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Legal aspects of teacher dismissal on grounds of incompetence

Lee, Kathleen Gay, Ed.D.

The University of North Carolina at Greensboro, 1989

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LEGAL ASPECTS OF TEACHER DISMISSAL
ON GROUNDS OF INCOMPETENCE

by

Kathleen G. Lee

A Dissertation 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 Advisor

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. Kuyper

Committee Members

E. J. B. Finch

R. J. Menger

V. L. Sharma

Dec. 7, 1989
Date of Acceptance by Committee

Dec. 7, 1989
Date of Final Oral Examination

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Teacher incompetency has been a major issue in American public education. In dealing with the incompetent teacher, school administrators and school boards face the dilemma of balancing their responsibility of providing quality education to public school students against the legal procedures and requirements which must be observed both prior to and during dismissal proceedings brought against the teacher. Key questions were raised in this study and answers were provided. The questions addressed major educational issues regarding teacher dismissal for incompetence, the historical basis for due process rights of teachers, statutory differences in how states treat teacher dismissal on grounds of incompetency, the relevant areas for determining whether a teacher is incompetent, legal principles established by important cases and particular trends deduced from an analysis of court decisions regarding teacher dismissal for incompetence, the role of due process in the dismissal of incompetent tenured teachers, and steps which should be taken by school administrators to insure that the dismissal of a teacher for incompetency will be upheld by the courts if litigated.

Based upon an analysis of the data, the following conclusions were drawn: Clear communication between teachers and administrators and between administrators and school

boards is needed during proceedings involving teacher evaluation, remediation, or dismissal. Such communication will decrease the likelihood of misunderstandings during dismissal proceedings. School officials who are insensitive to teacher due process rights increase the risk of judicial reversal of teacher dismissals. Courts are intolerant of sham attempts at remediation of the incompetent teacher. Administrators should utilize consistent guidelines for evaluating teachers and should communicate concern for deficiencies to the teacher. Protection of teacher due process rights is worth the extra effort it requires of administrators during dismissal proceedings. The competent administrator can successfully obtain dismissal of incompetent tenured teachers. Incompetent administrators create problems by not communicating with incompetent teachers regarding their poor performance and by inflating their evaluative ratings of incompetent teachers. Unsuccessful teacher dismissal proceedings may be indicative of administrative incompetence.

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CHAPTER I
INTRODUCTION

This study is based upon several major premises: (1) that teacher incompetency is a primary concern of administrators and school boards throughout the United States, (2) that at times school administrators and school boards desire to react appropriately in the face of incompetence but find their decisions reversed due to lack of legal knowledge, (3) that school officials are frozen into indecision out of fear that termination procedures initiated will be overturned by the courts, and (4) that statutes regarding teacher tenure are enacted by state legislatures and interpreted by the courts to insure that authorities who dismiss teachers are in strict compliance so that the due process rights of teachers are protected.

There is a definite and recognized need in American schools regarding the issue of teacher incompetency.

School administrators indicated in three national surveys between 1974 and 1977 that teacher incompetence was among the three most serious problems that they faced. When asked to estimate the proportion of their teachers who were unsatisfactory performers, school administrators cited figures ranging from 5 to 15 percent Parents, as well as administrators, have expressed concerns about the quality of the teaching force. For 13 consecutive years, public school parents have identified this particular problem as one of the biggest problems facing the schools in their community Finally, teachers, most of whom are conscientious and competent

professionals, have complained--often bitterly--about the incompetents in their midst....¹

The purposes of this study are as follows: to compare how the different state legislatures through their statutes have addressed the dilemma of teacher incompetence, to analyze court rulings where teacher incompetency was at issue, to study the rights and responsibilities of both teachers and administrators as applicable to the area of teacher competency, to develop an approach for dealing with dismissal proceedings in a just and fair manner, and to provide administrators with guidelines to facilitate compliance with legal requirements during teacher dismissal proceedings based upon grounds of incompetency.

Professional competence of those who educate today's youth must be zealously supervised by school administrators. Good intentions will not suffice. Careful evaluation and examination of teaching procedures must be conducted regularly. This is how successful organizations operate:

Few productive organizations in the country bank as much as schools do on academic preparation as the guarantor of working effectiveness. The typical American corporation is far more deeply involved in the evaluation and continuing education of its key employees than is

¹ Edwin M. Bridges, "Collaborative Research: The Case of the Incompetent Teacher," 13 Teacher Education Quarterly, No.2, at 60-61 (Spring 1986).

the typical American school district.²

Pessimists freely blame the tenure system for incompetence in the teaching ranks. However, rather than hindering, the assessment and evaluation process inherent to the tenure program should enhance an administrator's ability to deal with teacher incompetency. This should be accomplished through procedures in which due process is assured and in which dismissal is never for unreasonable, arbitrary, or capricious reasons. While incompetence is much more difficult to prove than such grounds as insubordination, where there are blatantly unacceptable incidents to verify through collaboration from witnesses, it is still a legally recognized basis for termination of employment which a conscientious administrator will utilize when the situation merits such action.

In recent years, society has changed drastically in its opinion of educators. The general public no longer complacently assumes that the teacher is always right. "The hard-pressed taxpayer... makes a direct connection between teacher tenure and poor education."³ Dissatisfaction with

² Craig Pearson, "The Teacher Competency Movement: Blessing or Sham? Part II," 10 Learning, No. 2, at 99 (Sept. 1981).

³ David S. Rosenberger and Richard A. Plimpton, "Teacher Incompetence and the Courts," 4 Journal of Law & Education, No. 3, at 469 (July 1975).

those in governmental positions has expanded to include public education, with such transition resulting in universal insistence upon increased competency and accountability. "[T]here has been a growing movement in the field of professional education toward competency-based programs."⁴ The key word here is accountability.

Various terms are used to denote the incompetency of a teacher -- among them are "inefficiency," "inadequacy," "ineffectiveness," "neglect of duty," and "unfitness to teach." At one time, disobeying one's superiors and disregarding rules and procedures were included as forms of incompetency, along with flaws in one's personal moral code and failure to abide by the values of the community. This study does not address such issues for they fall under the categories of "insubordination" and "immorality."

The terms "incompetency" and "inefficiency" are relatively close in meaning, with both indicating a lack of some required ability.⁵ Still, drawing the line on what does and does not constitute "incompetency" is difficult, for there are gray areas which often indicate a failing in performance

⁴ Id.

⁵ Rainwater v. Board of Education of Greenville R-2 School District of Wayne County, 645 S.W.2d 172, 176 (Mo.App. 1982).

due to poor judgment.⁶ Clearly a lack of knowledge of one's subject matter would be deemed to be incompetency, such as a social studies teacher's inability to use and discuss maps.⁷ Equally clear, personal mastery of subject matter without the skill to impart such knowledge to one's pupils would constitute incompetency and would be indicative of ineffective teaching.⁸ But other aspects of a teacher's duties, such as maintaining good classroom control while practicing fair, safe methods of student discipline also impact upon a teacher's competency in the classroom.⁹ Furthermore, a finding of incompetence does not require that the administration prove that the teacher is actually mentally incompetent.¹⁰ However, teacher behavior outside the classroom which has no negative effect upon teacher performance within the classroom will not be examined as the grounds for an incompetency dismissal in this study. Such behavior, though often labeled incompetency, is really more closely related to teacher morality.

⁶ Kroll v. Independent School District No. 593, 304 N.E.2d 338 (Minn. 1981).

⁷ Community Unit School District No. 60, Waukegan Public Schools v. Maclin, 435 N.E.2d 845 (Ill.App. 1982).

⁸ Nestler v. Chapel Hill/Carrboro City Schools Board of Education, 311 S.E.2d 57 (N.C.App. 1984).

⁹ Perez v. the Commission on Professional Competence. et. al., 197 Cal.Rptr. 390 (Cal.App. 4 Dist. 1983).

¹⁰ Harrison-Washington Community School Corporation, et. al., v. Bales, 450 N.E.2d 559 (Ind.App.2 Dist. 1983).

The term "incompetence" has been deemed by the Courts not to be unconstitutionally vague, so that a man of common intelligence should be able to comprehend and have adequate notice of what is expected of him regarding his performance.¹¹ Thus, dismissal based upon incompetence has sufficient legal grounds to support a cause of action and to avoid dismissal of case. Still, both administrators and boards of education struggle over what does constitute incompetence. The term "incompetence to teach" has been defined by various courts to mean a range of things, from failure to maintain classroom discipline,¹² to failure of the teacher's pupils to progress at an acceptable rate.¹³ This exemplifies the broad interpretation of the term "incompetence," which tends to complicate dealing with this problem.

Furthermore, tests to measure competency are generally exercises in futility. Edward Masonis, administrator of teacher programs and services at Educational Testing Service in Princeton which produces the National Teacher Examinations (NTE) said the following:

As far as I know, there is no such thing as a test of teacher aptitude or potential, and I know of no test,

¹¹ Benke v. Neenan, et. al., 658 P.2d 860 (Colo. 1983).

¹² Board of Directors of the Sioux City Community School District v. Mroz, 295 N.W.2d 447 (Iowa 1980).

¹³ Whaley v. Anoka-Hennepin Independent School District No. 11, 325 N.W.2d 128 (Minn. 1982).

including NTE, that purports to measure teacher effectiveness. One problem in judging that is that there is no general agreement about what an effective teacher is. The number of definitions is about equal to the number of professional educators. If you're willing to divide teaching into a number of competencies, and if you accept the fact that some of those are knowledge competencies-- the notion a teacher can't teach something he or she doesn't know-- one could say that the tests can measure those.¹⁴

Definitions of Terms to be Used

The following words and phrases are key terms which will be used in this study:

DECERTIFY "To withdraw or revoke the certification of."¹⁵

DISMISSAL. "A release or discharge from employment."¹⁶

DUE PROCESS CLAUSE. "Two such clauses are found in the U.S. Constitution, one in the 5th Amendment pertaining to the federal government, the other in the 14th Amendment which protects persons from state actions. There are two aspects: procedural, in which a person is guaranteed fair procedures and substantive which protects a person's property from unfair governmental interference

¹⁴ Craig Pearson, "The Teacher Competency Movement: Blessing or Sham? Part I," 10 Learning, No. 1, at 29 (July/Aug. 1981).

¹⁵ Webster's New Collegiate Dictionary, 290 (Springfield, Mass.: G. & C. Merriam Company, 1981).

¹⁶ Black's Law Dictionary, Fifth Edition, 421 (St. Paul, Minn.: West Publishing Co., 1979).

or taking."¹⁷

FIFTH AMENDMENT. The Fifth Amendment of the Constitution of the United States is part of the original Bill of Rights, which was approved in 1791. It applies to the federal government and addresses the due process issue in the following manner:

"No person...shall...be deprived of life, liberty, or property, without due process of law...."

FOURTEENTH AMENDMENT. The Fourteenth Amendment of the Constitution of the United States was ratified in 1868. It extends the federal due process requirements to the States in their dealings with the people of the United States. The pertinent section reads as follows:

"[N]or shall any State deprive any person of life, liberty, or property, without due process of law...."

HEARING DE NOVO. "Generally, a new hearing or a hearing for the second time, contemplating an entire trial in same manner in which matter was originally heard and a review of previous hearing. On hearing "de novo" court hears matter as court of original and not appellate jurisdiction."¹⁸

INCOMPETENCY. "Lack of ability, legal qualification, or fitness to discharge the required duty. A relative term which may be employed as meaning disqualification, inability, or incapacity and it can refer to lack of legal qualifications or fitness to discharge the required duty and to show want of physical or intellectual or moral fitness."¹⁹

PROBATION. "[T]he initial period of employment during which a new, transferred, or promoted employee must prove or show that he is capable of performing the required duties of the job or position before he will be considered as permanently employed in such position. As

¹⁷ Id. at 449.

¹⁸ Id. at 649.

¹⁹ Id. at 688-689.

applied to teachers, term means that teacher is on trial, with his competence and suitability remaining to be finally determined...."²⁰

TENURE. "Status afforded to teacher or professor upon completion of trial period, thus protecting him or her from summary dismissal. Tenure denotes relinquishment of the employer's unfettered power to terminate the employee's services."²¹

For purposes of this study, the writer has chosen to use the masculine gender uniformly whenever referring to individuals in the singular form.

Status of the Practice of Teacher Dismissal in the Public Schools

This study is significant because it provides educators with a comprehensive analysis of legal aspects of teacher dismissal on grounds of incompetence. Furthermore, it provides administrators with set guidelines to use when making crucial decisions regarding teacher dismissal.

The significance of this study can be reinforced by analyzing the scope of dismissal of public school teachers for incompetency. However, formal dismissals are only the visible portion of this serious problem. Often a well-documented case

²⁰ Id. at 1082.

²¹ Id. at 1317.

may result in early retirement or forced resignation. Thus adherence to appropriate procedures and due process restrictions is vitally important.

However, often when a teacher is persuaded to leave one school system, he simply inflicts his incompetence upon another as a result of the "counseling out" method of eliminating poor teachers in the administrator's own district.

Constituents of the schools who are truly concerned about the quality of teaching deserve to know more about this hidden process. The secrecy, however, is rationalized: Both the system and the beleaguered teacher are spared time, money and painful notoriety. Certain teachers, grossly inadequate by any measure, may thus accept 'counseling out' in trade for glowing letters of recommendation and the hope of inflicting themselves on another district somewhere.²²

Generally if a court case is reversed, it will not be because the Court determined there was sufficient competency on the part of the teacher. Rather, usually it is deemed that the dismissed teacher's due process rights were violated.

Questions to be Answered

The purposes of this study are as follows: to compare how the different state legislatures through their statutes have addressed the dilemma of teacher incompetence, to analyze

²² Pearson, "Part II," at 100.

court rulings where teacher incompetency was at issue, to study the rights and responsibilities of both teachers and administrators as applicable to the area of teacher competency, to develop an approach for dealing with dismissal proceedings in a just and fair manner, and to provide administrators with guidelines to facilitate compliance with legal requirements during teacher dismissal proceedings based upon grounds of incompetency. Lack of clarity regarding how courts view teacher dismissal, plus public relations and staff relations issues, often result in administrative inaction regarding teacher competency problems.²³ To establish guidelines for administrators and determine reasonable expectations for teachers, it is necessary to address certain key questions:

1. What are the major educational issues regarding teacher dismissal on grounds of incompetence?
2. What is the historical basis for due process rights for teachers?
3. How do the different states vary in their treatment of teacher dismissal on grounds of incompetency? Are these differences fundamental or cosmetic?
4. What areas are relevant in determining whether a teacher is incompetent?

²³ Rosenberger and Plimpton, at 470.

5. What legal principles have been established by important cases regarding teacher dismissal on grounds of incompetency?
6. Can any particular trends be determined based upon an analysis of court decisions addressing teacher incompetency?
7. What role does the issue of due process play in the dismissal of tenured teachers on grounds of incompetency?
8. What steps should be taken by school administrators to assure that the dismissal of a teacher for incompetency is based upon defensible, reasonable, and just grounds and procedures so that such dismissal will be upheld if litigated?

Basic Assumptions

The researcher states the following premises based upon her dissertational research:

1. It is the school administrator's duty to determine the competency status of his teachers.
2. It is the duty of both the school administrator and the school board to follow appropriate legal procedure when seeking the dismissal of a teacher for

incompetence.

3. Each state legislature establishes the basis for teacher dismissal so long as such laws do not violate the federal requirement respecting due process rights.
4. If executed correctly, the evaluation process for teachers should have as its goal improved teacher performance with dismissal being an alternative only when an administrator's best efforts do not culminate in the desired results.
5. The administrator's primary duty is to the students; thus, teacher incompetency simply cannot be tolerated.
6. Courts will generally accept an administrator's evaluation of a teacher's degree of competency.
7. When courts overturn teacher dismissals for incompetency, the reason is generally based upon failure to follow correct procedure and to pay sufficient attention to a teacher's due process rights.
8. The administrator and school board who perform competently in teacher dismissal proceedings will find their decisions upheld in court.

Methods of Procedure

The researcher utilized both legal and educational resources in obtaining appropriate material for the composition of this dissertation. Sources included the following: Current Index to Journals in Education, Index to Legal Periodicals, Education Index, American Jurisprudence Proof of Facts, American Law Reports, and the state statutes of all fifty states. Court cases focusing on teacher dismissal for incompetence were examined as reported in the National Reporter System. This system consists of a compilation of cases in volumes called Reporters which report decisions rendered by the United States Supreme Court, the United States District Courts, the United States Courts of Appeals, and state appellate courts, among others. Approximately twenty-five cases which have been litigated since Edward Lakey's dissertation entitled Legal Aspects of Teacher Tenure Laws, Teacher Incompetency, and Due Process are examined in this study, with emphasis placed upon their relevance regarding appropriate procedures to be followed by administrators initiating dismissal proceedings. These cases have been Shepardized, a procedure in which a case is looked up in a volume called a citator based upon its given citation to determine what has happened to the case since the decision was first rendered. Use of the set of law books called

Shepard's Citations is important to determine that any given case which might be relied upon as authority is still reliable. With the citator, the decision can be checked to verify that it has not been reversed by a higher court or overruled by a subsequent decision of the same court. Thus a reversal or extension of the case to other situations can be discovered.

Design of the Study

Chapter II, A Review of the Literature, examines the historical basis for due process procedure, including the Sinderman and Roth cases which serve as the backbone for the due process requirement for teachers. The following pre-1976 cases are examined in this chapter:

Biggs v. School City of Mt. Vernon, 90 N.E. 105 (Ind.App. 1909).

Board of Education of City of Los Angeles v. Ballou, 68 P.2d 389 (Cal. App. 1937).

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

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

Hapner v. Carlisle County Board of Education, 205 S.W.2d 325 (Ky. App. 1947).

Applebaum v. Wulff, 95 N.E.2d 19 (Ohio Ct. Com. Pleas 1950).

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

Guthrie v. Board of Education of Jefferson County, 298 S.W.2d 691 (Ky. App. 1957).

Werner v. Community Unit School District No. 4, Marshall County, 190 N.E.2d 184 (Ill. App. 1963).

Perry v. Sindermann, 92 S.Ct. 2694 (1972).

Board of Regents of State Colleges v. Roth, 92 S.Ct. 2701 (1972).

Wojt v. Chimacum School District No. 49, 516 P.2d 1099 (Wash. App. 1973).

Chapter III, An Analysis of Fifty States' Laws Regarding Teacher Incompetency, deals with the tenure and decertification laws in relationship to dismissal for incompetency and addresses the necessary steps inherent in such dismissal proceedings. Among topics examined are actual grounds for dismissal and areas of responsibility regarding dismissal procedures. The fifty state statutes are recorded in Appendix A.

Chapter IV, Legal Aspects of Teacher Dismissal on Grounds of Incompetence, examines concerns and issues with which the school administrator must contend when faced with the necessity of dismissing a teacher for incompetency. Viewpoints expressed in various educational journals are

examined regarding questions such as the following: What is incompetency? In dismissal proceedings, what procedures should be followed? Why are incompetent teachers not dismissed? What skills do administrators need to deal with teacher incompetency? What evidence is needed to prove incompetency? How does teacher evaluation fit into this process?

Chapter V, Analysis of Cases, examines cases dealing with teacher dismissal on grounds of incompetence, focusing on cases since 1976. The lack of any Supreme Court cases since Sindermann and Roth which even relate to this topic necessitates the examination of a larger number of cases than would usually be studied at this time. The applicable cases, as determined by the researcher of this study, are listed chronologically below:

Gilliland v. Board of Education of Pleasant View Consolidated School District No. 622 of Tazewell County, 365 N.E.2d 322 (Ill. 1977).

Rosso v. Board of School Directors of the Owen J. Roberts School District, 380 A.2d 1328 (Pa. Cmwlth. 1977).

Sanders v. Board of Education of South Sioux City Community School District No. 11, 263 N.W.2d 461 (Neb. 1978).

Beebee v. Haslett Public Schools, 278 N.W.2d 37 (Mich. 1979).

Board of Education of School District No. 131 v. Illinois

State Board of Education, 403 N.E.2d 277 (Ill. App. 1980).

Busker v. Board of Education of Elk Point Independent School District #61-3, of Union County, 295 N.W.2d 1 (S.D. 1980).

Board of Directors of Sioux City Community School District v. Mroz, 295 N.W.2d 447 (Iowa 1980).

Williams v. Pittard, 604 S.W.2d 845 (Tenn. 1980).

Hollingsworth v. Board of Education of School District of Alliance, 303 N.W.2d 506 (Neb. 1981).

Kroll v. Independent School District No. 593, 304 N.W.2d 338 (Minn. 1981).

Morris v. Board of Education of City of Chicago, 421 N.E.2d 387 (Ill. App. 1981).

Ganyo v. Independent School District No. 832, 311 N.W.2d 497 (Minn. 1981).

Community Unit School District No. 60, Waukegan Public Schools, Lake County v. Maclin, 435 N.E.2d 845 (Ill. App. 1982).

Whaley v. Anoka-Hennepin Independent School District No. 11, 325 N.W.2d 128 (Minn. 1982).

Rainwater v. Board of Education of Greenville R-2 School District of Wayne County, 645 S.W.2d 172 (Mo. App. 1982).

Benke v. Neenan, 658 P.2d 860 (Colo. 1983).

Everett v. Board of Education of Hampton Community School District, 334 N.W.2d 320 (Iowa App. 1983).

Harrison-Washington Community School Corporation v. Bales, 450

N.E.2d 559 (Ind. App. 2 Dist. 1983).

Perez v. Commission on Professional Competence and San Diego Unified School District, 197 Cal. Rptr. 390 (Cal. App. 4 Dist. 1983).

Nestler v. Chapel Hill/Carrboro City Schools Board of Education, 311 S.E.2d 57 (N.C. App. 1984).

Eshom v. Board of Education of School District No. 54, 364 N.W.2d 7 (Neb. 1985).

Cope v. Board of Education of Town of West Hartford, 495 A.2d 718 (Conn. App. 1985).

Stamper v. Board of Education of Elementary School District No. 143, 491 N.E.2d 36 (Ill. App. 1 Dist. 1986).

Leola School District v. McMahan, 712 S.W.2d 903 (Ark. 1986).

Combs v. Board of Education of Avon Center School District No. 47, 498 N.E.2d 806 (Ill. App. 2 Dist. 1986).

Mongitore v. Regan, 520 N.Y.S.2d 194 (A.D. 2 Dept. 1987).

Chapter VI, Summary, Conclusions, and Recommendations, contains a review of the purposes of this study, answers questions asked in this study, and presents conclusions, suggestions, and recommendations for educators regarding how to deal with the issues related to teacher dismissal on grounds of incompetence. Recommendations for further study are also included.

CHAPTER II

A REVIEW OF THE LITERATURE

The issue of teacher incompetence is not new. It is, however, one of perplexing difficulty. Furthermore, those administrators who do not examine the past are doomed to commit the same errors as their predecessors. This has been happening, with the result being judicial reversals of school board dismissals of teachers whose contracts have been terminated on grounds of incompetency.

In approximately two-thirds of the dismissal cases heard at the appellate court level between 1939 and 1982, judges ruled in favor of the district. Between August 1975, and December 31, 1979, school districts did not fare as well with hearing officers; only 37 percent of the hearing officer decisions sustained the action of the board. However, if winning is defined to include resignations that occurred in connection with these hearings plus upheld decisions, the success rate jumps to 74 percent.²⁴

In 1975, Rosenberger and Plimpton observed that the dismissal cases which had been heard over the previous half-century relied upon implicit standards. The standards against which teachers were measured were based upon the sometimes rather uncommon quality referred to as "common sense." There was the attitude that "everyone knows" what a competent

²⁴ Edwin M. Bridges, "It's Time to Get Tough with the Turkeys," 64 Principal, No. 3 at 21 (Jan. 1985).

teacher does and does not do. The incompetent teacher failed to comply with these informal standards. "A kind of 'conventional wisdom' rather than any precise pre-determined and announced standard was used to make the incompetence decision."²⁵

Such unstated standards were acceptable at one time. They are no longer. This is largely due to the growing concern with due process issues. As indicated in Chapter One, "due process" is a term found in the Fifth and Fourteenth Amendments to the United States Constitution. These two amendments guarantee all people protection from deprivation of life, liberty or property without due process of law. According to Robert Munnelly, this means that under the American justice system,

...any individual who is threatened or becomes subject to serious or adverse action by public authorities must be provided with procedural protection. Such procedures give the individual an opportunity to contest the proposed action so as to ensure that fairness and good judgment govern the entire decision-making process. If a teacher has earned tenure, that teacher is vested with a property right. Action to remove a teacher from employment must be carried out in a due process framework.²⁶

²⁵ David S. Rosenberger and Richard A. Plimpton, "Teacher Incompetence and the Courts," 4 Journal of Law & Education, No. 3 at 486 (July 1975).

²⁶ Robert J. Munnelly, "Dealing with Teacher Incompetence: Supervision and Evaluation in a Due Process Framework," 50 Contemporary Education, No. 4 at 222 (Summer 1979).

The use of the tenure system fits well with the guarantee of due process rights. Both due process procedures and tenure aim at protecting the teacher from undue influence and toward allowing the teacher to concentrate on responsibilities to pupils. Munnelly noted the following as reason for the development of the tenure system:

During the early days of this century, state governments made explicit the procedural rights due teachers. As a good-government reform measure, tenure became a way to counteract the corruption of the spoils system which had flourished earlier and which had exposed teachers and their livelihood to the clutches of politically motivated school officials and corrupt politicians.²⁷

Traditionally, the local school boards have been granted the power to hire and fire teachers. At the same time, state boards of education have been authorized to certify and decertify teachers. In both cases, these grants of authority were expressed in broad, sweeping terms aimed at empowering local and state boards with the ability to control teacher quality within their jurisdictions. This worked well until the 1960s, when various federal court cases relying upon the Fourteenth Amendment's due process guarantee highlighted the necessity of modifying such broad grants of authority through specification of the reasons for which a teacher might be dismissed or decertified and the procedures required before

²⁷ Id.

state or local boards could deny a teacher the right to work in education.²⁸

The 1970 United States Supreme Court case of Goldberg v. Kelly,²⁹ which was actually a welfare case, discussed "just cause" for dismissal regarding what procedural safeguards must be observed to protect the accused individual's rights. In this case, the Court found that a citizen must be guaranteed certain protections, among them being: an opportunity to be heard; timely, adequate notice of the hearing along with an explanation of the charges; opportunity to confront and question witnesses; opportunity to present evidence and to present his case; right to retain legal counsel; right to an objective determination of the case based upon the law and evidence presented at the hearing; and a written statement giving the final determination and reasons for such determination.³⁰

In 1972, the United States Supreme Court, in Board of Regents v. Roth³¹ and Perry v. Sindermann,³²

²⁸ Suzanne H. McDaniel and Thomas R. McDaniel, "How to Weed Out Incompetent Teachers Without Getting Hauled into Court," 59 National Elementary Teacher, No. 3 at 32 (Mar. 1980).

²⁹ 90 S.Ct. 1011, 397 U.S. 254 (1970).

³⁰ Id.

³¹ 92 S.Ct. 2701, 408 U.S. 564 (1972).

³² 92 S.Ct. 2694, 408 U.S. 593 (1972).

established the principle, that, where a person can demonstrate the existence of a property interest or a liberty interest that is threatened by a government action, the person is entitled to procedural due process before the government can take action.³³

These two cases have been touted as providing "two landmark Supreme Court decisions that define the liberty and property rights of teachers under contract."³⁴

The Supreme Court, in Roth, determined that a liberty interest existed when the reason for nonrenewal of a teaching contract might harm the teacher's standing in the eyes of the community or when the resulting negative perception of the teacher might adversely affect the teacher's other professional opportunities. Based upon the finding in this case, it might be inferred that procedural due process is required in decertification or nontenured teacher cases since such action would certainly involve a liberty interest. Decertification would effectively bar a teacher from pursuing a career in education both in his state and in any other states which have reciprocity agreements with his state.³⁵

In Perry v. Sindermann, which was also decided by the United States Supreme Court in 1972, a property interest was

³³ McDaniel at 32.

³⁴ Robert MacNaughton and Victor J. Ross, "With Preparation, You Can Clear the Teacher Termination Hurdles," 169 American School Board Journal, No. 4 at 32 (April 1982).

³⁵ 92 S.Ct. 2701, 408 U.S. 564 (1972).

said to exist when the teacher was tenured, when he was dismissed during the contract period, and/or when his contract was not renewed despite an implied promise of continued employment.³⁶

Roth and Sindermann were companion cases involving employment of college professors; however, the findings are applicable to public school teachers. The first case, Roth, dealt with a university instructor who was under a one-year contract. State law allowed university officials to retain control over reemployment decisions regarding nontenured teachers. Roth argued that he had not been rehired because of critical remarks he had made regarding the administration, thus claiming his First Amendment rights had been violated. Furthermore, he had received no statement giving reasons for not being rehired and for not being granted a hearing, thus he argued that his due process rights had been violated. The Supreme Court ruled that, when there was no statutory or contractual right guaranteeing continued employment, a hearing would only be required when failure to rehire would seriously damage Roth's standing and associations in the community or would impose a stigma upon him that would interfere with his attaining other employment opportunities. (The District Court stayed proceedings on the First Amendment issue.) Even though

³⁶ 92 S.Ct. 2694, 408 U.S. 593 (1972).

Roth lost his case, the Supreme Court used his case to establish the groundwork for liberty and property interests in one's employment.

In Perry v. Sindermann, Robert Sindermann was successful in his suit, in which the Court found that he had a right to a hearing before being dismissed. Though his allegations were similar to those of Roth, the situations varied. Sindermann was a nontenured college professor who had been employed for four successive years, each time by one-year contract. The Court ruled that he was entitled to notice of charges against him and a hearing on those charges with opportunity to speak in his own defense. This case differed from Roth because in this case the Board of Regents had issued a press release stating that Sindermann was discharged for insubordination and there appeared to be a real possibility that the real reason for dismissal was Sindermann's exercise of his freedom of speech. Also the Court found that Sindermann was employed in a system with a de facto tenure policy so that he had more than just a mere expectancy of continued employment.

MacNaughton and Ross presents the following analysis of the two cases:

In the Roth decision, the Supreme Court declared that a teacher's good name, reputation, and standing in the community are liberty interests and must be protected. In other words, if the reasons you have for terminating a teacher include mental or moral fitness -- or similar conditions that could be construed as a stigma to the teacher's good name -- the teacher, regardless of tenure,

must be provided proper notice, a hearing, and the opportunity to clear his name. ... In the Sinderman [sic] decision, the Supreme Court declared that a job -- and a teacher's expectation of retaining that job -- constitute property interest. Further, if you intend to deprive a teacher of a property interest (his job), you'd better be prepared to use due process all the way.³⁷

The assurance of due process rights is found in the Fourteenth Amendment to the United States Constitution. However, due process has two forms: substantive and procedural. The substantive form prevents school boards and administrators from interfering with a teacher's constitutional and contractual rights without good cause.³⁸ MacNaughton and Ross said the following about substantive due process:

It provides the protection of such basic rights as speech, press, religion, assembly, and equal protection of the law as listed in the First, Thirteenth, and Fourteenth Amendments.³⁹

The second type is procedural due process.

Procedural due process protects one against arbitrary actions by public officials. Procedural rights include the methods by which personal freedoms are protected. School officials must follow well-defined procedures. They include the right for a teacher to receive notice of charges (so he/she can be informed and take

³⁷ MacNaughton and Ross at 34.

³⁸ Id. at 32.

³⁹ Ann B. Dolgin, "Two Types of Due Process: The Role of Supervision in Teacher Dismissal Cases," 65 NASSP Bulletin, No. 442 at 18 (Feb. 1981).

appropriate action); the right to a hearing; the right to be protected against arbitrary rulings; and the right to appellate review.⁴⁰

While the Roth and Sindermann decisions indicated that only due process is required in the consideration of dismissal actions to be taken against a teacher, some states have chosen to required higher standards than those required by the United States Constitution. Some states have decided that fairness and equity must rule in decisions regarding dismissal of tenured public school teachers. Minimal due process requirements, these states decided, were not enough; fairness and equity standards would demand more. The following was stated by Claxton in 1986:

Eighteen states have enacted legislation which requires that teachers be treated fairly and equitably before a final determination is made to dismiss them.⁴¹ Generally, this means that prior to dismissal proceedings, a teacher is evaluated by administrators, who identify deficiencies and provide the teacher an opportunity to correct them. The process is known as remediation.⁴²

⁴⁰ Id. at 18-19.

⁴¹ These eighteen states are: Arizona, Arkansas, California, Florida, Georgia, Idaho, Illinois, Kansas, Minnesota, Missouri, Nevada, New Mexico, North Carolina, Oklahoma, Pennsylvania, South Carolina, Utah, and Washington.

⁴² William P. Claxton, "Remediation: The Evolving Fairness in Teacher Dismissal," 15 Journal of Law & Education, No. 2 at 182 (Spring 1986).

The relevant sections of the fifty state statutes regarding teacher dismissal are provided in the Appendix.

The above mentioned Goldberg v. Kelly, and Roth and Sindermann cases are the relevant Supreme Court cases involving due process and tenure which have impact upon public school administrative decisions regarding teacher dismissal. The following lower court cases provide a historical representation of what has transpired in teacher dismissal cases in the United States from 1909 to 1973.

In the 1909 case of Biggs v. School City of Mt. Vernon,⁴³ the appellant (Biggs) brought motion for a new trial after his dismissal from the position as principal teacher had been upheld by the lower court. Biggs argued insufficiency of evidence to support the finding and said that the finding was contrary to law. Biggs had been employed by the school system through a written contract which stated his duties as instruction of the students, along with all duties related to being principal teacher of a particular school building in Mt. Vernon for the school year beginning in September, 1904. The contract also provided that, if discharged by the board for incompetency, Biggs would not be entitled to any compensation after notice of dismissal. On November 23, 1904, Biggs received notification that he was dismissed effective

⁴³ 90 N.E. 105 (Ind.App. 1909).

immediately. Biggs's claim was that he was dismissed without cause or fault. Furthermore, he said as a result of this discharge, he was left without employment as a teacher, which was the profession for which he had trained, that he was unable to obtain any other form of employment, and that the dismissal was such a serious attack upon his competency, character, and reputation as a teacher that he was forced to seek employment in another city.

The court stated that, when there is conflicting evidence, so that the earlier decision rendered could be justified, they would not reverse a decision. Such was the case here. While evidence existed that Biggs knew the subject matter, there was also evidence that he had been lacking in ability to impart the knowledge which he possessed to his students. There was also uncontradicted evidence that he was lacking in discipline skills and practical efficiency. His difficulty with his students began shortly after he began working and continued throughout his employment. Witnesses testified that the students did whatever they pleased, and Biggs admitted that he had been unable to maintain order, having once even threatened to call the police during his period as teacher. However, neither his predecessor nor his successor had such problems with the students.

The court thus affirmed Biggs's dismissal, saying,

"Incompetency," as employed in the contract, is a relative term, denoting a want of the requisite qualifications for performing a given act or service. Appellant failed where others, under like conditions, succeeded....⁴⁴

One point of interest is that, at that time, dismissal could be effective immediately, without opportunity being provided for remediation. Also some of the language in Biggs's argument was interesting, in that his claim appears to be a harbinger of the liberty interest involving good name and reputation as later defended by the Supreme Court in the Roth case.

The 1937 case of Board of Education of City of Los Angeles v. Ballou⁴⁵ presented the issue of sufficient notice to the court. In 1935, the California Legislature had amended the School Code, removing some of the power to dismiss from the realm of school officials and extending control to officials in judiciary positions. In part of its decision, the District Court chastised the Legislature for so doing, arguing, "A duty essentially administrative has been withdrawn from administrative officials and imposed upon officials

⁴⁴ Id. at 106.

⁴⁵ 68 P.2d 389 (Cal.App. 1937).

exercising judicial functions."⁴⁶ Thus the tension of administrative versus judicial power over teacher dismissal was apparent in 1937. The uneasy truce between these two factions is often based upon a position that findings of fact by an administrative body will not be challenged when there is reasonable basis for such findings. Where successful challenges will most likely occur is in the area of procedural due process, examples of which will be discussed in Chapter Five.

In Ballou, the defendant teacher, who had permanent teacher status, was provided notice of his incompetency by the Board so that they could proceed with dismissal action against him if there were no improvement. The teacher said the charges set forth in the complaint were simply conclusions and failed to provide him with sufficient notice. The teacher was charged with lack of knowledge of subject matter, poor organizational skills, lack of classroom control, lack of ability to discipline students effectively, inability to control temper, improper treatment of students demonstrated when he insulted students and harshly criticized them in front of their peers, and failure to accept recommendations of his superiors.⁴⁷ The court disagreed with the teacher, saying that

⁴⁶ Id. at 391.

⁴⁷ Id. at 390.

it was not necessary for the charges to be as detailed as charges used in indictments. According to the court, all that is required is that the charges be stated in simple language and be sufficient in their nature so that the teacher might prepare a defense against them. It was ruled that there was no requirement that particular facts or incidents be included in the notice. The court stated that Ballou had received sufficient warning to enable him to correct his deficiencies and that he had not done so. Thus the District Court's ruling was in favor of the Board.

The Ballou case exemplifies another point -- that courts are dependent upon state statutes in their determinations in teacher dismissal cases. This is because the Tenth Amendment to the Constitution reads, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Thus, since education is not addressed in the Constitution, the States maintain authority in this area except in cases of constitutional issues. Furthermore, while statutory mandates must be followed, where school board policies exist implementing the statutes, board policies must be followed.

In the 1938 case of McSherry v. City of St. Paul,⁴⁸ the court discussed the historical purpose for the tenure system in public education. The following is a synopsis of the court's description of the development of the teacher tenure system: The reason for tenure dates back to the "spoils system" of the Jacksonian era in United States history. The corruption of this period is the reason for the passage of the first civil service act in 1883. In 1885, the National Education Association established a committee to explore the possibility of tenure in the teaching profession. This amounted to applying the principles of civil service to the schools. The benefit of such action was thought to be the resulting independence of the profession from personal or political influence of others. Thus in 1886, Massachusetts enacted the first tenure law for teachers. Since 1900, the principle of teacher tenure has spread throughout the country, generally following the civil service plan. The objective of teacher tenure is to protect those teachers who have undergone an adequate probationary period from unjust removal from their positions. The legislative intent of those who have enacted teacher tenure laws is to provide certainty, stability, and permanency of employment to those who have proven themselves as competent teachers and to prevent their dismissal or

⁴⁸ 277 N.W. 541 (Minn. 1938).

demotion without just cause.⁴⁹

In Appeal of Mulhollen,⁵⁰ the court had no difficulty finding competent evidence to support the dismissal of Miss Mulhollen on grounds of incompetency. Three different assistant county superintendents rated her as unsatisfactory based upon her lack of technical skill, inadequate lesson preparation, poor organization of lessons, grammatical errors in her speech, failure to correct errors of her students, insufficient utilization of visual aids, lack of clear teaching objectives, lack of participation of some students, and poor attitude of students toward their work. Her principal testified that her grading system was hopelessly confused with students being ranked higher or lower than was correct. For example, the student entitled to the number one rank in the class was ranked number twenty-nine.⁵¹

While the court acknowledged that the teacher was undoubtedly incompetent, it chastised the administration for allowing her to teach within the system for twenty-three years when she was clearly unfit as a teacher. As the court stated,

...it is difficult to find the reason for the delay in discovering that she was unfit for her position. ...[T]he supervisory officials concerned have been somewhat derelict in their duty to the school children and

⁴⁹ Id.

⁵⁰ 39 A.2d 283 (Pa.Super.Ct. 1944).

⁵¹ Id.

taxpayers of the district in not sooner dispensing with the services of [Miss Mulhollen].⁵²

Furthermore, the court attacked the administration for failure to provide the teacher with anecdotal records explaining the reasons for her unsatisfactory ratings immediately after she had been rated. These records had been submitted and filed by the assistant county superintendents without Miss Mulhollen's having the benefit of examining their contents. In criticizing this oversight, the court reminded the administrators that the rating procedure was not solely devised by the legislature for the dismissal of professional employees, but that it was also to be utilized to provide remediation for those employees whose deficiencies might be corrected.⁵³ Such mishandled cases as this one would be subject in 1989 to reversal based upon procedural due process grounds. However, in 1944, this teacher's dismissal was upheld.

In Hapner v. Carlisle County Board of Education, et al.,⁵⁴ the appellate court upheld the termination of Mrs. Hapner's contract to teach in Carlisle County. She argued that she had been dismissed arbitrarily as a result of

⁵² Id. at 286.

⁵³ Id. at 287.

⁵⁴ 205 S.W.2d 325 (Ky. 1947).

community prejudice, while the Board claimed she was inefficient as a teacher. She had been served with notice of a hearing prior to dismissal. At the hearing, eighteen people testified that she was too old (at age sixty-four) to teach, that her teaching methods were different from and not as satisfactory as those of the other teachers, that her method of grading discouraged her students, that a number of her students did not get along well with her, that her students did not learn much, and that she was generally unacceptable as a teacher. In rebuttal, Mrs. Hapner provided witnesses that contradicted the testimony of her opponents.

Despite the absence of expert testimony and the poor quality of the testimony provided by both sides, the circuit court's affirmation of the Board's decision to dismiss Mrs. Hapner was affirmed by the appellate court. If such a case were heard in 1989, reversal would be very likely based upon lack of clearly defined standards of performance required of the competent teacher.⁵⁵

In Applebaum v. Wulff,⁵⁶ the court ruled that the Board's decision to terminate the teacher's contract for gross inefficiency was supported by the evidence. Applebaum had been a teacher in the Cleveland Public Schools for about

⁵⁵ See the discussion of Sanders v. Board of Education in Chapter Five.

⁵⁶ 95 N.E.2d 19 (Ohio Ct. Com. Pleas 1950).

twenty-seven years when she was notified that the Board intended to terminate her employment on grounds of gross inefficiency and that she had ten days to request a hearing. She demanded and was granted a public hearing on the matter. At the hearing, the Board voted to sustain the recommendation of the superintendent of terminating Applebaum's contract. At issue on appeal from a lower court was whether the court's authority was limited to judicial review of the proceedings of the Board or if it was the intent of the Legislature which enacted the teacher tenure laws to provide a trial de novo in an appeal from the Board's decision. The bases for the Board's decision against the teacher were poor classroom control, lack of student progress, lack of provisions for various student ability levels within the classroom, antagonistic relationship with parents and students, and lack of improvement in teaching performance. The court explained that, prior to tenure laws, the School Board could make any decision it deemed proper without review by others. While this had changed, the Board was still the hiring and firing body and was still responsible for dismissal hearings. The court ruled that it was only charged with the duty to determine whether the Board acted reasonably in its decision and whether the dismissal hearing was conducted fairly. The court found the action to be reasonable and the hearing to be fair.

This position that the court was only charged with determining that the Board did not act illegally, rather than whether the court would have reached the same conclusions, appears also in the 1956 case of Conley v. Board of Education of the City of New Britain.⁵⁷ In this case, Conley was notified by the superintendent that action was being taken to terminate his contract based upon stated charges which constituted gross inefficiency and that he was entitled to a hearing upon request. Conley requested a hearing and was represented by counsel. At the hearing, the Board ruled that the charges of gross inefficiency had been proven by a preponderance of the evidence. Conley appealed to the Court of Common Pleas, which sustained the Board's action, after which he appealed to the Supreme Court of Errors. Here it was determined that it was not the function of the courts to retry a teacher dismissal case. The school board itself was an administrative agency acting in a quasi-judicial capacity. The Board only had power to terminate Conley's employment if the charge of gross inefficiency was supported by a preponderance of the evidence. After such ruling, the function of the court was simply to rule on the legality of the Board's action, based upon whether the evidence the Board had examined could reasonably justify the Board's decision.

⁵⁷ 123 A.2d 747 (Conn. 1956).

These differing functions of school boards and courts in teacher dismissal cases are present in some of the more recent cases which will be analyzed in Chapter Five.

In comparison, the court in the 1957 case of Guthrie v. Board of Education of Jefferson County⁵⁸ stated that a trial judge who does not rule on questions of fact, but who instead is content with simply determining whether the Board was guilty of abuse of discretion or illegal behavior has not performed his statutory duty. This is because the legislative intent at that time in Kentucky was that the trial court's decision in a teacher dismissal case would be an original action. Regarding Miss Guthrie, both the Board and the trial judge found sufficient evidence that she was a poor disciplinarian who could not maintain classroom or playground control of her students, and that her classroom was filled with tension and confusion, which resulted in unhappy students and poor learning environment. Thus the decision of the Board was upheld.

In the case of Werner v. Community Unit School District No. 4,⁵⁹ the Appellate Court reinstated the dismissed teacher after determining that the causes for her dismissal for, among other things, incompetence in the classroom were remediable.

⁵⁸ 298 S.W.2d 691 (Ky. 1957).

⁵⁹ 190 N.E.2d 184 (Ill. App. 1963).

The teacher's contract had been terminated after a public hearing for improper grading, infraction of school rules, failure to require sufficient work from her students, classroom incompetence, giving students higher grades than deserved, allowing students to change their answers on papers, and delaying of tests to allow her students an advantage over children in other classes. However, despite all these problems, both the superintendent and the principal admitted that they had never complained to the teacher about the behaviors which constituted the reasons for her dismissal prior to her dismissal. Furthermore, this same teacher, during an earlier school year, had had a discipline problem which had been discussed with her by her superiors, and she had afterwards corrected this problem. Thus on judicial review, the court ruled that the Board's finding that the reasons for Werner's dismissal were not remediable was not supported by competent evidence. This issue of the remediableness of charges against a teacher will be shown in Chapter Five to have lead to reversals of teacher dismissal when inadequate time is provided for remediation.

The issue of remediation is also addressed in the 1973 case of Wojt v. Chimacum School District No. 49.⁶⁰ Mr. Wojt was a teacher who had made no effort to maintain classroom

⁶⁰ 516 P.2d 1099 (Wash. App. 1973).

control, had allowed students to deface classroom property, had ignored school policy by permitting students to fix their own grades, had discussed with his students the parental complaints against him, and had not conformed in behavior to school policies. On appeal, he was reinstated because he had not been provided an opportunity to remedy his behavior after charges had been brought. The court explained its decision as follows:

Where a teacher is discharged because of classroom deficiencies, the consequences are severe. Chances of other employment are diminished, if not eliminated. Much time, effort, and money has been expended by the teacher in obtaining the requisite credentials. It would be manifestly unfair to allow a discharge for a teaching or classroom deficiency which is reasonably correctible [sic].⁶¹

Summary

In summary, a review of the literature indicates that the teacher tenure system was based upon the civil service system, which developed in response to the spoils system of corrupt government. Each state developed its own tenure laws at its own rate, with the earliest of such laws being enacted in Massachusetts in 1886. Such laws protect nonprobationary teachers from dismissal by their school boards without just cause. One such reason justifying dismissal was teacher

⁶¹ Id. at 1103.

incompetency. The earliest cases of teacher dismissal did not tend to focus on such issues as due process rights and procedural safeguards, which was addressed in Goldberg v. Kelly in 1970, or liberty interests and property rights regarding continued employment, as addressed in the Roth and Sindermann cases in 1972. Sufficiency of evidence of incompetency was a primary issue in these first cases. Gradually, other issues such as adequate notice, fair hearing, adequate time for remediation, the role of the Court in appeals from Board rulings, along with the above stated issues, became central to dismissal cases. As a result, a more sophisticated understanding by the school administrator regarding teacher dismissal proceedings is a necessity in today's school environment.

CHAPTER III
AN ANALYSIS OF FIFTY STATES' LAWS
REGARDING TEACHER INCOMPETENCY

The importance to the school administrator of a working knowledge of his state's law regarding teacher dismissal cannot be overestimated. This can mean the difference between a dismissal which is upheld on appeal to the courts and one which is not. As stated by Roney and Perry,

When school administrators comply with statutory requirements in dismissing a tenured teacher, it is clear to the teacher that his contract rights are terminated. It is when a school board fails to comply with precise statutory provisions that confusion and uncertainty exist as to the status of the tenured teacher regardless of the incompetence issue.⁶²

As of Fall 1987, the statutes in existence for all fifty states regarding the dismissal of public school teachers are presented in the Appendix. They vary greatly in level of detail, ranging from a very general overview of the issue, as seen in those laws governing Maine, New Hampshire, Pennsylvania, Utah, and Wisconsin, to a very detailed approach, such as those statutes stated for North Carolina. Language varies also, with nonprobationary teachers being

⁶² Robert K. Roney and Irma O. Perry, "Where the Buck Stops: Tenure Laws and Incompetency," 61 NASSP Bulletin, No. 406 at 48 (Feb. 1977).

called "continuing contract teachers" in Wyoming, "career teachers" in North Carolina, "teachers on continuing service status" in Alabama, "tenured teachers" in Georgia, "permanent teachers" in California, and "teachers with professional service contracts" in Florida.

In all states, however, teachers who have established themselves as a result of a certain number of years of service are afforded the right of due process hearings. Many but not all states also allow this right for probationary teachers. This right to due process includes advance notice of intent to dismiss which is either automatically or at the teachers' request followed by a hearing. During the hearing, the teacher is afforded the right to hear the charges against him, to be represented by counsel, to subpoena witnesses, to present evidence, to cross-examine witnesses, to present testimony in his own behalf, and to receive fair and impartial treatment.

There are a multitude of reasons for teacher dismissal. Some of these appear with greater frequency than others. The following reasons are listed in the statutes of ten or more states as cause for dismissal: immorality (35), incompetency (30), good, just, sufficient, or probable cause (27), neglect of duty or negligence (25), insubordination (21), noncompliance with school or board rules, policies, or laws (17), misconduct in office or unprofessional or unbecoming

conduct (15), physical or mental disability (15), inefficiency (15), criminal activity or conviction (12), and reduction in force (10).

The states also vary in the number of causes they list for dismissal. Nevada has reasons for dismissal which fit into seventeen different categories on the Grounds for Teacher Dismissal Table. Those reasons were: inefficiency, immorality, unprofessional conduct, insubordination, neglect of duty, physical or mental incapacity, decrease in number of positions, conviction of a felony or crime involving moral turpitude, inadequate performance, evident unfitness for service, failure to comply with board requirements, failure to show normal improvement and evidence of professional growth, advocating the overthrow of the government or teaching Communism to indoctrinate students, any cause which could lead to a revocation of a teacher's license, willful neglect or failure to carry out requirements, or dishonesty. In comparison, Utah does not list any grounds for teacher dismissal, and the following states only list single, general "for cause" reasons: Arkansas - "any cause which is not arbitrary, capricious, or discriminatory," Idaho - "just and reasonable cause," Iowa - "just cause," Michigan - "reasonable and just cause," Rhode Island - "just cause," Vermont - "just and sufficient cause," and Washington - "probable cause."

At the end of this chapter, there are five tables presenting the various grounds for teacher dismissal in all fifty states. Table 1 shows which states list "incompetency" or the two related charges of "inefficiency" and "inadequate performance" as grounds for teacher dismissal. Table 2 displays the five most common grounds for teacher dismissal and indicates which states include each of these charges in their statutes as basis for teacher dismissal. Table 3 does the same, addressing the six grounds which are the next most common after the previous five reasons given in Table 2. Tables 4 and 5 presents all other grounds for teacher dismissal listed in state statutes with the relevant states for each reason.

Not only are there varying causes for dismissal, but there are differences in dismissals of tenured as compared to nontenured teachers, with generally more procedures being provided for the tenured along with the right to judicial review. Probationary teachers are usually simply protected from dismissals which are arbitrary or capricious or for political or personal reasons. Dismissal during a teacher's term of contract also require more stringent procedures than dismissal at the end of the contract period.

Some states, such as New Jersey, require a period for the deficient teacher to be allowed to attempt to improve unacceptable performance. Others, such as North Carolina,

refuse to allow dismissal based upon actions which happened more than three years ago. New Mexico allows the teacher to take his case before an independent arbitrator, while Ohio allows the use of a referee. Texas provides for a hearing before a committee of classroom teachers and administrators before the hearing before the board of trustees. New Jersey has the hearing conducted by the commissioner with the board of education as a party to the hearing. In Washington, the hearing officer renders the decision regarding teacher dismissal. Washington, along with North Carolina, specify that the burden of proof is on the board to prove by a preponderance of the evidence that the teacher should be dismissed.

A brief glimpse at the different states' statutes reveals variations in their laws -- some which are significant and others which are cosmetic. In Alabama, the teacher receives notification by June 15 that the superintendent is recommending his dismissal to the board of education. The teacher chooses whether the hearing will be public or private. Within five days of the close of the hearing, the decision is made regarding dismissal. The teacher can appeal the decision first to the state tenure commission and then to the circuit court.

In Alaska, a tenured teacher receives notice of intent to dismiss before March 16. The tenured teacher decides

whether the hearing will be public or private, and ten days after the hearing is completed the decision is rendered. Review from the school board's decision is through a de novo trial in superior court.

Arizona requires notice of intent to dismiss on or before April 15. If reason for dismissal is inadequacy of classroom performance, the teacher must be allowed 90 days in which to correct deficiencies. The teacher determines whether the hearing will be public or private. Within ten days of the hearing, the governing board makes its ruling. Appeal of this ruling is to the superior court in that county.

Arkansas only allows terminations upon the recommendation of the superintendent. There is no tenure, but instead there is contract renewal from year to year. Notice of intent to dismiss is provided the teacher by May 1st. The hearing, which is before the board of directors, is private unless the teacher or the board request that it be public. After the hearing, the board makes its decision within ten days. Appeal is to the county circuit court.

In California, the teacher is allowed forty-five days to correct unprofessional conduct and ninety days to remedy problems regarding incompetency. The governing board does not allow notices of intent to dismiss to be issued between May 15 and September 15. The Commission on Professional Competence conducts dismissal hearings and renders final

decisions in cases. Appeal is to the court of competent jurisdiction.

The chief executive officer of the district or any board member recommends dismissal in Colorado. The hearing, which is open to the public unless either the teacher or the board requests that it be private, is before a hearing officer. The board of education issues a written order within thirty days after the hearing officer's recommendations. Judicial review is through the court of appeals.

In Connecticut, notice of intent to dismiss is issued by April 1st. The hearing is before an impartial hearing panel and is public if the teacher or panel so requests. The board of education renders its decision within fifteen days of receipt of the written recommendation of the impartial hearing panel. Appeal is to the superior court.

Delaware provides that the teacher will receive written notice of the intention to dismiss. The hearing is before the board, Unless the teacher chooses otherwise, the hearing is private. Fifteen days after the hearing is concluded, the board renders its decision. Appeal is to the superior court for the county where the teacher is employed.

In Florida, notification of the teacher regarding unsatisfactory performance must be accomplished not later than six weeks prior to the end of the postschool conference period. The teacher is then allowed the following year in

which to improve. In cases of dismissal, the superintendent makes the recommendation and the hearing is before the school board. Judicial review of a dismissal ruling is through the district court of appeals.

Georgia provides for hearings before the local board or a tribunal of three to five impartial people from the Professional Practices Commission, whichever the board chooses. If the hearing is before the board, the decision is made at the hearing or within five days of close. When the tribunal is utilized, their findings and recommendations are submitted to the board within five days, from which the board makes its ruling within ten days. Appeals are to the state board.

In Hawaii, written notice of intent to dismiss is signed by the superintendent of education. Then the board or a hearing officer conducts the hearing, which is private unless the teacher requests that it be public.

Notice of possible nonrenewal of contract must be provided the employee no later than April 1st in Idaho. This notice is from the superintendent or other duly authorized officer of the school district. The decision regarding dismissal is made within fifteen days after close of the hearing.

In Illinois, following written notice, the dismissal hearing is before a disinterested hearing officer and is

public if so requested by teacher or board. The hearing officer renders his decision within forty-five days of the conclusion of the hearing.

The superintendent makes the determination that he will recommend teacher dismissal in Indiana. Notice to nonpermanent employees must be by May 1st.

In Iowa, the teacher is notified no later than March 15 that the superintendent is recommending dismissal to the board. Within five days after the hearing, the board meets in executive session for a final decision. A nonprobationary teacher may appeal the decision to an adjudicator within fifteen days after hearing the board's decision. The adjudicator's decision is final and binding except when either party rejects it. Appeal is first to the district court and then to the supreme court.

Written notice of intention to terminate a teacher's contract must be delivered by April 10 in Kansas. A hearing committee hears the evidence and renders a decision within thirty days of the close. If the decision is unanimous, the board adopts the opinion as its own. If the decision of the hearing committee is not unanimous, the board will consider it and will make its own decision no later than thirty days after close of the hearing. Appeal is to the district court.

In Kentucky, termination of teacher contract is effected by the board after being recommended by the superintendent.

The hearing is public or private, at the teacher's discretion. At the end of the hearing, the board decides within five days whether to dismiss the teacher. Appeal is first to the circuit court and then to the court of appeals.

Louisiana allows public or private hearings at the discretion of the teacher, with an appeal for a full hearing to a court of competent jurisdiction. Maine's statutes regarding teacher dismissal are brief; they provide for due notice of a dismissal hearing prior to a hearing before the school board. Causes for the dismissal are stated as the teacher has proven unfit to teach and his services are deemed unprofitable to the school by the board.

In Maryland, the county superintendent recommends dismissal to the county board after providing notice of impending dismissal and the opportunity of a hearing to the teacher. Appeal from the county board is to the state board.

Massachusetts utilizes the school committee to provide notice to the teacher and to hold the hearing, which is either public or private at the committee's discretion. Michigan guarantees the probationary teacher whose work is not satisfactory that he will be so told sixty days before the close of the year. A hearing before the board is public or private at the teacher's discretion. The decision, which is rendered in fifteen days, can be appealed to the state tenure commission only by nonprobationary teachers.

In Minnesota, notices of nonrenewal are sent to probationary teachers before June 1st, and to continuing teachers by April 1st. The hearing is public or private at the teacher's option, except hearings for reductions in force are public. The decision regarding dismissal is made after the hearing and entered into the board's minutes.

The superintendent of schools is responsible for notice of dismissal to the teacher on or before April 8 in Mississippi. The hearing is before the board or a hearing officer, with the decision being provided within thirty days after conclusion of the hearing when by the hearing officer and within ten days if the board conducts the hearing. Appeal is to the chancery court and then to the Mississippi Supreme Court.

In Missouri cases involving insubordination, incompetency, or inefficiency, the superintendent or school board warns the individual teacher at least thirty days prior to notice that he must resolve his difficulties. A hearing officer can hear the case, after which the board will render the decision based upon the transcript. The transcript is provided ten days after the hearing, and the decision is made seven days after that. Appeal is to the circuit court and then the appellate court.

In Montana, the teacher is notified by May 1st, and the hearing is before the board of trustees, after which the

teacher can appeal to the county superintendent and either teacher or trustees can appeal to the superintendent of public instruction. Notification date in Nebraska is either April 1st or May 15, depending on the class district involved. The decision of the school board is final.

The Nevada probationary employee is warned of the dismissal recommendation no later than March 1st. A hearing officer is utilized and his report is filed no later than fifteen days after the conclusion of the hearing. His recommendations are binding if there was prior agreement to this. Otherwise, the superintendent can submit a contrary recommendation and the board can choose either. Appeal is to the district court.

In New Hampshire, notification of impending dismissal is on or before March 15. Only those who have taught three years can request a hearing. The school board makes its decision within fifteen days of the close of the hearing. Review by the state board of education is made within fifteen days of request.

New Jersey utilizes a hearing conducted by the commissioner based upon charges by one who is not a member of the board of education. The board of education is considered a party to the action, and the board's actions are in private meeting.

In New Mexico, on or before the last day of school, the teacher receives a written notice from the local board or governing authority of the state agency indicating his services will not be required the following year. If the instructor has taught three or more years, he can appeal to an independent arbitrator from the decision of the board for a de novo hearing. The arbitrator, after the close of the hearing, provides a decision within ten days which is binding except in the case of corruption, which is the grounds for an appeal to the district court.

In New York, a hearing panel makes its decision, which it forwards in a report to the Commissioner of Education for implementation. This hearing is public or private at the discretion of the employee, and may be followed by an appeal to the Commissioner of Education.

North Carolina allows the teacher to choose between utilization of the Professional Review Committee followed by a hearing or simply a hearing in cases where the teacher has received notice of the possibility of dismissal. The board makes its decision within five days after a hearing based upon the preponderance of the evidence. Appeal is to the superior court.

The teacher is notified by April 15 of the intention not to renew in North Dakota. The hearing that follows is private unless both the teacher and the board request

otherwise. Final decision must be by May 1st.

Ohio requires a written notice of intention not to renew from the board, followed by a hearing either before the board or a referee. The referee's report on whether or not to terminate is either accepted or rejected within the board's minutes. Appeal is to the court of common pleas.

Prior to April 10 in Oklahoma, the teacher receives his notice regarding the intention to terminate his contract. After board hearing, he can appeal the board's action to the Professional Practices Commission for a hearing in executive session. From here a report will be submitted to the state board of education for a final determination. Appeal is to the district court.

In Oregon, by April 1st, a probationary teacher receives his nonrenewal notice. While he can be dismissed for any just cause, the permanent teacher has more rights and may appeal a school board dismissal to the Fair Dismissal Appeals Board, which may reverse the decision. The hearing is private unless the teacher requests that it be public. In contrast, in Pennsylvania, the dismissal hearings are public unless the employee requests otherwise.

Rhode Island provides for notification of the teacher by March 1st in case of nonrenewal. The hearing is public or private at the discretion of the teacher, with a right to appeal to the state department of education and then to the

superior court.

In South Carolina, notice of nonrenewal is by April 15, with public hearing unless the teacher requests it be private, determination within ten days of hearing, and right to appeal to the court of common pleas and then to the supreme court. South Dakota, in comparison, requires notice of nonrenewal before the third Monday in March, with private conference available, and decision rendered seven days after hearing.

The superintendent provides the written notice of intent in Tennessee and the board of education hears the case in private session at the request of the teacher or the board, with the decision being made within ten days after the hearing. Appeal is to chancery court and then to the supreme court.

For probationary teachers, Texas requires the notice of intent of nonrenewal by April 1st. A hearing can then be requested of the board. The superintendent makes nonrenewal recommendations to the board of trustees, and hearings are public unless the teacher requests his be private. Also there is the provision allowing a hearing before classroom teachers prior to the hearing before the board. Appeal is first to state commissioner of education and then to the district court.

Utah requires notice to all nonrenewed teachers at least two months before the end of the contact term, with hearing

examiners conducting the hearing by power of the board of education. Vermont, in comparison, requires notice no later than April 15, with the hearing being private unless the teacher choosing public. The school board makes its decision within five days of close of the hearing. Appeal is to the superior court.

The procedure in Virginia is notice and then hearing before school board or fact-finding panel. The panel can, at the request of the teacher, meet privately. The panel files its report with the board which may or may not concur with the panel's position. Appeal is to the circuit court.

Washington requires probable cause for dismissal notification, followed by a hearing which is either open or closed at the request of the employee. The dismissal decision is based upon the preponderance of the evidence and rendered ten days after the conclusion of the hearing. West Virginia requires probable cause for a hearing, which is open or closed at the employee's request. Appeal is to the superior court.

Notification on or before March 15 is required in the case of nonrenewal in Wisconsin. The hearing shall be public when so requested by the teacher. Wyoming also requires notification no later than March 15. Nonrenewal proceedings are initiated by the superintendent or a member of the board.

The above are simply some aspects of the fifty state statutes regarding teacher dismissal proceedings. On the

following pages are charts reflecting grounds for teacher dismissal. The appendix provides selected sections of the actual statutes for each of the fifty states which relate to teacher dismissal, particularly those regarding grounds of incompetency.

Chapter Four, Legal Aspects of Teacher Dismissal on Grounds of Incompetency, will further discuss the importance of paying careful attention to legal requirements in dismissal proceedings.

TABLE 1
INCOMPETENCY AND RELATED CHARGES

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

TABLE 1 CONTINUED
INCOMPETENCY AND RELATED CHARGES

State	Incompetency	Inefficiency	Inadequate Performance
South Dakota	x	o	o
Tennessee	x	x	o
Texas	x	o	o
Utah	o	o	o
Vermont	o	o	o
Virginia	x	o	o
Washington	o	o	o
West Virginia	x	o	o
Wisconsin	o	x	o
Wyoming	x	o	o

TABLE 2
FIVE MOST COMMON GROUNDS FOR TEACHER DISMISSAL

State	Immoral	Insubor	Incomp	Neglect	Good Cause
Alabama	X	X	X	X	X
Alaska	X	O	X	O	O
Arizona	O	O	O	O	X
Arkansas	O	O	O	O	O
California	X	O	X	O	O
Colorado	X	X	X	X	X
Connecticut	X	X	X	O	X
Delaware	X	X	X	X	O
Florida	X	X	X	X	X
Georgia	X	X	X	X	X
Hawaii	X	O	O	O	X
Idaho	O	O	O	O	X
Illinois	X	O	X	X	X
Indiana	X	X	X	X	X
Iowa	O	O	O	O	X
Kansas	X	X	X	O	O
Kentucky	X	X	X	X	O
Louisiana	X	O	X	X	O
Maine	O	O	O	O	O
Maryland	X	X	X	X	O
Massachusetts	O	X	X	O	X
Michigan	O	O	O	O	X
Minnesota	O	O	O	X	X
Mississippi	X	O	X	X	X
Missouri	X	X	X	O	O
Montana	X	O	X	O	X
Nebraska	X	X	X	X	X
Nevada	X	X	O	X	O
New Hampshire	X	O	X	O	O
New Jersey	O	O	O	O	X
New Mexico	O	O	O	O	X
New York	X	X	X	X	O
North Carolina	X	X	O	X	O
North Dakota	X	X	O	O	O
Ohio	X	O	O	O	X
Oklahoma	X	O	X	X	O
Oregon	X	X	O	X	O
Pennsylvania	X	O	X	X	O
Rhode Island	O	O	O	O	X
South Carolina	X	O	X	X	O
South Dakota	X	O	X	X	O

TABLE 2 CONTINUED

FIVE MOST COMMON GROUNDS FOR TEACHER DISMISSAL

State	Immoral	Insubor	Incomp	Neglect	Good Cause
Tennessee	o	x	x	x	o
Texas	x	o	x	x	x
Utah	o	o	o	o	o
Vermont	o	o	o	o	x
Virginia	x	o	x	o	x
Washington	o	o	o	o	x
West Virginia	x	x	x	x	o
Wisconsin	x	o	o	o	x
Wyoming	x	x	x	x	x

Immoral = Immorality

Insubor = Insubordination

Incomp = Incompetency

Neglect = Neglect of duty or negligence

Good Cause = Good, just, sufficient, or probable cause

TABLE 3

OTHER FREQUENTLY NAMED GROUNDS FOR TEACHER DISMISSAL

State	Conduct	RIF	Noncomply	Crime	Disabled	Ineffic
Alabama	X	X	O	O	O	O
Alaska	O	O	X	O	O	O
Arizona	O	O	O	O	O	O
Arkansas	O	O	O	O	O	O
California	X	O	X	X	X	O
Colorado	O	O	O	X	X	O
Connecticut	O	X	O	O	X	X
Delaware	X	X	O	O	O	O
Florida	X	O	O	X	O	O
Georgia	O	X	O	O	O	O
Hawaii	O	X	X	O	O	X
Idaho	O	O	O	O	O	O
Illinois	O	O	O	O	O	O
Indiana	O	X	O	O	O	O
Iowa	O	O	O	O	O	O
Kansas	X	O	X	O	X	X
Kentucky	X	O	O	O	X	X
Louisiana	O	O	O	X	O	O
Maine	O	O	O	O	O	O
Maryland	X	O	O	O	O	O
Massachusetts	X	O	O	O	O	X
Michigan	O	O	O	O	O	O
Minnesota	X	O	X	O	O	X
Mississippi	O	O	O	O	O	O
Missouri	O	O	X	X	X	X
Montana	O	O	X	O	O	O
Nebraska	X	X	O	O	X	O
Nevada	X	X	X	X	X	X
New Hampshire	O	O	X	O	O	O
New Jersey	X	O	O	O	O	X
New Mexico	O	O	O	O	O	O
New York	X	O	O	O	X	X
North Carolina	O	X	X	X	X	O
North Dakota	X	O	O	X	X	X
Ohio	O	O	X	O	O	X
Oklahoma	O	O	O	O	O	O
Oregon	O	O	O	X	X	X
Pennsylvania	O	O	X	O	X	O
Rhode Island	O	O	O	O	O	O
South Carolina	O	O	X	X	O	O
South Dakota	O	O	X	O	O	O

TABLE 3 CONTINUED

OTHER FREQUENTLY NAMED GROUNDS FOR TEACHER DISMISSAL

State	Conduct	RIF	Noncomply	Crime	Disabled	Ineffic
Tennessee	x	o	o	o	o	x
Texas	o	x	x	x	x	o
Utah	o	o	o	o	o	o
Vermont	o	o	o	o	o	o
Virginia	o	o	x	x	x	o
Washington	o	o	o	o	o	o
West Virginia	o	o	o	o	o	o
Wisconsin	o	o	x	o	o	x
Wyoming	o	o	o	o	o	o

Conduct = Misconduct in office / unbecoming or unprofessional conduct

RIF = Reduction in force / decrease in number of positions

Noncomply = Noncompliance with school or board rules, laws, or policies

Crime = Criminal activity or conviction

Disabled = Physical or mental disability

Ineffic = Inefficiency

TABLE 4

OTHER GROUNDS FOR TEACHER DISMISSAL AND RELEVANT STATES

State	Drug/Alco	Turpitude	Education	Cruelty
California	X	O	O	O
Florida	X	X	O	O
Georgia	O	O	X	O
Illinois	O	O	O	X
Kansas	O	O	X	O
Mississippi	X	O	O	X
Missouri	O	X	O	O
Nebraska	O	O	X	O
Nevada	O	X	X	O
New York	O	O	X	O
North Carolina	X	X	X	O
Oklahoma	O	X	O	X
Oregon	O	X	X	O
Pennsylvania	X	O	O	X
South Carolina	X	O	O	O
Texas	X	X	O	O
Virginia	O	X	O	O
West Virginia	X	O	O	X

Drug/Alco = Drug or alcohol abuse

Turpitude = Moral Turpitude

Education = Failure to maintain educational training or
professional growth

Cruelty = Cruelty

TABLE 5
MISCELLANEOUS GROUNDS FOR TEACHER DISMISSAL
WITH RELEVANT STATES

STATES	=	AL	AR	CA	DL	GA	HI	IN	LA	ME	MA	MO	MT	NV	NJ	NM	NC	OK	OR	PA	SC	TX	UT	
<u>GROUNDS</u>																								
Dishonesty		0	0	X	0	0	0	0	X	0	0	0	0	X	0	0	0	0	0	0	X	0	0	0
Unfitness		0	0	X	0	0	0	0	0	X	0	0	X	X	0	0	0	0	0	0	0	0	0	0
Best Interest		X	0	0	0	0	0	X	0	X	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Revoke License		0	0	0	0	0	0	0	0	0	0	0	0	X	0	0	X	0	X	0	0	0	0	0
Overthrow Govt		0	0	0	0	0	0	0	0	0	0	0	0	X	0	0	X	0	0	X	0	0	0	0
Not arbitrary		0	X	0	0	0	0	0	0	0	0	0	0	0	0	X	0	0	0	0	0	0	0	0
Communist		0	0	X	0	0	0	0	0	0	0	0	0	X	0	0	0	0	0	0	0	0	0	0
Disloyalty		0	0	0	X	0	0	0	0	0	0	0	0	0	0	0	0	X	0	0	0	0	0	0
Incapacity		0	0	0	0	0	0	0	0	0	X	0	0	0	X	0	0	0	0	0	0	0	0	0
Owe Debts		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	X	0	0	0	0	0	X	0
Incite Students		0	0	0	0	X	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Not Return		0	0	0	0	0	X	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Excess Absences		0	0	0	0	0	0	0	0	0	0	X	0	0	0	0	0	0	0	0	0	0	0	0
No Reason		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	X

TABLE 5 CONTINUED**MISCELLANEOUS GROUNDS FOR TEACHER DISMISSAL**

Dishonesty = Dishonesty

Unfitness = Unfitness for service

Best Interest = Best interest of school

Revoke License = Any cause that would lead to revocation of
teacher's license

Overthrow Govt = Advocating overthrow of government

Not Arbitrary = Any cause not arbitrary, capricious, or
discriminatory

Communist = Member or advocate of Communist party

Disloyalty = Disloyalty

Incapacity = Incapacity

Owe Debts = Failure to repay debts

Incite Students = Inciting students to violate laws or school
rules

Not Return = Failure to return after leave of absence

Excess Absences = Excessive absences

No Reason = No reason given

CHAPTER IV
LEGAL ASPECTS OF TEACHER DISMISSAL
ON GROUNDS OF INCOMPETENCE

In dealing with teacher dismissal, the administrator encounters various problems and dilemmas. In this chapter, the following issues are examined: (1) incompetence - difficulty in defining and measuring incompetence, manifestations of incompetence, characteristics relating to incompetence; (2) teacher evaluation - skills needed by administrators, procedures involved; and remediation process - steps involved; (3) dismissal proceedings - steps involved, how to proceed legally and fairly; (4) administrative excuses - why the incompetent are not dismissed; (5) alternatives to dismissal; (6) due process - steps required, importance of due process; and (7) positive results of teacher dismissals.

**Incompetency - Difficulty in Defining
and Measuring Incompetence and
Manifestations and Characteristics of Incompetence**

In Chapter One, definitions of key terms, including "incompetency," were given. The definition of "incompetency"

incorporated the concept of lacking in moral fitness.⁶³ Such a definition of "incompetency" is obviously quite broad, for with the inclusion of "moral fitness," "incompetency" would include "moral turpitude," which will not be addressed in this study except when multiple reasons are given for dismissal.

Expressing the precise meaning of "incompetence" is difficult, and problems in dealing with the term naturally lead to complications in dealing with the situation. As Patricia Palker notes,

Defining the word "incompetence" is the beginning of the problem. Some see incompetence as a simple lack of knowledge about the subject being taught. Others view it as a lack of sensitivity toward both children and teaching. And still others define it as a lack of control over the class. Most, however, agree that it includes all of these factors plus a lack of imagination and creativity in teaching.⁶⁴

Still, "incompetence" is a difficult term to describe.

Rosenberger and Plimpton describe "incompetence" as follows:

While considered synonymous with inefficiency, insufficiency, and inability, and, while further connoting a lack or absence of ability, abstractly, incompetence is a relative term without technical

⁶³ Black's Law Dictionary, Fifth Edition, the Publisher's Editorial Staff, 688-89 (St. Paul, Minn.: West Publishing Co., 1979).

⁶⁴ Patricia Palker, "How to Deal with Incompetent Teachers," Teacher, 42-43 (Jan. 1980).

meaning.⁶⁵

Actually, there are several aspects to be considered in the teaching process: one is internal and resides within the teacher, while the second is external and involves the students' responsiveness to the teacher. The entire process might be regarded as: action equals the teacher's attempts at communication (however successful) with his students; reaction equals the students' response (whether negative or positive); and synthesis equals the learning accomplished, the degree of attainment of knowledge through the process of interaction between students and teacher. Incompetence on the part of the teacher is the result of a breakdown of this process and leads to a lack of learning or to negative learning. Rosenberger and Plimpton state:

What is not considered to be incompetence depends greatly upon the circumstances of the case but generally those bringing charges should be able to reasonably relate the teacher's act to the effectiveness of that teacher in the teaching-learning process.⁶⁶

It should be recognized that not everyone disparages the ambiguous nature of the term "incompetence."

⁶⁵ David S. Rosenberger and Richard A. Plimpton, "Teacher Incompetence and the Courts," 4 Journal of Law & Education, No. 3 at 471 (July 1975).

⁶⁶ Id. at 479.

One of the problems faced by boards of education and school administrators is the operational definition of "incompetence." ...There is obviously a good bit of room for interpretation and judgment within these requirements. ...Granted, from a strictly legal point of view a clear, unambiguous definition would be best; but from an educational point of view flexibility can be an asset. It does not mean that the statute is easy to interpret or enforce, but it does mean that with competence on the part of administrators a plan can be set up and utilized to improve teaching competence and to remove incompetent teachers.⁶⁷

Subject matter knowledge is not sufficient to assure competency; organizational and communication skills are also required for effective teaching. A school board's expectations that a teacher know and be able to teach his subject are reasonable. Therefore, any deficiencies in areas of teaching techniques and subject matter certainly meet the delineation of incompetency. However, it is not sufficient for the teacher simply to master a subject and convey that knowledge to pupils. For the teacher to avoid charges of incompetency or inefficiency, the teacher's performance should not be hampered by defects which would make him unfit to continue teaching. Rosenberger and Plimpton note:

Incompetence is usually manifested by a pervasive pattern of behavior resulting in a lack of classroom organization and harmony, and dissatisfaction on the part of the pupil

⁶⁷ Robert K. Roney and Irma O. Perry, "Where the Buck Stops: Tenure Laws and Incompetence," 61 NASSP Bulletin, No. 406 at 46 (Feb. 1977).

and supervising authorities.⁶⁸

There are generally concrete signs which accompany the incompetent teacher, many of which those around him will recognize. Typical signs of teacher incompetence are poor classroom control, often the result of poor planning, which leads to an inability to hold the attention of the students and to maintain order, and the resulting complaints by parents requesting transfers for their children into other classrooms. Sometimes physical mistreatment of students accompanies these problems.⁶⁹

Another method for identifying incompetency is establishing what characteristics are present in the competent teacher and thus absent in the incompetent teacher. Rosenberger and Plimpton suggest the following:

Emphasis upon clarity of objectives, specific performance, and the demonstration of what the teacher can do toward meeting objectives will no doubt improve the capability of professionals to define competency and thus incompetency.⁷⁰

Because the charge of incompetence is a serious accusation, dismissal for which would deprive the teacher of

⁶⁸ Rosenberger and Plimpton at 471.

⁶⁹ Ron Daugherty, "Those Who Should Not Teach," 13 Thrust No. 4 at 13 (Jan. 1984).

⁷⁰ Rosenberger and Plimpton at 469.

his livelihood, there must be reasons given when such a charge is made.

[The reasons] are sufficient if they are made in simple language and are broad enough to fairly advise the employee of their nature so that he can properly prepare a defense thereto. In addition, they must be related to the educational process and to working relationships within the educational process.⁷¹

Robert Munnelly cites several reasons for dismissal on grounds of incompetence. Broadly, they are: teaching methods, effects on students, personal attitudes of teacher, and subject matter knowledge.⁷² Edwin Bridges describes teacher incompetence as either technical, bureaucratic, ethical, productive, or personal failure. Technical failure relates to expertise necessary for task performance. Bureaucratic failure relates to compliance with rules and regulations. (This may really be closer to insubordination than incompetence.) Ethical failure relates to performing professionally as an educator. Productive failure relates to attaining goals regarding student performance. Personal failure relates to psychological, mental, or physical

⁷¹ Id. at 472.

⁷² Robert J. Munnelly, "Dealing With Teacher Incompetence: Supervision and Evaluation in a Due Process Framework," 50 Contemporary Education, No. 4 at 223 (Summer 1979).

deficiencies of the teacher.⁷³

Obviously, "incompetency" is a complex term and can vary in what it encompasses. As Daugherty explains, incompetency is one of the most commonly stated reasons for dismissal. Usually the charge of incompetency means that the teacher just is not effective in his role as a teacher because he lacks the essential qualities and qualifications of a truly effective teacher. Since this is a serious accusation, anyone who brings such a charge against a teacher should be able to prove it.⁷⁴

Causes for teacher dismissal can be classified within the following four areas: teaching methodology, subject matter knowledge, personal attitude, and effect on students.⁷⁵ However, in teacher dismissal cases, generally there is a pattern of reasons for the action rather than just one. According to Rosenberger and Plimpton,

In virtually no case, has a single reason been used as the basis for dismissal. Certainly these reasons must be substantial and specific and directly related to teaching, rather than being arbitrary and capricious or

⁷³ Edwin M. Bridges, "Managing the Incompetent Teacher - What Can Principals Do?" 69 NASSP Bulletin, No. 478 at 58-59 (Feb. 1985).

⁷⁴ Daugherty at 13.

⁷⁵ Rosenberger and Plimpton at 472.

general and vague.⁷⁶

Bridges points out that even though incompetence is an ambiguous term, most states have chosen to include it as legal basis for teacher dismissal.⁷⁷ Rosenberger and Plimpton note:

It should also be noted that, while statutes often use the term [incompetence] as a reason for dismissal, it is not defined in statute. The same is true with similar terms such as inefficiency when used in place of incompetence.⁷⁸

Yet, there is good news for the administrator in the courts' treatment of the use of incompetence as grounds for teacher dismissal. Court rulings do not generally rest on the basis of conflicting definitions of competency; rather, the central issue is fairness to the accused throughout the process. Generally, definitions of competence are based upon the judgment of professionals in the field of education. If the definition is stated clearly, so that a teacher may reasonably be expected to interpret the definition fairly and accurately, "competency" as so defined will be upheld by the courts. However, neither in application nor concept, can the use of the term be arbitrary or capricious.⁷⁹

⁷⁶ Id. at 477.

⁷⁷ Bridges, "Managing the Incompetent Teacher," at 57-58.

⁷⁸ Rosenberger and Plimpton at 470.

⁷⁹ Roney and Perry at 47.

Fortunately, when school administrators exercise their discretion in deciding what incompetence or failure means in a particular instance, the courts are likely to accord great deference to this definition. Judges are inclined to accept the administrator's definition of incompetence without question as long as the criteria embodied in this definition have been communicated to teachers and teachers have received information about the specific ways in which their performance has failed to satisfy the criteria. In short, the ambiguity surrounding the meaning of incompetence does not pose an insurmountable barrier to the principal in dealing with incompetent teachers.⁸⁰

**Teacher Evaluation - Skills needed by Administrators,
Procedures Involved; and Remediation Process - Steps Involved**

However, the administrator must always remember his primary duty -- to facilitate learning -- and should first seek to alleviate the problem through support and remediation for the incompetent teacher. The administrator must determine whether a teacher's classroom difficulties stem (a) from failures of the school system in such areas as clarifying expectations, (b) from outside distractions unrelated to the educational system such as marital or financial crises, or (c) from teacher-related problems such as lack of skills or lack of effort. If (a) describes the problem, it is the administrator's responsibility to correct the situation. If the problem is (b), the administrator might reasonably expect

⁸⁰ Bridges, "Managing the Incompetent Teacher," at 59.

the teacher to seek the proper professional help. If the difficulty lies in (c), the administrator must next ascertain whether the problem resides in a lack of skill or a lack of effort. These two must be treated differently. A lack of skills requires in-depth remediation for the teacher regarding whatever skills are lacking. A lack of effort requires goal-setting by the principal, feedback to the teacher based upon performance, and reinforcement of desired teacher behavior by the principal.⁸¹

Furthermore, to deal successfully with the incompetent teacher, the administrator himself must possess certain skills. According to Edwin Bridges, the administrator who is evaluating teaching competency in a situation which may ultimately lead to recommendation of teacher dismissal must possess special skills and knowledge which are often omitted in the preservice training of school administrators. Such an administrator must possess the following qualities if he is to perform effectively his evaluation responsibilities:

1. The ability to describe and analyze what is happening in a classroom.
2. The ability to provide an unbiased rating of a teacher's performance.
3. The ability to diagnose the cause(s) for a teacher's poor performance.
4. The ability to prescribe remediation that is appropriate to the teacher's classroom deficiencies.
5. The ability to conduct conferences with teachers regarding their instructional performances.

⁸¹ Id. at 59-61.

6. The ability to document matters related to 1 through 5.
7. Knowledge of the legal bases for evaluating and dismissing incompetent teachers.⁸²

But even the most talented administrator will not be able to do an efficient job of evaluating his teachers without designating sufficient time to spend in the classrooms of those teachers. Bridges indicates that, while most principals recognize the importance of spending time in the classrooms with their teachers, in reality very little time is spent managing instructional activities due to time constraints and prioritizing procedures which place other duties higher. School systems need to hold administrators accountable for dealing with incompetent teachers in a satisfactory and timely manner.⁸³

There are volumes written on how the administrator should discharge his duties when faced with unsatisfactory teacher performance. The following are six points presented by Remley and MacReynolds on this topic. They suggest a positive approach to the situation:

1. Students, parents, the school superintendent, the school board, and society in general all have an interest in the quality of public education. The principal has a duty to

⁸² Edwin M. Bridges, "It's Time to Get Tough with the Turkeys," 64 Principal, No. 3 at 19-20 (Jan. 1985).

⁸³ Id. at 20.

all of these parties to uphold quality education even if this involves dismissing an incompetent teacher. The principal should not be diverted from his duty by concerns regarding depriving the incompetent teacher of his livelihood.

2. Teacher effectiveness should be recorded objectively and professionally through the utilization of nonbiased, specific evidence.

3. While the principal should treat the teacher recommended for dismissal with understanding when the teacher expresses dismay over the recommendation, the principal should stand firm in his decision.

Principals who resent a teacher's anger tend to make a bad situation even worse. Understanding and compassion, coupled with firm resolve, is the best position for principals faced with angry teachers.

4. An important point for principals to remember is that the true purpose of teacher evaluation is remediation, not dismissal. This goal can sometimes be better attained by utilizing a more effective teacher to train the weak teacher in techniques which will enable him to improve. Often this approach is seen by the incompetent teacher as less threatening than direct developmental assistance from the principal and thus a more effective method.

5. Teacher evaluations should be conducted by the principal regularly and in a thorough manner. At such times,

the principal should assist teachers with problems and warn those displaying incompetencies that improvement is expected and required.

6. The principal who truly care about his staff will want his teachers to perform well. He will allow sufficient time for remediation before dismissing an ineffective teacher.⁸⁴

The most important ingredient for dealing with poor teacher performance is open and clear communication between the administrator and the teacher. As Roney and Perry point out, once unacceptable teacher performance is identified, the administrator has a responsibility to expedite the teacher's remediation. The administrator who uses tact and concern when dealing with inadequate teacher performance will best effect a change in such teacher through alleviation of the teacher's feelings of fear or anger. Good channels of communication and well-established, sound evaluation will assist the school administrator in practicing effective staff development. Administrators and teachers working together should set general goals and specific objectives to evaluate teacher performance. Then, when performance falls short of the stated goals and objectives, the administrator will have an understandable basis for counseling and assisting the

⁸⁴ Theodore P. Remley, Jr., and Virginia B. MacReynolds, "Due Process in Dismissals: A Reflection of Our Values," 72 NASSP Bulletin, No. 504 at 42-43 (Jan. 1988).

teacher.⁸⁵ Only after such steps have failed to produce acceptable results, should the principal pursue teacher dismissal as a viable alternative.

Even among educators there are contradictory opinions regarding the principal's charge in handling the incompetent teacher and the responsibility of warning the teacher that improvement is required to avoid dismissal. According to David Larson, there are certain steps which should be taken by a principal faced with unsatisfactory teacher performance. He states that first the teacher should be placed in an intensive remediation program. Second, the teacher should be informed in writing of the reason for this placement and what improvement is expected. Third, the teacher must be told that lack of improvement will result in further action. However, Larson states, it is not the responsibility of the principal to indicate what form the further action may take because such a call can only be made by the superintendent of schools and the board of education.⁸⁶ Probably a preferable approach is one in which the superintendent is kept constantly informed of the situation and is in agreement with the principal that the principal should apprise the teacher of his exact

⁸⁵ Roney and Perry at 48.

⁸⁶ David H. Larson, "Advice for the Principal: Dealing with the Unsatisfactory Teacher Performance," 65 NASSP Bulletin, No. 442 at 10-11 (Feb. 1981).

situation regarding continued employment. The element of surprise should never be a part of the dismissal process.

Bridges suggests three steps in dealing with incompetent teachers: identification, remediation, and dismissal if remediation does not result in sufficient improvement.⁸⁷ He proposes the following normative approach for dealing with teacher incompetency problems:

1. Establish "excellence in teaching" as a high priority for the school district;
2. Adopt and publish reasonable criteria for evaluating teachers;
3. Adopt sound procedures for determining whether teachers satisfy these criteria and apply these procedures uniformly to teachers in the district;
4. Provide unsatisfactory teachers with remedial assistance and a reasonable period of time to improve;
5. Establish and implement procedures for ensuring that appraisers have the requisite competencies;
6. Provide appraisers with the resources needed to carry out their responsibilities;
7. Hold appraisers accountable for evaluating and dealing with incompetent teachers; and
8. Provide incompetent teachers with a fair hearing prior to making the dismissal decision.⁸⁸

**Dismissal Proceedings - Steps Involved,
How to Proceed Legally and Fairly**

To provide a fair dismissal hearing, the administrator

⁸⁷ Bridges, "Managing the Incompetent Teacher," at 57.

⁸⁸ Edwin M. Bridges, "Collaborative Research: The Case of the Incompetent Teacher," 13 Teacher Education Quarterly, No. 2 at 62 (Spring 1986).

must be able to produce clear and convincing evidence that the teacher is indeed incompetent. What is needed is evidence of sustained repetition of teacher problems, constant warnings, frequent assistance for the teacher, adequate time and opportunity in which to improve, and close supervision, all of which occurs within a typical working environment.⁸⁹

Unfortunately, some teachers will fail to improve to an acceptable level of performance despite the administrator's efforts to provide sufficient remedial assistance. When this happens, such teachers must either be dismissed or be persuaded to resign. Dismissal proceedings brought against a tenured teacher require production of proof such that by the preponderance of the evidence the teacher's incompetence can be substantiated. Some examples of such evidence are supervisory evaluations based upon formal and informal classroom observations, peer evaluations, self-evaluations, student complaints, parental complaints, and student ratings.⁹⁰

Dealing with incompetent teachers, whether through remediation or dismissal, requires extra effort on the part of the administrator and those who assist him in performance of his duties. Principals must have various resources for effective management of incompetent teachers. Such resources

⁸⁹ Remley and MacReynolds at 42.

⁹⁰ Bridges, "Managing the Incompetent Teacher," at 61-62.

include strong remedial assistance, sufficient time to work with teachers, and the advice of competent legal counsel. Without all three, the administrator will not be able to deal effectively with his incompetent staff members through remediation or dismissal procedures.⁹¹ Legal assistance in situations which the principal perceives as eventually leading to dismissal proceedings is of vital importance. Access to legal counsel is essential when dismissal may be the final solution. The dismissal proceeding has appropriately been called "a legal minefield." An attorney with experience in teacher dismissal cases should be utilized by the principal to avoid the potential pitfalls which may exist.⁹²

However, it cannot be overemphasized that without sufficient evidence, attempts to dismiss the incompetent teacher will fail. Complaints alone will not do; there must be professional evaluations too. As noted by Rosenberger and Plimpton:

Since there exists a presumption of competence on the part of a properly certified teacher who has served a period of time without being rated incompetent, the burden of proof is upon those that assert that a teacher has fallen short of his obligations. ...Evidence to support a charge [of incompetence] must have probative value and relevance to establish the alleged facts and the decision must be limited to consideration of the

⁹¹ Id. at 63.

⁹² Id. at 64.

evidence offered.⁹³

Generally, testimony regarding a teacher's competency will come from professionals, parents, community members, and students. This testimony must be sufficient in amount to establish a pattern of incompetent performance and must be current enough to prove relevance to the proceedings. The time period of the evidence gathering will affect its relevance. Since charges of incompetency should not be based upon isolated incidents, patterns indicating unacceptable performance must extend over a substantial period of time. However, evidence of previous incompetency from an earlier time too far removed from the present will not support dismissal. Reasonableness is the key word to consider when determining what evidence is relevant.⁹⁴

There must be clear and convincing evidence that there was a good faith effort made to assist the incompetent teacher and to raise his performance, through remediation, to an acceptable level of competency. Thus there should be documented examples of the following: frequent observation sessions, suggestions for improvement, follow-up evaluations, assistance with remediation through utilization of specialists, assistance from a master teacher, and suggested

⁹³ Rosenberger and Plimpton at 479.

⁹⁴ Id. at 484.

reading assignments addressing procedures in education. Furthermore, everything should be put in writing, including times, dates, and objective observations. All of this should be verifiable. The teacher should be kept informed of each step in the procedure and should be required to sign his evaluations as acknowledgement of the contents. Throughout the entire evaluation process, the teacher should be aware that there is a possibility of dismissal if there is no improvement in his performance.⁹⁵

An imperative rule throughout this procedure is that the administrator must be organized. Principals who intend to seek dismissal of incompetent teachers should maintain substantial written files on any teachers who display obvious deficiencies. Such files should contain documentation of the shortcomings, proof that assistance has been made available to the teacher, and evidence regarding teacher improvement or the lack of it. There should also be records of several observations and follow-up conferences to establish proof of a pattern of incompetence. This will necessitate the principal's spending many hours observing in the classroom, holding follow-up conferences, and providing weak teachers

⁹⁵ Daugherty at 13-14.

with remedial assistance as needed.⁹⁶ Dismissing a tenured teacher for incompetence is drastic action; thus it is vitally important that the administrator carefully consider all aspects of the teacher's performance carefully. Utilization of several objective observers to evaluate the teacher's performance is desirable. Such observers will judge the teacher after gathering data through classroom observation, assessment of the performance of the teacher's students in comparison to that of similar students, and information provided during conferences with parents and students.⁹⁷

One apparently obvious, but sometimes neglected, aspect of this entire process is the need for understanding by all parties involved of what the goal is regarding standard of performance required. Among both educators and judges there should be consensus that a specified acceptable standard of teaching performance understood by all parties in advance would be the fairest basis upon which to determine competency decisions. Furthermore, when a school system plans to apply its own unique standards of performance to its tenured teachers, the school board is responsible for communicating

⁹⁶ Suzanne H. McDaniel and Thomas R. McDaniel, "How to Weed Out Incompetent Teachers Without Getting Hauled into Court," 59 National Elementary Principal, No. 3 at 35 (Mar. 1980).

⁹⁷ Benjamin Sendor, "Good News: Courts Now Agree that Poor Teachers (Even Those Who Have Tenure) Can Be Fired," 171 American School Board Journal, No. 8 at 7 (Aug. 1984).

such standards to all affected teachers.⁹⁸

A school board's dismissal of an incompetent teacher will not be upheld on appeal if, during the proceedings, the teacher's rights, as guaranteed by the United States Constitution or state laws, are violated. Thus compliance with all legal safeguards of individual rights is mandated. As an example, here are California requirements for a school board seeking to dismiss a teacher:

1) There has to be legal cause. 2) The legal process has to be carefully followed. 3) There has to be a record of observation and evaluation, together with warnings to the teacher that a need for improvement exists as well as a list of efforts to be made for improvement. 4) Substantial objective evidence must be collected in a permissible manner. And 5) a show of good faith must be exhibited.⁹⁹

"Good faith" can be interpreted here as meaning keeping the teacher informed of all steps throughout the dismissal proceedings, along with providing assistance for improvement.

Larson's suggestions to the administrator on how to deal with the incompetent teacher provide an excellent overview of steps which must be taken by the effective administrator in such circumstances:

1. If more than one person is involved in teacher evaluation, there must be communication between the two evaluators.

⁹⁸ Rosenberger and Plimpton at 485-486.

⁹⁹ Daugherty at 14.

2. Before the teacher is approached, make sure both evaluators have met beforehand to develop objectives which the teacher will be expected to meet in order to improve his or her performance.
3. Make sure the superintendent of schools is involved early in this entire process.
4. Confer with the teacher to share concerns and make suggestions for improvement. Remember, it is incumbent upon the evaluator(s) to help the teacher improve.
5. Document all conferences, meetings, observations, and directives. Documentation becomes extremely important of the bottom line is a fair dismissal hearing.
6. Post-conference summaries should be made in writing. The summary should reflect the teacher's reactions to what was discussed.
7. Any problems or breach of rules should be documented and brought to the teacher's attention.
8. It must be shown that the evaluator(s) made suggestions for improvement, and that ample time has been given for the teacher to improve his or her performance.
9. All documents which are being placed in a teacher's file must be proofread and edited for grammar, spelling, sentence structure, etc. Remember, any written document is a direct reflection on the author.
10. Seek the advice of the school board attorney early in the process if a fair dismissal case may be pending.
11. When it becomes clear that the principal is going to recommend fair dismissal, the superintendent should meet with the teacher to indicate that he is aware of the teacher's unacceptable performance; to let the teacher know that continued employment is in jeopardy; and to point out that there must be substantial improvement in the teacher's performance by a designated date.
12. Once the principal has decided to seek the dismissal of a teacher, the school board attorney should be consulted and support secured from the superintendent of schools and the school board.¹⁰⁰

The administrator should never become so engrossed in laying groundwork for dismissal proceedings that he forgets that the primary goal is to assist the teacher in improving and overcoming any difficulties he is experiencing. Dismissal

¹⁰⁰ Larson at 11.

is an alternative to be employed only when absolutely necessary.

On the other end of the spectrum, however, do not grant tenure to those whose performance during the probationary period has not been acceptable. The probationary period should be used to examine the new teacher's performance, to discuss any problems in his performance with him, and to assist him in developing his teaching skills.¹⁰¹ Throughout this time, the administrator should be keeping careful records. Thus if the probationary teacher's performance is inadequate, the decision not to renew his contract can be justified. As Benjamin Sendor notes:

Courts will support your decision not to rehire a poor or even a mediocre probationary teacher as long as the decision is not made on arbitrary, capricious, or discriminatory grounds. But once a teacher gains the status of tenure, getting rid of him for inadequate performance is markedly tougher.¹⁰²

The administrator should realize that not every situation can be corrected through remediation, that some rare situations will mandate immediate dismissal. Sometimes certain teacher behaviors which serve as grounds for dismissal will also be actions which are irremediable because of the irreparable harm which has already been committed affecting

¹⁰¹ Sendor at 7.

¹⁰² Id.

students, faculty, or school, and because such harm could not have been corrected by admonitions from the teacher's supervisors when they became aware of the situation. More commonly, a cause for dismissal will be of such a remediable nature that the teacher is entitled to notice that the behavior is unacceptable and should be corrected within a set time period. When there is a lack of consensus between the teacher and the administration regarding whether a cause for dismissal is remediable, such a case will be subject to judicial review for a determination.¹⁰³ In such cases, meticulous adherence to all legally delineated procedures is required to assure a dismissal which will be upheld by the courts.

Administrative Excuses -

Why the Incompetent Are Not Dismissed

However, when the correct course of action is clearly the commencement of dismissal proceedings against an unequivocally incompetent teacher, too often principals procrastinate in doing their duty, partially due to the natural human tendency to avoid unpleasant tasks. Principals faced with duties as both evaluators and consultants often abdicate their

¹⁰³ Rosenberger and Plimpton at 472.

responsibilities in the evaluation area, due to the negative connotations associated with that role. Furthermore, because of the generally adversary nature of teacher dismissal proceedings, there is a tendency to avoid this role. Often principals let poor teachers "slide" the first year, assuming that they will improve. When the deficiencies continue, the principals hesitate to bring action regarding performance they previously tolerated. And finally, principals fear being too zealous in their evaluation proceedings will result in courtroom accusations of malicious harassment.¹⁰⁴

Often it is only when budgetary constraints put pressure upon the administrators that they finally are motivated to action. Before that, many administrators tolerate poor teachers. As Bridges points out:

Administrators often used double-talk to deaden the sting of criticism; gave teachers, the good and bad alike, satisfactory evaluations; and relied on escape hatches (e.g., transfer or reassignment to a non-teaching position) to sidestep the problems posed by the incompetent teacher. These tolerant and protective responses were apt to persist unless the district was faced with declining enrollments and budgetary pressures. These circumstances stimulated administrators to abandon their earlier practices and confront the teacher about his or her poor performance. Confrontation meant that administrators began to criticize teachers, to provide them with assistance in overcoming their deficiencies, and to induce them to leave if they failed to improve.¹⁰⁵

¹⁰⁴ McDaniel and McDaniel at 35-36.

¹⁰⁵ Bridges, "Collaborative Research," at 63-64.

There is a lot of finger-pointing among administrators, teachers' unions, and teachers regarding who is to blame for the difficulty of ridding a school system of incompetent teachers. Administrators insist that they are unable to act because the cost of an attempt to dismiss an incompetent teacher is astronomical, both in the thousands of dollars of legal fees and the hours of time involved in such an action. They argue that unions are at fault for not being more discriminatory regarding the quality of teacher for whom they will support a legal battle against teacher dismissal.¹⁰⁶

Unions, in comparison, blame administrators. They argue that the employment and supervision of teachers is the charge of the administrator. If administrators were more selective in their employment procedure and in the process of evaluation before granting tenure, tenured incompetent teachers would not exist. In response to the charge that they should be more selective regarding whom they defend against dismissal, union officials argue that such is impossible. They are charged with the responsibility of providing teachers with their due process rights. Failure to do so would expose the unions to lawsuits by undefended teachers against the union.¹⁰⁷

¹⁰⁶ Palker at 43.

¹⁰⁷ Id. at 44.

And finally, while the other teachers constantly condemn the administrators for failure to act quickly and decisively against incompetent teachers, those teachers are accused by administrators of being generally unwilling to speak out against an incompetent teacher within their midst. The peer pressure not to report incompetent teachers is quite strong.¹⁰⁸ However, the bottom line regarding accountability for the presence of incompetent teachers in a school system remains the same -- the responsibility for evaluating and addressing teaching competency issues resides in the administrators.

Alternatives to Dismissal

In the case of incompetency which cannot be cured through remediation, the principal must, in some way, terminate the ineffective teacher's employment. This can be accomplished by one of two methods --forced resignation or formal dismissal. Of the two, forced resignations are by far the more prevalent.¹⁰⁹ Particularly with tenured teachers, forced or induced resignations are much more common than dismissal.¹¹⁰

¹⁰⁸ Id.

¹⁰⁹ Bridges, "Collaborative Research," at 61.

¹¹⁰ Id. at 63.

The practicality of using induced resignations is apparent when one contemplates the following difficulties encountered when dismissals are sought:

- (1) the legal barriers to removing tenured teachers for incompetence;
- (2) the technical problems in measuring teacher effectiveness; and
- (3) the human obstacles that were involved, including the willingness and the ability of supervisors to carry out their responsibilities in the area of teacher evaluation.¹¹¹

Taking these reasons in reverse order, one finds that the third one has two parts: the first part is psychological and involves the personal discomfort experienced by those who must judge others while the second part addresses the competency of those who judge the competency of others. There are many leadership training programs which seek to analyze and develop these two traits of the supervisor.

The second reason deals with the art of effective, efficient, reliable evaluation methods. Because of the extreme concern over accountability and management by objectives in the last few years, there have been many programs developed which have honed this down to a fine, precise methodology.

The first reason for so few teacher dismissals for incompetency is one which is being addressed in this study and

¹¹¹ Bridges, "Collaborative Research," at 62.

is one which can be mastered by the administrator through knowledge of the teacher's due process rights and through careful planning and documentation. Munnelly indicates that generally when a school board loses a case based upon teacher incompetence, the decision of the court is the result of the board's failure to follow due process procedures rather than a finding that the board's appraisal regarding the teacher's competence was faulty.¹¹²

This should be considered in juxtaposition to those school systems that were successful in their dismissal proceedings. When school boards are upheld by the courts in their decision to dismiss incompetent teachers, they usually have been carefully attentive in their compliance to due process requirements during the evaluation period long before the decision to begin dismissal proceedings had been made. Observation of due process requirements only during the final termination stage is a common defect in many cases where the courts have overturned the school boards' dismissal decisions.¹¹³

¹¹² Munnelly at 221.

¹¹³ Id. at 223.

Due Process - Steps Required and Importance of Due Process

The following are the fundamental principles inherent to due process protection and should be carefully observed in all dismissal hearings:

1. the right to notice (including a statement of reasons) so the teacher can be informed of the impending subject of review and can choose what action to take with reference to it;
2. the right to a hearing;
3. the right to personal presence at the hearing;
4. the right to counsel, including the privilege of raising issues and setting up a defense, and the right to confront and cross-examine the witnesses;
5. the right to introduce evidence;
6. the right to protection against arbitrary rulings and the right to fairness and impartiality;
7. the right to proof of damages;
8. the right to a review by an appeal tribunal.¹¹⁴

Generally, court involvement in dismissal cases will occur only in the appeal process after an initial ruling on whether a teacher should be dismissed. If the teacher has been dismissed, usually the procedural aspects are being examined on appeal rather than substantive issues. Judicial involvement in teacher dismissal cases occurs only at the appellate stage. Most state legislatures have empowered their school boards with the authority to dismiss teachers after conducting a due process hearing. When a dismissed teacher chooses to challenge the board's decision, he may appeal to

¹¹⁴ Id. at 222.

the courts. Usually when a court hears a dismissal case on appeal, the major focus concerns due process issues. The actual facts of the case regarding instructional skills and effectiveness are usually not the key issues. Instead, courts commonly defer in areas regarding teacher effectiveness to the judgments of the local administrators and school boards.¹¹⁵

Thus the second difficulty mentioned earlier as a reason why tenured teachers are rarely dismissed -- "the technical problems in measuring teacher effectiveness" -- is usually not an issue. This may be because the courts both assume that administrators are experts in teaching methodology and suspect that administrators may be lacking in their knowledge of properly conducted legal proceedings and due process guaranteed rights.

Therefore it is vital that the school administrator remedy any deficiencies he might have regarding due process observances required for dismissal proceedings.

School officials need a firm understanding of what due process is and how it applies in dismissal actions. This understanding is critical not only at the school board stage of the dismissal but also in the supervisory and evaluative activities of local administrators.¹¹⁶

¹¹⁵ Id. at 221.

¹¹⁶ Id.

Due process rights must be given proper attention in the pre-dismissal period. By safeguarding the teacher's rights during the evaluative period, the administrator can feel more secure that the eventual decision to dismiss will be upheld. The following are due process rights which should be observed:

1. the right to know what standards of performance were expected,
2. the right to notice and feedback,
3. the right to a chance to improve and to get help for improvement,
4. the right to have sufficient time to carry out prescribed improvement.¹¹⁷

Not only are these required as legally established due process rights; they also are representative of general fair treatment for which all school systems should strive. It is important to remember that:

...due process procedures are the result of a compassionate society's attempt to ensure that those being dismissed are protected from arbitrary prejudices, capricious vendettas, and other unacceptable passions that may motivate an unscrupulous principal to fire a teacher.¹¹⁸

Legal due process forces an administrator to refrain from seeking to dismiss a teacher in cases where he has failed to develop a valid case against the teacher.¹¹⁹ If well-

¹¹⁷ Id. at 223.

¹¹⁸ Remley and MacReynolds at 41.

¹¹⁹ Id.

documented in his case against an incompetent teacher, a principal should be unapprehensive of the due process procedure and should view it as a device to justify his stance that dismissal is warranted in the given circumstances. Such a principal will experience the satisfaction of having his decision upheld. However, administrators whose slipshod documentation of teacher incompetence fails to meet standards required by legal due process will discover their attempts to dismiss incompetent teachers to be unsuccessful.¹²⁰

Often the dismissal hearing can be entirely avoided through the use of common sense in treating the inadequate teacher with dignity, respect, and consideration while still resolutely pursuing the goal of improved performance, with the alternative being termination of employment. Effective administrators will confront incompetent teachers with their shortcomings, will tell them precisely how they must improve, will provide support and assistance to help them improve, and will allow them to explain any failures to improve. Teachers who are treated fairly in this manner by their principals often come to the same conclusion as their principals -- that the teaching profession is not right for them. Thus these teachers can leave their teaching positions feeling that they were treated justly and that their departure decisions were

¹²⁰ Id. at 41-42.

made by mutual agreement. Teachers whose principals utilize the evaluation process primarily as a remediation tool and only for dismissal as a last resort rarely demand due process proceedings.¹²¹

If due process procedures are zealously followed throughout the initial dismissal proceedings, and the dismissed teacher does not believe that he has been the victim of underhanded treatment but instead has been treated with respect, despite the final ruling being against him, he is less likely to appeal than if he believes he is the target of a personal vendetta being waged against him by a school administrator.

The major education associations have taken a position in support of strict observance of teachers' due process rights during teacher evaluation procedures. The American Association of School Administrators, the NEA, and the AFT have all stated that the deficiencies of the teacher charged with incompetency should be significant in nature and should be clearly described in a written record made known to the teacher. Such record should include information regarding the teacher's strengths and shortcomings. Furthermore, the teacher should be informed of his weaknesses and allowed

¹²¹ Id. at 42.

adequate opportunity to remedy them.¹²² The teacher involved has invested both time and money in becoming a member of the teaching profession. He is entitled to a careful and fair evaluation of his performance in his chosen field.

Finally, there is the practicality of the situation which cannot be ignored. When due process rights are not given proper deference, the foundation of the case may collapse, an occurrence which will leave the administrator forced to work with a reinstated and thoroughly alienated teacher. Thus every administrator should never underestimate the importance of following due process procedures. As Craig Pearson notes: "A system that accepts the rules of due process... will be likely to sustain its standards and its cases -- all the way through the courts, if necessary."¹²³

Positive Results of Teacher Dismissals

Though the dismissal of an incompetent teacher is regarded as a negative course of action which is, unfortunately, just part of the job of the school administrator, the positive aspects of such actions should not

¹²² Craig Pearson, "The Teacher Competency Movement: Blessing or Sham? Part II," 10 Learning, No. 2 at 100 (Sept. 1981).

¹²³ Id.

be ignored. Principals often choose not to seek dismissal of incompetent teachers because they believe the results are not worth the effort. Instead they inflate teacher evaluation ratings, they procrastinate on taking action against incompetent teachers, and they pass ineffective teachers to other schools in their district. This is wrong. The results of justifiable dismissal actions are worth the effort -- in improved student performance and increased community satisfaction with the enhanced quality of education resulting from the removal of incompetent teachers from the classrooms.¹²⁴

Daugherty expresses the following viewpoint of what teacher dismissal in California involves:

Dismissing a teacher is not an easy task. Principals have to plan for at least two years' effort if the case is one of incompetency or related problems. But it's worth it: after the principal has followed through with such a dismissal, an improved quality of teaching will be obtained at the school.¹²⁵

Furthermore, the removal of poor teachers can have beneficial effects on an entire school system. As Palker notes:

Wherever there is a teacher who is not 'up to snuff', good teachers worry. They worry because, with the present close scrutiny of schools, 'one bad apple' is

¹²⁴ Bridges, "Managing the Incompetent Teacher," at 64-65.

¹²⁵ Daugherty at 13.

more visible and may be hurting the image of the teaching profession more than ever before. It's a time when new teachers aren't being hired and older ones, good and bad, are staying longer. Not only is the incompetent teacher hurting the image of the profession and hurting the teacher who has to make up for someone else's shortcomings, but he or she may also be hurting teachers in their pocketbooks [because parents will resist teacher pay increases when they believe that some of the recipients of the raises are incompetent].¹²⁶

Summary

In summary, while "incompetence" is a difficult term to describe, its manifestations are clear through observation of an ineffective teacher in action. It contains a mixture of inner aspects of the teacher and external aspects regarding rapport with the students. More obviously noticed is the classroom environment of the incompetent teacher.

In situations involving incompetent teachers, an administrator's own competency is on the line in the manner in which he handles this teacher. The administrator must utilize strong evaluative skills and good judgment in dealing with the teacher. Then both the teacher, who may choose to appeal his dismissal, and the courts, which may reverse the dismissal, will believe the action initiated by the administrator and decided by the school board after a due

¹²⁶ Palקר at 43.

process hearing was fair. In comparison, a poorly managed teacher dismissal case may be regarded as a sign of incompetence within the administrative level of the school district. Thus, how the school administrator deals with the incompetent teacher is a reflection of the competency of that administrator in performing his required role in his school system.

CHAPTER V
ANALYSIS OF CASES

Introduction

In the previous chapter, this study examined concerns and issues with which the school administrator must contend when faced with the necessity of dismissing a teacher for incompetency. Chapter V details actual teacher dismissal cases to determine how well theory matches practice. The twenty-six cases included were all decided between 1977 and 1987. In eight of the cases, the teacher was reinstated by the appellate court, reversing the local school board's earlier dismissal. In the other eighteen cases, the decision by the school board to dismiss the teacher for incompetency was upheld. All twenty-six cases focus on public school teacher dismissal proceedings based upon charges of incompetency as reviewed at the appellate level. Regarding format for this examination, the procedure will be to analyze first the eight rulings in favor of the teacher chronologically, and afterwards, to explore the eighteen rulings upholding the school board, also in chronological order.

Judicial Decisions in Favor of Teachers

In Sanders v. Board of Education of South Sioux City Community School District No. 11,¹²⁷ a tenured physical education teacher won reinstatement due to insufficient evidence to establish neglect of duty or incompetency on the part of the teacher. At issue was what conduct would be sufficient to constitute just cause for termination of a tenured teacher's contract. At that time, the court noted,

There are few, if any, objective criteria for evaluating teacher performance or for determining what constitutes just cause for terminating teaching contracts of tenured teachers. Each case must, therefore, be assessed on its own facts.¹²⁸

Such lack of objective criteria back in 1978, when this case was decided, may be hypothesized to be the reason for so much reform and increased specificity in laws governing tenured teachers.

In Sanders, there was no proof that the performance of the discharged teacher was below the standard of performance required of others in the school. Some late classes and some discipline problems, neither of which were very serious, were

¹²⁷ 263 N.W.2d 461 (Neb. 1978).

¹²⁸ Id. at 465.

not, according to the court, enough to fire the teacher. The administration did not present a united front in this case: Ms. Sanders' high school principal had recommended renewal of her contract while, for the same year, the school board had voted to terminate her contract. Furthermore, the previous year, she had been placed on probationary status without ever receiving guidelines for improvement.

In sustaining the district court's reversal of the school board's decision, the Supreme Court of Nebraska indicated that generally evidence of occasional acts reflecting a neglect of duty would not justify dismissal for incompetency:

Incompetency or neglect of duty are not measured in a vacuum nor against a standard of perfection, but, instead, must be measured against the standard required of others performing the same or similar duties. The conduct of Mrs. Sanders complained of by the board might well be categorized as minimal rather than substantial evidence of incompetence or neglect of duty. However her performance is classified, there is a complete absence of evidence that Mrs. Sanders' performance of her particular duties was below the standard of performance required of other teachers in the high school performing the same or similar duties.¹²⁹

Frequent formal evaluations with follow-up meetings where a specific remediation plan was developed would have provided much needed evidence that the school board was serious about improving Mrs. Sanders' performance. Also, item-by-item comparison of Mrs. Sanders' performance to that of other

¹²⁹ Id. at 465.

teachers in the same school would have resulted in a better understanding of whether she was functioning acceptably according to the standards set by her school's administration.

In Board of Education of School District No. 131 v. Illinois State Board of Education,¹³⁰ John Murray, a teacher of educable mentally handicapped (EMH) high school students, was dismissed by the local board of education, reinstated by an administrative hearing officer, dismissed by a circuit court, and finally reinstated by the Appellate Court of Illinois. The court determined, in this case, that the dismissed teacher was not allowed sufficient time to remedy his weaknesses as a teacher. While Murray received oral and written notification of teaching deficiencies earlier, he did not sign a statement agreeing to a set period of remediation until February 4, 1977. Then he agreed to a 45-day period of remediation. He was dismissed on April 4, 1977, which was only 41 calendar days later, and he was allowed only fifteen school days from his receipt of notice to remedy and his final observation on March 21, 1977, as time in which to improve. Furthermore, the March evaluation actually indicated that Murray was making progress toward correcting his deficiencies. Ruling for the teacher, the court said,

In sum, it is our view that the hearing officer's determination that the Board failed to give Murray a

¹³⁰ 403 N.E.2d 277 (Ill.App. 1980).

reasonable remediation period to correct his alleged deficiencies is supported by the evidence.¹³¹

Obviously, there were problems in the school board's handling of this case. What might have been done better? The board's decision may have been upheld if the board had allowed Murray forty-five school days in which to improve his performance and had evaluated him several times after the forty-five days to determine whether to terminate his contract. The actual facts of the case indicate the board had already decided to dismiss him at the onset of the remediation period. School boards must also remember that to comply with statutory requirements and to put the involved teacher on alert that definite action is required on his part to retain his position, official notice to the teacher is required to establish the period of remediation.

If, following a notice to remedy, a remedial deficiency is not corrected within a reasonable period of time, it may be grounds for discharge. ...A remediation period is only triggered by official school board action; unofficial notices given by school administrators are not controlling.¹³²

While different jurisdictions may have varying laws regarding what constitutes official notice to a teacher, it is important for the administrator to know the laws that

¹³¹ Id. at 282.

¹³² Id. at 281.

govern his school system. Furthermore, a tendency sometimes exist to avoid the unpleasantness of being direct with the incompetent teacher during the early stages of the dismissal proceedings before final determination that recommendation for dismissal will be made. This results in a breakdown in communication between teacher and administration and is innately unfair to the teacher who deserves to be fully cognizant of the seriousness of his situation.

Sometimes a charge of incompetency will simply be a veil for differing educational philosophies between the teacher and the supervising administrator. Such appears to be the case in Williams v. Pittard,¹³³ where the principal, who was unfamiliar with teaching techniques in kindergarten, wanted more structure in Mrs. Williams' classroom. In this case, the school board, upon the principal's recommendation, dismissed the teacher for inefficiency and insubordination. The county chancery court reinstated her, and the Supreme Court of Tennessee upheld the chancery court, calling it a close case. Mrs. Williams, along with having a loosely structured readiness program for her kindergarten students, also failed on occasion to be at school at 7:45 a.m., as required by the principal, though she was always there by 8:00 a.m., when supervision of the students began. While a state supervisor

¹³³ 604 S.W.2d 845 (Tenn. 1980).

who observed her class testified that, in her opinion, more structure was needed in Mrs. Williams' classroom, the supervisor admitted that Mrs. Williams had a good readiness program that would prepare her students for the first grade.

The court made the following determination in this case:

In light of the absence of any persuasive testimony that Mrs. Williams' performance was "below the standards of efficiency" maintained by other kindergarten teachers or that she was "wanting in effective performance of duties," we agree with the Chancellor that the evidence of inefficiency was insufficient to warrant Mrs. Williams' dismissal.¹³⁴

The importance of formal teacher evaluations cannot be overemphasized. A teacher's documented evaluation record, the contents of which the teacher should be fully familiar, can greatly strengthen or completely destroy an administrator's case for the teacher's dismissal. This is the situation with Hollingsworth v. Board of Education of the School District of Alliance,¹³⁵ where the majority of Mr. Hollingsworth's appraisals had been favorable. This case, in which the school board's dismissal was first upheld by the district court but later reversed by the Supreme Court of Nebraska, had at issue control of the classroom, handling of student misbehavior, and the teacher's personal hygiene. However, the teacher had had

¹³⁴ Id. at 850.

¹³⁵ 303 N.W.2d 506 (Neb. 1981).

excellent formal evaluations up until shortly before recommendation of dismissal, and most of the student discipline problems had occurred after the dismissal proceedings started. He was dismissed by the board for just cause, which included incompetence, neglect of duty, unprofessional conduct, and other conduct which interferes with performance of duties. The court ruled that he was improperly terminated. "In building its case against Mr. Hollingsworth, the school board has fashioned a house of straw which cannot stand in the fresh breeze of careful analysis."¹³⁶ Written observations praising Hollingsworth and testimony against Hollingsworth, both by Mr. Grosshans, the principal, contradicted each other as evidence. Furthermore, Hollingsworth's present performance had not been judged by objective standards nor had it been compared to that of other staff members. Thus, the court ruled that the record was not sufficient, as a matter of law, to establish just cause for dismissal.

The 1981 case of Kroll v. Independent School District No. 593¹³⁷ demonstrates the importance of verifying the accuracy of the charges against a terminated teacher. The teacher in this case, a tenured third grade teacher with 23 years of

¹³⁶ Id. at 512.

¹³⁷ 304 N.E.2d 338 (Minn. 1981).

experience, was subjected to immediate discharge for "conduct unbecoming a teacher." She allegedly held pins under the arms of a disciplined child to prevent him from lowering them when he was being punished for throwing a crayon by being required to stand by his desk with arms extended, airplane style. Testimony regarding the pins was full of discrepancies, with the teacher's denying having done so and student witnesses' versions being varied regarding what happened. There was no evidence of any psychological harm as a result of the incident, and the teacher's previous record was unblemished. Thus the Minnesota Supreme Court reversed the school board's decision to dismiss, since the part that could be proven, the standing in class with arms extended as punishment, was insufficient grounds to justify immediate dismissal. Furthermore, there was no evidence that, given proper warning, the teacher could not modify her approach to discipline to meet the unwritten policy of her school system.

The issue of remediableness is also an important part of this decision. The court indicated that, for a teacher's conduct to result in immediate discharge, the act which leads to this dismissal should be one which is considered not remediable. Determining whether an act is not remediable involves considering the teacher's entire record, the severity of the act in light of the teacher's entire record, and the actual impact of the teacher's conduct on the students. This

case involved a single incident, of which the verified part was not unusually serious, and the impact on the teacher's students was so negligible that the disciplined student had difficulty remembering the incident. Thus the teacher was reinstated, with back pay.

The issue of whether a cause for dismissal is remediable appears also in Morris v. Board of Education of the City of Chicago,¹³⁸ in which a tenured high school physical education teacher had poor discipline, ridiculed awkward students, and presented disorganized lessons. This situation had existed for five months of school before the board of education dismissed the teacher without providing statutory warning. For such a dismissal to be upheld, there had to be cause for dismissal (which there was) and competent substantial evidence that the cause for dismissal was not remediable (which there was not). The appellate court reversed the decision of the board of education and of the circuit court, stating that, under the circumstances, five months was an insufficient time period in which to establish whether the teacher's unacceptable performance was irremediable. The concept of remediation should be of vital concern to the school administrator, for as these cases indicate, only causes which result in severe damage to students, faculty, or school will

¹³⁸ 421 N.E.2d 387 (Ill.App. 1981).

justify termination without first giving the teacher a set time period in which to improve.

Exactly what is a reasonable time period for remediation is subject to interpretation. In Ganyo v. Independent School District No. 832,¹³⁹ the Supreme Court of Minnesota reversed the decision of the school board and the district court, saying the decision to terminate the teacher was not supported by substantial evidence on the complete record test and finding that eight weeks is insufficient time for the teacher to correct deficiencies. Several considerations may have influenced this decision. After the teacher's notice of deficiency, only the assistant principal observed her. The record indicated there had since been improvement in some areas. Ganyo was allowed five weeks to correct her deficiencies and had only eight weeks before notice of proposed termination. This was not deemed to be reasonable since Ganyo was a teacher who had taught in the system for seventeen years.

The court gave its basis for reversal when it said:

We will not set aside a school board's decision to terminate a teacher unless that decision is fraudulent, arbitrary, unreasonable, not supported by substantial evidence on the record, not within the school board's jurisdiction or based on an erroneous theory of law. ...We do not hear the case de novo or substitute our

¹³⁹ 311 N.W.2d 497 (Minn. 1981).

findings for those of the board.¹⁴⁰

This quotation presents another significant issue: the basis for appellate court decisions. When the court said that it did not hear the case de novo, it was stating that on hearing an appeal, the court renders its decision based only on the record, with no new information being allowed into evidence. Thus the court will not provide for either side the opportunity to argue new premises or present new evidence. Therefore, a full and complete record of events should be included in the original dismissal hearing.

The final case included in this selection of cases where teachers won reversals of school board dismissals is a perfect example of a situation in which dismissal would have been sustained if the administration had not bungled the case. In the 1986 Leola School District v. McMahan¹⁴¹ case, the teacher, Mrs. McMahan, clearly had a personality problem and was abusive to some of her first and second grade students. She divided her classes into fast learners and slow learners, resulting in the slow learners being taunted by the others. Some of the children were afraid of her, for she yelled at students and harassed and picked on some. One student wet his pants in Mrs. McMahan's classroom several times, once after

¹⁴⁰ Id. at 500.

¹⁴¹ 712 S.W.2d 903 (Ark. 1986).

she had refused to let him go to the restroom. He was then made to wipe up the floor in front of the other children.¹⁴²

Despite such valid basis for dismissal, Mrs. McMahan successfully appealed her case to the circuit court with the Supreme Court of Arkansas supporting the circuit court's decision, due to procedural flaws in the case and lack of determination on the part of the administration to take a firm stand with the teacher. In December 1981, the superintendent received complaints about Mrs. McMahan. On her December evaluation, she was rated as unsatisfactory in the area of rapport with parents and students.

The superintendent conducted conferences with her on January 4, 18, and 21. The first conference was used to discuss student harassment, the second indicated no positive plan for resolution had been submitted since the first meeting, and the third one, with Mrs. Williams, a concerned parent, had no written record. On February 3, the superintendent told the teacher there was no need for further meetings and that he was leaning toward recommending her renewal in April. A letter followed, confirming this point.

In March, there was a meeting between McMahan and Williams with another teacher present, followed by a meeting with the superintendent. McMahan created a disturbance in the

¹⁴² Id. 909.

meeting and was sent out into the hall. She then created a disturbance in the hall, which included lying on her back and screaming, which she later attributed to back spasms caused by stress.

On April 8, the superintendent recommended her renewal. When the board members asked for more information, he reversed himself and recommended nonrenewal. McMahan was informed of the recommendation, received a hearing, and was dismissed.

McMahan brought various charges on appeal regarding not being allowed to respond at two board meetings when complaining parties had been heard, introduction of documents at the May 18 hearing, to which she had not been allowed prior access despite her request and legal right to such, and her claim that she was really being dismissed based upon accusations made in 1976, since such accusations had been discussed at the May 18 meeting. The trial court, believing McMahan's claims, ruled the dismissal was based on arbitrary, capricious, and discriminatory reasons. The Supreme Court of Arkansas said it could not find the trial court's decision to be clearly erroneous. So the school board's dismissal of McMahan was found to be an abuse of discretion, with her receiving backpay and reinstatement.

Clearly, this was not a well-organized, unified process on the part of the administration. Only fourteen calendar days were allowed for McMahan to develop a remediation program

on her own, the subject of one meeting was not documented, the superintendent prematurely told her he would recommend renewal, the superintendent changed his mind regarding McMahan's renewal, and McMahan's rights were abused during the hearing process. Carefully planned procedures may have lead to a different result.

Fortunately, many administrators are very conscientious about evaluation processes and dismissal proceedings.

Judicial Decisions in Favor of School Boards

The following eighteen cases reflect situations where, despite occasional procedural flaws, the administrators involved conducted the process skillfully enough to result in the dismissals to be upheld.

In the 1977 Gilliland v. Board of Education of Pleasant View Consolidated School District No. 622 of Tazewell County¹⁴³ case, Gilliland was a second grade teacher who grabbed students by the arms and hair, shouted at them, and had an uncontrollable temper. Her unusual disciplinary techniques included making students sit on the floor or stand with their noses against the wall as punishment. She referred to one child as "you fat kid." Several parents testified that their

¹⁴³ 365 N.E.2d 322 (Ill. 1977).

children cried and were upset, began to hate school, feigned illness to avoid going to the plaintiff's class, and otherwise exhibited various signs of nervous tension.

The court, in its ruling upholding the school board's decision to dismiss the teacher, stated the following:

[T]he board's findings must be sustained unless those findings are contrary to the manifest weight of the evidence. ...Uncorrected causes for dismissal which originally were remediable in nature can become irremediable if continued over a long period of time.¹⁴⁴

Based upon an expert witness's testimony, the court determined that Gilliland's behavior and methods were not remediable. Since the proper procedure for remediable causes for dismissal had not been followed in this case, a determination to the contrary would have resulted in reversal. This case could have been decided either way. Except in situation of actual danger, where the welfare of the children is immediately threatened if the teacher is not removed, administrators would simplify the dismissal process by complying with all procedural requirements which allow sufficient time for improvement.

The case of Rosso v. Board of School Directors of the Owen J. Roberts School District¹⁴⁵ resulted in a dismissal

¹⁴⁴ Id. at 326.

¹⁴⁵ 380 A.2d 1328 (Pa.Cmwlth. 1977).

being sustained which involved an incompetent French teacher with poor teaching methods. Documented observations showed that the teacher presented information to students in a disorganized manner, was unable to maintain an adequate pace when presenting information, did not create an atmosphere which was conducive to effective learning, and failed to vary her instructional methods. The teacher received notice of her deficiencies after having been observed numerous times by five different administrators over a two-year time span. Furthermore, the teacher had been provided with a plan for improvement and had been allowed a full school year during which to implement the plan.

On appeal, the teacher claimed that her dismissal was procedurally flawed and based on insufficient evidence. The court, in affirming her dismissal, found her claim to be without merit and praised the school administration on their handling of this case.

In our opinion, the conduct of the school administration in this case is above reproach. The school district's evaluation procedures are a model of how a professional employe should be rated.¹⁴⁶

The 1979 Beebee v. Haslett Public Schools¹⁴⁷ case exemplifies how specific conditions representing a lack of

¹⁴⁶ Id. at 1329.

¹⁴⁷ 278 N.W.2d 37 (Mich. 1979).

control, when not corrected by the teacher after unfavorable evaluations, will result in dismissal. Here a kindergarten teacher said she was dismissed because of her teaching methodology, but school administration argued termination was based upon her lack of classroom control. The court found sufficient evidence of lack of safety and control. "[A]t issue was the plaintiff's failure to implement her philosophy in a safe and orderly fashion and her refusal to cooperate with administration efforts to achieve this goal."¹⁴⁸

The description of the disorder which existed in this teacher's classroom is quite graphic:

Children were observed using knives without supervision, slamming tables together, fighting with water, throwing crayons, wooden blocks, pointed tiles and sawdust about the room, walking on tops of tables, and window ledges, playing in the cloakroom, running around and shouting, and sliding on their backs on the floor. Plaintiff's classroom was described as disorderly, in that there were piles of material throughout the room, a tree stump with protruding nails, pieces of slivered lumber lying about the room, blocks and sawdust all over the floor, and paint spilled on the floor, cupboards and walls.¹⁴⁹

The teacher's principal discussed with her the necessity of improved control without response. He also had others talk with her regarding this matter, without success. She received two critical written evaluations, one from her principal and

¹⁴⁸ Id. at 39.

¹⁴⁹ Id. at 40.

the other from another elementary school principal from the area. She was not responsive to either. On appeal, the teacher argued that there was no competent and substantial evidence that her classroom was unsafe or disorderly. However, the court disagreed with her, saying:

There may be reasonable and just cause for dismissal if there is substantial evidence that the teacher's classroom is significantly more disorderly or unsafe than would be reasonably expected. In the instant case, there was more than sufficient evidence that plaintiff's classroom was lacking in control and safety more often than would be reasonably expected in any kindergarten classroom, including one utilizing plaintiff's particular pedagogical method.¹⁵⁰

Another case involving lack of classroom control was Busker v. Board of Education of Elk Point Independent School District #61-3, of Union County,¹⁵¹ which involved a high school mathematics teacher. The school board refused to renew the teacher's contract, the circuit court reversed the board's decision, and the Supreme Court of South Dakota reversed the circuit court's decision. The school board said the teacher was incompetent, and the higher court ruled that the burden was on the teacher to prove that the school board's decision was not reasonable. The court said the teacher failed to meet her burden of overcoming the presumption that the board acted

¹⁵⁰ Id. at 41.

¹⁵¹ 295 N.W.2d 1 (S.D. 1980).

in good faith. Furthermore, it ruled that there was insufficient proof that the teacher was dismissed for her association with an anti-administration faction within the school system, which the teacher had claimed was the real reason for her dismissal.

The court said there was substantial evidence to justify the board's decision. The teacher's performance was unsatisfactory in areas of organizational skills, maintaining appropriate classroom environment, and fostering students' interests. She was criticized in her evaluation because students would leave their seats without permission and put their feet on the desks. The general classroom atmosphere was found to be unacceptable.

According to the court, it is required to make its decision based upon whether there was substantial evidence to support the board's decision.

When a court is determining whether to reverse an agency decision, the standard is not whether there is evidence contrary to the agency's findings, but rather whether there is substantial evidence to support it.¹⁵²

In Board of Directors of the Sioux City Community School District v. Mroz,¹⁵³ the Supreme Court of Iowa reinstated the school board's decision to dismiss the teacher based upon the

¹⁵² Id. at 4.

¹⁵³ 295 N.W.2d 447 (Iowa 1980).

preponderance of the evidence. The court said there was just cause for termination, and Mroz himself admitted that he was lax as a teacher. His students talked, daydreamed, wandered around the room, moved desks, and left the room without permission. Mroz showed frequent films and overhead slides, with little preparation or follow-up. Both the adjudicator and the district court had ruled in favor of the teacher. At issue was whether the adjudicator's decision was unsupported by the preponderance of the evidence. The higher court said that it was unsupported and that the school board's decision was supported by a preponderance of competent evidence.

Sometimes cases involve incompetent teachers who actually lack the basic subject matter knowledge required to be a teacher. Such a case was Community Unit School District No. 60, Waukegan Public Schools v. Maclin,¹⁵⁴ in which the school board's dismissal was reversed by hearing officer, who was then reversed by the circuit court, with the appellate court affirming the circuit court's decision. Basically, the teacher did not have control of her class. The class was noisy, parents complained about their children's lack of progress, and the teacher was late or absent too frequently. The teacher resented her principal's close monitoring of her class and indicated she felt there was racial bias on the part

¹⁵⁴ 435 N.E.2d 845 (Ill.App. 1982).

of the principal. She was given a list of deficiencies to improve.

Three faculty supervisors observed her classes with Mrs. Maclin's being given prior notice. Every time she displayed a very clear lack of subject matter knowledge. All three said she was not fit to be a teacher. Her lack of a basic mastery of the subject matter made remediation not a viable alternative. However, she was given sixty-four days to begin improving, but there was no improvement.

Her dismissal was confirmed, based on her failure to: (1) organize her classroom for effective instruction; (2) present clear and effective explanations; (3) maintain a good relationships with parents; (4) keep up-to-date class records; (5) maintain proper classroom discipline; (6) maintain student folders; (7) respond in a positive manner to supervisors' suggestions; (8) arrive at work on time; and (9) establish a good attendance record.¹⁵⁵

In Whaley v. Anoka-Hennepin Independent School District No. 11,¹⁵⁶ the Supreme Court of Minnesota reversed the ruling of the district court and upheld the school board's decision to terminate Mr. Whaley's contract. According to the court, there was substantial evidence to support the board's decision

¹⁵⁵ Id. at 846.

¹⁵⁶ 325 N.W.2d 128 (Minn. 1982).

to end Whaley's contract. The determination was based upon the forty-four findings of fact regarding his job performance. These findings centered on four deficiencies, which were: poor rapport with students, lack of student discipline, excessive and improper use of worksheets, and lack of student progress.

The administration in this case presented the professional opinion of more than just one evaluator. Testifying against the teacher were the principal, the school district's reading curriculum consultant, the teacher responsible for reading program records, and two other teachers. Furthermore, the teacher was given notice of his deficiencies and time to improve before being terminated.

Also utilized was the process of judging the performance of the students of the teacher in question against that of other similar pupils of other teachers in the district. The school district's reading consultant observed Whaley's classroom and his students' written work and then examined the records of similar students in the district's reading program. On this basis, the consultant concluded that Whaley's students did not make satisfactory progress. Two other teachers using the same reading program testified that the records indicated that Whaley's students progressed more slowly than their students. Thus the Supreme Court of Minnesota ruled that:

...Whaley's students made unsatisfactory progress due to his poor teaching performance. When so established, lack of student progress is sufficient to trigger the grounds for

discharge [under the Minnesota Statutes].¹⁵⁷

Often, when there is a charge of incompetency against a teacher, there is also a lack of classroom control. Generally, at the stage when the administration really starts scrutinizing the teacher's predicament, there is difficulty in distinguishing whether the poor teaching led to the lack of control or the poor classroom management techniques led to ineffective teaching. Very likely both poor teaching and substandard classroom control are partially responsible for unacceptable classroom environment.

An example of poor teaching and lack of control can be found in Rainwater v. Board of Education of Greenville R-2 School District of Wayne County.¹⁵⁸ In this case, the teacher received a warning letter, saying she needed to improve. Afterwards, she received a letter, explaining exactly what deficiencies she needed to correct. Among her problems were unruly children, lack of lesson plans, early dismissal of her classes, students' talking and moving about and disrupting others, inconsistent grading methods, and unproductive assignments for the students. Six weeks later, she received a letter which notified her of dismissal proceedings being initiated against her. She was charged with incompetency and

¹⁵⁷ Id. at 131.

¹⁵⁸ 645 S.W.2d 172 (Mo.App. 1982).

inefficiency because of her classroom's constant state of chaos. Furthermore, the warning letter had not motivated her to improve her performance to any substantial degree. While the teacher claimed there was insufficient evidence, the court disagreed, finding a lack of adequate learning. Moreover, teachers who substituted for her and other teachers who taught her same students did not encounter the discipline problems which she did. The court upheld the board's decision, ruling that the board had acted reasonably.

In discussing the concepts of "incompetency" and "inefficiency," the court distinguished the two as follows:

[I]nefficiency and incompetency are closely related, and an incident or occurrence could constitute proof of both. ...[A] charge of incompetency requires a showing of lack of ability or legal qualifications or fitness to discharge the required duty...[while] a charge of inefficiency may be proved a showing of a teacher's incapacity or indisposition to do the things required.¹⁵⁹

The issue of what "incompetency" means came up again in the case of Benke v. Neenan,¹⁶⁰ where the hearing officer, the school board, and the Supreme Court of Colorado all supported the dismissal of a tenured high school art teacher. The teacher made several claims, each of which the court found without merit. The teacher argued that the statute which

¹⁵⁹ Id. at 176.

¹⁶⁰ 658 P.2d 860 (Colo. 1983).

allowed dismissal for incompetency and neglect of duty was unconstitutionally vague and thus void. The court ruled to the contrary. She argued that her First Amendment rights had been violated. The court ruled otherwise. She claimed that there was not substantial evidence in the record supporting the findings of fact and that the use of hearsay evidence dictated dismissal. The court disagreed, citing the use of fifteen witnesses, with four volumes of testimony compiled over a four-day period, which included sufficient evidence which was not hearsay. Thus the dismissal was upheld.

Regarding when a statute is void for vagueness, the court provided the following guidelines:

A statute is void for vagueness when it fails to give fair warning of what is prohibited and when it does not lend itself to meaningful judicial review. ... However, statutes are presumed to be constitutional and should be interpreted, when viable, in a constitutional manner. ... [T]he terms "incompetence" and "neglect of duty" are sufficiently precise that men of common intelligence would not have to guess at their meaning. ... Competence indicates the ability to perform ably and above a minimum level of sufficiency. ... Therefore, incompetence indicates the inability to perform. Duty indicates those actions required by one's particular occupation. ... In themselves, the terms are adequate to give warning as to prohibitions.¹⁶¹

Everett v. Board of Education of the Hampton Community School District and the Hampton Community School District¹⁶² is

¹⁶¹ Id. at 861-862.

¹⁶² 334 N.W.2d 320 (Iowa App. 1983).

another case in which the judgment of the school board was upheld. After the school board dismissed Mrs. Everett, both the district court and the court of appeals upheld the dismissal. The evidence indicated that the teacher, a nonprobationary fifth grade teacher, used negative reinforcement, sarcasm, and ridicule with elementary school students and had poor rapport with parents. The principal, the superintendent, and the director of elementary education said that for eight years this teacher had had problems with the above mentioned faults.

Parents requested that their children not be put in Mrs. Everett's class and complained that she gave too much homework and pressured children too much. Those children who were assigned to her class dreaded going to school. Everett used poor judgment in her handling of learning situations. One child who had mispronounced a word was required to repeat it in front of the class until he finally pronounced it correctly. He managed this only after twenty attempts. Finally even Mrs. Everett's fellow teachers were requesting that their children not be assigned to Mrs. Everett's class.

While Everett argued that the decision of the board was not supported by a preponderance of the evidence, the court said she failed to demonstrate error in the decision and thus upheld her dismissal.

The decision by the appellate court was not unanimous. The position taken by the dissent is a perfect example of why it is so important that administrators do not inflate teacher evaluations with the assumption that the teacher will improve next year. The dissent cited the administrative reviews of the teacher as evidence that, according to the administration, Mrs. Everett's performance was not unacceptable in the past. Out of all her evaluations from 1974 to 1981, up until 1980, all of them were more than adequate. The radical change in her principal's evaluation between 1979 and 1980 appeared suspect to the dissent, who suggested it was probably due to her criticism of her principal's educational philosophy, which he was seeking to implement in the school.

The dissent warned of the importance of taking a vigilant position in the protection of teacher tenure against unacceptable reasons for dismissal:

Teacher tenure is too important for us to run roughshod over it. It is vital, not only for the well-being of the teachers themselves, but for the schools and the general public that the teaching profession be insulated from personal or political influence and from the malignant power of arbitrary administrators or school boards. ...The objective of a teacher tenure law is to protect teachers against unjust removal after they have undergone an adequate probationary period. This is not only for the protection of the teachers, but it is in the public interest, since it gives teachers a degree of security which they would not otherwise have and provides for continuity of the educational programs of the

community.¹⁶³

Another case in which the term "incompetency" was examined is Harrison-Washington Community School Corporation, et.al. v. Bales,¹⁶⁴ in which the teacher was dismissed for incompetency and neglect of duty. Bales was often unprepared for class, was unable to maintain discipline, failed to improve his performance according to stated job targets, slept during his classes and scheduled conferences, and used deficient grading methods by basing six weeks' grades on only one or two tests, which was unacceptable procedure for a fourth grade teacher. He was given a 34-day notice of the hearing to cancel his contract and was accorded all due process rights at the hearing.

While Bales contended that he should not be dismissed for incompetency because he was not mentally incompetent, the court disagreed and said that the "incompetency" claim does not require a mentally diseased mind to be upheld. In rejecting Bales' argument, the court said:

[Bales] urges us to construe the word incompetency to mean "the onset of mental disease or serious physical impairment which prohibits continued performance by the teacher." ...No authority is cited for such a limited interpretation. We cannot agree that it was the legislature's intent to permit a school board to dismiss a tenured teacher for incompetence only if such teacher

¹⁶³ Id. at 325.

¹⁶⁴ 450 N.E.2d 559 (Ind.App.2 Dist. 1983).

was so mentally diseased that the appointment of a guardian for such teacher might be necessary.¹⁶⁵

One of the better known of recent cases involving teacher dismissal for incompetence is Perez v. the Commission on Professional Competence,¹⁶⁶ a California case in which the dismissal of a high school Spanish teacher was upheld. In early 1980, Perez began to lose control of his students.

Tardiness, inattention, siestas, talking in class, disdain for discipline, reading unrelated paperback books, general goofing off -- all characterized his students and the classroom environment. In April, two students set a rug afire. Perez did nothing about it. A student asked him for a pass and reported the fire to the vice principal.¹⁶⁷

Perez was rated as unsatisfactory in May 1980, but he still could not manage to control his students. The learning environment remained poor, with students decorating their desks and the walls of the classroom with graffiti and wandering about as they so chose. Perez was again received unsatisfactory evaluations in January 1981 and April 1981. In January 1981, he also received final written notice detailing specifically in what areas he must improve. The district also provided Perez with specific standards against

¹⁶⁵ Id. at 564.

¹⁶⁶ 197 Cal.Rptr. 390 (Cal.App.4 Dist. 1983).

¹⁶⁷ Id. at 392.

which his performance would be measured. Finally, the Commission before which Perez appeared dismissed him for incompetency and unprofessional behavior. The Court of Appeal said there was not sufficient evidence to say Perez was guilty of unprofessional behavior but that the evidence supported a charge of incompetency. The performance of the administration was excellent, with all procedural requirements for teacher dismissal in the State of California being met, such as the requirement of at least ninety days' written notice of incompetency with specific examples of behavior which should be corrected.

In its ruling dismissing the charge of unprofessional behavior and upholding the charge of incompetency, the court said that unprofessional conduct should be measured by fitness to teach. Otherwise, it will be subjected to a subjective rather than an objective measure. Incompetency, in comparison, is a more definite term. The court explained as follows:

Incompetency as a basis for dismissal does not invoke the vagueness and uncertainty of the phrases -- moral turpitude, immorality or unprofessional conduct. It is a plain word and means not competent. ...Competent, in turn, means properly or well qualified; capable -- adequate for the purpose, suitable; sufficient. ...Incompetency does not invoke subjective analysis of standards of morality or professionalism which vary from individual to individual dependent on time, circumstances or custom. ...We hold incompetency to be its own

standard.¹⁶⁸

Finally, the court said it should not reverse the trial court's judgement unless the lower court's decisions was definitely in error.

The trial court's judgment must be upheld on appeal if supported by substantial evidence.... Where the trial's court's findings are challenged, based on insufficiency of the evidence, Perez bears the heavy burden of showing that there is no substantial evidence to support those findings.¹⁶⁹

Perez failed to do so.

Nestler v. Chapel Hill/Carrboro City Schools Board of Education¹⁷⁰ is a North Carolina case in which the school board dismissed Dr. Nestler upon the superintendent's recommendation. This recommendation was made in opposition to the position taken by a professional review board, which indicated charges of inadequate performance could not be substantiated. Afterwards, the superior court ruled in favor of Nestler, but the North Carolina Court of Appeals reversed the decision of the superior court.

Dr. Nestler was a career high school chemistry teacher who had taught in the school system since 1971. From 1971 to

¹⁶⁸Id. at 396.

¹⁶⁹ Id. at 397.

¹⁷⁰ 311 S.E.2d 57 (N.C.App. 1984).

1978, he received satisfactory performance ratings. In 1978, Dr. Monson became principal. He questioned Nestler's competence based upon various specific factors which he made known to Nestler. Nestler was observed by this principal, the assistant principal, and the director of secondary education, and all three felt Nestler's performance was unacceptable. In contrast, along with the review board's questioning the validity of the charge of inadequate performance, two teachers at the same school said Nestler was a competent teacher. Still, Nestler was dismissed for inadequate performance due to lack of instructional organization. The specifics of this charge as stated by his principal, Dr. Monson, with concurrence from Dr. Fleetwood, Director of Secondary Education, and Mr. Dwyer, Assistant Principal, were: (1) poor anticipatory set; (2) failure to establish objectives; (3) inadequate checking for comprehension; (4) talking in a monotone; (5) too much lecturing; (6) weak laboratory experiments; and (7) inadequate homework assignments.¹⁷¹

There were some definite flaws in the school board's case against Nestler. Dr. Nestler's grasp of his subject matter was undeniably excellent. There had been no standardized tests utilized to determine if his students were any less proficient in chemistry than other students. The professional

¹⁷¹ Id. at 57-58.

review panel, as mentioned before, did not find substantial grounds for dismissal. On cross-examination, the principal's testimony indicated reliance on hearsay and included inconsistent and contradictory statements. Furthermore, the principal and other evaluators did not thoroughly review the quality of Dr. Nestler's homework and laboratory assignments.

Based upon these facts, the superior court ruled there was not substantial evidence for a dismissal and reversed the decision of the school board. The superior court also said that Nestler's due process rights had been violated because the applicable part of the state law was too vague. The Court of Appeals reversed the superior court's decision, finding reasonable grounds for dismissal and saying that the state law was not unconstitutionally vague.

On addressing the issue of substantial evidence for dismissal, the court said:

[W]ith all the evidence in the record, we still have the testimony of Monson, Fleetwood and Dwyer which we believe has not been so discredited as to not be substantial evidence supporting the Board's findings of fact.¹⁷²

In countering the "void-for-vagueness" argument, the court said:

Under the due process clause of the fourteenth amendment to the United States Constitution, a statute is void for vagueness if its terms are so vague, indefinite and

¹⁷² Id. at 60.

uncertain that a person cannot determine its meaning and therefore cannot determine how to order his behavior to meet its dictates. ...We believe that the term "inadequate performance" is one that a person of ordinary understanding can comprehend in regard to how he is required to perform. ...We do not believe the statute is unconstitutional as applied to the petitioner.¹⁷³

Despite some glaring weaknesses in its arguments, the school board was upheld in the Nestler case. Such weaknesses were not present in Eshom v. Board of Education of School District No. 54.¹⁷⁴ In this case, the school board's dismissal of Mrs. Eshom, a tenured secondary school teacher, was affirmed by both the district court and the state supreme court. Eshom's endorsed area was home economics, but she was assigned to teach mathematics and English also. Twice she was formally evaluated by the principal and told she needed to improve in controlling her seventh grade math and English classes. The principal said that her performance did not measure up against that of her fellow teachers and that, though she had genuinely tried to improve, she had not and could not meet the district's standards. Eshom's response was that her problems stemmed from the present situation requiring her to teach outside her field. However, the administration pointed out that others were also teaching outside their fields without encountering difficulties. Her principal

¹⁷³ Id. at 60.

¹⁷⁴ 364 N.W.2d 7 (Neb. 1985).

charged that Mrs. Eshom lacked the basic teaching skills required for teaching any subject.

The school board based its dismissal of Mrs. Eshom upon a variety of reasons. These included the following: failure to maintain control of her class, improper use of her voice in teaching techniques, failure to control her emotions when correcting students, use of incorrect and substandard English and grammar, inadequate variety of teaching materials, and insufficient individualized instruction.¹⁷⁵ Furthermore, it was ruled that the principal's item-by-item analysis of the teacher evaluation form and comparison of the teacher's performance with other teachers' performance justified the dismissal for incompetency. Of ten secondary teachers evaluated, Eshom and one other were the only ones who received marginal or unsatisfactory ratings for the year, and the other unsatisfactory teacher was not extended an offer for the following year either.

In upholding the teacher's discharge, the court indicated that state laws permitted dismissal of tenured teachers for "just cause," which includes "incompetency." Furthermore, the term "incompetency" includes, by definition, any demonstrated shortcomings or deficiencies in teaching skills.¹⁷⁶ Since the

¹⁷⁵ Id. at 11.

¹⁷⁶ Id. at 11.

evidence presented at the hearing before the school board was deemed sufficient as a matter of law to support the board's dismissal of the teacher, the court said it must affirm the board's decision since the order of any such administrative body must be affirmed when it acts within its jurisdiction and when there is competent evidence to sustain its findings.¹⁷⁷

Sometimes teachers appealing their dismissals base their arguments on technicalities. An example of this is Cope v. Board of Education of the Town of West Hartford,¹⁷⁸ in which a first grade teacher conceded that the board had followed due process procedures in her dismissal. However, she argued that written procedural rules, which did not exist in this case, were required to protect teachers' due process rights. The court said written procedures were not required and also dismissed her claim that there was not sufficient evidence to support her dismissal for incompetency. The court said that Cope had so neglected her duties, despite warnings, that there was so little supervision of her first grade students that their safety was actually endangered. Therefore, the court upheld her dismissal.

¹⁷⁷ Id. at 11.

¹⁷⁸ 495 A.2d 718 (Conn.App. 1985).

In Stamper v. Board of Education of Elementary School District No. 143,¹⁷⁹ the court emphasized the deference which would be shown to the school board regarding its discretionary powers. This case involved Ruth Stamper, a tenured junior high school home economics teacher who formerly was a second grade teacher. This teacher had been a satisfactory second grade teacher for nineteen years. Then she requested and was assigned a transfer to teach home economics at the junior high level.

She taught junior high students for five years, with an unsatisfactory rating the last year. The administration indicated there were problems with her teaching throughout her period as a junior high teacher. The teacher, during this period, resisted suggestions that she retire. She received a warning letter concerning classroom management problems in May 1980, and several additional notices between that time and April 1982. In April 1982, she received notice that she would be dismissed if her deficiencies were not remedied. During the 1982-1983 school year she was evaluated about ten times formally and regularly informally. All four of her supervisors recommended dismissal. In June 1983, the sixty-six year old teacher was dismissed by the Board for failure to maintain classroom discipline, among other things.

¹⁷⁹ 491 N.E.2d 36 (Ill.App.1 Dist. 1986).

The Board was justified in dismissing her, according to the court, for she had been given one year to improve, after being advised of her deficiencies. She had not been able to manage or discipline her home economics class. Stamper argued that the Board had an obligation to transfer her back to elementary school where she had been competent. The court ruled such power was utilized only at the Board's discretion. Evidence supported the charge that she was incompetent in her present position, and the Board was not required to transfer her back to grade school.

In examining the charge that Mrs. Stamper lacked control of her classroom, the court stated the following about those who had observed her class:

[They]...noted that students entered and left the room at will, did not work on home economics assignments, created disturbances such as fighting, and that plaintiff's class was so unruly that the ensuing noise and disturbances interfered with the other classes in nearby rooms.¹⁸⁰

Furthermore, the hearing officer who upheld the Board's decision noted that, based upon the evidence presented, it would be illogical to return Stamper to her position at the junior high school. While he admitted that the record reflected an earlier competency on the part of Stamper as an elementary school teacher, he also stated that a hearing

¹⁸⁰ Id. at 37.

officer lacks the authority to transfer a teacher. A hearing officer only has the power to affirm or reverse board decisions based upon the evidence.¹⁸¹

The Appellate Court of Illinois took a similar position, stating:

In an administrative review, a court will not interfere with a school board's decision regarding a teacher dismissal unless the board acted arbitrarily or capriciously or unless the reasons given for the dismissal are against the manifest weight of the evidence. ...Furthermore, an appellate court's function in these cases is limited to determining whether the board's decision is supported by the evidence.¹⁸²

Moreover, the court stated that a school board's powers to employ teachers and to determine the grade level at which such teachers will teach are entirely discretionary powers. Upon determining that Stamper was not competent to teach junior high home economics classes, the Board had full discretionary powers to choose whether to transfer her to another grade or whether to seek her dismissal. The Board, within its powers, chose dismissal proceedings.¹⁸³ Thus the court upheld Stamper's dismissal.

¹⁸¹ Id. at 37-38.

¹⁸² Id. at 38.

¹⁸³ Id. at 39.

Combs v. Board of Education of Avon Center School District No. 47¹⁸⁴ is another case in which the court applied common sense, after the existence of teacher incompetency had been clearly documented, yet where the validity of the dismissal was in question due to failure on the part of administration to comply fully with all procedural requirements. The court found that, though this failure caused some confusion, the dismissed teacher suffered no deprivation as a result and thus allowed the decision to stand.

In May 1982, Combs was notified that his performance was unsatisfactory and that if there were not improvements, he would be discharged. Despite observations by his principal, the superintendent, and an independent consultant, and meetings between Combs and the administration, his class remained unruly, and he could not control his students. Specific examples of such lack of control included fights between students, once serious enough to result in one student's injuries requiring stitches, an incident involving two students being caught by a faculty member while they were climbing out of Combs' classroom window, and a disturbance caused by three unsupervised students who either left voluntarily or were sent out of Combs' classroom.

¹⁸⁴ 498 N.E.2d 806 (Ill.App.2 Dist. 1986).

In June 1983, Combs received a notice from the Board which said, "You are hereby notified that you are dismissed as a teacher in Avon Center School District 47," and which let him know there would be a hearing. The hearing officer was appointed in August 1983, and the hearing was held in nine sessions from December 1983 to February 1984. The hearing officer received the transcript in March 1984 and rendered the decision in July 1984.

Combs claimed his due process rights were violated because he was dismissed before the hearing. However, from June 1983 to August 1983, Combs suffered no deprivation due to his being notified of dismissal because he continued to receive his pay from the previous year since he had chosen to be paid on a twelve-month calendar. By the time those checks ended in August, the Board had altered its position and had suspended him without pay, which was the proper procedure. Thus in terms of effect, there was no distinction between Combs and an employee properly suspended when charges are made. Furthermore, the court ruled that Combs was provided with minimal opportunity to be heard by the Board on June 7, 1983, when he was served with formal notice.

Combs also argued that the hearing officer's decision was void because it was rendered more than thirty days after the hearing in violation of the Illinois State Board of Education rules. The court refused to nullify the hearing officer's

decision on these grounds. Instead, the court considered the extenuating circumstances of the case and accepted excuses for the delay.

The hearing officer, who could only choose to discharge or reinstate the teacher, was found to have applied correctly the preponderance of the evidence standard. The court accepted the hearing officer's finding of blatant patterns of deficiency in classroom management. The court said it could not say such a ruling was unreasonable. Thus minor technical errors on the part of the administration did not result in a reversal of a decision to dismiss an incompetent teacher.

Finally, in Mongitore v. Regan,¹⁸⁵ the dismissal of a tenured teacher of the emotionally handicapped was upheld based upon substantial evidence documenting situations where the teacher had been unable to control her class and effectively plan and teach lessons. Because she could not manage her class, her dismissal was not shocking to a sense of fairness and was not excessive since a hearing panel had determined that any lesser penalty would not improve her teaching. Though witnesses testified that Mongitore had good intentions as a teacher, they said she was not capable of being a teacher. Thus the court ruled that because the record indicated that the school board's decision was supported by

¹⁸⁵ 520 N.Y.S.2d 195 (A.D.2 Dept. 1987).

substantial evidence, the court could not substitute its judgment for that of the Board.¹⁸⁶

Summary

In summary, by presenting the twenty-six cases included in this chapter, the writer presented a general overview of how the courts respond to teacher dismissals on grounds of incompetency. Basically, courts will not challenge the administrators' ruling of incompetency if an objective format is used in making such a determination and if adequate time is provided for remediation. When examining the actions of the school board in teacher dismissal cases, the courts look for strict observation of the teachers' due process rights. Correct procedures should be followed prior to and during a dismissal hearing; otherwise, the dismissal may be overturned even if the teacher is incompetent.

¹⁸⁶ Id. at 195.

CHAPTER VI
SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

Summary

Throughout the history of American public education, the problem of dealing with incompetent teachers has troubled school boards and school administrators. Based upon an analysis of research presented in this study, the incompetent teacher in the public schools continues to be a major educational problem.

The complexity of the problem of teacher competency can be traced to the necessity of balancing the protection of teachers from corrupt and unfair dismissal practices against the responsibility of school administrators to the public to ensure that unfit teachers will not be allowed to remain in the classroom. Such protection from unjust dismissal was first afforded public employees with the first public service act, which was passed in 1883. This act was passed as a response to the evils of the "spoils system," which dated back in governmental practices to the Jacksonian era in American history. This civil service act was the basis for the first tenure laws for American public school teachers, which was passed in 1886 in Massachusetts. Along with the tenure system came the responsibility of avoiding granting tenure to those

who were not fit teachers and of removing those who had tenure who should never had received it. Tenure was established to protect those teachers who had undergone an adequate probationary period from unjust removal from their positions. The legislative intent of those who enacted teacher tenure laws was to provide certainty, stability, and permanency of employment to those who have proven themselves as competent teachers and to prevent their dismissal or demotion without just cause. However, as greater career security was provided for American teachers, school administrators and school boards were faced with the situation that removal of an established teacher from the classroom could not be accomplished without proof of just cause and without strict adherence to all procedures required to avoid depriving the involved teacher of his constitutionally guaranteed due process rights.

The introductory material in Chapter I delineated the concerns regarding teacher dismissal for incompetency which have been addressed within this study. Throughout this study, the researcher has sought to provide guidelines for school boards and school administrators to facilitate compliance with the laws involved during the dismissal of public school teachers on the basis of incompetency. In Chapter I, the researcher identified several key questions which were answered within Chapters II, III, IV, and V. The answers to these questions serve as a basis for the development of the

guidelines already mentioned.

The first question listed in Chapter I was: What are the major educational issues regarding teacher dismissal on grounds of incompetence? These major educational issues include the challenge of determining what incompetency is and how it should be measured, evaluation and remediation procedures which should be utilized by the administrator prior to initiating dismissal proceedings, steps which should be undertaken to guarantee that dismissal proceedings are fair, just, and effective in obtaining the removal of incompetent teachers, and the institution of necessary dismissal proceedings as a duty rather than as a right of the school administrator.

The second question was: What is the historical basis for due process rights for teachers? The term "due process" is found in the Fifth and Fourteenth Amendments to the United States Constitution. These two amendments guarantee all people protection from deprivation of life, liberty, or property without due process of law. Furthermore, several United States Supreme Court cases have addressed the issue of property rights and liberty interests regarding continuation of employment of those who teach in public institutions and the issue of due process requirements relating to public institutions in general. In response, states have incorporated into their education codes requirements to insure

observation of due process rights of teachers, particularly those with tenure.

The third question posed in Chapter I was: How do the different states vary in their treatment of teacher dismissal on grounds of incompetency? Are these differences fundamental or cosmetic? The fifty states range in their degree of detail in the area of this particular aspect of education law. All fifty have statutes addressing teacher dismissal; however, reasons range from "for just and sufficient cause" in Vermont to sixteen specific reason for dismissal in Nevada. Thirty states list "incompetency" as grounds for dismissal. Ten of the remaining twenty list either "inefficiency" or "inadequate performance" as grounds for dismissal. This leaves only ten states not addressing incompetency or a related charge as grounds for dismissal. These ten states are: Arkansas, Idaho, Iowa, Maine, Michigan, New Mexico, Rhode Island, Utah, Vermont, and Washington. Each of these, except Utah, have a "for good cause" type reason given as basis for teacher dismissal, into which category "incompetency" might fit. Utah statutes fail to state a reason for teacher dismissal, though the procedure for dismissal is provided in the statutes.

The states are actually quite similar in their treatment of teacher dismissal on grounds of incompetence for those states which supply directives which go into equal amounts of detail. Along with differences in the extensiveness of the

different statutes, there are variations in terminology, in whether various groups hearing the case are advisory or decision-making in nature, and in which appellate divisions of the judiciary hear the case. Commonly the hearing procedures involved are direct appeals to the board of education or board of trustees, with variations incorporating professional competency panels, arbitrators, hearing officers and committees of school personnel, some of which act in advisory capacities which others function as intermediate decision-making bodies after the school board but prior to the judiciary system's involvement. Some differences are cosmetic, such as those involving terminology. The hearing process itself is fairly uniform throughout the states, with observation of due process rights being required in all states, regardless of whether the statutes delineate such rights.

The fourth question was: What areas are relevant in determining whether a teacher is incompetent? Basically, relevant areas include any deficiencies which interfere with the learning process for students. The examination of various court cases in Chapters II and V provides greater specificity regarding actual incidents and behaviors which will be legally upheld as representative of teacher incompetency. Generally, these areas could be described as teaching techniques, classroom control, overall rapport with others, classroom

environment, subject matter knowledge, record-keeping skills, and work habits.

The fifth question asked in Chapter I was: What legal principles have been established by important cases regarding teacher dismissal on grounds of incompetency? The major legal principles which have been established are the necessity of observing all due process requirements, the importance of compliance with all statutory mandates, the acknowledgment by the administrator that incompetency is not determined in a vacuum, but is based upon standards made known to the teacher, and the desirability of providing a period for remediation before seeking to dismiss the incompetent teacher.

The sixth question was: Can any particular trends be determined based upon an analysis of court decisions addressing teacher incompetency? Trends can be found by studying the various appellate court decisions involving teacher dismissal for incompetence. The courts do not question the administrator's judgment in asserting that a particular teacher is incompetent. Instead, challenges appear where inadequate time is allowed for remediation, where procedural due process is not observed zealously, where communication with the teacher is not clear and precise throughout the dismissal proceedings, and where there appears to be a lack of good faith attempt on the part of the administrator regarding providing remedial assistance for the

teacher.

The seventh question listed in Chapter I was: What role does the issue of due process play in the dismissal of tenured teachers on grounds of incompetency? Due process is a vital aspect of teacher dismissal cases involving tenured teachers charged with incompetency. The school administrator and school board must strictly observe all due process requirements throughout dismissal proceedings. Otherwise, an indisputably incompetent teacher may be returned to the classroom based upon procedural issues. Through reversal of cases where incompetent teachers were deprived of their due process rights, the courts seek to force school administrators and school boards to become sensitive to teachers' constitutionally guaranteed due process rights.

The eighth and final question asked: What steps should be taken by school administrators to assure that the dismissal of a teacher for incompetency is based upon defensible, reasonable, and just grounds and procedures so that such dismissal will be upheld if litigated? This question will be addressed in the Recommendations for school administrators and school boards which will be provided later in this chapter. The most important features are: careful compliance with requirements based upon due process rights; documentation of all proceedings; clear and constant communication with the teacher throughout the evaluative, remedial, and dismissal

stages; clear directives on what is expected of the teacher throughout the process as precise goals which must be attained by mutually agreed upon dates; clear and honest communication of the administrator's assessment of the teacher's performance, and a good faith attempt to assist the teacher in improving so that dismissal will not be necessary.

Based upon these questions the researcher answered, there are certain conclusions which can be deduced and which will be discussed below.

Conclusions

Even when legal issues appear to be similar or the same as those in cases previously decided by the courts, different circumstances can produce entirely different decisions. Thus, drawing conclusions based upon legal research can be difficult. However, based upon an analysis of judicial decisions, the following general conclusions can be made regarding the legal aspects of teacher dismissal on grounds of incompetence.

1. Clear communication between teachers and school administrators and between school administrators and school boards is a necessity in any proceedings which involve teacher evaluation, remediation, and/or dismissal.

2. Lack of clear communication can result in misunderstandings in situations which result in teacher dismissals and may increase the likelihood of such dismissals being litigated and reversed.

3. School officials who fail to follow all requirements based upon procedural and substantive due process rights and who are not sensitive to potential property rights or liberty interests of teachers whose competency is questioned run the risk of having dismissal decisions reversed in the courts.

4. Courts do not regard sham attempts at remediation of the inefficient teacher in a favorable light. Teachers whose weaknesses are remediable (and incompetency fits such a category) must be allowed a reasonable and established length of time in which to improve and must be provided by the administration with assistance in accomplishing this goal. Otherwise, their dismissal will be reversed by the courts.

5. School administrators who utilize established, uniform, and consistent guidelines which focus on definite skills, techniques, and behaviors for teacher evaluations and who communicate their findings to the teacher assist that teacher by enabling him to focus on improving his areas of deficiency. Such an approach to teacher deficiencies increases the likelihood that the teacher will view the administrator as a partner in education rather than as an adversary and, if attempts at remediation are not successful,

may encourage the inefficient teacher to reach the same conclusion as the administrator regarding his inability to function effectively as a teacher.

6. The importance of protecting teachers' constitutionally guaranteed due process rights justifies the time, effort, and expense required of school districts to litigate successfully a teacher dismissal case.

7. Despite myths perpetuated by the general public to the contrary, dismissals of incompetent tenured teachers are upheld by the courts when the administrator who seeks the dismissals displays competency throughout the dismissal proceedings.

8. Incompetent administrators allow incompetent teachers to continue teaching and to acquire tenure status, inflate unrealistically inefficient teachers' performance ratings, fail to communicate their concerns regarding poor classroom performance to weak teachers in an attempt to avoid unpleasant discussions, and seek then to dismiss such teachers without first following all procedures and requirements as stated in federal, state, and local laws and policies.

9. Unsuccessful teacher dismissal proceedings on grounds of incompetency may be a sign of functional incompetency on the administrative level.

Recommendations

Based upon an analysis of the legal research accomplished through the study, the following recommendations are made for school board members and school administrators. These recommendations should serve as guidelines for school officials faced with teacher dismissal proceedings based upon grounds of incompetency.

1. Know all state statutory details regarding what constitutes "incompetency" and "just cause" for dismissal.

2. Know all state statutory requirements and local policies regarding precise procedures to be followed during teacher dismissals.

3. Understand the property rights and liberty interests of each teacher as they relate to that particular teacher's contract status.

4. Keep teachers constantly informed through written communication of the individual deficiencies in their teaching performance and provide assistance for those with problems so that they might improve within a reasonable period of time.

5. Maintain sufficient documentation so that if there is an appeal to the courts, all steps can be verified.

6. Maintain updated files regarding individual teachers' deficiencies and the responses of administrators to address these deficiencies. These files should be accessible to the

particular teachers for inspection.

7. Document with specificity, including time, date, and place, any acts which qualify as examples of the named statutory causes which will serve as grounds for dismissal. It is imperative to be able to show that these acts impaired the teaching effectiveness of the individual teacher involved.

8. Utilize other district personnel to document a teacher's incompetence. This should include both observation of the deficient teacher by those outside the particular school staff to prove impartiality in the determination of that teacher's incompetence and involvement of outside resources in an effort to provide remediation for the deficient teacher. Such strategy should reduce the possibility of counterclaims by the teacher that the dismissal was motivated by personal or political reasons. Furthermore, the chance of improvement in classroom effectiveness is enhanced through utilization of personnel with whom the teacher has not already begun to experience adversarial relations. There should also be consideration of peer review in teacher remediation and evaluation.

9. Avoid any situation where charges against the teacher are based upon personality conflicts or run contrary to constitutionally guaranteed rights of the teacher. Such situations, even when there are other bona fide reasons for teacher dismissal, may taint the entire case and result in

reversal of the school board's decision to dismiss.

10. Notify the teacher by registered mail of the intent to discharge, and with that notice include an outline of all due process rights guaranteed to the teacher.

11. However, never forget that the initial purpose of the evaluative process in regard to the incompetent teacher is remediation. Dismissal should always be regarded as an alternative when the necessary improvement in performance does not occur.

12. Never mislead a teacher by implying that incompetent performance is acceptable. Keep the ineffective teacher constantly informed of his true performance rating. There should never be any surprises in situations leading up to and culminating in teacher dismissal on grounds of incompetency. The teacher should always be aware of what he is expected to do, how his performance has been evaluated, and what steps will be undertaken if inadequate classroom performance is not corrected.

13. Never allow an incompetent teacher to remain in the classroom. It is the administrator's duty to insure that all students within his school enjoy the benefits of satisfactory teacher performance.

14. Always remember that the best interests of the students should be the primary focus of any school system.

15. Finally, an administrator should not get discouraged if, after following all the previously suggested guidelines, he is faced with a judicial reversal of the board's decision to dismiss an incompetent teacher. There are no procedures available which can guarantee success in every valid teacher dismissal case.

Recommendations for Further Study

This study has focused upon teacher dismissal on grounds of incompetency. Further research is suggested in three fields which would aim at having only competent teachers in the classroom by addressing any potential problems long before dismissal proceedings are needed.

The first suggested study would focus on a preteacher training inventory which would determine potential problems which might be encountered by prospective teachers in the teaching field due to a lack of interpersonal skills necessary to relate to students. Such a program would seek to "counsel out" those with unsuitable temperaments for the teaching profession before they had invested significant amounts of time and money preparing for entry into the profession and before they had received their teaching certificates.

Another suggested area of study would be in the field of teacher employment. Such a study would examine present

interviewing and hiring procedures. It would then seek to develop a model of new procedures based upon the attributes of the prospective teacher which serve as best indicators of the characteristics the ultimately successful teacher will display.

While this study was developed as a use document for the administrator, a similar study would be helpful for teachers. Such a study would examine the issue of administrative incompetence in the evaluation of teachers and would provide teachers with various techniques to employ when faced with administrative inefficiency.

Research in the area of teacher evaluation and remediation would be an excellent basis for further study. An issue would be how to assist the incompetent teacher so that he can rise to a sufficient level of expertise to function adequately as a classroom teacher.

Finally, research of the sections in state codes addressing reasons for teacher dismissal is recommended. The varying degrees of complexity in the bases for dismissal might be studied to determine historically why there are differences, what motivated some state legislatures to address this issue in such detail while others simply indicate dismissal is possible for good, just, reasonable or probable cause.

All of these recommended areas of further study serve the important purpose of focusing on the positive goal of employing only teachers who perform at an acceptable level of competence. Only through improvement of performance of teachers will schools be successful in improving performance of their students.

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The California Reporter. Reports in full every decision of the California Supreme Court and lower courts of record in California from 1959 to date.

The Federal Reporter. Reports in full every decision of the United States District Courts and the United States Circuit Courts from 1880 to date.

The Federal Supplement. Reports in full the decisions of the United States District Courts since 1932.

The New York Supplement. Reports in full all cases of the New York Court of Appeals since 1932 and lower courts of record in New York from 1888 to date.

The North Eastern Reporter. Reports in full every decision of the courts of last resort of Illinois,

Indiana, Massachusetts, New York, and Ohio from 1885 to date.

The North Western Reporter. Reports in full every decision of the courts of last resort of Iowa, Michigan, Minnesota, Nebraska, North Dakota, South Dakota, and Wisconsin from 1879 to date.

The Pacific Reporter. Reports in full every decision of the courts of last resort of Alaska, Arizona, California to 1960, California Supreme Court since 1960, Colorado, Hawaii, Idaho, Kansas, Montana, Nevada, New Mexico, Oklahoma, Oregon, Utah, Washington, and Wyoming from 1883 to date.

The South Eastern Reporter. Reports in full every decision of the courts of last resort in Georgia, North Carolina, South Carolina, Virginia, and West Virginia from 1887 to date.

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APPENDIX
STATE CODES

ALABAMA

Code of Alabama

16-8-23. Appointment and removal of teachers.

The county board of education shall appoint, upon the written recommendation of the county superintendent, all principals, teachers, clerical and professional assistants authorized by the board. The county board may suspend or dismiss for immorality, misconduct in office, insubordination, incompetency or willful neglect of duty, or whenever, in the opinion of the board, the best interests of the school require it, superintendents, principals, teachers or any other employees or appointees of the board, subject to the provisions of chapter 24 of this title. (School Code 1927, Section 117; Code 1940, T. 52, Section 86.)

16-9-23. Nomination, assignment, removal, etc., of teachers, employees, etc.

The county superintendent of education shall nominate in writing for appointment by the county board of education all principals, teachers and all other regular employees of the board. He shall assign them to their positions, transfer them as the needs of the schools require, recommend them for promotion, suspend them for cause and recommend them for dismissal, subject to the provisions of chapter 25 of this title. (School Code 1927, Section 161; Code 1940, T. 52, Section 123.)

16-10-9. Charges against teacher may be filed by trustees.

The board of school trustees shall seek in every way to develop sentiment in the support of the schools, and in case of dissatisfaction they may file with the county board of education written charges requesting the removal of the principal or any other teacher in said school. (School Code 1927, Section 185; Code 1940, T. 52, Section 145.)

16-11-17. Establishment of salaries; dismissal of employees.

The city board of education shall fix the salaries of all employees and may suspend or dismiss any principal or teacher or supervisor or attendance officer or other regular employee so appointed on the written recommendation of the city superintendent of schools for immorality, misconduct in office, incompetency, willful neglect of duty or when, in the opinion of the board, the best interests of the schools may require, subject to the provisions of chapter 24 of this title. (School Code 1927, Section 205; Code 1940, T. 52, Section 165.)

16-12-16. Nomination, removal, etc., of teachers, employees, etc.

The city superintendent of schools shall nominate in writing for appointment by the city board of education all principals, teachers, supervisors, attendance officers, janitors and all other employees of the board and shall assign to them their positions, transfer them as the needs of the schools require, recommend them for promotion, suspend them for cause and recommend them for dismissal, subject to the provisions of chapter 24 of this title.

All persons so nominated for teaching or supervising positions shall hold certificates issued by the state board of education. (School Code 1927, Sections 224, 229; Code 1940, T. 52, Sections 182, 187.)

16-23-5. Revocation of certificates.

The state superintendent of education shall have authority to revoke any certificate issued under the provisions of this chapter when the holder has been guilty of immoral conduct or unbecoming or indecent behavior. (School Code 1927, Section 354; Code 1940, T. 52, Section 337.)

16-24-2. Criteria for continuing service status for teachers, principals and supervisors; list of persons recommended for continuing status; effect of consolidation or separation of schools.

(a) Any teacher in the public schools who shall meet the following requirements shall attain continuing service status: 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 reemployed in such county or city school system the succeeding school year.

....
(c) 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.

....
(Acts 1939, No. 499, p. 759; Code 1940, T. 52, Section 352; Acts 1951, No. 805, p. 1402; Acts 1953, No. 773, p. 1040.)

16-24-3. 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 16-24-9 or 16-24-10; 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. (Acts 1939, No. 499, p. 759; Code 1940, T. 52, Section 353; Acts 1953, No. 773, p. 1040.)

16-24-8. Cancellation of contracts -- Grounds.

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. (Acts 1939, No. 499, p. 759; Code 1940, T. 52, Section 358; Acts 1953, No. 773, p. 1040.)

16-24-9. Same -- Procedure; hearings.

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 20 nor more than 30 days after the service of such notice to the teacher by United States registered or certified 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, that the board shall not be accountable for the witness fees of more than 10 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. (Acts 1939, No. 499, p.759; Code 1940, T. 52, Section 359; Acts 1951, No. 690, p. 1191; Acts 1953, No. 773, p. 1040.)

16-24-10. Same -- Finality of action of employing board; appeals; damages for breach of contract.

(a) The action of the employing board shall be final in its action on cancellation of a teacher's contract; provided, that such action was in compliance with the provisions of this chapter and was not arbitrarily unjust.

(b) 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 15 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 15 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 paper filed with the board by the teacher in compliance with the provisions of this 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 30 days from the day of the filing of the notice of appeal. 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 not less than 30 days nor more than 60 days after such notice of appeal is filed, 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.

(c) No action shall lie for the recovery of damages for the breach of any employment contract of a teacher in the public schools. (Acts 1939, No. 499, p. 759; Code 1940, T. 52, Section 360; Acts 1945, No. 411, p. 646; Acts 1953, No. 773, p. 1040; Acts 1981, No. 81-686, p. 1156, Section 2.)

16-24-12. Teacher deemed reemployed for succeeding school year unless notified.

Any teacher in the public schools, whether in continuing service status or not, shall be deemed offered reemployment 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 nonemployment to be given to any teacher whether in continuing service status or not except by a vote of a majority of its members evidenced by the minute entries of said board made prior to or at the time of any such action. (Acts 1939, No. 499, p. 759; Code 1940, T. 52, Section 361(2); Acts 1945, No. 411, p. 646; Acts 1953, No. 773, p. 1040; Acts 1973, No. 1079, p. 1835, Section 1.)

16-24-36. Appeals generally.

It shall be the duty of the state tenure commission to hear and determine appeal cases as provided in section 16-24-10, and the decisions of the state tenure commission shall be final to the extent provided by section 16-24-38. (Acts 1959, No. 643, p. 1557, Section 5; Acts 1973, No. 1079, p. 1835, Section 1.)

16-24-37. Direct appeal by certain teachers denied hearing before local board of education.

A teacher who has attained continuing service status and has been denied a hearing before the local board of education as required by section 16-24-6 or 16-24-9 shall have the right to appeal directly to the state tenure commission for relief. The appeal shall state facts sufficient to allow the commission to determine tentatively whether or not the local board of education has complied with the provisions of section 16-24-6 or 16-24-9. The local board may answer or deny in writing the facts set out in the teacher appeal and, if it fails to so deny, the facts set out in the appeal must be taken as true. The commission shall review the teacher's request and the local board's answer or denial and shall determine, with or without hearing, whether or not the local board of education has complied with the provisions of section 16-24-6 or 16-24-9, whichever is involved. Based upon its findings the state tenure commission shall:

- (1) Order a hearing before the local board;
- (2) Determine that the teacher has been transferred or dismissed in violation of the law and rescind the action taken by the local board; or
- (3) Sustain the action taken by the local board.

Action taken by the state tenure commission under this section shall be final to the extent provided under this chapter for any other action of the commission. (Acts 1973, No. 1079, p. 1835, Section 1.)

16-24-38. 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. (Acts 1973, No. 1079, p. 1835, Section 1.)

ALASKA**Alaska Statutes****Sec. 14.20.030. Causes for revocation and suspension.**

The commissioner or the Professional Teaching Practices Commission may revoke or suspend a certificate only for the following reasons:

(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 or the regulations of the department; or

(4) upon a determination by the Professional Teaching Practices Commission that there has been a violation of ethical or professional standards or contractual obligations. (Section 11 chapter 98 SLA 1966; am Section 1 chapter 9 SLA 1975; am Section 1 chapter 103 SLA 1976)

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. (Section 1 chapter 92 SLA 1960; am Section 15 chapter 98 SLA 1966)

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 AS 14.20.180. (Section 2 chapter 92 SLA 1960; am Section 21 chapter 98 SLA 1966; am Sections 1, 2 chapter 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 the teacher's contract for any cause which the employer determines to be adequate. However, at the teacher's request, the teacher is entitled to a written statement of the cause for 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 nonretained teacher may request and receive an informal hearing 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. (Section 22 chapter 98 SLA 1966; am Section 1 chapter 11 SLA 1968; am Section 13 chapter 46 SLA 1970; am Section 15 chapter 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 tenured teacher, a statement of cause and a complete bill of particulars.

(b) The tenured teacher may, within 15 days immediately following receipt of the notification, notify the employer in writing that a hearing before the school board is requested. The tenured teacher may require in the notification that the hearing be either public or private and that the hearing be under oath or affirmation. The notification may also require that the right of cross-examination be provided and that the tenured teacher be represented by counsel and 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 tenured 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 tenured teacher for cost upon request of the tenured teacher. A final decision of the school board requires a majority vote of the 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 tenured teacher within 10 days of the date of the decision. (Section 3a chapter 92 SLA 1960; am Section 23 chapter 98 SLA 1966; am Sections 2, 3 chapter 11 SLA 1968; am Section 14 chapter 46 SLA 1970; am Sections 16, 17 chapter 124 SLA 1975)

Sec. 14.20.205. Judicial review.

If a school board reaches a decision unfavorable to a teacher, the teacher is entitled to a de novo trial in the superior court. However, a teacher who has not attained tenure rights is not entitled to judicial review according to this section. (Section 24 chapter 98 SLA 1966; am Section 1 chapter 148 SLA 1966; am Section 4 chapter 11 SLA 1968; am Section 18 chapter 124 SLA 1975)

ARIZONA

Arizona Revised Statutes

15-536. Offer of contract to certified teacher who has not been employed more than three consecutive school years; acceptance; notice to teacher of intention not to reemploy

....

B. Notice of the board's intention not to reemploy the teacher 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 April 15, directed to the teacher at his place of residence as recorded in the school district records. The notice shall incorporate a statement of reasons for not reemploying the teacher. If the reasons are charges of inadequacy of classroom performance, the board, or its authorized representative, shall, at least ninety days prior to such notice, give the teacher written preliminary notice of his inadequacy, specifying the nature of the inadequacy with such particularity as to furnish the teacher an opportunity to correct his inadequacies and overcome the grounds for such charge. The governing board may delegate to employees of the governing board the general authority to issue preliminary notices of inadequacy of classroom performance to teachers pursuant to this section without the need for prior approval of each notice by the governing board. In all cases in which an employee of the governing board issues a preliminary notice of inadequacy of classroom performance without prior approval by the governing board, the employee shall report its issuance to the governing board within five school days. The written notice of intention not to reemploy shall include a copy of any evaluation pertinent to the charges made and filed with the board.

C. Nothing in this section shall be construed so as to provide a certified teacher who has not been employed by the school district for more than the major portion of three consecutive school years and who has received notice of the board's intention not to offer a teaching contract with the right to a hearing pursuant to the provisions of Section 15-539, subsection F. (Amended by Laws 1986, Ch. 103, Sec. 1; Laws 1986, Ch. 399, Sec. 7; Laws 1987, Ch. 202, Sec. 2.)

15-538. Preliminary notice of inadequacy of classroom performance

A. The governing board of any school district shall give any certificated teacher who has not been employed by the school district for more than the major portion of three consecutive school years notice of intention to dismiss or not to reemploy if such intention is based on charges of inadequacy of classroom performance. The governing board, or

its authorized representative, shall, at least ninety days prior to such notice, give the teacher written preliminary notice of his inadequacy, specifying the nature thereof with such particularity as to furnish the teacher an opportunity to correct his inadequacies and overcome the grounds for such charge. The governing board may delegate to employees of the governing board the general authority to issue preliminary notices of inadequacy of classroom performance to teachers pursuant to this section without the need for prior approval of each notice by the governing board. In all cases in which an employee of the governing board issues a preliminary notice of classroom performance without prior approval by the governing board, the employee shall report its issuance to the governing board within five school days. The written notice of intention to dismiss or not to reemploy shall include a copy of any evaluation pertinent to the charges made and filed with the governing board.

B. If the preliminary notice required in subsection A is issued as a result of an intention to dismiss, such preliminary notice shall be given at least ninety days prior to service of notice of the intention to dismiss. If the preliminary notice is issued as a result of an intention not to reemploy, such preliminary notice shall be given no later than January 15. (Amended by Laws 1986, Ch. 399, Sec. 9; Laws 1987, Ch. 202, Sec. 3.)

15-538.01. Offer of contract to certificated teacher employed more than three consecutive school years

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....

C. If dismissal proceedings in reference to the teacher cannot be completed by May 15 through no fault of the governing board or the superintendent, or if the incidents relied on in whole or in part occurred after May 15, dismissal proceedings may continue or be initiated. (Amended by Laws 1986, Ch. 399, Sec. 10.)

15-539. Dismissal of certificated teacher; due process; written charges; notice; hearing on request

A. Upon a written statement of charges formulated by the governing board, charging that there exists cause for the suspension without pay of dismissal of a certificated teacher of the district, the governing board shall, except as otherwise provided in this article, give notice to the teacher of its intention to suspend him without pay or dismiss him at the expiration of thirty days from the date of the service of the notice.

B. The governing board shall give a certificated teacher who has been employed by the school district for more than the major portion of three consecutive school years notice of

intention to dismiss if its intention to dismiss is based on charges of inadequacy of classroom performance as defined by the governing board. The governing board or its authorized representative shall give the teacher a written preliminary notice of inadequacy of classroom performance by the preceding May 15. The governing board may delegate to employees of the governing board the general authority to issue preliminary notices of inadequacy of classroom performance to teachers pursuant to this section without the need for prior approval of each notice by the governing board. In all cases in which an employee of the governing board issues a preliminary notice of inadequacy of classroom performance without prior approval by the governing board, the employee shall report its issuance to the governing board within five days. The written preliminary notice of inadequacy of classroom performance shall specify the nature of the inadequacy of the classroom performance with such particularity as to furnish the teacher an opportunity to correct his inadequacies and overcome the grounds for the charge. The written preliminary notice of inadequacy of classroom performance shall include a copy of any evaluation pertinent to the charges made and state the date by which the teacher has to correct the inadequacy and overcome the grounds for the charge. The written preliminary notice of inadequacy of classroom performance shall allow the teacher one summer vacation period to obtain additional education if the teacher so desires and one full semester of teaching time subsequent to the opportunity for additional education within which to correct the inadequacy and overcome the grounds for the charge. If within the time specified in the written preliminary notice of inadequacy of classroom performance the teacher does not demonstrate adequate classroom performance, the governing board shall dismiss the teacher either within thirty days of the service of a subsequent notice of intention to dismiss or by the end of the contract year in which the subsequent notice of intention to dismiss is served unless the teacher has requested a hearing as provided in subsection F of this section. If the teacher demonstrates adequate classroom performance during the period allowed to correct such deficiencies as specified in the written preliminary notice of inadequacy of classroom performance, the governing board may not dismiss the teacher for the reasons specified in the written preliminary notice of inadequacy of classroom performance. If the governing board of a school district has received approval to budget for a career ladder program, the governing board may define inadequacy of classroom performance by establishing a single level of performance which is required of all teachers or by establishing more than one required level of performance. If more than one level is established, the following restrictions shall apply:

1. The governing board may require increased levels of performance only during the first six years of teaching in the school district. A single level of performance to demonstrate minimum adequacy shall be required of teachers who have taught for seven or more years in the district.

2. The same level of performance for minimum adequacy shall be required of all teachers who have completed the same number of years of teaching in the district.

C. The governing board shall develop its definition of inadequacy of classroom performance in consultation with its certificated teachers. The consultation may be accomplished by holding a public hearing, forming an advisory committee, providing teachers the opportunity to respond to a proposed definition or obtaining teacher approval of a career ladder program which defines inadequacy of classroom performance.

D. Any written statement of charges alleging unprofessional conduct, conduct in violation of the rules, regulations or policies of the governing board or inadequacy of classroom performance shall specify instances of behavior and the acts or omissions constituting the charge so that the certificated teacher will be able to prepare a defense. It shall, if applicable, state the statutes, rules or written objectives of the governing board which the certificated teacher is alleged to have violated and set forth the facts relevant to each occasion of alleged unprofessional conduct, conduct in violation of the rules, regulations or policies of the governing board or inadequacy of classroom performance.

E. The notice shall be in writing and be served upon the certificated teacher personally or by United States registered or certified mail addressed to him at his last known address. A copy of the charges, together with a copy of this section and Sections 15-501, 15-538.01, 15-540 through 15-542 and 15-544 through 15-547 shall be attached to the notice.

F. The certificated teacher who receives notice that there exists cause for dismissal or suspension without pay shall have the right to a hearing if he files a written request with the governing board within thirty days of service of notice. The filing of a timely request shall suspend the imposition of a suspension without pay or a dismissal pending completion of the hearing. (Amended by Laws 1986, Ch. 103, Sec. 2; Laws 1986, Ch. 399, Sec. 11; Laws 1987, Ch. 202, Sec. 4.)

15-540. Suspension prior to dismissal of a certificated teacher; written charges; salary

A. Upon a written statement of charges formulated by the governing board charging a certificated teacher of the school district with cause for suspension without pay or dismissal, the governing board may immediately place the teacher on administrative leave of absence.

B. The notice of administrative leave of absence shall be in writing and be served upon the teacher personally or by United States registered mail addressed to the teacher at his last known address.

C. Any teacher who is placed on administrative leave of absence pursuant to this section shall continue to be paid regular salary during the period of administrative leave of absence. (Amended by Laws 1986, Ch. 399, Sec. 12.)

15-541. Hearing on dismissal

The governing board shall hold a hearing on the dismissal or suspension of a certificated teacher as provided in this article not less than ten nor more than twenty-five days after the request is filed, and notice of the time and place of the hearing shall be given to the teacher not less than three days before the date of the hearing. The teacher may request a public or private hearing before the board. 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. The governing board shall prepare an official record of the hearing, including all testimony recorded manually or by mechanical device, and exhibits, but the board shall not be required to transcribe the record unless requested by the teacher, who shall be furnished with a complete transcript upon the payment of the actual cost. Within ten days following the hearing the board shall determine whether there existed good and just cause for the notice of dismissal or suspension and shall render its decision accordingly, either affirming or withdrawing the notice of dismissal or suspension. Good and just cause does not include religious or political beliefs or affiliations unless they are in violation of the oath of the teacher. (Amended by Laws 1986, Ch. 399, Sec. 13.)

15-542. Hearing costs; counsel; limitations on evidence; reinstatement

A. The governing board shall pay all expenses of the hearing. The certificated teacher and the governing board shall pay their own attorney and witness fees, except if the governing board does not suspend the teacher without pay or dismiss the teacher, the governing board shall pay all reasonable attorney and witness fees incurred by the teacher.

B. No witness shall be permitted to testify at the hearing except upon oath or affirmation. No testimony shall be given or evidence introduced relating to adequacy of classroom performance which occurred more than four years prior to the date of the serving of the notice. Evidence of records regularly kept by the governing board concerning the teacher may be introduced, but no decision relating to the suspension without pay or dismissal of any teacher shall be

made based on charges or evidence relating to adequacy of classroom performance occurring more than four years prior to service of the notice. The four-year time limit shall not apply to the introduction of evidence in any area except that relating to adequacy of classroom performance.

C. If a certificated teacher who has been employed by the school district for more than the major portion of three consecutive school years is placed on administrative leave of absence pending the hearing, he shall be reinstated within five days after the governing board renders a decision not to suspend him without pay or dismiss him. (Amended by Laws 1986, Ch. 399, Sec. 14.)

15-543. Appeal from decision of board

A. The decision of the governing board is final unless the certificated teacher files, within thirty days after the date of the decision, an appeal with the superior court in the county within which he was employed.

B. The decision of the governing board may be reviewed by the court in the same manner as the decision made in accordance with the provisions of Section 41-785. The proceeding shall be set for hearing at the earliest possible date and shall take precedence over all other cases, except older matters of the same character and matters to which special precedence is otherwise given by law. (Amended by Laws 1986, Ch. 399, Sec. 15.)

ARKANSAS

Arkansas Statutes

80.1214. Revocation of license -- Hearing.

The State Board of Education may revoke the license of any teacher for cause, but only after a hearing before the board upon reasonable notice to such teacher and a written copy of the cause to be considered. [Acts 1931, No. 169, Section 183, p. 476; Pope's Dig. Section 11625.]

80-1266.3. Automatic renewal of contract unless otherwise notified -- Notice of nonrenewal mailed to teacher.

... Termination, nonrenewal or suspension shall be only upon the recommendation of the Superintendent.

A notice of nonrenewal shall be mailed by registered or certified mail to the teacher at the teacher's residence address as reflected in the teacher's personnel file. ... The notice of recommended nonrenewal of a teacher shall include a simple but complete statement of the reasons for such recommendation. [Acts 1983, No. 936, Sec. 4, p. 2283.]

80-1266.4. Termination during term of contract.

A teacher may be terminated during the term of any contract period for any cause which is not arbitrary, capricious, or discriminatory; the superintendent shall notify the teacher of the termination recommendation. Such notice shall include a simple but complete statement of the grounds for the recommendation of termination, and shall be sent by registered or certified mail to the teacher at the teacher's residence address as reflected in the teacher's personnel file. [Acts 1983, No. 936, Section 5, p. 2283]

80-1266.5. Suspension -- Notice of grounds -- Hearing -- Termination.

Whenever a superintendent has reasons to believe that cause exists for the termination of a teacher and that immediate suspension of the teacher is necessary, the superintendent may suspend the teacher without notice or a hearing. The superintendent shall notify the teacher in writing within two (2) school days of the suspension. Such written notice shall include a simple but complete statement of the grounds for suspension and/or recommended termination, and shall state that a hearing before the board of directors is available to the teacher upon request, provided such request is made in writing within the time provided in Section 9 [Section 80-1266.8]. The hearing shall be scheduled by the president of the board and the teacher and shall be held within the time provided in Section 9 [Section 80-1266.8] after a request for the hearing unless the teacher and the

board agree to a later time.

If sufficient grounds for termination or suspension are found, the board may terminate the teacher or continue the suspension for a definite period of time. The salary of a suspended teacher shall cease as of the date the board sustains the suspension. If sufficient grounds for termination or suspension are not found, the teacher shall be reinstated without loss of compensation. [Acts 1983, No. 936, Section 6, p. 2283.]

80-1266.6. Annual evaluation -- Notification of deficiencies -
- Documentation of efforts to correct problems.

...Whenever a superintendent or other school administrator charged with the supervision of a teacher believes or has reason to believe that a teacher is having difficulties or problems meeting the expectations of the district or its administration and the administrator believes or has reason to believe the problems could lead to termination or nonrenewal of contract, the administrator shall bring the problems and difficulties to the attention of the teacher involved in writing and shall document the efforts which have been undertaken to assist the teacher to correct whatever appears to be the cause for potential termination or nonrenewal. [Acts 1983, No. 936, Section 7, p. 2283.]

80.1266.8. Written request for hearing -- Hearing procedures.

A teacher who receives a notice of recommended termination or nonrenewal may file a written request with the school board of the district for a hearing. Such written request for a hearing shall be sent by certified or registered mail to the president of the school board, with a copy to the superintendent, or may be delivered in person to each of them by such teacher, within thirty (30) days after the written notice of proposed termination or nonrenewal is received by the teacher. Upon receipt of such request for a hearing, the board shall grant a hearing 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 board, except that the teacher and board may, in writing, agree to a postponement of the hearing to a later date.

(b) The hearing shall be private unless the teacher or the board shall request that the hearing be public.

(c) The teacher and the board may be represented by representative(s) of their choosing.

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

(1) The 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 written request is filed with the board by the teacher at least twenty-four (24) hours prior to the time set for the hearing, in which event the board shall make and preserve, at its own expense, a record of the hearing, and shall furnish a transcript thereof to the teacher without cost. [Acts 1983, No. 936, Section 9, p. 2283.]

80-1266.9. Board action -- Notice to teacher -- Written conclusions by the board -- Appeal.

(a) Upon conclusion of its hearing with respect to the termination or nonrenewal of a contract of a teacher who has been employed as a fulltime teacher by the school district for less than three (3) continuous years, the board shall take action on the recommendations by the superintendent with respect to the termination or nonrenewal of such contract. The board's decision with regard to nonrenewal of a probationary teacher shall be final.

(b) Any certified teacher who has been employed continuously by the school district three (3) or more years (or who may have achieved nonprobationary status pursuant to Section 2 [Section 80-1266.1] herein), may be terminated or the board may refuse to renew the contract of such teacher for any cause which is not arbitrary, capricious, or discriminatory, or for violating the reasonable rules and regulations promulgated by the school board. Upon completion of such hearing, the board shall, within ten (10) days after the holding of the hearing: (1) uphold the recommendation of the superintendent to terminate or not renew the teacher contract, or (2) may reject or modify the superintendent's recommendation to terminate or not renew the contract of the teacher, or (3) may vote to continue the contract of such teacher under such restrictions, limitations, or assurances as the school board may deem to be in the best interest of the school district. Said decision shall be reached by the school board within ten (10) days from the date of the hearing, and a copy thereof shall be furnished in writing to the teacher involved either by personally delivering the same to the teacher or by addressing the same to the teacher's last known address by registered or certified mail.

(c) Subsequent to any hearing granted a teacher by this Act [Sections 80-1266 - 80-1266.10], the school board shall, by majority vote, make specific written conclusions with regard to the truth of each reason given the teacher in support of the recommended termination or nonrenewal.

(d) The exclusive remedy for any non-probationary teacher aggrieved by the decision by the school board shall be an appeal therefrom to the Circuit Court of the county in which the school district is located, within seventy-five (75) days

of the date of written notice of the action of the school board. Additional testimony and evidence may be introduced on appeal to show facts and circumstances showing that the termination or nonrenewal was lawful or unlawful. [Acts 1983, No. 936, Section 10, p. 2283.]

CALIFORNIA

California Education Code

44932. Grounds for dismissal of permanent employee; Suspension of permanent or probationary employee for unprofessional conduct

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

- (1) Immoral or unprofessional conduct.
- (2) Commission, aiding, or advocating the commission of acts of criminal syndicalism, as prohibited by Chapter 188, Statutes of 1919, or in any amendment thereof.
- (3) Dishonesty.
- (4) Incompetency.
- (5) Evident unfitness for service.
- (6) Physical or mental condition unfitting him to instruct or associate with children.
- (7) 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.
- (8) Conviction of a felony or of any crime involving moral turpitude.
- (9) Violation of Section 51530 of this code or conduct specified in Section 1028 of the Government Code, added by Chapter 1418 of the Statutes of 1947.
- (10) Violation of any provision in Section 7001 to 7007, inclusive, of this code.
- (11) Knowing membership by the employee in the Communist Party.
- (12) Alcoholism or other drug abuse which makes the employee unfit to instruct or associate with children.

(b) The governing board of a school district may suspend without pay for a specific period of time on grounds of unprofessional conduct a permanent certificated employee or, in a school district with an average daily attendance of less than 250 pupils, a probationary employee, pursuant to the procedures specified in Sections 44933, 44934, 44935, 44936, 44937, 44943, and 44944. This authorization shall not apply to any school district which has adopted a collective bargaining agreement pursuant to subdivision (b) of Section 3543.2 of the Government Code. (Amended Stats 1981 ch 100 Sec. 18; Stats 1983 ch 498 Sec. 51, effective July 28, 1983.)

44934. Written statement of charges and notice of intent to dismiss or suspend 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, as specified in Section 44932 or 44933, for the dismissal or suspension 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 or suspend him or her 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. Suspension proceedings may be initiated pursuant to this section only if the governing board has not adopted a collective bargaining agreement pursuant to subdivision (b) of Section 3543.2 of the Government Code.

Any written statement of charges of unprofessional conduct or incompetency shall specify instances of behavior and the acts or omissions constituting the charge so that the teacher will be able to prepare his defense. It shall, where applicable, state the statutes and rules which the teacher is alleged to have violated, but it shall also set forth the facts relevant to each occasion of alleged unprofessional conduct or incompetency.

This section shall also apply to the suspension of probationary employees in a school district with an average daily attendance of less than 250 pupils which has not adopted a collective bargaining agreement pursuant to the subdivision (b) of Section 3542.2 of the Government Code. (Amended Stats 1983 ch 498 Sec. 53, effective July 28, 1983.)

44936. Service of notice and attachments

The notice of dismissal or suspension in a proceeding initiated pursuant to Section 44934 shall not be given between May 15th and September 15th in any year. It shall be in writing and be served upon the employee personally or by United States registered mail addressed to him at his last known address. A copy of the charges filed, containing the information required by Section 11503 of the Government Code, together with a copy of the provisions of this article, shall be attached to the notice. (Amended Stats 1983 ch 498 Sec. 55, effective July 28, 1983.)

44937. Waiver of hearing

In a dismissal or suspension proceeding initiated pursuant to Section 44934, if the employee does not demand a hearing by filing a written request for hearing with the governing board, he or she may be dismissed or suspended without pay for a specific period of time at the expiration of the 30-day period. (Amended Stats 1983 ch 498 Sec. 56, effective July 28, 1983.)

44938. Unprofessional conduct or incompetency: Notice of charges

(a) The governing board of any school district shall not act upon any charges of unprofessional conduct unless at least 45 calendar days prior to the date of filing, the board or its authorized representative has given the employee against whom the charge is filed, written notice of the unprofessional conduct, specifying the nature thereof with such specific instances of behavior and with such particularity as to furnish the employee an opportunity to correct his or her faults and overcome the grounds for such charge. The written notice shall include the evaluation made pursuant to Article 11 (commencing with Section 44660) of Chapter 3 of this part, if applicable to the employee.

(b) The governing board of any school district shall not act upon any charges of incompetency unless it acts in accordance with the provisions of paragraph (1) or (2):

(1) At least 90 calendar days prior to the date of the filing, the board or its authorized representative has given the employee against whom the charge is filed, written notice of the incompetency, specifying the nature thereof with such specific instances of behavior and with such particularity as to furnish the employee an opportunity to correct his or her faults and overcome the grounds for the charge. The written notice shall include the evaluation made pursuant to Article 11 (commencing with Section 44660) of Chapter 3, if applicable to the employee.

(2) The governing board may act during the time period composed of the last one-fourth of the schooldays it has scheduled for purposes of computing apportionments in any fiscal year if, prior to the beginning of that time period, the board or its authorized representative has given the employee against whom the charges is filed, written notice of the incompetency, specifying the nature thereof with such specific instances of behavior and with such particularity as to furnish the employee an opportunity to correct his or her faults and overcome the grounds for the charge. The written notice shall include the evaluation made pursuant to Article 11 (commencing with Section 44660) of Chapter 3, if applicable to the employee.

(c) "Incompetency" as used in this section means, and refers only to, the incompetency particularly specified as a cause for dismissal in Section 44932 and does not include any other cause for dismissal specified in Section 44932.

"Unprofessional conduct" as used in this section means, and refer to, the unprofessional conduct particularly specified as a cause for dismissal or suspension in Sections 44932 and 44933 and does not include any other cause for dismissal specified in Section 44932. (Amended Stats 1983 ch

498 Sec. 57, effective July 28, 1983.)

44941. Notice of suspension and intention to dismiss: Service.

The notice of suspension and intention to dismiss, shall be in writing and be served upon the employee personally or by United States registered mail addressed to the employee at his last known address. A copy of the charges filed, containing the information required by Section 11503 of the Government Code, together with a copy of the provisions of this article, shall be attached to the notice. If the employee does not demand a hearing within the 30-day period, he may be dismissed upon the expiration of 30 days after service of the notice. (Enacted Stats 1976 ch 1010 Sec. 2, operative April 30, 1977.)

44943. Action of governing board after demand for hearing

When any employee who has been served with notice pursuant to Section 44934 of the governing board's intention to dismiss or suspend him or her demands a hearing, the governing board shall have the option either (a) to rescind its action, or (b) schedule a hearing on the matter. (Amended Stats 1983 ch 498 Sec. 58, effective July 28, 1983.)

44944. Conduct of hearing; Decision

(a) In a dismissal or suspension proceeding initiated pursuant to Section 44934, if a hearing is requested by the employee, the hearing shall be commenced within 60 days from the date of the employee's demand for a hearing. The hearing shall be initiated, conducted, and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. However, the hearing date shall be established after consultation with the employee and the governing board, or their representatives, and the Commission on Professional Competence shall have all the power granted to an agency in that chapter, except that the right of discovery of the parties shall not be limited to those matter set forth in Section 11507.6 of the Government Code but shall include the rights and duties of any party in civil action brought in a superior court. Notwithstanding any provision to the contrary, and except for the taking of oral depositions, no discovery shall occur later than 30 calendar days after the employee is served with a copy of the accusation pursuant to Section 11505 of the Government Code. In all cases, discovery shall be completed prior to seven calendar days before the date upon which the hearing commences. If any continuance is granted pursuant to Section 11524 of the Government Code, the time limitation for commencement of the hearing as provided in this subsection shall be extended for a period of time equal to such continuance. However, the extension shall not

include that period of time attributable to an unlawful refusal by either party to allow the discovery provided for in this section.

If the right of discovery granted under the preceding paragraph is denied by either the employee or the governing board, all the remedies in Section 2034 of the Code of Civil Procedure shall be available to the party seeking discovery and the court of proper jurisdiction, to entertain his or her motion, shall be the superior court of the county in which the hearing will be held.

The time periods in this section and of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and of Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure shall not be applied so as to deny discovery in a hearing conducted pursuant to this section.

The superior court of the county in which the hearing will be held may, upon motion of the party seeking discovery, suspend the hearing so as to comply with the requirement of the preceding paragraph.

No witness shall be permitted to testify at the hearing except upon oath or affirmation. No testimony shall be given or evidence introduced relating to matters occurred more than four years prior to the date of the filing of the notice. Evidence of records regularly kept by the governing board concerning the employee may be introduced, but no decision relating to the dismissal or suspension of any employee shall be based on charges or evidence of any nature relating to matters occurring more than four years prior to the filing of the notice.

(b) The hearing provided for in this section shall be conducted by a Commission on Professional Competence. One member of the commission shall be selected by the employee, one member shall be selected by the governing board, and one member shall be an administrative law judge of the Office of Administrative Hearings who shall be chairperson and a voting member of the commission and shall be responsible for assuring that the legal rights of the parties are protected at the hearing. If either the governing board or the employee for any reason fails to select a commission member at least seven calendar days prior to the date of the hearing, the failure shall constitute a waiver of the right to selection, and the county board of education or its specific designee shall immediately make the selection. When the county board of education is also the governing board of the school district or has by statute been granted the powers of a governing board, the selection shall be made by the Superintendent of Public Instruction, who shall be reimbursed by the school district for all costs incident to the selection.

The member selected by the governing board and the member selected by the employee shall not be related to the employee and shall not be employees of the district initiating the dismissal or suspension and shall hold a currently valid credential and have at least five years' experience within the past 10 years in the discipline of the employee.

(c) The decision of the Commission on Professional Competence shall be made by a majority vote, and the commission shall prepare a written decision containing findings of fact, determinations of issues, and a disposition which shall be, solely:

(1) That the employee should be dismissed.

(2) That the employee should be suspended for a specific period of time without pay.

(3) That the employee should not be dismissed or suspended.

The decision of the Commission on Professional Competence that the employee should not be dismissed or suspended shall not be based on nonsubstantive procedural errors committed by the school district or governing board unless the errors are prejudicial errors.

The commission shall not have the power to dispose of the charge of dismissal by imposing probation or other alternative sanctions. The imposition of suspension pursuant to paragraph (2) shall be available only in a suspension proceeding authorized pursuant to subdivision (b) of Section 44932 or Section 44933.

The decision of the Commission on Professional Competence shall be deemed to be the final decision of the governing board.

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.

(d) (1) If the member selected by the governing board or the member selected by the employee is employed by any school district in this state the member shall, during any service on a Commission on Professional Competence, continue to receive salary, fringe benefits, accumulated sick leave, and other leaves and benefits from the district in which the member is employed, but shall receive no additional compensation or honorariums for service on the commission.

(2) If service on a Commission on Professional Competence occurs during summer recess or vacation periods, the member shall receive compensation proportionate to that received during the current or immediately preceding contract period from the member's employing district, whichever amount is greater.

(e) If the Commission on Professional Competence determines that the employee should be dismissed or suspended, the governing board and the employee shall share equally the expenses of the hearing, including the cost of the administrative law judge. The state shall pay any costs incurred under paragraph (2) of subsection (d), the reasonable expenses, as determined by the administrative law judge, of the member selected by the governing board and the member selected by the employee, including, but not limited to payments or obligations incurred for travel, meals, and lodging, and the cost of the substitute or substitutes, if any, for the member selected by the governing board and the member selected by the employee. The Controller shall pay all claims submitted pursuant to this paragraph from the General Fund, and may prescribe reasonable rules, regulations, and forms for the submission of the claims. The employee and the governing board shall pay their own attorney fees.

If the Commission on Professional Competence determines that the employee should not be dismissed or suspended, the governing board shall pay the expenses of the hearing, including the cost of the administrative law judge, any costs incurred under paragraph (2) of subdivision (d), the reasonable expenses, as determined by the administrative law judge, of the member selected by the governing board and the member selected by the employee, including, but not limited to payments or obligations incurred for travel, meals, and lodging, the cost of the substitute or substitutes, if any, for the member selected by the governing board and the member selected by the employee, and reasonable attorney fees incurred by the employee.

As used in this section, "reasonable expenses" shall not be deemed "compensation" within the meaning of subdivision (d).

If either the governing board or the employee petitions a court of competent jurisdiction for review of the decision of the commission, the payment of expenses to members of the commission required by this subdivision shall not be stayed.

In the event that the decision of the commission is finally reversed or vacated by a court of competent jurisdiction, then either the state, having paid the commission members' expenses, shall be entitled to reimbursement from the governing board for those expenses, or the governing board, having paid the expenses, shall be entitled to reimbursement from the state.

Additionally, either the employee, having paid a portion of the expenses of the hearing, including the cost of the administrative law judge, shall be entitled to reimbursement from the governing board for the expenses, or the governing board, having paid its portion and the employee's portion of the expenses of the hearing, including the cost of the

administrative law judge, shall be entitled to reimbursement from the employee for that portion of the expenses.

(f) The hearing provided for in this section shall be conducted in a place selected by agreement among the members of the commission. In the absence of agreement, the place shall be selected by the administrative law judge. (Amended Stats 1978 ch 1172 Sec. 1; Stats 1979 ch 666 Sec. 2; Stats 1980 ch 1186 Sec. 1; Stats 1983 ch 498 Sec. 59, effective July 28, 1983; Stats 1985 ch 324 Sec. 2.)

COLORADO**Colorado Revised Statutes**

22-60-110. Grounds for annulling, suspending, or revoking certificate or letter of authorization.

...
 (3) The state board of education may suspend or revoke a certificate or letter of authorization if the state board finds and determines that the holder thereof has become professionally incompetent or guilty of unethical behavior.
 ...

22-60-111. Procedure -- denial, suspension, annulment, or revocation - certificate or letter of authorization.

Procedures for the denial, suspension, revocation, or annulment of a certificate or letter of authorization shall be in accordance with the provisions of sections 24-4-102 to 24-4-107, C.R.S.; except that, where judicial review is pending or the time in which to seek judicial review has not elapsed, the state board of education may take emergency action relating to the annulment, suspension, or revocation of a certificate or letter of authorization, and the expiration date of a certificate or letter of authorization shall not be extended, even though judicial review is pending or the time for seeking such review has not elapsed.

22-60-112. Hearing commissioner - duties.

The state board of education is authorized to appoint a hearing commissioner, who may preside at hearings on the denial, annulment, suspension, or revocation of a certificate or letter of authorization. When so appointed, he shall reduce his findings to written form and submit them to the state board of education, and he shall not participate in the deliberations of said board.

22-63-111. Dismissal - reasons.

(1) No teacher shall be dismissed during the term of his contract without good cause shown in a written notice from the board of education stating the reasons therefor.

(2) The reasons outlined in section 22-63-116 are applicable to the dismissal of a teacher who has not acquired tenure. The procedures outlined in section 22-63-117 are applicable to the dismissal of a teacher who has not acquired tenure.

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 or the acceptance of a

guilty plea or a plea of nolo contendere to 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.

22-63-117. Dismissal - procedure - judicial review.

(1) Except as provided in subsection (13) of this section, a tenure teacher shall be dismissed in the manner prescribed by subsections (2) to (12) of 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 that charges have been filed against said teacher and that a hearing thereon may be held before a hearing officer, as provided in subsection (5) of this section. The notice from the secretary of the board shall include a copy of said charges, a copy of this article, and all exhibits which the school district intends to submit in support of the school district's prima facie case against the tenure teacher including a list of witnesses to be called in support of the school district's prima facie case against the tenure teacher, addresses and telephone numbers of the witnesses, and all pertinent documentation in the possession of the district relative to the circumstances surrounding the charges. Additional witnesses and exhibits in support of the school district's prima facie case may not be added at a later date except on a showing of good cause. 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 if he files with said secretary a written request therefor within seven days after the date of receipt of the notice. A tenure teacher shall continue to receive regular compensation from the time such teacher is suspended until a decision is rendered by the board of education pursuant to this subsection (3) or subsection (10) of this section: except that in no event shall compensation continue beyond one hundred twenty days after charges have been accepted by the board for review. If such teacher's compensation is discontinued and the board subsequently takes action to retain such teacher, any compensation withheld beyond the one hundred twenty days shall be paid to such teacher. 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.

(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 as provided in subsection (4) of this section, it shall be conducted before a hearing officer selected in the following manner: The board shall, within four days after the receipt of the teacher's request for a hearing, notify the division of hearing officers in the department of administration that a list of three hearing officers is required. Within four days after receipt of said notification from the board, the director of the division of hearing officers shall provide to the board a list of three hearing officers and shall certify that each of the hearing officers on the list is available to commence the hearing and render a decision within the time limits prescribed in this section. Within seven days after receipt of the list, the board shall strike one name from the list and forward the list to the teacher who shall, within seven days after receipt of the list, strike one name from the list, and the remaining person shall be the hearing officer. Failure of the teacher to strike a name within said time shall result in the withholding of one day's pay for each day of delay. Failure of the board to strike a name within said time obligates the board to compensate the teacher one day's pay for each day of delay. The expenses of the hearing officer shall be paid from funds of the school district. Within seven days after his selection, the hearing officer shall give the teacher at least fourteen days' written notice of the hearing, including the place and time therefor, but on no event shall such hearing commence more than thirty days after the selection of the hearing officer. No later than twenty days after the selection of the hearing officer, the teacher shall provide a list of all exhibits to be presented at the hearing and all witnesses to be called, including the addresses and telephone numbers of the witnesses. Additional witnesses and exhibits may not be added at a later date except on a showing of good cause. Within ten days after receipt of the teacher's list of witnesses and exhibits, the school district shall forward to the teacher its list of rebuttal witnesses and exhibits.

(6) The hearing officer may receive or reject evidence and testimony, administer oaths, and, if necessary, subpoena

witnesses. All testimony shall be given under oath. The hearing officer may do all other acts normally performed by an administrative hearing officer, including ordering a continuance, subject to the time limitations of subsection (5) of this section; except that in no event shall any continuance be granted in the absence of a clear showing of good cause. Specific findings of fact shall be entered in the record if a continuance is granted. The hearings shall be open to the public unless either the teacher or the board requests a private hearing before the hearing officer, but no findings of fact or recommendations shall be adopted by the hearing officer 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. By entering an appearance on behalf of the teacher or the board of education, counsel agree to be prepared to commence the hearing within the time limitations of subsection (5) of this section and to proceed expeditiously once the hearing has begun. All district records pertaining to the teacher shall be made available for the use of the hearing officer and/or the teacher.

(8) A record and transcript shall be made of all evidence and testimony received by the hearing officer. The hearing officer shall review the evidence and testimony and make written findings of fact thereon. The hearing officer 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 hearing officer in open session not later than thirty days after the conclusion of the hearing. The hearing officer shall forthwith forward to said teacher and to the secretary of the employing board a copy of the findings of fact and a copy of the recommendations. 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 findings of fact and recommendations of the hearing officer, notify the teacher of the time and place of the meeting of the board of education at which the findings of fact and recommendations will be considered.

(10) The board of education shall review the hearing officer's findings of fact and recommendations, and it shall enter its written order within thirty days after the date of the hearing officer'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 one-year probation; but the board shall make a conclusion, giving its reasons therefor, that the hearing officer's findings of fact are not supported by the record made before

the hearing officer if it dismisses the teacher over the hearing officer's recommendation of retention, and such finding shall be included in its written order. 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 hearing officer, 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 such deadline, the proceedings under this section shall not be invalidated.

(11) The teacher may file an action for review in the court of appeals by appropriate proceedings under section 24-4-106 (11), C.R.S., in which action the board of education of the employing school district shall be made the party defendant. Such review shall be on the record made before the hearing officer and the board.

(12) If the board orders the retention of the teacher, the teacher shall have suffered no loss of salary by reason of suspension pending the final action of the board except for salary withheld due to a teacher's failure to comply with the deadline for striking a name from the list of three hearing officers as required in subsection (5) of this section.

....

CONNECTICUTConnecticut General Statutes Annotated
Title 10. Education and Culture

10-145b. Teaching certificates

...
(m) The state board of education may revoke any certificate issued pursuant to this section for any of the following reasons: (1) The holder of the certificate obtained such certificate through fraud or misrepresentation of a material fact; (2) the holder as persistently neglected to perform the duties for which certification was granted; (3) the holder is professionally unfit to perform the duties for which certification was granted; (4) the holder is convicted in a court of law of a crime involving moral turpitude or of any other crime of such nature that in the opinion of the board continued certification would impair the standing of certificates issued by the board; or (5) other due and sufficient cause. Revocation shall be in accordance with procedures established by the state board of education pursuant to chapter 54.

10-151. Employment of teachers. Definitions. Notice and hearing on failure to renew or termination of contract. Appeal

...
(c) The contract of employment of a teacher who has not attained tenure may be terminated at any time for any of the reasons enumerated in subdivisions (1) to (6), inclusive, of subsection (d) of this section; otherwise the contract of such teacher shall be continued into the next school year unless such teacher receives written notice by April first in one school year that such contract will not be renewed for the following year. Upon the teacher's written request, such notice shall be supplemented within seven days after receipt of the request by a statement of the reason or reasons for such nonrenewal. Such teacher, upon written request filed with the board of education within twenty days after the receipt of notice of termination or nonrenewal, shall be entitled to a hearing either before the board or, if indicated in such request and if designated by the board, before an impartial hearing panel established and conducted in accordance with the provisions of subsection (d) of this section, such hearing shall commence within fifteen days after receipt of such request unless the parties mutually agree to an extension. A board of education may designate a subcommittee of three or more board members to conduct hearings and submit written findings and recommendations to the board for final disposition in the case of teachers whose contracts are terminated for the reason stated in subdivision

(5) of subsection (d) of this section. The teacher shall have the right to appear with counsel of the teacher's choice at the hearing. A teacher who has not attained tenure and whose contract is terminated for any of the reasons enumerated on subdivisions (1) to (4), inclusive, of subsection (d) of this section shall have the right to appeal in accordance with the provisions of subsection (f) of this section. No right of appeal shall exist if (A) a teacher who has not attained tenure has received nonrenewal notice prior to April first of a school year or (B) such teacher's contract is terminated for the reasons enumerated in subdivisions (5) and (6) of subsection (d) of this section.

(d) The contract of employment of a teacher who has attained tenure shall be continued from school year to school 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 or loss of a position to another teacher, if no other position exists to which such teacher may be appointed if qualified, provided such teacher, if qualified, shall be appointed to a position held by a teacher who has not attained tenure, and provided further that determination of the individual contract or contracts of employment to be terminated shall be made in accordance with either (A) a provision for a layoff procedure agreed upon by the board of education and exclusive employees' representative organization or (B) in the absence of such agreement, written policy of the board of education; or (6) other due and sufficient cause. ... Prior to terminating a contract, a board of education shall vote to give the teacher concerned a written notice that termination of such teacher's contract is under consideration and, upon written request filed by such teacher with such board within seven days after receipt of such notice, shall within the next succeeding seven days give such teacher a statement in writing of the reasons therefor. Within twenty days after receipt of written notice by the board of education that contract termination is under consideration, such teacher may file with such board a written request for a hearing. A board of education may designate a subcommittee of three or more board members to conduct hearings and submit written findings and recommendations to the board for final disposition in the case of teachers whose contracts are terminated for the reasons stated in subdivision (5) of this subsection. Such hearing shall commence within fifteen days after receipt of such request, unless the parties mutually agree to an extension, (A) before the board of education or a subcommittee of the board, (B) if indicated in such request or if designated by the board before an impartial

hearing panel or, (C) if the parties mutually agree, before a single impartial hearing officer chosen by both parties. If the parties are unable to agree upon the choice of a hearing officer within five days after their decision to use a hearing officer, the hearing shall be held before the board or panel, as the case may be. The impartial hearing panel shall consist of three members appointed as follows: The board of education shall appoint one panel member, the teacher shall appoint one panel member, and those two members shall choose a third, who shall serve as chairperson. Within ninety days after receipt of the request for a hearing, the impartial hearing panel, subcommittee of the board or hearing officer, unless the parties mutually agree to an extension, shall submit written findings and a recommendation to the board of education as to the disposition of the charges against the teacher, and shall send a copy of such findings and recommendation to the teacher. The board of education shall give the teacher concerned its written decision within fifteen days of receipt of the written recommendation of the impartial hearing panel, subcommittee or hearing officer. Each party shall pay the fee of the panel member selected by it and shall share equally the fee of the third panel member or hearing officer and all other costs incidental to the hearing. If the hearing is before the board of education, the board shall render its decision within fifteen days after the close of such hearing, and shall send a copy of its decision to the teacher. The hearing shall be public if the teacher so requests or the board, panel or subcommittee so designates. The teacher concerned shall have the right to appear with counsel at the hearing, whether public or private. A copy of a transcript of the proceedings of the hearing shall be furnished by the board of education, upon written request by the teacher within fifteen days after the board's decision, provided the teacher shall assume the cost of any such copy. 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.

(e) 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.

(f) Any teacher aggrieved by the decision of a board of education after a hearing as provided in subsection (d) of this section may appeal therefrom, within thirty days of such decision, to the superior court. Such appeal shall be made returnable to said court in the same manner as is prescribed for civil actions brought to said court. Any such appeal shall be a privileged case to be heard by the court as soon after the return day as is practicable. The board of education shall file with the court a copy of the complete

transcript of the proceedings of the hearing held by the board of education or by an impartial hearing panel for such teacher, together with such other documents, or certified copies thereof, as shall constitute the record of the case. The court, upon such appeal, shall review the proceedings of such hearing and shall allow any party to such appeal to introduce evidence in addition to the contents of such transcript, if it appears to the court that additional testimony is necessary for the equitable disposition of the appeal. The court, upon such appeal and after a hearing thereon, may affirm or reverse the decision appealed from. Costs shall not be allowed against the board of education unless it appears to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

DELAWARE

Delaware Code Annotated

1204. Revocation of professional status certificate.

A professional status certificate may be revoked upon dismissal for immorality, misconduct in office, incompetency, wilful neglect of duty or disloyalty, provided full and fair hearing and appeal shall have been allowed as elsewhere set forth in this title.

.... (14 Del. C. 1953, Sec. 1204; 50 Del. Laws, c. 154, Sec. 1.)

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 of which shall be in the employ of the terminating board. (14 Del. C. 1953, Sec. 1410; 50 Del. Laws, c. 39, Sec. 1; 58 Del. Laws, c. 270.)

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 the education services. The board shall have power to suspend any teacher pending a hearing if the situation warrants such action. (14 Del. C. 1953, Sec. 1411; 50 Del. Laws, c. 39, Sec. 1.)

1412. Notice of termination.

In the event that a teacher fails to request a hearing, as herein provided, the aforesaid notice of intent to terminate services shall be construed as a notice of termination. (14 Del. C. 1953, Sec. 1412; 50 Del. Laws, c. 39, Sec.1.)

1413. Hearing by terminating board.

(a) 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;

(a) 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.

(b) Any provision of this chapter to the contrary notwithstanding, the board may designate a hearing officer to conduct the hearing prescribed by subsection (a) of this section under rules and regulations promulgated by the board. The hearing officer shall submit a report with a recommendation to the board, within 5 days of the conclusion

of the hearing, which shall become part of the record. A majority of the board shall convene to review the records of the proceedings and, within 15 days of the hearing before the hearing officer, shall submit to the employee its decision in writing. (14 Del. C. 1953, Sec. 1413; 50 Del. Laws, c. 39, Sec. 1; 64 Del. Laws, c. 250, Sec. 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, Sec. 1414; 50 Del. Laws, c. 39, Sec. 1.)

1420. Reasons for termination; rights of teacher.

Termination of any teacher's services during the school year shall be for 1 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 Section 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, Sec. 1420; 50 Del. Laws, c. 39, Sec. 1.)

FLORIDA

Florida Statutes Annotated

230.23. Powers and duties of school board

The school board, acting as a board, shall exercise all powers and perform all duties listed below:

...
 (5) Personnel. -- Designate positions to be filled, prescribe qualifications for those positions, and provide for the appointment, compensation, promotion, suspension, and dismissal of employees as follows, subject to the requirements of chapter 231:

...
 (f) Suspension and dismissal and return to annual contract status. -- Suspend, dismiss, or return to annual contract members of the instructional staff and other school employees; however, no administrative assistant, supervisor, principal, teacher, or other member of the instructional staff may be discharged, removed, or returned to annual contract except as provided in chapter 231.

231.28. Education Practices Commission; authority to discipline

(1) The Education Practices Commission shall have authority to suspend the teaching certificate of any person as defined in s. 228.041(9) or (10) for a period of time not to exceed 3 years, thereby denying that person the right to teach for that period of time, after which the holder may return to teaching as provided in subsection (4); to revoke the teaching certificate of any person, thereby denying that person the right to teach for a period of time not to exceed 10 years, with reinstatement subject to the provisions of subsection (4); to revoke permanently the teaching certificate of any person; or to impose any other penalty provided by law, provided it can be shown that such person:

...
 (b) Has proved to be incompetent to teach or to perform duties as an employee of the public school system or to teach in or to operate a private school;

....
 (3) The revocation by the Education Practices Commission of a teaching certificate of any person automatically revokes any and all Florida teaching certificates held by that person.

231.36. Contracts with instructional staff, supervisors, and principals

(1) (a) Each person employed as a member of the instructional staff in any district school system shall be properly certificated and shall be entitled to and shall

receive a written contract as specified in chapter 230. All such contracts, except continuing contracts as specified in subsection (4), shall contain provisions for dismissal during the term of the contract only for just cause. Just cause includes, but is not limited to, misconduct in office, incompetency, gross insubordination, willful neglect of duty, or conviction of a crime involving moral turpitude.

(3) (e) A professional service contract shall be renewed each year unless the superintendent, after receiving the recommendations required by s. 231.29(5), charges the employee with unsatisfactory performance as determined under the provisions of s. 231.29 and notifies the employee in writing, no later than 6 weeks prior to the end of the postschool conference period, of performance deficiencies which may result in termination of employment, if not corrected during the subsequent year of employment (which shall be granted for an additional year in accordance with the provisions on subsection (1)). Except as otherwise hereinafter provided, this action shall not be subject to the provisions of chapter 120, but the following procedures shall apply:

1. On receiving notice of unsatisfactory performance, the employee, on request, shall be accorded an opportunity to meet with the superintendent or his designee for an informal review of the determination of unsatisfactory performance.

2. An employee notified of unsatisfactory performance may request an opportunity to be considered for a transfer to another appropriate position, with a different supervising administrator, for the subsequent year of employment.

3. During the subsequent year, the employee shall be provided assistance and inservice training opportunities to help correct the noted performance deficiencies. The employee shall also be evaluated periodically so that he will be kept apprised of progress achieved.

4. Not later than 6 weeks prior to the close of the postschool conference period of the subsequent year, the superintendent, after receiving and reviewing the recommendation required by s. 231.29(5), shall notify the employee, in writing, whether the performance deficiencies have been corrected. If so, a new professional service contract shall be issued to the employee. If the performance deficiencies have not been corrected, the superintendent may notify the school board and the employee, in writing, that the employee shall not be issued a new professional service contract; however, if the recommendation of the superintendent is not to issue a new professional service contract, and if the employee wishes to contest such recommendation, the employee will have 15 days from receipt of the superintendent's recommendation to demand, in writing, a hearing. In such hearing, the employee may raise as an issue, among other things, the sufficiency of the superintendent's

charges of unsatisfactory performance. Such hearing shall be conducted at the employee's election in accordance with one of the following procedures:

a. A direct hearing conducted by a hearing officer assigned by the Division of Administrative Hearings of the Department of Administration. The hearing shall be conducted within 45 days of receipt of the written appeal in accordance with chapter 120. The recommendation of the hearing officer shall be made to the school board. A majority vote of the membership of the school board shall be required to sustain or change the hearing officer's recommendation. The determination of the school board shall be final as to the sufficiency or insufficiency of the grounds for termination of employment.

(4) (c) 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 suspended or dismissed at any time during the school year; however, the charges against him must be based on immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, drunkenness, or conviction of a 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; but, if the 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 determine upon the evidence submitted whether the charges have been sustained and, if the charges are sustained, shall determine either to dismiss the employee or fix the terms under which he 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. Any such decision adverse to the employee may be appealed by the employee pursuant to s. 120.68, provided such appeal is filed within 30 days after the decision of the school board.

...

(6) (a) Any member of the instructional staff, excluding an employee specified in subsection (4), may be suspended or dismissed at any time during the term of the contract; however, the charges against him must be based on just cause as provided in paragraph (1)(a). Whenever such charges are made against any such employee of the school board, the school board may suspend such person without pay; but, if the charges are not sustained, he shall be immediately reinstated, and his back salary shall be paid. When an employee is notified in writing of such charges, he will have 15 days from receipt of the notice to demand, in writing, a hearing to be conducted at his election in accordance with either sub-subparagraph a.

or sub-subparagraph b. of subparagraph (3)(e)4. Any such decision adverse to the employee may be appealed by the employee pursuant to s. 120.68, provided such appeal is filed within 30 days after the decision of the school board.

....

120.68 Judicial review

(1) A party who is adversely affected by final agency action is entitled to judicial review. For purposes of this section, a district school board whose decision is reviewed under the provisions of s. 231.36 and whose final action is modified by a superior administrative decision shall be a party entitled to judicial review of the final action. A preliminary, procedural, or intermediate agency action or ruling, including any order of a hearing officer, is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

(2) Except in matters for which judicial review by the Supreme Court is provided by law, all proceedings for review shall be instituted by filing a petition in the district court of appeal in the appellate district where the agency maintains its headquarters or where a party resides. Review proceedings shall be conducted in accordance with the Florida Appellate Rules.

GEORGIA**Official Code of Georgia Annotated
Title 20. Education****20-2-940. Grounds and procedure for terminating or suspending contract of employment**

(a) Grounds for termination or suspension. 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) Willful 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;
- (6) To reduce staff due to loss of students or cancellation of programs;
- (7) Failure to secure and maintain necessary educational training; or
- (8) 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 definite term, written notice of the charges shall be given at least ten 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; and
- (4) 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 part relating to suspension from duty shall be served either personally or by certified mail. All notices required by this part relating to demotion, termination, nonrenewal of contract, or reprimand shall be served by certified mail. Service shall be deemed to be perfected when the notice is deposited in the United States mail addressed to the last known address of the addressee with sufficient postage affixed to the envelope.

(d) Counsel; testimony. Any teacher, principal, or other person against whom such charges listed in subsection (a) of

this Code 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 production of documents and other evidence. Such subpoenas and compulsory process shall be issued in the name of the local board and shall be signed by the chairman or vice-chairman of the local board. In all other respects, such subpoenas and other compulsory process shall be subject to Part 1 of Article 2 of Chapter 10 of Title 24, as now or hereafter amended.

(e) Hearing.

(1) The hearing shall be conducted before the local board, or the local 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 local board for its decision thereon; or the local board may refer the matter for hearing to a tribunal constituted by the Professional Practices Commission, created pursuant to Part 1 of this article.

(2) The hearing shall be reported at the local board's expense. If the matter is heard by a tribunal, the transcript shall be prepared at the expense of the local board and an original and two copies shall be filed in the office of the superintendent. If the hearing is before the local 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 for by the appellant. In the event of an appeal to the state board, the original shall be transmitted to the state board as required by its rules.

(3) Oath or affirmation shall be administered to all witnesses by the chairman, any member of the local board, or by the local board attorney.

(4) All questions relating to admissibility of evidence or other legal matters shall be decided by the chairman or presiding officer, subject to the right of either party to appeal to the full local 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 local 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 in this subsection, the same rules governing nonjury trials in the superior court shall prevail.

(f) Decisions; appeals. The local 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 local board within five days of the conclusion of the hearing, and the local board

shall render its decision thereon within ten days after the receipt of the transcript. Appeals may be taken to the state board in accordance with Code Section 20-2-1160, as now or hereafter amended, and the rules and regulations of the state board governing appeals.

....

HAWAII**Hawaii Revised Statutes
Title 18. Education**

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. [L 1959, c 28, pt of Sec. 2; am L 1965, c 175, Sec. 19; Supp, Sec. 38-5.2; HRS Sec. 297-11]

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 the teacher's 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. 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 of the hearing, shall report the hearing officer's findings of fact and the hearing officer's 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 the teacher's 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, the teacher shall be paid the teacher's 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 Sec. 2; am L 1965, c 96, Sec. 26; Supp, Sec. 38-5.3; am L 1967, c 174, Sec. 1; HRS Sec. 297-12; am imp L 1984, c 90, Sec. 1]

IDAHO

Idaho Code
Title 33. Education

33-1208. Revocation, suspension, or denial of certificate -- Grounds.

The state board of education may revoke or suspend any certificate issued or authorized under section 33-1201, Idaho Code, upon any of the following grounds:

- a. Gross neglect of duty;
- b. Incompetency;

...

A district superintendent shall report to the chief officer of teacher certification the name of any educator dismissed or otherwise severed from employment for revocation or suspension of a certificate. [1963, ch. 13, Sec. 150, p. 27; am. 1969, ch. 258, Sec. 9, p.794; am. 1978, ch. 180, Sec. 1, p. 411; am. 1984, ch. 150, Sec. 1, p. 353; am. 1987, ch. 229, Sec. 1, p. 485.]

33-1209. Proceedings to revoke or suspend -- Complaint -- Hearing.

Proceedings to revoke or suspend any certificate issued or authorized under section 33-1201, Idaho Code, shall be commenced by a written complaint against the holder thereof. Such complaint shall be made by the chief certification officer of the state board of education to the said state board, stating the ground or grounds for revocation and proposing that the certificate be revoked. A copy of the complaint shall be served upon the certificate holder, either by personal service or by certified mail.

Not more than thirty (30) days after the date of service of any complaint, the person complained against may request, in writing, a hearing upon the complaint. Any such request shall be made and addressed to the state board of education; and if no such request for hearing be made, the grounds for revocation stated in the complaint shall be deemed admitted.

Upon receiving any request for hearing, the state board of education shall give notice, in writing, to the person requesting the hearing, which notice shall state the time and place of the hearing; but the time of such hearing shall be not less than five (5) days from the date of notice thereof.

The state board shall have the power to order the issuance of any subpoena requested by its chief certification officer, or by the respondent, requiring the attendance of any witness at the hearing, and the state board may, upon its own motion, order the issuance of such subpoena. The state board may hold such hearing, or may delegate to one or more of its members, or to some other suitable person, authority to hold

such hearing, with full power to issue subpoenas as hereinabove. A written documentary evidence, adduced or presented at such hearing shall be kept.

All hearings shall be informal, with the object of ascertaining the truth. The person complained against may appear in person or by attorney, and may produce, examine and cross-examine witnesses; and, if he chooses so to do, may submit for the consideration of the state board of education a written statement in lieu of oral testimony, but any such statement shall be under oath and the affiant shall be subject to cross-examination.

At the conclusion of any hearing which the board has delegated authority to be heard, the person holding the hearing shall submit to the board a concise statement of the proceedings, a summary of the testimony, and any documentary evidence offered, together with his findings of fact and recommendation. The board shall review the record so made, as well as its own records, and make its determination, or it may order another hearing before the same or other persons, or before the board.

The determination of the board, upon any hearing, shall be entered in its records, and written notice of its determination shall be given to the person complained against by the state superintendent of public instruction, which notice shall be a part of the records of the state board of education.

The final determination of the state board of education may be reviewed by writ of review in the district court of the county in which the holder of a revoked certificate has been last employed as a teacher; but application for such writ of review shall be made not more than thirty (30) days from the date of notice of revocation.

Whenever any certificate has been refused or revoked, the state board of education may, upon a clear showing that the cause constituting grounds for refusal or revocation no longer exists, issue a certificate or reinstate a revoked certificate either conditionally or unconditionally. [1963, ch. 13, Sec. 151, p. 27; am. 1984, ch. 150, Sec. 2, p. 353.]

33-1213. Notice of intent not to renew contract or to reduce salary.

Upon receiving written notice from the superintendent or other duly authorized officer of the school district showing why the contract of any certificated employee whose contract would otherwise be automatically renewed should not be renewed, or that the contract of any such employee should be renewed but at a reduced salary, as provided in section 33-1212, Idaho Code, the board of trustees shall give a written notice of possible nonrenewal or salary reduction to such employee, along with written notice of the allegations and a

hearing to be held before the board. This notice must be given to the affected employee not later than the first day of April preceding the expiration of the term of the employee's current contract. The hearing shall be scheduled to take place not less than thirty (30) days nor more than forty-five (45) days after receipt of the notice by the employee. The procedures for the hearing itself and decision of the board shall be consistent with other procedures specified in section 33-513(4), Idaho Code. [1963, ch. 13, Sec. 155, p. 27; am. 1973, ch. 126, Sec. 4, p. 238; am. 1978, ch. 340, Sec. 1, p. 874.]

33-1215. Termination of employment or reduction of salary -- Hearing and review.

At the hearing held pursuant to the notice provided for in section 33-1213, Idaho Code, the superintendent or other authorized officer must present evidence to substantiate the allegations contained in such notice. The affected employee may be represented by legal counsel and/or by a representative of a local or state teachers association. The employee may produce evidence to refute the allegations. Any witness presented by either party shall be subject to cross-examination. 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 close of the hearing stating whether the board finds that there is just and reasonable cause not to renew the contract or to reduce the salary of the affected employee, and if so, what reasons it relies upon in that determination. The procedures for the hearing itself and [the] decision of the board shall be consistent with the procedures specified in section 33-513(4), Idaho Code. [1963, ch. Sec. 157, p. 27; am. 1973, ch. 126, Sec. 6, p. 238; am. 1978, ch. 340, Sec. 2, p. 874.]

ILLINOIS

Illinois Annotated Statutes

11-22.4. Dismissal of teachers

To dismiss a teacher for incompetency, cruelty, negligence, immorality or other sufficient cause, to dismiss any teacher who fails to complete a 1-year remediation plan with a "satisfactory" or better rating and to dismiss any teacher whenever, in its opinion, he is not qualified to teach, or whenever, in its opinion, the interests of the schools require it, subject, however, to the provisions of Sections 24-10 to 24-15, inclusive. Temporary mental or physical incapacity to perform teaching duties, as found by a medical examination, is not a cause for dismissal. Marriage is not a cause of removal.

21-23. Suspension or revocation of certificate.

(a) Any certificate issued pursuant to this Article may be suspended for a period not to exceed one calendar year by either the regional superintendent or State Superintendent of Education upon evidence of ...incompetency, ...the neglect of professional duty, ... or other just cause. ...The regional superintendent or State Superintendent of Education shall upon receipt of evidence of ...incompetency,... the neglect of professional duty or other just cause serve written notice to the individual and afford the individual opportunity for a hearing prior to suspension. If a hearing is requested within 10 days of notice of opportunity for hearing it shall act as a stay of proceedings not to exceed 30 days. No certificate shall be suspended until the teacher has an opportunity for a hearing at the educational service region. When a certificate is suspended, the right of appeal shall lie to the State Teacher Certification Board. When an appeal is taken within 10 days after notice of suspension it shall act as a stay of proceedings not to exceed 60 days. Any certificate may be revoked for the same reasons as for suspension by the State Superintendent of Education. No certificate shall be revoked until the teacher has an opportunity for a hearing before the State Teacher Certification Board, which hearing must be held within 60 days from the date the appeal is taken.

....

24-12. Removal or dismissal of teachers in contractual continued service

...

If a dismissal or removal is sought for any other reason or cause [besides decrease in number of teachers], including those under Section 10-22.4, the board must first approve a motion containing specific charges by majority vote of all

its members. Written notice of such charges shall be served upon the teacher within 5 days of the adoption of the motion. Such notice shall contain a bill of particulars. No hearing upon the charges is required unless the teacher within 10 days after receiving notice requests in writing of the board that a hearing be scheduled, in which case the board shall schedule a hearing on those charges before a disinterested hearing officer on a date no less than 15 nor more than 30 days after the enactment of the motion. The secretary of the school board shall forward a copy of the notice to the State Board of Education. Within 5 days after receiving this notice of hearing, the State Board of Education shall provide a list of 5 prospective, impartial hearing officers. Each person on the list must be accredited by a national arbitration organization. No one on the list may be a resident of the school district. The Board and the teacher or their legal representatives within 3 days shall alternately strike one name from the list until only one name remains. The teacher shall promulgate uniform standards and rules of procedure for such hearings. As to prehearing discovery, such rules and regulations shall, at a minimum, allow for: (1) discovery of names and addresses of persons who may be called as expert witnesses at the hearing, the omission of any such name to result in a preclusion of the testimony of such witness in the absence of a showing of good cause and the express permission of the hearing officer; (2) bills of particulars; (3) written interrogatories; and (4) production of relevant documents. The per diem allowance for the hearing officer shall be paid by the State Board of Education and may not exceed \$300. The hearing officer shall hold a hearing and render a final decision. 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 the witnesses and may offer evidence and witnesses and present defenses to the charges. The hearing officer may issue subpoenas and subpoenas duces tecum requiring the attendance of witnesses and, at the request of the teacher against whom a charge is made or the board, shall issue such subpoenas, but the hearing officer may limit the number of witnesses to be subpoenaed in behalf of the teacher or the Board to not more than 10. All testimony at the hearing shall be taken under oath administered by the hearing officer. The hearing officer shall cause a record of the proceedings to be kept and shall employ a competent reporter to take stenographic or stenotype notes of all the testimony. The costs of the reporter's attendance and services at the hearing shall be paid by the State Board of Education. 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 setting a hearing on charges stemming from causes that are considered remediable, a board must give the teacher reasonable warning in writing, stating specifically the causes which, if not removed, may result in charges; however, no such written warning shall be required if the causes have been the subject of a remediation plan pursuant to Article 24A. The hearing officer shall consider and give weight to all of the teacher's evaluations written pursuant to Article 24A. The hearing officer shall, with reasonable dispatch, make a decision as to whether or not the teacher shall be dismissed and shall give a copy of the decision to both the teacher and the school board. The decision of the hearing officer is final unless reviewed as provided in Section 24-16 of this Act. In the event such review is instituted, any costs of preparing and filing the record of proceedings shall be paid by the board.

If a decision of the hearing officer is adjudicated upon review or appeal in favor of the teacher, then 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.

Any teacher who is reinstated by any hearing or adjudication brought under this Section shall be assigned by the board to a position substantially similar to the one which that teacher held prior to that teacher's suspension or dismissal.

....

34-85. Removal for cause -- Notice and hearing -- Suspension
No teacher or principal appointed by the board of education shall (after serving the probationary period of 3 years specified in Section 34-84) be removed except for cause.

The board by vote of a majority of its full membership must first approve a motion containing written charges and specifications presented by the general superintendent of schools. A written notice of such charges shall be served upon the teacher or principal within 5 days of the adoption of the motion. If the teacher or principal cannot be found upon diligent inquiry, such charges may be served upon him by mailing a copy thereof in a sealed envelope by prepaid certified mail, return receipt requested, to the teacher's or principal's last known address. A return receipt showing delivery to such address within 10 days after the date of the motion shall constitute proof of service.

No hearing upon the charges is required unless the teacher within 10 days after receiving notice requests in writing of the board that a hearing be scheduled, in which case the board shall schedule a hearing on those charges

before a disinterested hearing officer on a date no less than 15 nor more than 30 days after the adoption of the motion. The secretary of the school board shall forward a copy of the notice to the State Board of Education within 5 days from the date of the adoption of the motion. Within 5 days after receiving the notice of hearing, the State Board of Education shall provide the teacher or principal and the local board with a list of 5 prospective, impartial hearing officers. Each person on the list must be accredited by a national arbitration organization.

The board and the teacher or principal or their legal representatives within 3 days from receipt of the list shall alternately strike one name from the list until only one name remains. The teacher or principal shall have the right to proceed first with the striking. Each party shall promptly serve written notice on the other of any name stricken from the list. If the teacher or principal fails to do so, the local board may select the hearing officer from any name remaining on the list. The teacher or principal may waive the hearing at any time prior to the appointment of the hearing officer. Notice of the selection of the hearing officer shall be given to the State Board of Education. The hearing officer shall be notified of his selection by the State Board of Education. A signed acceptance shall be filed with the State Board of Education within 5 days of receipt of notice of the selection. The State Board of Education shall notify the teacher or principal and the board of its appointment of the hearing officer. The State Board of Education shall promulgate uniform standards and rules of procedure for such hearings including reasonable rules of discovery.

The per diem allowance for the hearing officer shall be paid by the State Board of Education. The hearing officer shall hold a hearing and render the final decision. The hearing shall be public at the request of either the teacher or principal or the board. The teacher or principal 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 hearing officer may issue subpoenas requiring the attendance of witnesses and, at the request of the teacher or principal against whom the charge is made or the board, shall issue such subpoenas, but the hearing officer may limit the number of witnesses to be subpoenaed in behalf of the teacher or principal or the board to not more than 10 each. All testimony at the hearing shall be taken under oath administered by the hearing officer. The hearing officer shall cause a record of the proceedings to be kept and shall employ a competent reporter to take stenographic or stenotype notes of all the testimony. The costs of the reporter's attendance and services at the hearing shall be paid by the State Board of Education. Either party

desiring a transcript of the hearing shall pay the cost thereof.

Pending the hearing of the charges, the person charged may be suspended in accordance with the rules prescribed by the board but such person, if acquitted, shall not suffer any loss of salary by reason of the suspension.

Before service of notice of charges on account of causes that may be deemed to be remediable, the teacher or principal shall be given reasonable warning in writing, stating specifically the causes which, if not removed, may result in charges; however, no such written warning shall be required if the causes have been the subject of a remediation plan pursuant to Article 24A.

The hearing officer shall consider and give weight to all of the teacher's evaluations written pursuant to Article 24A.

The hearing officer shall within 45 days from the conclusion of the hearing make a decision as to whether or not the teacher or principal shall be dismissed and shall give a copy of the decision to both the teacher or principal and the board. If the hearing officer fails without good cause to make a decision within the 45 day period the name of such hearing officer shall be struck for a period not less than 6 months from the master list of hearing officers maintained by the State Board of Education. ...The decision of the hearing officer is final unless reviewed as provided in Section 34-85b of this Act.

In the event judicial review is instituted, any costs of preparing and filing the record of proceedings shall be paid by the party instituting the review. If a decision of the hearing officer is adjudicated upon review or appeal in favor of the teacher or principal, then 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 Indiana Statutes Annotated****20-6.1-3-7. License revocation and suspension.**

(a) On the written recommendation of the superintendent of public instruction, the board may revoke a license for:

- (1) Immorality;
- (2) Misconduct in office;
- (3) Incompetency; or
- (4) Willful neglect of duty.

However, for each revocation the board shall comply with IC 4-21.5-3.

....

20-6.1-4-10. Cancellation of indefinite contracts.

(a) An indefinite contract with a permanent teacher may be canceled in the manner specified in section 11 [20-6.1-4-11] of this chapter for only the following grounds:

- (1) Immorality;
- (2) Insubordination, which means a willful refusal to obey the state school laws or reasonable rules prescribed for the government of the school corporation;
- (3) Neglect of duty;
- (4) Incompetency;
- (5) Justifiable decrease in the number of teaching positions; or
- (6) Other good and just cause.

When the cause of cancellation is ground (1) or (2), the cancellation is effective immediately. When the cause of cancellation is ground (3), (4), (5), or (6), the cancellation is effective at the end of the school term following the cancellation.

(b) An indefinite contract may not be canceled for political or personal reasons.

20-6.1-4-10.5. Cancellation of indefinite contract of semipermanent teacher by school corporation -- Grounds.

(a) An indefinite contract with a semipermanent teacher may be cancelled in the manner specified in section 11 [20-6.1-4-11] of this chapter only for the following grounds:

- (1) Immorality;
- (2) Insubordination; which means refusal to obey the state school laws or reasonable rules prescribed for the government of the school corporation;
- (3) Neglect of duty;
- (4) Substantial inability to perform teaching duties;
- (5) Justifiable decrease in the number of teaching positions;
- (6) Good and just cause; or

(7) The cancellation is in the best interest of the school corporation.

(b) An indefinite contract with a semipermanent teacher may not be cancelled for political or personal reasons.

(c) The principal of the school at which the teacher teaches shall provide the teacher with a written evaluation of the teacher's performance before January 1, of each year. Upon the request of a semipermanent teacher, delivered in writing to the principal within thirty [30] days after the teacher receives the evaluation required by this section, the principal shall provide the teacher with an additional written evaluation.

20-6.1-4-11. Cancellation of indefinite contract by school corporation -- Procedures.

(a) An indefinite contract with a permanent or semipermanent teacher may be cancelled only in the following manner:

(1) The teacher shall be notified in writing of the date, time, and place for the consideration by the school corporation of the cancellation of the contract; this notification must occur not more than forty [40] days nor less than thirty [30] days before the consideration;

(2) The teacher shall be furnished, within five [5] days after a written request, a written statement of the reasons for the consideration;

(3) The teacher may file a written request for a hearing within fifteen [15] days after receipt of the notice of this consideration;

(4) When the request for a hearing is filed, the teacher shall be given a hearing before the governing body on a day no earlier than five [5] days after filing;

(5) The teacher shall be given not less than five [5] days' notice of the time and place of the hearing;

(6) At the hearing, the teacher is entitled;

(A) To a full statement of the reasons for the proposed cancellation of the contract; and

(B) To be heard, to present the testimony of witnesses and other evidence bearing on the reasons for the proposed cancellation of the contract;

(7) A contract may not be canceled until:

(A) The date set for consideration of the cancellation of the contract;

(B) After a hearing is held, if a hearing is requested by the teacher; and

(C) The superintendent has given his recommendations on the contract; on five [5] days' written notice to him by the school corporation, the superintendent shall present his recommendation on each contract, except on a superintendent's contract;

(8) Pending a decision on the cancellation of a teacher's contract, the teacher may be suspended from duty; and

(9) After complying with section 10 [20-6.1-4-10] of this chapter in the case of permanent teachers, or section 10.5 [20-6.1-4-10.5] of this chapter in the case of semipermanent teachers, and this section, the governing body of the school corporation may cancel an indefinite contract with a teacher by a majority vote evidenced by a signed statement in the minutes of the board; the decision of the governing board is final.

20-6.1-4-12. Discharge -- Reinstatement.

(a) A permanent teacher who holds an indefinite contract under section 9 [20-6.1-4-9] of this chapter may not be discharged or have his contract canceled except as provided in sections 10 and 11 [20-6.1-4-10 and 20-6.1-4-11] of this chapter.

A semipermanent teacher who holds an indefinite contract under section 9.5 [20-6.1-4-9.5] of this chapter may not be discharged or have his contract cancelled except as provided in sections 10.5 and 11 [20-6.1-4-10.5 and 20-6.1-4-11] of this chapter.

(b) Each school corporation and its proper officers shall retain each permanent or semipermanent teacher until his indefinite contract is properly terminated.

(c) If subsection (a) or (b) of this section is violated, the permanent or semipermanent teacher may bring action in the nature of mandate as provided by law against the proper officers of the school corporation for an order requiring them to reinstate the teacher and restore him to full rights as a permanent or semipermanent teacher.

20-6.1-4-14. Contractual rights of nonpermanent teachers.

(a) Each contract entered into by a nonpermanent teacher and a school corporation continues in force on the same terms and for the same wages, unless increased by IC 20-6.1-5-1, the teachers' minimum salary law, for the next school term following the date of termination set in the contract. However, the contract does not continue if:

(1) On or before May 1, the school corporation notifies the teacher that the contract will not continue for the next school term; the notification must be:

(A) Written; and

(B) Delivered in person, or mailed by registered or certified mail to the teacher at his last and recognized address;

(2) The teacher delivers and mails by registered or certified mail to the school corporation his written resignation; or

(3) The contract is replaced by another contract between

the parties.

(b) A teacher who is refused continuation of the contract under subsection (a) of this section has the following rights:

(1) Upon the request of the teacher, and within fifteen [15] days of the receipt of the notice of contract non-renewal the governing body or the superintendent of the school corporation shall provide the teacher with a written statement which may be developed in an executive session and which is not a public document, giving the reasons for the noncontinuation of the teacher's contract.

(2) The principal of the school at which the teacher teaches, shall provide the teacher with an annual written evaluation of the teacher's performance before January 1, of each year. Upon the request of a nonpermanent teacher, delivered in writing, to the principal within thirty [30] days after the teacher receives the evaluation required by this section, the principal shall provide the teacher with an additional written evaluation.

(c) A conference shall be held with the governing body, or at its direction with the superintendent or his designee, not more than ten [10] days following the day the governing body receives the request. If the first conference is not with the governing body, a second conference shall be held with the governing body not more than twenty [20] days following the day the governing body receives the request for a second conference, or before the end of the school year, whichever is earlier. The governing body may, in addition to a conference, require that the superintendent or his designee and the teacher summarize in writing the position of each with respect to the continuance of the contract. At any conference, the governing body, the superintendent or his designee may provide any information supporting noncontinuance, and the teacher may provide any information demonstrating that noncontinuance of the contract is improper. The conference with the governing body shall be in executive session unless the teacher requests a public conference. The teacher may have a representative at any conference. The time periods set out in this subsection shall be extended for a reasonable period when a teacher or school official is ill or absent from the school corporation or for other reasonable cause. The governing body shall affirm or reverse its position on continuation of the teacher's contract not more than ten [10] days after the conference.

(d) The governing body of a school corporation may decide not to continue a teacher's contract under this section: (1) for any reason considered relevant to the school corporation's interest; or (2) because of a teacher's inability to perform his teaching duties.

IOWA

Iowa Code Annotated

279.15. Notice of termination -- request for hearing

1. The superintendent or the superintendent's designee shall notify the teacher not later than March 15 that the superintendent will recommend in writing to the board at a regular or special meeting of the board held not later than March 31 that the teacher's continuing contract be terminated effective at the end of the current school year. However, if the district is subject to reorganization under chapter 275, the notification shall not occur until the first organizational meeting of the board of the newly formed district.

2. Notification of recommendation of termination of a teacher's contract shall be in writing and shall be personally delivered to the teacher, or mailed by certified mail. The notification shall be complete when received by the teacher. The notification and the recommendation to terminate shall contain a short and plain statement of the reasons, which shall be just cause, why the recommendation is being made. The notification shall be given at or before the time the recommendation is given to the board.

As a part of the termination proceedings, the teacher's complete personnel file of employment by that board shall be available to the teacher, which file shall contain a record of all periodic evaluations between the teacher and appropriate supervisors.

Within five days of the receipt of the written notice that the superintendent is recommending termination of the contract, the teacher may request, in writing to the secretary of the board, a private hearing with the board. The private hearing shall not be subject to chapter 21 and shall be held no sooner than ten days and no later than twenty days following the receipt of the request unless the parties otherwise agree. The secretary of the board shall notify the teacher in writing of the date, time, and location of the private hearing, and at least five days before the hearing shall also furnish to the teacher any documentation which may be presented to the board at the private hearing and a list of persons who may address the board in support of the superintendent's recommendation at the private hearing. At least three days before the hearing, the teacher shall provide any documentation the teacher expects to present at the private hearing, along with the names of any persons who may address the board on behalf of the teacher. This exchange of information shall be at the time specified unless otherwise agreed.

279.16. Private hearing -- decision -- record

The participants at the private hearing shall be at least a majority of the members of the board, their legal representatives, if any, the superintendent, the superintendent's designated representatives, if any, the teacher's immediate supervisor, the teacher, the teacher's representatives, if any, and the witnesses for the parties. The evidence at the private hearing shall be limited to the specific reasons stated in the superintendent's notice of recommendation of termination. No participant in the hearing shall be liable for any damages to any person if any statement at the hearing is determined to be erroneous as long as the statement was made in good faith. The superintendent shall present evidence and argument on all issues involved and the teacher may cross-examine, respond and present evidence and argument in his or her behalf relevant to all issues involved. Evidence may be by stipulation of the parties and informal settlement may be made by stipulation, consent, or default or by any other method agreed upon by the parties in writing. The board shall employ a certified shorthand reporter to keep a record of the private hearing. The proceedings or any part thereof shall be transcribed at the request of either party with the expense of transcription charged to the requesting party.

The presiding officer of the board may administer oaths in the same manner and with like effect and under the same penalties as in the case of magistrates exercising criminal or civil jurisdiction. The board shall cause subpoenas to be issued for such witnesses and the production of such books and papers as either the board or the teacher may designate. The subpoenas shall be signed by the presiding officer of the board.

In case a witness is duly subpoenaed and refuses to attend, or in case a witness appears and refuses to testify or to produce required books or papers, the board shall, in writing, report such refusal to the district court of the county in which the administrative office of the school district is located, and the court shall proceed with the person or witness as though the refusal had occurred in a proceeding legally pending before the court.

The board shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure, but it shall hold the hearing in such manner as is best suited to ascertain and conserve the substantial rights of the parties. Process and procedure under sections 279.13 to 279.19 shall be as summary as reasonably may be.

At the conclusion of the private hearing, the superintendent and the teacher may file written briefs and arguments with the board within three days or such other time as may be agreed upon.

If the teacher fails to timely request a private hearing or does not appear at the private hearing, the board may proceed and make a determination upon the superintendent's recommendation, which determination in that case shall be not later than April 10, or not later than five days after the scheduled date for the private hearing, whichever is applicable. The board shall convene in open session and by roll call vote determine the termination or continuance of the teacher's contract.

Within five days after the private hearing, the board shall, in executive session, meet to make a final decision upon the recommendation and the evidence as herein provided. The board shall also consider any written brief and arguments submitted by the superintendent and the teacher.

The record for a private hearing shall include:

1. All pleadings, motions and intermediate rulings.
2. All evidence received or considered and all other submissions.
3. A statement of all matters officially noticed.
4. All questions and offers of proof, objections and rulings thereon.
5. All findings and exceptions.
6. Any decision, opinion, or conclusion by the board.
7. Findings of fact shall be based solely on the evidence in the record and on matters officially noticed in the record.

The decision of the board shall be in writing and shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts and supporting the findings. Each conclusion of law shall be supported by cited authority or by reasoned opinion.

When the board has reached a decision, opinion, or conclusion, it shall convene in open meeting and by roll call vote determine the continuance or discontinuance of the teacher's contract. The record of the private conference and findings of fact and exceptions shall be exempt from the provisions of chapter 68A. The secretary of the board shall immediately mail notice of the board's action to the teacher.

279.17 Appeal by teacher to adjudicator

If the teacher is no longer a probationary teacher, the teacher may, within ten days, appeal the determination of the board to an adjudicator by filing a notice of appeal with the secretary of the board. The notice of appeal shall contain a concise statement of the action which is the subject of the appeal, the particular board action appealed from, the grounds on which relief is sought and the relief sought.

Within five days following receipt by the secretary of the notice of appeal, the board or the board's legal

representative, if any, and the teacher or the teacher's representative, if any, may select an adjudicator who resides within the boundaries of the merged area in which the school district is located. If an adjudicator cannot be mutually agreed upon within the five-day period, the secretary shall notify the chairperson of the public employment relations board by transmitting the notice of appeal, and the chairperson of the public employment relations board shall within five days provide a list of five adjudicators to the parties. Within three days from receipt of the list of adjudicators, the parties shall select an adjudicator by alternately removing a name from the list until only one name remains. The person whose name remains shall be the adjudicator. The parties shall determine by lot which party shall remove the first name from the list submitted by the chairperson of the public employment relations board. The secretary of the board shall inform the chairperson of the public employee relations board of the name of the adjudicator selected.

If the teacher does not timely request an appeal to an adjudicator the decision, opinion, or conclusion of the board shall become final and binding.

Within thirty days after filing the notice of appeal, or within further time allowed by the adjudicator, the board shall transmit to the adjudicator the original or a certified copy of the entire record of the private hearing which may be the subject of the petition. By stipulation of the parties to review the proceedings, the record of the case may be shortened. The adjudicator may require or permit subsequent corrections or additions to the shortened record.

The record certified and filed by the board shall be the record upon which the appeal shall be heard and no additional evidence shall be heard by the adjudicator. In such appeal to the adjudicator, especially when considering the credibility of witnesses, the adjudicator shall give weight to the fact findings of the board; but shall not be bound by them.

Before the date set for hearing a petition for review of board action, which shall be within ten days after receipt of the record unless otherwise agreed or unless the adjudicator orders additional evidence be taken before the board, application may be made to the adjudicator for leave to present evidence in addition to that found in the record of the case. If it is shown to the adjudicator that the additional evidence is material and that there were good reasons for failure to present it in the private hearing before the board, the adjudicator may order that the additional evidence be taken before the board upon conditions determined by the adjudicator. The board may modify its findings and decision in the case by reason of the additional

evidence and shall file that evidence and any modifications, new findings, or decisions, with the adjudicator and mail copies of the new findings or decisions to the teacher.

The adjudicator may affirm board action or remand to the board for further proceedings. The adjudicator shall reverse, modify, or grant any appropriate relief from the board action if substantial rights of the teacher have been prejudiced because the board action is:

1. In violation of a board rule or policy or contract;
or

2. Unsupported by a preponderance of the competent evidence in the record made before the board when that record is viewed as a whole; or

3. Unreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

The adjudicator shall, within fifteen days after the hearing, make a decision and shall give a copy of the decision to the teacher and the secretary of the board. The decision of the adjudicator shall become the final and binding decision of the board unless either party within ten days notifies the secretary of the board that the decision is rejected. The board may reject the decision by majority vote, by roll call, in open meeting and entered into the minutes of the meeting. The board shall immediately notify the teacher of its decision by certified mail. The teacher may reject the adjudicator's decision by notifying the board's secretary in writing within ten days of the filing of such decision.

All costs of the adjudicator shall be shared equally by the teacher and the board.

279.18. Appeal by either party to court

If either party rejects the adjudicator's decision, the rejecting party shall, within thirty days of the initial filing of such decision, appeal to the district court of the county in which the administrative office of the school district is located. The notice of appeal shall be immediately mailed by certified mail to the other party. The adjudicator shall transmit to the reviewing court the original or certified copy of the entire record which may be the subject of the petition. By stipulation of all parties to the review proceedings, the record of such a case may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional cost. The court may require or permit subsequent corrections or additions to the shortened record.

In proceedings for judicial review of the adjudicator's decision, the court shall not hear any further evidence but shall hear the case upon the certified record. In such judicial review, especially when considering the credibility

of witnesses, the court shall give weight to the fact findings of the board; but shall not be bound by them. The court may affirm the adjudicator's decision or remand to the adjudicator or the board for further proceedings upon conditions determined by the court. The court shall reverse, modify, or grant any other appropriate relief from the board decision or the adjudicator's decision equitable or legal and including declaratory relief if substantial rights of the petitioner have been prejudiced because the action is:

1. In violation of constitutional or statutory provisions; or

2. In excess of the statutory authority of the board or the adjudicator; or

3. In violation of a board rule or policy or contract; or

4. Made upon unlawful procedure; or

5. Affected by other error of law; or

6. Unsupported by a preponderance of the competent evidence in the record made before the board and the adjudicator when that record is viewed as a whole; or

7. Unreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

An aggrieved or adversely affected party to the judicial review proceeding may obtain a review of any final judgment of the district court by appeal to the supreme court. The appeal shall be taken as in other civil cases, although the appeal may be taken regardless of the amount involved.

KANSAS

Kansas Statutes Annotated

72-1383. Cancellation of teachers' certificates; grounds.

Any certificate issued by the state board of education or institutions under the state board of regents may be canceled by the state board of education in the manner provided by law, on the grounds of immorality, gross neglect of duty, annulling of written contracts with boards of education without the consent of the board which is party to the contract, or for any cause that would have justified the withholding thereof when the same was granted.

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, incompetence, physical unfitness or failure to comply with the reasonable requirements of the board of education as may be prescribed to show normal improvement and evidence of professional training. ...

72-5411. Continuation of teachers' contracts; notice to terminate or discontinue; change by mutual consent.

All contracts of employment of teachers in the public schools in the state shall continue in full force and effect during good behavior and efficient and competent service rendered by the teacher, and all contracts of employment shall be deemed to continue for the next succeeding school year unless written notice of intention to terminate the contract is served by the board of education upon any teacher on or before April 10 or the teacher gives written notice to the board of education that the teacher does not desire continuation of the contract on or before May 10 or, if applicable, not later than 15 days after final action is taken by the board of education upon termination of professional negotiation absent a binding agreement under article 54 of chapter 72 of Kansas Statutes Annotated, whichever is the later date. 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.

72-5437. Continuation of teachers' contracts; notice of termination or nonrenewal; change of terms.

All contracts of employment of teachers, as defined in K.S.A. 72-5436, and amendments thereto, except contracts entered into under the provisions of K.S.A. 72-5412a, and

amendments thereto, shall be deemed to continue for the next succeeding school year unless written notice of termination or nonrenewal is served as provided in this section. Written notice to terminate a contract may be served by a board upon any teacher prior to the time the contract has been completed, and written notice of intention to nonrenew a contract shall be served by a board upon any teacher on or before April 10. A teacher shall give written notice to the board that the teacher does not desire continuation of the contract on or before May 10 or, if applicable, not later than 15 days after final action is taken by the board upon termination of professional negotiation absent a binding agreement under article 54 of chapter 72 of Kansas Statutes Annotated, whichever is the later date. Terms of a contract may be changed at any time by mutual consent of both the teacher and the board.

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 K.S.A. 72-5437, or whenever such a teacher is terminated before the end of his or her contract term, the teacher shall be given a written notice of the proposed nonrenewal or termination including (1) a statement of the reasons for the proposed nonrenewal 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 or the board of control, or the secretary of the board of trustees within fifteen (15) days from the date of such notice of nonrenewal or termination that he or she desires to be heard and designating therein one hearing committee member. Upon the filing of any such notice, the board shall, within fifteen (15) days thereafter, designate one hearing committee member. The two hearing committee members shall designate a third hearing committee member who shall be the chairman and who 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, area vocational-technical school or community junior college 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 K.S.A. 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 testimony of a witness by affidavit may be presented only if such witness lives more than one hundred (100) miles from the location of the unified school district office, area vocational-technical school or community junior college, or is absent from the state, or is unable to appear because of age, illness, infirmity or imprisonment. When testimony is presented by affidavit the same shall be served upon the clerk of the board of education or the board of control, or the secretary of the board of trustees, 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 not less than ten (10) days prior to the presentation to the hearing committee, and

(d) the right of the teacher to testify in his or her own behalf and give reasons for his or her 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. Witnesses, fees, and mileage; hearing committee members, expenses; testimony; recording and transcribing, when; costs.

(a) For attending before the hearing committee at a hearing hereunder, witnesses who are subpoenaed shall receive five dollars (\$5) per day and mileage at the rate prescribed under K.S.A. 75-3203a for miles actually traveled in going to and returning from attendance at such hearing. The fees and mileage for the attendance of witnesses shall be borne by the party calling the witness, except that fees and mileage of witnesses subpoenaed by the hearing committee shall be borne equally by the parties. Witnesses voluntarily attending before the hearing committee shall not receive fees or mileage for attendance at such hearing.

(b) Each member of the hearing committee shall be paid subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223, and amendments thereto. The costs for the services of members of the hearing committee shall be borne

equally by the parties.

(c) 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.

(d) All other costs of a hearing hereunder which are not specifically allocated in this section shall be borne equally by the parties.

72-5441. Same; affidavits; depositions; interrogatories; time.

When either party desires to present testimony by affidavit or by deposition, that party shall furnish to the hearing committee the date on which the testimony shall be taken. A copy of the affidavit or the deposition shall be furnished to the opposing party within ten (10) days following the taking of any such testimony, and no testimony shall be presented at a hearing until the opposite party has had at least ten (10) days prior to the date upon which the testimony is to be presented to the hearing committee to rebut such testimony by affidavit or deposition or to submit interrogatories to the affiant or deponent to be answered under oath. Such ten (10) day period may, for good cause shown, be extended by the chairman of the hearing committee.

72-5442. Powers of hearing committee; rules of evidence not binding; burden of proof; admissibility of evidence.

At any meeting of a hearing committee, when authorized by a majority of the committee, any member thereof may:

- (a) Administer oaths;
- (b) issue subpoenas for the attendance and testimony of witnesses and the production of books, papers and documents relating to any matter under investigation;
- (c) authorize depositions to be taken;
- (d) receive evidence and limit lines of questioning and testimony which are repetitive, cumulative or irrelevant;
- (e) call and examine witnesses and introduce into the record documentary and other evidence;
- (f) regulate the course of the hearing and dispose of procedural requests, motions and similar matters;
- (g) take any other action necessary to make the hearing accord with administrative due process;

Hearings hereunder shall not be bound by rules of evidence whether statutory, common law or adopted by the rules of court: Provided, however, That the burden of proof shall initially rest upon the board in all instances other than when the allegation is that the teacher's contract has been terminated or nonrenewed by reason of the teacher having exercised a constitutional right. All relevant evidence shall

be admissible, except that the hearing committee may in its discretion exclude any evidence if it believes that its probative value is substantially outweighed by the fact that its admission will necessitate undue consumption of time.

72.5443. Opinion of hearing committee; findings of fact and recommendation; effect; appeal to district court.

(a) Unless otherwise agreed to by both the board and the teacher, the hearing committee shall render a written opinion not later than 30 days after the close of the hearing, setting forth its findings of fact and recommendation as to the determination of the issues. The opinion of the hearing committee shall be submitted to the teacher and to the board.

(b) If the members of the hearing committee are unanimous in their opinion, the board shall adopt the opinion as its decision in the matter and such decision shall be final, subject to appeal to the district court as provided in K.S.A. 60-2101, and amendments thereto.

(c) If the members of the hearing committee are not unanimous in their opinion, the board shall consider the opinion, hear oral arguments or receive written briefs from the teacher and a representative of the board, and decide whether the contract of the teacher shall be renewed or terminated. The decision of the board under this subsection shall be submitted to the teacher not later than 30 days after the close of oral argument or submission of written briefs and such decision shall be final, subject to appeal to the district court as provided by K.S.A. 60-2101, and amendments thereto.

KENTUCKY

Kentucky Revised Statutes

161.120. Revocation of certificates.

Any certificate issued under KRS 161.010 to 161.100, or any certificate or license issued under any previous law to superintendents, principals, teachers, supervisors, directors of pupil personnel or other administrative, supervisory or instructional employees may be revoked by the state board of education, on the written recommendation of the superintendent of public instruction, for immorality, misconduct in office, incompetency or wilful neglect of duty, or upon the determination that a certificate applicant presented or declared false information toward obtaining the issuance or renewal of any type of teacher certification. Before the certificate is revoked the defendant shall be given a copy of the charges against him and an opportunity, upon not less than ten (10) days' notice, to be heard in person or by counsel.

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. violations 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 or teachers involved.

(2) (a) Charges on the above causes shall be supported by written records of teacher performance by the superintendent, principal, or other supervisory personnel of the board.

(b) Marriage of a teacher shall not be cause for termination of the 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) days nor more than thirty (30) days after the service of such charges upon the teacher. The teacher shall within ten (10) days after the receipt of the 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.

(5) The board of education may, on recommendation of the superintendent, suspend a teacher pending final action to terminate his contract if, in its judgment, the character of the charges warrants such action. If after the hearing the decision of the board is against termination of the contract, the suspended teacher shall be paid his full salary for the period of such suspension.

(6) The teacher shall have a right to make an appeal both as to law and as to fact to the circuit court. If said appeal is not made within thirty (30) days after dismissal, then the decision of the board of education shall be final. Such appeal shall be an original action in said court and shall be commenced by the filing of a petition against such board of education, in which petition the facts shall be alleged upon which the teacher relies for a reversal or modification of the order of termination of contract. Upon service or waiver of summons in said appeal, such board of education shall forthwith transmit to the clerk of said court for filing a transcript of the original notice of charges and a transcript of all evidence adduced at the hearing before such board, 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 before the board of education and shall hold such additional hearings as it may deem 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 under the provisions of KRS 161.720 to 161.810 and in accordance with the evidence adduced at the hearing. Either the teacher or the board of education may appeal from the action of the court to the Court of Appeals.

LOUISIANA

Louisiana Revised Statutes Annotated

17:442. 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....

17:443. 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 contributing to any group, organization, movement or corporation that is by law or injunction prohibited 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 twenty days in advance of the date of the hearing, the superintendent with approval of the school board shall furnish the teacher with a copy of the written charges. Such statement of charges shall include a complete and detailed list of the specific reasons for such charges and shall include but not be limited to the following: date and place of alleged offense or offenses, names of individuals involved in or witnessing such offense or offenses, names of witnesses called or to be called to testify against the teacher at said hearing, and whether or not any such charges previously have been brought against the teacher. 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 said hearing. For the purpose of conducting hearings hereunder the board shall have the power to issue subpoenas to compel the attendance of all witnesses on behalf of the teacher. Nothing herein contained shall impair the right of

appeal to a court of competent jurisdiction.

B. If a permanent teacher is found guilty by a school board, after due and legal hearing as provided herein, on charges of willful neglect of duty, or of incompetency, or dishonesty, or of being a member of or contributing to any group, organization, movement or corporation that is by law or injunction prohibited from operating in the state of Louisiana, and ordered removed from office, or disciplined by the board, the superintendent with approval of the board shall furnish to the teacher a written statement of recommendation of removal or discipline, which shall include but not be limited to the exact reason(s), offense(s) or instance(s) upon which the recommendation is based. Such teacher may, not more than one year from the date of the said finding, petition a court of competent jurisdiction for a full hearing to review the action of the school board, and the court shall have jurisdiction to affirm or reverse the action of the school board in the matter. If the finding of the school board is reversed by the court and the teacher is ordered reinstated and restored to duty, the teacher shall be entitled to full pay for any loss of time or salary he or she may have sustained by reason of the action of the said school board.

17:461. Probation and tenure of teachers

All teachers shall serve a probationary term of three years reckoned from the date of appointment in the parish of Orleans, during which term the Orleans Parish school board may dismiss or discharge any such probationary teacher upon the recommendation of the superintendent of public schools for the Parish of Orleans, accompanied by the written reasons therefor.

Any probationary teacher found unsatisfactory by the Orleans Parish school board at the expiration of the said probationary period, shall be notified in writing by the board that he has been discharged or dismissed; in the absence of such notification, the probationary teacher shall automatically become a regular and permanent teacher in the employ of the Orleans Parish school board....

17:462. Permanent teacher; cause for removal; procedure

A. A permanent teacher shall not be removed from office except on written and signed charges of immorality, or of wilful neglect of duty, or of incompetency, or of being a member of or of contribution 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 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 compel 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.

B. If permanent teacher is found guilty by the school board, after due and legal hearing as provided herein, on charges of wilful neglect of duty, or of incompetency, or immorality, 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 ordered removed from office or disciplined by the said board, the teacher may, not more than one year from the date of said finding, petition a court of competent jurisdiction for a full hearing to review the action of the school board, and the court shall have jurisdiction to affirm or reverse the action of the school board in the matter. If the finding of the school board is reversed by the court and

the teacher is ordered reinstated and restored to duty, the teacher shall be entitled to full pay for any loss of time or salary he may have sustained by reason of the action of the said school board.

17:471. Teacher defined; probationary term; tenure; discipline and removal from office.

....

B. ...A probationary teacher may be dismissed, or otherwise disciplined by the Department of Corrections, upon written recommendation, accompanied by valid reasons therefor, of the secretary of corrections. ...

C. Any teacher found unsatisfactory by the Department of Corrections at the expiration of the probationary term shall be notified in writing that their employment contract will not be renewed. In absence of such notice a probationary teacher shall become a regular and permanent teacher employed by the Department of Corrections.

D. A permanent teacher employed by the Department of Corrections shall not be disciplined or removed from office except upon written and signed charges of wilful neglect of duty, incompetence, dishonesty, or violation of the rules and regulations governing employees of the department, and then only if found guilty of such charges after a hearing by the Department of Corrections. All hearings conducted pursuant to this Section shall be in accordance with the provisions of Chapter 13 of Title 49 of the Louisiana Revised Statutes of 1950 relative to adjudication. Judicial review of a decision of the board shall be in accordance with Chapter 13 of Title 49 of the Louisiana Revised Statutes of 1950.

MAINE**Maine Revised Statutes Annotated****20-A Sec. 13020. Revocation or suspension of a certificate**

1. General. The state board's rules adopted under this chapter shall specify the procedure to be followed by the commissioner in seeking the revocation or suspension of a certificate in the Administrative Court and shall authorize the commission to enter into a consent agreement with any certificated person in lieu of initiating or completing a proceeding in the Administrative Court.

2. Grounds for revocation or suspension of a certificate. The following are grounds for revocation or suspension of a certificate issued under this Title:

A. Evidence that a person has injured the health or welfare of a child through physical or sexual abuse or exploitation shall be grounds for revocation or suspension of a certificate. ...

B. Other grounds as may be established by state board in its rules relating to criminal offenses not inconsistent with Title 5, chapter 341, fraud or gross incompetence.

....

20-A Sec. 13202. Teacher dismissal

A school board, after investigation, due notice of hearing and hearing thereon, shall dismiss any teacher, although having the requisite certificate, who proves unfit to teach or whose services the board deems unprofitable to the school; and give to that teacher a certificate of dismissal and of the reasons for the dismissal, a copy of which the board shall retain. That dismissal shall not deprive the teacher of compensation for previous services.

MARYLAND**The Annotated Code of the Public General Laws of Maryland
Education****6-201. Appointment, tenure, and qualifications.**

...

(b) Appointment of professional personnel.

(1) The county superintendent shall nominate for appointment by the county board:

...

(ii) All principals, teachers, and other certificated personnel.

(2) As to these personnel, the county superintendent shall:

...

(iv) Suspend them for cause and recommend them for dismissal in accordance with Sec. 6-202 of this article.

....

6-202. Suspension or dismissal of teachers, principals and other professional personnel.

(a) Grounds and procedure for suspension or dismissal.

(1) On the recommendation of the county superintendent, a county board may suspend or dismiss a teacher, principal, supervisor, assistant superintendent, or other professional assistant for:

(i) Immorality;

(ii) Misconduct in office, including knowingly failing to report suspected child abuse in violation of Sec. 5-903 of the Family Law Article;

(iii) Insubordination;

(iv) Incompetency; or

(v) Willful neglect of duty.

(2) Before removing an individual, the county board shall send the individual a copy of the charges against him and give him an opportunity within 10 days to request a hearing.

(3) If the individual requests a hearing within the 10 day period:

(i) The county board promptly shall hold a hearing, but a hearing may not be set within 10 days after the county board sends the individual a notice of the hearing; and

(ii) The individual shall have an opportunity to be heard before the county board, in person or by counsel, and to bring witnesses to the hearing.

(iii) The individual may appeal from the decision of the county board to the State Board.

MASSACHUSETTSAnnotated Laws of Massachusetts
Chapter 71

38G. Standards of Certification of Teachers, Principals, etc.

...

Any certificate issued by the board may be revoked for cause, pursuant to the standards and procedures established by the rules and regulations of the board.

....

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 section forty-one 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 periods, prior to the meeting 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 the discretion under section forty-one or a superintendent employed under a contract, for the duration of his contract, shall nor be dismissed, except for inefficiency, incompetency, 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; nor unless, if he so requests, he shall have been furnished by the committee with a written charge or charges of the cause or causes for which his dismissal is proposed; nor 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; not unless the charge or charges shall have been substantiated; not 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 section nor section forty-one shall affect 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. No teacher or superintendent who has been lawfully dismissed shall receive compensation for services rendered thereafter.

42D. Suspension of Teachers and Superintendents.

The school committee may suspend any teacher, but no teacher shall be suspended for more than ten days and no superintendent, other than a union superintendent and the superintendent of schools in the city of Boston, shall be suspended, unless by a two thirds vote of the whole committee. In every such town a teacher or superintendent employed at discretion under section forty-one or a superintendent employed under a contract, for the duration of his contract, shall not be suspended, under the provisions of this paragraph, except for unbecoming conduct or other good cause, nor unless at least seven 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; nor unless, if he so requests, he shall have been furnished by the committee with a written charge or charges of the cause or causes for which the suspension is proposed; nor 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 to examine them and to cross-examine other witnesses; nor unless the charge or charges shall have been substantiated; nor unless, in the case of a teacher, the superintendent shall have given the committee his recommendations thereon. No teacher or superintendent shall be suspended for a period exceeding one month, nor shall such teacher or superintendent receive compensation for any period of lawful suspension. No teacher or superintendent shall be interrogated prior to any notice given to him relative to a hearing on suspension unless he is notified of his right to be represented by counsel during any such investigation.

The school committee, a superintendent or any other school official designated for the purpose, by the superintendent, may, notwithstanding any provision of this section to the contrary, suspend for a period of not more than five days a teacher for unbecoming conduct or for any other cause which such committee, superintendent or official deems adequate.

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.

MICHIGANMichigan Statutes Annotated
Title 15. Education

15.1983 Same [Probationary Period]; 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.

15.2001 Discharge or demotion of teacher on continuing tenure; retirement.

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, notice, hearing, and determination thereof, as are hereinafter provided.

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.

15.2003 Same; suspension, compensation.

Sec. 3. On the filing of charges in accordance with this section, the controlling board may suspend the accused teacher from active performance of duty until a decision is rendered by the controlling board, but the teacher's salary shall continue during such suspension: Provided, That if the decision of the controlling board is appealed and the tenure commission reverses the decision of the controlling board, the

teacher shall be entitled to all salary lost as a result of such suspension.

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 [15] days after the termination of the hearing. A copy of such decision shall be furnished the teacher affected within five [5] 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 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 the 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.

15.2021 Appeal; hearing, notice.

Sec. 1. A teacher [who has achieved tenure status may] appeal any decision of a controlling board under this act within 30 days from the date of such decision, to a state tenure commission. The state tenure commission shall provide for a hearing to be held within 60 days from the date of appeal. Notice [and conduct] of [such] hearing shall be the same as provided in article 4, section 4 of this act, and in such other rules and regulations as the tenure commission may adopt.

MINNESOTA**Minnesota Statutes Annotated****125.09. Suspension or revocation of licenses**

Subdivision 1. Grounds for revocation. The board of teaching or the state board of education, whichever has jurisdiction over a teacher's licensure, may, on the written complaint of the board employing a teacher, or of a teacher organization, or of any other interested person, which complaint shall specify the nature and character of the charges, suspend or revoke such teacher's license to teach for any of the following causes:

- (1) Immoral character or conduct;
- (2) Failure, without justifiable cause, to teach for the term of the teacher's contract;
- (3) Gross inefficiency or willful neglect of duty; or
- (4) Failure to meet licensure requirements; or
- (5) Fraud or misrepresentation in obtaining a license.

125.12. Employment; contracts, termination

Subd. 2. Hiring, dismissing. School boards shall hire or dismiss teachers at duly called meetings.

Subd. 3. Probationary period. The first three consecutive years of a teacher's first teaching experiences 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 the teacher is thereafter employed shall be one year. The school board shall adopt a plan for written evaluation of teachers during the probationary period. Evaluation shall occur not less than three times each year. 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 June 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 the 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 section 123.35, subdivision 5.

Subd. 4. Termination of contract after probationary period. A teacher who has completed a probationary period in

any school district, and who has not been discharged or advised of a refusal to renew the teacher's 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 prior to April 1 upon one of the grounds specified in subdivision 6 or prior to June 1 upon one of the grounds specified in subdivisions 6a or 6b, or until the teacher is discharged pursuant to subdivision 8, or by written resignation of the teacher submitted prior to April 1.... 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 upon reasonable notice to the teacher of the date set for hearing, 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.

...

Subd. 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 the teacher's educational effectiveness;
- (d) Other good and sufficient grounds rendering the teacher unfit to perform the teacher's duties.

A contract shall not be terminated upon one of the grounds specified in clause (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.

...

Subd. 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 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 months 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 record 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.

Subd. 9. Hearing procedures. Any hearing held pursuant to this section shall be held upon appropriate and timely notice to the teacher, and any hearing held pursuant to subdivision 6 or 8 shall be private or public at the discretion of the teacher. A hearing held pursuant to subdivision 6b shall be public and may be consolidated by the school board. At the hearing, the board and the teacher may each be represented by counsel at each party's 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.

Subd. 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 case of a contract termination for grounds specified in subdivision 6, prior to June 1 for grounds specified in subdivision 6a or 6b, or within ten days after conclusion of the hearing in the case of a discharge. If the decision of the board or of the 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.

Subd. 11. Judicial review. The pendency of judicial proceedings shall not be ground 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.

Subd. 13. Exception. This section shall not apply to any district in a city of the first class.

125.17. Teacher tenure act; cities of the first class; definitions

...

Subd. 2. Probationary period; discharge or demotion. All teachers in the public schools in cities of the first class during the first three years of consecutive employment shall be deemed to be in a probationary period of employment during which period any annual contract with any teacher may, or may not, be renewed as the school board shall see fit. The school board shall adopt a plan for a written evaluation of teachers during the probationary period. Evaluation shall occur not less than three times each year. The school board may, during such probationary period, discharge or demote a teacher for any of the causes as specified in this code. A written statement of the cause of such discharge or demotion shall be given to the teacher by the school board at least 30 days before such removal or demotion shall become effective, and the teacher so notified shall have no right of appeal therefrom.

Subd. 3. Period of service after probationary period; discharge or demotion. After the completion of such probationary period, without discharge, such teachers as are thereupon re-employed shall continue in service and hold their respective position during good behavior and efficient and competent service and shall not be discharged or demoted

except for cause after a hearing.

Any probationary teacher shall be deemed to have been re-employed for the ensuing school year, unless the school board in charge of such school shall give such teacher notice in writing before June 1 of the termination of such employment. In event of such notice the employment shall terminate at the close of the school sessions of the current school year.

Subd. 4. Grounds for discharge or demotion. Causes for the discharge or demotion of a teacher either during or after the probationary period shall be:

(1) Immoral character, conduct unbecoming a teacher, or insubordination;

(2) Failure without justifiable cause to teach without first securing the written release of the school board having the care, management, or control of the school in which the teacher is employed;

(3) Inefficiency in teaching or in the management of a school;

(4) Affliction with active tuberculosis or other communicable disease shall be considered as cause for removal or suspension while the teacher is suffering from such disability; or

(5) Discontinuance of position or lack of pupils.

Subd. 5. Hearing of charges against teacher. The charges against a teacher shall be in writing and signed by the person making the same and then filed with the secretary or clerk of the school board having charge of the school in which the teacher is employed. Such school board before discharging or demoting a teacher shall then accord the teacher against whom such charges have been filed a full hearing and give to the teacher at least ten days' notice in writing of the time and place of such hearing; such notice may be served personally or sent by certified mail addressed to such teacher at the teacher's last known post office address; provided, that if the charge be made by any person not in connection with the school system the charge may be disregarded by such school board. Upon such hearing being held such school board shall hear all evidence that may be adduced in support of the charges and for the teacher's defense thereto. Either party shall have the right to have a written record of the hearing at the expense of the board and to have witnesses subpoenaed and all witnesses so subpoenaed shall be examined under oath. Any member of the school board conducting such a hearing shall have authority to issue subpoenas and to administer oaths to witnesses.

Subd. 6. Counsel; examination of witnesses. Each party appearing before the school board shall have the right to be

represented by counsel, and such counsel may examine and cross-examine witnesses and present arguments.

Subd. 7. Hearings. All hearings before the school board shall be private or may be public at the decision of the teacher against whom such charges have been filed.

Subd. 8. Decision, when rendered. Such hearing must be concluded and a decision in writing, stating the grounds on which it is based, rendered within 25 days after giving of such notice. Where the hearing is before a school board the teacher may be discharged or demoted upon the affirmative vote of a majority of the members of the school board. If the charges, or any of such, are found to be true, the school board conducting the hearing shall discharge, demote, or suspend the teacher, as seems to be for the best interest of the school. No teacher shall be discharged for either of the causes specified in subdivision 4. clause (3), except during the school year, and then only upon charges filed four months before the close of the school sessions of such school year.

Subd. 9. Charges expunged from records. In all cases where the final decision is in favor of the teacher the charge or charges shall be physically expunged from the records.

Subd. 10. Suspension pending hearing; salary. Upon the filing of charges against a teacher, the school board may suspend the teacher from regular duty. If, upon final decision, the teacher is suspended or removed, the school board may in its discretion determine the teacher's salary or compensation as of the time of filing the charges. If the final decision is favorable to the teacher there shall be no abatement of salary or compensation.

MISSISSIPPI**Mississippi Code Annotated**

37-9-59. Suspension or removal of principal or teacher; prohibited grounds for denying employment or reemployment.

For incompetence, neglect of duty, immoral conduct, intemperance, brutal treatment of pupil or other good cause the superintendent of schools may dismiss or suspend any certificated employee in any school district. Before being so dismissed or suspended any certificated employee shall be notified of the charges against him and he shall be advised that he is entitled to a public hearing upon said charges. In the event the continued presence of said employee on school premises poses a potential threat or danger to the health, safety or general welfare of the students, or, in the discretion of the superintendent, may interfere with or cause a disruption of normal school operations, the superintendent may immediately release said employee of all duties pending a hearing if one is requested by the employee. In the event a certificated employee is arrested, indicted or otherwise charged with a felony by a recognized law enforcement official, the continued presence of the certificated employee on school premises shall be deemed to constitute a disruption of normal school operations. The school board, upon a request for a hearing by the person so suspended or removed shall set a date, time and place for such hearing which shall be not sooner than five (5) days nor later than thirty (30) days from the date of the request. The procedure for such hearing shall be as prescribed for hearings before the board or hearing officer in Section 37-9-111. From the decision made at said hearing, any certificated employee shall be allowed an appeal to the chancery court in the same manner as appeals are authorized in Section 37-9-113. Any party aggrieved by action of the chancery court may appeal to the Mississippi Supreme Court as provided by law. In the event that a certificated employee is immediately relieved of duties pending a hearing, as provided in this section, said employee shall be entitled to compensation for a period up to and including the date that the initial hearing is set by the school board, in the event that there is a request for such a hearing by the employee. In the event that an employee does not request a hearing within five (5) calendar days of the date of the notice of discharge or suspension, it shall constitute a waiver of all rights by said employee and such discharge or suspension shall be effective on the date set out in the notice to the employee.

....

37-9-101. Short title; declaration of legislative intent.

Sections 37-9-101 to 37-9-113 shall be known as and cited as the "School Employment Procedures Law of 1977."

It is the intent of the legislature to establish procedures for providing public school employees with notice of the reasons for not offering an employee a renewal of his contract, to provide an opportunity for the employee to present matters in extenuation or exculpation to enable the board to determine whether the recommendation of nonemployment is a proper employment decision and not contrary to law, and not to establish a system of tenure or require that all decisions of nonreemployment be based upon cause with respect to employment in the school district.

37-9-105. Written notice of determination not to offer employee renewal contract shall be given; time therefor.

In the event that a determination is made by a school district not to offer an employee a renewal contract for a successive year, written notice of nonrenewal shall be given within seven (7) days of the date when the recommendation to reemploy would have been made under the provisions of sections 37-9-15 and 37-9-17, and amendments thereto, but in any event no later than the following:

...
 (c) If the employee is a teacher or other professional educator, the school district shall give a notice of nonreemployment on or before April 8.

37-9-109. Rights of employee.

An employee who has received notice under section 37-9-105, upon written request, shall be entitled to:

(a) Written notice of the reasons for nonreemployment, together with a summary of the factual basis therefor, which notice shall be given at least five (5) days prior to any hearing;

(b) An opportunity for a hearing at which to present matters relevant to the reasons given for the nonreemployment decision, including any reasons alleged by the employee to be the reason for nonreemployment;

(c) Receive a fair and impartial hearing before the board or hearing officer;

(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.

(1) The school board, upon request for a hearing from an employee under the terms of sections 37-9-101 to 37-9-113, shall set the time, place and date of such hearing and notify

the employee in writing of same. The date shall be set not sooner than five (5) days nor later than thirty (30) days from the date of the request, unless otherwise agreed. The hearing may be held before the board or before a hearing officer appointed for such purpose by the board, either from among its own membership, from the staff of the school district or other qualified and impartial person, but in no event shall the hearing officer be the staff member responsible for the initial decision of nonreemployment.

(2) The employee shall be afforded an opportunity to present matters at the hearing relevant to the reasons given for the nonreemployment determination and to the reasons the employee alleges to be the reasons for nonreemployment and to be represented by counsel at such a hearing. Such hearing shall be conducted in such a manner as to afford the employee a fair and reasonable opportunity to present witnesses and other evidence pertinent to the issues in his behalf and to cross-examine witnesses against the employee. The board or the hearing officer may require any portion of the evidence to be submitted in the form of depositions or affidavits, and in case affidavits are received, an opportunity to present counter-affidavits shall be provided.

(3) The board shall cause to be made stenographic notes of the proceedings. In the event of a judicial appeal of the board's decision, the entire expense of the transcript and notes shall be assessed as court costs.

(4) The board shall review the matters presented before it, or, if the hearing is conducted by a hearing officer, the record of the proceedings and, based solely thereon, conclude whether the nonreemployment determination is a proper employment decision, and shall notify the employee in writing of its final decision and reasons therefor. Such notification shall be within thirty (30) days of the conclusion of the hearing if the hearing is conducted by a hearing officer and within ten (10) days of the conclusion of the hearing if the hearing is initially conducted by the board. If the matter is heard before a hearing officer, the board shall also grant the employee the opportunity to appear before the board to present a statement in his own behalf, either in person or by his attorney, prior to a final decision by the board.

(5) In conducting a hearing, the board or hearing officer shall not be bound by common law or by statutory rules of evidence or by technical or formal rules of procedure except as provided in sections 37-9-101 to 37-9-113, but may conduct such hearing in such manner as best to ascertain the rights of the parties; provided, however, hearsay evidence, if admitted, shall not be the sole basis for the determination of facts by the board or hearing officer.

(6) In the event the decision of the school board is in favor of the employee, the board shall have the authority to

order the execution of a contract with the employee for an additional period of one (1) year.

(7) For purposes of conducting hearings under sections 37-9-101 to 37-9-113, the board or hearing officer shall have the authority to issue subpoenas for witnesses and to compel their attendance and the giving of evidence. Any expense connected therewith shall be borne by the party requesting the subpoenas, which shall include an appearance fee for each witness so subpoenaed not inconsistent with state laws governing payments to witnesses. In the event it is necessary to enforce or quash a subpoena issued to compel the attendance of a witness, application shall be made with the chancery court of the county where the school board is located.

37-9-113. Appeals.

(1) Any employee aggrieved by a final decision of the school board is entitled to judicial review thereof, as hereinafter provided.

(2) An appeal may be taken by such employee to the chancery court of the judicial district in which the school district is located, by filing a petition with the clerk of that court and executing and filing bond payable to the school board with sufficient sureties, in the penalty of not less than two hundred dollars (200.00), conditioned upon the payment of all of the costs of appeal, within twenty (20) days of the receipt of the final decision of the board.

(3) The scope of review of the chancery court in such cases shall be limited to a review of the record made before the school board or hearing officer to determine if the action of the school board is unlawful for the reason that it was:

- (a) Not supported by any substantial evidence;
- (b) Arbitrary or capricious; or
- (c) In violation of some statutory or constitutional right of the employee.

(4) No relief shall be granted based upon a court's finding of harmless error by the board in complying with the procedural requirements of sections 37-9-101 to 37-9-113. However, in the event that there is a finding of prejudicial error in the proceedings, the cause shall be remanded for a rehearing consistent with the findings of the court.

(5) Any party aggrieved by the action of the chancery court may appeal to the Supreme Court in the manner provided by law.

MISSOURI**Annotated Missouri Statutes**

168.071. Revocation, suspension or refusal of license, grounds -- procedure -- appeal

The Missouri state board of education may refuse to issue or renew, or may suspend or revoke a certificate of license to teach upon satisfactory proof of incompetency, cruelty, immorality, drunkenness, neglect of duty, or the annulling of written contract with the local board of education without the consent of the majority of the members of the board which is a party to the contract. All charges must be preferred in writing. They shall be signed by the chief administrative officer of the district or by the president of the board when so authorized by a majority of the board. The charges must be sworn to by the party or parties making the accusation, and filed with the respective certificating authority. The teacher must be given due notice of not less than ten days, and an opportunity to be heard, together with witnesses. The complaint must plainly and fully specify what incompetency, immorality, neglect of duty or other charges are made against the teacher, and if after a hearing the certificate is refused, suspended, or revoked, the teacher may appeal to the circuit court at any time within ten days thereafter by filing a petition for review of the judgment of the certificating authority. On appeal the judge shall, with or without a jury at the option either of the teacher or the person making the complaint, try the matter de novo, affirming or denying the action of the certificating authority, and shall tax the cost against the appellant if the judgment of the certificating authority is affirmed. If the court disaffirms the judgment, then it shall assess the costs of the whole proceedings against the district making the complaint.

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 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 absences 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 evaluative 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.

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 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.

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.

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.

2. The appeal may be taken by filing notice of appeal with the board of education, whereupon the board of education, under its certificate, shall forward to the court all documents and papers on file in the matter, together with a transcript of the evidence, the findings and the decision of the board of education, which shall thereupon become the

record of the cause. Such appeal shall be heard as provided in chapter 536, RSMo.

3. Appeals from the circuit court shall be allowed in the same manner as in civil actions, except that the original transcript prepared and filed in the circuit court by the board of education, together with a transcript of the proceedings had in the circuit court, shall constitute the transcript on appeal in the appellate court. The board of education shall make available, to the parties, copies of any transcript prepared and filed by it in the circuit court and upon final determination of the cause in the appellate court the original record of the board of education filed as a part of the transcript on appeal shall be certified back to the board of education by the appellate court. In all appeals from the board of education or circuit court the costs thereof shall be assessed against the losing party as provided by law in civil cases. All appeals to the circuit court and appellate courts shall have precedence over all cases except election contests.

4. If the circuit court finds for the teacher, he shall be restored to permanent teacher status and shall receive compensation for the period during which he may have been suspended from work, and such other relief as may be granted by the court.

MONTANA

Montana Code Annotated

Title 20. Education

20-4-110. Suspension, revocation, and denial -- appeals.

(1) The board of public education may suspend or revoke the teacher or specialist certificate of any person for any of the following reasons:

(a) making any statement of material fact in the application for a certificate which the applicant knows to be false;

(b) any reason that would have required or authorized the denial of the teacher or specialist certificate to the person if it had been known at the time the certificate was issued;

(c) incompetency;

(d) gross neglect of duty;

(e) conviction of, entry of a guilty verdict, a plea of guilty, or a plea of no contest to a criminal offense involving moral turpitude in this state or any other state or county;

(f) immoral conduct related to the teaching profession;

(g) substantial and material nonperformance of the employment contract between the teacher or specialist and the trustees of a district without good cause or the written consent of the trustees;

or

(h) denial, revocation, suspension, or surrender of a teacher or specialist certificate in another state for any reason constituting grounds for similar action in this state.

(2) The board may initiate proceedings under this section if a request for the suspension or revocation of the teacher or specialist certificate of any person is made to it by;

(a) the trustees of a district as to a teacher or specialist employed by that district within the 12 months immediately preceding receipt of the request by the board of public education; or

(b) the superintendent of public instruction.

(3) (a) If the employment relationship between a school district and a teacher or specialist is terminated or not renewed because the trustees have reason to believe that the teacher or specialist engaged in conduct described in subsection (1) (e) or (1) (f), the trustees shall make a written report to the superintendent of public instruction describing the circumstances of the termination or nonrenewal of the employment relationship.

(b) The superintendent shall review the report and may conduct further investigation. If he is satisfied that sufficient grounds exist, he may request action by the board of public education under subsection (2)(b). The request must

be brought within 1 year after discovery of the events that gave rise to the report.

(c) The trustees and the superintendent shall ensure the confidentiality of the report.

(d) The trustees and the superintendent and their agents and employees are immune from suit for actions taken in good faith under this section with respect to the report.

(4) The board shall give a 30-day written notification to any person when the board intends to consider the suspension or revocation of his certificate. The board shall conduct an investigation of the reasons for the suspension or revocation charge and then, if the investigation warrants further action, conduct a hearing in the manner provided by board policies. At the hearing the board shall afford the person an opportunity to defend himself and his qualifications against the charge.

(5) After a hearing, the board may suspend or revoke the person's teacher or specialist certificate, except that in the case of a first violation under subsection (1)(g), the maximum penalty is a 2-year suspension of the person's certificate.

(6) Whenever the superintendent of public instruction denies the issuance or renewal of a teacher or specialist certificate, the applicant may appeal the denial to the board of public education. The board shall hear the appeal in the same manner provided in this section for suspension or revocation and in accordance with the policies of the board. The decision of the board shall be final.

20-4-204. Termination of tenure teacher services.

(1)(a) The following persons may make a recommendation in writing to the trustees of the district for termination of the services of a tenure teacher:

(i) a district superintendent;

(ii) in a district without a district superintendent, a principal;

(iii) in a district without a district superintendent or a principal, the county superintendent or a trustee of the district.

(b) The recommendation must state clearly and explicitly the specific reason or reasons leading to the recommendation for termination.

(2) Whenever the trustees of a district receive a recommendation for termination, the trustees shall, before May 1 of the current fiscal school year, notify the teacher of the recommendation for termination and of the teacher's right to a hearing on the recommendation. The notification must be delivered by certified letter or by personal notification for which a signed receipt is returned. The notification must include:

(a) the statement of the reason or reasons that led to the recommendation for termination; and

(b) a printed copy of this section for the teacher's information.

(3) The teacher may, in writing, waive the right to a hearing. Unless the teacher waives the right to a hearing, the trustees shall set a hearing date, giving consideration to the convenience of the teacher, not less than 10 days or more than 20 days from receipt of the notice of recommendation for termination.

(4) The trustees shall:

(a) conduct the hearing on the recommendation at a regularly scheduled or special meeting of the board of trustees and in accordance with 2-3-203; and

(b) resolve at the conclusion of the hearing to terminate the teacher or to reject the recommendation for termination.

(5) The tenure teacher may appeal a decision to terminate to the county superintendent who may appoint a qualified attorney at law as legal adviser, who shall assist the superintendent in preparing findings of fact and conclusions of law.

(6) 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.

20-4-207. Dismissal of a teacher under contract.

(1) The trustees of any district may dismiss a teacher before the expiration of his employment contract for immorality, unfitness, incompetence, or violation of the adopted policies of such trustees.

(2)(a) The following persons may recommend the dismissal of a teacher for cause under subsection (1);

(i) a district superintendent;

(ii) in a district without a district superintendent, a principal;

(iii) in a district without a district superintendent or principal, the county superintendent or a trustee of the district;

(b) A person listed in subsection (2)(a) who recommends dismissal of a teacher shall give notice of the recommendation in writing to each trustee of the district and to the teacher.

(c) The notice must state the specific instances of behavior or acts that led to the recommendation for dismissal.

(3)(a) Whenever the trustees of any district receive a recommendation for dismissal, the trustees shall notify the teacher of his right to a hearing before the trustees either by certified letter or by personal notification for which a signed receipt must be returned. The teacher may in writing waive the right to a hearing. Unless the teacher waives the right to a hearing, the teacher and trustees shall agree on

a hearing date not less than 5 days or more than 20 days from the notice of intent to recommend dismissal;

(b) The trustees shall conduct a hearing on the recommendation and resolve at the conclusion of the hearing to dismiss the teacher or to reject the recommendation for dismissal.

(4) With the exception of a county superintendent, a person who recommends dismissal pursuant to subsection (2) may suspend the teacher from active performance of duty with pay pending the hearing date if the teacher's behavior or acts that led to the recommendation for dismissal are contrary to the welfare of the students or the effective operation of the school district.

(5) Any teacher who has been dismissed may in writing within 10 days appeal such dismissal to the county superintendent. Following such appeal a hearing shall be held within 10 days. If the county superintendent, after a hearing, determines that the dismissal by the trustees was made without good cause, he shall order the trustees to reinstate such teacher and to compensate such teacher at his contract amount for the time lost during the pending of the appeal.

NEBRASKA

Revised Statutes of Nebraska

79-1234. Teacher's or administrator's certificate; revocation or suspension; ground; notice and hearing; effect of failure to appear; order; reinstatement.

The State Board of Education may, for just cause, revoke such certificate for such period of time as the board, in its discretion, shall determine. Just cause may consist of any one or more of the following: (1) Incompetency, (2) immorality, (3) intemperance, (4) cruelty, (5) crime against the law of the state, (6) neglect of duty, (7) general neglect of the business of the school; (8) unprofessional conduct, (9) physical or mental incapacity, or (10) breach of contract for teaching or administering services. The revocation or suspension of the certificate shall terminate the employment of such teacher or administrator, but such teacher or administrator shall be paid up to the time of receiving notice of revocation or suspension. The board shall immediately notify the secretary of the school district or board of education where such teacher or administrator is employed. It shall also notify the teacher or administrator of such revocation or suspension and shall enter its action in such case in the books or records of its office; Provided, no certificate shall be revoked or suspended without due notice from the board and an opportunity given the teacher or administrator to explain or defend his conduct. Any person failing to appear at a hearing called for the purpose of considering the revocation or suspension of his certificate, shall be deemed guilty of the charges preferred and shall have his certificate revoked or suspended immediately.

If, at the end of the period of suspension, the teacher or administrator makes an affirmative showing to the board that he has fully complied with the order of suspension and that he will not in the future engage in any practice listed in this section as grounds for revocation or suspension, his certificate shall be reinstated. The Commission of Education shall promptly notify the chief state school officer of each state of any revocation, suspension, or reinstatement under the provisions of this section.

79-1254. Board of education; employment of administrators and teachers; renewal of contracts; termination of contracts; just cause; exceptions; procedure; nepotism prohibited.

... Except for the first two years of employment under any contract entered into after February 26, 1975, 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 for just cause at the close of the contract period. The first two years of the contract shall be a probationary period during which it may be terminated without just cause. Any superintendent or associate superintendent may have his contract of employment terminated without just cause at the close of the contract period. 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 just 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. The board shall render the decision to amend or terminate a contract based on the evidence produced at the hearing. As used in this section and section 79-1254.02, the term just cause shall mean incompetency, neglect of duty, unprofessional conduct, insubordination, immorality, physical or mental incapacity, other conduct which interferes substantially with the continued performance of duties or a change in circumstances necessitating a reduction in the number of administrators or teachers to be employed by the board of education.

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 reelected 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.

79-1259. Teachers; indefinite contract; cancellation; procedure.

Any indefinite contract with a permanent teacher in 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 school shall have given the school board his recommendations 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; (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

Nevada Revised Statutes Annotated

391.312. Grounds for suspension, demotion, dismissal and refusal to reemploy teachers and administrators; consideration of evaluations and standards of performance.

1. A teacher may be suspended, dismissed or not reemployed... for the following reasons:

- (a) Inefficiency;
- (b) Immorality;
- (c) Unprofessional conduct;
- (d) Insubordination;
- (e) Neglect of duty;
- (f) Physical or mental incapacity;

...

- (i) Inadequate performance;
- (j) Evident unfitness for service....

2. In determining whether the professional performance of a licensed employee is inadequate, consideration must be given to the 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 board.

391.3125. Evaluations of licensed personnel: Development of policy; number of evaluations; notice to probationary employee that he may not be reemployed; recommendations and assistance; copy of evaluation.

1. It is the intent of the legislature that a uniform system be developed for objective evaluation of teachers and other licensed personnel in each school district.

2. Each board, following consultation with and involvement of elected representatives of the teachers or their designees, shall develop a policy for objective evaluations in narrative form. The policy must set forth a means according to which an employee's over-all performance may be determined to be satisfactory or unsatisfactory. The policy may include an evaluation by the teacher, pupils, administrators or other teachers or any combination thereof. In like manner, counselors, librarians, and other licensed personnel must be evaluated on forms developed specifically for their respective specialties. A copy of the policy adopted by the board must be filed with the department.

3. A conference and a written evaluation for a probationary employee must be concluded no later than:

- (a) November 1;
- (b) January 1;
- (c) March 1; and
- (d) April 15.

of the school year, except that a probationary employee assigned to a school that operates all year must be evaluated at least 4 times during each 12 months of employment on a schedule determined by the board.

4. Whenever an administrator charged with the evaluation of a probationary employee believes the employee will not be reemployed for the next school year, he shall bring the matter to the employee's attention in a written document which is separate from the evaluation no later than the third required evaluation. The notice must include the reasons for the potential decision not to reemploy or refer to the evaluation in which the reasons are stated. Such a notice is not required if the probationary employee has received a letter of admonition during the current school year.

5. Each postprobationary teacher must be evaluated at least once each year.

6. The evaluation of a probationary teacher or a postprobationary teacher must, if necessary, include recommendations for improvements in his performance. A reasonable effort must be made to assist the teacher to correct any deficiencies noted in the evaluation. The teacher must receive a copy of each evaluation not later than 15 days after the evaluation. A copy of the evaluation and the teacher's response must be permanently attached to the teacher's personnel file.

391.315. Recommendations for demotion, dismissal and against reemployment; request for appointment of hearing officer.

1. A superintendent may recommend that a teacher be dismissed or not reemployed.

....

391.3161. Hearing officer; appointment to list; qualifications; terms; vacancies; selection; duties.

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4. A hearing officer shall conduct hearings in cases of demotion, dismissal, or a refusal to reemploy based on grounds contained in subsection 1 of NRS 391.312.

391.317. Notice of intention to recommend demotion, dismissal or refusal to reemploy; rights of employee.

1. Except as otherwise provided in NRS 391.31963, at least 15 days before recommending to a board that it demote, dismiss or not reemploy a postprobationary employee, or dismiss or demote a probationary employee, the superintendent shall give written notice to the employee, by registered or certified mail, of his intention to make the recommendation.

2. The notice must:

(a) Inform the licensed employee of the grounds for the recommendation.

(b) Inform the employee that, if a written request therefor is directed to the superintendent within 10 days after receipt of the notice, the employee is entitled to a hearing before a hearing officer.

(c) Inform the employee that he may request appointment of a hearing officer from a list provided by the American Arbitration Association and that one will be appointed if the superintendent agrees in writing.

391.318. Request for hearing; Action by superintendent.

1. If a request for a hearing is not made within the time allowed, the superintendent shall file his recommendation with the board. The board may, by resolution, act on the recommendation as it sees fit.

2. If a request for a hearing is made, the superintendent shall not file his recommendation with the board until a report of the hearing officer is filed with him.

391.3192. Hearing: Procedures; compensation and expenses of hearing officer; payment for expenses of hearing officer and transcript.

1. As soon as possible after the time of his designation, the hearing officer shall hold a hearing to determine whether the grounds for the recommendation are substantiated.

2. The superintendent of public instruction shall furnish the hearing officer with any assistance which is reasonably required to conduct the hearing, and the hearing officer may require witnesses to give testimony under oath and produce evidence relevant to the investigation.

3. The licensed employee and superintendent are entitled to be heard, to be represented by an attorney and to call witnesses in their behalf.

4. The hearing officer is entitled to be reimbursed for his reasonable actual expenses and to receive compensation for actual time served at a rate of \$60 per hour.

5. If requested by the hearing officer, an official transcript must be made.

6. The board and the licensed employee are equally responsible for the expense of and compensation for the hearing officer and the expense of the official transcript.

7. The state board shall develop a set of uniform standards and procedures to be used in such a hearing. The technical rules of evidence do not apply to this hearing.

391.3193. Written report of hearing: Contents; final and binding if so agreed; time limited for filing.

1. Except as otherwise provided in subsection 3, within 30 days after the time of his designation, the hearing officer shall complete the hearing and shall prepare and file a written report with the superintendent and the licensed

employee involved not later than 15 days after the conclusion of the hearing.

2. The report must contain an outline of the scope of the hearing, findings of fact and conclusions of law, and recommend a course of action to be taken by the board. The report of the hearing officer is final and binding on the employee and the board if the employee and the superintendent have so agreed before the selection of the hearing officer was begun.

3. If it appears that the report cannot be prepared within 15 days, the licensed employee and the superintendent shall be so notified before the end of that period, and the hearing officer may take the time necessary not exceeding 30 days following the conclusion of the hearing to file the written report and recommendation.

4. The licensed employee and the superintendent or his designee may mutually agree to waive any of the time limits applicable to the hearing procedure.

391.3194. Action by superintendent upon receipt of report; action by board; notice to licensed employee; judicial review.

1. Within 5 days after the superintendent receives the report of the hearing officer he shall either withdraw the recommendation to demote, dismiss or not reemploy the licensed employee or file his recommendation with the board.

2. Within 15 days after the receipt of the recommendation of the superintendent, the board shall either accept or reject the hearing officer's recommendation and notify the licensed employee in writing of its decision.

3. The board may, before making a decision, refer the report back to the hearing officer for further evidence and recommendations. Within 15 days after the report is referred to him, the hearing officer shall complete the report and file it with the board and mail a copy to the superintendent and the licensed employee.

4. The licensed employee may appeal the decision to a district court within the time limits and in the manner provided by law for appeals of administrative decisions of state agencies. If the report of the hearing officer is final and binding, the employee or the board may request judicial review of the report pursuant to NRS 38.145 or 38.155.

NEW HAMPSHIRE**New Hampshire Revised Statutes Annotated****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-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 3 or more years in the same school district and who has been so notified may request in writing within 5 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 15 days. The school board shall issue its decision in writing within 15 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 10 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 15 days after the request for review is filed, and the decision of the state board shall be final and binding upon both parties.

NEW JERSEYNew Jersey Statutes Annotated
Title 18A Education

18A:6-10. Dismissal and reduction in compensation 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,

...

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 of 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.

....

18A:6-11. Written charges: written statement of evidence; filing; statement of position by employee; certification of determination; notice

Any charge made against any employee of a board of education under tenure during good behavior and efficiency shall be filed with the secretary of the board in writing, and a written statement of evidence under oath to support such charge shall be presented to the board. The board of education shall forthwith provide such employee with a copy of the charge, a copy of the statement of the evidence and an opportunity to submit a written statement of position and a written statement of evidence under oath with respect thereto. After consideration of the charge, statement of position and statements of evidence presented to it, the board shall determine by majority vote of its full membership whether there is probable cause to credit the evidence in support of the charge and whether such charge, if credited, is sufficient to warrant a dismissal or reduction of salary. The board of education shall forthwith notify the employee against whom the charge has been made of its determination, personally or by certified mail directed to his last known address. In the event the board finds that such probable cause exists and that the charge, if credited, is sufficient to warrant a dismissal or reduction of salary, then it shall forward such written charge to the commissioner for a hearing pursuant to N.J.S. 18A:6-16, together with a certificate of such determination. Provided, however, that if the charge is inefficiency, prior

to making its determination as to certification, the board shall provide the employee with written notice of the alleged inefficiency, specifying the nature thereto, and allow at least 90 days in which to correct and overcome the inefficiency. The consideration and actions of the board as to any charge shall not take place at a public meeting.

18A:6-13. Dismissal of 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; compensation; reinstatement

Upon certification of any charge to the commissioner, the board may suspend the person against whom the charge is made, with or without pay, but, if the determination of the charge by the Commissioner of Education is not made within 120 calendar days after certification of the charges, excluding all delays which are granted at the request of such person, then the full salary (except for said 120 days) of such person shall be paid beginning on the hundred twenty-first day until such determination is made. Should the charge be dismissed, the person shall be reinstated immediately with full pay from the first day of such suspension. Should the charge be dismissed and the suspension be continued during an appeal therefrom, then the full pay or salary of such person shall continue until the determination of the appeal. However, the board of education shall deduct from said pay or salary any sums received by such employee or officers by way of pay or salary from any substituted employment assumed during such period of suspension. Should the charge be sustained on the original hearing or an appeal therefrom, and should such person appeal from the same, then the suspension may be continued unless and until such determination is reversed, in which event he shall be reinstated immediately with full pay as of the time of such suspension.

18A:6-16. Proceedings before commissioner; hearing

Upon receipt of such charge and certification, or of a charge lawfully made to him, the commissioner or the person appointed to act in his behalf in the proceedings shall examine the charges and certification and if he is of the opinion that they are not sufficient to warrant dismissal or reduction in salary of the person charged, he shall dismiss the same and notify said person accordingly. If, however, he

shall determine that such charge is sufficient to warrant dismissal or reduction in salary of the person charged, he shall conduct a hearing therein within a 60-day period after the receipt thereof upon reasonable notice to all parties in interest.

18A:6-17. Board of education a party; conduct of hearing

In such hearing the board of education shall be a party and the hearing shall be conducted in accordance with the rules and regulations, adopted by the commissioner and approved by the state board.

NEW MEXICO**New Mexico Statutes Annotated
Chapter 22 Public Schools****22-10-12. Notice of reemployment; termination.**

On or before the last day of the school year of the existing employment contract, the local school board or the governing authority of the state agency shall serve written notice of reemployment or termination on each certified school instructor employed by the school district or state agency. A notice of reemployment shall be an offer of employment for the ensuing school year. A notice of termination shall be a notice of intention not to reemploy for the ensuing school year. Failure of the local board or the governing authority of the state agency to serve a written notice of reemployment or termination on a certified school instructor shall be construed to mean that notice of reemployment has been served upon the person for the ensuing school year according to the terms of the existing employment contract but subject to any additional compensation allowed other certified school instructors of like qualifications and experience employed by the school district or state agency. Nothing in this section shall be construed to mean that failure of a local school board or the governing authority of the state agency to serve a written notice of reemployment or termination shall automatically extend a certified school instructor's employment contract for a period in excess of one school year.

22-10-14. Reemployment decisions; local school board; procedures.

A. A local school board may decline to reemploy a certified school instructor with less than three years of consecutive service for any reason it deems sufficient. In assessing a certified school instructor for reemployment, the local school board may take into account and use as a basis for its decision not to reemploy a certified school instructor any factors deemed relevant to the school district's educational interests.

B. A certified school instructor who has been employed by a school district for three consecutive years and who receives a notice of termination pursuant to Section 22-10-12 NMSA 1978 may request an opportunity to make a statement to the local school board on the decision not to reemploy him by submitting a written request to the local superintendent within five calendar days from the date written notice of termination is served upon him. The certified school instructor may also request in writing the reasons for the local school board's action to terminate him. The superintendent shall provide written reasons for the notice

of termination to the certified school instructor within five calendar days from the date the written request for a meeting and the written request for the reasons was received by the superintendent. Neither the superintendent nor the local school board shall publicly disclose its reasons for termination.

C. A local school board may not refuse to reemploy a certified school instructor who has been employed by a school district for three consecutive years if its decision is based upon grounds that are arbitrary or capricious or legally impermissible. . . .

D. The certified school instructor's request pursuant to Subsection B of this section shall be granted if he responds to the superintendent's written reasons as provided in Subsection B of this section by submitting in writing to the superintendent a contention that the decision not to reemploy him was arbitrary or capricious or based on legally impermissible grounds. . . . The written contention shall specify the grounds on which it is contended that the decision was impermissibly based and shall include a statement of the facts that the certified school instructor believes support his contention. This written statement shall be submitted within five calendar days from the date the certified school instructor receives the written reasons from the superintendent. The submission of this statement constitutes a representation on the part of the certified school instructor that he can support his contentions and an acknowledgment that the local school board may offer the causes for its decision and any relevant data in its possession in rebuttal of his contentions.

E. A local school board shall meet to hear the certified school instructor's statement within ten calendar days after the local school board receives the statement. The hearing shall be conducted informally and, notwithstanding the provisions of the Open Meetings Act, shall be held in executive session with the members of the local school board, the certified school instructor, the superintendent and such witnesses as may be called in attendance by either party. The certified school instructor and the superintendent may each be accompanied by a person of his choice. The certified school instructor shall present his contentions, limited to those grounds specified in Subsection D of this section. The local school board may offer such rebuttal testimony as it deems relevant. All witnesses may be questioned by the local school board, the certified school instructor or his representative and the superintendent or his representative. The local school board may consider only such evidence as it considers reliable. No record shall be made of the proceeding. The local school board shall notify the certified school instructor and the superintendent of its decision in

writing within five calendar days from the conclusion of the meeting.

F. Nothing in this section or Section 22-10-14.1 NMSA 1978 shall be construed as creating any statutorily created property rights.

22-10-14.1. Appeals; independent arbitrator; qualifications; procedure; binding decisions.

A. A certified school instructor who has been employed by a school district for three consecutive years and who is still aggrieved by the decision of a local school board rendered pursuant to Section 22-10-14 NMSA 1978 may request an appeal to an independent arbitrator. A written request for an appeal shall be submitted to the local superintendent within five calendar days from the receipt of the local school board's written decision or the refusal of the board to grant a hearing. The request shall be accompanied by a statement of particulars specifying the grounds on which it is contended that the decision was impermissible pursuant to Subsection C of Section 22-10-14 NMSA 1978 and including a statement of facts supporting the contentions. Failure of the certified school instructor to submit a timely request for appeal or a statement of particulars with his request shall disqualify him for any appeal and render the local school board's decision final.

B. The local school board and the certified school instructor shall meet within ten calendar days from the receipt of the request for an appeal and select an independent arbitrator to conduct the appeal. If the parties fail to agree on an independent arbitrator, they shall request the presiding judge in the judicial district in which the certified instructor's public school is located to select one. The presiding judge shall select the independent arbitrator within five calendar days from the date of the parties' request.

...

D. Appeals from the decision of the local board shall be decided after a de novo hearing before the independent arbitrator. The issue to be decided by the independent arbitrator is whether the board's decision to terminate the certified school instructor was arbitrary or capricious or based on legally impermissible grounds as defined in Subsection C of Section 22-10-14 NMSA 1978.

E. The de novo hearing shall be held within thirty calendar days from the selection of the independent arbitrator. The arbitrator shall give written notice of the date, time and place of the hearing, and such notice shall be sent to the certified school instructor and the local school board.

F. Each party has the right to be represented by counsel at the hearing before the independent arbitrator.

...
 J. The certified school instructor has the burden of proof and shall prove by substantial evidence that the local school board's decision was arbitrary or capricious or based on legally impermissible grounds as defined in Subsection C of Section 22-10-14 NMSA 1978. If the certified school instructor proves by substantial evidence that the board's action was arbitrary or capricious or legally impermissible, then the burden shifts to the local school board to rebut the evidence presented by the certified school instructor.

K. The arbitrator shall uphold the local school board's decision unless the certified school instructor proves by substantial evidence that the board's decision was arbitrary or capricious or based on legally impermissible grounds as defined in Subsection C of Section 22-10-14 NMSA 1978.

...
 M. The independent arbitrator shall render a written decision affirming or reversing the action of the local school board. The decision shall contain findings of fact and conclusions of law. The parties shall receive actual written notice of the decision of the arbitrator within ten calendar days from the conclusion of the de novo hearing.

...
 P. The decision of the arbitrator shall be binding on both parties and shall be final and nonappealable except where the decision was procured by corruption, fraud, deception or collusion, in which case it shall be appealed to the district court in the judicial district in which the public school is located.

....

22-10-17. Discharge hearing; procedures.

A. a local school board or the governing authority of a state agency may discharge a certified school instructor ... during the term of his written contract only for good and just cause according to the following procedure:

(1) serving a written notice of intent to discharge on the instructor in accordance with the law for service of process in civil actions; and

(2) stating in the notice of intent to discharge the cause for discharge and the instructor's rights to address the local school board as provided in this section.

....

22-10-17.1. Appeals; independent arbitrator; qualifications; procedure; binding decision.

A. A certified school instructor ... aggrieved by a decision of a local school board to discharge him after his

statement to the board presented pursuant to Section 22-10-17 NMSA 1978 may request an appeal to an independent arbitrator.

...

...

D. Appeals from the decision of the local school board shall be decided after a hearing before the independent arbitrator. The issue to be decided by the independent arbitrator is whether the board's decision to discharge the certified school instructor ... was based on good and just cause.

...

J. An official record shall be made of the hearing. ...

K. The independent arbitrator shall render a written decision affirming or reversing the action of the local school board. The decision shall contain findings of fact and conclusions of law. The parties shall receive the written decision of the arbitrator within thirty calendar days from the conclusion of the hearing.

...

M. The decision of the arbitrator shall be final and binding on both parties and shall be nonappealable except where the decision was procured by corruption, fraud, deception or collusion, in which case it may be appealed to the court of appeals by filing a notice of appeal as provided by the New Mexico rules of appellate procedure.

....

NEW YORK**McKinney's Consolidated Laws of New York Annotated
Book 16 Education Law**

2573. Appointment of assistant district or other superintendents, teachers and other employees; their salaries, et cetera

...

5. At the expiration of the probationary term of any persons appointed for such term, the superintendent of schools shall make a written report to the board of education recommending for permanent appointment those persons who have been found competent, efficient and satisfactory. ...

....

3012. Tenure: certain school districts

...

2. At the expiration of the probationary term of a person appointed for such term, ... the superintendent of schools shall make a written report to the board of education or the trustees ... recommending for appointment on tenure those persons who have been found competent, efficient and satisfactory. ...[Such persons] 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.... 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.

...

3020. Dismissal of teacher

Except as otherwise provided in sections twenty-five hundred twenty-three [now 2573], three thousand twelve and three thousand thirteen, no teacher shall be removed during a term of employment unless for neglect of duty, incapacity to teach, immoral conduct, or other reason which, when appealed to the commissioner of education, shall be held by him sufficient cause for such dismissal.

3020-a. Hearing procedures and penalties

1. Filing of charges. All charges against a person enjoying the benefits of tenure ...shall be in writing and filed with the clerk or secretary of the school district or employing board during the period between the actual opening

and closing of the school year for which the employee is normally required to serve. ...

2. Disposition of charges. Upon receipt of the charges, the clerk or secretary...shall immediately notify the board thereof.... The employing board ...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 ...shall be immediately forwarded to the accused employee by certified mail. ...Within ten days of receipt of the statement of charges, the employee shall notify the clerk or secretary ...whether he desires a hearing on the charges. ...Unless the employee has waived his right to a hearing ...the clerk or secretary... shall, not later than the end of said ten-day period, notify the commissioner of education of the need for a hearing....

3. Hearings.

a. Notice of hearing. Upon receipt of a request for a hearing..., the commissioner of education shall schedule a hearing, to be held in the local school district, or county seat, within twenty working 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.

...

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.... 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....

Each such hearing shall be conducted by the chairman of the panel 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....

4. Post hearing procedures. Within five days of the conclusion of a hearing..., the commissioner of education shall forward a report of the hearing, including the findings and recommendations of the hearing panel...to the employee and to the clerk or secretary of the employing board. Within thirty days of receipt of such hearing report the employing board shall implement the recommendations thereof.... 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 the record.

5. Appeal. Either the employee or the employing board may review the findings of the hearing panel either by appeal to the commissioner of education ...or by a special

proceeding.... The hearing panel's decision shall be deemed to be final for the purpose of such proceeding.

...

NORTH CAROLINA

General Statutes of North Carolina

115C-325. System of employment for public school teachers.

...

(e) 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 one or more of the following:

- a. Inadequate performance.
- b. Immorality.
- c. Insubordination.
- d. Neglect of duty.
- e. Physical or mental incapacity.
- f. Habitual or excessive use of alcohol or nonmedical use of a controlled substance....
- g. Conviction of a felony or a crime involving moral turpitude.
- h. Advocating the overthrow of the government....
- 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.

....

(2) Before recommending to a board the dismissal or demotion of the career teacher..., the superintendent shall give written notice to the career teacher by certified mail of his intention to make such recommendation and shall set forth as part of his recommendation the grounds upon which he believes such dismissal is justified. ... Within the 15-day period after receipt of the notice, the career teacher may file with the superintendent a written request for a hearing before the board within 10 days. If the teacher requests a hearing before the board, the hearing procedures provided in G.S. 115C-325(j) shall be followed. If no request is made within the 15-day period, the superintendent may file his recommendation with the board. If, after considering the recommendation of the superintendent and the evidence adduced at the hearing if there is one, the board concludes that the grounds for the recommendation are true and substantiated by a preponderance of the evidence, the board, if it sees fit, may by resolution order such dismissal....

(3)...Failure to notify a career teacher of an inadequacy in his performance shall be conclusive evidence of satisfactory performance.

...

(h) Procedure for Dismissal or Demotion of Career Teacher.

(1) A career teacher may not be dismissed, demoted, or reduced to part-time employment except upon the superintendent's recommendation.

(2) Before recommending to a board the dismissal or demotion of the career teacher, the superintendent shall give written notice to the career teacher by certified mail of his intention to make such recommendation and set forth as part of his recommendation the grounds upon which he believes such dismissal is justified. The notice shall include a statement to the effect that if the teacher within 15 days after the date of receipt of the notice requests a review, he shall be entitled to have the proposed recommendations of the superintendent reviewed by a panel of the [Professional Review] Committee. A copy of G.S. 115C-325 and a current list of the members of the Professional Review Committee shall also be sent to the career teacher. If the teacher does not request a panel hearing within the 15 days provided, the superintendent may submit his recommendation to the board.

(3) Within the 15-day period after receipt of the notice, the career teacher may file with the superintendent a written request for either (i) a review ...by a panel of the Professional Review Committee or (ii) a hearing before the board within 10 days. ... If no request is made within that period, the superintendent may file his recommendation with the board. The board, if it sees fit, may by resolution dismiss such teacher. ...

(4) If a request for review is made, the superintendent...shall notify the Superintendent of Public Instruction who...shall designate a panel of five members of the Committee... to review the proposed recommendations of the superintendent for the purpose of determining whether in its opinion the grounds for the recommendation are true and substantiated. ...

(j) Hearing Procedure. ...

(1) The hearing shall be private.

...

(3) At the hearing the teacher and the 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....

...

(k) Panel Finds Grounds for Superintendent's Recommendation True and Substantiated.

(1) If the panel found that the grounds for the recommendation of the superintendent are true and

substantiated, at the hearing the board shall consider the recommendation of the superintendent, the report of the panel, including any minority report, and any evidence which the teacher or the superintendent may wish to present with respect to the question of whether the grounds for the recommendation are true and substantiated. The hearing may be conducted in an informal manner.

(2) If, after considering the recommendation of the superintendent, the report of the panel and the evidence adduced at the hearing, the board concludes that the grounds for the recommendation are true and substantiated, by a preponderance of the evidence, the board, if it sees fit, may by resolution order such dismissal.

(1) Panel Does Not Find That the Grounds for Superintendent's Recommendation Are True and Substantiated.

(1) If the panel does not find that the grounds for the recommendation of the superintendent are true and substantiated, at the hearing the board shall determine whether the grounds for the recommendation of the superintendent are true and substantiated upon the basis of competent evidence adduced at the hearing by witnesses who shall testify under oath or affirmation...

(2) The procedure at the hearing shall be such as to permit and secure a full, fair and orderly hearing.... 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. ...

...
(4) 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. The board's decision shall be based on a preponderance of the evidence.

(5) Within five days following the hearing, the board shall send a written copy of its findings and order to the teacher and superintendent. ... 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.

(m) Probationary Teacher.

...
(2) The board, upon the 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.

(n) Appeal. Any teacher who has been dismissed or demoted pursuant to G.S. 115C-325(e)(2), or pursuant to subsections

(h), (k) or (l) of this section...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. This appeal shall be filed within a period of 30 days after notification of the decision of the board....

NORTH DAKOTA**North Dakota Century Code Annotated
Education****15-36-15. Revocation of teacher's certificate -- Grounds -- Effect.**

The superintendent of public instruction may suspend for a period of time, or revoke and annul any teacher's certificate granted in this state upon any or all of the following grounds:

...
2. For incompetency, immorality, intemperance, or cruelty of the certificate holder.

...
The revocation of a certificate shall terminate the employment of the holder of such certificate in the school in which the holder is employed when the certificate is revoked....

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 the teacher in writing of that fact at least ten days prior to the date of contemplated discharge. The teacher shall be informed in writing of the time and place for a special meeting of the school board to be held on the question of the teacher's discharge prior to a final decision on the matter. The teacher shall also be informed in writing of his right to demand a specification of the reasons for discharge, which must, upon receipt of the demand of the teacher, be furnished not less than five days prior to the meeting to be held on the question of the teacher's discharge. The 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 the 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 meeting shall be an executive session of the board unless both the school board and the teacher requesting the 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; and the teacher's spouse, or one other

family member of the teacher's choice, may also attend the meeting if the teacher so desires. In addition to board members, the business manager of the school district, 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.

e. Continuing physical or mental disability which renders him unfit or unable to perform his duties as a teacher.

...
5. The school board of any district contemplating not renewing a teacher's contract, as provided in section 15-47-27, shall notify the teacher in writing of such contemplated nonrenewal no later than April fifteenth. ...The reasons given by the board for not renewing a teacher's contract must be sufficient to justify the contemplated action of the board and may not be frivolous or arbitrary but must 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. ...The determination not to renew a contract if made in good faith is final and binding on all parties. ...

OHIO**Page's Ohio Revised Code Annotated
Title 33: Education-Libraries****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 for other good and just cause. Before terminating any contract, the employing board shall furnish the teacher a written notice signed by its treasurer of its intention to consider the termination of his contract with full specification of the grounds for such consideration. The board shall not proceed with formal action to terminate the contract until after the tenth day after receipt of the notice by the teacher. Within ten days after receipt of the notice from the treasurer of the board, the teacher may file with the treasurer 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 treasurer shall give the teacher at least twenty days' notice in writing of the time and place of the hearing. ...The hearing shall be private unless the teacher requests a public hearing. ...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 treasurer of the board. ...After a hearing by 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. ...

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. The appeal shall be an original action in the court and shall be commenced by the filing of a petition against the board, in which petition the facts shall be alleged upon which the teacher relies for a reversal or modification of such order of termination of contract. ...

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. ...

3319.31 Revocation of certificates; notification of convictions.

(A) If at any time the holder of a certificate is found ... incompetent..., the state board of education shall revoke the certificate....

OKLAHOMA**Oklahoma Statutes Annotated
Title 70 Schools****6-103. Dismissal of teacher -- Grounds -- Destruction of building -- Epidemics**

A. ...any teacher may be dismissed at any time or not reemployed for immorality, willful neglect of duty cruelty, incompetency, teaching disloyalty to the American Constitutional system of government, or any reason involving moral turpitude and any teacher shall be dismissed at any time or not reemployed if convicted of a felony....

B. In determining whether the professional performance of a teacher is inadequate, consideration may be given to any written standards of performance which may have been adopted by the State Board of Education....

6-103.2. Admonishment of teacher

Whenever a principal ... believes that it is necessary to admonish a teacher in the district for a reason he believes may lead to the teacher's dismissal or nonreemployment, the principal shall:

1. Bring the matter to the attention of the teacher, in writing, and make a reasonable effort to assist the teacher to correct whatever appears to be the cause for potential dismissal or nonreemployment; and

2. Allow a reasonable time for improvement, which time shall not exceed two (2) months. ... If the teacher does not correct the cause for potential dismissal or nonreemployment, within a reasonable length of time, the principal shall make a recommendation to the superintendent of the school district for the dismissal or nonreemployment of the teacher.

6-103.4. Dismissal or nonreemployment of teacher -- Procedure

A. Whenever a superintendent... determines that cause exists for the dismissal or nonreemployment of a teacher employed within the school district, he or she shall submit a recommendation in writing to the board of education for such school district. In the case of a tenured teacher, the recommendation shall contain the one or more statutory grounds for the potential dismissal or nonreemployment. The recommendation for the dismissal or nonreemployment of either a tenured or a probationary teacher shall be approved or rejected upon a majority vote of the board's members.

B. If the local board of education approves the recommendation..., the board shall cause written notice of the dismissal or nonreemployment to be mailed ... to the teacher who is the subject of the action. In the case of a tenured teacher, the notice shall state the one or more statutory

grounds for the dismissal or nonreemployment and the right of the teacher to have a hearing conducted by a hearing panel. In the case of a probationary teacher whose contract is not being renewed, the notice shall state the cause for nonrenewal and the rights of the teacher to have a due process hearing conducted by the board of education. ...

C. Within ten (10) days of receipt of the notice, the tenured or probationary teacher shall notify ... the clerk of the local board of education of his or her respective decision.

...

6-103.6. Scheduling of hearing

A. The hearing judge shall schedule a hearing on the tenured teacher's dismissal or nonreemployment within ten (10) days after the judge is chosen. Upon scheduling the hearing, the hearing judge shall immediately notify the teacher of the time and place for the hearing and the procedures provided by law and by the State Board of Education pursuant to this act to be followed in selecting a hearing judge.

...

6-103.7. Procedural due process to be afforded

At the hearing, and until final disposition of the case, the district superintendent or his designee shall represent the local board of education. The tenured teacher and district superintendent or his designee, as the representative of the local board of education, shall be afforded procedural due process at the hearing, including the following rights:

1. To have counsel of his own choice present;
2. To present witnesses in person or to present their testimony by interrogatories, affidavits or depositions. A list of any witnesses which are to be presented shall be furnished to the other party at least five (5) days before the hearing is scheduled;
3. To testify in his own behalf and give reasons for any actions or policies;
4. To have an orderly hearing;
5. To have a fair and impartial decision based upon the evidence; and
6. To have an official transcript of the hearing made.

6-103.9. Rules of evidence --Proof

A. ... The standard of proof shall be by the preponderance of the evidence and the burden of proof at the hearing shall be on the district superintendent or his designee ... to establish that the teacher's dismissal or nonreemployment is warranted.

...

6-103.11. Written report -- Contents

A. Within thirty days from the time a hearing judge has been chosen, the hearing panel shall complete the hearing, prepare a written report and submit copies of the report to the superintendent of the school district and the tenured teacher. The report shall be written by the hearing judge.

...

...

6-103.12. Decision final

The decision of the hearing panel as contained in the report shall be final and shall be obeyed by the parties involved unless the tenured teacher or the district superintendent ... appeals the decision to the district court.

...

6-120. Violations of professional standards -- Hearings -- Advisory recommendations -- Right of subpoena

The commission [Professional Practices Commission] in administering these criteria shall afford any person charged with violation of professional standards the right to a hearing before the commission.

...

No certificate shall be deemed to have been suspended or revoked by action of the commission, until a full review of its decision by the State Board as set out herein. ...

Any decision to revoke or suspend shall only be based on the grounds of immorality, willful neglect of duty, cruelty to students, incompetency, teaching disloyalty to the American Constitutional system of government or for any reason involving moral turpitude.

...

6-122. Contracts -- Teachers with three (3) years' service - Failure to renew -- Hearing -- Appeal

The failure to renew a contract by the board of education of any teacher who has completed three (3) years shall not be effective, and such contract shall be renewed unless there is served on such teacher a written statement by such board containing a statement of causes for such action, which must include one of the following: immorality, wilful neglect of duty, cruelty, incompetency, teaching disloyalty to the American Constitutional system of government, or any reason involving moral turpitude. Such teacher shall be afforded an opportunity to appear before such board and confront his or her accusers, having the right to cross-examine and offer any evidence to refute the statements and a reconsideration of the action theretofore made by the board.

...

Before final decision of the matter the teacher shall be allowed to appeal the action of the board to the Professional Practices Commission. . . .Such hearing may be held in executive session if agreed on by all parties concerned.

After review of the matter the State Board of Education shall issue its decision either confirming the action of the local board of education or issuing the finding that dismissal of said teacher was without sufficient cause and that said teacher was without fault in the premise, which decision shall be final. 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 a effort to resolve their differences prior to April 10 of the succeeding year.

OREGON**Oregon Revised Statutes**

342.175 Grounds for revocation or suspension of certificate; reinstatement.

(1) Action to suspend or revoke any certificate ...may be initiated by the Teacher Standards and Practices Commission ... upon complaint charging the teacher ... with:

...

(b) Gross neglect of duty;

(c) Any gross unfitness

342.663. Hearing on demotion or dismissal of certain district employees.

...

(2) A school employee who has been demoted or dismissed shall be entitled to a hearing before the school board if a written request is filed with the board within 15 days of the dismissal or demotion.

...

FAIR DISMISSAL LAW

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 considered in good faith sufficient by the board. The probationary teacher shall be given a written copy of the reasons for the dismissal, and upon request shall be provided a hearing thereon by the board, at which time the probationary teacher shall have the opportunity to be heard either in person or by a representative of the teacher's choice.

(2) For any cause it may deem in good faith sufficient, the district board may refuse to renew the contract of any probationary teacher. ...

(3) If an appeal is taken from the hearing, the appeal shall be to the circuit court for the county....

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; or

(i) Any cause which constitutes grounds for the revocation of such permanent teacher's teaching certificate.

342.895 Procedure for dismissal of permanent teacher.

(1) Authority to dismiss a permanent teacher is vested in the district school board ... 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 ... of the intention to make a recommendation to dismiss the teacher. ...

Notice shall also be sent to the district school board and to the Fair Dismissal Appeals Board. ...

342.905 Appeal procedure.

(1) If the district school board dismisses the teacher, the teacher or the teacher's representative may appeal that decision to the Fair Dismissal Appeals Board....

...
 (3) As soon as possible after the time the notice of appeal is received by the Superintendent of Public Instruction, the superintendent shall appoint a panel of three members from the Fair Dismissal Appeals Board of the purpose of conducting a hearing. ...

...
 (5) 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 Fair Dismissal Appeals Board panel shall determine whether the facts relied upon to support the statutory grounds cited for dismissal are true and substantiated. If the panel finds the facts true and substantiated, it shall then consider whether such facts, in light of all the circumstances and additional facts developed at the hearing that are relevant to the statutory standards in ORS 342.865(1), are adequate to justify the statutory grounds cited. The panel shall not reverse the dismissal if it finds the facts relied upon are true and substantiated unless it determines, in light of all the evidence and for reasons stated with specificity in its findings and order, that the dismissal was unreasonable, arbitrary or clearly an excessive remedy. The panel shall prepare the report within 30 days from the final adjournment of the hearing.

(6) (a) ...if the Fair Dismissal Appeals Board panel finds that the facts relied on to support the recommendation of the district superintendent are untrue or 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 be reinstated and the teacher shall receive such back pay as ordered by the Fair Dismissal Appeals Board panel for the period between the effective date of the dismissal and the date of the order reinstating the teacher.

...

342.915 Hearing procedure.

(1) The hearing shall be private unless the permanent teacher requests a public hearing.

...

(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 evidence relevant to the issue of whether the facts 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.

PENNSYLVANIAPurdon's Pennsylvania Statutes Annotated
Title 24 Education

11-1122. Causes for termination of contract

The only valid causes for termination of a contract heretofore or hereafter entered into with a professional employe shall be immorality, incompetency, intemperance, cruelty, persistent negligence, mental derangement, advocacy of or participation 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 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 the 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.

12-1211. Annulment of certificates

All State certificates or endorsements of the certificates of other states may be annulled by the Superintendent of Public Instruction for incompetency, cruelty, negligence, immorality or intemperance, after

hearing, of which reasonable notice in writing must be given to the parties interested.

1225. Powers and duties of Department of Public Instruction

The Department of Public Instruction shall have the power, and its duty shall be --

...
(j) To suspend and revoke the certificate and/or registration of any person found guilty upon hearings of immorality, incompetency, intemperance, habitual use of drugs or narcotics, cruelty, negligence or for violation of any provision of this act....

RHODE ISLAND

General Laws of Rhode Island

16-11-4. Annulment of certificates.

The commissioner of education shall promulgate rules and regulations under which a certificate may be annulled for cause.

The holder shall be entitled to notice and a hearing before the commissioner of education prior to the annulment of the certificate. The holder shall have an opportunity to appeal the decision of the commissioner to the board of regents, if desired.

16-12-6. Dismissal of teachers -- Special rules as to Woonsocket and Cumberland.

The school committee of any town may, on reasonable notice and a hearing of such teacher, dismiss any teacher for refusal to conform to the regulations by them made, or for other just cause; provided, however, the respective school committee of the city of Woonsocket and the town of Cumberland in electing teachers shall elect to serve at its discretion all teachers who have served in the schools under its direction for the previous three (3) consecutive school years; provided, that the respective school committee of the city of Woonsocket and the town of Cumberland may elect to serve at its discretion any person who has served more than one (1) previous consecutive year. The respective school committee of the city of Woonsocket and the town of Cumberland may dismiss a teacher within the year of employment in the instance of teachers not employed at discretion, and at any time in the instance of teachers employed at discretion by a two-thirds vote of the whole school committee for cause, which may be violation of law, flagrant or persistent violation of the rules and regulations legally prescribed by said school committee, inefficiency, incapacity, insubordination, conduct unbecoming a teacher or other just cause; provided, that no teacher shall be dismissed unless he has received a written copy of the charge or charges against him not less than thirty (30) days before the meeting at which such charge or charges are to be considered, and unless the teacher if he so requests it has been given a hearing before said school committee, and unless the charge or charges has or have been admitted or substantiated....

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, however, 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 Section 16-13-4.

16-13-3. Probationary period -- Tenure after probation.

No such teacher [who has completed the 3-year probationary period] shall be dismissed except for good and just cause.

16-13-4. Statement of cause for dismissal -- Hearing -- Appeals.

Statement of cause for dismissal shall be given the teacher in writing by the governing body of the schools at least one (1) month prior to the close of the school year. The teacher may, within fifteen (15) 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 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.

16-13-5. Suspension for cause -- Payment for period suspended.

Section 16-13-4 shall not prevent the suspension of a teacher for good and just cause. But if, after hearing is requested by the teacher, the teacher shall be vindicated, he shall be paid in full for the period of suspension, and provided further, that during the period of suspension, all medical and insurance benefits shall remain in full force and effect.

SOUTH CAROLINA

Code of Laws of South Carolina

59-25-150. Revocation or suspension of certificate

The State Board of Education may, for just cause, either revoke or suspend the certificate of any person.

59-25-160. Revocation or suspension of certificate; "just cause" defined.

"Just cause" may consist of any one or more of the following:

- (1) Incompetence;
 - (2) Wilful neglect of duty;
 - (3) Wilful violation of the rules and regulations of the State Board of Education;
 - (4) Unprofessional conduct;
 - (5) Drunkenness;
 - (6) Cruelty;
 - (7) Crime against the law of this State or of the United States;
 - (8) Immorality;
 - (9) Any conduct involving moral turpitude;
 - (10) Dishonesty;
 - (11) Evident unfitness for position for which employed;
- or
- (12) Sale or possession of narcotics.

59-25-420. Teacher required to notify board of acceptance; opportunity for hearing if not reemployed

... 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.

59-25-430. Dismissal of teachers; grounds; opportunity for hearing; suspension of charges.

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, conviction of a violation of the law of this state or the United States, gross immorality, dishonesty, illegal use, sale or possession of drugs or narcotics.

Notwithstanding the provisions of Section 59-25-450, when any teacher is charged with a violation of the law of this State or the United States which upon conviction may lead to, or be cited as a reason for, dismissal, such teacher may be suspended pending resolution of the charges and receive his usual compensation during the suspension period, such compensation not to exceed the term of his teaching contract. If the teacher is convicted, including pleading guilty or nolo contendere to the charges, he may then be subject to dismissal proceedings. If no conviction results, his suspension shall be terminated.

59-25-440. Written notice to teacher of possible dismissal; school administrator required to make reasonable effort to assist teacher in corrective measures; reasonable time for improvement required.

Whenever a superior, principal, where applicable, or supervisor charged with the supervision of a teacher finds it necessary to admonish a teacher for reason that he believes may lead to, or be cited as a reason for, 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 Section 59-25-450, allow reasonable time for improvement.

59-25-460. 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 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 Section 59-25-470. 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 the 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 the testimony. If the board's decision is favorable to the teacher, the board shall pay the cost of the reporter's attendance and services at the hearing. If the decision is unfavorable to the teacher, one-half of the cost

of the reporter's attendance and services shall be borne by the teacher. Either party desiring a transcript of the hearing shall pay for the costs thereof.

59-25-470. 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 any and all defenses to the charges. The board shall order the appearance of any witness requested by the teacher. 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.

59-25-480. Appeals; costs and damages.

The decision of the district board of trustees shall 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.

SOUTH DAKOTA

South Dakota Codified Laws

13-42-9. Grounds for revocation or suspension of certificate -
- Suspension for jumping contract.

The superintendent of elementary and secondary education may revoke or suspend any certificate for any cause which would have prevented its issue, or after dismissal for plain violation of contract, gross immorality, incompetency, or flagrant neglect of duty....

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.

Before the third Monday in March, the school board shall notify in writing a teacher who is in or beyond the third full consecutive 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. For purposes of this section, an approved leave of absence may not be considered a break in consecutive employment. 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 does not 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 and at least annually thereafter. The evaluation shall note any major deficiency and shall provide suggestions for correction.

13-43-10. Notice of board's determination not to renew -- Noncompliance as offer of renewal -- Change of terms by mutual agreement.

No earlier than fourteen 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.

13-43-10.2. Notice to first or second year teacher of determination not to renew -- Informal conference -- Statement of reasons -- Finality of determination.

Before the first day of May, the school board shall notify in writing a teacher, who is in the first or second full term of employment in a school district, of its intention not to renew the teacher's contract. The teacher, upon written request made within seven calendar days of the notice, shall be afforded an informal, private conference in executive session before the school board and appropriate administrators. The teacher and the board may each have a representative present. The conference shall not be required if the teacher is not being rehired because of a reduction in staff. During the conference, the teacher shall be provided a statement of the reasons which have led to the intention not to renew the teacher's contract. This section shall not be interpreted as granting tenure to any such teacher in the

first or second full term of employment; the purpose for the statement of reasons for nonrenewal shall be to assist the teacher involved in making his own personal assessment of his abilities and prospects and for discussing the reasons for the nonrenewal during the conference. The statement of reason shall not constitute any grounds whatsoever for challenging the nonrenewal. A decision by the board shall be final and may not be subject to appeal to the courts. A grievance may not be filed under the provisions of chapter 3-18 unless local policy provides otherwise.

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

Tennessee Annotated Code

49-5-511. Dismissal or suspension of teachers generally.

(a)(1) No teacher shall be dismissed or suspended except as provided in this part.

(2) The causes for which a teacher may be dismissed are as follows: incompetence, inefficiency, neglect of duty, unprofessional conduct, and insubordination, as defined in Section 49-5-501.

(3) A superintendent may suspend a teacher at any time that may seem necessary, pending investigation or final disposition of a case before the board or an appeal, provided that if the teacher is vindicated or reinstated, he shall be paid the full salary for the period during which he was suspended.

(4) 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 part, 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.

(5) 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 him, and a copy of a form which shall be provided by the state commissioner of education advising the teacher as to his legal duties, rights, and recourse under the terms of this part.

(b)(1) When it becomes necessary to reduce the number of teaching positions in the system because of a decrease in enrollment or for other good reasons, the board shall be empowered to dismiss such teachers as may be necessary.

(2) The board shall give the teacher written notice of dismissal explaining fully the circumstances or conditions making the dismissal necessary.

(3) A tenure teacher who has been dismissed because of abolition of position shall be placed on a preferred list for reemployment in the first vacancy he is qualified by training and experience to fill, provided, however, nothing in this subsection shall be construed to deprive the board of the power to determine the fitness of such teacher for reemployment in such vacancy on the basis of the board's evaluation of such teacher's competence, compatibility, and suitability to properly discharge the duties required in such vacancy considered in the light of the best interest of the students in the school where the vacancy exists.

49-5-512. Dismissal or suspension -- Hearing.

A teacher, having received notice of charges against him, may within thirty (30) days after receipt of notice, demand a hearing before the board, as follows:

(1) The teacher shall give written notice to the superintendent of his 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 not be later than thirty (30) days following receipt of notice demanding a hearing.

(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 the 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 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.

(9) The superintendent or other school official shall not be held liable, personally or officially, when performing their duties in prosecuting charges against any teacher or teachers under this part.

49-5-513. Dismissal or suspension -- Review.

(a) A teacher under "permanent 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.

(b) The petition shall be filed within thirty (30) days from the receipt by the teacher of notice of the decision of the board. The petition shall state briefly the issues involved in the cause, the substance of the order of the board, or the respects in which the petitioner claims the

order of the board is erroneous, and praying for an accordant review. The petition shall be addressed to the presiding chancellor and shall name as defendants the members of the board and such other parties of record, if such, as were involved in the hearing before the board.

(c) The petitioner shall give bond for costs as in other chancery suits or oaths of paupers in lieu.

(d) Upon the filing of the petition, the clerk and master shall immediately send, by registered return-receipt mail, to the chairman of the board a notice of the filing of the petition and a certified copy thereof. The clerk shall also send a similar notice to the last known post office address of each other party named as defendant. In lieu of notice by registered mail, subpoena to answer may be served personally on each defendant, as in other chancery cases.

(e) The filing of such petition shall suspend the order of the board pending a decision by the chancellor, but the teacher shall not be permitted to return to teaching pending final disposition of the appeal.

(f) All defendants named in the petition, desiring to make defense, shall do so by answer (in which grounds of demurrer shall be incorporated) to said petition within thirty (30) days from the date of the filing of the petition, unless the time be extended by the court. Any other person who may be affected by the decision to be made by the court may, upon proper leave given, intervene and file an answer in the cause. Amendments may be granted as in other chancery procedure.

(g) The cause shall stand for trial and shall be heard and determined at the earliest practical date, as one having precedence over other litigation, except suits involving state, county, or municipal revenue. The hearing shall be de novo and may be on deposition and interrogatories, or on oral testimony.

(h) The chancellor shall reduce his findings of fact and conclusions of law to writing and make them parts of the record.

(i) Any party dissatisfied with the decree of the court may appeal to the Supreme Court as provided by the Tennessee Rules of Appellate Procedure, where the cause shall be heard on the transcript of the record from the chancery court.

TEXASVernon's Texas Codes Annotated
Title 2

13.046. Suspension and Cancellation of Certificates

(a) Any teacher's certificate issued under the provisions of this code or under any previous statute relating to the certification of teachers may be suspended or cancelled by the state commissioner of education under any one or more of the following circumstances:

...
(2) on the satisfactory evidence that the holder is a person unworthy to instruct the youth of this state....

...

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. ...

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.

13.109. 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:

...

(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) incompetency in performance of duties;

....

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 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 charge based upon grounds of 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.

(e) The board shall take such action as it deems lawful and appropriate and shall notify the teacher in writing of that action within 15 days following the conclusion of the hearing.

13.114. Decision of Board

If the teacher upon notification of any such proposed action fails to request a hearing within 10 days thereafter, or after a hearing as hereinabove provided, the board of trustees shall take such action and shall enter such order as it deems lawful and appropriate. If the teacher is reinstated, he shall immediately be paid any compensation withheld during any period of suspension without pay. No order adverse to the teacher shall be entered except upon majority vote of the full membership of the board of trustees.

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, for review by him, provided notice of such appeal is filed with the board of trustees and a copy thereof mailed to the commissioner within 15 days after written notice of the action taken by the board of trustees shall be given to the teacher; or, the teacher may challenge the legality of such action by suit brought in the district court of any county in which such school district lies within 30 days after such notice of the action taken by the board of trustees has been given to the teacher.

(b) If the board of trustees shall order the continuing contract status of any teacher holding such a contract abrogated at the end of any school year and such teacher returned to probationary contract status, or if the board of trustees shall order that any teacher holding a continuing contract be dismissed at the end of the school year, or that any teacher holding a probationary contract shall be dismissed at the end of a school year before the end of the employment period covered by such probationary contract, the teacher affected by such order, after filing notice of appeal with the board of trustees, may appeal to the commissioner of education by mailing a copy of the notice of appeal to the commissioner within 15 days after written notice of the action taken by the board of trustees has been given to the teacher.

(c) Either party to an appeal to the commissioner shall have the right to appeal from his decision to a District Court

in Travis County.

21.203. Nonrenewal of Term Contracts

(a) The board of trustees of each school district may choose not to renew the employment of any teacher employed under a term contract effective at the end of the contract period.

...

UTAH

Utah Code Annotated

53-2-24. Revocation or suspension of certificates -- Grounds.

The State Board of Education shall revoke or suspend state certificates for immoral, unprofessional, or incompetent conduct or evident unfitness for teaching or other professional services authorized by the certificates.

Chapter 51

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. Said 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 or 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 to 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.

53-51-6. Hearings -- Rights of teacher -- Hearings before district board or examiners.

At all hearings, after due notice and on demand of the educator, he may be represented by counsel, produce witnesses, hear the testimony against him and cross-examine witnesses and examine documentary evidence. Hearings may be held before the board or the board may establish a procedure whereby hearing is before examiners selected pursuant to section 53-51-7.

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 are appointed. The boards may delegate to 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.

VERMONT**Vermont Statutes Annotated
Chapter 53****1752. Grounds and procedures for suspension and dismissal**

...
(b) Unless otherwise negotiated, a teacher under contract to teach in a public school whose contract is not renewed for the ensuing year for just and sufficient cause shall be notified in writing, setting forth the grounds therefor 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, 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 an 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 no 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 shall be in writing and 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 section and any provision in the contract inconsistent with this section shall be considered of no force or effect.

VIRGINIA

Code of Virginia Annotated

22.1-305. Nonrenewal of contract of probationary teacher.

A. Before a division superintendent recommends to the school board nonrenewal of the contract of a teacher who has not achieved continuing contract status, the division superintendent shall notify the teacher of the proposed recommendation. Upon written request of the teacher within five working days after receipt of such notice, the division superintendent or his designee shall orally provide the specific reasons, if any, for such recommendation, along with supporting documentation, if any, to the teacher and, if requested by the teacher, to his or her representative. Within ten days after receiving such reasons, the teacher may request, by notification in writing to the division superintendent, a conference before the division superintendent. Upon such request, the division superintendent shall set a date for the conference, which shall be within thirty days of the request, and shall give the teacher at least fifteen days' notice of the time and place of the conference.

B. The conference shall be before the division superintendent or his designee. No such designee shall have recommended to the division superintendent the nonrenewal of the teacher's contract. The teacher and the person or persons who recommended the nonrenewal of the teacher's contract to the division superintendent, or a representative of either or both, shall be allowed to participate in the conference, but no such representative shall be an attorney.

...
D. The division superintendent shall notify the teacher, in writing, of his intention with respect to the recommendation within ten days after the conference.

...
F. The conference shall be confidential and no written or oral communication of such conference shall be made to anyone other than the school board, in executive session, and employees of the school division having an interest therein....

22.1-307. Dismissal, etc., of teacher; grounds.

Teachers may be dismissed or placed on probation for incompetency, immorality, noncompliance with school laws and regulations, disability as shown by competent medical evidence, conviction of a felony or a crime of moral turpitude or other good and just cause.

22.1-308. Grievance procedure.

A. The Board of Education shall prescribe a grievance procedure which shall include the following:

1. Except in the case of dismissal or placing on probation, a first step which shall provide for an informal, initial processing of a grievance by the most immediate appropriate supervisor through a discussion;

2. A requirement that all stages of the grievance beyond the first step be in writing on forms prescribed by the Board of Education and supplied by the school board;

3. A requirement that in reducing the grievance to writing, the teacher shall specify the specific relief he expects to obtain through the use of the procedure;

4. The right of the grievant and the respondent to present appropriate witnesses and be represented by legal counsel or other representative;

...

8. A final step which shall provide for a final decision on the grievance by the school board;

9. The provisions of Sections 22.1-309 through 22.1-313.

....

22.1-309. Notice to teacher of recommendation of dismissal or placing on probation; school board not to consider merits during notice; superintendent required to provide reasons for recommendation upon request.

In the event a division superintendent determines to recommend dismissal of any teacher or the placing on probation of a teacher on continuing contract, written notice shall be sent to the teacher notifying him of the proposed dismissal or placing on probation and informing him that within fifteen days after receiving the notice the teacher may request a hearing before the school board as provided in Section 22.1-311 or before a fact-finding panel as provided in Section 22.1-312. ... At the request of the teacher, the division superintendent shall provide the reasons for the recommendation in writing or, if the teacher prefers, in a personal interview. ...

22.1-311. Hearing before school board.

The hearing before the school board, which shall be private unless the teacher requests a public one, must be set within thirty days of the request, and the teacher must be given at least fifteen days' written notice of the time and place. At the hearing the teacher may appear with or without a representative and be heard, presenting testimony of witnesses and other evidence.

22.1-312. Hearing before fact-finding panel.

A. In the event that a hearing before a fact-finding

panel is requested, a three-member panel shall be selected....

B. The panel shall set the time for a hearing....

...

D. The panel may ask, at the beginning of the hearing, for statements from the division superintendent and the teacher clarifying the issues involved. The parties shall then present their claims and evidence. ...

The parties shall produce such additional evidence as the panel may deem necessary to an understanding and determination of the dispute. The panel shall be the judge or relevancy and materiality of the evidence offered. ...

...

H. The panel shall make a written report which shall include its findings of fact and recommendations and shall file it with the members of the school board, the division superintendent and the teacher, not later than thirty days after completion of the hearing.

I. ... In cases of dismissal or probation, a record or recording of the proceedings shall be made and preserved for a period of six months. ...

...

L. The recommendations and findings of fact of the panel submitted to the school board shall be based exclusively upon the evidence presented to the panel at the hearing.

...

22.1-313. Decision of school board; generally.

A. The school board shall retain its exclusive final authority over matters concerning employment and supervision of its personnel, including dismissals, suspensions and placing on probation.

B. In the case of a hearing before the school board, the school board shall give the teacher its written decision within thirty days after the hearing. ... In the case of a hearing before a fact-finding panel, the school board shall give the teacher its written decision within thirty days after the school board receives both the transcript of such hearing, if any, and the panel's findings of fact and recommendations; however, should there be a further hearing before the school board, as hereafter provide, such decision shall be furnished the teacher within thirty days after such further hearing. The decision of the school board shall be reached after considering the transcript, if any, and the findings of fact and recommendations of the panel and such further evidence as the school board may receive at any further hearing.

C. ...In the event the school board's decision is at variance with the recommendations of the fact-finding panel, the school board's written decision shall include the rationale for the decision.

...

22.1-314. Decision of school board; issue of grievability; appeal.

Decisions regarding whether or not a matter is grievable shall be made by the school board at the request of the school division administration or grievant and such decision shall be made within ten days of such request. ... Decisions of the school board may be appealed to the circuit court having jurisdiction in the school division for a hearing on the issue of grievability.

Proceedings for review of the decision of the school board shall be instituted by filing a notice or appeal with the school board within ten days after the date of the decision and giving a copy thereof to all other parties. ... The court may affirm the decision of the school board or may reverse or modify the decision.

WASHINGTON**West's Revised Code of Washington Annotated
Title 28A Common School Provisions**

28A.58.450. Adverse change in contract status of certificated employee -- Determination of probable cause -- Notice -- Opportunity for hearing

In the event it is determined that there is probable cause or causes for a teacher ...to be discharged or otherwise adversely affected in his or her contract status, such employee shall specify the probable cause or causes for such action. Such determinations of probable cause for certificated employees ... shall be made by the superintendent. 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.... Every such employee so notified, at his or her request in writing ... shall be granted opportunity for a hearing pursuant to RCW 28A.58.455 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 the event any such notice or opportunity for hearing is not timely given, 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.

If such employee does not request a hearing as provided herein, such employee may be discharged or otherwise adversely affected as provided in the notice served upon the employee.

...

28A.58.455. Adverse change in contract status of certificated employee, including nonrenewal of contract -- Hearings -- Procedure

(1) Any employee receiving a notice of probable cause for discharge or adverse effect in contract status ...shall be granted the opportunity for a hearing pursuant to this section.

(2) In any request for a hearing ... the employee may request either an open or closed hearing. ...

(3) The employee may engage counsel who shall be entitled to represent the employee....

(4) In the event that an employee requests a hearing... a hearing officer shall be appointed....

...

(6) The hearing officer shall preside at any prehearing conference scheduled....

(7) The hearing officer shall preside at any hearing and in connection therewith shall:

...
 (c) Within ten days following the conclusion of the hearing transmit in writing to the board and to the employee, findings of fact and conclusions of law and final decision. If the final decision is in favor of the employee, the employee shall be restored to his or her employment position and shall be awarded reasonable attorneys' fees.

(8) Any final decision by the hearing officer to nonrenew the employment contract of the employee, or to discharge the employee... shall be based solely upon the cause or causes specified in the notice of probable cause to the employee and shall be established by a preponderance of the evidence at the hearing to be sufficient cause or causes for such action.

...
 (10) A complete record shall be made of the hearing....

28A.58.460 Adverse change in contract status of certificated employee, including nonrenewal of contract -- Appeal from -- Notice -- Service -- Filing -- Contents

Any teacher ... desiring to appeal from any action or failure to act upon the part of a school board relating to the discharge ... may serve upon the chairman of the school board and file with the clerk of the superior court in the county in which the school district is located a notice of appeal....

28A.58.470 Adverse change in contract status of certificated employee, including nonrenewal of contract -- Appeal from -- Certification and filing with court of transcript

The clerk of the superior court, within ten days of his receipt of the notice of appeal shall notify in writing the chairman of the school board of the taking of the appeal....

28A.58.480 Adverse change in contract status of certificated employee, including nonrenewal of contract -- Appeal from -- Scope

Any appeal to the superior court by an employee shall be heard by the superior court without a jury. ...

The court may affirm the decision of the board or hearing officer or remand the case for further proceedings; or it may reverse the decision if substantial rights of the employee may have been prejudiced....

WEST VIRGINIA

West Virginia Code Annotated

18A-2-2. Employment of teachers; contracts; continuing contract status; how terminated; dismissal for lack of need; released time; failure of teacher to perform contract or violation thereof.

...

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, ... 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....

18A-2-8. Suspension and dismissal of school personnel by board; appeal

Notwithstanding any other provisions of law, a board may suspend or dismiss any person in its employment at any time for: Immorality, incompetency, cruelty, insubordination, intemperance or willful neglect of duty, but the charges shall be stated in writing served upon the employee within two days of presentation of said charges to the board. The employee so affected shall be given an opportunity, within five days of receiving such written notice, to request, in writing, a level four hearing and appeals pursuant to provisions of article twenty-nine [18-29-1 et seq.], chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

18A-3-6. Grounds for revocation of certificates; recalling certificates for correction.

The state superintendent may, after ten days' notice and upon proper evidence, revoke the certificates of any teacher for drunkenness, untruthfulness, immorality, or for any physical, mental or moral defect which would render him unfit for the proper performance of his duties as a teacher, or for any neglect of duty or refusal to perform the same, or for using fraudulent, unapproved, or insufficient credit, or for

any other cause which would have justified the withholding of a certificate when the same was issued.

WISCONSIN**West's Wisconsin Statutes Annotated****118.19 Teacher certificates and licenses**

...
 (5) After written notice of the charges and of an opportunity for defense, any certificate of license to teach issued by the department may be revoked by the state superintendent for incompetency or immoral conduct on the part of the holder.
 ...

118.22 Renewal of teacher contracts

...
 (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 employe 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. ...No teacher may be employed or dismissed except by a majority vote of the full membership of the 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 the board is considering nonrenewal of the teacher's contract and 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

...
 (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 wilful 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 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 a court reporter. All parties shall be entitled to be represented by counsel at the

hearing. The action of the governing body is final.

....

119.42 Teacher tenure

...A teacher who has a permanent appointment shall not be discharged, except for cause upon written charges. After 20 days' written notice to the teacher of the charges and upon the teacher's written request, the charges shall be investigated, heard and determined by the board. The action of the board on the matter shall be final.

WYOMING**Wyoming Statutes Annotated**

21-2-305. Revocation or suspension of teachers' certificates; reports and assistance from local boards and officials.

(a) In addition to any other powers assigned to it by law, the state board may:

(i) Revoke or suspend certificates issued by the department of education for incompetency, immorality, other reprehensible conduct, or gross neglect of duty, upon its own motion or upon the petition of any local board of trustees; provided, that no certificate shall be revoked or suspended without a hearing conducted as provided by law....

21-7-105. Employment of initial contract teachers on annual basis; notice of termination to such teachers.

An initial contract teacher who has taught in the system continuously for a period of at least ninety (90) days shall be hired on an annual basis and shall be notified in writing of termination, if such is the case, no later than March 15 of each year.

21-7-106. 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.

21-7-108. Hearing on recommendation 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.

21-7-110. Suspension or dismissal of teachers.

(a) The board may suspend or dismiss any teacher for incompetency, neglect of duty, immorality, insubordination, or any other good or just cause.

(b) 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.

(c) Hearing. -- Every teacher who has dismissal or suspension proceedings initiated 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 no 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.

(d) 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.