973 Supp. 72-8202b, or amendments thereto.

72-5437. Continuation of teachers' contracts; exceptions; notice of termination or nonrenewal; change of terms. All contracts of employment of teachers, as defined in section 1 (72-5436) of this act, except contracts entered into under the provisions of K.S.A. 72-5412a, shall be deemed to continue for the next succeeding school year unless written notice of intention to terminate or not renew the contract is served by the board of education upon any such teacher on or before the fifteenth day of March or the teacher shall give written notice to the board of education of the school district on or before the fifteenth day of April that the teacher does not desire continuation of said contract. Terms of a contract may be changed at any time by mutual consent of both the teacher and the board of education of the school district.

72-5438. Contents of notice; hearing; designation of hearing committee members; appointment by district judge, when. Whenever a teacher is given written notice of intention to not renew the teacher's contract as provided in section 2 (72-5437) of this act, or whenever such a teacher is terminated before the end of his contract term, the teacher shall be given a written notice of the proposed non-renewal or termination including (1) a statement of the reasons for the proposed non-renewal or termination, and (2) a statement that the teacher may have the matter heard by a hearing committee, upon written notice filed with the clerk of the board of education within fifteen days from the date of such notice of non-renewal or termination that he desires to be heard and designating therein one hearing committee member. Upon the filing of any such notice, the board of education shall, within fifteen days thereafter, designate a third hearing committee member who shall be the chairman and who shall live no more than 100 miles from the involved and shall in all cases be a resident of the state of Kansas. In the event that the two hearing committee members are unable to agree upon a third hearing committee member within five (5) days after the designation of the second hearing committee member, a district judge of the home county of the school district shall appoint the third hearing committee member upon application of the teacher or either of the first two hearing committee members.

72-5439. Procedural due process, requirements. The hearing provided for in section 3 (72-5438) shall afford procedural due process; including the following:

(a) The right of each party to have counsel of such party's own choice present and to receive the advice of such counsel or other person whom such party may select, and

(b) the right of each party or such party's counsel to cross-examine any person who provides information for the consideration of the hearing committee, except those persons whose testimony is presented by affidavit, and

(c) the right of each party to present such party's own witnesses in person, or their testimony by affidavit or deposition, except that when presented by affidavit the same shall be served upon the clerk of the board of education or the agent of the board and upon the teacher in person or by first class mail to the address of the teacher which is on file with the board of education not less than ten (10) days prior to presentation to the hearing committee, and

(d) the right of the teacher to testify in his own behalf and give reasons for his conduct, and the right of the board to present its testimony through such persons as it may call to testify in its behalf and to give reasons for its actions, rulings or policies, and

(e) the right of the parties to have an orderly hearing, and

(f) the right of the teacher to a fair and impartial decision based on substantial evidence.

72-5440. Testimony; recording and transcribing, when; costs. Testimony at a hearing hereunder may, and upon the request of either party shall, be taken by a certified shorthand reporter or electronically recorded, and shall be transcribed upon request of either party or upon direction by a court. The costs for any such transcription shall be borne by the board of education.

72-5406. Discharge, demotion and mandatory retirement; when. Causes for the discharge or demotion of an instructor either during or after the probationary period shall be immoral character, conduct unbecoming an instructor, insubordination, failure to obey reasonable rules promulgated by the board of education, inefficiency, incompetency, physical unfitness or failure to comply with reasonable requirements of the board of education as may be prescribed to show normal improvement and evidence of professional training. Instructors also may be dismissed because of decrease in number of pupils or for other causes over which the board of education has no control. Dismissals due to increase in number of pupils or for other causes over which the board of education has no control must begin with those instructors with the least number of years of service, and such instructors so dismissed shall be placed on a preferred eligibility list and shall have the right to be restored to duty in the order of length of service whenever vacancies occur in which the instructor is qualified.

Kentucky

Kentucky Rev. Stat. Ann., cited thus in the Reports: KRS 161.740 etc.

161.721. Superintendent eligible for continuing contract status.

The superintendent shall be eligible for continuing contract status when he meets all requirements prescribed in KRS 161.720 to 161.810 for continuing contracts for teachers. (Enact. Acts 1944, ch. 98.)

161.730. Limited or continuing contracts with teachers required.

Each board of education shall enter into written contracts, either limited or continuing, for the employment of all teachers. (Enact. Acts 1942, ch. 113, Sec. 2; 1944, ch. 98; 1964, ch. 41, Sec. 2.)

161.740. Eligibility for continuing service status--Re-employment of those eligible--Transfer teachers--Reinstatement after was service.

(1) Teachers eligible for continuing service status in any school district shall be those teachers who meet qualifications listed in this section:

(a) Hold a standard or college certificate as defined in KRS 161.720;

(b) When a currently employed teacher is recommended for re-employment after teaching four consecutive years in the same district, or after teaching four years which shall fall within a period not to exceed six years in the same district, the year of present employment included, the superintendent shall recommend said teacher for a continuing contract, and, if the teacher is employed by the board of education, a written continuing contract shall be issued.

161.750. Limited contracts--Teacher re-employed unless notified.

(1) A written limited contract shall be entered into by each board of education with each teacher who is not eligible for a continuing contract as defined in KRS 161.740.

(2) Any teacher employed under a limited contract and ineligible for a continuing contract shall at the expiration of such limited contract be deemed re-employed under the provisions of KRS 161.720 to 161.810 for the succeeding school year at the same salary plus any increment or decrease as provided by the salary schedule, unless the employing board shall give such teacher written notice on or before the fifteenth day of May of its intention not to re-employ him; upon request by the teacher, such written notice shall contain the specific reason or reasons why the teacher is not being re-employed. Such teacher shall be presumed to have accepted such employment, unless he shall notify the board of education in writing to the contrary on or before the fifteenth day of June, and a written contract for the succeeding year shall be executed accordingly. (Enact. Acts 1942, ch. 113, Sec. 4; 1944, ch. 98; 1964, ch. 41, Sec. 4; 1970, ch. 169, Sec. 1.)

161.790. Termination of contract by board--Causes for--Procedure--
Suspension pending trial--Appeal.

(1) The contract of a teacher shall remain in force during good behavior and efficient and competent service by the teacher and shall not be terminated except for any of the following causes:

(a) Insubordination, including but not limited to 1. violation of lawful rules and regulations established by the local board of education for the operation of schools, and 2. refusal to recognize or obey the authority of the superintendent, principal, or any other supervisory personnel of the board in the performance of their duties;

(b) Immoral character or conduct unbecoming a teacher;

(c) Physical or mental disability;

(d) Inefficiency, incompetency, or neglect of duty, when a written statement identifying the problems or difficulties has been furnished the teacher involved.

(2) (a) Charges on the above causes shall be supported by written records of a teacher's performance by the superintendent, principal, or other contract.

(3) No contract shall be terminated except upon recommendation of the superintendent and unless the teacher is furnished with a written statement, specifying in detail the charge or charges against said teacher, signed by the chairman and secretary of the board of education and naming a date and place at which the teacher may appear before the board of education and answer said charge or charges. Said date for the hearing shall not be less than twenty (20) nor more than thirty (30) days after the service of the receipt of the written statement of such charges upon the teacher. The teacher shall within ten (10) days after the receipt of a written statement of such charges notify the board of education of his intention to appear and answer such charges, and upon failure of the teacher to give such notice, the board of education may dismiss the teacher by a majority vote and such dismissal shall be final.

(4) Upon receipt of the teacher's notice of intention to appear and answer such charges, the board of education shall issue such subpoenas as shall be necessary for the determination of the issues involved. The issue shall be heard at the time and place set and the hearing shall be public or private at the discretion of the teacher. Both parties may be represented by counsel and may require the presence of witnesses upon subpoena. Each witness shall be required to take oath or affirmation before an officer of the board of education. The board of education shall provide for a stenographic report of the proceedings and furnish the teacher with a copy. Upon completion of both sides of the case the board of education may by a majority vote dismiss the teacher or may defer its action for not more than five (5) days.

(6) The teacher shall have a right to make an appeal both as to law and as to fact to the circuit court.

Louisiana

LSA - R. S. 17: 442

442. Probation and tenure of parish or city school teachers

Each teacher shall serve a probationary term of three years to be reckoned from the date of his first appointment in the parish or city in which the teacher is serving his probation. During the probationary term the parish or city school board, as the case may be, may dismiss or discharge any probationary teacher upon the written recommendation of the parish or city superintendent of schools, as the case may be, accompanied by valid reasons therefor.

Any teacher found unsatisfactory by the parish or city school board, as the case may be, at the expiration of the said probationary term, shall be notified in writing by the board that he has been discharged or dismissed; in the absence of such notification, such probationary teacher shall automatically become a regular and permanent teacher in the employ of the school board of the parish or city, as the case may be, in which he has successfully served his three year probationary term; all teachers in the employ of any parish or city school board as of July 31, 1946, who hold proper certificates and who have served satisfactorily as teachers in that parish or city for more than three consecutive years, are declared to be regular and permanent teachers in the employ of the school board of that parish or city.

443. Removal of teachers; procedure; right to appeal

A. A permanent teacher shall not be removed from office except upon written and signed charges of willful neglect of duty, or incompetency or dishonesty, or of being a member of or of contributing to any group, organization, movement or corporation that is prohibited by law or injunction from operating in the State of Louisiana, and then only if found guilty after a hearing by the school board of the parish or city, as the case may be, which hearing may be private or public, at the option of the teacher. At least fifteen days in advance of the date of the hearing, the school board shall furnish the teacher with a copy of the written charges. The teacher shall have the right to appear before the board with witnesses in his behalf and with counsel of his selection, all of whom shall be heard by the board at the said hearing. Nothing herein contained shall impair the right of appeal to a court of competent jurisdiction.

444. Promotions; probationary periods and tenure

Whenever a teacher who has acquired permanent status, as set forth in R.S. 17:442 and 17:443, in a parish or city school system is promoted by the employing school board by moving such teacher from a position of lower salary to one of higher salary, such teacher shall

serve a probationary period of three years in the higher position before acquiring permanent status therein, but shall retain the permanent status acquired in the lower position from which he or she was promoted.

462. Permanent teachers; causes for removal procedure

A. A permanent teacher shall not be removed from office except on written and signed charges of immorality, or of willful neglect of duty, or of incompetency, or of being a member of or of contributing to any group, organization, movement or corporation that is prohibited by law or injunction from operating in the State of Louisiana, and then only if found guilty after a hearing by the Orleans Parish School Board, which hearing may be private or public, at the option of the teacher. At least fifteen days in advance of the date of the hearing, the school board shall furnish the teacher with the following:

- (1) A copy of the written charges.
- (2) A list of the names and last known addresses of all witnesses the board may or will use at the hearing.
- (3) A copy of all documents the board will or may introduce during the course of the hearing.

The teacher shall have the right to appear before the board with witnesses in his behalf and with counsel of his selection all of whom shall be heard by the board at the said hearing. At least fifteen days in advance of the date of the hearing, the teacher shall furnish to the school board the following:

- (1) A list of the names and addresses of all witnesses the teacher may or will use at the hearing.
- (2) A copy of all documents the teacher will or may introduce during the course of the hearing.

Nothing herein contained shall be construed as depriving the Orleans Parish School Board or any teacher thereof of any right of action it or they may be entitled to under the constitution and laws of the State of Louisiana.

For the purpose of conducting hearings or investigations hereunder, the board shall have the power to administer oaths and affirmations and the power to issue subpoenas in the name of the State of Louisiana to complete the attendance of witnesses and the production of documentary evidence. All such subpoenas shall be served by the sheriff or any deputy of the parish to which the same is directed; and such sheriff or deputy shall be entitled to no fee for serving such subpoenas. In the event any person fails or refuses to obey a subpoena issued hereunder, any district court of this state within the jurisdiction of which the hearing is held or within the jurisdiction of which said person is found or resides, upon application by the board or its representatives, shall have the power to compel such person to appear before the board and to give testimony or produce evidence as ordered; and any failure to obey such an order of the court may be punished by the court issuing the same as a contempt thereof.

463. Promotions; protection of tenure

Whenever a teacher who has acquired permanent status, as set forth in R.S. 17:461 and 17:462, in the Orleans Parish School system is promoted by the employing school board by moving such teacher from a position of lower salary to one of higher salary, such teacher shall serve a probationary period of three years in the higher position before acquiring permanent status therein, but shall retain the permanent status acquired in the lower position from which he or she was promoted.

During the probationary period in the position to which promoted a teacher shall not be disciplined, removed or demoted to the lower position from which he or she was promoted except in compliance with the provisions of R.S. 17:461. At the expiration of the probationary period in the higher position, a teacher, unless removed or demoted in accordance with R.S. 17:461, shall automatically acquire permanent status in the higher position and thereafter may not be disciplined, removed or demoted from such higher position except in compliance with the provisions of R.S. 17:462.

Where a teacher has not completed the probationary period for teachers as required by R.S. 17:461, or for a particular promotional position as established herein, and is promoted to a higher position, the probationary period, either as a teacher or in the previous promotional position, shall continue to run and at the end of such three year probationary period the teacher shall automatically acquire permanent status in the previously held position until permanent status in the new position is acquired by compliance with the provisions of this section.

Amended by Acts 1968, No. 507, 1.

Maine

20 M.R.S.A. Section 161(5)

161. Powers and duties of superintendents

A superintendent of schools shall have the following powers and duties:

5. Shall nominate teachers; election to be approved by committee; probationary period; teachers may be elected under contract. He shall nominate all teachers, subject to such regulations governing salaries and the qualifications of teachers as the school committee or school directors, he may employ teachers so nominated and approved for such terms as he may deem proper, subject to the approval of the school committee or school directors. Except that after a probationary period of not to exceed 3 years, subsequent contracts of duly certified teachers shall be for not less than 2 years, and unless a duly certified teacher receives written notice to the contrary at least 6 months before the terminal date of the contract, the contract shall be extended automatically for one year and similarly in subsequent years until age 65, although the right to an extension for a longer period of time through a new contract is specifically reserved to the contracting parties. No 2-year contract shall be issued to any teacher age 64 or over. The superintendent may nominate and the school committee may elect teachers age 65 and over for a one-year period. After a probationary period of 3 years, any teacher, who receives notice in accordance with this section that his contract is not going to be renewed, may during the 15 days following such notification request a hearing with the school committee or governing board. He may request reasons. The hearing shall be private except by mutual consent and except that either or both parties may be represented by counsel. Such hearing must be granted within 30 days of the teacher's request. The right to terminate a contract, after due notice of 90 days, is reserved to the superintending school committee or school directors when changes in local conditions warrant the elimination of the teaching position for which the contract was made. In case the superintendent of schools and the superintending school committee or school directors fail to legally elect a teacher, the commissioner shall have authority to appoint a substitute teacher who shall serve until such election is made.

Maryland

Section 114. Suspension or dismissal of teachers, principals, supervisors, assistant superintendents, or other professional assistants.

Any county board of education may, on the recommendation of the county superintendent of schools suspend or dismiss any teacher, principal, supervisor, assistant superintendent, or other professional assistant for immorality, misconduct in office, insubordination, incompetency, or willful neglect of duty, provided that the charge or charges be given an opportunity to be heard by the said board of education upon not less than 10 days' notice; that such person be allowed to bring counsel and witnesses, if so desired; and provided further that an appeal from the board's decision may be made to the State Board of Education. Nothing in this section shall preclude the State Board of Education from adopting bylaws providing for a probationary period of employment not to exceed two years. (An. Code, 1951, sec. 61, 98; 1939, sec. 52, 89; 1924, sec. 52, 86; 1912, sec. 56; 1904, sec. 54; 1888, sec. 50; 1870, ch. 311; 1872, ch. 377, subch. 8, sec. 3; 1874, ch. 463; 1916, ch. 506, sec. 25J, 56; 1969, ch. 405, sec. 1.)

Massachusetts

M. G. L. A. C. 71 Section 41 etc.

Section 41. Tenure of Certain Teachers.

Every school committee, in electing a teacher who has served in its public schools for the three previous consecutive school years, shall employ him to serve at its discretion, except as provided in section thirty-eight G; but any school committee may elect a teacher who has served in its schools for not less than one school year to serve at such discretion. A teacher not serving at discretion shall be notified in writing on or before April fifteenth whenever such person is not to be employed for the following school year. Unless said notice is given as herein provided, a teacher not serving at discretion shall be deemed to be appointed for the following school year.

A school committee may award a contract to a superintendent of schools for a period not exceeding six years. Nothing in this section shall be construed to prevent a school committee from voting to employ a superintendent of schools who has completed three or more years' service to serve at its discretion.

Section 42. Discharge of Teachers and Superintendents.

The school committee may dismiss any teacher, but no teacher and no superintendent, other than a union superintendent and the superintendent of schools in the city of Boston, shall be dismissed unless by a two thirds vote of the whole committee. A teacher not employed at discretion under the preceding section and who has been teaching for more than ninety days shall not be dismissed for any reason unless at least fifteen days, exclusive of customary vacation period, prior to the meetings at which the vote is to be taken, he shall have been notified of such intended vote and, if he so requests, he shall have been furnished by the committee with a written statement of the cause or causes for which the dismissal is proposed and if he so requests, he has been given a hearing before the school committee at which he may be represented by counsel, present evidence, and call witnesses to testify in his behalf and examine them, and the superintendent shall have given the committee his recommendation thereon. In every such town a teacher or superintendent employed at discretion under section forty-one or a superintendent employed under a contract, shall not be dismissed, except for inefficiency, incapacity, conduct unbecoming a teacher or superintendent, insubordination or other good cause, nor unless at least thirty days, exclusive of customary vacation periods, prior to the meeting at which the vote is to be taken, he shall have been notified of such intended vote; not unless, if he so requests, he has been given a hearing before the school committee which may be either public or private at the discretion of the school committee and at which he may be represented by counsel, present evidence and call witnesses to testify in his behalf and examine them; nor unless, in the case of a teacher, the superintendent shall have

given the committee his recommendations thereon. The change of marital status of a female teacher or superintendent shall not be considered cause for dismissal under this section. Neither this nor the preceding section shall effect the right of a committee to dismiss a teacher whenever an actual decrease in the number of pupils in the schools of the town renders such action advisable. In case a decrease in the number of pupils in the schools of a town renders advisable the dismissal of one or more teachers, a teacher who is serving at the discretion of a school committee under section forty-one shall not be dismissed if there is a teacher not serving at discretion whose position the teacher serving at discretion is qualified to fill. No teacher or superintendent who has been lawfully dismissed shall receive compensation for services rendered hereafter.

Section 43A. Appeal to Superior Court of Certain Teachers or Superintendents Dismissed or Demoted by School Committee. Any teacher or superintendent of schools employed at discretion or any superintendent employed under a contract, for the duration of his contract, may appeal to Superior Court.

Michigan

Michigan Stat., Ann., Section 15.1981 etc.

15.1981. Probationary period; teachers that have served one system the required period on effective date of act; authority of controlling board.

Sec. 1. All teachers during the first two school years of employment by the controlling board: Any such controlling board by unanimous vote of its members, however, may refuse to appoint a teacher who has rendered two or more years service in the school district under its control. In the event the vote against reappointment of such teacher is not unanimous the controlling board shall deem such teacher as on continuing tenure with full right to hearing and appeal as provided in article four and article six of this act: Provided further, That the controlling board, after this act becomes effective, may place on continuing tenure any teacher who has previously rendered two or more years of service. (MCL Sec. 38.81.)

15.1982. Same; number of years a teacher may be required to serve; extension of period.

Sec. 2. No teacher shall be required to serve more than one probationary period in any one school district or institution: Provided, That a third year of probation may be granted by the controlling board upon notice to the tenure commission. (MCL Sec. 38.82.)

15.1983. Same; notice as to satisfactoriness of services; failure to submit statement, effect; notice of discontinuance of service.

Sec. 3. At least 60 days before the close of each school year the controlling board shall provide the probationary teacher with a definite written statement as to whether or not his work has been satisfactory. Failure to submit a written statement shall be considered as conclusive evidence that the teacher's work is satisfactory. Any probationary teacher or teacher not on continuing contract shall be employed for the ensuing year unless notified (in writing) at least 60 days before the close of the school year that his services will be discontinued. (MCL Sec. 38.83.)

15.1991. Continuing tenure; in administrative capacity, contract, effect of failure to reemploy in such capacity.

Sec. 1. After the satisfactory completion of the probationary period, a teacher shall be employed continuously by the controlling board under which the probationary period has been completed, and shall not be dismissed or demoted except as specified in this act. If the controlling board shall provide in a contract of employment of any teacher employed other than as a classroom teacher, including but not limited to, a superintendent, assistant superintendent, principal, department head or director of curriculum, made with such teacher after the completion of the probationary period, that such teacher shall not be deemed to be granted continuing tenure in such capacity by virtue of

such contract of employment, then such teacher shall not be granted continuing tenure as an active classroom teacher in such school district. Upon the termination of any such contract of employment, if such controlling board shall not re-employ such teacher under contract in any such capacity, such teacher shall be continuously employed by such controlling board as an active classroom teacher. Failure of any controlling board to re-employ any such teacher in any such capacity upon the termination of any such contract of employment shall not be deemed to be a demotion within the provisions of this act. The salary in the position to which such teacher is assigned shall be the same as if he had been continuously employed in the newly assigned position. Failure of any such controlling board to so provide in any such contract of employment of any teacher in a capacity other than a classroom teacher shall be deemed to constitute the employment of such teacher on continuing contract in such capacity and subject to the provisions of this act. Continuing tenure shall not apply to an annual assignment of extra duty for extra pay. (MCL SEC. 38.91)

15.2001. Discharge or demotion of teacher on continuing tenure; re-tirement.

Sec. 1. Discharge or demotion of a teacher on continuing tenure may be made only for reasonable and just cause, and only after such charges, notices, hearing, and determination thereof, as are hereinafter provided. Nothing in this act shall be construed as preventing any controlling board from establishing a reasonable policy for retirement to apply equally to all teachers who are eligible for retirement under Act No. 136 of the Public Acts of 1945 or having established a reasonable retirement age policy, from temporarily continuing on criteria equally applied to all teachers the contract on a year-to-year basis of any teacher whom the controlling board might wish to retain beyond the established retirement age for the benefit of the school system. (MCL Sec. 38.101.)

15.2002. Same; written charges; signatures; professional services; furnishing of statement; hearing.

Sec. 2. All charges against a teacher shall be made in writing, signed by the person making the same, and filed with the secretary, clerk or other designated officer of the controlling board. Charges concerning the character of professional services shall be filed at least 60 days before the close of the school year. The controlling board, if it decides to proceed upon such charges, shall furnish the teacher with a written statement of the charges including a statement of the teacher's rights under this article, and shall, at the option of the teacher, provide for a hearing to take place not less than 30 nor more than 45 days after the filing of such charges. (MCL Sec. 38.102.)

15.2004. Same; hearing, decision, powers of board.

Sec. 4. The hearing shall be conducted in accordance with the following provisions:

a. The hearing shall be public or private at the option of the teacher affected.

b. No action shall be taken resulting in the demotion or dismissal of a teacher except by a majority vote of the members of the controlling board.

c. Both the teacher and the person filing charges may be represented by counsel.

d. Testimony at hearings shall be on oath or affirmation.

e. The controlling board shall employ a stenographer who shall make a full record of the proceedings of such hearing and who shall, within ten days after the conclusion thereof, furnish the controlling board and the teacher affected thereby with a copy of the transcript of such record, which shall be certified to be complete and correct.

f. Any hearing held for the dismissal or demotion of a teacher, as provided in this act, must be concluded by a decision in writing, within fifteen days after the termination of the hearing. A copy of such decision shall be furnished the teacher affected within five days after the decision is rendered.

g. The controlling board shall have the power to subpoena witnesses and documentary evidence, and shall do so on its own motion or at the request of the teacher against whom the charges have been made. If any person shall refuse to appear and testify in answer to any subpoena issued by the controlling board, such controlling board may petition the circuit court of the county setting forth the facts which court shall thereupon issue its subpoena commanding such person to appear before the controlling board there to testify as to the matters being inquired into. Any failure to obey such order of the court may be punished by such court as contempt thereof.

(MCL sec. 38.104.)

Minnesota

Section 125.12

125.12 Employment; contracts, termination

Subdivision 1. Teacher defined. A superintendent, principal, supervisor, and classroom teacher and any other professional employee required to hold a certificate from the state department shall be deemed to be a "teacher" within the meaning of this section.

Subdivision 2. Hiring, dismissing. School boards shall hire or dismiss teachers at duly called meetings. Where a husband and wife, a brother and sister, or two brothers or sisters, constitute a quorum, no contract employing a teacher shall be made or authorized except upon the unanimous vote of the full board. No teacher related by blood or marriage, within the fourth degree, computed by the civil law, to a board member shall be employed except by a unanimous vote of the full board. The employment shall be by written contract, signed by the teacher and by the chairman and clerk. Contracts for teaching or supervision of teaching can be made only with qualified teachers. Such contract shall specify the wages per year and the general assignment of the teacher. No teacher shall be required to reside within the employing school district as a condition to teaching employment or continued teaching employment.

Subdivision 3. Probationary period. The first and second consecutive years of a teacher's first teaching experience in Minnesota in a single school district shall be deemed to be a probationary period of employment, and after completion thereof, the probationary period in each school district in which he is thereafter employed shall be one year. A teacher who has complied with the then applicable probationary requirements in a school district prior to July 1, 1967, shall not be required to serve a new probationary period in the said district subsequent thereto. During the probationary period any annual contract with any teacher may or may not be renewed as the school board shall see fit; provided, however, that the school board shall give any such teacher whose contract it declines to renew for the following school year written notice to that effect before April 1. If the teacher requests reasons for any nonrenewal of a teaching contract, the school board shall give the teacher its reason in writing, including a statement that appropriate supervision was furnished describing the nature and the extent of such supervision furnished the teacher during his employment by the board, within ten days after receiving such request. The school board may, after a hearing held upon due notice, discharge a teacher during the probationary period for cause, effective immediately, under Minnesota Statutes, Section 123.14, Subdivision 4, or Section 123.35, Subdivision 5.

Subdivision 4. Termination of contract after probationary period.

A teacher who has completed his probationary period in any school district, and who has not been discharged or advised of a refusal to renew his contract pursuant to subdivision 3, shall have a continuing contract with such district. Thereafter, the teacher's contract shall remain in full force and effect, except as modified by mutual consent of the board and the teacher, until terminated by a majority roll call vote of the full membership of the board, upon one of the grounds specified in subdivision 6 or subdivision 6a or 6b, or until the teacher is discharged pursuant to subdivision 8, or by the written resignation of the teacher submitted prior to April; provided, however, that if an agreement as to the terms and conditions of employment for the succeeding school year has not been adopted pursuant to the provisions of section 179.61 to 177 prior to March 1, the teacher's right of resignation shall be extended to the 30th calendar day following the adoption of said contract in compliance with section 179.70 subdivision 2. Such written resignation by the teacher shall be effective as of June 30 if submitted prior to that date or, if submitted thereafter, shall be effective August 15. Before a teacher's contract is terminated by the board, the board shall notify the teacher in writing and state its ground for the proposed termination in reasonable detail together with a statement that the teacher may make a written request for a hearing before the board within 14 days after receipt of such notification. Within 14 days after receipt of this notification the teacher may make a written request for a hearing before the board and it shall be granted before final action is taken. If no hearing is requested within such period, it shall be deemed acquiescence by the teacher to the board's action. Such termination shall take effect at the close of the school year in which the contract is terminated in the manner aforesaid. Such contract may be terminated at any time by mutual consent of the board and the teacher and this section shall not affect the powers of a board to suspend, discharge, or demote a teacher under and pursuant to other provisions of law.

Subdivision 6. Grounds for termination.

A continuing contract may be terminated, effective at the close of the school year, upon any of the following grounds:

- (a) Inefficiency;
- (b) Neglect of duty, or persistent violation of school laws, rules, regulations, or directives;
- (c) Conduct unbecoming a teacher which materially impairs his education effectiveness;
- (d) Other good and sufficient grounds rendering the teacher unfit to perform his duties.

A contract shall not be terminated upon one of the grounds specified in clauses (a), (b), (c), or (d), unless the teacher shall have failed to correct the deficiency after being given written notice of the specific items of complaint and reasonable time within which to remedy them.

All evaluations and files generated within a school district relating to each individual teacher shall be available during regular school business hours to each individual teacher upon his written request. The teacher shall have the right to reproduce any of the contents of the files at the teacher's expense and to submit for inclusion in the file written information in response to any material contained therein: provided, however, a school district may destroy such files as provided by law.

Subdivision 8. Immediate discharge.

A school board may discharge a continuing-contract teacher, effective immediately, upon any of the following grounds:

- (a) Immoral conduct, insubordination, or conviction of a felony;
- (b) Conduct unbecoming a teacher which requires the immediate removal of the teacher from his classroom or other duties;
- (c) Failure without justifiable cause to teach without first securing the written release of the school board;
- (d) Gross inefficiency which the teacher has failed to correct after reasonable written notice;
- (e) Willful neglect of duty; or
- (f) Continuing physical or mental disability subsequent to a twelve month's leave of absence and inability to qualify for reinstatement in accordance with subdivision 7.

Prior to discharging a teacher the board shall notify the teacher in writing and state its ground for the proposed discharge in reasonable detail. Within ten days after receipt of this notification the teacher may make a written request for a hearing before the board and it shall be granted before final action is taken. The board may, however, suspend a teacher with pay pending the conclusion of such hearing and determination of the issues raised therein after charges have been filed which constitute ground for discharge.

Subdivision 9. Hearing procedures.

Any hearing held pursuant to Laws 1967, chapter 800 shall be held upon appropriate and timely notice to the teacher, and shall be private or public at the discretion of the teacher. At the hearing, the board and the teacher may each be represented by counsel at its or his own expense, and such counsel may examine and cross-examine witnesses and present arguments. The board shall first present evidence to sustain the grounds for termination or discharge and then receive evidence presented by the teacher. Each party may then present rebuttal evidence. Dismissal of the teacher shall be based upon substantial and competent evidence in the record. All witnesses shall be sworn upon oath administered by the presiding officer of the board. The clerk of the board shall issue subpoenas for witnesses or the production of records pertinent to the grounds upon the request of either the board or the teacher. The board shall employ a court reporter to record the proceedings at the hearing, and either party may obtain a transcript thereof at its own expense.

Subdivision 10. Decision.

After the hearing, the board shall issue a written decision and order. If the board orders termination of a continuing contract or discharge of a teacher, its decision shall include findings of fact based upon competent evidence in the record and shall be served on the teacher, accompanied by an order of termination or discharge, prior to April 1 in the hearing in the case of a discharge. If the decision of the board or of a reviewing court is favorable to the teacher, the proceedings shall be dismissed and the decision entered in the board minutes, and all references to such proceedings shall be excluded from the teacher's record file.

Subdivision 11. Judicial review.

The pendency of judicial proceedings shall not be grounds for postponement of the effective date of the school board's order, but if judicial review eventuates in reinstatement of the teacher, the board shall pay the teacher all compensation withheld as a result of the termination or dismissal order.

Mississippi

Mississippi code 1972 ann., section 37-9-59 etc.

Section 37-9-59. Suspension or removal of superintendent, principal, or teacher; prohibited grounds for denying employment or reemployment.

For incompetence, neglect of duty, immoral conduct, intemperance, brutal treatment of a pupil of other good cause the county superintendent of education or superintendent of the municipal separate school district, as the case may be, may remove or suspend any superintendent, principal or teacher in any school district. Before being so removed or suspended the superintendent, principal or teacher shall be notified of the charges against him and he shall be advised that he is entitled to a public hearing upon said charges at a date to be fixed in such notice. The notice shall be in writing and shall be given at least ten (10) days before the fixed date therein for the hearing. For the purpose of conducting such hearings the county superintendent of education or the superintendent of the municipal separate school district shall have the same power as a justice of the peace to issue subpoenas for witnesses and to compel their attendance and the giving of evidence by them. From the decision made at said hearing the superintendent, principal or teacher and those persons opposed to such principal, superintendent or teacher shall be allowed an appeal to the state board of education and for the purpose of such appeal either oral or written statements, under oath, of the facts may be made by the county superintendent of education or the municipal separate school district superintendent and the other interested parties. Any party aggrieved by the said ruling of the state board of education may effect and appeal therefrom to the chancery court in the same manner as appeals from the state education finance commission. When a superintendent, principal or teacher is removed as provided in this section the county superintendent or the municipal separate school district superintendent or the principal shall notify the board of trustees of the school district involved and a superintendent, principal or teacher shall be elected to fill such vacancy in the manner otherwise provided in this chapter.

The governing authorities of every school district in this state are hereby prohibited from denying employment or reemployment to any person as a superintendent, principal or teacher, as defined in section 37-9-1, or as a noninstructional personnel, as defined in section 37-9-1, for the single reason that any eligible child of such person does not attend the school system in which such superintendent, principal, teacher, or noninstructional personned is employed.

Dismissal of Personnel.

37-9-101. Citation for section 37-9-101 through 37-9-113.

Section 37-9-101 through 37-9-113 shall be known as and cited as the "Public School Fair Dismissal Act."

Section 37-9-103. Definition

As used in section 37-9-101 through 37-9-113 the word "employee" shall include and hold any teacher, principal, superintendent elected by a board of trustees, and other professional personnel employed by any public school district of this state and required to have a valid certificate issued by the state department of education as a pre-requisite of employment.

Section 37-9-105. Persons entitled to notice.

Any employee of a school district who has been employed by such district during the entirety of the preceeding school year, shall be given notice within seven (7) days of the decision that he not be offered a contract for reemployment for the succeeding school term when:

(a) by January 15 the board of trustees of the school district does not reemploy the superintendent;

(b) by February 15 the superintendent of a school district does not recommend the reemployment of a principal or by March 1 the board of trustees of the district does not approve the recommendation for the superintendent for the reemployment of a principal, or

(c) by April 1 the principal does not recommend to the superintendent the reemployment of a teacher, or by May 1 the principal does recommend the reemployment for a teacher and the superintendent does not approve the recommendation for the teacher's reemployment, or by May 1 the principal and superintendent both recommend the reemployment of a teacher and the board of trustees of the district declines the recommendation.

Section 37-9-107. Notice

Except in the case of nonreemployment of the superintendent, notice shall be tendered by the superintendent to any employee within seven days of the date when the recommendation to reemploy would have been made under the terms of sections 37-9-15 and 37-9-17 and amendments thereto.

In the case of the superintendent who is not offered a contract for reemployment by January 15 or other date set by section 37-9-13, Mississippi Code of 197s, the president of the board of trustees shall tender notice to such superintendent within seven (7) days of the date of the board's decision.

The notice shall be mailed by certified mail, return receipt requested.

Section 37-9-109. Rights of employee.

An employee entitled to notice under section 37-9-105 shall be entitled to:

- (a) receive a written statement of the reasons that he shall not be offered a new contract with facts supportive of those reasons upon request;
- (b) request a public hearing before the board within seven (7) days after receipt of the notice;
- (c) receive a fair and impartial hearing before the board within fourteen (14) days from the date of receipt of the notice from the employee requesting a hearing;
- (d) be represented by legal counsel, at his own expense.

If the employee does not request a hearing, the decision of the board with regard to the reemployment of the employee shall be final.

37-9-111. Hearing.

The board shall, upon receipt of a request for a hearing from the employee, set the time, place and date of such hearing, and inform the employee of same by registered mail return receipt requested. The hearing shall be conducted under rules of the board which shall embody due process of law and fairness for both parties. The board shall cause to be made a complete and accurate record of the proceedings of the hearing which shall be transcribed, and a copy shall be made available to the employee upon request, provided that a charge for the copy not in excess of reportees fees under section 9-13-33, Mississippi Code of 1972, may be assessed the employee.

The board shall notify the employee in writing of the decision of the board within seven (7) days after the date of completion of the hearing.

Section 37-9-113. Appeals.

Any employee aggrieved by the board's final decision shall have the right to appeal such decision, within thirty (30) days after receipt of the board's decision, to the appropriate chancery court in the manner provided in section 11-51-79, Mississippi Code of 1972. Such hearing before the chancery of the court shall be de novo. An appeal to the Supreme Court in a manner provided by law may be taken from the decision of the chancery court.

Missouri

Vernon's Ann. Mo. Stat., sections 168.14, etc.

168.112. Modification or termination, how

An indefinite contract between a permanent teacher and a board of education may be terminated or modified at any time by the mutual consent of the parties thereto. Any teacher who desires to terminate his contract at the end of a school term shall give written notice of his intention to do so and the reasons therefor not later than May first of the year in which the term ends.

Added by Laws 1969, p. 275 (168.106)

168.114. Board may terminate, grounds for

1. An indefinite contract with a permanent teacher shall not be terminated by the board of education of a school district except for one or more of the following causes:

(1) Physical or mental condition unfitting him to instruct or associate with children;

(2) Immoral conduct;

(3) Incompetency, inefficiency or insubordination in line of duty;

(4) Willful or persistent violation of, or failure to obey the school laws of the state or the published regulations of the board of education of the school district employing him;

(5) Excessive or unreasonable absence from performance of duties; or

(6) Conviction of a felony or a crime involving moral turpitude.

2. In determining the professional competency of or efficiency of a permanent teacher, consideration should be given to regular and special evaluation reports prepared in accordance with the policy of the employing school district and to any written standards of performance which may have been adopted by the school board.

Added by Laws 1969, p. 275 (168.107)

168.116. Termination by board-notice-charges

1. The indefinite contract of a permanent teacher may not be terminated by the board of education until after service upon the teacher of written charges specifying with particularity the grounds alleged to exist for termination of such contract, notice of a hearing of a hearing on charges and a hearing by the board of education on charges if requested by the teacher.

2. At least thirty days before service of notice of charges of incompetency, inefficiency, or insubordination in line of duty, the teacher shall be given by the school board or the superintendent of schools warning in writing, stating specifically the causes which, if

not removed, may result in charges. Thereafter, both the superintendent, or his designated representative, and the teacher shall meet and confer in an effort to resolve the matter.

3. Notice of a hearing upon charges, together with a copy of charges, shall be served on the permanent teacher at least twenty days prior to the date of the hearing. The notice and copy of the charges may be served upon the teacher by certified mail with personal delivery addressed to him at his last known address. If the teacher or his agent does not within ten days after receipt of the notice request a hearing on the charges, the board of education may, by a majority vote, order the contract of the teacher terminated. If a hearing is requested, by either the teacher or the board of education, it shall take place not less than twenty nor more than thirty days after notice of a hearing has been furnished the permanent teacher.

4. On the filing of charges in accordance with this section, the board of education may suspend the teacher from active performance of duty until a decision is rendered by the board of education but the teacher's salary shall be continued during such suspension. If a decision to terminate a teacher's employment by the board of education is appealed, and the decision is reversed, the teacher shall be paid his salary lost during the pending of the appeal. Added by Laws 1969, p. 275 (168.108).

168.118. Termination hearing, procedure, costs

If a hearing is requested on the termination of an indefinite contract it shall be conducted by the board of education in accordance with the following provisions:

- (1) The hearing shall be public;
- (2) Both the teacher and the person filing charges may be represented by counsel who may cross-examine witnesses;
- (3) Testimony at hearings shall be on oath or affirmation administered by the president of the board of education, who for the purpose of hearings held under sections 168.102 to 168.130 shall have the authority to administer oaths;
- (4) The school board shall have the power to subpoena witnesses and documentary evidence as provided in section 536.077 RSMO and shall do so on its own motion or at the request of the teacher against whom charges have been made. The school board shall hear testimony of all witnesses named by the teacher, however, the school board may limit the number of witnesses to be subpoenaed on behalf of the teacher to not more than ten;
- (5) The board of education shall employ a stenographer who shall make a full record of the proceedings of the hearings and who shall, within ten days after the conclusion thereof, furnish the board of education and the teacher, at no cost to the teacher, with

a copy of the transcript of the record, which shall be certified by the stenographer to be complete and correct. The transcript shall not be open to public inspection, unless the hearing on the termination of the contract was an open hearing or if an appeal from the decision of the board is taken by the teacher;

(6) All costs of the hearing shall be paid by the school board except the cost of counsel for the teacher;

(7) The decision of the board of education resulting in the demotion of a permanent teacher or the termination of an indefinite contract shall be by a majority vote of the members of the board of education, and the decision shall be made within seven days after the transcript is furnished them. A written copy of the decision shall be furnished the teacher within three days thereafter.

Added by Laws 1969, p. 275, 1 (168.109).

168.120. Appeal by teacher, procedure

1. The teacher shall have the right to appeal from the decision of the board of education to the circuit court of the county where the employing school district is located. The appeal shall be taken within fifteen days after service of a copy of the decision of the board of education upon the teacher, and if an appeal is not taken within the time, then the decision of the board of education shall become final.

Montana

Revised Code of Montana, Tit. 75, sec. 6103

"Principal" means any person who holds a valid class 3 Montana teacher certificate with an applicable principal's endorsement that has been issued by the superintendent of public instruction under the provisions of this Title and the policies adopted by the board of education and who has been employed by a district as a principal. For the purposes of this Title, any reference to a teacher shall be construed as including a principal, as herein defined.

75-6103. Teacher tenure. Whenever a teacher has been elected by the offer and acceptance of a contract for the fourth consecutive year of employment by a district in a position requiring teacher certification except as a district superintendent, the teacher shall be deemed to be reelected from year to year thereafter as a tenure teacher at the same salary and in the same or a comparable position of employment as that provided by the last executed contract with such teacher, unless:

(1) the trustees resolve by majority vote of their membership to terminate the services of the teacher in accordance with the provisions of section 75-6104; or

(2) the teacher will attain the age of sixty-five (65) years before the ensuing first day of September and the trustees have notified the teacher in writing by the first day of April that his services will not be needed in the ensuing school fiscal year, except that the trustees may continue to employ such a teacher from year to year until the school fiscal year following his seventieth (70th) birthday.

CHAPTER 61-EMPLOYMENT OF TEACHERS, SUPERINTENDENTS AND PRINCIPALS

Section

- 75-6104. Termination of tenure teacher services.
- 75-6105.1. Notification of nontenure teacher re-election.
- 75-6112. Appointment and dismissal of district superintendent or county high school principal.
- 75-6122. Ratification of agreements.
- 75-6129. Policy to recognize heritage of American Indians.
- 75-6130. Definitions.
- 75-6131. Teachers of Indian children to be qualified in Indian studies-trustees and noncertified personnel.
- 75-6132. Other schools encouraged to comply with requirements on Indian studies.

75-6104. Termination of tenure teacher services. Whenever the trustees of any district resolve to terminate the services of a tenure teacher under the provisions of subsection (1) of section 75-6103, they shall notify such teacher in writing by registered letter or by personal notification for which a signed receipt is returned before the first day of April of such termination. Such notification shall include a printed copy of section 75-6104, R. C. M. 1947, for the teacher's information. Any tenure teacher who receives a notice of termination may request, in writing ten (10) days after the receipt of such notice, a written statement declaring clearly and explicitly the specific reason or reasons for the termination of his services, and the trustees shall supply such statement within ten (10) days after the request. Within ten (10) days after the tenure teacher receives the statement of reasons for termination, he may request in writing a hearing before the trustees to reconsider their termination action. When a hearing is requested, the trustees shall conduct such a hearing and reconsider their termination action within ten (10) days after the receipt of the request for a hearing. If the trustees affirm their decision to terminate the teacher's employment, the tenure teacher may appeal their decision to the county superintendent who may appoint a qualified attorney at law as a legal adviser who shall assist the superintendent in preparing findings of fact and conclusions of law. Subsequently, either the teacher or the trustees may appeal to the superintendent of public instruction under the provision for the appeal of controversies in this Title.

75-6105.1. Notification of nontenure teacher re-election. The trustees shall provide written notice to all nontenure teachers who have been re-elected by the first day of April. Any nontenure teacher who does not receive notice of re-election or termination shall be automatically re-elected for the ensuing school fiscal year. Any nontenured teacher who receives notification of his re-election for the ensuing school fiscal year shall provide the trustees with his written acceptance of the conditions of such re-election within twenty (20) days after the receipt of the notice of re-election. Failure to so notify the trustees within twenty (20) days may be considered nonacceptance of the tenured position. The provisions of this section shall not apply to cases in which a nontenured teacher is terminated when the financial condition of the school district requires a reduction in the number of teachers employed and the reason for the termination is to reduce the number of teachers employed.

Nebraska

Neb. R.R.S. 1943, Ch. 79, sec. 1255

79-1254. Board of education; employment of administrators and teachers; renewal of contracts; termination of contracts; procedure; nepotism prohibited. The original contract of employment with an administrator or a teacher and a board of education of a Class I, II, III, or VI district shall require the sanction of a majority of the members of the board. Any contract of employment between an administrator or a teacher who holds a certificate which is valid for a term of more than one year and a Class I, II, III, or VI district shall be deemed renewed and shall remain in full force and effect until a majority of the members of the board vote on or before May 15 to amend or to terminate the contract at the close of the contract period; Provided, that the secretary of the board shall, not later than April 15, notify each administrator or teacher in writing of any conditions of unsatisfactory performance or other conditions because of a reduction in staff members or change of leave of absence policies of the board of education which the board considers may be cause to either terminate or amend the contract for the ensuing school year. Any teacher or administrator so notified shall have the right to file within five days of receipt of such notice a written request with the board of education for a hearing before the board. Upon receipt of such request the board shall order the hearing to be held within ten days, and shall give written notice of the time and place of the hearing to the teacher or administrator. At the hearing evidence shall be presented in support of the reasons given for considering termination or amendment of the contract, and the teacher or administrator shall be permitted to produce evidence relating thereto. No member of the board of education may cast a vote in favor of the election of any teacher when such member of the board is related by blood or marriage to such teacher.

79-1254.01. Administrators; employment; salary; contract; term. At any regular meeting, a board of education may elect for employment such administrators as the board may deem necessary for the proper conduct of the affairs of the school district at such salaries as the board may deem reasonable. It may contract with such administrators for a term not to exceed three years. No person shall be declared elected unless he receives the vote of a majority of all the members of the board. The contract of employment shall be reduced to writing.

79-1255. Definitions; teacher; school board. As used in sections 79-1255 to 79-1262: (1) The term teacher shall mean and include all full-time certificated educational employees of any fourth or fifth class school districts, except substitute teachers; and shall include full-time school nurses duly licensed by the State of Nebraska; and (2) the term school board shall mean the governing board or body of any fourth or fifth class school district.

79-1256. Teachers; probationary period; continuing contract. All teachers, as defined in section 79-1255, in the public schools in fourth and fifth class school districts shall, upon first employment, be classified as probationary teachers and be deemed to be in a probationary period, during which period any annual contract with any such teacher may or may not be renewed as the employing school board shall see fit. After a probationary teacher has once been elected to a position by the school board, such person shall be deemed to be re-elected under the same contract until a majority of the members of the school board vote, on or before April 1 of any year, to terminate the contract at the close of the contract period or until the contract is superseded by a new contract mutually agreed to by the school board and the teacher. Any such probationary teacher whose contract is automatically renewed according to the aforesaid provision shall file written notice with the secretary of the board within fifteen days thereafter of his acceptance of the renewed contract, and failure to file such notice shall be regarded as conclusive evidence of his non-acceptance of the contract.

79-1257. Teachers; three-year service; permanent teachers. Any person who has served or who shall serve under a contract as a teacher for three successive school years in a fourth or fifth class school district, and who begins a fourth year of service under a contract with such school board shall thereupon become a permanent teacher unless, by a majority vote of the school board, the time be extended one or two years before such teacher becomes a permanent teacher.

79-1258. Teachers; indefinite contract; contents; reduction of salary. The contract issued the teacher in a fourth or fifth class school district at the time he accepts permanent status shall be known as an indefinite contract and remain in force until the teacher reaches the age of sixty-five years, unless it is succeeded by a new contract signed by both parties or is canceled, as hereinafter provided in sections 79-1259 and 79-1260; Provided, that contracts of all permanent teachers shall provide for the annual determination of the date of beginning and length of school terms by the school board; and provided further, that such contracts may contain provisions for the fixing of the amount of annual compensation from year to year by the school board in each individual case or by a salary schedule adopted by the school district which schedule shall be deemed to be a part of such contract, but no teacher's salary may be reduced unless the same percentage reduction be applicable to a majority of the teachers in the system.

79-1259. Teachers; indefinite contract; cancellation; procedure. Any indefinite contract with a permanent teacher in a fourth or fifth class school district may be canceled only by the school board, by a majority vote, evidenced by a signed statement in the minutes of the school board, in the following manner: No contract shall be canceled until the date for consideration of the cancellation of such contract nor until, in case of teachers, supervisors, and principals, the superintendent of

schools shall have given the school board his recommendation thereon, and it shall be the duty of such superintendent to present such recommendations to the school board, within the time fixed by the board. Not less than thirty days nor more than forty days before consideration by the school board of the cancellation of contract, the teacher in question shall be notified in writing of the exact date, time when, and place where such consideration is to take place. If the teacher desires, he must be furnished a written statement of the reasons for such consideration within five days after filing with the board a written request for such a statement. If the teacher requests a hearing before the school board, the request must be granted. Such hearing must be held within twenty days after the request is filed and the teacher shall be given at least ten days' notice of the time and place of the hearing. Such teacher shall have the right to respond to the reasons for the proposed cancellation of his contract and to be accompanied at the hearing by someone qualified to speak for him.

79-1260. Teachers; indefinite contract; cancellation; grounds; time of taking effect. Nothing contained in this section shall prevent the suspension from duty of a permanent teacher in a fourth or fifth class school district, pending a decision on the cancellation of his contract. Cancellation of an indefinite contract may be made for (1) incompetency; (2) physical disability or sickness of any type which interferes with the performance of duty; (3) insubordination, which shall be deemed to mean a willful refusal to obey the school laws of this state, the rulings of the State Board of Education, or reasonable rules and regulations prescribed for the government of the schools of the district by the school board; (4) neglect of duty; (5) immorality; (6) failure to give evidence of professional growth; or (7) justifiable decrease in the number of teaching positions or other good and just cause, but may not be made for political or personal reasons. When the cause of cancellation of an indefinite contract is for immorality or insubordination, the cancellation shall go into effect immediately. For all other causes cancellation shall take effect at the end of the current school term. The decision of a school board to cancel an indefinite contract shall be final.

Nevada

391.312. Grounds for suspension, demotion, dismissal, refusal to reemploy teachers and administrators.

1. A teacher may be suspended, dismissed or not reemployed and an administrator may be demoted, suspended, dismissed or not reemployed for the following reasons:

- (a) Inefficiency;
- (b) Immorality;
- (c) Unprofessional conduct;
- (d) Insubordination;
- (d) Neglect of duty;
- (f) Physical or mental incapacity;
- (g) A justifiable decrease in the number of positions due to decreased enrollment or district re-organization;
- (h) Conviction of a felony or of a crime involving moral turpitude;
- (i) Inadequate performance;
- (j) Evident unfitness for service;

New Hampshire

N. H. Rev. Stat. Ann., Chap. 189:13

189:13 Dismissal of Teacher.

The school board may dismiss any teacher found by them to be immoral or incompetent, or one who shall not conform to regulations prescribed; provided, that no teacher shall be so dismissed before the expiration of the period for which said teacher was engaged without having previously been notified of the cause of such dismissal, nor without having previously been granted a full and fair hearing.

189:14 Liability of District.

The district shall be liable in the action of assumpsit to any teacher dismissed in violation of the provisions of the preceding section, to the extent of the full salary for the period for which such teacher was engaged

189:14-a Failure to be Renominated or Reelected.

Any teacher who has a professional standards certificate from the state board of education and who has taught for one or more years in the same school district shall be notified in writing on or before March 15 if he is not to be renominated or reelected. Any such teacher who has taught for three or more years in the same school district and who has been so notified may request in writing within five days of receipt of said notice a hearing before the school board and may in said request ask for reasons for failure to be renominated or reelected. The school board, upon receipt of said request, shall provide for a hearing on the request to be held within fifteen days. The school board shall issue its decision in writing within fifteen days of the close of the hearing.

189:14-b Review by State Board.

A teacher aggrieved by such decision may request the state board of education for review thereof. Such request must be in writing and filed with the state board within ten days after the issuance of the decision to be reviewed. Upon receipt of such request, the state board shall notify the school board of the request for review, and shall forthwith proceed to a consideration of the matter. Such consideration shall include a hearing if either party shall request it. The state board shall issue its decision within fifteen days after the request for review is filed, and the decision of the state board shall be final and binding upon both parties.

189:15 Regulations.

The school board may, subject to the supervision of the state board, prescribe regulations for the attendance upon, and for the management, classification and discipline of, the schools; and such regulations, when recorded by the district clerk, and when a copy thereof has been given to the teachers and read in the schools, shall be binding upon pupils and teachers.

189:31 Removal of Teacher.

Superintendents shall direct and supervise the work of teachers, and for cause may remove a teacher or other employee of the district. The person so removed shall continue as an employee of the district unless discharged by the local school board but may not return to the classroom or undertake to perform the duties of his position unless reinstated by the superintendent.

189:32 --Appeal.

Any person so removed, unless dismissed by the school board, may appeal to the commissioner of education. The commissioner shall prescribe the manner in which appeals shall be made, and when one is made shall investigate the matter in any way he sees fit, and make such orders as justice requires.

189:39 How Chosen.

Superintendents shall nominate and school boards elect all teachers employed in the schools in their union, providing such teachers hold a valid educational credential issued by the state board of education.

New Jersey

N.J.S.A. 18A:6-10

18A:6-10. Dismissal and reduction in compensation of persons under tenure in public school system

No person shall be dismissed or reduced in compensation,

(a) if he is or shall be under tenure of office, position or employment during good behavior and efficiency in the public school system of the state, or

(b) if he or shall be under tenure of office, position or employment during good behavior and efficiency as a supervisor, teacher or in any other teaching capacity in the Marie H. Katzenbach school for the deaf, or in any other educational institution conducted under the supervision of the commissioner:

except for inefficiency, incapacity, unbecoming conduct, or other just cause, and then only after a hearing held pursuant to this subarticle, by the commissioner, or a person appointed by him to act in his behalf, after a written charge or charges, of the cause or causes of complaint, shall have been preferred against such person, signed by the person or persons making the same, who may or may not be a member or members of a board of education, and filed and proceeded upon as in this subarticle provided.

Nothing in this section shall prevent the reduction of the number of any such persons holding such offices, positions or employments under the conditions and with the effect provided by law.

18A:6-11. Written charges; where made and filed

If written charge is made against any employee of a board of education under tenure during good behavior and efficiency, it shall be filed with the secretary of the board and the board shall determine by majority vote of its full membership whether or not such charge and the evidence in support of such charge would be sufficient, if true in fact, to warrant a dismissal or a reduction in salary, in which event it shall forward such written charge to the commissioner, together with certificate of such determination.

18A:6-12. Notice given to employee of inefficiency

The board shall not forward any charge of inefficiency to the commissioner, unless at least 90 days prior thereto and within the current or preceding school year, the board or the superintendent of schools of the district has given to the employee, against whom such charge is made, written notice of the alleged inefficiency, specifying the nature thereof with such particulars as to furnish the employee an opportunity to correct and overcome the same.

18A:6-13. Dismissal or charge for failure of determination by board

If the board does not make such a determination within 45 days after receipt of the written charge, or within 45 days after the expiration of the time for correction of the inefficiency, if the charge is of inefficiency, the charge shall be deemed to be dismissed and no further proceeding or action shall be taken thereon.

18A:6-14. Suspension upon certification of charge; reinstatement

Upon certification of any charge to the commissioner, the board may suspend the person against whom such charge is made, with or without pay, pending final determination of the same, and if the charge is dismissed, the person shall be reinstated immediately with full pay as of the time of such suspension.

18A:6-15. Service of written charges and certification

The board shall forthwith serve a copy of every written charge which is determined to be sufficient and to be supported by sufficient evidence, if true in fact, to warrant dismissal or a reduction in salary and a copy of its certification of determination upon the employee against whom charge has been made personally or by certified mail directed to his last known address immediately after such determination and the commissioner shall forthwith serve a copy of every written charge made lawfully to him upon the person against whom the charge has been made in the same manner immediately after receipt thereof.

New Mexico

New Mexico Statutes Ann. 1953, Sec. 77-8-9.

77-8-9. Notice of re-employment - Termination. - On or before the last day of each school year, the local school board or the governing authority of the state agency shall serve written notice of re-employment or termination on each certified school instructor employed by the school district or state agency. A notice of re-employment shall be an offer of employment for the ensuing school year. A notice of termination shall be a notice of intention not to re-employ for the ensuing school year. Failure of the local school board or the governing authority of the state agency to serve a written notice of re-employment or termination on a certified school instructor shall be construed to mean that notice of re-employment has been served upon the person according to the terms of the existing employment contract but subject to an additional compensation allowed other certified school instructors of like qualifications and experience employed by the school district or state agency.

77-8-11. Tenure rights. - A certified school instructor employed by a school district or a state agency for three (3) consecutive school years and having entered into an employment contract with the local school board of the school district or the governing authority of the state agency for a fourth consecutive school year acquires tenure rights with that school district or state agency.

77-8-12. Refusal to re-employ - Procedure. - A local school board or the governing authority of a state agency may refuse to re-employ a certified school instructor with tenure rights only according to the following procedure:

A. prior to the last day of the school year, serving a written notice of termination on the person in accordance with the law for service of process in civil actions;

B. stating in the notice of termination the following:

(1) the cause or causes for refusing to re-employ the person; and

(2) a place within the school district or state agency and a date not less than five (5) days nor more than fifteen (15) days from the date of service of the notice of termination for a hearing before the local school board or the governing authority of the state agency;

C. conducting a hearing according to the regulations prescribed by the state board; and

D. finding cause for refusing to re-employ the person pursuant to an employment contract with the person or finding any other good and just cause for refusing to re-employ the person.

77-8-12. Excepted from provisions. - Sections 77-8-9 through 77-8-12 NMSA 1953 do not apply to the following:

A. a person holding a standard certificate;

B. a certified school instructor who is also a certified school administrator and who is required to spend more than one-half (1/2) of his employment time in administrative functions;

C. a certified school instructor employed to fill the position of a certified school instructor entering military service;

D. a person attaining sixty-five (65) years of age prior to the last day of the school year; and

E. a person not qualified to teach.

77-8-14. Discharge - Procedure. - A local school board may discharge certified school personnel and the governing authority of a state agency may discharge certified school instructors during the term of written employment contracts only according to the following procedure:

A. serving a written notice of discharge on the person in accordance with the law for service of process in civil actions;

B. stating in the notice of discharge the following:

(1) the cause or causes for discharging the person; and

(2) a place within the school district or state agency and a date not less than five (5) days nor more than fifteen (15) days from the date of service of the notice of discharge for a hearing before the local school board or the governing authority of the state agency;

C. conducting a hearing according to the regulations prescribed by the state board; and

D. finding cause for discharging the person pursuant to the employment contract with the person or finding any other good and just cause for discharging the person.

77-8-16. Hearings before local school boards and governing authorities of state agencies - Regulations. - The state board shall promulgate regulations for the conduct of informal hearings by local school boards and governing authorities of state agencies for certified school instructors with tenure rights refused re-employment. These regulations shall also apply to hearings by local school boards for certified school personnel to be discharged during the term of written employment contracts and by governing authorities of state agencies for certified school instructors to be discharged during the term of written employment contracts. These regulations shall provide:

A. for an opportunity for all parties involved to appear and present testimony and information on all pertinent issues;

B. that the person refused re-employment or to be discharged may be represented by counsel;

C. that the technical rules of evidence and the rules of civil procedure shall not apply to the hearings. Such hearings shall be conducted in an informal manner, but the contentions or the defenses of each party to the hearing shall be amply and fairly presented without substantial prejudice;

D. after the completion of the informal hearing, the local school board or the governing authority of the state agency, shall render its decision in writing and such decision shall include a brief statement of the reasons for the discharge or refusal to re-employ; and

E. that within ten (10) days from the date of the hearing, the local school board or the governing authority of the state agency shall

serve a written copy of its decision upon the person refused re-employment or to be discharged. Service of the written copy of the decision upon the person shall be in accordance with the law for service of process in civil actions or by certified mail to the person's address of record with the school district or state agency. The action of the local school board or the governing authority of the state agency in refusing to re-employ or in discharging a person during the term of a written employment contract shall be effective on the date the written copy of the decision is served upon the person refused re-employment or discharged. For purposes of this section, mailing of the written copy of the decision by certified mail, return receipt requested, shall constitute service after ten (10) days from the date of the mailing.

77-8-17. Appeals to the state board. - A certified school instructor or administrator aggrieved by a decision of a local school board or a certified school instructor aggrieved by a decision of the governing authority of a state agency after an informal hearing conducted pursuant to section 77-8-16 NMSA 1953 may appeal to the state board. A written notice of appeal and request for hearing shall be filed with the state board within thirty (30) days from the date a written copy of the decision of the local school board or the governing authority of the state agency is served upon the person making the appeal.

New York

McKinney's Consolidated Laws of New York, Education Law sec. 3012, etc.

3012. Tenure: certain union free school districts

1. (a) Teachers and all other members of the teaching staff shall be appointed by the board of education of a union free school district having a population of more than forty-five hundred inhabitants and employing a superintendent of schools, upon the recommendation of such superintendent of schools, for a probationary period of three years provided, however, that in the case of a teacher who has been appointed on tenure in another school district within the state, and who was not dismissed from such district as a result of charges brought pursuant to subdivision one of section three thousand twenty-a of this chapter, the probationary period shall not exceed two years. The service of a person appointed to any of such positions may be discontinued at any time during such probationary period, on the recommendation of the superintendent of schools, by a majority vote of the board of education.

(b) Principals, administrators, supervisors and all other members of the supervising staff shall be appointed by the board of education of a union free school district having a population of more than forty-five hundred inhabitants and employing a superintendent of schools, upon the recommendation of such superintendent of schools for a probationary period of three years. The service of a person appointed to any of such positions may be discontinued at any time during the probationary period on the recommendation of the superintendent of schools, by a majority vote of the board of education.

2. At the expiration of the probationary term of a person appointed for such term, subject to the conditions of this section, the superintendent of schools shall make a written report to the board of education recommending for appointment on tenure those persons who have been found competent, efficient and satisfactory. Such persons, and all others employed in the teaching service of the schools of such union free school district, who have served the probationary period as provided in this section, shall hold their respective positions during good behavior and efficient and competent service, and shall not be removed except for any of the following causes, after a hearing, as provided by section three thousand twenty-a of such law: (a) insubordination, immoral character or conduct unbecoming a teacher; (b) inefficiency, incompetency, physical or mental disability, or neglect of duty; (c) failure to maintain certification as required by this chapter and by the regulations of the commissioner of education. Each person who is not to be recommended for appointment on tenure, shall be so notified by the superintendent of schools in writing not later than sixty days immediately preceding the expiration of his probationary period.

3013. Tenure: certain other school districts

1. (a) Teachers and all other members of the teaching staff, of school districts employing eight or more teachers other than city school districts and school districts having a population of four thousand five hundred or more and employing a superintendent of schools, shall be appointed by a majority vote of the board of education or trustee upon recommendation of the principal of the district in which they are to be employed for a probationary period of three years; provided, however, that in the case of a teacher who has been appointed on tenure in another school district within the state, and who was not dismissed from such district as a result of charges brought pursuant to subdivision one of section three thousand twenty-a of this chapter, the probationary period shall not exceed two years. Services of a person so appointed to any such positions may be discontinued at any time during such probationary period, upon the recommendation of the principal of the district, by a majority vote of the board of education or trustees.

(b) Principals, except principals of the district, supervisors, and all other members of the supervising staff, of school districts employing eight or more teachers, other than city school districts and school districts having a population of four thousand five hundred or more and employing a superintendent of schools, shall be appointed by a majority vote of the board of education or trustees upon the recommendation of the principal of the district in which they are to be employed. Any principal of the district, however, shall be appointed by such school authorities upon the recommendation of the district superintendent of schools. Services of a person so appointed to any such position may be discontinued at any time upon the recommendation of the district superintendent, by a majority vote of the board of education of trustees, except that the board of education may in its discretion, enter into an employment contract with any principal, supervisor, or member of the supervising staff for a period of from one to five years. On or after July first, nineteen hundred seventy-five, the board of education shall enter into written contracts of employment with such employees for a term of one to three years for the first three years of employment in such a position. Services rendered in such a position since July first, nineteen hundred seventy-two shall be counted toward such first three years of employment. Subsequent contracts shall be for not less than three nor more than five years. No such contract with the principal of the district shall be entered into unless authorized by a majority vote of the board of education upon the recommendation of the district superintendent of schools. No such contract shall be entered into with principals, other than the principal of the district, supervisors and other members of the supervising staff unless authorized by a majority of the board of education upon the recommendation of the principal of the district. Such contract may include duties, compensation, and other terms and conditions of employment and may specify the grounds on which such contract may be terminated and the procedures to be followed in the event of termination prior to the expiration date.

2. On or before the expiration of the probationary term of a person appointed for such term the principal of the district shall make a written report to the board of education or trustees recommending for appointment on tenure those persons who have been found competent, efficient and satisfactory. By a majority vote the board of education or trustees may then appoint on tenure any or all of the persons recommended by the principal of the district. Such persons shall hold their respective positions during good behavior and competent and efficient service and shall not be removed except for any of the following causes, after a hearing, as provided by section three thousand twenty-a of such laws: (a) Insubordination, immoral character or conduct unbecoming a teacher; (b) Inefficiency, incompetency, physical or mental disability or neglect of duty; (c) Failure to maintain certification as required by this chapter and by the regulations of the commissioner of education. Each person who is not to be so recommended for appointment on tenure shall be so notified in writing by the principal of the district, not later than sixty days immediately preceding the expiration of his probationary period.

3020-a. Hearing procedures and penalties

2. Disposition of charges. Upon receipt of the charges, the clerk of the school district or employing board shall immediately notify said board thereof. Within five days after receipt of charges, the employing board, in executive session, shall determine, by a vote of a majority of all the members of such board, whether probable cause exists. If such determination is affirmative, a written statement specifying the charges in detail, and outlining his rights under this section, shall be immediately forwarded to the accused employee by certified mail. The employee may be suspended pending a hearing on the charges and the final determination thereof. Within five days of receipt of the statement of charges, the employee shall notify the clerk of the employing board whether he desires a hearing on the charges. Unless the employee has waived his right to a hearing within the allotted time, the clerk of the board shall, not later than the end of said five-day period, notify the commissioner of education of the need for a hearing. If the employee waives his right to a hearing the employing board shall proceed, within five days, by a vote of a majority of all the members of such board, to determine the case and fix the penalty or punishment, if any, to be imposed in accordance with subdivision four of this section.

3. Hearings

a. Notice of hearing. Upon receipt of a request for a hearing in accordance with subdivision two of this section, the commissioner of education shall schedule a hearing, to be held in the local school district, or county seat, within fifteen days of his receipt of the request therefor,

and immediately notify the employee and the employing board of the time and place thereof and the procedures to be followed in selecting a hearing panel.

b. Hearing panel members. For the purposes of this section the commissioner of education shall maintain a list of hearing panel members, composed of professional personnel without administrative or supervisory responsibility, professional personnel with administrative or supervisory responsibility, chief school administrators, members of employing boards and others, selected from lists of nominees submitted by statewide organizations representing teachers, school administrators and supervisors and the employing boards. Hearing panel members shall be compensated at the rate of fifty dollars for each day of actual service plus necessary travel and subsistence expenses incurred in carrying out the duties of a panel member.

c. Hearing procedures. The commissioner of education shall have the power to establish necessary rules and procedures for the conduct of hearings under this section. Such rules shall not require compliance with technical rules of evidence. All such hearings shall be held before a hearing panel composed of three members not resident, nor employed, in the territory under the jurisdiction of the employing board, selected in the following manner from the list maintained by the commissioner of education for such purpose: one member shall be selected by the employee, one member shall be selected by the employing board and the third member shall be chosen by mutual agreement of the first two, or, if they fail to agree, by the commissioner of education.

Each such hearing shall be conducted by a hearing officer designated by the commissioner of education and shall be public or private at the discretion of the employee. The employee shall have a reasonable opportunity to defend himself and an opportunity to testify in his own behalf. Each party shall have the right to be represented by counsel, to subpoena witnesses, and to cross-examine witnesses. All testimony taken shall be under oath which the hearing officer in charge is hereby authorized to administer. A competent stenographer, designated by the commissioner of education, shall keep and transcribe a record of the proceedings at each such hearing. A copy of the transcript of the hearing shall, upon request, be furnished without charge to the employee involved.

4. Post hearing procedures. Within five days of the conclusion of a hearing held under this section, the commissioner of education shall forward a report of the hearing, including the findings and recommendations of the hearing panel and their recommendations as to penalty if one is warranted, to the employee and to the clerk of the employing board. Within five days of receipt of such hearing report the employing board shall determine the case by a vote of a majority of all the members of such board

and fix the penalty or punishment, if any, which shall consist of a reprimand, a fine, suspension for a fixed time without pay or dismissal. If the employee is acquitted he shall be restored to his position with full pay for any period of suspension and the charges expunged from his record.

5. Appeal. Any employee feeling himself aggrieved may review the determination of the employing board either by appeal to the commissioner of education as provided for by article seventy-eight of the civil practice law and rules. If the employee elects to institute such proceeding, the determination of the employing board shall be deemed to be final for the purpose of such proceeding.

North Carolina

Article 17. Sec. 115-142.

115.142. System of employment for public school teachers. -
Definition of Terms.

"Probationary teacher" means a certificated person, other than a superintendent, associate superintendent, or assistant superintendent, who has not obtained career-teacher status and whose major responsibility is to teach or to supervise teaching.

"Superintendent" means the superintendent of schools of a public school system or, in his absence, the person designated to fulfill his functions.

"Supervisor" means a person paid on the supervisor's salary schedule who supervises the instructional program in one or more schools and is under the immediate supervision of the superintendent or his designee.

"Teacher" means a person who holds at least a current, not expired, Class A certificate or a regular, not provisional or expired, vocational certificate issued by the State Department of Public Instruction; whose major responsibility is to teach or directly supervise teaching or who is classified by the State Board of Education or is paid as a classroom teacher; and who is employed to fill a full-time, permanent position.

Career Teachers.

- (1) A career teacher shall not be subjected to the requirements of annual appointment nor shall he or she be dismissed, demoted, or employed on a part-time basis without his or her consent except as provided in sub-section (e).
- (2) A career teacher who has performed the duties of principal or supervisor in a particular position in the school system for three consecutive years shall not be transferred from that position to a lower-paying administrative position or to a lower-paying non-administrative position without his consent except for the reasons given in G.S. 115-142(e) and in accordance with the procedure for the dismissal of a career teacher set out in this section.

Grounds for Dismissal or Demotion of A Career Teacher. -

- (1) No career teacher shall be dismissed or demoted or employed on a part-time basis except for:
 - a. Inadequate performance;
 - b. Immorality;
 - c. Insubordination;
 - d. Neglect of duty;
 - e. Physical or mental incapacity;
 - f. Habitual or excessive use of alcohol or non-medical use of a controlled substance as defined in Article 5 of Chapter 90 of the General Statutes.
 - g. Conviction of a felony or a crime involving moral turpitude;
 - h. Advocating the overthrow of the government of the United States or of the State of North Carolina by force, violence, or other unlawful means;
 - i. Failure to fulfill the duties and responsibilities imposed upon teachers by the General Statutes of this State;
 - j. Failure to comply with such reasonable requirements as the board may prescribe;
 - k. Any cause which constitutes grounds for the revocation of such career teacher's teaching certificate; or
 - l. A justifiable decrease in the number of positions due to district reorganization or decreased enrollment, provided that subdivision (2) is complied with,
 - m. Failure to maintain one's certificate in a current status.

- (2) When a career teacher is dismissed pursuant to G.S. 115-142(4)(1) above, his or her name shall be placed on a list of available teachers to be maintained by the board. Career teachers whose names are placed on such a list shall have a priority on all positions for which they are qualified which become available in that system for the three consecutive years succeeding their dismissal. However, if the school system offers the dismissed teacher a position for which he is certified and he refuses it, his name shall be removed from the priority list.

- (3) In determining whether the professional performance of a career teacher is adequate, consideration shall be given to regular and special evaluation reports prepared in accordance with the published policy of the employing school system and to any published standards of performance which shall have been adopted by the board. Failure to notify a career teacher of an inadequacy in his or her performance shall be conclusive evidence of satisfactory performance.

- (4) Dismissal under subdivision (1) above, except paragraph g thereof, shall not be based on conduct or actions which occurred more than three years before the written notice of the superintendent's intention to recommend dismissal is mailed to the teacher.

Procedure for Dismissal or Demotion of Career Teacher. --

A career teacher may not be dismissed, demoted, or reduced to part-time employment except upon the superintendent's recommendation.

Hearing Procedure.

The following provisions shall be applicable to any hearing conducted pursuant to G.S. 115-142(k) or (1)

- (1) The hearing shall be private.
- (2) The hearing shall be conducted in accordance with such reasonable rules and regulations as the board may adopt consistent with G.S. 115-142, or if no rules have been adopted, in accordance with reasonable rules and regulations adopted by the State Board of Education to govern such hearings.
- (3) At the hearing the teacher and superintendent shall have the right to be present and to be heard, to be represented by counsel and to present through witnesses any competent testimony relevant to the issue of whether grounds for dismissal or demotion exist or whether the procedures set forth in G.S. 115-142 have been followed.

The procedure at the hearing shall be such as to permit and secure a full, fair and orderly hearing and to permit all relevant competent evidence to be received therein. The report of the panel of the committee shall be deemed to be competent evidence. A full record shall be kept of all evidence taken or offered at such hearing. Both counsel for the system and the career teacher or his counsel shall have the right to cross-examine witnesses.

At the request of either the superintendent or the teacher, the board shall issue subpoenas requiring the production of papers or records or the attendance of persons residing within the State before the board. Subpoenas for witnesses to testify at the hearing in support of the recommendation of the superintendent or on behalf of the career teacher shall, as requested, be issued in blank by the board over the signature of its chairman or secretary. The board shall pay witness fees for up to five witnesses subpoenaed

on behalf of the teacher, except that it shall not pay for any witness who resides within the county in which the dismissal originates or who is an employee of the board. However, no employee of the board shall suffer any loss of compensation because he has been subpoenaed to testify at the hearing. These payments shall be as provided for witnesses in G.S. 7A-314.

At the conclusion of the hearing provided in this section, the board shall render its decision on the evidence submitted at such hearing and not otherwise.

Within five days following the hearing, the board shall send a written copy of its findings and order to the teacher and superintendent. The board shall provide for making a transcript of its hearing. If the teacher contemplates an appeal to a court of law, he may request and shall receive at no charge a transcript of the proceedings.

Probationary Teacher.

The board of any public school system may not discharge a probationary teacher during the school year except for the reasons for and by the procedures by which a career teacher may be dismissed as set forth in subsections (e) and (h) and (l) above.

The board, upon recommendation of the superintendent, may refuse to renew the contract of any probationary teacher or to reemploy any teacher who is not under contract for any cause it deems sufficient; provided, however, that the cause may not be arbitrary, capricious, discriminatory or for personal or political reasons.

Appeal.

Any teacher who has been terminated by action of the board after a hearing pursuant to subsections (k) or (l) shall have the right to appeal from the decision of the board to the superior court for the judicial district in which the teacher is employed. The appeal shall be filed within a period of thirty days after notification of the decision of the board. The cost of preparing the transcript shall be borne by the board.

North Dakota

Cited in case: N.D.C.C. 15-47-38

15-47-38. Legislative intent in employment of teachers-
Notification of discharge or failure to renew- Hearing.-

2. The school board of any school district contemplating discharging a teacher for cause prior to the expiration of the term of the teacher's contract shall notify such teacher in writing of such fact at least ten days prior to the date of contemplated discharge. Such teacher shall be informed in writing of the time and place for a special meeting of the school board to be held for such purpose prior to the final decision on the matter. Such teacher shall be informed in writing of his right to demand a specification of the reasons for such discharge, which must on demand of the teacher be furnished not less than five days prior to said meeting to be held on the question of contemplated discharge. Such reasons shall be sufficient to justify the contemplated action of the board and shall not be frivolous or arbitrary. At the meeting with the board, if the teacher has informed the board in writing at least two days prior thereto that he will contest the charges brought against him, the board must sustain the charges with evidence produced at such hearing with witnesses who shall be subject to cross-examination by the teacher or his representative. The teacher may then produce such witnesses as may be necessary to refute the charges, which witnesses shall be subject to cross-examination. The proceedings may, at the request of either party, be transcribed by a court reporter at the expense of the person requesting such transcript and the witnesses may on demand of either party be placed under oath by a person authorized by law to administer oaths. Any person testifying falsely under oath shall be guilty of perjury and punished according to law. The meeting shall be an executive session of the board unless both the school board and the teacher requesting such meeting shall agree that it shall be open to other persons or the public. The teacher may be represented at the meeting by two representatives of his own choosing. In addition to board members, the school district clerk, and the superintendent, the school board may be represented by two other representatives of its own choosing at such executive session. If the teacher so requests he shall be granted a continuance of not to exceed seven days by the board unless for good cause otherwise shown. No cause of action for libel or slander shall lie for any statement expressed either orally or in writing at any executive session of the school board held for the purposes provided for in this section.

3. A school board may dismiss a teacher, effective immediately, for any of the following causes:
 - a. Immoral conduct, insubordination, or conviction of a felony;
 - b. Conduct unbecoming a teacher which requires the immediate removal of a teacher from his classroom duties;
 - c. Failure without justifiable cause to perform contracted duties;
 - d. Gross inefficiency which the teacher has failed to correct after reasonable written notice; or
 - e. Continuing physical or mental disability which renders him unfit or unable to perform his duties as a teacher.
4. The school board by unanimous vote may suspend the teacher from regular duty if such action is deemed desirable during the process of determining if cause for dismissal exists. If, upon final decision, the teacher is dismissed, the board may in its discretion determine the teacher's salary or compensation as of the date of suspension. If the final decision is favorable to the teacher, there shall be no abatement of salary or compensation.
5. The school board of any school district contemplating not renewing a teacher's contract, as provided in section 15-47-27, shall notify such teacher in writing of such contemplated non-renewal no later than April first. Such teacher shall be informed in writing of the time, which shall not be later than April seventh, and place of a special school board meeting for the purpose of discussing and acting upon such contemplated non-renewal. Such teacher shall also be informed in writing of the reasons for such nonrenewal. Such reasons shall be sufficient to justify the contemplated action of the board and shall not be frivolous or arbitrary but shall be related to the ability, competence, or qualifications of the teacher as a teacher, or the necessities of the district such as lack of funds calling for a reduction in the teaching staff. At the meeting with the board the teacher may then produce such evidence as may be necessary to evaluate the reasons for nonrenewal, and either party may produce witnesses to confirm or refute the reasons. The school board shall give an explanation and shall discuss and confirm at such meeting its reasons for the contemplated nonrenewal of the contract. The meeting shall be an executive session of the board unless both the school board and the teacher shall agree that it shall be open to other persons or the public. The teacher may be represented at such meeting by any two representatives of his own choosing. In addition to board members, the school district clerk, and the superintendent,

the school board may be represented by two other representatives of its own choosing at such executive session. Upon such hearing, if the teacher so requests, he shall be granted a continuance of not to exceed seven days. No cause of action for libel or slander shall lie for any statement expressed either orally or in writing at any executive session of the school board held for the purposes provided for in this section. The determination not to renew a contract if made in good faith shall be final and binding on all parties. Final notice of the determination not to renew a contract shall be given in writing by April fifteenth as provided in section 15-47-27.

Ohio

Ohio Rev. Code Ann., sec. 3319.11

(C) "Continuing service status" for a teacher means employment under a continuing contract.

3319.11 Continuing service status and contract; limited contract; failure of board or superintendent to act.

Teachers eligible for continuing service status in any school district shall be those teachers qualified as to certification, who within the last five years have taught for at least three years in the district, and those teachers who, having attained continuing contract status elsewhere, have served two years in the district, but the board of education, upon the recommendation of the superintendent of schools, may at the time of employment or at any time within such two-year period, declare any of the latter teachers eligible.

Upon the recommendation of the superintendent that a teacher eligible for continuing service status be re-employed, a continuing contract shall be entered into between the board and such teacher unless the board by a three-fourths vote of its full membership rejects the recommendation of the superintendent. The superintendent may recommend re-employment of such teacher, if continuing service status has not previously been attained elsewhere, under a limited contract for not to exceed two years, provided that written notice of the intention to make such recommendation has been given to the teacher with reasons directed at the professional improvement of the teacher on or before the thirtieth day of April, and provided that written notice from the board of education of its action on the superintendent's recommendation has been given to the teacher on or before the thirtieth day of April, but upon subsequent re-employment only a continuing contract may be entered into. If the board of education does not give such teacher written notice of its action on the superintendent's recommendation of a limited contract for not to exceed two years before the thirtieth day of April, such teacher is deemed re-employed under a continuing contract at the same salary plus an increment provided by the salary schedule. Such teacher is presumed to have accepted employment under such continuing contract unless he notifies the board in writing to the contrary on or before the first day of June, and a continuing contract shall be executed accordingly.

A teacher eligible for continuing contract status employed under an additional limited contract for not to exceed two years pursuant to written notice from the superintendent of his intention to make such recommendation, is, at the expiration of such limited contract, deemed re-employed under a continuing contract at the same salary plus any increment granted by the salary schedule, unless the employing board, acting on the superintendent's recommendation as to whether or not the teacher should be re-employed, gives such teacher written notice of its intention not to re-employ him on or before the thirtieth day of April. Such teacher is presumed to have accepted employment under such continuing contract unless he notifies the

board in writing to the contrary on or before the first day of June, and a continuing contract shall be executed accordingly.

A limited contract may be entered into by each board with each teacher who has not been in the employ of the board for at least three years and shall be entered into, regardless of length of previous employment, with each teacher employed by the board who holds a provisional or temporary certificate.

Any teacher employed under a limited contract, and not eligible to be considered for a continuing contract, is, at the expiration of such limited contract, deemed re-employed under the provisions of this section at the same salary plus any increment provided by the salary schedule unless the employing board, acting on the superintendent's recommendation as to whether or not the teacher should be re-employed, gives such teacher written notice of its intention not to re-employ him on or before the thirtieth day of April. Such teacher is presumed to have accepted such employment unless he notifies the board in writing to the contrary on or before the first day of June, and a written contract for the succeeding school year shall be executed accordingly. The failure of the parties to execute a written contract shall not void the automatic re-employment of such teacher.

The failure of a superintendent of schools to make a recommendation to the board of education under any of the conditions set forth in this section, or the failure of the board of education to give such teacher a written notice pursuant to this section shall not prejudice or prevent a teacher from being deemed re-employed under either a limited or continuing contract as the case may be under the provisions of this section.

3319.16 Termination of contract by board of education.

The contract of a teacher may not be terminated except for gross inefficiency or immorality for willful and persistent violations of reasonable regulations of the board of education; or by other good and just cause. Before terminating any contract, the employing board shall furnish the teacher a written notice signed by its clerk of its intention to consider the termination of his contract with full specification of the grounds for such consideration. Such board shall not proceed with formal action to terminate the contract until after the tenth day after receipt of such notice by the teacher. Within ten days after receipt of such notice from the clerk of the board, the teacher may file with the clerk a written demand for a hearing before the board or before a referee, and the board shall set a time for the hearing which shall be within thirty days from the date of receipt of the written demand, and the clerk shall give the teacher at least twenty days' notice in writing of the time and place of such hearing. If a referee is demanded by either the teacher or board, the clerk shall also give twenty days' notice to the superintendent of public instruction. No hearing shall be held during the summer vacation without the teacher's consent. Such hearing shall be private unless the teacher requests a public hearing. The hearing shall be conducted by a referee appointed pursuant to section 3319.161 (3319.16.1) of the Revised Code, if demanded; otherwise, it shall be conducted by a majority of the

members of the board and shall be confined to the grounds given for such termination. The board shall provide for a complete stenographic record of the proceedings, a copy of such record to be furnished to the teacher. The board may suspend a teacher pending final action to terminate his contract if, in its judgment, the character of the charges warrants such action.

Both parties may be present at such hearing, be represented by counsel, require witnesses to be under oath, cross-examine witnesses, take a record of the proceedings, and require the presence of witnesses in their behalf upon subpoena to be issued by the clerk of the board. In case of the failure of any person to comply with a subpoena, a common pleas judge of the county in which the person resides, upon application of any interested party, shall compel attendance of the person by attachment proceedings as for contempt. Any member of the board or the referee may administer oaths to witnesses. After a hearing by a referee, the referee shall file his report within ten days after the termination of the hearing. After consideration of the referee's report, the board by a majority vote may accept or reject the referee's recommendation on the termination of the teacher's contract. After a hearing by the board, the board by majority vote may enter its determination upon its minutes. Any order of termination of a contract shall state the grounds for termination. If the decision, after hearing, is against termination of the contract, the charges and the record of the hearing shall be physically expunged from the minutes, and if the teacher has suffered any loss of salary by reason of being suspended, he will be paid his full salary for the period of such suspension.

Any teacher affected by an order of termination of contract may appeal to the court of common pleas of the county in which the school is located within thirty days after receipt of notice of the entry of such order. Such appeal shall be an original action in said court and shall be commenced by the filing of a petition against such board, in which petition the facts shall be alleged upon which the teacher relies for a reversal or modification or such order of termination of contract. Upon service or waiver of summons in said appeal, such board shall immediately transmit to the clerk of said court for filing a transcript of the original papers filed with the board, a certified copy of the minutes of the board into which the termination finding was entered, and a certified transcript of all evidence adduced at the hearing or hearings before such board or a certified transcript of all evidence adduced at the hearing or hearings before the referee, whereupon the cause shall be at issue without further pleading and shall be advanced and heard without delay. The court shall examine the transcript and record of the hearing and shall hold such additional hearings as it deems advisable, at which it may consider other evidence in addition to such transcript and record.

Upon final hearing, the court shall grant or deny the relief prayed for in the petition as may be proper in accordance with the evidence adduced in the hearing. Such an action is a special proceeding within the purview

of section 2505.02 of the Revised Code and either the teacher or the board may appeal therefrom.

In any court action the board may utilize the services of the prosecuting attorney or city solicitor as authorized by section 3313.35 of the Revised Code, or may employ other legal counsel.

Oklahoma

70 Oklahoma St. Ann, sec. 6-103, etc.

6-103. Dismissal of teacher - Grounds - Notice - Hearing

Upon hearing, as hereinafter provided, any teacher may be dismissed at any time for immorality, willful neglect of duty, cruelty, incompetency, teaching disloyalty to the American Constitutional system of government, or any reason involving moral turpitude. Before any teacher may be dismissed, written notice of the proposed dismissal shall be given him by the board of education in independent school districts, or by the county superintendent of schools in dependent school districts. Said notice shall contain a statement of the charges upon which a hearing is sought and by whom brought. The teacher complained of shall be notified of the date of the hearing, which shall be not less than ten (10) days from the date of said notice. The teacher shall be entitled to be present and to be represented by counsel. In the case of a teacher in a dependent school district, the hearing shall be before the county superintendent of schools and the board of education of the district in which the teacher is employed. In independent school districts it shall be before the board of education of such school district. In all cases a majority vote of those constituting the board, before which said hearing is held, shall be required in order to sustain the charges against the teacher charged and in dependent school districts the county superintendent of schools must concur.

The teacher shall be afforded an opportunity to appear before the board and confront his accusers, and shall have the right to cross-examine all witnesses and offer any evidence to support a reconsideration of the action theretofore made by the board. The burden of proof at this hearing shall be upon the administration of the school system to prove the statutory cause asserted by the administration.

In the case of dismissal of a teacher who has completed three (3) annual contracts in the school district before final decision of the matter, the teacher shall be allowed to appeal the action of the local board to the Professional Practices Commission. Such appeal shall be filed with the Professional Practices Commission within twenty (20) days after the hearing of the district school board and, in dependent school districts, the county superintendent of schools. Any appeal filed more than twenty (20) days after the hearing of the local board of education shall not be heard by the Professional Practices Commission, and the decision of the local board of education shall be final. The Commission shall allow all parties a full hearing and after reviewing the facts shall report its ruling to the State Board of Education and to all parties. The burden of proof at this hearing shall be upon the administration of the school system to prove the statutory cause asserted by the administration. Absent a request for appeal by either party within thirty (30) days from the ruling of the Professional Practices Commission to the State Board of Education, the ruling shall become binding and final. If a request for appeal of the ruling of the Professional Practices Commission is made, the State Board of Education

shall within fifteen (15) days fix a date, hour and place for full hearing of the matter, said hearing to take place within ten (10) days. The State Board of Education shall give notification of the time and place of the hearing to all interested parties. At this hearing both the teacher and the local board of education shall present the necessary evidence either by presenting the record or tape of the hearing before the Professional Practices Commission or by presenting evidence de novo. The burden of proof at this hearing shall be upon the administration of the school system to prove the statutory cause asserted by the administration. The hearing may be held in executive session only if agreed on by all parties concerned.

After hearing all evidence, and all witnesses, the State Board of Education shall issue its decision either confirming or reversing the action of the Professional Practices Commission, but in either case the decision shall constitute a final administrative determination of the matter.

The State Board may find that the dismissal of the teacher:

1. Was in accordance with statutory notice and by preponderance of the evidence determine that sufficient statutory cause was proven and, therefore, the dismissal was proper; or

2. Was without statutory notice and/or sufficient statutory cause was not proven and, therefore, the dismissal was not proper.

A final decision that a teacher was dismissed without sufficient cause or without procedural due process shall automatically reinstate the teacher for the contract year involved.

6-122. Contracts - Teachers with three (3) years' service -
Failure to renew - Hearing - Appeal

The failure by the board of education to renew the contract of any teacher who has completed three (3) years shall not be effective, and the contract shall be renewed unless the board causes to be served on the teacher a written statement of the causes for such action, which must include one of the following: immorality, willful neglect of duty, cruelty, incompetency, teaching disloyalty to the American Constitutional system of government, or any reason involving moral turpitude. The teacher shall be afforded an opportunity to appear before the board and confront his accusers, having the right to cross-examine all witnesses and offer any evidence to refute the statements and a reconsideration of the action theretofore made by the board. The burden of proof at this hearing shall be upon the administration of the school system to prove the statutory cause asserted by the administration.

Notice of nonrenewal and the statement of causes shall be mailed to the teacher prior to the 10th day of April. The initial hearing, if one has been requested by the teacher, shall be set within twenty (20) days after receipt of notice by said teacher for a hearing before the board of education. If requested by said teacher the hearing before the board of education shall be finalized within thirty days of the 10th day of April.

Before final decision of the matter, the teacher shall be allowed to appeal the action of the local board to the Professional Practices Commission. Such appeal shall be filed with the Professional Practices

Commission not later than June 30 following the hearing before the local board. Any appeal filed later than June 30 shall not be heard by the Professional Practice Commission and the decision of the local board of education shall be final. The Commission shall allow all parties a full hearing and after reviewing the facts shall report its ruling to the State Board of Education and to all parties. The burden of proof at this hearing shall be upon the administration of the school system to prove the statutory cause asserted by the administration. Absent a request for appeal by either party within thirty (30) days from the ruling of the Professional Practices Commission to the State Board of Education, the administrative ruling of the Professional Practices Commission shall become binding and final. Upon the receipt of the decision of the Professional Practices Commission, the State Board of Education, if requested within fifteen (15) days, shall fix a date, hour and place for full hearing of the matter within ten (10) days and give written notification to all parties of the time and place. At this hearing both the teacher and the local board of education shall present the necessary evidence either by presenting the record or tape of the hearing before the Professional Practices Commission or present evidence de novo. The burden of proof at this hearing shall be upon the administration of the school system to prove the statutory cause asserted by the administration. This hearing may be held in executive session only if agreed on by all parties concerned.

After hearing all evidence, the State Board of Education shall issue its decision either confirming or reversing the action of the Professional Practices Commission, but in either case the State Board's decision shall constitute a final administrative determination of the matter.

The State Board may find that the failure to renew the teacher's contract:

1. Was in accordance with statutory notice and by preponderance of the evidence determine that sufficient statutory cause was proven and, therefore, the nonrenewal was proper; or
2. Was without statutory notice and/or sufficient statutory cause was not proven by preponderance of the evidence and, therefore, the nonrenewal was not proper.

A finding that a teacher was dismissed without sufficient cause shall automatically extend for one year the contract of the teacher involved, during which period of time the board of education and the teacher shall negotiate in an effort to resolve their differences prior to April 10 of the succeeding year.

Oregon

342.815

Fair Dismissal Law

(1) "Administrator" includes any teacher the majority of whose employed time is devoted to service as a supervisor, principal, vice principal or director of a department or the equivalent in a fair dismissal district but shall not include the superintendent, deputy superintendent or assistant superintendent of any such district or any substitute or temporary employed by such a district.

(2) "Permanent teacher" means any teacher who has been regularly employed by a fair dismissal district for a period of not less than three successive years, whether or not the district was such a district during all of such period and who has been reelected by such district after the completion of such three-year period for the next succeeding school year.

(3) "Probationary teacher" means any teacher employed by a fair dismissal district who is not a permanent teacher.

(4) "Teacher" means any person who holds a teacher's certificate as provided in ORS 342.125 or who is otherwise authorized to teach in the public schools of this state and who is employed on other than a part-time basis in a fair dismissal district of this state as an instructor or administrator.

342.835 Probationary teacher.

(1) The district board of any fair dismissal district may discharge or remove any probationary teacher in the employ of the district at any time during a probationary period for any cause deemed in good faith sufficient by the board. However, the probationary teacher is entitled to meet informally with the board, at the teacher's request, to discuss the cause of dismissal.

(2) The district board may, for any cause it may deem in good faith sufficient, refuse to renew the contract of any probationary teacher. However, the teacher shall be entitled to notice of the intended action by March 15.

342.845 Permanent teacher.

(1) A permanent teacher shall not be subjected to the requirement of annual appointment nor shall he be dismissed or employed on a part-time basis without his consent except as provided in ORS 342.00 and 342.805 to 342.955.

(2) No permanent teacher who has served as an administrator in a particular position for a period of three successive years in a tenure district shall be transferred to a lower paying position as an administrator or to a nonadministrative position without his consent except for the reasons for which a permanent teacher may be dismissed as provided in ORS 342.200 and 342.805 to 342.955 and in accordance with the procedures set forth in ORS 342.200 and 342.805 to 342.955 pursuant to which a permanent teacher may be dismissed.

342.850 Teacher evaluation; form; personnel file content.

(1) The district superintendent of every school district, including superintendents of intermediate education districts, shall cause to have made at least annually an evaluation of performance for each teacher employed by the district in order to allow the teacher and the district to measure the teacher's development and growth in the teaching profession. A form shall be prescribed by the State Board of Education and completed pursuant to rules adopted by the district school board. Except in those districts having an average daily membership as defined in ORS 327.006 of less than 200 students, the person or persons making the evaluations must hold teaching certificates. The evaluation shall be signed by the school official who supervises the teacher and by the teacher. A copy of the evaluation shall be delivered to the teacher.

342.865 Grounds for dismissal of permanent teacher.

- (1) No permanent teacher shall be dismissed except for:
- (a) Inefficiency;
 - (b) Immorality;
 - (c) Insubordination;
 - (d) Neglect of duty;
 - (e) Physical or mental incapacity;
 - (f) Conviction of a felony or of a crime involving moral turpitude;
 - (g) Inadequate performance;
 - (h) Failure to comply with such reasonable requirements as the board may prescribe to show normal improvement and evidence of professional training and growth;
 - (i) Any cause which constitutes grounds for the revocation of such permanent teacher's teaching certificate; or
 - (j) Reduction in permanent teacher staff resulting from the district's inability to levy a tax sufficient to provide funds to continue its educational program at its anticipated level or resulting from the district's elimination of classes due to administrative decision. School districts shall make every effort to transfer teachers of courses scheduled for discontinuation to other positions for which they are qualified. Merit and seniority shall be considered in determination of a teacher for such transfer.

(2) In determining whether the professional performance of a permanent teacher is adequate, consideration shall be given to regular and special evaluation reports prepared in accordance with the policy of the employing school district and to any written standards of performance which shall have been adopted by the board.

342.895 Procedure for dismissal of permanent teacher.

(1) Authority to dismiss a permanent teacher is vested in the district school board subject to the provisions of the fair dismissal procedures of ORS 342.200 and 342.805 to 342.955 and only after recommendation of the dismissal is given to the district school board by the superintendent.

(2) At least 20 days before recommending to a board the dismissal of the permanent teacher, the district superintendent shall give written notice to the permanent teacher by certified mail of his intention to make a recommendation to dismiss the teacher. The notice shall set forth the statutory grounds upon which the superintendent believes such dismissal is justified, and shall contain a plain and concise statement of the facts relied on to support the statutory grounds for dismissal. If the statutory grounds specified are those specified in paragraph (a), (c), (d), (g), or (h) of subsection (1) of ORS 342.865, then evidence shall be limited to those allegations supported by statements in the personnel file of the teacher on the date of the notice to recommend dismissal, maintained as required in ORS 342.850. Notice shall also be sent to the district school board and to the Fair Dismissal Appeals Board. A copy of ORS 342.000 and 342.805 to 342.955 shall also be sent to the permanent teacher.

(3) The action of the district superintendent takes effect on the 20th day after notice is given the permanent teacher as required in subsection (2) of this section, if approved by the district school board. Notice of the board's action shall be given to the permanent teacher by certified mail.

342.905 Appeal procedure.

(1) If the district school board dismisses the teacher, the teacher may appeal that decision to the Fair Dismissal Appeals Board established under ORS 342.930 by filing with the Superintendent of Public Instruction within five days after receipt of notice of the district school board's decision, notice of appeal with a brief statement giving the reasons for the appeal.

(2) As soon as possible after the time an appeal is filed the Superintendent of Public Instruction shall appoint a panel of three members from the Fair Dismissal Appeals Board for the purpose of conducting a hearing. The panel shall be selected from those members of the board serving in positions where the average daily membership as determined in ORS 342.930 most nearly coincides with that of the involved district. One

member shall be a board member; one member shall not be affiliated with any common or union high school district; and one member shall be a teacher or administrator. If the appeal is from a permanent teacher in a teaching position, the board shall include the teacher member. If the permanent teacher is in an administrative position, the administrative member shall sit in place of a member who is resident of the district that is bringing the dismissal. As soon as possible after the selection of the panel, a time shall be established for the hearing. The board shall be furnished by the Department of Education at the department's expense appropriate professional and other special assistance reasonably required to conduct a hearing and shall be empowered on behalf of the permanent teacher, the district superintendent and the district school board to subpoena and swear witnesses and to require them to give testimony and to produce books and papers relevant to its hearing.

(3) The Fair Dismissal Appeals Board panel shall conduct a formal hearing.

(4) When the Fair Dismissal Appeals Board panel has completed its hearing, it shall prepare a written report and send it to the permanent teacher, the district superintendent, the district school board and the Superintendent of Public Instruction. The report shall contain its finding as to whether or not the facts relied on to support the recommendations of the district superintendent are true and substantiated and if true and substantiated, whether or not they are adequate to justify the statutory grounds cited as reasons for the dismissal. The panel shall prepare the report within 30 days from the time of receipt of notice of the appeal. However, when the panel finds that because of unusual circumstances justice requires that a greater time be spent, it shall so notify the permanent teacher, the district superintendent, the district school board and the Superintendent of Public Instruction. The extension shall not be beyond 30 days from the date of the notice of extension.

(5) (a) Subject to paragraphs (b) and (c) of this subsection, if the Fair Dismissal Appeals Board panel finds that the facts relied on are unsubstantiated, or if true and substantiated, are not adequate to justify the statutory grounds cited as reason for the dismissal, and so notifies the permanent teacher, the district superintendent, the district school board and the Superintendent of Public Instruction, the teacher shall receive his salary for the period between the effective date of the dismissal and the date of the order reinstating him.

(6) If the Fair Dismissal Appeals Board panel finds the facts relied on to support the recommendation of the district superintendent true and substantiated, and that those facts justify the statutory grounds cited as reason for the dismissal and so notifies the permanent teacher, the district superintendent, the district school board and the Superintendent of Public Instruction in writing, the dismissal becomes final on the date of notice.

(7) An appeal from action of the Fair Dismissal Appeals Board shall be taken in the manner provided in ORS 183.480.

342.915 Hearing procedure. The following provisions shall be applicable to any hearing conducted pursuant to ORS 342.905:

(1) The hearing shall be private unless the permanent teacher requests a public hearing.

(2) The hearing shall be conducted in accordance with rules and regulations adopted by the Fair Dismissal Appeals Board pursuant to ORS chapter 183.

(3) At the hearing the permanent teacher shall have the right to be present, and to be heard, to be represented by counsel and to present through witnesses any competent testimony relevant to the issue of whether facts as found by the Fair Dismissal Appeals Board and as relied on to support the recommendation of the district superintendent are true and substantiated and whether those facts justify the statutory grounds cited as reason for the dismissal and whether the procedures required by law have been followed.

Pennsylvania

Pa. 24P.S., sec. 11-1122

11-1122. Causes for termination of contract

The only valid causes for termination of a contract heretofore or hereafter entered into with a professional employee shall be immorality, incompetency, intemperance, cruelty, persistent negligence, mental derangement, advocacy or participating in un-American or subversive doctrines, persistent and wilful violation of the school laws of this Commonwealth on the part of the professional employe.

11-1126. Public hearings; exceptions

All hearings, under the provisions of this article or any other provision of the school laws pertaining to the dismissal or to the termination of contracts of professional employes, shall be public, unless otherwise requested by the party against whom the complaint is made.

11-1127. Procedure on dismissals; charges; notice; hearing

Before any professional employe having attained a status of permanent tenure is dismissed by the board of school directors, such board of school directors shall furnish such professional employe with a detailed written statement of the charges upon which his or her proposed dismissal is based and shall conduct a hearing. A written notice signed by the president and attested by the secretary of the board of school directors shall be forwarded by registered mail to the professional employe setting forth the time and place when and where such professional employe will be given an opportunity to be heard either in person or by counsel, or both, before the board of school directors and setting forth a detailed statement of the charges. Such hearing shall not be sooner than ten (10) days nor later than fifteen (15) days after such written notice. At such hearing all testimony offered, including that of complainants and their witnesses, as well as that of the accused professional employe and his or her witnesses, shall be recorded by a competent disinterested public stenographer whose services shall be furnished by the school district at its expense. Any such hearing may be postponed, continued or adjourned.

Rhode Island

G. L. R. I. 1956, sec. 16-13-2

16-13-2. Annual contract basis - Automatic continuation

Teaching service shall be on the basis of an annual contract, except as hereinafter provided, and such contract shall be deemed to be continuous unless the governing body of the schools shall notify the teacher in writing (on or before March 1) that the contract for the ensuing year will not be renewed.

16-13-3. Probationary period - Tenure after probation

Three successive annual contracts shall be considered evidence of satisfactory teaching and shall constitute a probationary period. Teachers who have given satisfactory service for three years prior to April 24, 1946, and therefore those who shall complete the probationary period, shall be considered in continuing service. No such teacher shall be dismissed except for good and just cause.

16-13-4. Hearing on dismissal for cause - Appeals

Statement of cause for dismissal shall be given the teacher in writing by the governing body of the schools at least one month prior to the close of the school year. The teacher may, within fifteen days of such notification, request in writing, a hearing before the full board. The hearing shall be public or private, in the discretion of the teacher. Both the teacher and school board shall be entitled to be represented by counsel and to present witnesses. The board shall keep a complete record of the hearing and shall furnish the teacher with a copy. Any teacher aggrieved by the decision of the school board shall have right of appeal to the state department of education and shall have the right of further appeal to the superior court.

16-13-2. Annual contract basis - Automatic continuation

Teaching service shall be on the basis of an annual contract, except as hereinafter provided, and such contract shall be deemed to be continuous unless the governing body of the schools shall notify the teacher in writing (on or before March 1) that the contract for the ensuing year will not be renewed; provided, that a teacher, upon request, shall be furnished a statement of cause for dismissal or nonrenewal of his contract by the school committee; provided further, that whenever any such contract is not renewed or said teacher is dismissed, said teacher shall be entitled to a hearing and appeal pursuant to the procedure set forth in 16-13-4.

16-13-3. Probationary period - Tenure after probation

Three successive annual contracts shall be considered evidence of satisfactory teaching and shall constitute a probationary period. Teachers who have given satisfactory service for three years prior to April 24, 1946, and [thereafter] those who shall complete the probationary period, shall be considered in continuing service. No such teacher shall be dismissed except for good and just cause.

Any teacher appointed to a position of principal, assistant principal or vice principal within the school system in which said teacher has attained tenure, shall, upon termination or resignation of such administrative position, be allowed to return to his former status as a tenured teacher within said system.

South Carolina

Code of South Carolina 1962, sec. 21-361 etc.

21-361. Notification of employment for ensuing year; notification of assignment. — On or before April fifteenth of each year, the boards of trustees of the several school districts shall notify, in writing, the teachers in their employ concerning their employment for the ensuing year. If the board, or the person designated by it, fails to notify a teacher who has been employed by a school district for a majority of the current school year of his status for the ensuing year, the teacher shall be deemed to be reemployed for the ensuing year and the board shall issue a contract to such teacher as though the board had reemployed such teacher in the usual manner.

On or before August fifteenth the superintendent or principal shall notify the teacher of his tentative assignment for the ensuing school year.

This section shall not apply to any teacher whose contract of employment or dismissal is under appeal under 21-365. (1974(58)2343.)

21-362. Teacher to notify board of acceptance; opportunity for hearing if not reemployed. — Any teacher who is reemployed by written notification pursuant to 21-361 shall by April twenty-fifth first notify the board of trustees in writing of his acceptance of the contract. Failure on the part of the teacher to notify the board of acceptance within the specified time limit shall be conclusive evidence of the teacher's rejection of the contract.

Any teacher, receiving a notice that he will not be reemployed for the ensuing year, shall have the same notice and opportunity for a hearing provided in subsequent sections for teachers dismissed for cause during the school year. (1974(58)2343.)

21-363. Dismissal of teachers; grounds; opportunity for hearing. — Any teacher may be dismissed at any time who shall fail, or who may be incompetent, to give instruction in accordance with the directions of the superintendent, or who shall otherwise manifest an evident unfitness for teaching; provided, however, that notice and an opportunity shall be afforded for a hearing prior to any dismissal. Evident unfitness for teaching is manifested by conduct such as, but not limited to, the following: persistent neglect of duty, willful violation of rules and regulations of district board of trustees, drunkenness, violation of the law of this State or the United States, gross immorality, any cause involving moral turpitude, dishonesty, illegal use, sale or possession of drugs or narcotics. (1974(58)2343.)

21-364. Certain notices to be in writing. — Whenever a principal or other school administrator charged with the supervision of a teacher finds it necessary to admonish a teacher for a reason that he believes

may lead to dismissal or cause the teacher not to be reemployed he shall: (1) bring the matter in writing to the attention of the teacher involved and make a reasonable effort to assist the teacher to correct whatever appears to be the cause of potential dismissal or failure to be reemployed and, (2) except as provided in 21-365, allow reasonable time for improvement. (1974(58)2343.)

21-365. Suspension of teachers; reinstatement. — Whenever a superintendent has reason to believe that cause exists for the dismissal of a teacher and when he is of the opinion that the immediate suspension of the teacher is necessary in the best interest of the children in the district, the superintendent may suspend the teacher without notice or without hearing. The superintendent shall notify the teacher in writing of the suspension. Such written notice shall include the fact that a hearing before the board is available to the teacher upon request; provided, such request is made in writing within fifteen days as prescribed by 21-367.

The salary of a suspended teacher shall cease as of the date the board sustains the suspension. If sufficient grounds for suspension are not subsequently found, the teacher shall be reinstated without loss of compensation. (1974(58)2343.)

21-366. Notice of dismissal; conduct of hearing. — No teacher shall be dismissed unless written notice specifying the cause of dismissal is first given the teacher by the district board of trustees and an opportunity for a hearing has been afforded the teacher. Such written notice shall include the fact that a hearing before the board is available to the teacher upon request; provided, such request is made in writing within fifteen days as prescribed by 21-367. Any such hearing shall be public unless the teacher requests in writing that it be private. The district board of trustees may issue subpoenas requiring the attendance of witnesses at any hearing and, at the request of the teacher against whom a charge is made, shall issue such subpoenas, but it may limit the number of witnesses to be subpoenaed in behalf of the teacher to not more than ten. All testimony at any hearing shall be taken under oath. Any member of the board may administer oaths to witnesses. The board shall cause a record of the proceedings to be kept and shall employ a competent reporter to take stenographic or stenotype notes of all of the testimony. One half of the cost of the reporter's attendance and services at the hearing shall be paid by the board and one half by the teacher. Either party desiring a transcript of the hearing shall pay for the costs thereof. (1974(58)2343.)

21-367. Request for hearing; time and place of hearing; rights of teacher; determination by board. — Within fifteen days after receipt of notice of suspension or dismissal, a teacher may serve upon the chairman of the board or the superintendent a written request for a hearing before the board. If the teacher fails to make such a request, or after a hearing as herein provided for, the district board of trustees shall take such action and shall enter such order as it deems lawful and appropriate.

The hearing shall be held by the board not less than ten nor more than fifteen days after the request is served, and a notice of the time and place of the hearing shall be given the teacher not less than five days prior to the date of the hearing. The teacher has the privilege of being present at the hearing with counsel and of cross-examining witnesses and may offer evidence and witnesses and present defenses to the charges. The complainants shall initiate the introduction of evidence in substantiation of the charges. Within ten days following the hearing, the board shall determine whether the evidence showed good and just cause for the notice of suspension or dismissal and shall render its decision accordingly, either affirming or withdrawing the notice of suspension or dismissal. (1974(58)2343.)

21-368. Appeals; costs and damages. — The decision of the district board of trustees be final, unless within thirty days thereafter an appeal is made to the court of common pleas of any county in which the major portion of such district lies.

Notice of such appeal and the grounds thereof shall be filed with the district board of trustees. The district board shall, within thirty days thereafter, file a certified copy of the transcript record with the clerk of such court. Any party may appeal to the Supreme Court from the court of common pleas in the same manner as provided by law for appeals from the circuit court to the Supreme Court. If the decision of the board is reversed on appeal, on a motion of either party the trial court shall order reinstatement and shall determine the amount for which the board shall be liable for actual damages and court costs. In no event shall any liability extend beyond two years from the effective date of dismissal. Amounts earned or amounts earnable with reasonable diligence by the person wrongfully suspended shall be deducted from any back pay. (1974(58)2343.)

21-269. Depositions. — Any party to such proceedings may cause to be taken the depositions of witnesses within or without the State and either by commission or de bene esse. Such depositions shall be taken in accordance with any subject to the same provisions, conditions and restrictions as apply to the taking of like depositions in civil actions at law in the court of common pleas; and the same rules with respect to the giving of notice to the opposite party, the taking and transcribing of testimony, the transmission and certification thereof and matters of practice relating thereto shall apply. (1974(58)2343.)

South Dakota

SDCL 1975, section 13-43-9.1. etc.

13-43-6. Contents of contract of employment—Distribution of copies—Duration.

The contract shall specify the date at or about which the school shall begin, the term of employment, the wages per month, and the time of payment thereof; such contract shall be signed in duplicate and one copy filed in the office of the business manager and the other retained by the teacher. Such contract may be issued covering any period of years, not to exceed three, over which a teacher holds a certificate which will remain valid without renewal.

13-43-9.1. Notice to tenured teacher of intent not to renew contract—Evaluation file available—Informal conference—Circumstances after notice—Evaluation and notice of deficiencies every semester.

On or before the third Monday in March, the school board shall notify in writing a teacher who is in or beyond the third full term of employment in a school district of its intention not to renew the teacher's contract, or the superintendent or school administrator shall notify the teacher of any intention on his part to recommend to the board that it not renew the teacher's contract. The board, or if applicable the superintendent or other administrator, shall, as soon as practicable and upon written request of the teacher, make available to the teacher for review his personal evaluation file, advise him in writing of the reasons on which the intention not to renew or not to recommend for renewal is based, and afford the teacher an informal, private conference before the board, or, if applicable, before the superintendent or other administrator.

This provision shall in no manner restrict the board in taking action, or the superintendent or other school administrator in making recommendations to the board, based on relevant circumstances which occur within twenty-one days of the notice required in this section, but, in such event, notice thereof shall be given to the teacher as soon as practicable.

All teachers shall be evaluated and given notice of any deficiencies during each semester of the first two full terms of employment.

13-43-10. Notice of board's determination not to renew—Noncompliance as offer of renewal—Change of terms by mutual agreement.

Not earlier than fourteen days nor later than twenty-one days after the notice of intent as provided in Section 13-43-9.1, such teacher shall be notified in writing by the board of the board's determination not to renew the teacher's contract for the ensuing school year. Failure by the board or the superintendent to comply with the provisions and notices of Sections 13-43-9.1 and 13-43-10 shall constitute an offer on the part of the board to renew the contract for the ensuing school year under the same terms and conditions as the contract

for the then current year. Different terms and conditions may be mutually agreed upon by the board and teacher at any later time.

13-43-10.1. Hearing on board's determination not to renew—Evidence privileged—Right to counsel—Final determination—Appeal.

Any teacher to whom notification has been given as provided in Section 13-43-10 may, within seven days after the receipt of the same, request in writing a hearing before the school board, meeting in executive session, at which hearing the board shall state the reasons for its determination. All statements made or evidence presented at any hearing in executive session will be deemed privileged communications. Such hearing shall be held by the board within seven days after the receipt of such request for a hearing. At such hearing the teacher and the board each upon two days' notice in writing to the other party may have counsel present and shall have full opportunity to present all relevant evidence. After considering all the relevant evidence the board shall sustain or revoke its original determination. Written notice of the final determination shall be delivered to that teacher within seven days after the hearing. A teacher aggrieved by such final determination shall have the right of appeal therefrom as provided in Section 13-46.1.

13-43-12. Teachers and administrators covered by tenure provisions.

For the purpose of Sections 13-43-9.1 to 13-43-11, inclusive, the term "teacher" means any person engaged in the profession of teaching children, grades kindergarten through twelve in the public schools of South Dakota and any person employed in the public schools as a principal, superintendent or other administrative school employee.

13-43-13. Dismissal provision unaffected by tenure provisions.

Nothing in Sections 13-43-9.1 to 13-43-12, inclusive, shall be construed as in any manner repealing or limiting the operation of any existing law with reference to the dismissal of teachers for cause.

13-43-15. Grounds for dismissal of teacher.

A school board may dismiss any teacher at any time for plain violation of contract, gross immorality, incompetency, or flagrant neglect of duty.

Tennessee

T. C. A. sec. 49-1416

49-1412. Dismissal and suspension - Grounds

No teacher shall be dismissed or suspended except as provided in this chapter. The causes for which a teacher may be dismissed are as follows: incompetence, inefficiency, neglect of duty, unprofessional conduct and insubordination.

49-1414. Written charges

When charges are made to the board of education against a teacher, charging the teacher with offenses which would justify dismissal of the teacher under the terms of this chapter, the charges shall be made in writing, specifically stating the offenses which are charged, and shall be signed by the party or parties making the charges.

49-1415. Notice of charges warranting dismissal

If in the opinion of the board charges are of such nature as to warrant the dismissal of the teacher, the superintendent shall give the teacher a written notice of this decision, together with a copy of the charges against her, and a copy of a form which shall be provided by the state commissioner of education advising the teacher as to her legal duties, rights and recourse under the terms of this chapter.

49-1416. School board hearing

A teacher, having received notice of charges against her, may within ten (10) days after receipt of notice, demand a hearing before the board, as follows:

(1) The teacher shall give written notice to the superintendent of her request for a hearing.

(2) The superintendent shall within five (5) days after receipt of request indicate the place of such hearing and set a convenient date, which date shall be not later than thirty (30) days following notice of dismissal or suspension.

(3) The teacher may appear at the hearing and plead his cause in person or by counsel.

(4) The teacher may present witnesses, and shall have full opportunity to present his contentions and to support them with evidence and argument.

(5) The chairman of the board conducting said hearing is hereby empowered to issue subpoena for witnesses to compel their attendance at hearings authorized under this section. All parties

to the proceeding shall have the right to have subpoenas issued by the chairman of the board to compel the attendance of all witnesses deemed by such parties to be necessary for a full and complete hearing. All witnesses shall be entitled to the witness fees and mileage provided by law for legal witnesses, which fees and mileage shall be paid as a part of the costs of such proceeding. The costs of such proceeding shall be paid by the losing party.

(6) The chairman of the board shall administer oaths to witnesses, who shall testify under oath.

(7) On request of either party to the trial witnesses may be barred from the hearing except as they are called to testify. The hearing may be private at the request of the teacher or in the discretion of the board.

(8) The board shall within ten (10) days decide what disposition to make of the case and shall immediately thereafter give the teacher written notice of its findings and decision.

49-1417. Judicial review.

A teacher under "permanent tenure" or "limited tenure" status who is dismissed or suspended by action of the board, may obtain a judicial review by filing a petition in the chancery court of the county where the teacher was employed.

49-1419. Local tenure laws unaffected.

Sections 49-1401 - 49-1419 shall not affect the operation of local or private tenure acts in operation on March 1, 1951, applying to counties, municipalities or special school districts, and this chapter shall not be operative in any such county, municipality or special school district so long as such local or private act remains in effect; but it shall become operative in any system where there is no tenure act in effect.

Texas

V. T. C. A., Education Code sec. 13.101

13.101. Probationary or Continuing Contract

Each teacher hereafter employed by any school district in this state shall be employed under, and shall receive from such district, a contract that is either a "probationary contract" or a "continuing contract" in accordance with the provisions of this subchapter if the school board chooses to offer such teacher a "probationary contract" or a "continuing contract." All such contracts shall be in writing in such form as may be promulgated by or approved by the commissioner of education, and shall embody the terms and conditions of employment hereinafter set forth, and such other provisions not inconsistent with this subchapter as may be appropriate.

13.102. Probationary Contract

Any person who is employed as a teacher by any school district for the first time, or who has not been employed by such district for three consecutive school years subsequent to August 28, 1967, shall be employed under a "probationary contract," which shall be for a fixed term as therein stated; provided, that no such contract shall be for a term exceeding three school years beginning on September 1 next ensuing from the making of such contract; and provided further that no such contract shall be made which extends the probationary contract period beyond the end of the third consecutive school year of such teacher's employment by the school district, unless the board of trustees determines and recites that it is in doubt whether the particular teacher should be given a continuing contract, in which event a probationary contract may be made with such teacher for a term ending with the fourth consecutive school year of such teacher's employment with the school district, at which time the employment of such teacher by such school district shall be terminated, or such teacher shall be employed under a continuing contract as hereinafter provided.

13.103. Probationary Contract: Termination

The board of trustees of any school district may terminate the employment of any teacher holding a probationary contract at the end of the contract period, if in their judgment the best interests of the school district will be served thereby; provided, that notice of intention to terminate the employment shall be given by the board of trustees to the teacher on or before April 1, preceding the end of the employment term fixed in the contract. In event of failure to give such notice of intention to terminate within the time above specified, the board of trustees shall thereby elect to employ such probationary teacher in the same capacity, and under probationary contract status for the succeeding school year if the teacher has been employed by such district for less than three successive school years, or in a continuing contract position if such teacher has been employed during three consecutive school years.

13.104. Hearing

In event a teacher holding a probationary contract is notified of the intention of the board of trustees to terminate his employment at the end of his current contract period, he shall have a right upon written request to a hearing before the board of trustees, and at such hearing, the teacher shall be given the reasons for termination of his employment. After such hearing, the board of trustees may confirm or revoke its previous action of termination; but in any event, the decision of the board of trustees shall be final and non-appealable.

13.106. Continuing Contract

Any teacher employed by a school district who is performing his third, or where permitted fourth, consecutive year of service with the district under probationary contract, and who is elected to employment by the board of trustees of such district for the succeeding year, shall be notified in writing of his election to continuing contract status with such district, and such teacher shall within 30 days after such notification file with the board of trustees of the employing school district notification in writing of his acceptance of the continuing contract, beginning with the school year following the conclusion of his period of probationary contract employment. Failure of the teacher to accept the contract within such 30 day period shall be considered a refusal on the part of the teacher to accept the contract.

13.108. Administrative Personnel

The board of trustees may grant to a person who has served as superintendent, principal, supervisor, or other person employed in any administrative position for which certification is required, at the completion of his service in such capacity, a continuing contract to serve as a teacher, and the period of service in such other capacity shall be construed as contract service as a teacher within the meaning of this subchapter.

13.109. Discharge During Year

Any teacher, whether employed under a probationary contract or a continuing contract, may be discharged during the school year for one or more of the following reasons, which shall constitute lawful cause for discharge:

- (1) immorality;
- (2) conviction of any felony or other crime involving moral turpitude;
- (3) drunkenness;

(4) repeated failure to comply with official directives and established school board policy;

(5) physical or mental incapacity preventing performance of the contract of employment; and

(6) repeated and continuing neglect of duties.

13.110. Release at End of Year

Any teacher employed under a continuing contract may be released at the end of any school year and his employment with the school district terminated at that time, or he may be returned to probationary contract employment for not exceeding the three succeeding school years, upon notice and hearing (if requested) as hereinafter provided, for any reason enumerated in Section 13.109 of this code or for any of the following additional reasons:

(1) inefficiency or incompetency in performance of duties;

(2) failure to comply with such reasonable requirements as the board of trustees of the employing school district may prescribe for achieving professional improvement and growth;

(3) willful failure to pay debts;

(4) habitual use of addictive drugs or hallucinogens;

(5) excessive use of alcoholic beverages;

(6) necessary reduction of personnel by the school district (such reductions shall be made in the reverse order of seniority in the specific teaching fields); or

(7) for good cause as determined by the local school board, good cause being the failure of a teacher to meet the accepted standards of conduct for the profession as generally recognized and applied in similarly situated school districts throughout Texas.

13.111. Notice

(a) Before any teacher shall be discharged during the year for any of the causes mentioned in Section 13.109 of this code, or before any probationary contract teacher shall be dismissed at the end of a school year before the end of the term fixed in his contract, or before any teacher holding a continuing contract shall be dismissed or returned to probationary contract status at the end of a school year for any of the reasons mentioned in Section 13.110 of this code, he shall be notified in writing by the board of trustees or under its direction of the proposed action and of the grounds assigned therefor.

(b) In the event the grounds for the proposed action relate to the inability or failure of the teacher to perform his assigned duties, the action shall be based upon the written recommendation by the superintendent of schools, filed with the board of trustees. Any teacher so discharged or dismissed or returned to probationary contract status shall be entitled, as a matter of right, to a copy of each and every evaluation report, or any other memorandum in writing which has been made touching or concerning the fitness or conduct of such teacher, by requesting in writing a copy of the same.

13.112. Hearing

(a) If, upon written notification of the proposed action, the teacher desires to contest the same, he shall notify the board of trustees in writing within 10 days after the date of receipt by him of the official notice above prescribed, of his desire to be heard, and he shall be given a public hearing if he wishes or if the board of trustees determines that a public hearing is necessary in the public interest.

(b) Upon any charges based upon grounds of inefficiency, or inability or failure of the teacher to perform his assigned duties, the board of trustees may in its discretion establish a committee of classroom teachers and administrators, and the teacher may request a hearing before this committee prior to hearing of the matter by the board of trustees.

(c) Within 10 days after request for hearing made by the teacher, the board of trustees shall fix a time and place of hearing, which shall be held before the proposed action shall be effective. Such hearing shall be public unless the teacher requests in writing that it be private.

(d) At such hearing, the teacher may employ counsel, if desired, and shall have the right to hear the evidence upon which the charges are based, to cross-examine all adverse witnesses, and to present evidence in opposition thereto, or in extenuation.

13.115. Appeals

(a) If the board of trustees shall order the teacher discharged during the school year under Section 13.109 of this code, the teacher shall have the right to appeal such action to the commissioner of education.

(c) Either party to an appeal to the commissioner shall have the right to appeal from his decision to the State Board of Education.

(d) Trial procedure in the district court shall be the same as that accorded other civil cases on the docket of said court, with the decision of the trial court to be subject to the same rights of appeal under the Texas Rules of Civil Procedure as is accorded other civil cases so tried.

13.201. Responsibilities of the Teaching Profession

Teaching is hereby declared to be and is recognized as a profession. The members of such profession shall accept responsibilities in development and promotion of high standards of ethics, conduct, and professional performance and practices of persons engaged in the practice of such profession in this state.

Utah

Utah Code Ann. 1953, Section 53-51-3

53-51-3. Definition of terms. - As used in this act:

- (1) "Contract term" or "term of employment" means the period of time an educator is engaged by the school district pursuant to a contract of employment whether oral or written.
- (2) "Dismissal" or "termination" means:
 - (a) Any termination of the status of employment of an educator.
 - (b) Failure to renew the employment contract of an educator who pursuant to the employment practices of the school district has a reasonable expectation of continued employment in successive years.
 - (c) Reduction in salary of an educator not generally applied to all educators of the same category in the employ of the school district has a reasonable expectation of continued employment in successive years.
- (3) "Educator" or "teacher" means all teaching and professional personnel of a school district who hold positions requiring certification and valid certificates issued to them by the State Board of Education.

53-51-4. District board to establish termination procedures.

The board of education of each school district by contract with its educators or their associations or by resolution of the board shall establish procedures for termination of educators in an orderly manner without discrimination.

53-51-5. Required provisions of termination procedures adopted by district. - The orderly dismissal procedure adopted by a district shall provide:

- (1) Right to a fair hearing.
- (2) If the district intends not to renew (the) contract of employment of an individual entitled to employment in succeeding years according to district personnel program, notice of such intention shall be given the individual. Such notice shall be issued at least two months before the end of the contract term of the individual, e.g., the school year. The notice in writing shall be served by personal delivery or by certified mail addressed to the individual's last known address. The notice shall be dated and contain a clear and concise statement that the individual's contract will not be renewed for an ensuing term and the reasons for the termination.
- (3) In the absence of timely notice, a subparagraph (2) employee is deemed to be re-employed for the succeeding contract term with a salary based upon the salary schedule applicable to the class of employee into which the individual falls. This provision shall not be construed to preclude the dismissal of an employee during his contract term for cause.

(4) At least one month prior to issuing notice of intent not to renew the contract of the individual, he shall be informed of the fact that continued employment is in question and the reasons therefor and given an opportunity to correct the defects which precipitated possible nonrenewal. The individual may be granted assistance in his efforts to make correction of the deficiencies which may include informal conferences and the services of applicable school personnel within the district.

(5) A written statement of causes (a) pursuant to which the contract of individuals may not be renewed, (b) pursuant to which the contract of each class of personnel may not be renewed, and (c) pursuant to which the contract of individuals may be otherwise terminated during the contract term.

(6) In cases when the district intends to terminate an individual's contract during his contract term, the district shall give written notice of such intent to said individual. Said notice shall be given in writing, served by personal delivery or by certified mail addressed to the individual's last known address. Said notice shall be given at least fifteen days prior to the proposed date of termination. It shall state the date of termination and the detailed reasons for such termination.

(7) Notices of intention not to renew the contract of employment of an individual or of intention to terminate his contract during its term shall advise the individual that he may request an informal conference before the board of such personnel as the district may designate.

(8) That the orderly dismissal procedure pursuant to which a contract is terminated during its term may include provisions pursuant to which the active service of the individual may be suspended pending a hearing when it appears that the continued employment of the individual may be harmful to students or the district.

(9) Written notice of suspension or final termination including findings of fact made by the board when such suspension or termination is for cause.

53-51-7. Hearing examiners appointed by district board - Appeal rights.

The board of education of each school district is hereby authorized and empowered to appoint hearing examiners to conduct hearings involving the termination of educators. The board shall establish procedures whereby such hearing examiners or may enter into contracts whereby said hearing examiners may make decisions relating to the employment of the educator which shall be binding upon both the educator and the board. Nothing herein shall be construed to limit the right of either the board or the educator to appeal to an appropriate court of law.

53-51-8. Necessary staff reduction not precluded.

Nothing in this act shall be construed to preclude staff reduction when necessary to decrease the number of teachers because of

decreased student enrollments in the district, because of the discontinuance of a particular service, because of the shortage of anticipated revenue after the budget has been adopted, or because of school consolidations.

53-51-9. Establishment of termination procedures by district board - Application to other personnel.

The board of education of each school district is hereby authorized and shall establish orderly dismissal procedures under this act and may apply such procedures to other personnel of the district.

Vermont

16 V.S.A. sec. 1752

Subchapter 1. General Provisions

1751. Contract

A contract between a board of school directors and a teacher shall not be valid unless the same is in writing, or partly written and partly printed, in triplicate, and signed by the teacher and by a majority of the board or by a member of the board or other person who has been duly authorized by a majority vote of the board at a regular meeting to sign the contract in question on behalf of the board. One copy thereof shall be filed with the board, one copy delivered to the teacher, and one copy delivered to the superintendent. Such contract shall specify the date when the teacher shall begin service, the time, grade and date of expiration of the certificate held by the teacher, the salary of the teacher and such other matters as may be necessary for a complete understanding between the parties.

1752. Grounds and procedures for suspension and dismissal

(a) A teacher under contract to teach in a public school who fails, without just cause, to complete the term for which the teacher contracted to teach, shall be disqualified to teach in any public school for the remainder of the school year.

(b) Unless otherwise negotiated, a teacher under contract to teach in a public school whose contract is not to be renewed for the ensuing year for just and sufficient cause shall be notified in writing, setting forth the grounds therefore no later than April 15. If the teacher so notified desires a hearing, the teacher shall so request in writing to the clerk of the school board. The teacher shall have the right to a hearing before the school directors within 15 days, may present witnesses and written evidence, and may be represented by counsel. A hearing shall be in executive session unless the teacher making the appeal requests or agrees in writing that it be open to the public. The school board shall affirm, modify, or reverse the nonrenewal and shall issue its decision in writing within five days.

(c) A superintendent may suspend a teacher under contract on the grounds of incompetence, or conduct unbecoming a teacher, failure to attend to duties or failure to carry out reasonable orders and directions of the superintendent and school board.

(d) The suspension shall be in writing and shall set forth the grounds therefor. Copies shall be delivered to the teacher, and to the chairman and to the clerk of the board of school directors.

Thereafter, performance under the teacher's contract shall be suspended, but he shall be paid pro rata to the time of his dismissal by the board.

(e) The teacher so suspended shall have the right to appeal to the board of school directors of the district for review of the decision. Filing a written notice of appeal with the clerk of the school board within seven days of the effective date of the suspension shall initiate the appeal. The clerk of the board shall forthwith forward a copy of the notice of appeal to the superintendent and send to the teacher an acknowledgment of receipt of the appeal.

(f) The school board to which the appeal is directed shall hear the appeal within ten days of receipt of notification. The teacher and the superintendent shall be advised by the clerk of the board of the time and place of hearing by written notice at least three days before the date of hearing.

(g) All parties shall be entitled to counsel at every stage of the proceedings established by this section. Hearings shall be in executive session, unless the teacher making appeal requests or agrees in writing that they be open to the public. A teacher making an appeal may waive in writing his right to a hearing.

(h) Upon hearing, or if an appeal is taken, the school board shall affirm or reverse the suspension or take such other action, including dismissal, as may appear just. If the suspension, or the dismissal, is reversed, the teacher shall not suffer any loss of pay, retirement benefits, or any other benefits to which he would otherwise have been entitled.

(j) The decision of the school board be in writing and shall be filed with the clerk of the school board not later than five days after the hearing or after the time for taking an appeal has expired. The clerk shall within three days notify the superintendent and the teacher in writing of the decision.

(k) No action at law shall lie on the part of a teacher against any school district for breach of contract by reason of suspension or dismissal unless the procedures herein described have been followed by said teacher.

(m) Every teacher's contract shall be deemed to contain the provisions of this statute and any provision in the contract inconsistent with this statute shall be considered of no force or effect. - Amended 1975, No. 79.

Virginia

Code of Virginia 1950, section 22-217.4 cited in Federal case:
Virginia code ann. section 22-217.4 (Replacement volume, 1973)

22-217.2. Written contracts required; execution of contracts; rules and regulations.

Written contracts shall be made by the school board with all public school teachers, except those temporarily employed as substitute teachers, before they enter upon their duties, in a form to be prescribed by the Superintendent of Public Instruction. Such contracts shall be signed in duplicate, with a copy thereof furnished to both parties.

The State Board of Education shall promulgate rules and regulations to effectuate the purposes of this article.

22-217.3. Probationary terms of service for teachers, principals and supervisors; reassigning principal or supervisor to teaching position.

A probationary term of service for three years in the same county or city school system shall be required before a teacher is issued a continuing contract. A teacher on continuing contract appointed to the position of principal or supervisor shall serve three years in such position before acquiring continuing contract status as principal or supervisor. Continuing contract status acquired by a principal or supervisor shall not be construed as prohibiting a school board from reassigning such administrative or supervisory personnel to a teaching position if notice of reassignment is given by the school board by April fifteenth of any year.

22-217.5. Dismissal, suspension, etc., of teacher; grounds.

Teachers may be dismissed, suspended or placed on probation for the following reasons: incompetency, immorality, noncompliance with school laws and regulations, disability as shown by competent medical evidence, or for other good and just cause. (1968, c. 691; 1975, c. 308)

22-217.6. Same; notice to teacher.

Written notice setting forth the reasons for dismissal, suspension or placing on probation and a statement that the teacher may request a hearing before the school board within fifteen days after receiving the notice must be sent to the teacher. A personal interview with the teacher stating the reason for dismissal or placing on probation may be employed in lieu of such written notice. (1968, c. 691; 1975, c. 308)

22-217.8. Same; decision of school board.

The school board shall give the teacher its written decision within ten days after the hearing, together with a copy of the transcript of the proceedings, which shall be furnished without cost. A majority vote of the school board is necessary for dismissal. (1968, c. 691; 1974, c. 18.)

Washington

Section 28A.58.450

28A.58.450 Adverse change in contract status of certificated employee—
Notice—Probable cause—Hearing—Decision.

Every board of directors determining that there is probable cause or causes for a teacher, principal, supervisor, superintendent, or other certificated employee, holding a position as such with the school district, hereinafter referred to as "employee", to be discharged or otherwise adversely affected in his contract status, shall notify such employee in writing of its decision, which notification shall specify the probable cause or causes for such action. Such notices shall be served upon that employee personally, or by certified or registered mail, or by leaving a copy of the notice at the house of his or her usual abode with some person of suitable age and discretion then resident therein. Every such employee so notified, at his or her request made in writing and filed with the chairman of the board or secretary of the board of directors of the district within ten days after receiving such notice, shall be granted opportunity for hearing to determine whether or not there is sufficient cause or causes for his or her discharge or other adverse action against his contract status. In request for hearing, the employee may request either an open or closed hearing. The board upon receipt of such request shall call the hearing to be held within ten days following the receipt of such request, and at least three days prior to the date fixed for the hearing shall notify such employee in writing of the date, time and place of the hearing. The hearing be opened or closed as requested by the employee, but if the employee fails to make such a request, the board or its hearing officer may determine whether the hearing shall be open or closed. The board may employ as a hearing officer any person not currently employed by the district to conduct on its behalf any hearing required by this section, who shall transmit to the board a record of the proceedings together with his recommended findings of fact and conclusions of law, and an advisory recommended decision for the board's final disposition. The board or its hearing officer may reasonably regulate the conduct of the hearing. The employee may engage such counsel and produce such witnesses as he or she may desire. The board of directors, within ten days following the conclusion of such hearing, shall notify such employee in writing of its final decision. Any decision to discharge or to take other adverse action against such employee shall be based solely upon the cause or causes for discharge specified in the notice of probable cause to the employee and established by a preponderance of the evidence at the hearing to be sufficient cause or causes for discharge or other adverse action against his contract status.

In the event any such notice or opportunity for hearing is not timely given by the district, or in the event cause for discharge or other adverse action is not established by a preponderance of the evidence at

the hearing, such employee shall not be discharged or otherwise adversely affected in his contract status for the causes stated in the original notice for the duration of his or her contract.

28A.67.070 Conditions and contracts of employment—Nonrenewal of contracts.

No teacher, principal, supervisor, superintendent, or other certificated employee holding a position as such with a school district, hereinafter referred to as "employee", shall be employed except by written order of a majority of the directors of the district at a regular or special meeting thereof, nor unless he is the holder of an effective teacher's certificate or other certificate required by law of the state board of education for the position for which the employee is employed.

The board shall make with each employee employed by it a written contract, which shall be in conformity with the laws of this state, and limited to a term of not more than one year. Every such contract shall be made in triplicate, one copy to be retained by the school district superintendent or secretary, one copy to be retained, after having been approved and registered, by the intermediate school district superintendent, and one copy to be delivered to the employee thereafter. No contract shall be offered by any board nor approved and registered by the intermediate school district superintendent for the employment of any teacher who has previously signed a contract to teach for that same term in another school district of the state of Washington unless such teacher shall have been released from his obligations under such previous contract by the board of directors of the school district to which he was obligated. Any contract signed in violation of this provision shall be void.

Every board of directors determining that there is probable cause or causes that the employment contract of an employee should not be renewed by the district for the next ensuing term shall notify that employee in writing on or before April 15th preceding the commencement of such term of that determination of the board of directors, which notification shall specify the cause or causes for nonrenewal of contract. Such notice shall be served upon the employee personally, or by certified or registered mail, or by leaving a copy of the notice at the house of his or her usual abode with some person of suitable age and discretion then resident therein. Every such employee so notified, at his or her request made in writing and filed with the chairman or secretary of the board of directors of the district within ten days after receiving such notice, shall be granted opportunity for hearing to determine whether or not the facts constitute sufficient cause or causes for nonrenewal of contract. In the request for hearing, the employee may request either an open or closed hearing. Such board upon receipt of such request shall call the hearing to be held within ten days following the receipt of such request, and at least three days prior to the date fixed for the hearing shall notify the employee in writing to the date, time and place of the hearing, but if the employee fails to make such a request, he

waived his rights to such a hearing. The board through its hearing officer may determine whether the hearing shall be open or closed.

The board may employ as a hearing officer any person not currently employed by the district to conduct on its behalf any hearing required by this section, who shall transmit to the board a record of the proceeding together with his recommended findings of fact and conclusions of law, and an advisory recommended decision for the board's final disposition. The board or its hearing officer may reasonably regulate the conduct of the hearing. The employee may engage such counsel and produce such witness as he or she may desire. The board of directors, within ten days following the conclusion of such hearing, shall notify the employee in writing of its final decision either to renew or not to renew the employment of the employee for the next ensuing term. Any decision not to renew such employment contract shall be based solely upon the cause or causes for nonrenewal specified in the notice of probable cause to the employee and established by a preponderance of the evidence at the hearing to be sufficient cause or causes for nonrenewal. If any such notification or opportunity for hearing is not timely given by the district, the employee entitled thereto shall be conclusively presumed to have been reemployed by the district for the next ensuing term upon contractual terms identical with those which would have prevailed if his employment had actually been renewed by the board of directors for such ensuing term.

West Virginia

Code Ann., sec. 18A-2-2 (1971 Replacement Vol.)

18A-2-1. Employment in general.

The employment of professional personnel shall be made by the board only upon nomination and recommendation of the superintendent. In case the board refuses to employ any or all of the persons nominated, the superintendent shall nominate others and submit the same to the board at such time as the board may direct. All personnel so nominated and recommended for employment and for subsequent assignment shall meet the certification, licensing, training, and other eligibility classifications as may be required by provisions of this chapter and by state board regulation. (1969, c. 140.)

18A-2-2. Employment of teachers; contracts; how terminated; dismissal for lack of need; released time; failure of teacher to perform contract or violation thereof.

Before entering upon their duties, all teachers shall execute a contract with their board of education, which contract shall state the salary to be paid and shall be in the form prescribed by the state superintendent of schools. Every such contract shall be signed by the teacher and by the president and secretary of the board of education, and when so signed shall be filed, together with the certificate of the teacher, by the secretary of the office of the board.

A teacher's contract, under this section, shall be for a term of not less than one nor more than three years; and if, after three years of such employment, the teacher who holds a professional certificate, based on at least a bachelor's degree, has met the qualifications for the same, and the board of education enter into a new contract of employment, it shall be a continuing contract: Provided, that any teacher holding a valid certificate with less than a bachelor's degree who is employed in a county beyond the said three-year probationary period shall upon qualifying for said professional certificate based upon a bachelor's degree, if reemployed, be granted continuing contract status. The continuing contract of any teacher shall remain in full force and effect except as modified by mutual consent of the school board and the teacher, unless and until terminated (1) by a majority vote of the full membership of the board before April first of the then current year, after written notice, served upon the teacher, return receipt requested, stating cause or causes, and an opportunity to be heard at a meeting of the board prior to the board's action thereon, or (2) by written resignation of the teacher before that date. Such termination shall take effect at the close of the school year in which the contract is so terminated: Provided, however, that the contract may be terminated at any time by mutual consent of the school board and the teacher, and that this section shall not affect the powers of the school board to suspend

or dismiss a principal or teacher pursuant to section eight (18A-2-8) of this article: Provided further, that a continuing contract for any teacher holding a certificate valid for more than one year and in full force and effect during the school year one thousand nine hundred sixty-three shall remain in full force and effect: And provided further, that a continuing contract shall not operate to prevent a teacher's dismissal based upon the lack of need for the teacher's services pursuant to the provisions of law relating to the allocation of teachers and pupil-teacher ratios. But in case of such dismissal, the teachers so dismissed shall be placed upon a preferred list in the order of their length of service with that board, and no teacher shall be employed by the board until each qualified teacher upon the preferred list, in order, shall have been offered the opportunity for re-employment: Provided that he has not accepted a teaching position elsewhere. Such reemployment shall be upon a teacher's preexisting continuing contract and shall have the same effect as though the contract had been suspended during the time the teacher was not employed.

In the assignment of position or duties of a teacher under said continuing contract, the board shall have authority to provide for released time of a teacher for any special professional or governmental assignment without jeopardizing the contractual rights of such teacher or any other rights, privileges, or benefits under the provisions of this chapter.

Any teacher who fails to fulfill his contract with the board, unless prevented from so doing by personal illness or other just cause, or unless released from such contract by the board, or who violates any lawful provision thereof, shall be disqualified to teach in any other public school in the State for a period of the next ensuing school year, and the state department of education or board may hold all papers and credentials of such teacher on file for a period of one year for such violation: Provided, however, that marriage of a teacher shall not be considered a failure to fulfill, or violation of the contract.

The superintendent at a meeting of the board on or before the first Monday in May, shall furnish in writing to the board a list of teachers and other employees to be considered for transfer and subsequent assignment for the next ensuing school year. All other teachers and employees not so listed shall be considered as reassigned to the positions or jobs held at the time of the meeting. The list of those recommended for transfer shall be included in the minute record of such meeting and all those so listed shall be notified in writing, which notice shall be delivered in writing, by certified mail, return receipt requested, to such persons' last known addresses within ten days following said board meeting, of their having been so recommended for transfer and subsequent assignment. The superintendent's authority to suspend school personnel shall be temporary only pending a hearing upon charges filed by the superintendent with the board of education, and such period of suspension shall not exceed thirty days unless extended by the order of the board. (1969, c. 140.)

18A-2-8. Suspension and dismissal of school personnel by board.

Notwithstanding any other provisions of law, a board may suspend or dismiss any person in his employment at any time for: Immorality, incompetency, cruelty, insubordination, intemperance or wilful neglect of duty, but the charges shall be stated in writing and the employee so affected shall be given an opportunity to be heard by the board upon not less than ten days' written notice, which charges and notice shall be served upon the employee within five days of the presentation of the charges to the board. The hearing may be held at the next regular meeting of the board or at a special meeting called for that purpose; and in any case when the board is not unanimous in its decision to suspend or dismiss, the person so suspended or dismissed shall have the right of appeal to the state superintendent of schools.

Wisconsin

Section 118.22 etc.

118.22 Renewal of teacher contracts

(1) In this section:

(a) "Teacher" means any person who holds a teacher's certificate or license issued by the state superintendent or a classification status under the board of vocational, technical and adult education and whose legal employment requires such certificate, license or classification status, but does not include part-time teachers employed by any board of school directors in a city of the 1st class.

(b) "Board" means a school board, vocational, technical and adult education district board, board of control of a cooperative educational service agency or county handicapped children's education board, but does not include any board of school directors in a city of the 1st class.

(2) On or before March 15 of the school year during which a teacher holds a contract, the board by which the teacher is employed or an employee at the direction of the board shall give the teacher written notice of renewal or refusal to renew his contract for the ensuing school year. If no such notice is given, on or before March 15, the contract then in force shall continue for the ensuing school year. The teacher shall accept or reject in writing such contract not later than the following April 15. No teacher may be employed or dismissed except by a majority vote of the full membership of the board. Nothing in this section prevents the modification or termination of a contract by mutual agreement of the teacher and the board. No such board may enter into a contract of employment with a teacher for any period of time as to which the teacher is then under a contract of employment with another board.

(3) At least 15 days prior to giving written notice of refusal to renew a teacher's contract for the ensuing school year, the employing board shall inform the teacher by preliminary notice in writing that if the teacher files a request therefor with the board within 5 days after receiving the preliminary notice, the teacher has the right to a private conference with the board prior to being given written notice of refusal to renew his contract.

118.23 Populous counties; teacher tenure

(1) In this section "teacher" means any person who holds a teacher's certificate or license, who is employed full time and meets the minimum requirements prescribed by the governing body employing such person and who is employed by a school board, board of trustees or governing body of any school operating under this title and lying

entirely and exclusively in a county having a population of 500,000 or more. "Teacher" does not include any superintendent or assistant superintendent; any teacher having civil service status under sections 63-01 to 63.17; any teacher in a public school in a city of the 1st class; or any person who is employed by a school board during the time of war as a substitute for a teacher on leave while on full-time duty in the U. S. armed forces or any reserve or auxiliary thereof and who is notified in writing at the time of employment that the position is of a temporary nature. This section does not apply to any teacher after the close of the school year during which the teacher has attained the age of 65 years, nor to any subsequent employment of such teacher.

(2) All teachers shall be employed on probation, but after continuous and successful probation for 3 years and the gaining of the 4th contract in the same school system or school, their employment shall be permanent except as provided in sub. (3). All principals shall be employed on probation, but after continuous and successful probation for 3 years and the gaining of a 4th contract in the same school system or school, their employment shall be permanent except as provided in sub. (3). Upon accepting employment in another school system or school to which this section applies, a teacher who has acquired permanent employment under this section shall be on probation for 2 years. After continuous and successful probation for 2 years and gaining the 3rd contract in such school system or school, employment therein shall be permanent except as provided in sub. (3). A person who acquired tenure as a teacher under this section shall not be deprived of tenure as a teacher by reason of his employment as a principal.

(3) No teacher who has become permanently employed under this section may be refused employment, dismissed, removed or discharged except for inefficiency or immorality, for willful and persistent violation of reasonable regulations of the governing body of the school system or school or for other good cause, upon written charges based on fact preferred by the governing body or other proper officer of the school system or school in which the teacher is employed. Upon the teacher's written request and no less than 10 nor more than 30 days after the receipt of notice by the teacher, the charges shall be heard and determined by the governing body of the school system or school by which the teacher is employed. Hearings shall be public when requested by the teacher and all proceedings thereat shall be taken by counsel at the hearing. The action of the governing body is final.

(4) If necessary to decrease the number of permanently employed teachers by reason of a substantial decrease of pupil population within the school district, the governing body of the school system or school may lay off the necessary number of teachers, but only in the inverse order of the appointment of such teachers. No permanently employed teachers may be prevented from securing other employment during the period he is laid off under this subsection. Such teachers shall be

reinstated in inverse order of their being laid off, if qualified to fill the vacancies. Such reinstatement shall not result in a loss of credit for previous years of service. No new permanent or substitute appointments may be made while there are laid off permanent teachers available who are qualified to fill the vacancies.

Wyoming

W.S. 1975 Cum. Supp., sec. 21.1-152

21.1-152. Definitions. - As used in this article the following definitions shall apply:

(a) Board: The board of trustees of any school district in the State of Wyoming offering instruction in any of the grades kindergarten through twelve (12).

(b) Continuing contract teacher:

(i) Any initial contract teacher who has been employed by the same school district in the State of Wyoming for a period of three consecutive school years and has had his contract renewed for a fourth consecutive school year.

(c) Dismissal: The cancellation of any teacher's contract of employment by the board of trustees while such contract is in effect. In the case of a continuing contract teacher, dismissal shall mean cancellation of his contract at any time other than at the end of a school year where proper notice has been given.

(d) Initial contract teacher: Any teacher who has not achieved continuing contract status.

(e) Superintendent: The chief administrative officer of any school district.

(g) Teacher: Any person employed under contract by the board of trustees of a school district as a certified professional employee.

21.1-156. Notice of recommendation of termination to continuing contract teacher; when termination effective. - (a) A continuing contract teacher shall be notified of a recommendation of termination by the superintendent or any member of the board by giving such teacher written notice thereof, together with written reasons therefor on or before March 15 of any year.

(b) Termination under such recommendation if approved by the board will be effective at the end of the contracted school year in the year in which notice of such termination is given.

21.1-158. Hearing on recommendations of termination. - A continuing contract teacher shall be entitled to a hearing before the board within thirty (30) days after receipt of notice of a recommendation of termination by requesting same in writing within at least ten (10) days after receiving said notice.

21.1-160. Suspension or dismissal of teachers. - The board may suspend or dismiss any teacher for incompetency, neglect of duty, immorality, insubordination, or any other good or just cause.

(a) Written Notice: Suspension or dismissal proceedings shall be initiated by the superintendent or any member of the board delivering to the teacher a written notice thereof, together with written reasons therefor.

(b) Hearing: Every teacher who has dismissal or suspension proceedings instituted against him shall have a hearing before the board on the reasons for such dismissal or suspension, unless such hearing is waived in writing by the teacher.

(i) The hearing shall be conducted before the board and shall be held not less than ten (10) nor more than thirty (30) days after the date of initiation of such dismissal or suspension proceedings. Written notice of the time and place of said hearing shall be delivered to the teacher at least ten (10) days prior thereto.

(ii) At any such hearing conducted by the board, the teacher shall have the right to appear in person with or without counsel; shall have the right to be heard and to present testimony or witnesses and other evidence bearing upon the reasons for the proposed dismissal or suspension; and shall have the right to cross-examine witnesses at the hearing. No testimony shall be received from a witness except under oath or affirmation, which may be administered by any member of the board of trustees. The board shall make provisions for the recording of all evidence and testimony presented at the hearings, and such record shall be retained in the minutes of the board as a public record for a period of five (5) years after the date of said hearing.

(c) Majority of Board: Any action resulting in the teacher's suspension or dismissal shall be approved by a majority of the duly elected members of the board of trustees.

APPENDIX B

A MODEL INSTRUMENT

FOR TEACHER EVALUATIONS

EXPECTED TEACHER PERFORMANCE

The teacher is directly responsible to the principal.

Pursuant to G.S. 115-146. "It shall be the duty of all teachers, including student teachers, substitute teachers, voluntary teachers, teachers' aides and assistants, when given authority over some part of the school program by the principal or supervising teacher, to maintain good order and discipline in their respective schools; to encourage temperance, morality, industry, and neatness; to promote the health of all pupils, especially of children in the first three grades, by providing frequent periods of recreation, supervising the play activities during recess, and encouraging wholesome exercises for all children; to teach as thoroughly as they are able all branches which they are required to teach; to provide for singing in the school, and so far as possible to give instruction in public school music; and to enter actively into the plans of the superintendent for the professional growth of the teachers. Teachers shall cooperate with the principal in ascertaining the cause of nonattendance of pupils that he may report all violators of the compulsory attendance law to the attendance officer in accordance with rules promulgated by the State Board of Education."

Qualifications as specified by the Yadkin County Board of Education:

It is the desire of the Yadkin County Board of Education to employ individuals who hold at least an "A" certificate in

the area of instruction in which the teacher's duties will apply. Any teacher who holds a certificate rating that is less than the "A" certificate and is employed by the Yadkin County Board of Education is required to complete a minimum of six semester hours of credit per year toward the elimination of his deficiency.

Teachers will be rated in regard to performance expectancies; to meet these criteria, they should:

- possess sufficient knowledge of the subject matter relating to the subjects or grade level taught;
- possess the ability and initiative to impart to students in an effective way the knowledge of the subject matter being taught;
- increase knowledge of the subject matter by participating in in-service programs and by studying current research;
- develop daily lesson plans which shall include objectives, methods and materials to be used, and evaluation procedure to ascertain student progress;
- make provision for students to express themselves creatively, by both written and oral means;
- provide opportunities for student involvement in the planning of classroom activities; including, but not limited to, independent study;
- create a classroom atmosphere which includes - among other considerations - learning centers, student displays, and a neat and orderly classroom appearance;

- maintain proper classroom discipline while providing ample flexibility for the student to work in a relaxed atmosphere;
- be cognizant of and provide for individual needs of students;
- comply with all Public School Laws of North Carolina and of the State Board of Education, as well as with the policies of the Yadkin County Board of Education, and of the school;
- provide proper supervision for all student activities within the school day;
- take active steps to encourage students to develop good study and work habits;
- strive to improve the quality of instruction by soliciting constructive criticism and by implementing suggestions for improvement;
- complete all reports promptly and accurately;
- cooperate with all school personnel, including peers, supervisory personnel, and administrative personnel, in strengthening the instructional program;
- observe confidential matters relating to pupils, parents, and school personnel; and
- maintain positive relationships with parents.

YADKIN COUNTY TEACHER EVALUATION PROCEDURE

I. BACKGROUND AND GENERAL INFORMATION

It is our belief that we have a strong instructional program in the Yadkin County School System. We all know that quality teaching does not occur automatically. It is a product of a cooperative effort of teachers, supervisors, pupils, and administrators.

To further improve our program, the Yadkin County Board of Education has approved, and we are hereby implementing, an evaluation program for our teachers.

The teacher evaluation program includes the following goals:

- (1) To improve the performance of the teacher,
- (2) To improve student performance,
- (3) To define teacher responsibilities more clearly,
- (4) To delineate areas of teacher strengths and weaknesses,
- (5) To provide continuing opportunities for a cooperative effort by faculty and supervisors to assist the teachers in improving areas of weakness,
- (6) To provide for teacher self-evaluation,
- (7) To stimulate teacher competence,
- (8) To provide information for use in making personnel decisions, and
- (9) To improve administrative and supervisory programs.

To achieve these goals, the evaluation procedure described in the following pages has been established.

The evaluation will normally be conducted by the principal or his designee. In order that uniformity of evaluation may be achieved, an extensive program of instruction for all evaluators will be conducted, and a system of measuring the effectiveness of the evaluators will be used.

The evaluation sheet will be used in all teacher evaluations. The evaluator will fully discuss his findings with each teacher. The teacher will be encouraged to add comments to the evaluation form. Specific recommendations for improvement, as well as help in achieving improvement, will be provided as needed.

A. In General

The principal has the primary responsibility for the evaluation of each teacher at his school. The evaluation may be conducted by a designee of the principal. In certain areas, the evaluation will be conducted by a designee of the central office. For example, the evaluation of special education teachers shall be conducted by the Coordinator of the Special Education program; the evaluation of Driver Education teachers shall be conducted by the Driver Education Coordinator; the evaluation of Title I reading teachers shall be by the Coordinator of Federal Programs. As used herein, the term "evaluator" shall include the principal, his designee, and in the areas of Special Education, Driver Education, and the Title I reading program the Coordinator of the particular program area.

The evaluator shall conduct a formal evaluation of each teacher at least twice a year. A formal evaluation may be conducted more frequently than twice a year if the principal or teacher deems it necessary or desirable. During a formal evaluation the evaluator shall actually be present in the classroom and observing for at least two class periods on the same day, though the periods need not be consecutive. The formal evaluation may cover more than two class periods if the evaluator or teacher deems it necessary or desirable. The evaluation form shall be used on each evaluation.

Some of the items on the evaluation sheet relate to matters to be observed and evaluated in the classroom. Other items, such as playground observation, lunchroom supervision, supervision of loading and unloading buses, and hallway observation, involve an evaluation based on a day-to-day observation of the teacher by the evaluator during the operation of the school.

If, prior to a formal evaluation period, the evaluator notes any significant action or inaction on the part of the teacher meriting praise, needing correction or improvement, or necessitating significant change or modification, the evaluator shall bring the matter to the attention of the teacher and shall prepare a written memorandum of the situation, including the nature of the situation, the praise, directives, or suggestions given. The teacher shall be given a copy of the memorandum and shall have the opportunity to comment in writing on the original and the copy of the memorandum. The formal evaluation period shall incorporate the memorandum and any additional comments

on the situation (such as improvement or lack of improvement) into the evaluation report.

The evaluation procedures outlined herein are designed to deal with the evaluation of a teacher. These evaluation procedures do not, and are not, intended to preclude the principal from bringing to the attention of the superintendent or other appropriate school officials, any matter which, in the principal's judgment, he deems necessary or desirable. The establishment of the evaluation procedures are not intended to and do not preclude application of the public school laws, do not diminish in any way any of the powers or duties conferred by said laws upon the superintendent or principal, and do not replace or preclude use of any of the procedures or rights provided by State law. The procedures do not preclude the superintendent or principal from dealing with problems relating to or arising on the administrative level of the school program, including, by way of illustration, requiring compliance by all personnel with public school laws, policies, school policy or Yadkin County Board of Education directives.

The evaluator shall not notify the teacher prior to any formal evaluation period.

B. The Rating Procedures

On the basis of the entire evaluation, the evaluator shall rate the teacher's performance as (1) Very High. (2) High (3) Satisfactory, (4) Low, and (5) Very Low.

A rating of satisfactory or above on each of the criteria described below is deemed prerequisite to an overall evaluation of satisfactory or above:

- (1) Knowledge of subject matter;
- (2) Daily teacher preparation;
- (3) Pupil-teacher relationship; and
- (4) Compliance with regulations, policies, and law.

On the remaining criteria, the teacher must achieve a cumulative average of at least 5.0 to receive an overall evaluation of satisfactory or above.

C. Procedure Following Evaluation

1. Conference and Comment

Following the completion of the formal evaluation report the evaluator shall have a conference with the teacher and shall review in detail with the teacher the entire evaluation report. The evaluator shall make in writing specific recommendations for improvement of the teacher in all areas of deficiency. These recommendations will be fully discussed by the evaluator with the teacher. The teacher shall receive two copies of the evaluator's report. The teacher shall have five full teaching days in which to consider the evaluation report and shall, by the end of the fifth teaching day following the receipt of the report, place any comments in the appropriate section of the report and return one copy, containing his comments, to the evaluator. After receiving the copy of the evaluation report from the teacher, the evaluator may have a further conference or conferences with the teacher, if either the teacher or the evaluator deems it necessary or desirable.

The evaluator shall prepare a written report of such additional conference or conferences, to be incorporated with the evaluation sheet. The teacher shall receive a copy, and may make written comments thereon. If the teacher desires an additional conference with the evaluator prior to the teacher making written comments, the conference shall be held.

2. Rating of Below Satisfactory - The Ten-Day Evaluation

If the evaluator rates the teacher below "satisfactory", there shall be another evaluation by the evaluator as soon as possible after the end of ten teaching days following the initial formal evaluation period. The evaluator shall review with the teacher this entire evaluation report and shall furnish the teacher two copies thereof. The evaluator shall make specific recommendations in detail for the improvement of the teacher in all areas of deficiency. These recommendations shall be fully discussed by the evaluator with the teacher. The evaluator will render all reasonable assistance to the teacher in implementing the recommendations for improvement. The teacher shall have five full teaching days in which to consider the evaluation and to place any comments in the appropriate section of the evaluation form. The teacher shall, by the end of the fifth teaching day following the formal evaluation, return one copy of the evaluation sheet, containing any of the teacher's comments, to the evaluator. The teacher may have an additional conference or conferences with the evaluator during the five day period, if the teacher so desires. A record of

such additional conference or conferences shall be prepared by the evaluator, a copy furnished to the teacher, who may make written comments thereon. The report shall be incorporated with the evaluation sheet.

If a teacher, at the end of the ten-day evaluation, receives a rating below that of satisfactory, the evaluator shall notify, without delay, the superintendent who is to employ a qualified outside consultant for further evaluation of the teacher. The notification to the outside consultant will simply be that the principal desires an evaluation of a certain teacher. Neither the superintendent or evaluator shall reveal to the consultant the nature of any claimed deficiencies in the teacher's performance.

3. Evaluation by Outside Consultant

As soon as reasonably possible after receiving notice from the evaluator that an evaluation of a teacher with a below-satisfactory rating is desired, and employment of an outside consultant, the consultant shall conduct an independent evaluation of the teacher using the evaluation form, making detailed notations and comments thereon or attached thereto. This evaluation shall cover a minimum of one full teaching day.

4. Procedure Following Evaluation by Outside Consultant

(a) Satisfactory or Above

Following the evaluation the consultant shall have a conference with the teacher and shall discuss the evaluation in detail if the rating of the supervisor is satisfactory or above. The consultant shall make in writing recommendations for

improvement. The teacher shall receive two copies of the evaluation and by the end of the fifth teaching day following the consultant's evaluation, return a copy to the consultant, containing any of the teacher's comments. The consultant shall furnish a copy, with the teacher's comments, to the evaluator and superintendent.

If the evaluation is satisfactory or above, the consultant shall again evaluate the teacher at the end of four weeks. If the consultant's second evaluation is satisfactory or above, no further evaluation of the teacher shall be required during that school year, but the principal may make further evaluations if he deems it desirable to do so. If the rating is below satisfactory, the procedure set forth in subsection "(b)" hereof shall be followed

(b) Below Satisfactory Rating By Outside Consultant

If the consultant rates the teacher below satisfactory, the consultant, in addition to the evaluation sheet mentioned above, shall prepare a detailed written report as to the findings with regard to the areas of strength and deficiencies and as to the methods recommended for improvement; and, in general, shall outline a proposed course of action designed to rectify or eliminate any areas of deficiency. The proposed course of action may involve use of the school system's supervisor. Two copies of the report shall be given to the teacher. The teacher shall, at the end of the fifth teaching day after receipt of the report, return one copy to the consultant with

any written comments of the teacher. The consultant shall furnish the superintendent and principal with a copy containing the teacher's comments, if any. The consultant and the teacher's supervisor shall exert all reasonable efforts to assist the teacher in correcting areas of deficiency.

The consultant shall discuss with the principal (and other evaluator, as the case may be) the evaluation, the suggested areas of improvement, and the methods recommended for improvement, together with any other pertinent information. The principal shall confer with the consultant and the teacher, and the principal shall exert all reasonable efforts to help the teacher correct the areas of deficiency.

The supervisor and the principal of the teacher will work closely with the teacher, on a day-to-day basis if deemed necessary and desirable, to improve the teacher's performance in the deficiency area. This shall be known as the counseling period.

The supervisor shall have the right, subject to the approval of the superintendent, to assign such other personnel as he deems requisite or desirable to assist in counseling the teacher.

At the end of six teaching weeks, the consultant and the principal shall again conduct a formal evaluation of the teacher. The consultant and the principal shall make separate evaluations, with two copies of each evaluation being furnished to the teacher, and the teacher shall, by the end

of the fifth teaching day, return to the consultant and principal a copy of his evaluation with any written comments of the teacher thereon.

If either the consultant or the principal, or both, rate the teacher as below satisfactory, the superintendent shall be notified without delay. The superintendent, at his discretion, shall conduct a formal evaluation, using the evaluation form. The superintendent shall have a conference with the teacher following the evaluation and furnish the teacher two copies thereof. The consultant and principal shall attend this conference. The superintendent will discuss the evaluation in detail with the teacher. The teacher shall, by the end of the fifth teaching day, return a copy of the evaluation to the superintendent with any written comments thereon. The superintendent shall then direct what action, if any, shall be taken with regard to the continued counseling of the teacher or what other action he deems requisite or desirable in the matter.

D. Emergency Procedure

If, following an evaluation, an additional evaluation is required hereunder, and there does not remain in the school year enough time to implement all or any of these procedures, the superintendent shall be immediately notified, and shall promptly confer with the evaluator and (keeping in mind the interests of the school system and the teacher), either (1) take such action as is authorized by G.S. 115-142 without further evaluation, or (2) provide that the evaluation pro-

ceedings pursuant to this policy shall be suspended until the forthcoming school year. Said proceedings would then resume at the point where they were when suspended.

CRITERION A - DISPLAYS KNOWLEDGE OF SUBJECT MATTER

The items listed below are not exhaustive, but are illustrative and therefore do not apply to every teaching situation. Because of the interrelationship of the various facets of teaching, some of the items necessarily fall under more than one major criterion.

Adequate Performance			Inadequate Performance	
Very High 9	High 8	Satisfactory 5	Low 3	Very Low 2
1. Teacher invariably exhibits knowledge in answering questions which are in text material.	1. Teacher almost always exhibits knowledge in answering questions which are in text material.	1. Teacher usually exhibits knowledge in answering questions which are in text material.	1. Teacher infrequently exhibits knowledge in answering questions which are in text material.	1. Teacher exhibits lack of knowledge in answering questions which are in text material.
2. Teacher invariably exhibits knowledge in answering questions not in text but in the field of study.	2. Teacher almost always exhibits knowledge in answering questions not in text but in the field of study.	2. Teacher usually exhibits knowledge in answering questions not in text but in field of study.	2. Teacher infrequently exhibits knowledge in answering questions which are not in the text, but which are in the field of study and should be known.	2. Teacher exhibits lack of knowledge in answering questions which are not in the text, but which are in the field of study and should be known.
3. Teacher continuously imparts in-depth and thought provoking material.	3. Teacher almost always imparts material which is intensive in nature.	3. The material imparted usually has substance and some logical explanation.	3. Teacher frequently imparts material which is superficial and weak with no logical explanation.	3. Material imparted by the teacher is superficial and weak with no logical explanation.

CRITERION A - CONTINUED

Adequate Performance			Inadequate Performance	
Very High 9	High 8	Satisfactory 5	Low 3	Very Low 2
4. Teacher never mistakes instructional rules.	4. Teacher infrequently mistakes instructional rules.	4. Teacher usually does not mistake instructional rules.	4. Teacher frequently mistakes instructional rules.	4. Teacher flagrantly mistakes instructional rules (For example, misinterpretation of a grammar rule in English).
5. Teacher demonstrates ability in imparting subject matter.	5. Teacher experiences no difficulty in imparting subject matter.	5. Teacher experiences occasional difficulty in imparting subject matter.	5. Teacher is frequently unable to impart subject matter.	5. Teacher is unable to impart knowledge of subject matter.
6. Teacher demonstrates a daily effort to increase knowledge of subject taught by referring to current research and by participating in in-service programs.	6. With rare exceptions, teacher demonstrates a daily effort to increase knowledge of subject taught by referring to current research and by participating in in-service programs.	6. Teacher usually demonstrates a daily effort to increase knowledge of subject taught by referring to current research and by participating in in-service programs.	6. Teacher frequently fails to demonstrate any evidence of daily efforts to increase knowledge of subject taught; (does not participate in in-service programs involving current teaching knowledge).	6. Teacher demonstrates no evidence of daily efforts to increase knowledge of subject taught; (does not participate in in-service programs involving current teaching knowledge).

CRITERION B - PREPARES FOR DAILY TEACHING

The items listed below are not exhaustive, but are illustrative and therefore do not apply to every teaching situation. Because of the interrelationship of the various facets of teaching, some of the items necessarily fall under more than one major criterion.

Adequate Performance			Inadequate Performance	
Very High 9	High 8	Satisfactory 5	Low 3	Very Low 2
1. Teacher provides daily lesson plans involving text-book, supplementary assignments, and research data.	1. Teacher provides lesson plans which are consistent with assignments and research data.	1. Teacher provides adequate lesson plans.	1. Teacher rarely provides daily lesson plans.	1. Teacher does not provide daily lesson plans.
2. Teacher continuously analyzes objectives, technique methods, and materials.	2. Teacher almost always analyzes objectives, technique methods, and materials.	2. Teacher usually analyzes objectives, technique methods, and materials.	2. Little evidence exists to show that teacher analyzes objectives, technique methods, and materials.	2. No evidence exists to show that teacher analyzes objectives, technique methods, and materials.
3. Daily lesson plan is consistent with the lesson plan provided by the Central Office.	3. Daily lesson plan almost always is consistent with the lesson plan provided by the Central Office.	3. Daily lesson plan is usually consistent with the plan form provided by the Central Office.	3. Daily lesson plan is rarely consistent with the lesson plan provided by the Central Office.	3. Daily lesson plan is not consistent with the lesson plan provided by the Central Office.
4. Teacher effectively designs the daily evaluation procedure for measuring effective student performance.	4. Ordinarily the daily evaluation procedure is effectively designed to measure the student performance.	4. Daily evaluation procedure is adequate.	4. Teacher rarely designs the daily evaluation procedure to effectively measure student performance.	4. No evidence exists to show that teacher designs daily evaluation procedure effectively to measure student performance.

CRITERION C - USES ORIGINAL AND IMAGINATIVE IDEAS TO DEVELOP STUDENT'S INTEREST AND CREATIVITY

The items listed below are not exhaustive, but are illustrative and therefore do not apply to every teaching situation. Because of the interrelationship of the various facets of teaching, some of the items necessarily fall under more than one major criterion.

Adequate Performance		Inadequate Performance		
Very High 9	High 8	Satisfactory 5	Low 3	Very Low 2
1. Teacher allows for creative expression, both written and oral.	1. Teacher almost always allows for creative expression both written and oral.	1. Teacher usually provides adequate opportunity for creative expression both written and oral.	1. Teacher seldom provides for creative expression, both written and oral.	1. Teacher provides no opportunity for creative expression, either written or oral.
2. Teacher allows for the involvement of students relative to the planning of classroom activities.	2. Teacher almost always allows for the involvement of students relative to the planning of classroom activities.	2. Teacher usually provides adequate opportunity for involvement of students relative to the planning of classroom activities.	2. Teacher seldom provides involvement for students relative to the planning of classroom activities.	2. Teacher makes no provision for the involvement of students in the planning of classroom activities.
3. Teacher provides learning centers to create interest and creativity.	3. Teacher almost always provides learning centers to create interest and creativity.	3. Teacher usually provides adequate opportunity for learning centers to create interest and creativity.	3. Teacher seldom provides learning centers to create interest and creativity.	3. Total lack of learning centers exists.
4. Teacher provides opportunity for independent study by students.	4. Teacher almost always provides opportunity for independent study by students.	4. Teacher usually provides adequate opportunity for independent study by students.	4. Teacher seldom provides for independent study by students.	4. Students have no opportunity for independent study.

CRITERION D - MAINTAINS GOOD PUPIL-TEACHER RELATIONSHIP

The items listed below are not exhaustive, but are illustrative and therefore do not apply to every teaching situation. Because of the interrelationship of the various facets of teaching, some of the items necessarily fall under more than one major criterion.

Adequate Performance		Inadequate Performance		
Very High 9	High 8	Satisfactory 5	Low 3	Very Low 2
1. Teacher provides effective organizational structure of classroom activities.	1. Teacher provides frequent organizational structure for classroom activities.	1. Teacher usually provides some organizational structure for classroom activities.	1. Teacher seldom provides organizational structure for classroom activities.	1. Teacher provides no organizational structure for classroom activities.
2. Teacher is firm in maintaining classroom policies and regulations (not deficient in controlling pupils in the class).	2. Teacher is almost always firm in maintaining classroom policies and regulations (not deficient in controlling pupils in the class).	2. Teacher is usually firm in maintaining classroom policies and regulations (sometimes deficient in controlling pupils in the class).	2. Teacher is seldom firm in maintaining classroom policies and regulations (deficient in controlling pupils in class).	2. Teacher provides no firmness in maintaining classroom policies and regulations (deficient in controlling pupils in the class.)
3. Students are aware of appropriate classroom procedure.	3. Students are almost always aware of appropriate classroom procedure.	3. Students are usually aware of appropriate classroom procedure.	3. Students are seldom aware of appropriate classroom procedure.	3. Students are not aware of appropriate classroom procedure.
4. Teacher consistently provides for pupil-teacher planning.	4. Provides numerous activities for pupil-teacher planning.	4. Teacher usually provides some opportunity for pupil-teacher planning.	4. Teacher provides for opportunity for pupil-teacher planning.	4. Teacher provides no opportunity for pupil-teacher planning.

CRITERION D - CONTINUED

Adequate Performance			Inadequate Performance	
Very High 9	High 8	Satisfactory 5	Low 3	Very Low 2
5. Teacher continuously recognizes and provides for individual differences in pupils.	5. Teacher almost always recognizes and provides for individual differences in pupils.	5. Teacher usually provides for individual differences in pupils.	5. Teacher seldom provides for individual differences in pupils.	5. Teacher does not provide for individual differences in pupils.
6. Students do not disturb other students.	6. Students seldom disturb other students.	6. Students occasionally disturb other students.	6. Students often disturb other students.	6. Students continually disturb other students.
7. Students move within and out of classroom in a constructive manner.	7. Students seldom move within and out of classroom in a disruptive manner.	7. Students sometime move within and out of classroom in a disruptive manner.	7. Students frequently move within and out of classroom in a disruptive manner.	7. Students consistently move within and out of classroom in a disruptive manner.
8. Teacher consistently provides for emotional, social, and environmental problems of pupils; (i.e., pupils are at ease, with no tension, no fear or dread of work.)	8. Teacher usually provides for emotional, social and environmental problems of pupils; (i.e., pupils are at ease, with no tension, no fear or dread of work).	8. Teacher sometimes provides for emotional, social and environmental problems of pupils; (i.e., pupils are sometimes ill at ease or tense and exhibit fear and dread of work).	8. Teacher rarely provides for emotional, social, and environmental problems of pupils; (i.e., pupils are often ill at ease or tense and exhibit fear and dread of class work).	8. Teacher does not provide for emotional, social, and environmental problems of pupils; (i.e., pupils are ill at ease or tense and exhibit fear and dread of work).
9. Teacher always gives instructions to students in a way that exhibits feelings of security, pleasure, and patience.	9. Teacher usually gives instructions to students in a way that exhibits feelings of security, pleasure, and patience.	9. Teacher sometimes gives instructions to students in a way that exhibits feelings of irritation, displeasure, and impatience toward students.	9. Teacher often gives instructions to students in a way that exhibits feelings of irritation, displeasure, and impatience toward students.	9. Teacher consistently gives instruction to students in a way that exhibits feelings of irritation, displeasure, and impatience toward students.

CRITERION E - PROVIDES ADEQUATE SUPERVISION FOR PUPILS AT ALL TIMES DURING THE SCHOOL DAY

The items listed below are not exhaustive, but are illustrative and therefore do not apply to every teaching situation. Because of the interrelationship of the various facets of teaching, some of the items necessarily fall under more than one major criterion.

Adequate Performance			Inadequate Performance	
Very High 9	High 8	Satisfactory 5	Low 3	Very Low 2
1. Teacher continuously provides classroom supervision of students while in the classroom.	1. Teacher almost always provides classroom supervision of students while in the classroom.	1. Teacher usually provides adequate classroom supervision of students in the classroom.	1. Teacher occasionally provides classroom supervision of students while in the classroom.	1. Teacher rarely provides classroom supervision of students while in the classroom.
2. Teacher continuously provides good playground supervision.	2. Teacher almost always provides good playground supervision.	2. Teacher usually provides adequate playground supervision.	2. Teacher occasionally provides good playground supervision.	2. Teacher rarely provides good playground supervision.
3. Teacher continuously provides good supervision concerning school-related activities (field trips, bus duty, and other assignments initiated by the principal).	3. Teacher almost always provides good supervision concerning school-related activities (field trips, bus duty, and other assignments initiated by the principal).	3. Teacher usually provides adequate supervision concerning school-related activities (field trips, bus duty, and other assignments initiated by the principal).	3. Teacher occasionally provides good supervision concerning school-related activities (field trips, bus duty, and other assignments initiated by the principal).	3. Teacher rarely provides good supervision concerning school-related activities (field trips, bus duty, and other assignments initiated by the principal).

CRITERION F - MAINTAINS ATTRACTIVE, HEALTHFUL, AND COMFORTABLE
CLASSROOM ENVIRONMENT AS FAR AS CIRCUMSTANCES PERMIT

The items listed below are not exhaustive, but are illustrative and therefore do not apply to every teaching situation. Because of the interrelationship of the various facets of teaching, some of the items necessarily fall under more than one major criterion.

Adequate Performance			Inadequate Performance	
Very High 9	High 8	Satisfactory 5	Low 3	Very Low 2
1. Teacher provides display and learning centers which enhance interest on the part of students and correlate well with the unit of study.	1. Teacher provides display and learning centers which usually enhance interest on the part of students and correlate well with the unit of study.	1. Display and learning centers are adequate.	1. Display and learning centers are inadequate and provide no correlation with the unit of study.	1. There is complete absence of display and learning centers.
2. Seating arrangement provides for effective student involvement and interaction.	2. Seating arrangement usually provides for effective student involvement and interaction.	2. Seating arrangement provides for student interaction and involvement in some classroom activities. However, it is ineffective for other classroom activities.	2. Seating arrangement is ineffective for most classroom activities.	2. Seating arrangement does not provide for effective student involvement and interaction (allows opportunity for cheating).
3. Room is always uncluttered; materials and supplies are very neatly arranged.	3. Room is almost always uncluttered; materials and supplies are neatly arranged.	3. Room is usually uncluttered.	3. Room is rarely uncluttered; materials and supplies are usually in no logical order.	3. Room is cluttered with materials and supplies in no logical arrangement.

CRITERION G - TAKES ACTIVE STEPS TO ENCOURAGE GOOD STUDY AND WORK HABITS ON THE PART OF THE STUDENT

The items listed below are not exhaustive, but are illustrative and therefore do not apply to every teaching situation. Because of the interrelationship of the various facets of teaching, some of the items necessarily fall under more than one major criterion.

Adequate Performance			Inadequate Performance	
Very High 9	High 8	Satisfactory 5	Low 3	Very Low 2
1. Teacher consistently provides opportunity for students to work in independent study, both written and outside the classroom.	1. Teacher provides numerous opportunities for students to work on independent study.	1. Teacher usually provides some opportunities for students to work in independent study.	1. Teacher provides few opportunities for students to work in independent study.	1. Teacher provides no opportunities for students to work in independent study.
2. All students are actively engaged in meaningful activity at beginning of class and throughout.	2. There is highly infrequent non-work-related idle conversation and chatter by students at beginning of class and throughout. Class becomes settled, and working begins almost immediately and with minimal urging by teacher.	2. There is occasional non-work-related idle conversation and chatter by students. Class becomes settled, and working commences shortly after class begins and after only one or two urgings by teacher.	2. There is some non-work-related idle conversation and chatter by students; class settles down to work after approximately 5-10 minutes and repeated urging by teacher.	2. There is much non-work-related idle conversation and chatter by students. General disorganization is exhibited; students cannot locate books or material. Numerous students are not paying attention.
3. All students are well prepared for class-work.	3. Students, with rare exceptions are well prepared.	3. Most students are prepared.	3. Few students are prepared.	3. Minimal number of students are prepared.

CRITERION G - CONTINUED

Adequate Performance			Inadequate Performance	
Very High 9	High 8	Satisfactory 5	Low 3	Very Low 2
4. All students complete homework in satisfactory manner.	4. All students, with rare exceptions, complete homework.	4. Most students complete homework.	4. Few students complete homework.	4. Minimal number of students complete homework.
5. All students follow instruction.	5. Students, with rare exceptions, follow instructions.	5. Most students follow instructions.	5. Few students follow instructions.	5. Students fail to follow instructions and show no evidence of understanding material.

CRITERION II - RESPONDS FAVORABLY TO SUPERVISION AND SUGGESTIONS FOR
IMPROVEMENT AS RECOMMENDED BY PRINCIPAL AND OTHER ADMINISTRATORS

The items listed below are not exhaustive, but are illustrative and therefore do not apply to every teaching situation. Because of the interrelationship of the various facets of teaching, some of the items necessarily fall under more than one major criterion.

Adequate Performance			Inadequate Performance	
Very High 9	High 8	Satisfactory 5	Low 3	Very Low 2
1. Teacher welcomes constructive criticism.	1. Teacher almost always responds to constructive criticism.	1. Teacher is adequate in responding to constructive criticism.	1. Teacher seldom responds to constructive criticism.	1. Teacher resents constructive criticism.
2. Teacher consistently attempts to implement suggestions for improvement.	2. Teacher almost always attempts to implement suggestions for improvement.	2. Teacher adequately attempts to implement suggestions for improvement.	2. Teacher seldom attempts to implement suggestions for improvement.	2. Teacher never attempts to implement suggestions for improvement.
3. Teacher consistently strives to identify teaching deficiencies.	3. Teacher almost always strives to identify teaching deficiencies.	3. Teacher adequately strives to identify teaching deficiencies.	3. Teacher seldom strives to identify teaching deficiencies.	3. Teacher never strives to identify teaching deficiencies.

CRITERION I - ADHERES TO POLICIES AND REGULATIONS

The items listed below are not exhaustive, but are illustrative and therefore do not apply to every teaching situation. Because of the interrelationship of the various facets of teaching, some of the items necessarily fall under more than one major criterion.

SATISFACTORY

UNSATISFACTORY

1. Teacher consistently adheres to the General Statutes of North Carolina.
2. Teacher consistently adheres to regulations of the State Board of Education.
3. Teacher consistently adheres to regulations of the Yadkin County Board of Education and of the individual.

1. Teacher occasionally adheres to the General Statutes of North Carolina.
2. Teacher occasionally adheres to regulations of the State Board of Education.
3. Teacher occasionally adheres to regulations of the Yadkin County Board of Education and of the individual schools.

CRITERION J - IS PROMPT AND ACCURATE WITH REPORTS

The items listed below are not exhaustive, but are illustrative and therefore do not apply to every teaching situation. Because of the interrelationship of the various facets of teaching, some of the items necessarily fall under more than one major criterion.

SATISFACTORY

UNSATISFACTORY

1. Teacher is consistently prompt and accurate with reports.
2. Teacher demonstrates no resentment in regard to the completion of reports.

1. Teacher is rarely or never prompt and accurate with reports.
2. Teacher expresses verbal opposition in regard to the completion of reports.

CRITERION K - WORKS WELL WITH OTHER STAFF MEMBERS

The items listed below are not exhaustive, but are illustrative and therefore do not apply to every teaching situation. Because of the interrelationship of the various facets of teaching, some of the items necessarily fall under more than one major criterion.

Adequate Performance			Inadequate Performance	
Very High 9	High 8	Satisfactory 5	Low 3	Very Low 2
1. Teacher consistently works well with other teachers.	1. Teacher almost always works well with other teachers.	1. Teacher usually works well with other teachers.	1. Teacher rarely works well with other teachers.	1. Teacher does not work well with other teachers.
2. Teacher consistently cooperates with administrators.	2. Teacher almost always cooperates with administrators.	2. Teacher adequately cooperates with administrators.	2. Teacher rarely cooperates with administrators.	2. Teacher does not cooperate with administrators.
3. Teacher consistently shows cooperative attitude and willingly participates in administrative structure designed to implement the school program (organization, etc.)	3. Teacher almost always shows cooperative attitude and willingly participates in administrative structure designed to implement the school program.	3. Teacher usually shows cooperative attitude and willingly participates in administrative structure designed to implement the school program.	3. Teacher rarely shows cooperative attitude or willingly participates in administrative structure designed to implement the school program.	3. Teacher neither shows cooperative attitude nor willingly participates in administrative structure designed to implement the school program.

CRITERION L - OBSERVES THE CONFIDENTIAL NATURE OF MATTERS RELATING
TO PUPILS, PARENTS, AND SCHOOL PERSONNEL

The items listed below are not exhaustive, but are illustrative and therefore do not apply to every teaching situation. Because of the interrelationship of the various facets of teaching, some of the items necessarily fall under more than one major criterion.

Adequate Performance		Inadequate Performance		
Very High 9	High 8	Satisfactory 5	Low 3	Very Low 2
1. Teacher consistently observes the confidential nature of matters relating to pupils, parents, and school personnel (especially pupil records).	1. Teacher almost always observes the confidential nature of matters relating to pupils, parents, and school personnel (especially pupil records).	1. Teacher usually observes the confidential nature of matters relating to pupils, parents, and school personnel (especially pupil records).	1. Teacher rarely observes the confidential nature of matters relating to pupils, parents, and school personnel (especially pupil records).	1. Teacher openly discusses confidential matters relating to pupils, parents, and school personnel with others.
2. Teacher consistently maintains positive relationship with parents (effectively initiates and schedules parent-teacher conferences relative to pupil performance).	2. Teacher almost always maintains positive relationships with parents (effectively initiates and schedules parent-teacher conferences relative to pupil performance).	2. Teacher usually maintains positive relationship with parents (effectively initiates and schedules parent-teacher conferences relative to pupil performance).	2. Teacher rarely maintains positive relationship with parents (seldom initiates and schedules parent-teacher conferences relative to pupil performance).	2. Teacher never maintains positive relationship with parents (does not initiate and schedule parent-teacher conferences relative to pupil performance).

Yadkin County Schools
 Teacher Evaluation Instrument

Teacher _____ Date _____
 Subject _____
 or _____
 Grade _____ School _____

Probationary

Tenure

Satisfactory Unsatisfactory

Criterion A

Criterion B

Criterion D

Criterion I

Favorable _____ Unfavorable _____

Criterion C 9 8 5 3 2

Criterion E 9 8 5 3 2

Criterion F 9 8 5 3 2

Criterion G 9 8 5 3 2

Criterion H 9 8 5 3 2

Criterion J 9 8 5 3 2

Criterion K 9 8 5 3 2

Criterion L 9 8 5 3 2

Average _____ Favorable _____ Unfavorable _____

Evaluator's Comments:

Teacher's Comments:

We have discussed the above report

Signature of Teacher _____ Date _____

Signature of Principal _____ Date _____

I give the Superintendent permission to place a copy of this evaluation in my

Personnel File _____
Signature of Teacher

APPENDIX C

RULES GOVERNING HEARINGS

RULES GOVERNING HEARINGS

Any hearing conducted by the Yadkin County School Board pursuant to G.S. 115-142 shall be conducted pursuant to the rules set out below.

1. Hearings Shall Be Private

All hearings shall be private.

2. Time of Hearing

Upon request by the individual involved or the superintendent, or upon the Board's own motion, a hearing date shall be scheduled by majority vote of the Board. The hearing date shall provide at least 15 days notice (provided however, in situations falling within G.S. 115-142(f), the notice provisions thereof shall control) to the individual involved and the superintendent. The Board may by majority vote, and for good cause shown, postpone the hearing, but all proceedings shall be conducted without undue delay.

3. Notification

The individual (teacher) involved shall be notified by certified mail of:

- (a) The nature of the charges, with sufficient specification of the charges to permit the showing of error, if any.
- (b) The date, time, and place of the hearing.
- (c) The rules and regulations of the Board governing the hearing.
- (d) A list of the names of the witnesses to testify against him or her, and the nature of their testimony.
- (e) His or her right to present evidence in his or her own defense, and to be represented by counsel.

- (f) That the Board will make written findings, supported by the evidence, at the conclusion of the hearing.
- (g) That the evidence shall be recorded, transcribed, and preserved by a stenographic reporter unless the recording is waived by teacher and superintendent.
- (h) His or her right to subpoena witnesses.

4. Preservation of Proceedings

The proceedings before the Board shall be recorded, transcribed, and preserved by a stenographic reporter, unless waived by the teacher and the superintendent. The stenographic reporter shall make and preserve all documents or other evidence, to the end that a complete record of proceedings will be prepared and maintained.

5. Right to Counsel

The teacher shall have the right to be represented by counsel and the superintendent shall have the right to be represented by counsel, the fee of said counsel to the superintendent to be paid by the Board. The Board shall have the right to employ counsel separate and apart from counsel for the superintendent.

6. Conduct of Hearings

The Board of Education shall sit as a panel and hear all proceedings. In the event one or more members of the Board is absent but a quorum is present, the Board may proceed with the hearing, but any member of the Board who is absent during any part of the hearing shall not participate in the deliberations of the Board or in the decision. The chairman shall preside, shall guide the course of the hearing,

and shall rule upon all matters arising during the hearing; including by way of illustration and not limitation - ruling upon motions, objections to questions or answers, motions to strike, competency of evidence. The Board shall have the right to have its counsel present and to fully consult with counsel during the course of the proceedings. The Chairman may consult with the members of the Board prior to ruling on any matter.

7. Presentation of Evidence

- (a) Only evidence which is admissible under the rules of evidence as applied in the Superior Court of North Carolina (whether statutory or common law) will be admitted in the course of the hearing except where other evidence is specifically made admissible by North Carolina statute.
- (b) All witnesses shall testify under oath or affirmation to be administered by the chairman or another designated member of the Board.
- (c) The superintendent will offer evidence first in support of his recommendation. The teacher shall have the right to cross-examine each witness, with the superintendent having the right to redirect and the teacher the right to recross examination.
- (d) The teacher shall then have the right to offer evidence and the superintendent shall have the right to cross-examine each witness offered by the teacher, with the teacher having the right to redirect.
- (e) The superintendent shall have the right to offer evidence in rebuttal and the teacher shall have the right to cross-examine each witness so offered, and the superintendent having the right to redirect examination and the teacher the right to recross examination.

(f) The chairman or any member of the Board shall have the right to question any witness at any time.

8. Burden of Proof

The superintendent has the burden of establishing the facts upon which his recommendation is based, and in the absence of evidence to support any essential fact, said fact shall be deemed not to have been proven.

9. Closing Statement

The teacher and the superintendent or counsel for the teacher and superintendent shall have the right to make a closing statement summarizing his or her contentions and position. The teacher shall have the right to make the first statement and the superintendent shall have the right to make the last statement.

10. Findings by the Board

At the conclusion of the hearing, the Board shall make written findings of fact with respect to each essential fact upon which its decision will be based, and each such fact must be supported by some competent evidence. The Board shall also state separately its conclusion with respect to the effect of the findings of fact and shall enter an order in accordance with its findings and conclusions. The Board may delay its findings and conclusions. The Board may delay its findings for a reasonable period of time until the evidence has been transcribed and the record has been made available. The Board may also request the superintendent and the teacher to prepare proposed findings of fact and conclusions for its consideration.

11. Notice of Decision

Immediately upon reaching a decision, the Board of Education shall serve upon the teacher and superintendent a copy of the findings of fact, conclusions and its order, and shall at the same time notify the teacher that a record of the proceedings is available for the use of the teacher without charge in the event the teacher wishes to appeal to the Superior Court. If a copy of the transcript of the hearing is not furnished to the teacher along with the notice of the Board's decision, then the teacher shall be advised as to where and when the transcript is available and the circumstances under which the transcript and other parts of the record may be examined.

12. Appeal

In the event the teacher desires to appeal from the decision of the Board to the Superior Court, a copy of the notice of appeal and any other documents constituting the case on appeal to the Superior Court shall be served upon the Board simultaneously with the filing of such notices and documents in the Superior Court.