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LEGAL ASPECTS OF ACADEMIC FREEDOM AND TENURE IN COMMUNITY COLLEGES

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LEGAL ASPECTS OF ACADEMIC FREEDOM AND TENURE IN COMMUNITY COLLEGES

by

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Academic freedom is an issue dating back to the time of Plato. Tenure has been linked with academic freedom for at least a century. The relationship between academic freedom and tenure is still debated as is the issue of academic freedom for nontenured faculty members.

While states have tenure laws for public school teachers, only seventeen states have legislative enactments concerning tenure for community college faculty. Faced with a lack of pertinent legislation, some community colleges have developed their own tenure systems. In the many community colleges that have no tenure systems, administrators face the problem of safeguarding faculty rights while effectively administering their institutions.

It is the purpose of this study to provide community college administrators with guidelines to help them recognize teacher rights so they may avoid wrongful dismissals with the accompanying damage to academic freedom. Damage to the community college may occur as a result of litigation resulting from dismissals and nonrenewals. This study, through analysis of state statutes and judicial decisions also provides a set of guidelines that community college administrators will find helpful in making dismissal and nonrenewal decisions.

Based on analysis of judicial decisions, the following conclusions are made. (1) Courts will intervene when a teacher's right to free speech is infringed. (2) Courts will intervene when a dismissal has infringed upon a property interest, an interest that exists for teachers with tenure or de facto tenure. (3) Courts will intervene when colleges fail to follow established policies and rules. (4) Most dismissal cases

will involve both liberty and property claims. (5) Liberty and property claims and procedural grounds will continue to be the basis for judicial decisions. (6) Where constitutionally protected activity is involved, courts will seek to determine if the protected activity is the principal reason for dismissal. (7) Tenure systems will continue to be threatened by declining enrollment. (8) Trends toward political conservatism will increase the threats to academic freedom. (9) The right of boards of trustees to establish and enforce curriculum standards will continue to be sustained by the courts.

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CHAPTER I

INTRODUCTION

Academic freedom is a philosophy of intellectual freedom that arose among the Greeks and again in European universities in the Middle Ages.[1] At that time the principal concern was the effect of the medieval church on the freedom of scholars.[2] A more modern conception of academic freedom came from nineteenth-century Germany. At that point the state, not the church, provided sponsorship for the majority of universities.[3] The German professors called for lehrfreiheit and lernfreiheit, freedom of teaching and learning, respectively. Together with many other ideas borrowed from the German universities, that view of academic freedom was incorporated into the American conception of intellectual freedom.[4]

In the United States as elsewhere, academic freedom is associated closely with the policy of tenure, a policy that was also followed to some extent in the Middle Ages where those in power, notably the popes, looked out for the physical security and material comfort of scholars, though this protection by no means assured academic freedom.[5] Indeed,

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[1]Ralph Fuchs, "Academic Freedom--Its Basic Philosophy, Function and History," in Academic Freedom--The Scholar's Place in Modern Society, ed. Hans W. Baade (New York: Oceana Publications, 1964), p. 1.

[2]Ibid.

[3]Academic American Encyclopedia, s.v. "Academic Freedom", by Edward Pincoffs.

[4]Ibid.

[5]Fuchs, p. 7.

the mere fact that the scholar's comfort and physical safety depended on those in authority tended to result in an aversion to the expression of ideas that might offend.[6] Even then, however, scholars sought a degree of autonomy, an immunity even from those who sponsored them. When conflicts did arise, some of the old universities such as Oxford were using forms of due process, where scholars could be dismissed for just cause.[7]

The Protestant Reformation marked a turning point in the academic freedom and tenure issue. Many universities fell at this time under more control by the state as opposed to the church.[8] This was especially true in England. In conjunction with its new state-created religion the non-religious element became increasingly important.[9]

American schools, just beginning at a time when these effects were still being felt, were subject to strict regulations by boards of state or church officials, notably at Harvard University and the College of William and Mary. From the beginning those colleges had adopted another European idea, the fellow, who usually enjoyed unlimited tenure.[10]

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[6]Walter Metzger, "Academic Tenure in America: A Historical Essay," in Faculty Tenure: A Report and Recommendations, ed. William Keast (San Francisco: Jossey-Bass Publishers, 1978), p. 94.

[7]Ibid., p. 102.

[8]Fuchs, p. 4.

[9]Lord Chorley, "Academic Freedom in the United Kingdom," in Academic Freedom--The Scholar's Place in Modern Society, ed. Hans W. Baade (New York: Oceana Publications, 1964), p. 221.

[10]Metzger, p. 109.

However, in the late seventeenth century there were proposals to limit tenure, and in 1716 the officials at Harvard ruled that all new tutors would be limited to three-year terms, though they could be reappointed for additional three-year periods.[11]

As mentioned earlier, the trend against tenure diminished greatly in the nineteenth century. Formal hearings, employed in the colonial period, made a comeback, and appeals of tenure matters could be made to the courts, though few were.[12]

Struggles over these issues helped spur the development of the American Association of University Professors (AAUP) in 1915. In that year the AAUP issued a declaration from its Committee on Academic Freedom and Tenure, and has since updated is position.[13]

In the twentieth century the tenure debate has heated up and abated with changing conditions. Serious threats to academic freedom came as a result of World War I and the accompanying distrust of foreign influences. This often placed faculties in defensive positions.[14] The Great Depression increased faculty desire for security while the infusion of money into the educational system after World War II resulted in a prosperity that educators desired to keep even as that prosperity diminished.[15] New and serious threats to academic freedom and tenure

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[11]Ibid., p. 117.

[12]Ibid., p. 129.

[13]Fuchs, p. 8.

[14]A.A.U.P. Bulletin, February-March, 1918, p. 29, 41.

[15]Metzger, p. 156.

came during the McCarthy era and a great deal was written in defense of tenure as a result.[16] The most recent threat to tenure is that posed by declining enrollment and the oversupply of educators. Many colleges are at the point of having large percentages of their faculties possessing tenure and face the problem of what to do about younger faculty members.[17]

Community colleges, having come into their own only in the past two decades, have had to face the above mentioned dilemmas from the time the institutions were founded, a situation that could help explain the problems those colleges have with the tenure issue.[18]

Notably in more recent years, numerous cases concerning academic freedom and tenure have found their way into the courts. Some of the cases involve community colleges or other two-year colleges. This study will review the major court cases concerning academic freedom and tenure in community colleges.

Much has been written concerning academic freedom and tenure from the public school and the collegiate perspectives; however, there is a scarcity of material dealing specifically with community colleges.

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[16]Arval A. Morris, "Academic Freedom and Loyalty Oaths," in Academic Freedom--The Scholar's Place in Modern Society, ed. Hans W. Baade (New York: Oceana Publications, 1964), p. 67.

[17]Bardwell L. Smith and Associates, The Tenure Debate (San Francisco: Jossey-Bass Publishers), p. 270.

[18]Charles R. Monroe, Profile of the Community College (San Francisco: Jossey-Bass Publishers), p. 270.

Selected key studies, only some of which deal exclusively with community colleges, will be reviewed in order that the judicial issues may become more apparent.

The purpose of this study is to provide community college administrators with a review of the tenure issue together with an examination of the larger issue of academic freedom. It presents arguments for and against tenure as a means of protecting academic freedom and reviews the legal issues involved.

Statement of the Problem

In making decisions concerning tenure as a means of safeguarding academic freedom, administrators face pressures. One of these is a pressure internal to the institution. Opposition to tenure may come from some administrators who dislike the complex due-process procedures that must be followed in dismissal cases. The procedural process may include documentation, written charges, and time limitations. Tenure may also prove a problem to administrators when a reduction in force becomes necessary.

Another group that may have strong opinions on tenure in community colleges is the people in the local community. As the name implies, those schools often have closer ties with the community than do large universities. Some citizens may question why faculty should have jobs guaranteed while those in other occupations do not.

In order to respond to these pressures, decision-makers need appropriate information. They need an awareness of the arguments for and against tenure and the relationship between tenure and academic freedom. Also, they need a knowledge of the legal ramifications of their decisions.

Questions to be Answered

In order to provide administrators with guidelines for making decisions regarding academic freedom and tenure, several key questions need to be answered. Those questions are listed below.

1. Under what circumstances, if any, are constitutional rights of faculty involved when administrators of community colleges and technical institutes are faced with academic freedom and tenure problems?

2. What are the major educational issues regarding academic freedom and tenure in community colleges and technical institutes?

3. Which of these educational issues involve legal questions as reflected in court cases concerning community colleges and technical institutes?

4. Based on recent court cases, what issues related to academic freedom and tenure are under litigation at this time?

5. What trends, if any, can be seen from the court cases?

6. Based on precedents established by "landmark" cases, what are legally acceptable criteria which are most likely to assist administrators of community colleges and technical institutes in preventing legal action in academic freedom and tenure cases?

Scope of the Study

This study examines the legal issues of academic freedom and tenure related to community colleges especially as those issues are influenced by litigation. The research describes the litigation, its causes and outcomes, and the possible effects that judicial decisions may have on community college administrators.

This study does not attempt to debate conclusively the argument either for or against tenure in two-year colleges, although advantages and disadvantages of tenure will be presented.

This study includes a review of the literature related directly or indirectly to academic freedom and tenure in community colleges. Major court cases related to those issues from 1952 to the present are included in the review.

Methods, Procedures, and Sources of Information

This study is historical in nature and examines available references concerning academic freedom and tenure, especially as those issues affect community colleges.

Dissertation Abstracts were searched to determine the need for this study. Relevant journal articles were located with the help of the Reader's Guide to Periodical Literature, Education Index, and the Index to Legal Periodicals.

Summaries of pertinent research were found in a review of literature assisted by a computer search from the Educational Resources Information Center (ERIC).

Court cases cited were located through use of the Corpus Juris Secundum, American Jurisprudence, and the National Reporter System. The more recent court cases cited were found through the NOLPE School Law Reporter.

Definition of Terms

Selected terms used frequently in this study are defined as follows:

Academic Freedom. While a large number of definitions of the term have been formulated, most have certain elements in common in that they speak of freedom in all of the following scholarly activities: study, research, opinion, discussion, expression, publication, speech, teaching, writing, and communication.[19] One view of academic freedom that seems to be inclusive would give the meaning as:

> ...a security against hazards to the pursuit of truth by those persons whose lives are dedicated to conserving the intellectual heritage of the ages and to extending the realm of knowledge. It is the right or group of rights, intended to make it possible for certain persons (always few in number in any society when compared with the bulk of the population) to reach truthfully and to employ their reason to the full extent of their intellectual powers.[20]

In spite of the large number of court cases involving the rights of educators, the term academic freedom is not often mentioned. In part it is due to a lack of understanding of the concept on the part of the general public. The misunderstanding has been heightened by the fact that academic freedom is an alien concept to many people outside of the educational system. In 1952 in a dissenting opinion in Alder v. Board of Education of City of New York, Justice Douglas became the first member of the Supreme Court to recognize academic freedom as a constitutional right.[21]

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[19]William P. Murphy, "Academic Freedom, An Emerging Constitutional Right", Academic Freedom--The Scholar's Place in Modern Society, ed. Hans W. Baade (New York: Oceana Publications, 1964), p. 21.

[20]Russell Kirk, Academic Freedom--An Essay in Definition (Chicago: Henry Regnery Company, 1955), p. 3.

[21]William P. Murphy, op. cit. p. 18; see also Adler v. Board of Education of City of New York, 342 US 485, 96 LEd 517, 72 SCt 380 (1952).

Tenure. The right of a teacher to continuing employment is referred to as tenure. The purpose is to protect capable teachers from unjust dismissals and political interference. Tenure systems normally provide grounds for teacher dismissal and procedures by which such removal may be accomplished. Thus, tenure serves as a safeguard for academic freedom.[22]

Due Process. In order to make the best possible decisions in teacher dismissal matters a system of procedures referred to as due process has been developed. Among those procedures are a preliminary hearing, the right to counsel, the right to hear charges, presentation of evidence and witnesses, the right to cross-examination of witnesses, a record of the proceedings that is made available to all parties involved, adequate time to prepare for the hearing, and a set of standards governing the entire process.[23]

When both parties understand there to be an expectancy of continued employment, a property interest is said to exist. If a party's good name and reputation have been stigmatized so as to hinder future employment opportunities or community standing, a liberty interest is involved. When either liberty or property interests are involved, due process is required by the Constitution of the United States.[24]

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[22]Edward C. Bolmeier, The School in the Legal Structure (Cincinnati: The W. H. Anderson Company, 1973) p. 192.

[23]Louis Joughin, "Academic Due Process," Academic Freedom--The Scholar's Place in Modern Society, ed. Hans W. Baade (New York: Oceana Publications, 1964), p. 146.

[24]Patricia A. Hollander, Legal Handbook for Educators (Boulder: Westview Press, 1978), p. 161.

Employment Contract. A contract is a binding agreement between two or more parties. It may be written or in the form of an informal statement. Courts may enforce the agreement or assess damages for its breach. As applied to education, contracts may be made with instructors individually or on a collective basis. The agreements are most often term contracts, having specific beginning and ending dates.[25]

Community College. Though many variations exist, the majority of educational institutions known as community colleges have some characteristics in common. Normally they are two-year, coeducational schools. They rarely have dormitories, being intended to serve commuting students. Two different groups of students are served: those wishing to transfer into a four-year college upon completion of the community college degree, and those who are interested in terminal programs, often referred to as career or occupational programs where no schooling beyond the two-year degree is contemplated.

Community colleges are generally inexpensive to attend, and admittance is easier than would be the case at most four-year schools. Indeed, many community colleges have open door policies where the only qualification for admission is graduation from high school. The result is a student population with a wide range of academic ability. However, the students are a rather homogenous group as far as geographic area and socioeconomic status are concerned. Faculty effort is concentrated on teaching as opposed to research.

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[25]Ibid., p. 8.

As the name implies, the colleges maintain close ties with the local community, having programs such as adult education, noncredit courses for special groups, plays, and other entertainments. In addition, these colleges provide the local community needed personnel to fill technical and subprofessional positions.[26]

Technical Institute. In many respects the technical institutes are identical to the community colleges and many community colleges have included within their organizational structure a technical institute component. However, the technical institute as the name implies places more emphasis on training students for technical and subprofessional positions.[27] Typically they do not offer the programs that transfer to four-year colleges and this is the major difference between community colleges and technical institutes.[28]

Many of the technical institutes began as extensions of the public school systems in the form of vocational and technical high schools.[29] Over the years many technical institutes have become community colleges.[30]

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[26]Thomas E. O'Connell, Community Colleges--A President's View (Urbana: University of Illinois Press, 1968), p. 6.

[27]Charles R. Monroe, Profile of the Community College (San Francisco: Jossey-Bass Publishers, 1980), p. 12.

[28]Ibid.

[29]Ibid.

[30]Ibid.

Signifiance of This Study

The academic freedom debate is not a new one, and over the years many cases have come to the courts for settlement. Before the last decade few cases directly involved community colleges. Where litigation did occur concerning academic freedom, decisions were based on the First Amendment rather than specifically on academic freedom.[31]

In many cases the issues of tenure and due process are involved in the litigation. That is explained by the perception on the part of educators that tenure and due process are the chief protectors of academic freedom through the requirement of a hearing and legitimate reasons for discharge.[32]

In the cases, the courts have upheld the right of educators to exercise their constitutional rights within the performance of their duties, while upholding the state's right to judge the competency of instructors.[33]

The fact that many community colleges and technical institutes do not have tenure has resulted in much of the recent litigation. Among the questions raised in those cases are breach of contract and property interest under the Fifth Amendment. The courts have held that the contract defines the property interest and that nontenured faculty

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[31]William P. Murphy, p. 22.

[32]Ibid., p. 54.

[33]Ibid., p. 35.

members have no property interest. Therefore, they have no right to due process when contracts are not renewed unless other issues are involved. Nontenured faculty cannot be dismissed for exercising their constitutional rights.[34]

On the other hand, policies and circumstances at a particular educational institution may alter the situation. A school without a written tenure policy can by administrative action create an expectation of continued employment. In effect de facto tenure can provide the faculty member a property interest.[35] De facto tenure cannot exist in colleges having formal tenure systems.[36]

In similar manner, a college's own rules and procedures, if not followed, may invalidate the nonrenewal of a faculty member who does not possess tenure. The key here is the failure to abide by established rules for due process. Those regulations are not required but if they are in effect they must be followed.[37]

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[34]Board of Regents of State Colleges v. Roth, 408 U.S. 564, 92 S. Ct. 2701 USCT, 1972.

[35]Perry v. Sindermann, 408 U.S. 593, 92 S. Ct. 2694, USCT 1972.

[36]Haimowitz v. University of Nevada, 579 F 2nd 526, (Ninth Circuit, 1978); see also Steinberg v. Elkins, 470 F. Supp. 1024 (District of Maryland, 1979).

[37]Nzomo v. Vermont State Colleges, 385 A 2nd 1099, Supreme Court of Vermont.

While state laws provide for the tenure of public school teachers and often state university faculty as well, seventeen states have tenure laws affecting two-year college faculty. Among states having tenure for community colleges are California, Colorado, Washington, Florida, and Illinois. The typical state statute regarding tenure in two-year colleges will include two categories of instructor, probationary and tenured. Generally, a probationary teacher may be dismissed at the end of the contract and lacks the right to judicial review enjoyed by tenured teachers.

Community college administrators should become aware of the legal issues involved as they consider whether to use a contractual arrangement regarding faculty employment or to implement a tenure policy. They must also consider the impact of the establishment of due process procedures. Finally, in making these decisions, educators should realize how academic freedom will be affected.

This study is significant in that it provides community college and technical institute administrators with an analysis of the legal aspects of tenure and academic freedom. This analysis, together with a summary of the critical issues and arguments, may aid these administrators in their efforts to safeguard academic freedom in community colleges.

Design of the Study

The remainder of this study is divided into three major sections. Chapter II contains a review of the related literature. In addition to literature concerned specifically with the legal aspects of academic freedom and tenure in community colleges, this chapter reviews writings on tenure and its relationship with academic freedom, especially as they

pertain to community colleges. These reviews are included so that the background of the legal issues may be more readily perceived.

Chapter III consists of a discussion of the legal issues involved in academic freedom and tenure matters. This section also examines the existing state statutes concerning academic freedom and tenure in community colleges.

The fourth chapter contains a listing and analysis of selected court cases. Cases dealing specifically with community colleges will be emphasized, though other cases originating in four-year colleges and universities will also be included as the decisions in these cases have had an impact on the two-year schools.

The final chapter is a review and summary of the information contained in the literature and in the analysis of court cases. The questions asked in the introduction are answered in this chapter.

CHAPTER II

REVIEW OF THE LITERATURE

In order that the current issues concerning academic freedom and tenure may be fully comprehended, it is necessary that the historical roots be examined. The historical overview presented in this chapter is intended to help the reader gain an historical perspective.

Academic freedom, though not known until fairly recently by that name, goes back at least to the days of Plato.[1] The concept found support in the Judaic-Christian philosophy of respecting the individual and later drew from the English heritage of civil liberties.[2]

In the United States, academic freedom in the modern sense of the word is about a century old, although the issue has been present since colonial times.[3] Very little of academic freedom existed in the colonial period because of pressures for orthodox religious beliefs that carried over into the classroom. However, with the American and French Revolutions came a spirit of freedom that carried over into the academic world.[4]

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[1]John S. Brubacher and Willie Rudy, Higher Education in Transition (New York: Harper and Row, 1968), p. 307.

[2]Algo D. Henderson, Policies and Practices in Higher Education (New York: Harper and Brothers, 1960), p. 213.

[3]Sidney Hook, Academic Freedom and Academic Anarchy (New York: Cowles Book Company, Inc., 1970), p. 34.

[4]Brubacher and Rudy, p. 307.

In the nineteenth century, due largely to German influence, academic freedom became a major concern of academics in the United States.[5] Today, virtually all colleges and universities recognize the principles of academic freedom, yet threats to academic freedom remain.[6] The twentieth century has seen threats to academic freedom from war, economic depression, cold war, declining enrollment, adverse public opinion, and even from the students and faculty themselves.[7]

From the nineteenth century onward, tenure has been closely associated with academic freedom, and tenure is generally considered to be necessary for the security of that freedom.[8] Tenure is security against being dismissed and results in the freedom to teach irrespective of the popularity of what is being taught. It is that job security that distinguishes between academic freedom and basic freedom of speech.[9] The threats to tenure are the threats to academic freedom mentioned above.[10]

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[5]Brubacher and Rudy, p. 307.

[6]Hook, p. 41.

[7]Paul L. Dressel and William H. Fariey, Return to Responsibility (San Francisco: Jossey-Bass, Inc. Publishers, 1972), p. 4.

[8]Walter P. Metzger, Academic Freedom in the Age of the University (New York: Columbia University Press, 1955), p. 180.

[9]Henderson, p. 210.

[10]Dressel and Fariey, p. 4.

Tenure is not a human or a civil right. It has to be earned.[11] The process of earning it results in a thorough evaluation of the faculty member's association with the institution. Once tenure is achieved, the burden of proof shifts to the institution.[12]

Early History

The history of academic freedom is closely tied to the history of the university, beginning in Greece and being highly developed by the fourth century.[13] Beginning in the twelfth century, the histories are even more closely parallel.[14] The Crusades of that era exposed many Europeans to ancient authors whose works were studied and discussed. Technological advances and some scientific investigation also characterized this period.[15]

It was during that century that universities were established in France and Italy and professors were given the privilege of self-government, as well as freedom from taxation and military service.[16]

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[11]Hook, p. 35.

[12]Henderson, p. 211.

[13]Alvin Quall, "The Solution to College Administration Problems," in Leaders, Teachers and Learners in Academe, ed. Stanley Lehrer (New York: Appleton-Century-Crofts, 1970), p. 215.

[14]Richard Hofstadter and Walter P. Metzger, The Development of Academic Freedom in the United States (New York: Columbia University Press, 1955), p. 3.

[15]John E. Wise, The History of Education (New York: Sheed & Wood, 1964), p. 126.

[16]Quall, p. 216.

While those fairly self-contained universities did thus enjoy a measure of freedom from outside forces, there was considerable pressure on academic freedom from within due to pervasive religious influence of the time.[17] The church did not seek freedom of thought, but the teaching of its one truth.[18] While such a policy would seem to eliminate academic freedom, in reality the policy was enforced with a great deal of inconsistency, and thus in certain instances, some degree of freedom was allowed.[19]

In the late fourteenth century and into the fifteenth century the universities experienced a loss of power.[20] That loss paralleled the declining power of the church and opened the way for the state to step in and exert more control over the universities.[21]

The Reformation, while eventually leading to the growth of individual freedom, at first tended to do just the opposite, with suppression of most critical thought by both Catholic and Protestant groups.[22] State control increased, with professors required to take confessional oaths of loyalty to the city and to the university.[23]

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[17]Hofstadter and Metzger, p. 6.

[18]Ibid., p. 18.

[19]Ibid.

[20]Ibid., p. 40.

[21]Ibid., p. 41.

[22]Ibid., p. 62.

[23]Ibid., p. 71.

An exception to this trend existed at the interdenominational university of Leiden. Founded in 1575, that university required only a simple oath without the usual doctrinal statements; however, that situation did not last beyond 1676.[24]

In England, after the conflicts between Catholics and Prostestants came the conflicts between Anglizans and Puritans. There were efforts to stamp out Puritanism at both Oxford and Cambridge. Confessional requirements were still required into the eighteenth century at European Universities as a result of that type of conflict.[25]

Colonial America and the Eighteenth Century United States

The European religious struggles mentioned above were brought to America by the colonists. With those struggles came pressures for orthodoxy.[26] Fearing that unless steps were taken their clergy would eventually be illiterate, the colonists in Massachusetts founded Harvard in 1636 to be an "orthodox instrument" of the Puritan community and its faith, and to produce "a learned and rational ministry".[27]

Teaching at Harvard was done mainly by tutors whose length of appointment was indefinite but usually of short duration, though through the years the average length of stay increased. Those tutors taught on the European model of liberal learning.[28]

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[24]Ibid., p. 72.

[25]Ibid., p. 74.

[26]Ibid., p. 63.

[27]Ibid., p. 81.

[28]Ibid., p. 85.

Yet the general opinion of the time held that there was but one religious truth and pressure existed to conform regarding religious matters.[29] Resulting from that pressure, the first writings concerning academic freedom in the United States came from Harvard in 1692 during the presidency of Increase Mather, who assumed that since he nominated the tutors, they should teach what he wanted them to teach. However, for most of his presidency Mather did not even live near Harvard, and by the time he took action the liberal traditions of the college had been established. One of the liberal tutors who left at the time of Mather's crackdown and later returned as president was John Leverett, who administered the college for sixteen years early the eighteenth century.[30]

As the system of higher education grew in America, it began to differ from the European model. Colleges were numerous, and usually they were small and governed by lay boards. At Harvard and at William and Mary among others, faculties were subordinated to those lay boards.[31] Since lay board members often had other occupations, a great deal of power was transferred to the college presidents. Indeed, many of the early academic freedom disputes were between presidents and their boards.[32]

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[29]Brubacher and Rudy, p. 308.

[30]Hofstadter and Metzger, p. 104.

[31]Ibid., p. 134.

[32]Ibid., p. 114.

Conflicts did arise between boards and teachers as well, particularly with regard to faculty religious attitudes, with boards tending to view teachers as instruments used to convey the religious truth. Though the problem was eased by selective hiring practices with religious convictions used as a criterion for selection, tutors, professors, and presidents sometimes changed their minds on religious matters after being hired. Such circumstances led to a resolution by the overseers at Harvard in 1735 to the effect that the overseers had the right to dismiss any instructional employee of the college suspected of holding unacceptable religious beliefs.[33]

By the end of the colonial period, private colleges were well established in America.[34] After the Revolutionary War most of the financial support previously enjoyed by some American colleges ended abruptly. Yet during that same period many new colleges were founded. Thus, resources available to higher education were spread thin. Sectarian differences were heightened as well.[35]

Those financial problems helped precipitate the most significant development in higher education in the eighteenth century: secularization, with an accompanying increase in academic freedom for faculty members, especially in institutions administered by strong presidents.[36] New colleges founded during this period were more open,

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[33]Ibid., p. 155.

[34]Ibid., p. 144.

[35]Ibid., p. 207.

[36]Ibid., p. 185.

and there was more emphasis on scientific study, though as yet science had not become very controversial.[37]

The trend toward secularization was not confined to the United States. Eighteenth century Germany was developing the modern concept of academic freedom.[38] The "enlightened despotism" existing in that country led to changes in the German universities with new emphasis being placed on free inquiry in the areas of science and philosophy.[39] Freedom of inquiry had its origins at the University of Halle-founded in 1694-and led the break from strict Lutheran ties.[40]

That concept of academic freedom with the basic restriction being that of good scholarship became recognized by American educators. However, it was not until the nineteenth century that the German influence made a profound impact on higher education in the United States.[41]

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[37]Ibid., p. 197.

[38]James Bowen, A History of Western Education (London: Methuen and Co., Ltd., 1981), p. 165.

[39]R. Freeman Butts, A Cultural History of Western Education (New York: McGraw Hill Book Company, 1955), p. 297.

[40]R. Freeman Butts, The College Charts Its Course (New York: Arno Press, 1971), p. 55.

[41]Ibid., p. 79.

The Nineteenth Century

The large number of colleges that was established in the early nineteenth century had a negative impact on faculty and student freedom. In 1790, there were nine institutions of higher education. In 1861 there were 182, and those figures do not take into account the colleges that failed to survive.[42] Sectarian competition accounted for much of that growth.[43]

The large number of colleges resulted in small enrollments and in many cases, in serious financial trouble. Princeton and Amherst are shining examples.[44] Faculty members were poorly paid and continued in their appointments by the grace of their governing boards with hearings rarely required for dismissal.[45] Boards of trustees exerted their power, often making decisions involving classroom instruction, curriculum, student government regulations, and even the private lives of faculty members.[46]

However, trustees rarely met often enough to enforce the policies with the result that presidents and faculty, especially in the larger colleges and universities, gradually assumed more control at least over day-to-day operations.[47] For example, faculties began to demand

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[42]Hofstadter and Metzger, p. 211.

[43]Ibid., p. 209.

[44]Metzger, p. 29.

[45]Hofstadter and Metzger, p. 230.

[46]Metzger, p. 30.

[47]Hofstadter and Metzger, p. 233.

more self-government in the area of student discipline, an area of concern in light of the students' widespread disobedience of strict trustee regulations.[48] Little faculty sentiment existed for seeking power to deal with broader issues such as the selection of the president of the college.[49]

A major factor encouraging faculties to seek more freedom was the influence of the German universities. The rise of the Hohenzollerns saw a separation of church and state in Germany which profoundly affected its universities.[50] With decreased church control of the universities came increased state control. Nevertheless, faculties enjoyed a good measure of freedom, selecting new faculty members and choosing their own deans.[51]

The German definition of academic freedom involved two concepts, lernfreiheit, or freedom of learning, and lehrfreiheit, which meant that a professor was free to examine evidence and report his findings either through lecture or publication. Professors were free to lecture on any subject with no prescribed syllabus and few administrative rules.[52]

Such freedom was considered necessary for the functioning of a university, and it gave the German professors a unique position in an otherwise rigid society.[53]

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[48]Metzger, p. 33.

[49]Ibid., p. 34.

[50]Ibid., p. 110.

[51]Ibid., p. 112.

[52]Ibid., p. 113.

[53]Ibid.

However, that freedom did not apply to situations outside the university where an atmosphere of political repression existed.[54] Professors, along with everyone else, were expected to be loyal to the state.[55]

The nineteenth-century United States was faced with pressures from science, industry, and the general public for a more utilitarian education than was being offered by the nation's colleges.[56] Faced with those problems with their nation's system of higher education, increasing numbers of American students went to Prussia for advanced study.[57] Over nine thousand Americans studied at German universities in the nineteenth century, and many more studied German literature.[58]

Before that German influence had its effects, most of the push for intellectual freedom in the United States had come from France and England in the spirit of civil liberty. However, the protection afforded in those nations was simply the right to be protected against political interference, not against losing one's position within a university. The latter protection was a cornerstone of the German system.[59]

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[54]Brubacher and Rudy, p. 314.

[55]Metzger, p. 115.

[56]Bowen, p. 355.

[57]Ibid.

[58]Metzger, p. 93.

[59]Brubacher and Rudy, p. 313.

American scholars tended to overlook the negative aspects of the German system such as the political repression, and tended to view the German universities idealistically.[60] Some of those students wrote of their experiences, praising the German system. German Universities: A Narrative of Personal Experience by James Hart was an example.[61]

Although American scholars read those works and admired the German system, they tended to implement only parts of that system.[62] More emphasis was given to lehrfreiheit than to lernfreiheit because of conflicts with powerful boards of trustees that controlled American colleges and universities.[63] This emphasis on instructional freedom carried into the twentieth century as evidenced by the 1915 American Association of University Professors (AAUP) report on Academic Freedom with its emphasis on teacher freedom.[64]

In contrast to the German system, American professors had more freedom outside of the university and less freedom in the classroom where they were supposed to remain neutral on controversial issues.[65]

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[60]Burton, J. Bledstein, The Culture of Professionalism (New York: W.W. Norton and Company, Inc., 1976), p. 319.

[61]Bowen, p. 355.

[62]Metzger, p. 118.

[63]Ibid., p. 124.

[64]Ibid., p. 118.

[65]Ibid., pp. 126-129.

American scholars, influenced by the pragmatism of William James and John Dewey, went much farther than the Germans and came to view academic freedom as including the right to protection of their positions within the universities in spite of their taking political stands.[66] Thus, in America, free speech inside and outside of the university were linked with academic freedom.[67] To protect that freedom increasing numbers of professors saw tenure as necessary in light of the power possessed by governing boards.[68]

Ideas concerning academic freedom caught on more readily in graduate programs than they did at the undergraduate level.[69]

Academic freedom conflicts arose on four fronts, the slavery issue, religion, science and business. After 1830, the first issue to threaten academic freedom, especially in the South, was slavery.[70] In spite of the American version of academic freedom, teachers were generally more willing to be controlled in the classroom than outside it.[71] That tendency was due in part to the belief carried over from the eighteenth century, that college students were too immature and irresponsible to be exposed to controversial opinions.[72] Thus, in 1856, North Carolina

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[66]Brubacher and Rudy, p. 314.

[67]Metzger, p. 131.

[68]Brubacher and Rudy, p. 314.

[69]Bowen, p. 357.

[70]Hofstadter and Metzger, p. 253.

[71]Metzger, p. 7.

[72]Ibid., p. 8.

professor Benjamin Sherwood Hedrick was dismissed for expressing pro-Republican sentiments.[73] Conformity was expected on that political issue just as it had always been on religious issues.[74]

Some of the first instances where the issue of academic freedom was raised were in defense of religious liberty for faculty members. Though American colleges and universities became more secular over the years of the nineteenth century, religion in the classroom remained a matter of concern.[75]

At the beginning of the nineteenth century, college presidents were often ordained ministers of the sponsoring church.[76] Even some state universities fell under the sway of a particular denomination as evidenced by required Bible classes and compulsory chapel.[77] State statutes offered little in the way of protection, opening the possibilities of religious tests for prospective faculty members.[78] Nonetheless, tolerance grew in the state universities, particularly with regard to outstanding professors whom administrators wished to recruit or retain. Religious influence continued to decline and become less a point

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[73]Hofstadter and Metzger, p. 258.

[74]Brubacher and Rudy, p. 308.

[75]Hofstadter and Metzger, p. 263.

[76]Metzger, p. 23.

[77]Ibid., p. 24.

[78]Ibid., p. 27.

of controversy until religious doctrine came into conflict with science.[79]

An increase in pressure for conformity at the college level in science and evolution in particular developed in the later half of the nineteenth century.[80] Out of the controversy over evolution came an emphasis on a particular rationale for academic freedom which would carry over into the next century.[81]

Charles Darwin's Origin of Species, published in 1859, drew a generally favorable response from the American scientific community and was no longer disputed by that group by the 1870's .[82] There was however, vigorous opposition to Darwinism from religious groups, with trustees at many colleges instructing presidents to keep it out of their colleges.[83] The degree of opposition to Darwinism at any one college depended upon the power and conviction of the college's leaders, how closely the college was tied to a church, the religious background of the trustees, and the importance of science to the institution.[84] Thus, the response to Darwinism was not uniform, and professors teaching evolutionary theory were hired at some institutions.[85]

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[79]Hofstadter and Metzger, p. 263.

[80]Brubacher and Rudy, p. 309.

[81]Metzger, p. 89.

[82]Ibid., p. 48.

[83]Ibid., p. 52.

[84]Ibid.

[85]Ibid., p. 53.

Logically, the most extreme cases of anti-Darwinism took place at theological seminaries.[86] At the Presbyterian Theological Seminary in Columiba, South Carolina, for example, Dr. James Woodrow was dismissed after twenty-five years of service for stating that while he believed every word of the Bible was true, the Bible did not go into detail as to how creation took place. Therefore he was unwilling to reject evolution outright.[87]

Another well-known incident occurred at Vanderbilt in 1878 after it became a multipurpose university. Alexander Winchell, an avowed evolutionist, was dismissed by Bishop Holland McTyere, the man who as president had originally hired him. Dismissal came after the former wrote a piece on the "pre Adamite" origin of man, even though in his writing Winchell stated that evolution was a reflection of God's will.[88] Winchell explained his situation to the newspapers, while other professors facing similar circumstances took their cases to court.[89]

Several notable trends came out of the controversy over evolution. At many institutions faculty members were looked upon as rebels by trustees who put pressure on college presidents to keep evolution out, or

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[86]Ibid., p. 53.

[87]Ibid., P. 54.

[88]Ibid., p. 56.

[89]Ibid., p. 67.

at the very least to teach it as an hypothesis only.[90] However, since antievolution policies were not consistent between colleges, faculty members gathered the courage to go on.[91]

Faculty members claimed that sectarian trustees were impeding the advancement of science and called for free scientific inquiry and for more of a say regarding academic matters.[92]

Though trustees retained the power to judge the fitness of faculty members, it became more common for faculty committees to have input in hiring, tenure, and promotion decisions, and for faculty members to have more freedom in the classroom.[93]

However, that freedom was not without bounds:

> Academic freedom does not justify all kinds of intellectual nonconformity but only that kind of nonconformity that proceeds according to rules; not any private belief but the kind of private belief that allows itself to be publicly tested, not a perfect competition of ideas, but rather an imperfect competition to which certain opinions come enhanced with a special warranty.[94]

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[90] Ibid., p. 53.

[91] Ibid., p. 67.

[92] Ibid., p. 69.

[93] Ibid., p. 91.

[94] Ibid., p. 90.

As colleges became more secular they became more open to the concept of academic freedom.[95] However, the fact that more businessmen were serving on governing boards in the late nineteenth century was both a help and a hindrance to the cause of academic freedom.[96] Businessmen, and the public in general, were opposed to academic freedom.[97] In the 1890's some cases drew national attention where, due to pressure from wealthy patrons, faculty members were dismissed for supporting the strategies of worker strikes and boycotts and for the expression of anti-monopoly views.[98]

Under the influence of business, colleges became more bureaucratic in the late nineteenth century. Bureaucratization in turn had a profound impact on academic freedom.[99] Faculty members found in the bureaucratic form of organization a new safeguard for their academic freedom, and from that time forward, academic freedom and tenure were linked.[100]

Higher education entered a new period of growth and expansion in the late nineteenth century.[101] Nevertheless, the supply of instructional

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[95]Ibid., p. 94.

[96]Ibid., p. 141.

[97]Bardwell L. Smith, ed., "Academic Freedom, Tenure and Countervailing Forces", in The Tenure Debate (San Francisco: Jossey-Bass, Inc., Publishers, 1973), p. 202.

[98]Metzger, p. 152.

[99]Ibid., p. 182.

[100]Ibid.

[101]Smith, p. 201.

personnel exceeded the demand, and the oversupply heightened the demand for tenure. That demand for tenure was

> . . . a demand for rules and regulations, for contractual definitions of function, for uniform procedures for dismissal, for definite standards for promotion based on seniority and service - in short for the definiteness, impersonality and objectivity that are the essence of bureaucratism.[102]

Thus, bureaucracy made professors more secure in their jobs and in their exercise of academic freedom. Tenure served to prevent academic freedom problems rather than to defend the faculty member after a dismissal had taken place.[103]

Before the Civil War, academics were not professionals as the term is understood today. They did little apart from teaching and had little relationship with the larger community.[104] The concept of academic freedom was linked with civil and religious liberty; however, the link was a weak one at that time.[105]

By the close of the nineteenth century, a modified version of the German concept of lehrfreiheit had become influential in the American system of higher education, and the demand for tenure as a safeguard for academic freedom had become more common.[106]

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[102]Metzger, p. 180.

[103]Ibid., p. 182.

[104]Hofstadter and Metzger, p. 262.

[105]Ibid.

[106]Metzger, p. 182.

The Twentieth Century

In the early twentieth century as in the late nineteenth century, the greatest threats to academic freedom came from business and government.[107] Political and economic issues were the points of controversy.[108] As mentioned above, higher education had developed a more bureaucratic form of government characterized by "entrenched" administrators.[109]

Faculty members were slow to organize due to the nature of their work and to their opposition to anything resembling a trade union.[110] Yet there were pressures to organize, as faculty members had no legal protection, since the courts did not recognize academic freedom as a legal right and were reluctant to interfere in the internal affairs of colleges.[111] The term academic freedom was not widely known and was not even included in the most widely used American dictionary as late as 1918. The term was not included in the legal dictionary of Words and Phrases as late as 1937.[112]

The American Association of University of Professors was formed in 1915 as was Committee A on Academic Freedom Tenure. Among the factors

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[107] Smith, p. 203.

[108] Brubacher and Rudy, p. 308.

[109] Quall, p. 216.

[110] Metzger, p. 196.

[111] Brubacher and Rudy, p. 318.

[112] Ibid.

leading to the establishment of that organization were lack of support from the judicial system, conflicts with administrators, and lack of uniformity of academic freedom policies.[113]

The committee came up with a declaration of principles. Among those principles were statements to the effect that the public should view the university as a place where professors were investigating and discovering truth and that professors had the right to present the results of investigations both inside and outside of the university. The faculty member should act responsibly, and that responsibility should be to society, not to the governing board.[114]

Since academic freedom was necessary for the very existence of a university as the term is used above, the committee found that faculty members should be limited in pursuing truth only by their competence and by their objectivity. Tenure was to be the safeguard of academic freedom.[115]

The committee also developed specific proposals, in particular a due process procedure that placed limitations on trustees' authority to fire faculty members and called for a trial by other faculty members before dismissal.[116]

After principles and proposals were outlined, The American Association of University Professors spent a great deal of time

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[113]Metzger, pp. 197-205.

[114]Brubacher and Rudy, p. 320.

[115]Metzger, p. 206.

[116]Ibid.

investigating cases and placing institutions found to be in violation of the guidelines on a "non recommended" list, a tactic which eventually led to colleges' adopting the American Association of University Professors' declaration, though those adoptions came gradually.[117]

Academic freedom remained a misunderstood and largely unpopular concept as reflected in the media of the time. In 1916 the New York Times called academic freedom a "sham."[118]

Through the twentieth century, up to and including the present day, the cause of academic freedom has faced a series of crises.[119] During World War I, the principal threat came from the wave of patriotism that swept the country.[120] Pro-German and pacifist ideas were not tolerated and faculty members were dismissed for expressing those views. Even the American Association of University Professors issued a statement recognizing limits on academic freedom in time of war.[121]

There was confusion regarding the old argument over when academic freedom applied. Was it whenever a faculty member spoke, on any issue, or only when he spoke within his field? The general view in the early twentieth century was that when a faculty member speaking outside of his

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[117]Brubacher and Rudy, p. 321.

[118]Cullen Murphy, "In Darkest Academia," Harpers, October, 1978, p. 24.

[119]Brubacher and Rudy, p. 321.

[120]Ibid., p. 309.

[121]Ibid., p. 321.

field was protected by regular civil liberties only, though often the public failed to make the distinction.[122]

In spite of problems and limitations, academic freedom actually became more widely accepted on college campuses as did due process procedures. Academic freedom came to be viewed as an essential part of higher education.[123]

Patriotism and intolerance generated by the war were not the only threats to academic freedom. The conflict between evolutionary science and fundamentalist religion raged anew, although not with as much impact as before on higher education.[124]

By the 1930's, academic freedom had become more widely respected within the nation's colleges and universities.[125] Gains were made in particular in the major private universities. Public esteem for the faculty member in higher education was growing.[126]

Nevertheless, two new threats to academic freedom appeared in the decade of 1930's, both of which were to reappear later in the century. The first of those threats, actually beginning in the late 1920's, was

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[122]Ibid., p. 315.

[123]Smith, p. 204.

[124]Butts, A Cultural History, p. 545.

[125]Edward Shils, "The Academic Ethos Under Strain", in Universities in the Western World, ed. Paul Seabury (New York: The Free Press, 1975), p. 20.

[126]Ibid., p. 21.

the "red scare" with the resultant fear of liberal ideas and the labeling of those ideas and the people who taught them as communist or socialist.[127]

The other threat was the Great Depression, which left many universities in precarious financial positions. There was widespread fear that too much academic freedom might lead to a decline in monetary support, causing a college to go over the financial edge.[128]

Those two factors, the "red scare" and the Great Depression, led to the loyalty oaths at colleges and universities as a condition of employment, oaths in which the faculty member was required to state his loyalty to the state and federal constitutions.[129]

Oaths became more common over the following two decades. Thirty states had passed loyalty oath statutes by 1952.[130] The American Association of University Professors issued a statement that competence should be the only criterion for hiring or dismissal. Still, many faculty members were afraid to discuss controversial subjects during the 1930's.[131]

Less pressure was placed on faculty members during World War II than during World War I, though pressure did exist.[132]

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[127]Butts, A Cutural History, p. 545.

[128]Brubacher and Rudy, p. 323.

[129]Ibid.

[130]Butts, A Cultural History, p. 545.

[131]Ibid., p. 546.

[132]Metzger, p. 231.

By 1939, only about seven boards of trustees had adopted the American Association of University Professors' standards, although there was much less opposition to those standards.[133] A revision of the guidelines was begun in 1938. Changes were made in the due process and tenure procedures. The original standards required a three-month notice of dismissal for instructors, while those of higher rank were to be given a one-year notice. While faculty approval of dismissal was necessary in cases involving those below associate professorial rank, above that rank a judicial hearing was required.[134]

The revisions eliminated the double standard, requiring a one-year notice of dismissal for any tenured faculty member. The probationary period before tenure could be granted was lowered from ten years to six. (That was later amended to seven.)[135] Academic freedom was also to be granted to those on probation. While colleges were still slow to formally adopt the AAUP rules, the revisions made those rules more to the liking of college administrators, and an increasing number of colleges used those rules as guidelines on academic freedom and tenure matters.[136]

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[133]Ibid., p. 209.

[134]Ibid., p. 207.

[135]Ibid., p. 213.

[136]Ibid.

The cold war of the 1950's led to threats to academic freedom.[137] There was widespread public support for conformity on the issue of communism.[138] In general, faculty members' opinions tended to be to the left of the views of the general public. Faculty members were more likely to take part in campus protests against threats to academic freedom such as the imposition of loyalty oaths.[139] In fact, faculty members were more likely to take part in protests than were students.[140]

There was no question about the right of a faculty member, as a citizen, to be a communist. However, such a faculty member's right to continue as a member of the faculty was challenged.[141] At Berkeley, the loyalty oath required that one swear that one was not a communist and that he was swearing in good faith. Thirty-nine faculty members refused to sign the oath and were dismissed, although that oath was later declared illegal by the courts because it singled out the faculty.[142]

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[137]Ibid., p. 231.

[138]Brubacher and Rudy, p. 325.

[139]Seymour M. Lipset, "The American University-1964-1974: From Activism to Austerity" in Universities in the Western World, ed. Paul Seabury (New York: The Free Press, 1975), p. 150.

[140]Everett C. Ladd and Seymour Lipset, The Divided Academy (New York: McGraw Hill Book Company, 1975), p. 302.

[141]Brubacher and Rudy, p. 325.

[142]Ibid., p. 329.

During the 1950's there were numerous dismissals of proven or admitted communists, along with some faculty members whose refusal to answer questions under the Fifth Amendment was taken as an admission of guilt.[143] As a result of the oaths and dismissals, many faculty members became cautious and timid.[144] The American Association of University Professors condemned the dismissals as the substitution of an economic punishment for a criminal one as the price for an individual exercising rights under the Fifth Amendment.[145]

Although the threats arising in the 1950's were among the most serious confronting academic freedom, the latter half of the decade saw new support for academic freedom and due process at all levels of education as the result of court decisions.[146] Since the 1950's, threats to academic freedom have become more subtle.[147]

Between 1952 and 1959, all nine justices of the United States Supreme Court went on record as recognizing academic freedom as a right. That recognition was largely responsible for college support of academic due process.[148]

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[143] Ibid.

[144] Ibid., p. 226.

[145] Ibid.

[146] Smith, p. 212.

[147] Ibid., p. 205

[148] Brubacher and Rudy, p. 326.

An example of judicial support is the case of Sweezy v. New Hampshire, where the professor had taught communism at a state university. At his trial he said he was not a communist, but refused to answer when asked whether he advocated Marxism. The New Hampshire court convicted him, but the Supreme Court reversed, stating that such an incident posed a threat to the right to free inquiry and as a result constituted a threat to the nation as a whole.[149]

New problems for academic freedom arose in the 1960's. That decade was characterized by growth and expansion of colleges and universities, and in particular by the rapid growth of community colleges.[150] Shortages of Ph.D's tended to bolster faculty influence within the various institutions of higher learning.[151]

In light of that influence, it is interesting to note that some of the threats to academic freedom came from faculty members themselves. Faculty members were beginning to spend more time outside of their colleges with professional associations, businesses, publishers and politics. Combined with the trend for college governance

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[149]Sweezy v. State of New Hampshire, 354 U.S. 234, 77 S. Ct. 1203, IL. Ed. 2d 1311, 1957.

[150]Charles R. Monroe, Profile of the Community College (San Francisco: Jossey-Bass Inc., Publishers, 1972), p. 4.

[151]Robert E. Roemer and James E. Schnitz, "Academic Employment as Day Labor," Journal of Higher Education, September/October 1982, p. 515.

to become more centralized, the result was a tendency for governance by faculty to also become more centralized through the formation of faculty senates, thus posing a threat to academic freedom which thrives on decentralization.[152]

The increasing size of many colleges and universities resulted in subject matter falling more under the control of committees. Often the faculty member teaching the subject was not included as a member of the committee regulating that subject area and in some cases no one from that particular discipline was included.[153]

The activism of both faculty and students of that decade also posed threats to academic freedom. Students at times responded to views different from their own with threats and disruptions.[154] In some cases the threat to academic freedom took the form of the use of physical violence against faculty members by students.[155] Many students of that decade were also critical of faculty tenure.[156]

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[152]Warrin Wallis, "Centripetal and Centrifugal Forces in University Organization" in The Contemporary University: U.S.A., ed. Robert S. Morrison (Boston: Houghton Mifflin Company, 1966), p. 44.

[153]Joseph H. Simons, Problems of the American University (Boston, The Christopher Publishing House, 1967), p. 158.

[154]Paul L. Dressel and William H. Farley, Return to Responsibility (San Francisco: Joseey-Bass Inc., Publishers, 1972), p. 4.

[155]Hook, p. 84.

[156]Martin Myerson, "The Ethos of the American Student: Beyond the Protests" in The Contemporary University: U.S.A., ed. Robert S. Morrison (Boston: Houghton Mifflin Company, 1966), p. 284.

Not all of the activism was on the part of the students. During the 1960's the tendency was for more liberal faculty to de-emphasize academic freedom in favor of other causes.[157] Still, even many well known liberal faculty members opposed protests and the mixing of politics and academic affairs because they perceived that mixing as a threat to academic freedom. They tended however to make a distinction between demonstrations and disruptions.[158] More conservative faculty members tended to view any concessions to students as threats to academic freedom.[159]

As a result of faculty activism, the old arguments concerning the faculty member's right to academic freedom when speaking outside of his field rose again during the 1960's.[160]

Regarding academic freedom in community colleges, which were just beginning their rapid growth in the 1960's, little was said or written, yet the issue did exist.[161] Before 1960, most community college faculty worked without tenure under systems of annual contracts.[162] The growth of academic freedom and tenure in those colleges during the 1960's was slowed by several factors.

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[157]Ladd and Lipset, p. 206

[158]Ibid, p. 233.

[159]Ibid., p. 210.

[160]Dressel and Farley, p. 5.

[161]Monroe, p. 258.

[162]Ibid., p. 268.

Academic freedom was much more widely accepted at the large universities than at the high school level where there was more public pressure and where the faculties were not well organized. Community colleges, with their high school roots, were faced with a problem similar to that faced by the high schools.[163]

Student and faculty activism was markedly less of a factor at the community college level. Nevertheless, public sentiment against academic freedom and tenure in the universities resulting from activism in those institutions, spilled over to affect the two-year colleges. The problem was compounded by the large number of people served by the two year colleges who thus became concerned with how those institutions were administered.[164] Faced with such pressures, community college administrators were reluctant to push for the recognition of academic freedom.[165]

The problems facing academic freedom and tenure in both two-year and four-year colleges carried over into the next decade where they were compounded by a strong supply of available teachers.[166]

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[163]Ibid., p. 256.

[164]Arthur M. Cohen, College Response to Community Demands (San Francisco: Jossey-Bass Inc., Publishers, 1975), p. 145.

[165]Monroe, p. 256.

[166]Cohen, p. 146.

The 1970's were characterized by a political swing to the right which left college faculties more liberal than the general population, a trend which tended to alienate those educators.[167] The general opinion of the time, however, was that faculty members were free from both internal and external forces to express their views on any subject.[168]

With that freedom finally established, the major threat of the 1970's came in the form of threats to tenure, long regarded as a safeguard of academic freedom. Attacks on tenure took many forms. Colleges and universities, faced with the financial problem of inflation and the consequent reduction of real income, and with declining enrollments and changing student needs in the latter part of the decade, faced the problem of dismissal of some tenured faculty members.[169] Reduction in force became a problem in the 1970's, and tenure stood in the way.[170] Even the issue of whether tenure actually protects academic freedom was raised again.[171]

Public opinion regarding college faculty was also generally either negative or apathetic. A 1978 Gallup poll indicated that the percentage of respondents with no opinion on college teachers doubled from the

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[167]Lipset, p. 150.

[168]Dressel and Farley, p. 17.

[169]Lipset, p. 151.

[170]Cohen, p. 50.

[171]Theodore Walden, "Tenure: A Review of the Issues," The Educational Forum, March 1980, p. 364.

percentage in the poll of the previous year.[172] Furthermore, business people, including those serving on college governing boards, tended to have antitenure views. College administrators were found to be in general agreement with the antitenure views.[173] Administrators showed more willingness to question American Association of University Professors reports during the 1970's.[174]

One of the major reasons for the attacks on tenure was the enormous increase in the number of faculty members with tenure during the 1970's. At the major universities, tenure systems were firmly entrenched, with the percentage of universities having more than 50 percent of their faculties tenured increasing from 46 percent in 1972 to 81 percent in 1974. One survey for the 1977-1978 academic year found the percentage of male faculty members with tenure to be 60.6 percent, compared with 42.5 percent for women, for an overall figure of 56 percent.[176]

Adding impact to those figures was the fact that the majority of those tenured faculty members were young, having come into higher

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[172]Murphy, p. 25.

[173]Patricia R. Plante, "The Attack on Tenure: The Threat from Within," Change, November/December 1983, p. 10.

[174]Dressel and Farley, p. 96.

[175]Walden, "Tenure," p. 370.

[176]National Center for Education Statistics, "Professors with Tenure," Chronicle of Higher Education, 8 May, 1978.

education in the 1960's.[177]

Colleges responded to the high percentages of tenured faculty by making tenure increasingly difficult to obtain through policies such as eight- to ten-year probationary periods, and offering in its place alternatives to tenure such as one-year contracts. Such actions have led some faculty members to seek help from the courts.[178]

In 1972, the Carnegie Commission on Higher Education recommended more nontenure track positions as a hedge against an uncertain future, since nontenure track positions offered the college more flexibility and a way out of the rapid growth in the numbers of tenured faculty.[179]

Alternatives to tenure continued to grow more common throughout the 1970's. In 1977 four out of ten people seeking teaching positions in higher education had been in the market before, and three out of ten placements were temporary.[180] In a related development, more Ph.D's sought employment with two year colleges and secondary schools as the decade progressed, going from of 3.2 percent in 1970 to 5.3 percent in 1976.[181]

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[177]Walden, "Tenure," p. 370.

[178]Elaine R. DiBiase, Tenure, Alternatives-to-Tenure and the Courts (Boston: American Educational Research Association, [1980]), p. 1.

[179]Roemer and Schnitz, p. 520.

[180]Ibid., p. 528.

[181]Ibid., p. 518.

Community colleges also felt the impact of moves away from tenure, though tenure never was as entrenched at the two year colleges. A 1972 survey done for the American Council of Education indicated that tenure systems were in effect in all public and private universities and 94 percent of private colleges, but in only about 66 percent of the two-year colleges (including both public and private colleges).[182]

Before the 1960's few states had provisions for community college teachers in their statutes, instead leaving such policies to local community college districts.[183] Thus many states had no system wide tenure policy.[184]

In spite of having to develop it themselves, many community colleges initiated some form of tenure and due process procedures including lists of requirements for obtaining tenure, clear evaluation criteria and procedures, means to challenge violations of the enture policy, and a general statement of the college's commitment to academic freedom.[186]

At other community colleges, boards of trustees and administrators opposed the formation of tenure and due process systems because of the

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[182]Lois Vander Vaerdt, "Affirmative Action and Tenure During Financial Crisis," Journal of Law and Education, October 1982, p. 518.

[183]Monroe, p. 268.

[184]William F. McHugh, "Faculty Unionism," in The Tenure Debate, ed. Bardwell L. Smith (San Francisco: Jossey-Bass Inc., Publishers, 1972), p. 163.

[185]Monroe, p. 269.

[186]McHugh, p. 163.

complications such systems would cause and because many were reluctant to go through those procedures and still not be sure they would win.[187]

The states that did enact legislation concerning tenure in community colleges showed no clear trend. In 1973 Virginia changed to a system of fixed time contracts.[188] In the late 1970's, North Carolina Senate bill 266 was introduced. The bill denied local boards of trustees the right to grant tenure. At the time of the introduction of that bill, a poll was taken at one of the state's community colleges having a tenure system in force: Surry Community College. The surveyed faculty members indicated their belief that voiding the tenure policy would make hiring and retention of qualified faculty members more difficult and result in a decrease in academic freedom at the institution.[189]

As the decade ended, the Illinois community college boards of trustees, which had the power to grant tenure if they wished, were required to have a tenure system by legislation which went into effect in January of 1980. That legislation specified criteria for obtaining tenure and for the dismissal of both tenured and nontenured faculty.[190]

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[187]Monore, p. 270.

[188]Cohen, p. 146.

[189]Claude Ayers. The Effects of Voiding the Tenure Policy at Surgery Community College (Nova University: ERIC Document Reproduction Service, ED 188 691, 1979), p. 6.

[190]Hans A. Andrews and Bruce C. Mackey. Reductions in Force in Higher Education: One College's Response to the Illinois Community College Tenure Act (ERIC Document Reproduction Service, ED 216 736, 1982), p. 5.

Although specific on the surface, such laws often failed to define key terms and left room for interpretation by local boards of trustees provided they stayed within the spirit of the law.[191] Such was the case in the Illionis system where the statute failed to define some key terms. As an example, the Illionis statute stated that no tenured faculty member was to be dismissed while any probationary faculty member remained, provided the tenured faculty member was "competent to render" the same service. "Competent to render" was thus left to local boards of trustees to define.[192]

In the 1970's direct attacks on tenure came in the form of legislation, and also indirect attacks such as the strengthening of the rights of nontenured faculty, the related controversy over the division of the faculty into "haves" and "have nots" by a tenure system, and the implementation of affirmative action programs.[193] Tenure became more difficult to obtain in the 1970's at all levels of higher education.[194]

A marked increase in tenure-related court cases also occurred in the 1970's due largely to the threats to tenure mentioned above.[195] Those

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[191]Ibid.

[192]Ibid., p. 2.

[193]Robert O'Neal, "Tenure Under Attack" in The Tenure Debate, ed. Bardwell L. Smith (San Francisco: Jossey-Bass Inc., Publishers, 1973), pp. 179-191.

[194]Lipset, p. 151.

[195]Perry A. Zirkel, "Avoiding Litigation in the Tenure Process," Journal of General Education, Winter 1979, p. 275.

court cases tended to become complex as in the case of Johnson v. The University of Pittsburgh which lasted seventy-four days with twelve thousand pages of testimony from seventy-three witnesses and over one thousand exhibits.[196] In the majority of those cases the defendant college won.[197]

Court cases often involved nontenured faculty, and in some of those cases the courts ruled that the faculty member in question had what amounted to de facto tenure, "depending on the objectivity of their expectation or the severity of their stigmatization."[198] At one college, suit was brought over a dismissal because the president's letter of appointment said "it is our sincere hope that your tenure with us will be happy and fruitful."[199]

Since 1915, there have been many threats to academic freedom; however, most have been reduced or eliminated through decisions within colleges on individual cases, changes in college policies, legislation, and interpretation by the courts.[200] In the 1980's faculty members have a great deal of authority in deciding how to teach and what to teach.[201]

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[196]Ibid., p. 276.

[197]Ibid., p. 277.

[198]Ibid., p. 275.

[199]Ibid.

[200]Lewis B. Mayhew, Arrogance on Campus (San Francisco: Jossey-Bass Inc., Publishers, 1970), p. 95.

[201]Derek Bok, Beyond the Ivory Tower (Cambridge: Harvard University Press, 1982), p. 35.

Yet that freedom is tempered by the widely held assumption that academic freedom does not include the right to teach (Italics mine) any subject, and that it does not mean the freedom to indoctrinate students or encourage them to violate rules.[202]

Public opinion concerning academic freedom had become more positive by the 1980's.[203] In a survey done by Group Attitudes Corporation, 32.4 percent of college graduates and 25.4 percent of those surveyed with no college education responded "very positively" to the term academic freedom.[204]

While progess has been made with regard to some aspects of academic freedom, further inroads have been made against tenure. In the 1980's the American Association of University Professors receives over two thousand inquiries per year on problems relating to its standards, and approximately on half of those inquiries result in the opening of a file on a formal complaint.[205] When a complaint concerns academic freedom and tenure and the college administration refuses to discuss the matter or submit to mediation, the American Association of University Professors may start an investigation in which an ad hoc committee visits the

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[202]Ibid., p. 26.

[203]Ibid., p. 27.

[204]"Public Backs College Education in Poll," Chronicle of Higher Education, 13 October 1982.

[205]Jordon E. Kurland, "Mediating the Implementation of AAUP Standards" in New Directions for Higher Education-Resolving Conflict in Higher Education, ed. Jane E. McCarthy (San Francisco: Jossey-Bass Inc., Publishers, 1980), p. 10

college, meets with the parties involved and prepares a report to Committee A on Academic Freedom and Tenure which can authorize publication of the report.[206]

If the dispute is not resolved before the American Association of University Professors' annual meeting, censure may be imposed. In 1980, forty-six institutions were on the censured list.[207]

Faculty members and administrators also have mixed opinions on tenure. Not surprisingly, those faculty members and administrators possessing tenure tend to favor it.[208] Others are less supportive. There are three distinct groups of college faculty in the 1980's. Those groups are tenured faculty, faculty with access to tenure (in tenure track positions) and faculty with no access to tenure at all.[209] A 1981 survey of 222,000 faculty members at 1,200 four-year colleges and universities indicated that 67.4 percent of the faculty were tenured and 25.5 percent was in tenure track positions, but not yet tenured.[210]

Those higher percentages of faculty in tenured and tenure track positions pose problems for college administrators. As a result, the trend for college administrators to move away from tenure track positions in favor of term contracts or to adopt some less severe

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[206]Ibid., p. 13.

[207]Ibid., p. 14.

[208]Theodore Walden, "Higher Education: Attitudes Toward Tenure," Phi Delta Kappan, November 1980, p. 217.

[209] Roemer and Schnitz, p. 514.

[210]"A Recent Survey on Tenure Practices at Four Year Institutions," Change, March 1981, p. 46.

modifications such as extended probationary periods, tenure quotas, or periodic evaluation of tenured faculty members continues into the 1980's.[211]

Tenure in the 1980's is also threatened by the raising of the retirement age to seventy years of age. Retirement has been used in the past as a termination of the tenure contract.[212] Faced with that problem along with declining enrollments, more college administrators are reevaluating tenure policies and at the same time are developing more reduction in force policies.[213]

One solution to the tenure and enrollment problems used increasingly in the 1980's is the employment of part-time faculty, an alternative that becomes more feasible as the supply of new master's and doctoral graduates exceeds the demand.[214] Part-time employees are more at the mercy of the institution, thus posing problems concerning their academic freedom.[215] Competition between full and part-time faculty also poses a

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[211]Richard P. Chait and Andrew T. Ford, "Beyond Traditional Tenure," Change, July/August 1982, p. 44.

[212]Walter Y. O.: "Academic Tenure and Mandatory Retirement Under the New Law," Science, 21 December 1979, p. 1373.

[213]Ibid., p. 1374.

[214]N. Carol Eliason, "Part-Time Faculty: A National Perspective" in New Directions for Community Colleges-Using Part-Time Faculty Effectively, ed. Michael H. Parsons (San Francisco: Jossey-Bass Inc., Publishers, 1980), p. 8.

[215]Richard R. Beman, "Observations of an Adjunct Faculty Member" in New Directions for Community Colleges-Using Part-Time Faculty Effectively, ed. Michael H. Parsons (San Francisco: Jossey-Bass Inc., Publishers, 1980), p. 82.

threat, but that situation is often welcomed by administrators.[216]

Two additional threats to academic freedom in the 1980's must be mentioned. Both concern factors external to the college that tend to restrict a faculty member's independence. The first of those factors is outside funding. While fifty years ago grants from philanthropic foundations and the federal government were relatively rare, in the 1980's they are considered a necessity in many fields, and restrictions often accompany funding.[217]

The other factor is "student consumerism," a term used to refer to providing the students with what they want in terms of what is taught and how it is taught.[218] If "student consumerism" is carried to an extreme it becomes a precondition for teaching and therefore restricts freedom in teaching.[219]

A related trend of the 1980's is a growing emphasis on "vocationalism," with the general goal being to give the student a set of marketable skills. Such policies may lead to instructional goals that are quite specific with prescribed syllibi and learning broken down into tasks and subtasks with acquired skill levels being measured.[220]

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[216]Louis S. Albert and Rollin J. Watson, "Mainstreaming Part-Time Faculty: Issue or Imperative?" in New Directions for Community Colleges-Using Part-Time Faculty Effectively, ed. Michael H. Parsons (San Francisco: Jossey-Bass Inc., Publishers, 1980), p. 74.

[217]Bok, p. 24.

[218]Gerald M. Reagan, "Contemporary Constraints on Academic Freedom," Educational Forum, Summer 1982, p. 393.

[219]Ibid.

[220]Ibid.

Summary

A review of the pertinent literature shows that threats to academic freedom have existed as long as there have been colleges and universities, and that threats still exist today. Although some threats have been lessened or eliminated through the years others have alarmingly resurfaced while new threats have also developed, especially regarding tenure, which for nearly a century has been viewed as one of the principal safeguards of academic freedom.

Through the years the threats to academic freedom and tenure have changed as society and the problems faced by society have changed. In some cases those problems have resulted in pressures on colleges to restrict academic freedom. In other instances, pressure has been more directed at individual faculty members.

Over the years more safeguards have been developed to stave off threats to academic freedom. Especially in the twentieth century, academic freedom came to be viewed by academics and later in the century by the courts as a right possessed by faculty members, with tenure and due process viewed as ways of protecting that right. Thus, due process tends to become a right in itself and, therefore, should be available to every faculty member regardless of tenure status.

CHAPTER III

LEGAL ASPECTS OF ACADEMIC FREEDOM AND TENURE IN COMMUNITY COLLEGES

The historical roots of college freedom in personnel matters go back to the statutes that established those colleges, laws that in many cases gave the institutions far-reaching authority over faculty members under the assumption that the college was best qualified to have that authority.[1] However, governance of colleges is the responsibility of lay boards. That fact has led in some instances to more attention being paid to community pressures than to academic freedom, as in a situation where a faculty member is dismissed for the expression of controversial views.[2]

Some state legislatures have seen fit to remedy that situation described above with statutes that apply to personnel matters. Often the colleges will institute policies for the protection of academic freedom, and those policies may be reflected in the wording of faculty member's contracts. Whether by state statute, by college policy, or by contract clause, the courts will order the college to comply with that statute, policy, or contract.[3]

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[1]Malcolm Moss and Francis E. Rourke, The Campus and the State (Baltimore: The John Hopkins Press, 1959), p. 149.

[2] Ibid., p. 296.

[3]William A. Keplin, The Law of Higher Education (San Francisco: Jossey-Bass Inc., Publishers, 1978), p. 131.

Thus, faculty members possess the academic freedom granted them by statute, college policy, or contract. College policies are often patterned after American Association of University Professors statements and if so, the courts often consider those AAUP statements whether or not they are directly in the contract if they are considered an important source of "custom and usage" at the college.[4]

Contracts and statutes may distinguish between tenured and nontenured faculty members; however, where constitutional issues are involved tenure is not considered by the courts to be necessary for the protection of constitutional rights.[5] For nontenured faculty members such protection may be the extent of their job security.[6] The state cannot deny any person equal protection under the law. In addition, the Fourteenth Amendment has been interpreted by the courts as safeguarding the rights of academic freedom for a professor to teach free and clear of arbitrary restrictions by the state.[7]

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[4]Ibid., p. 41

[5]Ibid.

[6]Virginia D. Nordin, "Legal Protection of Academic Freedom," in The Courts and Education, ed. Clifford Hooker (Chicago: University of Chicago Press, 1978), p. 312.

[7]Casimir J. Kowalski, Phillip C. Chamberlain and Joseph P. Cangemi, "Some Legal Aspects of Higher Education," College Student Journal, Fall 1977, p. 283.

Tenure and academic freedom, while linked, are not identical. A distinction must be made, as will be done in this chapter. Academic freedom specifically is afforded very little statutory protection.[8] Academic freedom is often discussed in court cases involving the constitutional rights of faculty members, and the courts have tended to use the term as a "catch all" to refer to a faculty member's legal rights.[9]

The concept of academic freedom has developed more through the efforts of the AAUP than through state statutes or from case law. Though several Supreme Court justices, both past and present, have argued for academic freedom under the First Amendment, "most cases are decided on rather narrow procedural grounds and never reach the underlying question of whether and how academic freedom might be practically protected by law."[10]

Thus, for the purpose of examining the legal aspects of academic freedom and tenure it is necessary to examine three topics: (1) academic freedom as a constitutional right; (2) academic freedom for nontenured faculty members; and (3) academic freedom for tenured faculty members.

This chapter will look at the topics indicated above as they are affected by three factors; (1) state statutes; (2) college policies; and (3) decisions.

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[8]Nordin, p. 313.

[9]Kaplin, Law of Higher Education, 141.

[10]Nordin, p. 313.

State Statutes

A formal tenure system is a type of employment security, serving, once tenure has been achieved, to limit the procedures administrators can follow in terminating a faculty member. Dismissal can be accomplished only after proper procedures have been followed. Among those procedures are notice of reasons for dismissal, notice of a hearing, the opportunity for a hearing where the faculty member may respond to the reasons given for nonretention.[11]

Tenure systems can arise from two sources, college policy or state statute or from a combination of both. Most states have tenure statutes, but they usually apply to public elementary and high school teachers with higher education covered by a different statute or not covered at all.[12] In some states, college faculty members are covered by the state employee personnel system, and unless the laws are clear on the point, if the state also has educational statutes, conflicting coverage may result.[13]

Fifteen state statutes offer much protection to nontenured faculty members. One of the few types of legislative enactment states have restricting the termination of probationary faculty members is contract

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[11]Harry W. Pettigrew, "Constitutional Tenure: Toward a Realization of Academic Freedom" in The Constitutional Status of Academic Tenure, ed. Walter P. Metzger (New York: Arno Press, 1977), pp. 477, 508-511.

[12]Ibid., p. 477.

[13]Moss, p. 149.

law. Thus a distinction is made between a dismissal during the term of the contract and a nonrenewal of the contract for the following year. The former may entail procedural safeguards, while the latter usually does not.[14]

Another protection for faculty members deals with the limitation of state statutes by the courts. In Keyishian,[15] the United States Supreme Court stated that public employment is not a privilege to which the state can attach restrictions to the employee's constitutional rights, and that teachers deserve special protection because of society's interest in academic freedom. Thus, state statutes must not infringe on a teacher's constitutional rights unless there is an "overriding public interest" in doing so.[16]

While as indicated above, most states have tenure statutes affecting public school teachers and not college and university faculty members, the situation regarding community colleges is much less clear, due in part to the evolution of those colleges as outlined in Chapter II. There are three basic ways that community colleges are classified by the states. Community colleges can be classified as part of the public school system. They can be included as a part of the state's system of higher education, or they can compose a separate community colleges system. In many instances, tenure policies are left up to individual colleges.

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[14]Pettigrew, p. 480.

[15]Keyishian v. Board of Regents of State of New York, 385 U.S. 589, 87 S. Ct. 675, 17 L. Ed. 2d 629 (1967).

[16]Pettigrew, p. 492.

An analysis of the community college tenure laws of the fifty states was conducted for this study, and the results are summarized in Table 1 with the applicable statutes presented in the Appendix.

In keeping with the tendency allowing institutions of higher education to establish tenure policies, Table 1 indicated that thirty-three state codes do not include tenure for community college faculty members. Sixteen states do not provide procedures for dismissal or nonrenewal of faculty members, and academic freedom in community colleges is only mentioned in the statutes of four states. For those states making no mention of dismissal procedures, the law enumerating the powers of the board of trustees, specifically their power to hire faculty members, is often interpreted as giving them the power to dismiss faculty members as well. For that reason, such statutes have been included in the Appendix where no more specific statute exists.

In listing the powers of the boards of trustees, nine state laws specifically include the power to terminate faculty appointments and in sixteen states the power to set the terms of employment. Such powers may be in the hands of either a state board or of local boards. Four states provide for termination at the discretion of the state board, and seven states let the state board set the terms of employment. In a state with a large community college system, making the state board responsible for dismissals would leave that board with a monumental task. The states such as New Mexico and Kentucky that give such power to their boards have small community college systems, or in the case of South Dakota, offer

TABLE 1

SUMMARY OF STATE STATUTES

		AL	AK	AZ	AR	CA	CO	CT	DE	FL	GA	HI
I.	Tenure not mentioned	x	x	x	x			x	x	x	x	x
II.	Dismissal/nonrenewal procedure not mentioned	x	x					x	x			
III.	Academic freedom mentioned					x	x	x				
IV.	Dismissal/nonrenewal at discretion of state board										x	
V.	Employment terms set by state board									x		x
VI.	Dismissal/nonrenewal at discretion of local board			x	x							
VII.	Employment terms set by local board				x		x	x	x			
VIII.	Provision for contracts					x				x		
IX.	Probationary faculty											
	A. Nonrenewal at discretion of local board											
	B. Written notice of nonrenewal					x	x					
	C. Hearing					x						
	D. Notice required for dismissal					x						
	E. Grounds for dismissal											
	F. Due process procedures outlined					x						
	G. Provision for suspensions					x						
	H. Judicial review					x						
X.	Tenured or continuing contract faculty											
	A. Procedure for attainment											
	B. Notice of nonrenewal/dismissal					x	x					
	C. Grounds for dismissal					x	x			x*		
	D. Hearing					x	x					
	E. Due process procedures outlined					x	x					
	F. Provision for suspensions					x	x					
	G. Judicial review					x	x					
XI.	Collective bargaining											
	A. To set employment terms											
	B. Hearing											
	C. Arbitration											
	D. Judicial review											

* Only one ground given for dismissal

TABLE 1 (continued)

SUMMARY OF STATE STATUTES

		ID	IL	IN	IA	KS	KY	LA	ME	MD	MA	MI
I.	Tenure not mentioned	x		x			x		x			x
II.	Dismissal/nonrenewal procedure not mentioned	x		x								x
III.	Academic freedom mentioned											
IV.	Dismissal/nonrenewal at discretion of state board						x					
V.	Employment terms set by state board											
VI.	Dismissal/nonrenewal at discretion of local board											
VII.	Employment terms set by local board									x	x	x
VIII.	Provision for contracts		x		x							
IX.	Probationary faculty											
	A. Nonrenewal at discretion of local board							x				
	B. Written notice of nonrenewal		x		x	x	x	x				
	C. Hearing				x	x!	x					
	D. Notice required for dismissal		x		x	x						
	E. Grounds for dismissal											
	F. Due process procedures outlined											
	G. Provision for suspensions				x							
	H. Judicial review											
X.	Tenured or continuing contract faculty											
	A. Procedure for attainment											
	B. Notice of nonrenewal/dismissal		x		x	x		x				
	C. Grounds for dismissal		x		x			x				
	D. Hearing		x		x	x		x				
	E. Due process procedures outlined		x		x	x		x				
	F. Provision for suspensions		x		x			x				
	G. Judicial review				x	x		x				
XI.	Collective bargaining											
	A. To set employment terms								x	x	x	
	B. Hearing								x			
	C. Arbitration								x		x	
	D. Judicial review								x			

! hearing only if question exists of violation of constitutional rights

TABLE 1 (continued)

SUMMARY OF STATE STATUTES

		MN	MS	MO	MT	NE	NV	NH	NJ	NM	NY	NC
I.	Tenure not mentioned		x	x	x			x+		x	x	x
II.	Dismissal/nonrenewal procedure not mentioned							x+			x	x
III.	Academic freedom mentioned											
IV.	Dismissal/nonrenewal at discretion of state board									x		
V.	Employment terms set by state board											
VI.	Dismissal/nonrenewal at discretion of local board		x@		x						x@	
VII.	Employment terms set by local board				x							
VIII.	Provision for contracts		x	x		x						
IX.	Probationary faculty											
	A. Nonrenewal at discretion of local board	x		x			x					
	B. Written notice of nonrenewal	x				x						
	C. Hearing					x						
	D. Notice required for dismissal											
	E. Grounds for dismissal											
	F. Due process procedures outlined											
	G. Provision for suspensions											
	H. Judicial review											
X.	Tenured or continuing contract faculty											
	A. Procedure for attainment								x			
	B. Notice of nonrenewal/dismissal	x		x		x	x		x			
	C. Grounds for dismissal	x		x		x*	x		x			
	D. Hearing			x		x	x		x			
	E. Due process procedures outlined			x		x	x		x			
	F. Provision for suspensions	x		x					x			
	G. Judicial review			x			x					
XI.	Collective bargaining											
	A. To set employment terms	x										
	B. Hearing	x										
	C. Arbitration											
	D. Judicial review											

+ law now being written
@ through delegation to president
* only one ground given for dismissal

TABLE 1 (continued)

SUMMARY OF STATE STATUTES

		ND	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT
I.	Tenure not mentioned	x	x	x	x	x	x	x#	x		x	
II.	Dismissal/nonrenewal procedure not mentioned		x	x	x	x	x	x#			x	
III.	Academic freedom mentioned									x		
IV.	Dismissal/nonrenewal at discretion of state board								x			
V.	Employment terms set by state board	x							x	x		x$@
VI.	Dismissal/nonrenewal at discretion of local board											
VII.	Employment terms set by local board				x							
VIII.	Provision for contracts							x				
IX.	Probationary faculty											
	A. Nonrenewal at discretion of local board							x				
	B. Written notice of nonrenewal							x**				
	C. Hearing							x**				
	D. Notice required for dismissal							x**				
	E. Grounds for dismissal							x**				
	F. Due process procedures outlined							x**				
	G. Provision for suspensions							x**				
	H. Judicial review							x**				
X.	Tenured or continuing contract faculty											
	A. Procedure for attainment											
	B. Notice of nonrenewal/dismissal									x		
	C. Grounds for dismissal									x		
	D. Hearing									x		
	E. Due process procedures outlined									x		
	F. Provision for suspensions									x		
	G. Judicial review									x		
XI.	Collective bargaining											
	A. To set employment terms											
	B. Hearing											
	C. Arbitration											
	D. Judicial review											

\# for technical institutes
@ through delegation to president
$ terms include tenure policy
** applied to all junior college faculty

TABLE 1 (continued)

SUMMARY OF STATE STATUTES

		VT	VA	WA	WV	WI	WY
I.	Tenure not mentioned	x	x				x
II.	Dismissal/nonrenewal procedure not mentioned	x					x
III.	Academic freedom mentioned						
IV.	Dismissal/nonrenewal at discretion of state board						
V.	Employment terms set by state board		x				
VI.	Dismissal/nonrenewal at discretion of local board						
VII.	Employment terms set by local board						
VIII.	Provision for contracts			x		x	
IX.	Probationary faculty						
	A. Nonrenewal at discretion of local board			x		x	
	B. Written notice of nonrenewal				x	x	
	C. Hearing				x		
	D. Notice required for dismissal						
	E. Grounds for dismissal			x			
	F. Due process procedures outlined			x	x		
	G. Provision for suspensions						
	H. Judicial review			x			
X.	Tenured or continuing contract faculty						
	A. Procedure for attainment			x		x	
	B. Notice of nonrenewal/dismissal						
	C. Grounds for dismissal			x		x	
	D. Hearing			x		x	
	E. Due process procedures outlined			x		x	
	F. Provision for suspensions						
	G. Judicial review			x			
XI.	Collective bargaining						
	A. To set employment terms					x	
	B. Hearing						
	C. Arbitration						
	D. Judicial review						

junior college courses at teachers' colleges or in partnership with other four-year colleges. It is far easier for a state board to simply set state-wide employment terms.

Local boards are given such powers in some states. Five states let local boards dismiss faculty members at the discretion of the board, and nine states provide for employment terms to be set by the local board.

While the use of employment contracts is very widespread, only eight states specifically provide for contracts in their statutes.

Of the fifteen states that provide tenure systems and/or some form of due process protection for community college faculty members, thirteen provide some measure of protection for probationary faculty members as well. That protection falls into a number of categories. Twelve states provide for notice to be given if the faculty member is not to be rehired for the next year, whereas only six states require notice for dismissal during the academic year, possibly due to the fact that such dismissals constitute situations in which faculty members must be removed quickly for the good of the college. That is also the thinking behind provisions for the suspension of probationary faculty members pending a hearing. Such suspensions are provided in the statutes of three states.

Seven states provide for hearings for probationary faculty members. Due process procedures at the hearing are specified in the statutes of four states. While there is some variation in the due process procedures of hearings from state to state, they typically include an opportunity

to respond to charges, an opportunity to present and cross-examine witnesses, representation by counsel if desired, and the making of a transcript of the proceedings. Grounds for dismissal of probationary faculty members are required in only two states. Three states also provide for judicial review should it be desired once a college's own due process procedures have been exhausted.

As would be expected, tenured faculty members receive more protection under state statute than do probationary faculty members. Of the nineteen states having either statutory tenure or dismissal systems, twelve require notice be provided to the faculty member before dismissal.

Grounds for dismissal are required in fourteen states, though Florida and Nebraska list only one ground each for dismissal. In Florida that ground is disruptive activity. In Nebraska it is unsatisfactory performance. California's statute is illustrative of a more complete list of grounds. Those grounds are (1) immoral or unprofessional conduct; (2) certain violations of the Penal Code; (3) dishonesty; (4) incompetency; (5) unfitness for service; (6) any physical or mental condition making the instructor unfit for service; (7) persistent refusal to obey school regulations; (8) conviction of a felony or crime involving moral turpitude; (9) membership in the Communist Party.[17] Even those grounds allow a great deal of interpretation by boards of trustees.

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[17]California, Government Code, Ch. 1010, Section 87732.

Hearings are required before dismissal in thirteen states' codes, and the due process procedures included in the hearing are outlined in all thirteen states. Minnesota community college faculty members work under collective bargaining agreements. Any due process is handled through a grievance procedure which is explained in the state's legislative enactment. Maine and Massachusetts have similar provisions. Thus all states providing for due process specify the nature of that due process for tenured faculty members.

The notice and hearings required in some states result in the passage of a good deal of time before the actual dismissal of a faculty member can take place. The delay is often intentional, giving the faculty member the opportunity to correct any faults. In California, for example, if a faculty member is charged with unprofessional conduct or incompetency, notice must be specific as to demonstrated instances of that unprofessional conduct or incompetency, and an opportunity must be provided to correct this situation.

Such delays before dismissal can result in problems where immediate removal is desirable due to the nature of the charge against a faculty member. As a solution to that problem, nine states have provided for the suspension of tenured faculty members. In Colorado for example, a faculty member may be suspended for up to fifteen days if in the judgement of the chief administrative officer the continued presence of that faculty member would substantially disrupt the operations of the college.

Nine states provide for judicial review of dismissal decisions, once procedures internal to the college have been exhausted. Such provisions typically give time limitations and the issues the court can consider in the review.

Five states deal with the dismissal or nonrenewal of community college faculty members at least in part through collective bargaining. Minnesota, Maine, Massachusetts, Maryland, and Wisconsin use such procedures to set terms of employment. As mentioned above, those states provide for due process through grievance procedures and arbitration. Wisconsin has a tenure law providing for notice, hearings, and grounds for dismissal; however, that state's law also provides for modification or waiver of any of the sections of the tenure law under a collective bargaining agreement.

Though in most cases the procedure for acquiring tenure is left to state or local boards of the trustees to develop, three states outline that procedure in their statutes. New Jersey, for example, gives the required time period before tenure can be attained, exceptions to that time period, and who is to make the decision on granting tenure.

As mentioned above, when states have a personnel law for state employees, a confusing situation can result if the statutes are not clear on whether faculty members are included, and states vary on their inclusion. On the one hand, Minnesota does cover its community college faculty members under its state civil service law, while on the other hand North Carolina specifically excludes them from coverage under its state personnel act.

College Policies

Thirty-one states do not provide for either tenure or dismissal of community college faculty members in their statutes. As a result, contracts and internal policies concerning dismissals are important in the two-year colleges, and in all institutions of higher education. Therefore, college trustees will often include in their regulations procedures similar to those found in state statutes for the dismissal of public school teachers, and those regulations then become incorporated into faculty members' contracts.[18]

College administrators have a great deal of flexibility in setting personnel policies, especially in states that do not provide them with statutory or other state level guidelines. However, once the rules and regulations are established they must be followed. When there is a deviation from those regulations, the matter often ends up in a court of law. Litigation can result not only from a failure to follow college regulations but also from questions arising as to who is to implement the regulations. For example, questions can arise as to who is to negotiate and execute the employment contract.[19]

Sindermann[20] provides an example of how a college's regulations and policies can become binding in the opinion of the courts through the

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[18]Pettigrew, p. 480.

[19]Thomas E. Blackwell, College Law (Washington: American Council on Education, 1961), p. 59.

[20]Perry v. Sindermann, 408 U.S. 593, 92 S Ct. 2694, 33 L. Ed. 2d 570 (1972).

recognition of a professional or at least a "customary law" where state guidelines and in this case the college's Faculty Guide included language that gave the faculty member the equivalent of tenure.[21]

Judicial Decisions

Academic Freedom. Only since World war II have the courts recognized academic freedom as part of a teacher's First Amendment rights, no longer viewing it as a matter internal to the college but seeing it as a concern of society as a whole.[22] The Supreme Court had already spoken to the issue of the teacher's right to teach in Meyer.[23] However, it was in the court cases of the 1950's and 1960's that the Supreme Court gave academic freedom constitutional status under the First Amendment rights to freedom of speech and association, under the Fifth Amendment right to protection from self-incrimination, and under the Fourteenth Amendment right to due process. Some of those Supreme Court cases contained statements supporting academic freedom.[24]

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[21]Matthew W. Finkin, "Toward a Law of Academic Status" in The Constitutional Status of Academic Tenure, ed. Walter P. Metzger (New York: Arno Press, 1977), p. 593.

[22]John S. Brubacher, The Courts and Higher Education (San Francisco: Jossey-Bass Inc., Publishers, 1977), p. 57.

[23]Meyer v. Nebraska, 262 U.S. 390, 43 S. Ct. 625, 67 L. Ed. 1042 (1923).

[24]Kaplin, Law of Higher Education, p. 142.

Slochower[25] speaks to the matter of due process, stating that while a teacher does not have a constitutional right to a job, and while the state does have broad powers to dismiss employees, due process is desirable before such dismissal takes place.

The first case where academic freedom is actually discussed is Adler[26] where, in his dissenting opinion, Justice William O. Douglas describes the consequences of stifling academic freedom. With Sweezy,[27] academic freedom went from the dissenting opinions of the Supreme Court to the majority opinion with six justices in the majority.[28] That majority opinion struck a balance between the interests of the individual and the interests of society in favor of the individual since such a balance is ultimately beneficial to society.[29] The opinion also stated that

> the essentiality of freedom in the community of the American Universities is almost self evident. No one should under estimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation.[30]

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[25]Slochower v. Board of Higher Education of City of New York, 350 U.S. 551, 76 S. Ct. 637, 100 L. Ed. 692 (1956).

[26]Adler V. Board of Education, 342 U.S. 485, 92 S. Ct. 380, 96 L. Ed. 517 (1952).

[27]Sweezy v. New Hampshire, 354, U.S. 234, 77 S. Ct. 1203, 1 L. Ed. 2d 1311 (1957).

[28]William P. Murphy, "Academic Freedom-An Emerging Constitutional Right" in The Consitutional Status of Academic Freedom, ed. Walter P. Metzger (New York: Arno Press, 1977), p. 455.

[29]Burbacher, p. 57.

[30]Sweezy v. New Hampshire, 354 U.S., p. 250.

Keyishian,[31] in rejecting Adler,[32] demonstrated the changes in the Supreme Court's views on academic freedom.[33] In Keyishian the Supreme Court stated that our Nation is deeply committed to safeguarding academic freedom which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall over the classroom.[34]

In the end, however, it is significant that the case was not decided on the grounds of academic freedom.[35]

Pickering[36] continues the trend favoring teacher rights with the Supreme Court stating that teachers may not be required to give up their First Amendment right to comment on matters of public concern. Again a balancing of the rights of the teacher and the state is involved.

Thus, a teacher's constitutional rights do not stop when he enters the school, a point that was made clear in Tinker[37]. While that case

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[31]Keyishian v. Board of Regents of the State of New York, 385 U.S. 589, 87 S. Ct. 675, 17 L. Ed. 2d 629 (1967).

[32]Adler v. Board of Education, 342 U.S. 485, 92 S. Ct. 380, 96 L. Ed. 517 (1952).

[33]Kaplin, Law of Higher Education, p. 146.

[34]Keyishian v. Board of Regents of the State of New York, 385 U.S. p. 603.

[35]Nordin, p. 319.

[36]Pickering v. Board of Education of Township High School District 205, 391 U.S. 563, 88 S. Ct. 1732, 20 L. Ed. 2d 811 (1968).

[37]Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 89 S. Ct. 733, 21 L. Ed. 2d 731 (1969).

dealt directly with student rights, the Supreme Court saw fit to apply the decision to teachers as well.

Academic freedom, as interpreted in the decisions indicated above, is not a right. Rather, it is a freedom because it gives immunity from the authority of others to prevent the individual from exercising his constitutional rights. It is therefore a personal liberty to teach and research freely, within the reasonable limits set by a sense of professional responsibility. For example, a psychology professor crying "fire" in a crowded theater to observe stress would go beyond the limits.[38]

Since academic freedom involves the freedom to teach and research, it is closely tied to employment at a college or university. Therefore, it is a freedom protected by the constitution in public institutions of higher learning.[39]

The courts have used the term academic freedom as a "catch all" to include a range of teacher rights. "This judicial conception of academic freedom is essentially an attempt to reconcile basic legal principles with the courts' notions of academic freedom's social and intellectual role in American education."[40]

Due to the attempts of the courts to balance the interests of the

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[38]William Van Alstyne, "The Specific Theory of Academic Freedom and the General Issue of Civil Liberty" in The Constitutional Status of Academic Freedom, ed. Walter P. Metzger (New York: Arno Press, 1977), pp. 71, 78.

[39]Ibid., p. 74.

[40]Kaplin, Law of Higher Education, p. 141.

teacher and the college in each case, it is difficult for administrators to make generalizations as to the establishment of policies regarding academic freedom. However, the court decisions do provide some guidance. Administrators' authority over the exercise of academic freedom is limited, especially outside of the classroom. That authority increases as the job relatedness of the teacher's activity increases. Therefore college regulations should be specific in nature, devoid of vague generalizations. Administrators should also avoid any interference with free speech, especially outside of the classroom. Due process procedures should be provided whenever a faculty member is deprived of liberty or property. Dismissals should not be based on actions that are legitimate exercises of constitutional rights.[41]

Academic Freedom for Nontenured Faculty Members. While tenured faculty members are protected by the procedural safeguards of their tenure systems, both tenured and nontenured faculty members are protected from infringement of their constitutional rights.[42]

Under the Fourteenth Amendment all faculty members have a right to due process under certain conditions, whether they are tenured or not. That conclusion is based primarily on two cases decided on the same day by the Supreme Court, Roth[43] and Sindermann.[44] Among the legal questions

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[41]Ibid., pp. 156-158.

[42]Pettigrew, p. 495.

[43]Board of Regents of State Colleges v. Roth, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972).

[44]Perry v. Sindermann, 408 U.S. 593, 92 S. Ct. 2694, 33 L. Ed. 2d 570 (1972).

addressed in those cases were whether a nontenured faculty member may have the right to continued employment based on state law, and whether such a faculty member may be deprived of a liberty or property interest without due process of law.[45]

Those cases came at a time when the circuits were split as to whether the Fourteenth Amendment required due process prior to the nonrenewal of teacher contracts and whether nonrenewal was a violation of First Amendment speech rights. The Supreme Court answered those questions, stating that teachers were entitled to due process when it is proven that they have been deprived of liberty or property.[46]

Tenure is irrelevant to liberty claims. The Supreme Court ruled that Sindermann's lack of tenure was not a consideration in his free speech claim, and that the government cannot deny a benefit because an employee exercises a constitutional right.[47] Although the case does not directly address the issue of pretermination hearings involving free speech violations, the wording of the case indicates that infringement of free speech rights leads to the requirement of a hearing before termination. However, the teacher must have a legitimate free speech

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[45]Elaine R. DiBiase, "Tenure, Alternatives to Tenure and the Courts", paper presented at the 1980 American Educational Research Association meeting, April, 1980.

[46]Carol H. Shulman, "Employment of Nontenured Faculty: Some Implications of Roth and Sindermann" in The Constitutional Status of Academic Tenure, ed. Walter P. Metzger (New York: Arno Press, 1977), p. 215.

[47]Kaplin, Law of Higher Education, p 142.

interest. Simply holding a teaching position is not sufficient to require due process if that position is taken away.[48]

In Roth[49], the Supreme Court found no liberty interest was infringed by the teacher's nonrenewal. The lower court had stated that Roth's interest in securing a job must be weighed against the administration's need for discretion in employment decision, but according to the Supreme Court such a weighing need only be done after a liberty or property interest has been proven.[50] No such liberty interest was demonstrated by Roth, since the Supreme Court found that simple failure to renew his appointment did not damage his standing in the community or his prospects for future employment. Therefore the fact that a teacher is not rehired for a particular job does not lead to a requirement of due process.[51]

The Supreme Court was not unanimous in that opinion. In his dissenting opinion in Roth, Justice William O. Douglas stated that

> nonrenewal of a teacher's contract is tantamount in effect to a dismissal, and the consequences may be enormous. Nonrenewal can be a blemish that turns into a permanent scar and effectively limits any chance the techer has of being rehired as a teacher, at least in his state.[52]

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[48]Shulman, p. 226.

[49]Board of Regents of State Colleges v. Roth, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972).

[50]Shulman, p. 217.

[51]Kaplin, Law of Higher Education, p. 133.

[52]Board of Regents of State Colleges v. Roth, 408 U.S., p. 585.

The Supreme Court defines an expectancy of employment as a property right, but no such property right exists if the expectancy is only in the mind of the teacher.[53] The Supreme Court disagreed with the Court of Appeals when the lower court stated that mere subjective expectancy was protected by due process. In Sindermann[54], the Supreme Court stated that in order for the expectation to be a legitimate property interest with accompanying rights to due process protection, the expectation must be derived from state laws or practices of the college. Those laws or practices can result in de facto tenure. As stated in Sindermann,[55] "...absence of...such explicit contractural provision [providing for tenure] may not always foreclose the possibility that a teacher has a property interest in continued employment." Such a property interest requires due process protection under the Fourteenth Amendment.

Thus the Supreme Court created a kind of quasi-tenure applicable to some faculty members and not to others, and in doing so left college administrators and the courts with a great deal of discretion.[56] For example according to the decision in Roth,[57] a distinction must be made

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[53]Larry W. Hughes and William M. Gordon, "Frontiers of the Law", in The Courts and Education, ed. Clifford P. Hooker (Chicago: University of Chicago Press, 1978), p. 353.

[54]Perry v. Sindermann, 408 U.S., p. 601.

[55]Ibid.

[56]William Van Alstyne, "The Supreme Court Speaks to the Untenured: A Comment on Board of Regents v. Roth and Perry v. Sindermann", in The Constitutional Status of Academic Tenure, ed. Walter P. Metzger (New York: Arno Press, 1977), p. 267.

[57]Board of Regents of State Colleges v. Roth, 408 U.S., p. 578.

between the faculty member whose contract is still in force and the faculty member whose contract has expired. The former has an interest that requires due process protection.

Bishop,[58] although not dealing with a school environment, has been linked to the education cases because it deals with due process protection for liberty and property interests. In Bishop,[59] a police officer was fired and orally informed in private of the decision and the reasons for it. The Supreme Court found that no property interests had been infringed since the wording of the ordinance dealing with the employment of police officers could not reasonably lead to an expectation of continued employment, and because the officer in this case was given the reasons in private, no liberty interest was involved.

In the decision indicated above on due process, the Supreme Court has indicated which situations require such protection: (1) when the rules or practices of the institution or state laws result in a mutual understanding that employment will be continued, thus creating a property interest claim; (2) when an institution in the process of terminating an appointment makes charges against a faculty member that damage his reputation or standing in the community, thus creating a liberty interest claim; (3) where termination results in a stigma that leads to the barring of the faculty member from employment in teaching, again

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[58]Bishop v. Wood, 426, U.S. 341, 96 S. Ct. 2074, 48 L. Ed. 2d 684 (1976).

[59]Kaplin, Law of Higher Education, p. 136.

involving a liberty interest; and (4) when the termination interferes with the faculty members free speech rights, also creating a liberty claim.[60]

Since those 1972 Supreme Court guidelines were handed down, numerous cases have come to the courts where faculty members have claimed infringement of liberty and property interest without their being afforded the benefit of due process. In Johnson[61] the United States Fourth Circuit Court of Appeals expanded on the property interest criteria of the Supreme Court, stating that a teacher who has held a position for a substantial length of time has the equivalent of tenure and therefore has a property interest requiring due process protection.[62]

The Court of Appeals also stated that dismissal of a teacher for no reason after many years of service would result in a stigma, and therefore a liberty interest would be involved.[63]

Walker[64] illustrates how expectation of continued employment does not constitute a property interest if it exists only in the mind of the teacher. Walker read into a letter from the president of the college a meaning that was not intended. The letter wished him a happy tenure with

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[60]Ibid., pp. 136-138.

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

[62]Ibid., p. 181.

[63]Ibid., p. 182.

[64]Walker v. California State Board of Trustees, 351 F. Supp. 977 (M.D. Pa. 1972).

the college. Since Walker was not accused of anything, the District Court also ruled that no liberty interest was involved.[65]

The same District Court also took a narrow view of liberty interests in Berry.[66] The District Court stated that though the charges brought against Berry were likely to damage her professional reputation, those charges (dealing with her competence as a teacher) were not severe enough to create a stigma, and that only such charges are immorality or disloyalty to the nation involved in a liberty interest.[67]

Failure of a college to follow state statutes is illustrated in Ramey.[68] Although the case did not involve a faculty member, it did involve a dismissal from a college position and demonstrated that where a state statute calls for due process procedures a property interest is created. Those procedures provided by legislative enactment must be followed for covered employees whether or not they have tenure.[69]

Ducorbier[70] gives an example of how another district court rejected a claim to a property interest based on what the District Court considered to be a unilateral expectation of continued employment. Ducorbier was an instructor, and by college rules was therefore ineligible for tenure.

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[65]Ibid., p. 998.

[66]Berry v. Hamblin, 356 F. Supp. 306 (M.D. Pa. 1973).

[67]Ibid., p. 308.

[68]Ramey v. Des Moines Area Community College, 216 N.W. 2d 345 (1974).

[69]Ibid., p. 347.

[70]Ducorbier v. Board of Supervisors of Louisiana State University, 386 F. Supp. 202 (E.D. La. 1974).

Ducorbier[71] is more significant for the decision regarding the instructor's liberty claim. The District Court ruled that the institution was under no obligation to determine if the job market could absorb Ducorbier before letting her go. She had claimed that her termination to make room for faculty members working on their doctoral degrees had stigmatized her.

Burdeau[72] also helped clarify where the courts stand on liberty interests, specifically regarding the creation of stigmas. Burdeau claimed that his dismissal with no reasons given would be interpreted negatively, but the Ninth Court of Appeals found no evidence to that effect.[73] In contrast, the Fourth Circuit Court of Appeals had found in Johnson,[74] that a dismissal for no reason created a stigma. In that case, however, the Fourth Circuit was dealing with a teacher who had been employed for twenty-nine years, whereas Burdeau was in his first year of employment. Taking those decisions together, the length of service of the teacher has to be considered to be the difference between a dismissal for no reason resulting in a stigma and the same type of dismissal producing no harmful effect.

The property interest claim in Burdeau[75] followed the typical pattern, with the Court of Appeals finding that Burdeau's sincere belief

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[71]Ibid., p. 205.

[72]Burdeau v. Trustees of California State Colleges, 507 F. 2d 770 (9th Cir. 1974).

[73]Ibid., 773.

[74]Johnson v. Fraley, 470 F. 2d 179 (4th Cir. 1972).

[75]Burdeau v. Trustees of California State Colleges, 507 F. 2d, p. 774.

in his qualifications did not give him a legitimate property claim.

In Markwell, more objective proof than simply a teacher's opinion was offered in support of property and liberty claims.[76] That evidence consisted of the teaching awards and numerous contract renewals given to Markwell prior to his criticism of the administration. However, the United States Fifth Circuit Court of Appeals did not find such evidence to be proof of an expectation of continued employment. The evidence was also found to be insufficient to prove that Markwell was terminated because of his criticism of the administration.[77]

Adequate proof of a property interest was provided in Assaf.[78] The university had failed to follow its own regulations regarding the timely notification of a faculty member that his appointment was not to be renewed. Although the board did follow another, conflicting regulation, the District Court held that the failure to notify the teacher by the required date led to an objective expectancy of continued employment and thus to a property interest.[79]

Regarding the conflicting regulations, the District Court stated that the university "...takes with one hand what it has just bestowed with the other hand [and such a situation is not]...the kind of fair play and substantial justice required by due process."[80]

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[76]Markwell v. Cullwell, 515 F. 2d 1258 (5th Cir. 1975).

[77]Ibid., p. 1259.

[78]Assaf v. University of Texas System, 399 F. Supp. 1245 (S.D. Tx 1975).

[79]Ibid., p. 1249.

[80]Ibid.

Keddie[81] concerned a liberty claim, and the decision of the District Court helped to further define liberty interests. Keddie was denied tenure, and his appointment was not renewed because he failed to meet the standards of excellence necessary for a grant of tenure. The District Court stated that a charge of failure to meet standards of excellence would not damage a teacher's career and furthermore, even if the charge had been incompetence, a liberty interest would not have been involved.[82]

Keddie's other liberty claim was that the failure to grant him tenure was the result of his political activity and his criticism of the adminstration. The District Court stated that a college may limit a faculty member's right to free speech where a compelling need exists to promote a close working relationship between the faculty member and the administration. The District Court also stated that academic freedom may be limited to activities that do not disrupt the educational process.[83]

The United States Supreme Court dealt with the termination of a teacher's appointment on multiple grounds in Mt. Healthy.[84] In that case a teacher was dismissed for making obscene gestures at female students and for making a school memorandum public. There were numerous other incidents that could have resulted in charges; however, the board cited only the two incidents indicated above. The District Court and the Court

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[81]Keddie v. Pennsylvania State University, 412 F. Supp. 1264 (M.D. Pa. (1976).

[82]Ibid., p. 1274.

[83]Ibid., p. 1270.

[84]Mt. Healthy City School District Board of Education v. Doyle, 429 U.S. 274, 97 S. Ct. 568, 50 L. Ed. 2d 471 (1977).

of Appeals found for the teacher since the activities cited by the board were considered exercises of free speech. The United States Supreme Court vacated the ruling, stating that where a teacher is terminated on multiple grounds, even though some of the grounds were based on constitutionally protected activity, if there are other grounds not so protected, and if the teacher's appointment would have been terminated on the basis of that unprotected activity, the termination is valid. To do otherwise, stated Justice William Rhenquist, might cause a school to retain a teacher against whom valid charges have been brought.[85]

Since Mt. Healthy, in order for a teacher to have a valid claim to a liberty interest, the protected activity must be proven to be the principal factor in the decision to dismiss, and that the decision would not have been made without the protected activity.

While the Supreme Court sets the standards, the states are not obligated to follow them exactly, as long as the state's own standards do not fall below the federal standards. That statement was made in the West Virginia case of McLendon v. Morton.[86] In that case an associate professor had met the eligibility standards published by the community college, yet was denied tenure. The Supreme Court of Appeals of West Virginia found that since she met the requirements for tenure she could not be denied tenure without due process.[87]

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[85]Ibid., p. 575.

[86]McLendon v. Morton, 249, S.E. 919 (W. Va. 1978).

[87]Ibid., p. 925.

Failure of a college to meet its own standards or standards set by the state is the principal cause for dismissal and nonrenewal cases being decided in favor of the faculty member. In Silbert,[89] however, such a failure worked against the person who sought to keep his position. Silbert was an administrator, but his contract stated that he was included under the college's tenure policy. When he was dismissed he sued; however, the Supreme Court of Montana upheld his dismissal on the grounds that under state law administrators were not eligible for tenure, and that the board had no authority to grant tenure to administrators since state law did not give the board of trustees that power.[90] Silbert is an important case for community colleges. As stated earlier in this chapter, thirty-two states have no tenure provisions for community colleges in their statutes. In those states the legislative enactment enumerating the powers of the trustees is often interpreted as giving boards the power to set tenure policies if they choose to do so. The finding in Silbert demonstrates that an assumption that a board of trustees has the power to make tenure decisions cannot be taken for granted.

Another case dealing with college regulations that were violated and with the powers of college boards is Causey.[91] In Causey a probationary teacher was denied tenure based on the recommendations of a tenure review committee's evaluation of his teaching. His teaching had never been

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[89]Silbert v. Community College of Flathead County, 587, P. 2d 26 (Mt. 1978).

[90]Ibid., p. 28.

[91]Causey v. Board of Trustees of Community College District V, 638 P. 2d 98 (Wa. 1982).

formally observed, and the committee did commit several procedural errors. When Causey sued, the Court of Appeals of Washington affirmed a lower court ruling that since Causey was probationary he could be terminated without cause, and irregularities in the committee's work could not constitute a denial of due process since no due process was required. Furthermore, it was the board and not the tenure review committee that had the authority to make the final tenure decision.[92]

Dismissal and nonrenewal cases are not always decided on narrow procedural grounds. In Goss[93] for example, a liberty interest was created when Goss' appointment was terminated because of her engagement in constitutionally protected activity. Goss illustrates how the courts use the criteria established in Mt. Healthy[94] to weigh various grounds for dismissal. The board dismissed Goss under a reduction in force policy because her evaluation had ranked her toward the bottom of the instructors in her department. However, the fact that points which would have raised her evaluation score were left out and the fact that she had been involved in disagreements with the board were considered by the Court of Appeals to be sufficient to decide the Mt. Healthy test in her favor. The disagreements with the board were found to be the principal reason for her nonrenewal, and she would have been retained except for the protected activity.[95] Goss is also significant because in the

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[92]Ibid., p. 100.

[93]Goss v. San Jacinto Junior College, 588 F. 2d 96 (5th Cir. 1979).

[94]Mt. Healthy City School District Board of Education v. Doyle, 429, U.S. 274, 97 S. Ct. 568, 50 L. Ed. 2d 471 (1977).

[95]Goss v. San Jacinto Junior College, 588 F. 2d, p. 99.

wording of that decision college administrators can learn what not to do if they are to avoid academic freedom cases.[96]

Daulton,[97] a more recent decision from the Fourth Circuit, reached much the same conclusions. Daulton divorced her husband and married a student. Thereafter she was cited for, among other things, being late for classes and inaccessible to students. She was also critical of the college administration, and that criticism was viewed as further evidence of her negative attitude. Citing Sindermann[98] and Mt. Healthy,[99] the United States Fourth Circuit Court of Appeals upheld the lower court ruling that Daulton's appointment had not been renewed because of her criticism of the administration, thereby infringing on her First Amendment rights. The Court of Appeals found that such criticism was the principal reason for her nonrenewal.[100] In its decision the Court of Appeals weighed the school's interest in regulating conduct against the teacher's right to speak out and found that in this case, Daulton's criticisms were not seriously disruptive.[101]

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[96]William A. Kaplin, The Law of Higher Education, 1980 (San Francisco: Jossey Bass Inc., Publishers, 1980), p. 60.

[97]Daulton v. Affeldt, 678 F. 2d 487 (4th Cir. 1982).

[98]Perry v. Sindermann, 408 U.S. 593, 92 S. Ct. 2694, 33 L. Ed 2d 570 (1972).

[99]Mt. Healthy City School District Board of Education v. Doyle, 429 U.S. 274, 97 S Ct. 568, 50 L. Ed 2d 471 (1977).

[100]Daulton v. Affeldt, 678, F. 2d, p. 491.

[101]Idid.

Academic Freedom for Tenured Faculty Members. The courts have left boards of trustees and administrators with a great deal of discretion in nonrenewal decisions involving nontenured faculty members, and while administrators generally favor that discretion and the flexibility it gives the institution, most administrators are not as strict as they legally could be. Tenure systems are very common, and many colleges' policies provide nontenured faculty members reasons for nonrenewal of appointments.[102]

College administrators have long recognized the value of academic freedom and the importance of due process procedures in protecting academic freedom with tenure systems being a means of institutionalizing that due process.[103] Even where there is no written contract tenure can be considered a contract and thus is afforded due process protection under the Fourteenth Amendment if (1) it has been granted in writing; (2) it has been granted after a probationary period during which the teacher's work has been evaluated; (3) the nature of the institution's work leads to a need for tenure for the benefit of society; and (4) the institution's policies indicate that the tenure decision has been given serious thought and that it will be of long duration.[104]

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[102]Shulman, pp. 229-230.

[103]Ibid., p. 469.

[104]Robert Hendrickson, "Legal Aspects of Faculty Reduction" in New Directions for Institutional Research-Coping with Faculty Reductions, ed. Stephen R. Hemple (San Francisco: Jossey-Bass Inc., Publishers, 1981), p. 26.

The courts have indicated what is required to satisfy due process for tenured faculty members: (1) a written statement of the basis for dismissal; (2) a description of the process used in reaching the dismissal decision; (3) the information on which the decision was based; and (4) an opportunity to respond.[105]

College administrators continue to face legal problems when tenured faculty members are dismissed, especially when the dismissal is for "cause" as provided in some state statutes and college regulations. The critical issue becomes the standards of determination for "cause." Therefore, some colleges and state legislatures have come up with more specific reasons for dismissal, the most common being incompetency, insubordination, immorality, and medical disability. Those terms are also broad, however, and college administrators must clearly define them if they wish to minimize their liability.[106]

Due process is required in cases involving the dismissal of tenured faculty members, and the issue of who carries out the due process procedures is also important as illustrated in Bowing.[107] The Washington Court of Appeals stated that while state law intended for tenured teachers to be dismissed only for cause and after due process, the board was not bound by the results of that due process when it was carried out by a review committee.[108]

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[105]Ibid., p. 31.

[106]Kaplin, Law of Higher Education, p. 53.

[107]Bowing v. Board of Trustees of Green River Community College District No. X, 521, P. 2d 220 (Wa. 1974).

[108]Ibid., p. 224.

Bowing's dismissal had not been recommended by the review committee, but the board dismissed her anyway. In its decision, the Washington Court of Appeals ordered the board to give her a hearing since the final decision on her dismissal rested with the board.[109]

Saunders[110] illustrates how the grounds given for dismissal can result in legal action being taken by a tenured faculty member. Saunders was discharged for inefficiency and insubordination, and he sued, claiming an infringement of his constitutional rights to free speech and expression. The board had more specific charges to back up the inefficiency and insubordination grounds for dismissal. Among those charges were his failure to teach the prescribed curriculum or use the textbook and his refusal to discuss his teaching problems with the administration. The Supreme Court of Missouri found the specific charges to be sufficient evidence to back up Saunders' dismissal for inefficiency and insubordination and stated that his dismissal did not result in an infringement of his constitutional rights since college administrators had the authority to set curriculum standards and to see that those standards were maintained.[111]

As mentioned above, the courts have established a pretermination hearing to be one of the requirements of due process for tenured faculty

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[109]Ibid.,

[110]Saunders v. Reorganized School District No. 2 of Osage County, 520 S.W. 2d 29 (Mo. 1975).

[111]Ibid., p. 35.

members. The nature of that hearing and its timeliness came into question in Chung.[112] Chung claimed that since his hearing came after the initial decision to terminate his appointment, he was denied due process. Citing Sindermann,[113] the United States Court of Appeals for the Third Circuit ruled that a hearing need not be held prior to termination, but the hearing must be held prior to the termination of benefits if the requirements for due process are to be satisfied. The Court of Appeals also stated that the purpose of due process to be the determination of whether a dismissal is "unreasonable, arbitrary or capricious."[114]

Although the courts have allowed institutions flexibility in their due process procedures, such procedures, even if followed to the letter, may be inadequate to protect the college from litigation if those procedures are used for intimidation to discourage the exercise of constitutionally protected rights as they were in Trotman.[115] In Trotman, the college president came into conflict with a large number of faculty members over a reduction in force policy. He used letters and telegrams containing implicit and explicit threats to stifle picketing and other protest actions against the policy and against subsequent actions taken by the president. The college's due process procedures were followed. For example, letters were sent to every faculty member

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[112]Chung v. Park, 377 F. Supp. 524, affd. C.A., 514 F. 2d 382, cert. den. 451 U.S. 986, 10. S. Ct. 2320, 68 L. Ed. 2d 844 (1980).

[113]Perry v. Sindermann, 408 U.S. 593, 92 S. Ct. 2694, 33 L. Ed. 2d 570 (1972).

[114]Chung v. Park, 377 F. Supp. p. 429.

[115]Trotman v. Board of Trustees of Lincoln University, 635 F. 2d 216, cert. den. 451 U.S. 986, 101 S. Ct. 2320, 68 L. Ed. 2d 844 (1980).

notifying them of nonrenewal. This was done to conform to the college policy of written notification before dismissal. The District Court found that the president had acted in good faith since he did follow the college's procedures, but the United States Third Circuit Court of Appeals overturned the lower court decision stating that the result of the president's letters and telegrams was a stifling of free speech that could not be justified on the basis that the speech would have resulted in serious disruption of the educational process. The exception was a protest by two faculty members where they stood in a classroom, an act which the Court of Appeals did find to be disruptive and therefore not constitutionally protected.[116]

Summary

Based on an analysis of cases, the trend suggests that the courts will most often support college administrators' decisions in dismissal and nonrenewal situations. The decisions are likely to be supported whether the faculty member has tenure or not. In many cases the courts have expressed regret at having to decide matters best left to the college administration to decide. However, where constitutional issues are raised the courts have readily become involved.

Although academic freedom is mentioned in numerous cases, the courts are more likely to rely on the concept of protection of liberty and property interests in making their decisions.[117] Both tenured and nontenured faculty members raise liberty claims, while for tenured faculty members tenure itself clearly constitutes a property interest.

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[116]Ibid., p. 225-226.

[117]Nordin, p. 330.

The Supreme Court left the definitions of liberty and property interests rather open, and the lower courts have had to determine where such interests exist and where they do not. Apparently the Supreme Court intended that such individual determinations take place as evidenced in Justice William O. Douglas' dissenting opinion in Roth[118] where he stated that a weighing of interests is necessary in each case.

An analysis of the judicial decisions suggests that nontenured faculty members will win whenever a liberty interest has been infringed by a termination, and that infringement been interpreted to include violation of the right to free speech. However, such an infringement must be the principal reason for termination.

The situation is less clear when the claim involves a liberty interest created because of a stigma. There is some disagreement among the courts with some stating that a charge of incompetence or in some cases the absence of a charge can create a stigma while others have found that only such charges as immorality do enough damage to a faculty member's standing to require due process protection. If administrators wish to play it safe and avoid litigation in the area of liberty interests, they should avoid damaging a teacher's reputation in the community and discrediting the teacher in such a way as to impair the teacher's ability to secure employment.[119]

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[118]Board of Regents of State Colleges v. Roth, 408 U.S., p. 583.

[119]Shulman, p. 224.

The direction of the courts regarding property interests of nontenured faculty members is more obvious. If college administrators follow their own rules and state legislative enactments they will avoid the creation of de facto tenure where it is not intended. To avoid property interest cases, college employment policies should be very specific concerning contracts and probationary status.[120] Should state statute or policy, or the regulations or practices of the college imply that the faculty member has some form of tenure, due process will be required before that faculty member can be removed. In the majority of cases that come before the courts, however, the expectation of continued employment has existed only in the mind of the faculty member. That kind of subjective expectancy does not result in a property interest.

Tenured faculty members clearly have a property interest and are protected by due process, but only if that due process is handled by the board of trustees is it not open to question. Tenure system usually provide grounds for dismissal; however, those grounds are often quite broad. The trend is for the courts to rely on the judgement of college administrators and boards of trustees as to what constitutes "cause", inefficiency, or any of the other common grounds for dismissal. Again, the courts will intervene when such grounds for dismissal involve participation by faculty members in constitutionally protected activity.

Nine of the cases indicated involve community colleges due in part to the failure of many states to provide statutory guidance in the area

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[120] Ibid.

of dismissals and nonrenewals of faculty members. As indicated in Chapter II, community college systems were still developing at a time when tenure systems were having problems. Thus, many have no formal tenure systems, forcing faculty members to rely on the courts for due process protection.

When community colleges are established under local political subdivisions such as a city, county, or community college district, special immunity problems may result.[121] In such cases the college may not share the state's immunity from suit. Community college administrators and boards of trustees must therefore be especially wary of the damage claims that can accompany a faculty member's suit.

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[121]Kaplin, Law of Higher Education. p. 70.

CHAPTER IV

REVIEW OF COURT DECISIONS

This chapter presents a review of landmark decisions and other significant court decisions in the three categories outlined in Chapter III. An overview is presented for each category. Specific facts and judicial decisions are presented as well as a discussion of the significance of each case to the category into which it is placed. Categories and cases are listed below:

1. Academic Freedom as a Constitutional Right
   - Meyer v. Nebraska (1923)
   - Slochower v. Board of Higher Education (1956)
   - Sweezy v. New Hampshire (1957)
   - Keyishian v. Board of Regents (1967)
   - Pickering v. Board of Education (1968)
   - Tinker v. Des Moines Independent Community School District (1969)

2. Academic Freedom as it Relates to Nontenured Faculty
   - Perry v. Sindermann (1972)
   - Board of Regents v. Roth (1972)
   - Johnson v. Fraley (1972)
   - Walker v. California State Board of Trustees (1972)
   - Berry v. Hamblin (1973)
   - Ramey v. Des Moines Area Community College (1974)
   - Ducorbier v. Board of Supervisors of Louisiana State University (1974)
   - Burdeau v. Trustees of California State Colleges (1974)
   - Markwell v. Culwell (1975)
   - Assaf v. University of Texas System (1975)
   - Keddie v. Pennsylvania State University (1976)
   - Mt. Healthy City School District Board of Education v. Doyle (1977)
   - McLendon v. Morton (1978)
   - Silbert v. Community College of Flathead County (1978)
   - Goss v. San Jacindo Junior College (1979)
   - Causey v. Board of Trustees of Community College District V (1982)
   - Daulton v. Affeldt (1982)

3. Academic Freedom as it Relates to Tenured Faculty
   Bowing v. Board of Turstees of Green River Community College District No. X (1974)
   Saunders v. Reorganized School District No. 2 of Osage County (1975)
   Chung v. Park (1975)
   Trotman v. Board of Trustees of Lincoln University (1980)

The landmark United States Supreme Court decisions are reviewed because they have established legal precedents which influence decisions related to academic freedom and tenure. Other cases present decisions from various courts in the American judicial system.

Academic Freedom as a Constitutional Right

Overview. The recognition of academic freedom by the courts has been slow in coming. The courts have been reluctant to substitute their judgement for that of academic administrators, yet they will do so if they see the need. The cases presented in this category deal with academic freedom in four-year colleges and in the public schools. Yet the decisions in both types of cases have been applied frequently to decisions involving community colleges.

The cases presented in this first section emphasize the rights of teachers that have to be balanced against the compelling state interest in education. In some instances those teacher rights have been given the name academic freedom. In others, the rights are referred to by the more specific names taken from the Constitution, such as freedom of speech.

Meyer v. Nebraska

262 U.S. 390, 43 S. Ct. 625, 67L. Ed. 1042 (1923)

Facts. While an instructor at Zion Parochial School, the plantiff, Robert T. Meyer, had taught German to a ten-year-old pupil in violation of a Nebraska statute which held that only English be taught to students

who had not completed the eighth grade. Meyer was found guilty by the District Court of Hamilton County and the Supreme Court of Nebraska affirmed, holding that the state statute did not conflict with the Fourteenth Amendment, but was instead a valid exercise of police power since it prevented children from thinking in foreign languages. Thinking in those languages could result in the children having sentiments in favor of a foreign country.

Decision. Justice James C. McReynolds delivered the opinion of the United States Supreme Court, stating that the Fourteenth Amendment does not simply afford protection from bodily restraint, but among other things includes the freedom to engage "in any of the common occupations of life."[1] The Nebraska statute interfered with the liberties protected by the Fourteenth Amendment, and the United States Supreme Court held that that interference was not acceptable. Therefore, the judgement of the Nebraska Supreme Court was reversed and the Nebraska law was held to be unconstitutional.

Discussion. This case shows the Supreme Court's recognition of the constitutional rights of teachers. Justice James C. McReynolds stated that Meyer's "rights to teach and the right of parents to engage him so to instruct their children, we think, are within the liberty of the Amendment."[2]

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[1]Meyer v. Nebraska, 262 U.S., p. 399.

[2]Ibid., p. 400.

Those rights may at times conflict with the interests of the state,". . . but the individual has certain fundamental rights which must be respected."[3]

Administrators should thus be aware that policies and rules must be developed so as not to interfere with the exercise of constitutional rights which include the teacher's right to teach.

Slochower v. Board of Higher Education of City of New York

350 U.S. 551, 76.S. et. 637, 100L. Ed. 692 (1956)

Facts. Under the Charter of the City of New York, Slochower was dismissed from his teaching position for invoking the Fifth Amendment privilege against self-incrimination before the Subcommittee to Investigate the Administration of the Internal Security Act and Other Internal Security Laws of the Senate Committee on the Judiciary. In testimony before the subcommittee, Slochower said that he was not a member of the Communist Party. He generally indicated a willingness to answer questions concerning his political beliefs since 1941. However, he refused to answer questions concerning his membership in groups during 1940 and 1941. This refusal resulted in his being suspended from his Brooklyn College teaching position and his dismissal under the New York City Charter. Since Slochower was tenured, he asserted that he was entitled to due process, but the New York Court of Appeals found that his use of the Fifth Amendment was equivalent to resignation and therefore he was not entitled to due process.

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[3]Ibid., p. 401.

Decision. The United States Supreme Court, in a five-four decision found that the New York City Charter imposed a penalty upon an individual for the exercise of a constitutional right. Furthermore, the Supreme Court held that invoking the Fifth Amendment is not the equivalent of resignation and therefore Slochower's right to due process was violated. Thus the decision of the New York court was reversed.

Discussion. The significance of the case to this section is that in its decision, the Supreme Court goes further in defining the rights and interests of the teacher and of the state:

> This is not to say that Slochower has a constitutional right to be an associate professor of German in Brooklyn College. The State has broad powers in the selection and discharge of its employees, and it may be that proper inquiry would show Slochower's continued employment to be inconsistent with a real interest of the state. But there has been no such inquiry here. We hold that the summary dismissal of appellant violates due process of law.[4]

Boards of trustees and college administrators should be aware that although they do possess wide ranging powers regarding dismissal, those powers are tempered by constitutional safeguards such as the right to due process.

Sweezy v. New Hampshire

354 U.S. 234, 77S. Ct. 1203, 1 L. Ed. 2d 1311 (1957)

Facts. A New Hampshire statute declared subversive organizations unlawful and subversive people ineligible for employment in state government, including teaching positions. Under that legislative enactment, all present and prospective state employees were required to

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[4]Slochower v. Board of Higher Education, 350 U.S., p. 555.

make sworn statements that they were not subversive. The attorney general was given the authority to investigate possible violations and, through the State Superior Court, could hold witnesses in contempt.

Sweezy was called to testify and, though he did appear, he refused to answer several questions. No action was taken by the attorney general. Five months later Sweezy was called to testify again at which time he confided that he was a Marxist and a socialist. He refused to answer questions concerning the Progressive Party and its members, the subject matter of a lecture he had given, or concerning his beliefs. The Superior Court held him in contempt. That decision was upheld by the New Hampshire Supreme Court although it was conceded that Sweezy's rights to lecture and associate with whom he pleased were infringed by the investigation. The court held that the infringement was outweighed by the need of the legislature to have information on subversives.

Decision. The United States Supreme Court reversed the decision of the New Hampshire court stating that "we do not now conceive of any circumstance where a state interest would justify infringement of rights in these fields."[5] The Supreme Court went on to declare that holding a person in contempt under the New Hampshire Statute was not in accordance with due process under the Fourteenth Amendment since the legislature was seeking the information but the attorney general was conducting the investigations. Such a separation of the legislative power to investigate from the responsibility to direct that power deprives

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[5]Sweezy v. Hampshire, 354 U.S., p. 251.

individuals of due process. A contempt citation under such a law is an invasion of liberties in the areas of academic freedom and political expression.

Discussion. While this case was decided on other merits, the right to academic freedom is specifically mentioned as illustrated in Justice Earl Warren's opinion:

> We believe that there unquestionably was an invasion of petitioner's liberties in the areas of academic freedom and political expression - areas in which government should be extremely reticent to tread.[6]

Justice Felix Frankfurter's concurring opinion is more specific:

> When weighed against the grave harm resulting from governmental intrusion into the intellectual life of a university, such justification for compelling a witness to discuss the contents of his lecture appears grossly inadequate. Particularly is this so where the witness has sworn that neither the lecture or at any other time did he ever advocate overthrowing the government by force or violence.[7]

Thus academic freedom is recognized specifically as one of a teacher's liberties and its importance is stated to be such that it is not to be infringed under most circumstances.

Keyishian v. Board of Regents of State of New York

385 U.S. 589, 87S. Ct. 675, 17 L. Ed. 2d 629 (1967)

Facts. A section of the New York Civil Law referred to as the Feinberg Law and a 1956 addition to that section were challenged by Keyishian, another faculty member and by a library employee. The Feinberg Law stated that persons advocating forceful otherthrow of the government were ineligible for state employment. The law had been challenged previously

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[6]Ibid., p. 250.

[7]Ibid., p. 261.

in Adler.[8] In that case the law had been found to be constitutional by the Supreme Court which also held that although people employed or seeking employment in the public schools of New York have a right to free speech, assembly and beliefs, they did not have a right to work for the school system on their own terms and would not be denied free speech if they were denied employment in the schools for advocating the overthrow of the government.

The 1956 addition to the Feinberg Law required each employee to sign the Feinberg Certificate stating that the employee had read the law, was not a member of the Communist Party and if the employee had ever been a member that membership had been reported to the president of the State University of New York.

Keyishian was a faculty member at the University of Buffalo when it became a part of the state system. He refused to sign the certificate, and his one year term contract was not renewed.

Before the case went to trial in 1965 the Feinberg Certificate was rescinded; however, the courts found that the rescission did not meet the questions raised, and the hearing proceeded as if the certificate were still a part of the law.

Decision. With Justice William Brennan writing the majority opinion in the five-four decision, the United States Supreme Court held that Adler[9] was not dispositive of the constitutional issues in Keyishian because in

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[8]Adler v. Board of Education, 342 U.S. 485, 72 S. Ct. 380, 96 L. Ed. 517 (1952).

[9]Ibid.

the former the Supreme Court did not consider that the New York law might be unconstitutionally vague.

The Supreme Court found the New York law to be unconstitutionally vague in that under that statute it was impossible for a teacher to know where to draw the line between seditious and nonseditious utterances. To illustrate the vagueness of the law Justice Brennan asked if the law applied when a teacher merely tells of the existence of a seditious doctrine.

In addition, the Supreme Court held that knowing membership in an organization is not an adequate reason to bar someone from state employment if they do not also work for the aims of that organization. The New York law was therefore too broad for that reason as well.

Thus the Supreme Court declared the law unconstitutional stating that while the state does have a legitimtate interest in protecting its education system, legislative enactments to that end should be specific because "First Amendment freedoms need breathing room to survice."[10]

Discussion. Before Keyishian, the Supreme Court had said that teachers work for school systems which can lay down reasonable terms for their contractual employment. Should the teacher choose not to work under those terms that is his privilege. Keyishian marks a departure from that notion as Justice Brennan said in a quotation from Silbert v. Verner.[11]

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[10]Keyishian v. Board of Regents of the State of New York, 385 U.S., p. 604.

[11]Silbert v. Verner, 374 U.S. 398, 83S. Ct. 1790, 10L. Ed. 2d 965.

> It is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial or placing conditions upon a benefit or privilege.[12]

Keyishian is also noted for illustrating the Supreme Court stand on academic freedom:

> Our Nation is deeply commited to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment which does not tolerate laws that cast a pall of orthodoxy over the classroom... The classroom is peculiarly the "market place of ideas." That Nation's future depends upon leaders trained through wide experience to that robust exchange of ideas which discovers truth out of a multitude of tongues, (rather) than through any kind of authoratative selection.[13]

Keyishian has major significance for the issues of academic freedom and tenure since it has been used as a precedent frequently in academic freedom and tenure cases up to the present day.

In light of Keyishian, college administrators and boards of trustees should be careful not to make rules and regulations so broad as to violate a teacher's First Amendment rights.

Pickering v. Board of Education of Township High School District 205

391 U.S. 563, 88 S. Ct. 1731, 20 L. Ed. 2d 811 (1968)

Facts. Marvin Pickering was dismissed from his teaching position in Township High School District 205 of Will County, Illinois for sending a letter to a local newspaper in reference to a proposed tax increase. The letter criticized the board's handling of past bond and tax proposals and its allocation of funds between educational and athletic programs.

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[12]Keyishian v. Board of Regents of the State of New York, 385 U.S., p. 605

[13]Ibid., p. 603.

At a hearing the board charged that many statements in Pickering's letter were false and that its publication questioned the competence of the board and the school administrators, thereby leading to a disruption of faculty discipline.

Pickering appealed the board's decision to dismiss him. The Circuit Court of Will County upheld the board decision as did the Illinois Supreme Court.

Decisions. The United States Supreme court, with Justice Thurgood Marshall delivering the opinion held that teachers may not be required to give up their First Amendment rights to comment on matters of public concern, and that they cannot be dismissed for commenting on such matters. In fact, Justice Marshall noted that the right to speak out on school issues is especially important for teachers who are in a position to have informed opinions.

However, even if a teacher's statements are erroneous, a teacher's right to engage in discussion of public issues outweighs the school adminstrator's interest in limiting such discussion, as long as the teacher's public statements do not intefere with performance of his duties or the regular operation of the schools and as long as the statements are not recklessly made or knowingly false.

Discussion. Like the other cases in this section, Pickering involves the balancing of the rights of the teacher against the interests of the state in administering education. Among other cases, Justice Marshall cites Keyishian:

> The theory that public employment which may be denied altogether may be subject to any conditions, regardless of how unreasonable, has been uniformly rejected.[14]

In addition to the finding that a teacher has a right as a citizen to comment on matters of public concern, the Supreme Court also pointed out that the nature of the employment relationship between a school board and a teacher is such that criticism of a school board by a teacher will not cause great harm to their relationship.

This case has been cited in later dismissal cases, especially where a dismissed faculty member has been publically critical of the board.

Tinker v. Des Moines Independent Community School District

293 U.S. 503, 89 S. Ct. 733, 21 L. Ed. 2d 731 (1969)

Facts. John Tinker, his sister Mary Beth and Christopher Eckhardt wore black armbands in spite of a policy against it passed by school principals who had heard of the plan to wear armbands. The three students were suspended from school until they returned without the armbands and the students took the matter to court. The United States District Court dismissed the complaint. The Court of Appeals for the Eighth Circuit upheld the dismissal.

Decision. Justice Abe Fortas delivered the seven-two majority opinion of the United States Supreme Court which overturned the Court of Appeals' decision, and stated that the wearing of armbands for the purpose of expressing certain views is a type of free speech and is therefore protected by the First Amendment. Furthermore, First Amendment rights

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[14]Ibid., p. 605-606.

are available to both students and teachers. Those rights are not surrendered upon entering the school.

While state authorities and school administrators do have the authority to control conduct in the schools, they must be mindful of the constitutional rights of students and teachers. Mere fear or apprehension of a disturbance is not a good enough reason to prohibit freedom of expression. Administrators can only act if the expression would materially and substantially interfere with the operation of the school.

Discussion. While this case is directly concerned with students, the Supreme Court saw fit to apply the principles addressed to teachers as well. Indeed, among the cases cited in Tinker are three of the cases in this section: Meyer,[15] Sweezy[16] and Keyishian,[17] all leading to the conclusion "it can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."[18]

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[15]Meyer v. Nebraska, 262 U.S. 390, 43 S. Ct. 625, 67 L. Ed. 1042 (1923).

[16]Sweezy v. New Hampshire, 354 U.S. 234, 77 S. Ct. 1203, 1 L. Ed. 2d 1311

[17]Keyishian v. Board of Regents of State of New York, 385 U.S. 589, 87 S. Ct. 675, 17 L. Ed. Ed. 2d 629 (1967).

[18]Tinker v. Des Moines Independent Community School District, 393 U.S. p. 506.

Another passage from Tinker[19] sets limitations on the administration's authority to maintain order:

> As we have discussed, the record does not demonstrate any fact which might reasonably have led school authorities to forecast substantial or material interference with school activities, and no disturbances on the school premises in fact occurred.

Academic Freedom as it Relates to Nontenured Faculty

Overview. Though tenured faculty members have many forms of protection connected with their tenure, nontenured faculty members have had to rely on constitutional protection alone. That protection falls into two general categories as discussed in Chapter III: liberty interests and property interests. Some of the cases in this section deal with liberty interests, in particular the right to freedom of speech.

Other cases deal with property interests, in particular the nontenured faculty member's right to a job through some understanding that equates to tenure. In some instances it may be difficult to determine whether the faculty member has tenure or not.

Many of the cases in this section involve the question of whether the faculty member did indeed have some form of tenure that would result in entitlement to due process before dismissal. Some of the cases in this section deal with both liberty and property interests.

Perry v. Sindermann

408 U.S. 593, 92 S. Ct. 2694, 33 L. Ed. 2d 570 (1972)

Facts. Robert Sindermann was employed for two years at the University of Texas, for four years at San Antonio Junior College and for four years at Odessa Junior College under a series of one-year contracts. During the

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[19]Ibid., p. 514.

1968-1969 academic year he became involved in public disagreements with some policies of the Board of Regents who voted in May, 1969 not to offer him a contract for the following academic year. He was given no statement of reasons for his nonrenewal and no opportunity for a hearing.

Perry brought action in District Court, claiming he was not renewed because of his criticism of the board, thereby violating his right to free speech. Furthermore, he alleged that he was entitled to due process in the form of a hearing. The District Court found for the defendants, but the United States Court of Appeals reversed.

Decision. Justice Potter Stewart gave the opinion of the United States Supreme Court which held that even if Sindermann did not have tenure, his claim regarding the infringement of his freedom of speech was not defeated. The government may not deny a person a benefit on the basis of exercise of constitutional rights. However, the faculty member must show a deprivation of a constitutional right. Merely showing failure to rehire does not prove the existence of a liberty interest.

In addition, the Supreme Court held that a college teacher may have a property interest in reemployment even if no formal tenure exists, if tenure may be applied. In such a situation, the teacher is entitled to due process. In order to determine if such a property interest exists it is necessary to examine the rules and conduct of the college administration. Such rules or conduct may result in the teacher having de facto tenure. However, a mere subjective expectancy of reemployment would not be protected.

In Sindermann, the Coordinating Board of the Texas College and University System's guidelines provided that a teacher employed for seven years had some form of tenure. In addition, Odessa Junior College's faculty handbook stated:

> Odessa College has no tenure system. The administration of the college wishes the faculty member to feel that he has permanent tenure as long as his teaching services are satisfactory and as long as he displays a cooperative attitude toward his co-workers, and as long as he is happy in his work.[20]

In light of those statements, the Supreme Court found that Sindermann had a property interest just as if he had been formally tenured, and therefore he was entitled to due process.

Discussion: This case, together with Board of Regents of State Colleges v. Roth[21] has been used in almost every case involving nontenured faculty members since they were handed down by the Supreme Court.

Sindermann deals with both liberty and property interests. Regarding liberty interests, specifically freedom of speech, the Supreme Court cited Pickering,[22] stating that a teacher's public criticism of superiors is protected. However, the opinion in Sindermann goes on to state that while the free speech claim is a legitimate issue to raise, the fact that the teacher was dismissed is not proof that the claim is valid.

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[20]Perry v. Sindermann, 408 U.S., p. 600.

[21]Board of Regents of State Colleges v. Roth, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972).

[22]Pickering v. Board of Education of Township High School District 205, 391 U.S. 563, 88 S. Ct. 1731, 20 L. Ed. 2d 811 (1968).

Regarding the property interest claim, the Supreme Court held that there may be an "unwritten common law" that gives certain employees the equivalent of tenure.[23] It was clearly pointed out in this case that the expectancy of continued employment could not be merely subjective.

Combined with the decision in Roth,[24] these cases represent the standards by which later liberty and property interest claims have been evaluated.

Board of Regents of State Colleges v. Roth

408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972)

Facts. David Roth was a nontenured assistant professor at a state university. He was hired for a fixed term of one academic year and was later informed that he would not be rehired for the next academic year. No explanation was given for the decision since university rules did not require that reasons be given.

Under Wisconsin law, a state univeristy teacher could acquire tenure as a permanent employee after four years. Nevertheless, Roth took the matter to court, claiming infringement of his Fourteenth Amendment rights. Specifically, he claimed that the real reason for his nonrenewal was his criticism of the adminstration and that he had been denied due process since he was not informed of the reasons for his nonrenewal. The District Court granted summary judgement for Roth and the Court of Appeals affirmed.

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[23]Perry v. Sindermann, 408 U.S., p. 602.

[24]Board of Regents of State Colleges v. Roth, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972).

Decision. The United States Supreme Court, with Justice Potter Stewart delivering the opinion, reversed the lower court decision and remanded the case, finding that due process protection applied only to the infringement of interests proctected by the Constitution. A teacher's interest in holding a job is not by itself a liberty interest, nor is it a property interest unless there exists a legitimate claim of entitlement to the job.

The Supreme Court opinion went on to extend the definition of property interests to encompass any claim to entitlement to benefits that comes about because of rules or understandings arising under state law or college policy. In the absence of such statute or policy there is normally no constitutional interest in reemployment. Therefore, to have property interest in reemployment, a faculty member must have more than the need or desire for reemployment.

The Supreme Court found that Roth did not have a property interest in reemployment and therefore his lack of due process did not constitute an infringement of Fourteenth Amendment rights.

Discussion. When taken with Sindermann,[25] this case shows the Supreme Court's position on liberty and property claims. In Sindermann,[26] the teacher had a reasonable expectancy of continued employment as a result of state and school policies, and thus he was entitled to due process.

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[25]Perry v. Sindermann, 408 U.S. 593, 92 S. Ct. 2694, 33 L. Ed. 2d 570 (1972).

[26]Ibid.

In Roth there was no such expectation since he was informed in advance that his appointment would be for one year only.

Regarding liberty interests, the Supreme Court stated that where a person's reputation or good name is at risk because of government action, due process is required; however simply not rehiring someone in a particular job does not result in a stigma sufficient to require the protection afforded by due process.

Since the decisions in Roth and Sindermann[27] were handed down they have been cited in many cases by both faculty members and the college administrators because the Supreme Court left a great deal of room for interpretation regarding the validity of liberty and property claims. A clue to the reason for the Supreme Court's decision may be found in Roth in the dissenting opinion of Justice William O. Douglass:

> There is some times a conflict between a claim for First Amendment protection and the need for orderly administration of the school system, as we noted in Pickering v. Board of Education, 391 U.S. 563, 569, 88 S. Ct. 1731, 1735, 20 L. Ed. 2d 811. That is one reason why summary judgements are seldom appropriate. Another reason is that careful fact finding is often necessary to know whether the given reason for nonrenewal of a teacher's contract is the real reason or a feigned one.[28]

Johnson v. Fraley

470 F. 2d 179 (1972)

Facts. Evelyn Johnson sued the school board and the superintendent under the Civil Rights Act for their decision not to reemploy her as a teacher without giving her a hearing or the reasons for her nonrenewal. She also

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[27]Ibid.

[28]Board of Regents of State Colleges v. Roth, 408 U.S., p. 583.

claimed that such action was in violation of school board regulations and state law. The District Court found for the defendants, stating that Johnson was employed under a series of one-year contracts without provision for tenure although she had continuously taught in the school system for twenty-nine years.

Decision. The United States Court of Appeals for the Fourth Circuit vacated the decision and remanded the case, holding that where a teacher has taught for a long period of time and then is abruptly dismissed, there may be injury to the teacher's reputation and thus due process is called for. Furthermore, a long period of continuous employment can equate to tenure in which case due process is required. Therefore Johnson was entitled to due process.

Discussion. In deciding this case the Court of Appeals cited Sindermann[29] and Roth.[30] Those cases declared that injury to one's professional reputation caused by abrupt termination after a long period of employment can result in damage to the teacher's reputation with the accompanying protection afforded by due process.

Thus Johnson had a right to due process protection on two grounds. Her dismissal after twenty-nine years might seriously have damaged her

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[29]Perry v. Sindermann, 408 U.S. 593, 92 S. Ct. 2694, 33 L. Ed. 2d 570 (1972).

[30]Board of Regents of State Colleges v. Roth, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972).

standing and association in the community, thereby threatening a liberty interest. In addition, her longevity in her job resulted in the equivalent of tenure, providing her with a property interest.

Walker v. California State Board of Trustees

351 F. Supp. 997 (M.D. Pa. 1977)

Facts. James Walker taught from 1967 to 1979 at which time he was terminated on September 18. Walker sued, claiming he had de facto tenure although the faculty manual explained that new faculty members were hired for a probationary period. The basis of Walker's claim was a letter from the president of the college sent to Walker when he was first hired. The letter stated in part that "it is our sincere hope that your tenure with us will be happy and fruitful."[31]

Decision. The United States District Court found that Walker had no tenure or expectancy of tenure since the faculty manual explained that his employment was probationary. Therefore he had no property interest requiring a hearing or reasons for dismissal.

In addition, since he was not accused of anything, his standing and associations were not harmed. Thus no liberty interest existed.

Discussion. This case illustrates how the Roth[32] and Sindermann[33]

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[31]Walker v. California State Board of Trustees, 351 F. Supp., p. 997.

[32]Board of Regents of State Colleges v. Roth, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972).

[33]Perry v. Sindermann, 408 U.S. 593, 92 S. Ct. 2694, 33 L. Ed. 2d 570 (1972).

decisions are applied by the lower courts. In this instance the court found the faculty member's claim based on the letter from the president to have more form than substance.

Applying the criteria given in those Supreme Court decisions, the District Court found no evidence of de facto tenure since no reasonable expectancy of continued employment existed.

This case illustrates the problems that can be caused by careless wording of a seemingly harmless document. One sentence in a welcoming letter resulted in a de facto tenure claim and a lawsuit.

Berry v. Hamblin

356 F. Supp. 306 (M.D. Pa. 1973)

Facts. Plaintiff Barbara Berry brought action against the president and trustees of Lock Haven State College after she was discharged without a hearing. Berry had been a physical education teacher at the college for three years and had previously been considered for tenure. On that basis she asserted that she had a property interest in continued employment.

Berry was given the reasons for her dismissal in a letter from the president. Among those reasons were inadequate attention to students who did not do well at sports, hostility toward colleagues, indifference to departmental rules, and failure to show potential for professional growth. Berry asserted that such charges damaged her good name and professional reputation and thus constituted an infringement of her liberty.

Decision. The United States District Court determined that she did not have a property interest because she did not show that her contract or

any college rule gave her an objective expectancy of continued employment.

The District Court also rejected her liberty claim, saying that while the charges against Berry may indeed have damaged her professional reputation, they did not entitle her to a hearing. The opinion went on to state that discharge based on charges of immorality, or disloyalty to the nation are the kind of charges involving a liberty interest.

In light of the District Court's opinion, Berry was given twenty days to prove her claims to Fourteenth Amendment protection.

Discussion. This case, decided three months after Walker, also deals with liberty and property claims. While in Walker[34] college rules indicated that the professor did not have tenure, in Berry there was no such rule. Instead it was up to the teacher to prove that a rule existed that would have led to an objective as opposed to a subjective expectancy of continued employment.

Regarding the liberty claim, the District Court took a fairly narrow view of what constitutes a stigma: "...While these charges may injure Plaintiff's professional reputation, they are not the type of charges which entitle her to a hearing."[35]

Ramey v. Des Moines Area Community College

216 N.W. 2d 345 (1974)

Facts. Walter Ramey was the supervisor of a federal vocational project being operated in the Des Moines school system. For reasons not stated

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[34]Walker v. California State Board of Trustees, 351 F. Supp. 997 (M.D. Pa. 1977).

[35]Berry v. Hamblin, 356 F. Supp., p. 308.

in the case he "fell from the favor of defendants."[36] He received a notice that his contract would be terminated on October 31, 1971 and that he had a right to a hearing under the Iowa Code. His contract was cancelled and he brought action in Polk District Court which ruled in his favor.

Decision. The Supreme Court of Iowa upheld the lower court finding that Ramey's contract was not terminated in accordance with state law since the move to terminate him and the letter of termination was not timely.

The board of trustees did comply with a state statute dealing with summary discharge. However, the court found that compliance to be irrelevant since the board had proceeded under the continuing contract statute.

Discussion. While not involving a faculty member, this case does involve a dismissal from a college position covered by legislative enactment. In the opinion, the Iowa Supreme Court expressed surprise that Ramey's contract contained a clause placing him under the continuing contract statute since the program involved was federally funded and therefore constituted a "perilous vocation."[37] However, because the contract did include the clause, the state statute had to be followed, and the board did not do so.

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[36]Ramey v. Des Moines Area Community College, 216 N.W., p. 346.

[37]Ibid.

This case illustrates the importance of carefully drafting contracts and the value of knowing the applicable state laws and the implications of legislative enactments.

Ducorbier v. Board of Supervisors of Louisiana State University

386 F. Supp. 202 (E.D. La 1974)

Facts. Freda Ducorbier was first employed by Louisiana State University in New Orleans for the fall semester of 1964. She then left to work on her master's degree, and returned to the college the following September. She was offered three successive yearly appointments. After the first semester of the third academic year she resigned for maternity reasons, then returned the following September and served for two more academic years. In February, 1971 she was informed that she would not be reappointed for the following academic year.

Ducorbier followed the college grievance procedure during which the following reasons for nonrenewal were made known to her: (1) that her renewal was not favored by the permanent faculty; (2) that she had shown no outstanding merit since she had received her master's degree; (3) that she did not possess sufficient rank to acquire tenure; and (4) that she was near the end of the time of service at which American Association of University Professors guidelines recommended that a tenure decision be made.

Decision. The United States District Court dismissed Ducorbier's motion, finding that she had neither a liberty or property interest. Regarding her claimed property interest, the District Court found that in light of university policy she had only a unilateral expectancy of continued employment.

Ducorbier also claimed that the charges against her resulted in a stigma and thus a liberty interest was involved. The District Court held that nonrenewal in order to reserve positions for instructors working on their doctoral degrees did not result in a stigma.

Discussion. This case illustrates now another District Court interpreted Roth.[38] In connection with the liberty interest claim this decision went into more detail when it stated that the university "was under no duty to determine whether the job market could absorb Mrs. Ducorbier before releasing her."[39]

Burdeau v. Trustees of California State Colleges

507 F. 2d 770 (9th Cir. 1974)

Facts. Howard Burdeau was a nontenured assistant professor at California State College, San Bernardino on a one-year appointment for the 1970-1971 academic year. In February of that year he was informed that he would not be reemployed for the next year. He availed himself of the college grievance procedure, but then refused to proceed unless he was provided with the evidence that had been used in making the nonrenewal decision.

That evidence was not provided to him, and Burdeau brought action in District Court claiming a denial of his right to due process. The District Court dismissed the action and the plaintiff appealed.

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[38]Board of Regents of State Colleges v. Roth, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972).

[39]Ducorbier v. Board of Supervisors of Louisiana State University, 386 F. Supp., p. 205.

Decision. The United States Court of Appeals for the Ninth Circuit affirmed the decision of the District Court, stating that failure to give a reason for nonrenewal did not impose a stigma since there was no proof that dismissal with no reason given would be interpreted negatively.

The Court of Appeals, citing Roth[40] and Sindermann,[41] found that Burdeau's sincere belief in his qualifications and his hope of reemployment gave him no property claim.

Discussion. The decision on the property interest claim is consistent with the decisions of the other federal courts. Regarding the liberty interest, the Appeal Court found that failure to give reasons for nonrenewal did not impose a stigma. In Johnson,[42] reviewed earlier in this section, failure to give reasons did result in a stigma. However, the Johnson court coupled the failure to give reasons for nonrenewal with the length of service of the teacher. Since Burdeau was in his first year of employment, the decision in this case is not inconsistent with the decision in Johnson.

Markwell v. Culwell

515 F. 2d 1258 (5th Cir. 1975)

Facts. Dick Markwell had been employed under a series of seven one-year contracts at San Antonio College on probationary status. Prior to

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[40]Board of Regents of State Colleges v. Roth, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972).

[41]Perry v. Sindermann, 408 U.S. 593, 92 S. Ct. 2694, 33 L. Ed. 2d 570 (1972).

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

receiving tenure he was terminated. Markwell brought suit, asserting that his termination was in retaliation from his criticism of his department and thus was an infringement of his First Amendment rights. He offered as proof of his claim the fact that he had been offered repeated contract renewals and had received teaching awards. Those renewals and rewards, he claimed, also created de facto tenure and he was therefore entitled to a hearing. The District Court rejected his claims, and the teacher appealed.

Decision. The United States Court of Appeals for the Fifth Circuit affirmed the decision of the District Court, finding that renewals and awards did not create a property interest and thus no hearing was necessary. Furthermore, the court found Markwell's teaching awards to be inadequate proof of a causal link between his criticism of the administration and his termination.

Discussion. This case illustrates how the burden of proof is placed on the teacher who claims the exercise of First Amendment rights as the cause of termination. This case also serves to illustrate how the courts interpret Sindermann.[43] It is not the various contract renewals that lead to an objective expectation of continued employment. Rather it is the legislative enactments and college policies regarding those renewals that lead to a property interest. In Sindermann,[44] a teacher employed

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[43]Ibid.

[44]Ibid.

for a certain length of time had some form of tenure under state policy, and college policy stated that all faculty members enjoyed a form of informal tenure. No such policies existed in Markwell and therefore no such interpretation of his numerous contract renewals was possible.

Assaf v. University of Texas System

399 F. Supp. 1245 (S.D. Texas 1975)

Facts. Dr. Said Assaf was a nontenured faculty member at The University of Texas Health Science Center at Houston, employed under the Rules and Regulations of the Board of Regents of the University of Texas System. Those rules included procedure for notification of nonrenewal of nontenured faculty members. Dr. Assaf did receive written notice that his appointment would be terminated. However, he received the notice in March when, according to the rules of the system he should have been notified in December. The Board of Regents claimed that it had acted under another rule which stated that when a faculty member had not received word of his renewal or nonrenewal it was up to the faculty member to make inquiry.

Decision. The United States District Court held that both the professor and the university were bound by the professor's contract and by the college's rules and regulations. In this case there were two conflicting regulations and the District Court held that the second regulation was unconstitutional since it shifted the burden of inquiry to the faculty member. Going further, the District Court stated that when a nontenured faculty member is likely to prevail in a challenge to termination, where such termination would result in a loss of professional standing and

where a hearing would create little or no burden for the college, that the public's interest in education would be best served if the faculty member is given the opportunity for a hearing. Thus the District Court issued an injunction against Assaf's termination pending a hearing.

Discussion. This case illustrates the consequences of the failure to follow college rules and regulations and of having conflicting regulations. The court found that a body of statutes or rules must be viewed in their entirety and thus rejected the board's argument that while it had failed to comply with one rule regarding nonrenewal it had lived up to another, conflicting rule. The District Court found that:

> In this posture, the question squarely presented is whether in the present context a state institution can by some legerdemain divest an individual of a procedural right which that institution has ostensibly already vested upon him. This court concludes that the conduct of the University of Texas insofar as it takes with one hand that which it has just bestowed with the other hand is not the kind of fair play and substantial justice required by due process under the fourteenth amendment.[45]

Regarding Assaf's property claim, the District Court followed the standards set by Roth[46] and Sindermann,[47] finding that the university's failure to notify the professor by the required date resulted in an objective expectation of continued employment thus creating a property right sufficient to require a hearing.

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[45]Assaf v. University of Texas System, 399 F. Supp., p. 1249.

[46]Board of Regents of State Colleges v. Roth, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972).

[47]Perry v. Sindermann, 408 U.S. 593, 92 S. Ct. 2694, 33 L. Ed. 2d 570 (1972).

In dealing with the professor's liberty claim, the court took a more liberal stand than had the other courts, finding that a hearing was necessary because of the damage to the professor's career that would result simply from termination. The court explained that such protection was necessary where the professor was likely to prevail in challenging termination, stating that:

> The public has a right to expect that faculty members who will directly or indirectly affect the education of their children shall be of impeccable character and have the highest credentials. An accompanying interest of at least equal importance is an interest that there be a fair determination that the educational system is not being deprived of the expertise of people of superior caliber for merely frivolous reasons not relevant to academic excellence. Until such a determination of the validity of termination has been made, then a presumption of competence and integrity which is an integral part of public confidence in public education mandates that a professor be retained. In a broader sense, this court is saying that the public interest in the present context is best served by not terminating an individual until due process prescribed has been complied with.[48]

Keddie v. Pennsylvania State University

412 F. Supp. 1264 (M.D. Pa. 1976)

Facts. Wells Keddie was employed as a nontenured associate professor at Pennsylvania State University. When he neared the time of eligibility for tenure, a tenure review committee was assembled to consider him for tenure. His department chairman did recommend him but stated that he found Keddie "impatient and imprudent."[49]

The committee determined that Keddie's performance was not outstanding enough for him to be considered for tenure. As a result of the denial of tenure Keddie was not renewed for the following year and

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[48]Ibid.

[49]Keddie v. Pennsylvania State University, 412 F. Supp., p. 1268.

he brought an action seeking relief and damages on the basis that his constitutional rights had been infringed and that his termination amounted to a stigma. Specifically, Keddie asserted that he had been denied tenure because of his active support of political causes and his criticism of the university administration.

Decision. The United States District Court denied Keddie's claim, holding that the evidence failed to support his allegations. In connection with Keddie's free speech claim, the court found that the right of the state to maintain discipline, promote harmony, and to encourage a close working relationship between the professor and the administration may limit a professor's right to free speech. Furthermore, academic freedom may be limited to activities which are not disruptive to the educational process.

The District Court also held that where a professor is not renewed because of failure to meet standards of excellence and where no other charges have been made, there is no damage to the teacher's career or to his good name. Even if he had been discharged for incompetence, a liberty interest would not have been involved.

Discussion: This case shows the reluctance of the courts to intervene in tenure decisions:

> The judiciary is not qualified to evaluate academic performance. The courts do not possess the academic expertise which should enlighten an academic committee's decision. The courts will not serve as a Super-Tenure Review Committee.[50]

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[50] Ibid., p. 1270.

Regarding the free speech issues raised in this case, the District Court held that academic freedom does have its limits.

> ...Academic freedom is not a license for uncontrolled expression or activity at variance with established curricular content or job related procedures and requirements, nor does academic freedom encompass activies which are internally destructive to the proper functioning of the university or disruptive of the education process.[51]

Pickering[52] is cited as one basis for that finding.

Regarding Keddie's due process claim, the District Court cited Sindermann,[53] stating that a hearing held after the decision has already been made is adequate to satisfy due process, but that in any case, Keddie's lack of a property interest meant that he was not entitiled to due process.

Boards of trustees and administrators thus should be aware that they do have power to control the college environment and that academic freedom is not an unlimited freedom for faculty members.

Mt. Healthy City School District Board of Education v. Doyle

429 U.S. 274, 97 S. Ct. 568, 50 L. Ed. 2d 471 (1977)

Facts. Fred Doyle was an untenured teacher who had worked under a series of three, one-year contracts and then under a two-year contract. During the latter he was elected president of the Teachers' Association. In that capacity he had come into some conflict with the Board of Education.

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[51]Ibid.

[52]Pickering v. Board of Education of Township High School District 225, 391 U.S. 563, 88 S. Ct. 1731, 20 L. Ed. 2d 811 (1968).

[53]Perry v. Sindermann, 408 U.S. 593, 92 S. Ct. 2694, 33 L. Ed. 2d 570 (1972).

During that same period Doyle was also involved in several incidents including an altercation with another teacher, swearing at students, arguing with cafeteria workers, making obscene gestures at female students, and making public a school memorandum concerning teacher dress codes by giving that information to a radio station. The board notified Doyle that he would not be rehired and gave as reasons the obscene gestures and the radio station matter. As a result, Doyle brought action against the board. The District Court found for the teacher since the radio station matter and the gestures were protected by the First Amendment. The Court of Appeals affirmed the lower court decision.

Decision. The United States Supreme Court, with Justice William Rehnquist delivering the opinion, vacated the decision of the Court of Appeals and remanded the case, holding that where a school board's decision is based in part on conduct protected by the First and Fourteenth Amendments, the court should go on to determine whether the evidence shows that the board would have reached the same conclusion even without the protected conduct.

In a reaffirmation of earlier decisions, the Supreme Court also held that the fact that a teacher does not have tenure does not defeat claims that First and Fourteenth Amendment rights have been infringed, even though the teacher could have been discharged for no reason whatsoever.

Dicsussion. The decision affirms Roth[54] which states that nontenured

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[54]Board of Regents of State Colleges v. Roth, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d (1972).

faculty members do have protection for the exercise of their constituional rights.

This decision has been cited frequently since it was handed down because it deals with situations where there is more than one cause for nonrenewal. In Mt. Healthy the Supreme Court gives boards and administrators guidelines to determine if a termination is within constitutional bounds.

> A rule of causation which focuses solely on whether protected conduct played a part, "substantial or otherwise, in a decision not to rehire, could place an employee in a better position as a result of the exercise of constitutionally protected conduct than he would have occupied had he done nothing. The difficulty with the rule enunciated by the District Court is that it would require reinstatement in cases where a drastic and perhaps abrasive incident is inevitably on the minds of those responsible for the decision to rehire, and does indeed play a part in that decision even if the same decision would have been reached had the incident not occurred.[55]

McLendon v. Morton

249 S.E. 919 (W Va 1978)

Facts. Vonceil McLendon was an assistant professor at Parkersberg Community College who sought a writ of mandamus against the Board of Regents and the chancellor claiming that she was denied due process where the college decided not to grant tenure. McLendon based her claim on the college's tenure standards as published in a policy bulletin. Those standards, she claimed, set criteria which if met would result in a property interest and thus due process would be necessary before tenure could be denied.

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[55]Mt. Healthy City School District Board of Education v. Doyle, 429 U.S., p. 575.

Decision. The Supreme Court of Appeals of West Virginia awarded the writ, agreeing with the teacher that since she had met the eligibility standards for tenure she could not be denied tenure on the basis of her competence without due process. Providing such due process would not adversely affect the state's interest in awarding tenure only to competent teachers. The decision went on to say that minimal due process would include a notice of the reasons for denying tenure, and the opportunity to submit evidence before an unbiased tribunal.

The court also stated that while the decision in this case goes beyond the due process considerations outlined by the United States Supreme Court, the lower court is not required to hand down decisions identical to those of the United States Supreme Court if those lower court decisions do not let the state standard fall below the federal standard.

Discussion. This case is unique because of some of the statements made, more than for the outcome of the case. This case demonstrates how state courts can set the standards of due process protection higher than the federal standard.

> ...Our analysis of liberty and property interests was hinged to our constitutional due process standard, West Virginia Constitution, Article III, Section 10. Consequently, while we may utilize the teachings of the United States Supreme Court in its due process cases, we are not constrained by identicality so long as we do not diminish our state below the federal standard.[56]

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[56]McLendon v. Morton, 249 S.E., p. 992.

While Roth[57] and Sindermann[58] were considered in this case, the West Virginia court did not find them precisely relevant stating that "a precise line cannot be drawn around the concepts of property and liberty interest since these terms expand with society's enlightened values."[59] The court went on to find that

> ...the Board's Bulletin recognizes tenure is inextricably tied to academic freedom. Tenure once acquired is a substantial right. We cannot blind ourselves to the fact that tenure is a paramount professional and economic goal for a teacher. This is a valuable property interest.[60]

Silbert v. Community College of Flathead County

587 P. 2d 26 (Mt. 1978)

Facts. Victor Silbert was hired as Manager of Services of a community college, an administrative position, in 1969. In May, 1975 he signed a twelve-month contract which contained a clause stating that the position was tenured and that it fell under the college tenure policy. In March, 1976 his position was discontinued. Silbert sued, asserting that the district had failed to give him tenure. The District Court for Flathead County granted summary judgement for the community college and Silbert appealed.

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[57]Board of Regents of State Colleges v. Roth, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972).

[58]Perry v. Sindermann, 408 U.S. 593, 92 S. Ct. 2694, 33 L. Ed. 2d 570 (1972).

[59]McLendon v. Morton 249 S.E. 919 (W Va. 1978).

[60]Ibid., p. 926.

Decision. The Supreme Court of Montana upheld the lower court decision, holding that a community college may not grant tenure except to those authorized to receive it, and since Silbert's position was administrative he was not eligible in spite of his contract.

That decision was based on the finding that in the absence of a statute authorizing community college trustees to grant tenure, grants of tenure are ultra vires.

Discussion: This case is especially important for community colleges because in thirty-three states there are no statutes dealing directly with tenure for faculty members. In such states the statute enumerating the powers of the board, in particular the power to hire faculty members is interpreted as also giving them the right to dismiss or to set terms of employment, including tenure policies. In this case the court has failed to make such a broad interpretation of the statute.

Goss v. San Jacinto Junior College

588 F. 2d 96 (5th Cir. 1979)

Facts. Patsy Goss was hired by San Jacinto Junior College in 1966 and her contract was renewed annually for six years. During that time she helped form a chapter of the National Faculty Association and a chapter of the Texas Junior College Teachers' Association and campaigned for her husband when he ran for a seat on the college's board of regents. After a hearing her contract was not renewed for the 1973 academic year. She filed a complaint asserting infringement of her First Amendment rights and was reinstated in the fall of 1974. In her suit Goss sought back pay, which was awarded by a jury, and the college appealed, claiming that

her nonrenewal had been due to declining enrollment and to her evaluations in which she ranked in the bottom three instructors.

Decision. The Fifth Circuit United States Court of Appeals affirmed the lower court decision, finding that there was ample evidence to support Goss' claim that she had not been rehired because of her "political and professional activities."[61] For example, she was not awarded evaluation points to which she was entitled that would have raised her to the middle of the instructors of her department.

Discussion. The Board of Regents cited Mt. Healthy[62] as part of its defense in this case. Under Mt. Healthy,[63] two conditions must be met before a decision can be made in favor of the teacher: (1) that the protected activity was a principal fact in the decision not to rehire; and (2) that the decision not to rehire would not have been made without the protected activity. The Court of Appeals found evidence that the situation in Goss met the Mt. Healthy[64] test, that the teacher would not have been dismissed except for the protected activity. Although the Board of Regents asserted that reduction in force was the reason for Goss' nonrenewal, the omission of points that should have been added to her evaluation tended to discount the Board of Regents' claim.

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[61]Goss v. San Jacinto Junior College, 588 F. 2d, p. 98.

[62]Mt. Healthy City School District Board of Education v. Doyle, 429 U.S. 274, 97 S. Ct. 568, 50 L. Ed. 2d 471 (1977).

[63]Ibid.

[64]Ibid.

Causey v. Board of Trustees of Community College District V

638 P. 2d 98 (Wa 1982)

Facts. Charles Causey was hired as a probationary teacher for a one-year appointment and was rehired on two more one-year contracts. Two months later than required by state statute, a tenure review committee was formed to evaluate his teaching. The committee functioned informally. Its membership changed over the years of Causey's appointment and his teaching was never formally observed. Nevertheless, the committee recommended that he not be given tenure based on evaluations of his teaching and on declining enrollment in his department. Causey sued, asserting that under state law teaching effectiveness should be the primary reason for denying tenure, and that the tenure review committee had not met as prescribed by state law. The Snohomish County Superior Court found for the board and the teacher appealed.

Decision. The Court of Appeals of Washington, Division 1 affirmed the lower court ruling, finding that since the teacher was probationary and no constitutionally protected activity was involved, he could be terminated without cause and that the board need not provide him with reasons for his termination.

The Washington Court of Appeals also held that while there had been irregularities in the tenure review procedure such irregularities did not mean that tenure had to be granted.

Discussion. This case provides another illustration of how the courts deal with board powers and the delegation of those powers. In many

instances boards of trustees delegate the power to make personnel decisions, but as this case shows, such delegation does not legally take the final decision away from the board. In handing down the decision in this case, the Washington Court of Appeals held that it was the board and not the tenure review committee that had to make the final decision, and therefore the irregularities in that committee's work were not a factor in the case.

The Washington Court of Appeals held further, that the college's reduction in force procedure applied only to employees under binding contracts and not to probationary faculty members whose contracts had expired. Only while the contract was in force did the teacher have an expectancy of continued employment.

Daulton v. Affeldt

678 F. 2d 487 (4th Cir. 1982)

Facts. Judy Daulton had been a well-thought-of instructor at Forsyth Technical Institute for five years before she divorced her husband and shortly thereafter married a student at the college. After her divorce and remarriage she was cited by the administration for being late for class, inaccessible to students, and too affectionate with her husband at college. Her denial of the charges was viewed by the administration as evidence of a negative attitude, and she was notified in a memorandum that she had to make changes if she wanted to keep her job. Improvements were noted after the memorandum was sent. However, on a faculty data sheet which asked instructors to list the school's strengths and weaknesses she was critical of the administration, specifically their lack of concern for students. She also expressed concern over being

required to prepare a course outline for a course she was not teaching, and as a result she was not required to prepare it, but in his evaluation of her, her supervisor noted the criticisms on the data sheet and other disagreements as evidence of her negative attitude, and he recommended that her contract not be renewed.

The dean agreed about Daulton's attitude, although he noted that her classroom performance was satisfactory. As a result of the recommendation, the president and the board of trustees went along with the decision not to renew her contract, and she sued, claiming that her constitutional right to free speech had been violated. The District Court found in favor of the teacher.

Decision. The United States Court of Appeals for the Fourth Circuit, in affirming the decision of the District Court held that Daulton had a claim if she could prove that the decision not to rehire her was based on protected activity even though she did not have tenure and though the board of trustees could fail to renew her at the end of her contract. Citing Mt. Healthy,[65] the Court of Appeals also stated that Daulton had to prove that the protected speech was the motivating factor in the decision not to rehire her.

Based on those statements, and Daulton's evidence, the court found that her disagreements with the administration did not cause significant disruption for the trustees' action to be justified and that "...the importance of protecting Daulton's First Amendment right to speak out on

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[65]Ibid.

these subjects outweighs the school's interest in regulating the conduct of its employees."[66] Thus the court affirmed that a teacher has the right to express concern over matters affecting education.

Discussion: This case illustrates how the tests of Mt. Healthy[67] and Sindermann[68] are used by the lower courts. In Daulton a liberty interest was infringed by the nonrenewal of the instructor and this proved to be the "substantial and motivating factor" in her nonrenewal.[69] Her nonrenewal for having a negative attitude was not considered to be the motivating factor in part because improvements had been noted following the warning memorandum. College administrators and boards of trustees should be mindful of the liberty and property interests of faculty members and should be sure that terminations meet the Mt. Healthy[70] test that the termination would have occurred even without considering the protected activity engaged in by the faculty member.

Academic Freedom as it Relates to Tenured Faculty

Overview. Tenured faculty members clearly possess an expectancy of continued employment, and therefore are entitled to due process. Since

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[66]Daulton v. Affeldt, 678 F. 2d, p. 491.

[67]Mt. Healthy City School District Board of Education v. Doyle, 529 U.S. 274, 97 S. Ct. 568, 50 L. Ed. 2d 471 (1977).

[68]Perry v. Sindermann, 408 U.S. 593, 92 S. Ct. 2694, 33 L. Ed. 2d 570 (1972).

[69]Daulton v. Affeldt, 678 F. 2d, p. 491.

[70]Mt. Healthy City School District Board of Education v. Doyle, 529 U.S. 274, 97 S. Ct. 568, 50 L. Ed. 2d 471 (1977).

that fact is widely recognized, tenure systems do provide some form of due process. As a result, there are fewer instances where teachers must rely on the courts for protection. However, even where college policies provide for due process, questions as to the adequacy and fairness of that protection do arise. The cases presented in this section are illustrative.

Bowing v. Board of Trustees of Green River Community College District

No. X

521 P. 2d 220 (Wa 1974)

Facts. Shirley Bowing was a tenured faculty member at Green River Community College. The president of the college notified her of the following charges against her: (1) ineffective teaching; and (2) inability to work effectively with other staff members. Bowing was afforded a hearing before a committee where she was represented by counsel and where witnesses were cross-examined. The committee found that the charges against Bowing were not supported by the evidence and recommended that she not be dismissed. The Board of Trustees accepted the committee's finding as to the first charge but asked the committee to reconsider the second charge. The committee came to the same conclusions as before. Nevertheless, the board voted to dismiss Bowing. She brought suit, and the Superior Court of King County found in her favor. The board appealed.

Decision. The Court of Appeals of Washington, Division 1 reversed the lower court decision, finding that the tenure statute of Washington intended that while a teacher should only be dismissed for cause and

after due process, a board of trustees is not bound by the results of that due process when it is carried out by a review committee. The boards do not have the power to delegate dismissal.

On the other hand, the Washington Court of Appeals stated that tenure is a property right and that due process to be an effective protector of it must be conducted at "a meaningful time and in a meaningful manner", which would have been accomplished in this case only by a hearing before the board after the committee had reconsidered its decision.[71] In spite of that finding, the court held that the appropriate remedy was not to reverse the board's decision, but to grant Bowing a proper hearing.

Discussion. This case illustrates the differences between tenured faculty members and nontenured faculty members. Where tenure exists, due process is unquestionably required, but the form of that due process is open to interpretation. If the actual process is delegated by the board, the board retains authority over due process.

Saunders v. Reorganized School District No. 2 of Osage County

520 S.W. 2d 29 (Mo. 1975)

Facts. James Saunders was a tenured English teacher at Linn Technical Junior College who was discharged by the school board. His dismissal stemmed from charges that he had refused to teach the prescribed curriculum, that he would not discuss that refusal with the administration, that he had refused to prepare a course outline, that,

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[71]Bowing v. Board of Trustees of Green River Community College District No. X, 521 U.S., p. 225.

after he was suspended on those charges and then allowed to return to work, he refused to return, that he had refused to use the required textbook, that he had refused to discuss teacher evaluations, that he had been absent an excessive number of times, and that he was inefficient. Before he was terminated he was notified of the charges and given a hearing before the school board which found evidence to support the charges and Saunders sued. The circuit count found in favor of the board and the teacher appealed.

Decision. The Supreme Court of Missouri affirmed the lower court decision, holding that administrators have a great deal of power to manage their schools and the courts may not interfere with that power unless it is used in an arbitrary or unreasonable way. The Missouri Supreme Court also held that terminating a tenured teacher for inefficiency and insubordination was not a violation of the teacher's free speech right. In this case, sufficient evidence of the charges of incompetency, inefficiency, and insubordination did exist to justify the action of the board. The United States Supreme Court denied certiorari in this case.

Discussion. This case is typical of dismissal cases involving tenured faculty members. It illustrates the limited nature of the protection afforded by tenure and the bounds of academic freedom in the classroom. Regarding the latter, the Missouri Supreme Court ruled that Keyishian[72]

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[72]Keyishian v. Board of Regents of State of New York, 385 U.S. 589, 87 S. Ct. 675, 17 L. Ed. 2d 629 (1967).

did not apply because that case did not address freedom of teaching. The Missouri Supreme Court cited Meyer[73] in finding for the board, stating that in Meyer[74]:

> ...the thrust of the decision seems to be not that there is an unlimited freedom to teach, but that the state may not interfere in the teaching process as prescribed by the schools without some relationship to a justifiable state goal.[75]

The Missouri Supreme Court went on to state that:

> ...no one denies the power of a School Administrator to establish a curriculum and require its use, nor do any of the authorities justify the action of a teacher in rejecting in whole or in part the curriculum and calendar established by the School Administration.[76]

Thus as long as the curriculum is not unreasonable or arbitrary, the teacher is obligated to follow it, and tenure offers no protection to the teacher other than the right to due process before termination.

Chung v Park

377 F. Supp. 524, affd. C.A., 514 F. 2d 382, Cert. Den. 96 S. Ct. 364 (1975)

Facts. In-Cho Chung was a professor at Mansfield State College for five academic years on a series of one-year appointments. In December of the fifth year the college president recommended to the board of trustees that Chung not be rehired for the following year giving as reasons

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[73]Meyer v. Nebraska, 262 U.S. 390, 43 S. Ct. 625, 67 L. Ed. 1042 (1923).

[74]Ibid.

[75]Saunders v. Reorganized School District No. 2 of Osage County, 520 S.W. 2d, p. 34.

[76]Ibid., p. 35.

Chung's poor teaching and his refusal to cooperate with his department to correct his teaching problems.

Chung was notified of the charges and agreed to put the matter before an arbitration panel. After a thorough hearing including representation by counsel and cross-examination of witnesses, the panel found sufficient evidence to support the charges against Chung.

Chung sued, claiming infringement of his constitutional rights. Specifically he claimed that he was denied due process because his hearing came after the decision to terminate him had been made, and because the burden of proof had been placed on him to show that the termination was unreasonable, arbitrary or capricious. The United States District Court for the Middle District of Pennsylvania found for the college and Chung appealed.

Decision. The United States Court of Appeals for the Third Circuit affirmed the lower court ruling, holding that whether Chung was tenured or not (which was also in question), he had waived his right to a hearing under the college's tenure policy when he had agreed to have the matter decided by the arbitration panel, and that he had been afforded the minimum protection necessary for a property interest: (1) a written notice of charges: (2) disclosure of the evidence against him; (3) the right to cross-examine witnesses; (4) the chance to be heard and to present witnesses; (5) the right to have the matter heard by a neutral body; and (6) a written statement by that body on the evidence used in making the decision.

The Court of Appeals also ruled that the hearing need not be held prior to the decision to terminate, but that it must be held before the termination of benefits. Therefore a hearing held before the end of the academic year would be adequate whether the professor had tenure or not.

Discussion. This case is included with the section on tenured faculty members in spite of the question of whether Chung actually had tenure. The Court of Appeals proceeded as if he did have tenure. This case sheds light on the court's view of the nature and function of due process and of adequate due process.

In Chung the Court of Appeals noted that the determination of the adequacy of due process depends on a weighing of the interest of the teacher in avoiding unreasonable termination against the board of trustees' interest in maintaining a competent faculty. Thus "due process should not be employed to insure that this exercise of discretion [by the adminstration] is 'wise' but only that it is not unreasonable, arbitrary, or capricious."[77]

Trotman v. Board of Trustees of Lincoln University

635 F. 2d 216, cert. den. 451 U.S. 986 (1980)

Facts. Herman Branson, president of Lincoln University, developed a retrenchment plan in order to increase the student-faculty ratio in compliance with state guidelines. The faculty rejected the plan, voted to censure Branson, and asked the governor to replace him. Two days later on April 28, 1977, Branson sent every faculty member a notice of

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[77]Chung v. Park, 377 F. Supp., p. 529.

termination whether they had tenure or not. He did so in order to comply with a faculty bylaw requiring a one-year notice for terminations. All of the notices were later rescinded except for the one sent to Trotman, former chairman of the English Department and an outspoken critic of Branson, who was subsequently denied tenure and fired.

Another English professor, Edward Groff, asked for a medical leave in order to have brain surgery and was granted such leave by the vice president. He later discovered that he had been retired, an action that led to more faculty protests and to the reinstatement of Groff.

One of the leading critics of Branson was William Johnson, who was removed from the chairmanship of the Chemistry Department by the president.

Another incident occurred on September 1, 1977. Trotman and Alfred Farrell, another English teacher, stood in a classroom to protest the class being taught by Gladys Willis, the new head of the department. The class had formerly been taught by Farrell. Trotman and Farrell were arrested by campus police but the board of trustees did not press charges. In connection with that incident, the faculty sought to censure Willis on a motion by Julius Bellone. Later Branson sent a letter to Bellone stating in part: "Please treat this as a warning that any further breaches of commonly accepted academic principles of fair play will be considered cause for appropriate discipline, including termination for your employment contract at Lincoln."[78] Bellone did not make the motion to censure again.

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[78]Trotman v. Board of Trustees of Lincoln University, 635 F. 2d, p. 222.

In May, 1978 Virginia Gunn criticized her department chairman who later that day wrote a memorandum to the administration criticizing her teaching ability. Eight faculty members sent a letter to the department chairman condemning the memorandum. Branson sent those faculty members a letter objecting to their action and requesting that they attend a meeting which turned out to be a disciplinary hearing with Branson's letter serving as the notice required by due process. No disciplinary action was taken, however.

Two faculty members spoke to newspaper reporters about the retrenchment policy and the resulting problems, and stories on the situation were printed. Branson sent those faculty members letters implying that they had made false statements and they should check their statements' accuracy and that they had violated American Association of University Professors standards.

Another incident occurred in April, 1978. A group of faculty members was planning to picket during a visit to the campus by former President Ford. The picketing was planned to call attention to the problems at the school. Some of the faculty members involved in the plan received telegrams to the effect that picketing during the term of the collective bargaining agreement would be grounds for dismissal.

As a result of the incidents mentioned, Trotman, Farrell, Johnson, Groff, Bellone and others sued alleging infringement of their freedom of speech. The District Court granted the college's request for a dismissal finding that the adminstrations' actions were made in good faith and that the letters and telegrams sent by Branson did not prevent faculty members from exercising their free speech rights.

Decision. The United States Court of Appeals for the Third Circuit vacated the lower court decision and the United States Supreme Court denied certiorari. The Court of Appeals held that faculty members' free speech could not be restricted simply because that speech was discordant, and that picketing was also protected by the First Amendment if it was done in a reasonable manner.

Furthermore, the Court of Appeals stated that neither good faith on the part of administrators, nor the fact that the faculty members persisted in the protected activity was an adequate reason for restriction of free speech. The letters and telegrams contained explicit and implicit threats that constituted an infringement of free speech. In order to justify such a restriction, the administration would have had to prove that the faculty members' conduct would have seriously disrupted the operation of the college.

Finally, the Court of Appeals found that the trial judge had erred in placing the burden of proof on faculty members to show that adminstrative action would not have occurred except for the protected activity.

Discussion. This case involved both tenured and nontenured faculty members. It also involved many academic freedom issues. It is included with this section because tenured faculty members and the protection afforded them are involved, but it also deals with nontenured faculty members. Thus the Court of Appeals cites cases that have been presented in the other two sections of this chapter. This case demonstrates how, when a college abuses its own system of due process, the courts are willing though regretfully so, to intervene.

Citing Pickering,[79] the Court of Appeals recognized that a faculty member's right to free speech is limited. It cannot be allowed to adversely affect education. However, legitimate criticism does not qualify. To determine a standard for evaluating free speech the Court of Appeals cited Tinker[80] and stated:

> It is particularly important that in cases dealing with academia, the standard applied in evaluating the employer's justification should be one applicable to the rights of teachers and students...In an academic environment, supression of speech or opinion cannot be justified by an "undifferentiated fear or apprehension of disturbance"...Restraint on such protected activity can be sustained only upon a showing that such activity would "materially and substantially" interfere with the requirement of appropriate discipline in the operation of the school.[81]

In making that determination, the overall picture must be examined. "An analysis of each discrete allegation without considering the impact of all of the facts and circumstances in combination would overlook the proverbial forest for the trees.[82] The fact that the administration acted in good faith, if true, was irrevelant as was the persistence of the faculty members in their protected activity. Otherwise "such a defense would limit the protection of the First Amendment to those who are timid but eliminate it for those who are brave."[83]

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[79]Pickering v. Board of Education of Township High School District 205, 391 U.S. 563, 88 S. Ct. 1731, 20 L. ed. 2d 811 (1968).

[80]Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 89 S. Ct. 733, 21 L. Rd. 2d 731 (1969).

[81]Trotman v. Board of Trustees of Lincoln University, 635 F. 2d, p. 230.

[82]Ibid., p. 229.

[83]Ibid., p, 227.

The Court of Appeals also looked at the president's retaliation for the exercise of free speech by faculty members citing Pickering[84] and Mt. Healthy,[85] although the court did not consider that to be central to the case.

Finally, the Court of Appeals stated its opinion on academic freedom and the courts' place in protecting it:

> The academic process entails, at its core, open communication leading to reasoned decisions. Our society assumes in almost all cases with good reason, that different views within the academic community will be tested in an atmosphere of free debate. It is the dialectic process which underlies learning and progress...Although our judicial reponsibility requires that we take jurisdiction of the issues and decide the case, we are cognizant, and we hope the parties are, that some other process of resolution would have been far preferable.[86]

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[84]Pickering v. Board of Education of Township High School District 205, 391 U.S. 563, 88 S. Ct. 1731, 20 L. ed. 2d 811 (1968).

[85]Mt. Healthy City School District Board of Education v. Doyle, 429 U.S. 274, 97 S. Ct. 568, 50 L. Ed. 2d 471 (1977).

[86]Trotman v. Board of Trustees of Lincoln University, 635 F. 2d, p. 219.

CHAPTER V

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

The teacher's rights to teach and research have been recognized for centuries as something to be treasured. Only if the teacher is free to make inquiries and search for truth can teaching be done in a professional manner. Only if the teacher is free to speak out can there be satisfaction that the duty of an educator has been successfully performed.

As valuable as academic freedom is to the teacher, it is or should be of equal value to college adminstrators. If a college's goal is to seek the truth, then administrators shall not be afraid of the expression of divergent points of view. Any attempt to stifle academic freedom not only affects the teacher directly involved, but also casts a pall over the entire institution, discouraging originality, innovation, and the growth that comes only from free and open debate.

Such action is detrimental to society as a whole. In a nation that values free expression, it would indeed be unfortunate for the future leaders of the country to be educated in an atmosphere of uniformity, where divergent and controversial opinions are met with swift retaliation.

Fortunately, most college adminstrators and boards of trustees recognize the value of academic freedom and have established policies, rules, and regulations to safeguard it. One of the surest ways to stifle

a teacher's dissent is to fire him. Tenure systems help protect teachers from the arbitrary dismissals that may at times stem from the exercise of of academic freedom. By insuring the faculty member of due process, tenure systems help to safeguard academic freedom. Thus the American Association of University Professors has long emphasized the link between academic freedom and tenure and has worked to encourage college boards of trustees to adopt tenure systems.

While not guaranteeing the teacher a job, tenure, through its provisions for due process, does insure that the teacher has a chance to know the charges brought and affords a chance to refute these charges.

Tenure systems have not eliminated the threats to academic freedom. Grounds for dismissal under such systems are often broad, and college administrators and trustees can sometimes rid themselves of controversial faculty members on the basis of those broad grounds when, if the situation were examined more closely, the specific reasons for dismissal may involve academic freedom.

Threats to tenure also exist. Declining enrollment, cutbacks in government funding, and the high percentage of faculty members having tenure have caused some colleges to question, revise, and in some cases do away with tenure systems. Elimination or modification of tenure systems may leave faculty members with little or no due process protection. That protection has only rarely been enjoyed by nontenured faculty members. Few colleges afford them even minimal due process. As a result, nontenured faculty members may be more timid than their tenured colleagues.

The elimination of some tenure systems with the possibility that the

requirements for due process will be eliminated as well, together with the right to due process, has effectively increased the threats to academic freedom.

Though college administrators tend to be tolerant of classroom activity within reasonable limits, they tend to be less forgiving when it comes to criticism of the college by faculty members. Often they consider such criticism to be outside the bounds of academic freedom. They view such criticisms as divisive and disruptive. In such cases, an avoidance of due process may be viewed by administrators as a way to prevent disruption without delay.

Administrators who wish to avoid the negative consequences of a stifling of academic freedom, however, must consider the impact of denying due process to a faculty member. They should also remember that teachers are also citizens of the nation and that they possess all the rights held by other citizens. Those rights include the right to due process protection whenever a public institution seeks to deprive a citizen of liberty or property. Under such circumstances, tenure is not a consideration. Thus, all faculty members have the right to due process where constitutionally protected activity is the reason for dismissal or nonrenewal. It is the purpose of this study to provide community college administrators with guidelines that will help them in the recognition of teacher rights so they may avoid wrongful dismissals with the accompanying damage to academic freedom. This study should also serve to remind them of the value of academic freedom to their institution and to society, and of how fragile academic freedom can be when a teacher is faced with dismissal.

Additional damage to the college can occur as a result of litigation that may result from dismissals and nonrenewals. The courts, though reluctant to interfere in matters internal to the college, will not hesitate to protect the constitutional rights of faculty members. Administrators should be familiar with those rights, or the courts will familiarize them. This study, through the analysis of state statutes and judicial decisions should also serve to help community college administrators know their rights, specifically, how far they can go in dismissal and nonrenewal situations, and how they can rid themselves of truly disruptive elements while avoiding dismissals that will be overturned in court.

The nature and history of community colleges has led to tenure systems being less common than they are at four-year colleges. Where tenure systems do not exist, administrators must still be aware of the constitutional rights of faculty members and should not believe that in the absence of a tenure system they can dismiss faculty members at will.

Summary of This Study

From Plato to the present day academic freedom has been a recurring issue in postsecondary education governance. Tenure has been connected with academic freedom for at least a century. Yet the relationship between academic freedom and tenure is still debated as is the issue of academic freedom for nontenured faculty members. Colleges which destroy tenure systems and the many community colleges that never had tenure systems still face the problem of how to safeguard faculty rights and at the same time effectively administer institutions.

Chapter II provided the reader with a historical background

concerning academic freedom and tenure so the reader might better understand relevant judicial decisions and the current state legislation.

As a guide to educational and legal research, several key questions were formulated and listed in Chapter I. While Chapter II provided answers to some of those questions, most of the answers were contained in Chapters III and IV. The answers to those questions may serve as a major part of a set of legal guidelines which community college administrators can use when making decisions involving the dismissal of nonrenewal of faculty members.

The first question listed in Chapter I was: Under what circumstances, if any, are constitutional rights of faculty involved when administrators of community colleges and technical institutes are faced with academic freedom and tenure problems?

I. Constitutional rights become involved in academic freedom problems
   A. when a teacher is denied rights that are due as a citizen of the nation such as the right to belong to certain groups or the right to engage in his profession;
   B. when a teacher's right to freedom of speech and expression either in or out of the classroom will be infringed by a dismissal or nonrenewal and the speech or expression is not materially or substantially disruptive;
   C. when a teacher's ability to secure another teaching position is substantially harmed by a dismissal or nonrenewal.

II. Constitutional rights become involved in tenure problems
   A. when tenured faculty members are dismissed without due process;
   B. when by state law, policy, or by college policy or practice a

nontenured faculty member having an objective expectancy of continued employment and thus having de facto tenure, is dismissed or not renewed and due process is not afforded him;

C. when the college administrators and board of trustees fail to follow their own regulations or state laws or regulations.

The second question in Chapter I asked: What are the major education issues regarding academic freedom and tenure in community colleges and technical institutes?

The major educational issues are the following:

I. teachers' rights to academic freedom both in and out of the classroom;

II. the linking of academic freedom with tenure or some other system of due process to protect teachers from arbitrary dismissals;

III. the large percentage of faculty members already tenured on some campuses;

IV. pressure on community colleges due to fluctuating enrollments;

V. increasing use of part-time and temporary faculty members who usually have no institutionalized due process rights;

VI. the ability of the community college to win community support for academic freedom and for the accompanying due process safeguards;

VII. governance of community colleges by administrators who have educational philosophies which make academic freedom a high priorty and who are willing to support policies protecting academic freedom even when faced with community pressure.

The third question in Chapter I asked: Which of these educational issues involve legal questions as reflected in court cases concerning

community colleges and technical institutes? Since the courts have seen fit to apply the same dismissal and nonrenewal decisions to all public educational institutions, all such cases are of concern to community colleges and technical institutes. The right of the teacher to teach and specifically to make decisions in the classroom has increased largely due to the recognition of that right by the courts. The courts have also recognized the link between academic freedom and tenure. While a number of cases have mentioned academic freedom, tenure systems and other due process procedures are more often the bases of court decisions.

The fourth question asked in Chapter I dealt with the academic freedom and tenure issues that are under litigation at this time. Since the Supreme Court saw fit to leave the determination of whether constitutional rights are involved to the lower courts on a case-by-case basis, the issues before the courts are the same issues given in answer to the first question in Chapter I. In virtually every nonrenewal and dismissal case, both liberty and property issues are raised.

The fifth and sixth questions concerned the trends determined by an analysis of court cases and the guidelines for administrators that are needed as a result of those trends. Such guidelines should help community college administrators prevent legal action in situations involving academic freedom and tenure. An analysis of judicial decisions suggests that the courts will most often support college administrators' decisions in dismissal and nonrenewal situations. Although academic freedom is mentioned in numerous cases, the courts are more likely to rely on the concept of protection of liberty and property interests in making their decisions. Both tenured and nontenured faculty members can

raise liberty claims, while for tenured faculty members tenure itself clearly constitutes a property interest.

An analysis of court cases indicates that faculty members will win their cases if they can prove an infringement of their free speech rights has resulted from their terminations. They must also prove that the exercise of free speech was the principal reason for termination. A liberty interest is involved in this situation.

The situation is less clear when a faculty member's claim involves a liberty interest created because of a stigma attached to nonrenewal. There is some disagreement among the courts as to what constitutes a stigma.

The direction of the courts regarding property interests is more obvious. For faculty members without formal tenure, if state statutes or policies, or college regulations and practices imply that the faculty member has some form of tenure, due process will be required before that faculty member can be removed. Tenured faculty members clearly have a property interest and are protected by due process.

If administrators wish to avoid litigation in the area of liberty interests they should avoid terminations where the principal ground involves the faculty member's exercise of free speech. Administrators should also avoid damaging a faculty member's reputation in the community.

To avoid property interest cases, college employment policies should be very specific concerning contracts and probationary status. Administrators must strictly follow those policies and state statutes were applicable. Failure to do so may result in the creation of <u>de facto</u> tenure.

Conclusions of This Study

Based on an analysis of judicial decisions, the following general conclusions are made concerning the legal aspects of academic freedom and tenure in community colleges. It should be noted, however, that these conclusions may not be valid in a particular case if the circumstances are different than in the cases on which this analysis was based.

1. Courts will intervene when the teacher's right to free speech is infringed, with free speech broadly interpreted to include most forms of expression as long as they are not materially or substantially disruptive of the education process.
2. Courts will intervene when a dismissal or nonrenewal has infringed upon a property interest, and such interest may exist in some cases even if the faculty member is not formally tenured. This is often called de facto tenure.
3. Courts will intervene when colleges fail to follow established policies, rules, and customs, and when colleges fail to follow state procedures and statutes.
4. Most dismissal and nonrenewal cases will involve both liberty and property claims by the teacher.
5. Liberty and property claims and procedural grounds will continue to be the basis for judicial decisions. Academic freedom, though recognized by courts, will not be the basis of judicial decisions.
6. When multiple grounds for dismissal are involved, courts will use the Mt. Healthy criteria, meaning that the court must determine if protected activity is the principal reason for dismissal and if the dismissal would have occurred without that protected activity.

7. Tenure systems will continue to be threatened by declining and fluctuating enrollment. Enrollment changes make the already strong desire of administrators for flexibility even stronger. That desire may be frustrated by tenure systems.
8. The growing trend toward political conservatism will in all likelihood increase the threat to academic freedom through community pressure to silence controversial faculty members.
9. The right of community college board of trustees and administrators to establish curriculum standards and enforce those standards will continue to be sustained by judicial review.

Recommendations of This Study

Boards of trustees and school officials responsible for the organization and governance of community colleges must be informed of the constitutional issues and legal developments affecting community colleges if they are to avoid litigation. Boards of trustees and administrators' regulations must be carefully formulated and carefully followed. Boards of trustees and administrators need a thorough knowledge of state legislative enactments and policies and the interpretation of statutes by the judiciary and state attorneys general in order to effectively administer and avoid litigation.

Once adopted, a policy must be made clear to administrators at every level. The administrative interpretation of the policy, the specifics of its implementation, and the consequences of violating the policy, should be thoroughly explained to all employees.

In formulating dismissal and nonrenewal policies and, where applicable, tenure policies, boards might use Roth and Sindermann and

Mt Healthy as guidelines. Predicated on the findings of this study, specifically the findings of the United States Supreme Court's landmark cases the following guidelines concerning academic freedom and tenure in community colleges have been formulated. Yet even though the guidelines seem to be legally acceptable, it is worthwhile remembering that faculty members who feel their constitutional rights have been infringed may initiate litigation against the college regardless of policies adhering to the guidelines.

GUIDELINES FOR A POLICY CONCERNING DISMISSALS AND NONRENEWALS OF COMMUNITY COLLEGE FACULTY MEMBERS

I. Community college policies concerning dismissal and nonrenewal should be formally adopted by the board of trustees.
   A. The policy should contain a statement of the board of trustees' support for academic freedom and the board of trustees' commitment to the protection of the constitutional rights of faculty members.
   B. The policy should be developed with the help of faculty members and American Association of University Professors guidelines within the constraints established by applicable state laws.
   C. Procedures for implementation of the policy should be explicitly given, and while implementation may be delegated (if allowed by state law) the final decision rests with the board of trustees.

II. For probationary faculty members and faculty members in colleges without tenure systems:

A. A due process committee should be established to deal with objections in dismissal and nonrenewal cases.

B. The fact that the faculty member has no form of tenure should be explicitly stated.

C. If the faculty member is employed under contract, the policy should state that there is no requirement that the contract be renewed.

D. During the academic year, if a faculty member is to be dismissed while under contract, the policy should make provisions for due process as given in III, B below.

E. In community colleges without tenure systems, due process procedures as indicated in III, B below should be used when nonrenewal involves a faculty member who has served for many years.

F. When a nontenured faculty member feels that constitutional rights have been infringed by appointment nonrenewal, opportunity should be afforded to present the claim before the college due process committee which will then determine the validity of the claim, and if it is valid the committee will recommmend to the board of trustees that the appointment be renewed.

III. For community colleges wishing to establish a tenure policy:

A. Procedures for attainment of tenure should be covered in detail, including the following:

1. A probationary period should be established of a duration sufficient to fairly evaluate the faculty member.

2. Evaluation procedures should be specific and the criteria used in the evaluation should be made known to the faculty member in advance.
3. Opportunity should be given to the faculty member who has been denied tenure to "appeal" by addressing the due process committee.

B. Due process procedures used in the dismissal of tenured faculty members should be indicated and should include the following:
1. Notice of dismissal should be given at least four months before the end of the academic year.
2. The grounds for dismissal should be made known to the faculty member and should come from a list of grounds established by policy.
3. The faculty member should be given the opportunity for a hearing at which time evidence and witnesses may be presented in his defense.
4. A transcript of the hearing should be made and provided to all parties involved.
5. Provisions should be made for appeal of the dismissal decision, either to an arbitrator or to the courts.

Recommendations for Further Study

As indicated in this chapter, the growing trend toward political conservatism may pose additional threats to academic freedom as college administrators face pressures to terminate controversial faculty members. Future research could examine the impact of this political trend on academic freedom, tenure, and dismissal cases.

Faced with declining enrollment, some college administrators have recently turned to reduction-in-force procedures. Future research could analyze judicial decisions to determine if reduction-in-force policies are being used by administrators as a convenient way of ridding themselves of faculty members who would otherwise be protected by constitutional rights and perhaps by tenure as well.

BIBLIOGRAPHY

BOOKS

Albert, Louis S. and Watson, Rollin J. "Mainstreaming Part-Time Faculty: Issue or Imperative?" In New Directions for Community Colleges: Using Part-Time Faculty Effectively. Edited by Michael H. Parson. San Francisco: Jossey-Bass Inc., Publishers, 1980.

Beman, Richard R. "Observations of an Adjunct Faculty Member." In New Directions for Community Colleges:Using Part-Time Faculty Effectively. Edited by Michael H. Parsons. San Francisco: Jossey-Bass Inc., Publishers, 1980.

Bledstein, Burton J. The Culture of Professionalism. New York: W. W. Norton and Company, Inc., 1976.

Bok, Derek. Beyond the Ivory Tower. Cambridge: Harvard University Press, 1982.

Bolmeier, Edward C. The School in the Legal Structure. Cincinnati: The W. H. Anderson Company, 1973.

Bowen, James. A History of Western Education. London: Methuen and Co. Ltd., 1981.

Brubacher, John S. and Rudy, Willis. Higher Education in Transition. New York: Harper and Row, 1968.

Brubacher, John S. The Courts and Higher Education. San Francisco: Jossey-Bass Inc., Publishers, 1971.

Butts, R. Freeman. A Cultural History of Western Education. New York: McGraw Hill Book Company, 1955.

Butts, R. Freeman. The College Charts its Course. New York: Arno Press, 1971.

Chorley, Lord. "Academic Freedom in the United Kingdom." In Academic Freedom: The Scholar's Place in Modern Society. Edited by Hans W. Baade. New York: Oceana Publications, 1964.

Cohen, Arthur M. College Responses to Community Demands. San Francisco: Jossey-Bass Inc., Publishers, 1975.

DiBiase, Elaine R. Tenure, Alternatives to Tenure, and the Courts. Boston: American Educational Research Association, 1980.

Dressel, Paul L. and Fariey, William H. Return to Responsibility. San Fransciso: Jossey-Bass Inc., Publishers, 1972.

Eliason, N. Carol. "Part-Time Faculty: A National Perspective." In New Directions for Community Colleges-Using Part-Time Faculty Effectively. Edited by Michael H. Parsons. San Francisco: Jossey-Bass Inc., Publishers, 1980.

Finkin, Matthew W. "Toward a Law of Academic Status." In The Constitutional Status of Academic Tenure. Edited by Walter P. Metzger. New York: Arno Press, 1977.

Fuchs, Ralph. "Academic Freedom: Its Basic Philosophy, Function and History." In Academic Freedom: The Scholar's Place in Modern Society. Edited by Hans W. Baade. New York: Oceana Publications, 1964.

Henderson, Algo D. Policies and Practices in Higher Education. New York: Harper and Brothers, 1960.

Hendrickson, Robert. "Legal Asepcts of Faculty Reduction." In New Directions for Institutional Research: Coping with Faculty Reduction. Edited by Stephen R. Hemple. San Francisco: Jossey-Bass Inc., Publishers, 1981.

Hofstadter, Richard and Metzger, Walter P. The Development of Academic Freedom in the United States. New York: Columbia University Press, 1955.

Hollander, Patricia A. Legal Handbook for Educators. Boulder: Westview Press, 1978.

Hook, Sidney. Academic Freedom and Academic Anarchy. New York: Cowles Book Company Inc., 1970.

Hughes, Larry W. and Gordon, William M. "Frontiers of the Law." In The Courts and Education. Edited by Clifford P. Hooker. Chicago: University of Chicago Press, 1978.

Joughin, Louis. "Academic Due Process." In Academic Freedom: The Scholar's Place in Modern Society. Edited by Hans W. Baade. New York: Oceana Publications, 1964.

Kaplin, William A. The Law of Higher Education. San Francisco: Jossey-Bass Inc., Publishers, 1978.

Kaplin, William A. The Law of Higher Education 1980. San Francisco: Jossey-Bass Inc., Publishers, 1980.

Kirk, Russell. Academic Freedom: An Essay in Definition. Chicago: Henry Regnery Company, 1955.

Kurland, Jordan E. "Mediating the Implementation of AAUP Standards." In New Directions for Higher Education: Resolving Conflict in Higher Education. Edited by Jane E. McCarthy. San Francisco: Jossey-Bass Inc., Publishers, 1980.

Ladd, Everett C. and Lipset, Seymour M. The Divided Academy. New York: McGraw Hill Book Company, 1975.

Lipset, Seymour M. "The American University 1964-1794: From Activism to Austerity." In Universities in the Western World. Edited by Paul Seabury. New York: The Free Press, 1975.

McHugh, William F. "Faculty Unionism." In The Tenure Debate. Edited by Bardwell L. Smith. San Francisco: Jossey-Bass Inc., Publishers, 1972.

Mayhew, Lewis B. Arrogance on Campus. San Francisco: Jossey-Bass Inc., Publishers, 1970.

Metzger, Walter P. Academic Freedom in the Age of the University. New York: Columbia University Press, 1955.

Metzger, Walter P. "Academic Tenure in America: A Historical Essay." In Faculty Tenure: A Report and Recommendation. Edited by William Keast. San Francisco: Jossey-Bass Inc., Publishers, 1978.

Monroe, Charles R. Profile of the Community College. San Francisco: Jossey-Bass Inc., Publishers, 1972.

Moos, Malcolm and Rourke, Francis E. The Campus and the State. Baltimore: The Johns Hopkins Press, 1959.

Morris, Arval A. "Academic Freedom and Loyalty Oaths." In Academic Freedom--The Scholar's Place in Modern Society. Edited by Hans A. Baade. New York: Oceana Publications, 1964.

Murphy, William P. "Academic Freedom: An Emerging Constitituional Right." In The Constitutional Status of Academic Freedom. Edited by Walter P. Metzger. New York: Arno Press, 1977.

Myerson, Martin. "The Ethos of the American Student: Beyond the Protests." In The Contemporary University: U.S.A. Edited by Robert S. Morrison. Boston: Houghton Mifflin Company, 1966.

Nordin, Virginia D. "Legal Protection of Academic Freedom." In The Courts and Education. Edited by Clifford Hooker. Chicago: University of Chicago Press, 1978.

O'Connell, Thomas E. Community Colleges: A President's View. Urbana: University of Illinois Press, 1968.

O'Neal, Robert. "Tenure Under Attack." In The Tenure Debate. Edited by Bardwell L. Smith San Francisco: Jossey-Bass Inc., Publishers, 1973.

Quall, Alvin. "The Solution to College Administration Problems." In Leaders, Teachers and Learners in Academe. Edited by Stanley Lehrer. New York: Appleton-Century-Crofts, 1970.

Pettigrew, Harry W. "Constitutional Tenure: Toward a Realization of Academic Freedom." In The Constitutional Status of Academic Tenure. Edited by Walter P. Metzger. New York: Arno Press, 1977.

Shils, Edward. "The Acadmeic Ethos Under Strain." In Universities in the Western World. Edited by Paul Seabury. New York: The Free Press, 1975.

Shulman, Carol H. "Employment of Nontenured Faculty: Some Implications of Roth and Sindermann." In The Constitutional Status of Academic Tenure. Edited by Walter P. Metzger. New York: Arno Press, 1977.

Simons, Joseph H. Problems of the American University. Boston: The Christopher Publishing House, 1967.

Smith, Bardwell L., ed. "Academic Freedom, Tenure and Countervailing Forces." In The Tenure Debate. San Francisco: Jossey-Bass Inc., Publishers, 1973.

Van Alstyne, William. "The Specific Theory of Academic Freedom and the General Issue of Civil Liberty." In The Constitutional Status of Academic Freedom. Edited by Walter P. Metzger. New York: Arno Press, 1977.

Van Alstyne, William. "The Supreme Court Speaks to the Untenured: A Comment on Board of Regents v. Roth and Perry v. Sindermann." In The Constitutional Status of Academic Tenure. Edited by Walter P. Metzger. New York: Arno Press, 1977.

Wallis, Warren. "Centripetal and Centrifugal Forces in University Organization." In The Contemporary University: U.S.A.. Edited by Robert S. Morrison. Boston: Houghton Mifflin Company 1966.

Wise, John E. The History of Education. New York: Sheed and Wood, 1964.

JOURNALS AND PERIODICALS

American Association of University Professors Bulletin, February/March 1918.

"A Recent Survey on Tenure Practices at Four Year Institutions." Change, March 1981, p. 46.

Chait, Richard P. and Ford, Andrew T. "Beyond Traditional Tenure." Change, July/August 1982, pp. 44-54.

Kowalski, Casimir J.; Chaimberlain, Phillip C.; and Cangemi, Joseph P. "Some Legal Aspects of Higher Education." College Student Journal 11 (Fall 1977): 277-84.

Murphy, Cullen. "In Darkest Academia." Harpers, October 1978, pp. 24-28.

O, Walter Y. "Academic Tenure and Mandatory Retirement Under the New Law." Science, 21 December 1979, pp. 1373-8.

Plante, Patricia R. "The Attack on Tenure: The Threat From Within." Change, November/December 1983, pp. 10-11.

"Professors with Tenure." Chronicle of Higher Education. 8 May 1978.

"Public Backs College Education in Poll." Chronicle of Higher Education. 13 October 1982.

Reagan, Gerald M. "Contemporary Constraints on Academic Freedom." Educational Forum, Summer 1982, pp. 391-402.

Roemer, Robert E. and Schnitz, James E. "Academic Employment as Day Labor." Journal of Higher Education 5 (September/October 1982): 514-31.

Vaerdt, Lois. "Affirmative Action and Tenure During Financial Crisis." Journal of Law and Education 11 (October 1982): 507-37.

Walden, Theodore. Tenure: A Review of the Issues." Educational Forum, March 1980, pp. 363-72.

Walden, Theodore. "Higher Education: Attitudes Toward Tenure." Phi Delta Kappen, November 1980, pp. 216-17.

Zirkel, Perry A. "Avoiding Litigation in the Tenure Process." Journal of General Education 30 (Winter 1979): 275-81.

COURT CASES

Adler v. Board of Education of New York, 342 U.S. 485, 96 L. Ed. 517, 72 S. Ct. 380 (1952).

Assaf v. University of Texas System, 399 F. Supp. 1245 (S.D. Tx 1975).

Berry v. Hamblin, 356 F. Supp. 306 (M.D. Pa. 1973).

Bishop v. Wood, 426 U.S. 341, 96 S. Ct. 2074, 48 L. Ed. 2d 684 (1976).

Board of Regents of State Colleges v. Roth, 408 U.S. 564, 92 S. Ct. 2701 33 L. Ed. 2d 548 (1972).

Bowing v. Board of Trustees of Green River Community College District No. X, 521 P. 2d 220 (Wa. 1974).

Burdeau v. Trustees of California State Colleges, 507 F. 2d 770 (9th Cir 1974).

Causey v. Board of Trustees of Community College District V, 638 P. 2d 98 (Wa. 1982).

Chung v. Park, 377 F. Supp. 524, affd. C.A., 514 F. 2d 382, Cert. den. 96 S. Ct. 364 (1975).

Daulton v. Affeldt, 678 F. 2d 487 (4th Cir. 1982).

Ducorbier v. Board of Supervisors of Louisiana State University, 386 F. Supp. 202 (E.D. La 1974).

Goss v. San Jacinto Junior College, 588 F. 2d 96 (5th Cir. 1979).

Haimowitz v. University of Nevada, 579 F. 2d 526 (9th Cir. 1978).

Johnson v. Fraley, 470 F. 2d 179 (4th Cir. 1972).

Keddie v. Pennsylvania State University, 412 F. Supp. 1264 (M.D. Pa. 1976).

Keyishian v. Board of Regents of University of State of New York, 385 U.S. 589, 87 S. Ct. 675, 17 L. Ed. 2d 629 (1967).

Markwell v. Culwell, 515 F. 2d 1258 (5th Cir. 1975).

McClendon v. Morton, 249 S.E. 919 (W Va. 1978).

Meyer v. Nebraska, 262 U.S. 390, 67 L. Ed. 1042, 43 S. Ct. 625 (1923).

Mt. Healthy City School District Board of Education v. Doyle, 429 U.S. 274, 97 S. Ct. 568, 50 L. Ed. 2d 471 (1977).

Nzomo v. Vermont State Colleges 385 A 2d 1099 (Vt. 1978).

Perry v. Sindermann, 408 U.S. 593, 92 S. Ct. 2694, 33 L. Ed. 2d 570 (1972).

Pickering v. Board of Education of Township High School District 205, 391 U.S. 563, 88 S. Ct. 1731, 20 L. Ed. 2d 811 (1968).

Ramey v. Des Moines Area Community College, 216 N.W. 2d 345 (Io. 1974).

Saunders v. Reorganized School District No. 2 of Osage County, 520 S.W. 2d 29 (Mo. 1975).

Sibert v. Community College of Flathead County 587 P. 2d 26 (Mt. 1978).

Slochower v. Board of Higher Education of the City of New York, 350 U.S. 551, 76, S. Ct. 637, (1956).

Steinberg v. Elkins, 470 F. Supp. 1024 (Mo. 1979).

Sweezy v. State of New Hampshire, 354 U.S. 234, 77 S. Ct. 1203, 1 L. Ed. 2d 1131 (1957).

Tinker v. Des Moines Independent Community School District 393, U.S. 503, 89 S. Ct. 733, 21 L. Ed. 2d 731 (1969).

Trotman v. Board of Trustees of Lincoln University, 635 F. 2d 216, cert. den. 451 U.S. 986, 101 S. Ct. 2320, 68 L. Ed. 2d 844 (1981).

Walker v. California State Board of Trustees, 351 F. Supp. 997 (M.D. Pa 1977).

MISCELLANEOUS SOURCES

Academic American Encyclopedia, S.V. "Academic Freedom," by Edward Pincoffs.

Andrews, Hans A. and Mackey, Bruce C. Reductions in Force in Higher Education: One College's Response to the Illinois Community College Tenure Act. ERIC Document Reproduction Service, ED 216 736, 1982.

Ayers, Claude. The Effects of Voiding the Tenure Policy at Surry Community College. Nova University: ERIC Document Reproduction Service, ED 188 691, 1979.

APPENDIX A

RECOMMENDED POLICY

RECOMMENDED COMMUNITY COLLEGE POLICY FOR DISMISSAL AND NONRENEWAL OF FACULTY MEMBERS

I. Statement of policy.

The Board of Trustees of _____ recognizes the importance of academic freedom to the mission of this institution and to the community served by this institution. Furthermore, it is the intent of the board to protect the constitutional rights of faculty members in every circumstance. To these ends the board will act under the following policy.

II. Probationary faculty members.

Probationary faculty members do not possess any form of tenure. Length of appointment is determined by contract which may be renewed upon the mutual agreement of the board and the faculty member. Regarding dismissals of and contract nonrenewals for probationary faculty members, the following procedures shall be followed:

A. If a probationary faculty member is to be dismissed during the term of the contract, that faculty member will be afforded due process prior to the termination of salary and benefits. Such due process will include (1) notice of the charges brought; (2) the opportunity for a hearing before the college due process committee with such committee to be composed of the president or the president's designee and two faculty members; (3) the opportunity for a hearing before the board if the due process committee finding is unsatisfactory, at which the faculty member

may present evidence and witnesses and cross-examine witnesses for the board of trustees; (4) provision of a transcript of the hearing to the faculty member; and (5) appeal to an arbitrator selected mutually by the faculty member and the board of trustees. Any activity that materially and substantially interferes with the educational process shall be grounds for dismissal as indicated in the board of trustees policy relating to contract performance.

B. Probationary faculty members serving beyond a period of seven academic years shall be afforded due process before the nonrenewal of the contract. The specific due process procedures to be followed are provided in II, A above.

C. In keeping with the college's commitment to the protection of the constitutional rights of faculty members, any faculty member with length of service less than seven years who sincerely feels that nonrenewal of the contract has infringed upon constitutional rights may appeal the nonrenewal to the college due process committee which shall make a recommendation concerning the nonrenewal to the board.

NOTE: For colleges with tenure systems, the following would be added to the policy stated above.

III. Tenured faculty members.

A. Faculty members shall be considered for tenure upon completion of seven academic years of service to the college.

B. A tenure review committee shall be established consisting of the

president or the president's designee and three members of the faculty, at least one of whom shall be from the same department as the faculty member being considered for tenure. The committee will base its decision on the faculty member's teaching effectiveness, research (where applicable) and potential for academic growth. Objective evidence shall be used in the evaluation including but not limited to formal observation of the faculty member's teaching and records of additional course work and training engaged in by the faculty member.

C. When the committee's recommendation to the board of trustees is that tenure be denied, the faculty member shall, after being informed of the reasons for denial, have the opportunity to address the board of trustees and show cause why the committee's recommendation shall not be acted upon.

D. Once a faculty member has been granted tenure, dismissal cannot take place except for one or more of the following reasons: (1) incompetency; (2) immorality; (3) conviction of a felony; (4) insubordination; (5) inefficiency; (6) medical disability; and (7) reduction in force necessitated by declining enrollment where no probationary faculty member may be dismissed. Such reasons as provided in (1) through (6) shall be grounds for dismissal only if they cause material and substantial interference with the educational processes that are the primary mission the college.

E. Before the termination of salary and benefits, a tenured faculty member shall be afforded due process. Such due process will include (1) notice of the charges brought; (2) the opportunity for a hearing before the college due process committee; (3) the opportunity for a hearing before the board if the due process committee finding is unsatisfactory at which evidence and witnesses may be presented and witnesses for the board of trustees may be cross-examined; (4) provision of a transcript of the hearing to the faculty member; and (5) appeal to an arbitrator selected mutually by the faculty member and the board of trustees.

APPENDIX B

STATE STATUTES

ALABAMA

In Alabama each junior college is set up by provision of state statutes with its own section for rules and regulations. Although not all of those sections are worded the same, the following is typical:

16-60-21. The board of trustees shall have full, ample and sufficient power and authority to make, adopt and enforce all rules and regulations, not inconsistent with the laws of this state, which may be necessary for the management, control and conduct of the college and the business connected therewith.

The above section applies to the junior college for Franklin, Marion and Winston counties.

ALASKA

14.40.600. Regulations. A community college established by the university in cooperation with school districts or political subdivisions shall be established, maintained, and operated under rules and regulations adopted by the board. The selection and academic qualifications for personnel and the curriculum of a community college insofar as it pertains to academic degree programs and activities, is the responsibility of the board. The selection and qualifications of personnel for nondegree programs and activities of the community college are the responsibility of the governing body of the school district or political subdivision.

ARIZONA

15-679. Powers and duties. A. Except as otherwise provided, the district board shall:

5. Appoint and employ a president or presidents, vice presidents, deans, professors, instructors, lecturers, fellows, and other such officers and employees it deems necessary.

7. Remove any officer or employee when in its judgement the interests of education in the state so require.

ARKANSAS

80-4910. Local board established - composition - terms - elections - powers and duties.

b. The powers and duties of the local Board shall be as follows:

(5) To appoint, upon nomination of the president, members of the administrative and teaching staffs and to fix their compensation and terms of employment.

CALIFORNIA

66700. Community colleges as part of the public school system: Duties of state boards of Education. The public community colleges are secondary schools and shall continue to be a part of the public school system of this state. Ths Board of Governors of the California Community Colleges shall prescribe minimum standards for the formation and operation of public community colleges and exercise general supervision over public community colleges.

77290. Employment of personnel: Salaries and Benefits. The district board shall employ and assign all personnel not inconsistent with the minimum standards adopted by the board of governors. The district governing board shall establish employment practices, salaries, and benefits for all employees not inconsistent with the laws of this state.

72292. Student conduct: Faculty and student expression of opinions. The district governing board shall establish rules and regulations governing student conduct. The district governing board shall establish procedures not inconsistent with those established by the board of governors to insure faculty and students the opportunity to express their opinions at the campus level.

87604. Employment. The governing board of community college district shall employ each certificated person as one of the following: contract employee, regular employee, or temporary employee.

CALIFORNIA (continued)

87605. Employment contract. The governing board of a district shall employ persons to serve in positions requiring certification qualifications for the first academic year of his employment or portion thereof by contract. Any person who, at the time an employment contract is offerred to him by the district, is neither a regular employee of the district nor a contract employee then serving under a second contract entered into persuant to Section 87608 shall be deemed to be employed for "the first academic year of his employment or a portion thereof."

87606. Contract contents. An employment contract shall contain in such terms and conditions as the governing board an the proposed employee shall agree upon and as are consistent with the provisions of the law.

87607. Decisions re continued employment: Requirements. Before making a decision relating to the continued employment of a contract employee, the following requirements shall be satisfied:

(a) The employee has been evaluated in accordance with the evaluation standards and procedures established in accordance with the provisions of Article 4 (commencing with Section 87660) of this chapter, a fact determined solely by the governing board.

(b) The governing board has received statements of the most recent evaluations.

(c) The governing board has received recommendations of the superintendent of the district and, if the employee is employed at a community college, the recommendations of the president of that community college.

(d) The governing board has considered the statement of evaluaton and the recommendations at a lawful meeting of the board.

87608. Contract employee: First contract. If a contract employee is working under his first contract, the governing board shall at its discretion, and not subject to judicial review except as expressly provided herein, shall elect one of the following alternatives:

(a) Not enter into a contract for a second year.

(b) Enter into a contract for a second academic year.

(c) Employ the contract employee as a regular employee for all subsequent academic years.

87609. Contract employee: Second contract. If a contract employee is employed under his second consecutive contract entered into pursuant to Section 87608, the governing board, at its discretion and not subject to judicial review except as expressly provided herein, shall elect one of the following alternatives:

(a) Employ the contract employee as a regular employee for all subsequent academic years.

(b) No employ the contract employee as employee.

CALIFORNIA (continued)

87610. Notice re decisions: Requirements. The governing board shall give written notice of its decision under Section 87608 and the reasons therefor to the employee on or before March 15 of the academic year covered by the existing contract. Failure to give the notice as required to a contract employee under his first contract shall be deemed an extension of the existing contract without change for the following academic year. The governing board shall give written notice of its decision under Section 87608 and the reasons therefor to the employee on or before March 15 of the academic year covered by the existing contract. Failure to give the notice as required to a contract employee under this second consecutive contract shall be deemed a decision to employ him as a regular employee for all subsequent academic years.

87611. Hearing. If the contract employee objects to the decision of the governing board persuant to Section 87609, he may request a hearing. The hearing shall be requested and conducted and the proposed decision shall be prepared, in accordance with the provision of Section 87740.

87667. Dismissal and penalties: Contract and regular employees. During the school year, all contract and regular employees are subjected to dismissal and the imposition of penalites on the grounds and pursuant to procedures set forth in the article.

CALIFORNIA (continued)

87667. Grounds for dismissal or penalization. A contract or regular employee may be dismissed or penalized for one or more of the grounds set forth in Section 87732.

87671. Satisfaction of grounds. A contract or regular employee may be dismissed or penalized if one or more of the grounds set forth in Section 87732 are present and the following are satisfied:

(a) The employee has been evaluated in accordance with standards and procedures estalbished in accordance with the provisions of this article.

(b) The district governing board has received all statements of evaluation which considered the events for which dismissal of penalities may be imposed.

(c) The district governing board has received recommendations of the superintendent of the district and, if the employee is working for a community college, the recommendation of the president of that community college.

(d) The district governing board has considered the statements of evaluation and the recommendations in a lawful meeting of the board.

87672. Statement of decision to dismiss or penalize: Postponement. If a governing board decides it intends to dismiss or penalize a contract or

regular employee, it shall deliver a written statement, duly signed and verified, to the employee setting forth the complete and precise decision of the governing board and the reasons therefor.

The written statement shall be delivered by serving it personally on the employee or by mailing it by the Unisted States registered mail to the employee at his address last known to the district.

A governing board may postpone the operative date of a decision to dismiss or impose penalities for a period not to exceed one year, subject to the employee's satisfying his legal responsibilities as determined by statute and rules and regulations of the district. At the end of his period of probation, the decision shall be made operative or permanently set aside by the governing board.

87673. Employee's noticed of objection to decision. If the employee objects to the decision of the governing board or the reasons therefor on any ground, he shall notify in writing the governing board, the superintendent of the district which employs him, and the persident of the college at which he serves of his objection within 30 days of the date of the service of notice.

87674. Agreement as to arbitrator: Written confirmation. Within 30 days of the receipt by the district governing board of the employee's demand for a hearing, the employee and the governing board shall agree upon an arbitrator to hear the matter. Where there is agreement as to

the arbitrator, the employee and the governing board shall enter into the records of the governing board written confirmation of the agreement signed by the employee and an authorized representative of the governing board. Upon entry of such confirmation, the arbitrator shall assume complete and sole jurisdiction over the matter.

87675. Arbitration proceedings: Arbitrator's decision. The arbitrator shall conduct preceedings in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1, Division 3, Title 2, of the Government Code except that the right of discovery of the parties shall not be limited to those matters set forth in Section 11507.6 of the Government Code but shall include the rights and duties of any party in a civil action brought in a superior court. In all cases, discovery shall be completed prior to one week before the date set for hearing. He shall determine whether there is cause to dismiss or penalize the employee. If he finds cause, he shall determine whether the employee shall be dismissed and determine the precise penalty to be imposed, and he shall determine whether his decision shall be imposed immediately or postponed pursuant to Section 87672. No witness shall be permitted to testify at the hearing upon oath or affirmation. No testimony shall be given or evidence introduced relating to matters which 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 made based on charges or evidence of any nature relating to matters occurring more than four years prior to the filing of the notice.

87676. Postponement of operation of decision. In the case in which the arbitrator determines that the operationg of his decision should be postponed, any question of terminating the postponement shall be determined by the arbitrator.

87677. Payment of costs. The district alone shall pay the fees of the arbitrator, his expenses, and such expenses as he shall determine are a cost of the proceedings. The "cost of the proceedings" does not include any expenses paid by the employee for his counsel, witnesses, or the preparation on presentation of evidence on his behalf.

87678. Request for appointment of administrative hearing officer. If within 30 days of the receipt of the notification by the district governing board, no written confirmation of agreement of the employee and the governing board to an arbitrator has been submitted to the secretary of the governing board for entry into its records, the governing board shall certify the matter to the Office of Administrative Hearings and request the appointment of an administrative hearing officer.

CALIFORNIA (continued)

87679. Administrative hearing officer's conduct of proceedings. The administrative hearing officer shall conduct proceedings in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1, Division 3, Title 2, of the Government Code except that the right of discovery of the parties shall not be limited to those matters set forth in Section 11507.6 of the Government Code but shall include the rights and duties of any party in a civil action brought in a superior court. In all cases, discovery shall be completed prior to one week before the date set for hearing. The written notice delivered to the employee pursuant to Section 87672 shall be deemed an accusation. The written objection of the employee delivered pursuant to Section 87673 shall be deemed the notice of defense.

87680. Hearing proceedings: Hearing officer's decision. The hearing officer shall determine whether there is cause to dismiss or penalize the employee. If he finds cause, he shall determine whether the employee shall be dismissed and determine the precise penalty to be imposed, and he shall determine whether his decision should be imposed immediately or postponed pursuant to Section 87672. No witness shall be permitted to testify at the hearing except under oath or affirmation. No testimony shall be given or evidence introduced relating to matters which occurred more than four years prior to the date of the filing of the notice.

CALIFORNIA (continued)

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 made based on charges or evidence of any nature relating to matters occurring more than four years prior to the filing of the notice.

87681. Postponement of operation of decision. In the case in which the hearing officers determines that the operation of his decision should be postponed, any question of terminating the postponement shall be brought to the hearing officer.

87682. Judicial review. The decision of the arbitrator or hearing officer, as the case may be, may, on petition of either the governing board of the employee, be reviewed by a court of competent jurisdiction in the same manner as a decision may be a hearing officer under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The court, on review, shall exercise its independent judgement on the evidence. 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 given by law.

87683. Payment of costs. The charges levied by the Office of Administrative Hearing shall be paid by the district.

CALIFORNIA (continued)

87684. Immoral conduct or conviction of crime involving moral turpitude: Satement of facts. If a contract or regular employee is dismissed or penalized for immoral conduct or conviction of a felony or crime involving moral turpitude, the governing board shall transmit to the Chancellor of the California Community Colleges, and to the county superintendent of schools which issued the certificate under which the employee was serving at the time of his dismissal or the imposition of his penalty, a statement setting forth the acts of the employee and a request that any certificate issued by the county board of education to the employee be revoked if the employee is not reinstated upon appeal.

87732. Grounds for dismissal of regular employee. No regular employee shall be dismissed except for one or more of the following causes:

(a) Immoral or unprofessional conduct.

(b) Any violation of Article 4 (commencing with Section 11400) of Chapter 3 of Title 1 of Part 4 of the Penal Code.

(c) Dishonesty.

(d) Incompetency.

(e) Evident unfitness for service.

(f) Physical or mental condition which makes him or her unfit to instruct or associate with students.

(g) Persistent violation of or refusal to obey the school laws or reasonable regulations prescribed for the government of the community colleges by the governing board of the community college district employing him or her.

CALIFORNIA (continued)

(h) Conviction of a felony or of any crime involving moral turpitude.

(i) Conduct specified in Section 1028 of the Government Code.

(j) Knowing membership by the employee in the Communist Party.

87734. Unprofessional conduct or incompetency: Notice of charges. The governing board of any community college district shall not act upon charges of unprofessional conduct or incompetency unless during the preceeding term or half school year prior to the date of the filing of the charge, and at least 90 days prior to the date of the filing, the board of its authorized representative has given the employee against whom the charge is filed, written notice of the unprofessional conduct or incompetency, specifying the nature thereof with such specific instances of behavior and with such particularity asto furnish the employee an opportunity to correct his faults and overcome the grounds for such charge. The written notice shall include the evaluation made pursuant to Article 4 (commencing with Section 87660) of this chapter, if applicable to the employee. "Unprofessional conduct" and "incompetency" as used in this section means, and refers to, the unprofessional conduct and incompetency particularly specified as a cuase for dismissal in Section 87732 and does not include any other cause for dismissal specified in Section 87732.

CALIFORNIA (continued)

87735. Immediate suspension: Hearing upong certain charges. Upon the filing of written charges, duly signed and cerified by the person filing them with the governing board of a community college district, or upon a written statement of charges formulated by the governing board, charging a permanent employee of the district with immoral conduct, conviction of a felony or of any crime involving moral turpitude, with incompetency due to mental disability, with willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing district, or with knowning membership by the employee in the Communist Party, the governing board may, if it deems such action necessary, immediately suspend the employee from his or her duties and give notice to him or her of his or her suspension, and that 30 days after service of the notice, he or she will be dismissed, unless he or she demands a hearing.

If a regular employee is suspended upon charges of knowing membership by the employee in the Communist Party, he or she may within 10 day after service upon him of notice of such suspension file with the governing board a verified denial, in writing, of the charges. In such event the regular employee who demands a hearing within the 30-day period shall continue to be paid his or her regular salary during the period of suspension and until the entry of the decision of the hearing officer, if and during such time as he or she furnishes to the district a suitable bond, or other security acceptable to the governing board, as a guarantee

CALIFORNIA (continued)

that the employee will repay to the district the amount of salary so paid to him or her during the period of suspension in case the decision of the Commission on Professional Competence is that he or she shall be dismissed. If it is determined that the employee may not be dismissed, the district shall reimburse the employee for the cost of the bond.

87736. Sex offenses and naroctics offenses; compulsory leave of absence. Whenever the certificated employee of a community college district is charged with the commission of any sex offense, as defined in Section 87010, by complaint, information, or indictment filed in a court of competent jurisdiction, the governing board of the district shall immeidately place the employee upon compulsory leave of absence for a period of time extending for not more than 10 days after the date of the entry of judgement in the proceedings. The governing board of the district may extend the compulsory leave of absence of the employee beyond such period by giving notice to the employee withint 10 days after the entry of judgement in the proceedings that the employee will be dismissed 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.

Any employee placed upon compulsory leave of absence pursuant to this section shall continue to be paid his or her regular salary during the period of his or her compulsory leave of absence, if and during such time as the employee furnishes to the community college district a suitable

bond, or other security acceptable to the governing board, as a guarantee that the employee will repay to the district the amount of salary so paid to the employee during the period of compulsory leave of absence in case the employee is convicted of such charges, or fails or refuses to return to service following an acquittal of the offense or dismissal of the charges. If the employee is acquitted of the offense, or the charges against the employee are dismissed, the district shall reimburse the employee for the cost of the bond upon his or her return to service in the district.

If the employee does not elect to furnish bond, or other security acceptable to the governing board of the district, and if the employee is acquitted of the offense, or the charges against the employee are dismissed, the district shall pay to the employee his or her full compensation for the period of the compulsory leave of absence upon his or her return to service in the district.

Whenever any certificated employee of a community college district is charged with the commission of narcotics offense as defined in Section 87011 of the Education Code, or a violation of Section 261.5 of the Penal Code, Sections 11357 to 11361, inclusive, 11363, 11364 or 11377 to 11382, inclusive, insofar as such sections relate to any controlled substances in paragraph (4) or (5) of subdivision (b) of Section 11056, or any controlled substances in subdivision (d) of Section 11054, except paragraphs (10), (11), (12), and (17), of such subdivision of the Health and Safety Code, by complaint, information, or indictment filed in a

court of competent jurisdiction, the governing board of the district may immediately place the employee upon compulsory leave in accordance with the procedure in this section.

87737. Notice of suspension and intent 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.

87740. Cause, notice, and right to hearing required for dismissal of probationary employee. (a) No later than March 15 and before an employee is given notice by the governing board that his services will not be required for the ensuing year, the governing board and the employee shall be given written notice by the superintendent of the district or his designee, or in the case of a district which has no superintendent by the clerk or secretary of the governing board, that it has been recommended that such notice be given to the employee, and stating the reasons therefor. If a contract employee has been in the employ of the district

less than 45 days on March 15, the giving of such notice may be deferred until the 45th day of employment and all time periods and deadline dates herein prescribed shall be coextensively extended.

Until the employee has requested a hearing as provided in subdivision (b) or has waived his right to a hearing, the notice and reasons therefor shall be confidential and shall not be divulged by any person, except as may be necessary in the performance of duties; however, the violation of this requirement of confidentiality, in and of itself, shall not in any manner be construed as affecting the validity of any hearing conducted pursuant to this section.

(b) The employee may request a hearing to determine if there is cause for not reemploying him for the ensuing year. A request for a hearing must be in writing and must be delivered to the person who sent the notice pursuant to subdivision (a), on or before a date specified therein, which shall not be less than seven days after the date on which the notice is served upon the employee. If an employee fails to request a hearing on or before the date specified, his failure to do so shall constitute his waiver of his right to a hearing. The notice provided for in subsection (a) shall advise the employee of the provisions of this subdivision.

(c) In the event a hearing is requested by the employee, the preceeding shall be 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 and the governing board shall have all power granted to

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an agency therein, except that: (1) the respondent shall file his notice of defense,if any, within five days after service upon him of the accusation and he shall be notified of such five-day period for filing in the accusation; (2) the discovery authorized by Section 11507.6 of the Government Code shall be available only if request is made therefor within 15 days after service of the accusation, and the notice required by Section 11505 of the Government Code shall so indicate; and (3) the hearing shall be conducted by a hearing officer who shall prepare a proposed decision, containing findings of fact and a determination as to whether the charges sustained by the evidence are related to the welfare of the schools and the students thereof. The proposed decision shall be prepared for the governing board and shall contain a determination as to the sufficiency of the cause and a recommendation as to disposition. However, the governing board shall make the final determination as to the sufficiency of the cause and disposition. None of the findings, recommendations, or determinations contained in the preposed decision prepared by the hearing officer shall be binding on the governing board or on any court in future litigation. Copies of the proposed decision shall be submitted to the governing board and to the employee on or before May 7 of the year in which the preceeding is commenced. All expenses of the hearing, including the cost of the hearing officer, shall be paid by the governing board from the district funds. The board may adopt from time time such rules and procedures not inconsistent with provisions of this section, as may be necessary to effectuate this section.

CALIFORNIA (continued)

(d) The governing board's determination not to reemploy a contract employee for the ensuing school year shall be for cause only. The determination of the governing board as to the sufficiency of the cause pursuant to this section shall be conclusive, but the cause shall relate solely to the welfare of the schools and the students thereof and provided that cause shall include termination of services for the reasons specified in Section 87743. The decision made after the hearing shall be effective on May 15 of the year the proceeding is commenced.

(e) Notice to the contract employee by the governing board that his sevice will not be required for the ensuing year,shall be given no later than May 15.

(f) If a governing board notifies a contract empoyee that his services will not be required for the ensuing year, the board shall, within 10 days after delivery to it of the employee's written request, provide him with a statement of its reasons for not reemploying him for the ensuing year.

(g) Any notice or request shall be deemed sufficient when it is delivered in person to the employee to whom it is directed, or when it is deposited in the United States' registered mail, postage prepaid and addressed to the last known address of the employee.

(h) In the event that the governing board does not give notice provided for in subdivision (e) of this section on or before May 15, the employee shall be deemed reemployed for the ensuing school year.

CALIFORNIA (continued)

(i) If after request for hearing pursuant to subdivision (b) any continuance is granted pursuant to Government Code Section 11524, the dates prescribed in subdivisions (c), (d), (e), and (h) which occur on or after the date of granting the continuance shall be extended for a period of time equal to such continuance.

87743. Reduction in number of permanent employees. No regular employee shall be deprived of his position for causes other than those specified in Sections 87453, 87467 and 87484, and Sections 87732 to 87739, inclusive, and no contract employee shall be deprived of his position for cause other than as specified in Section 87740 except in accordance with the provisions of Section 87463 and Sections 87743 to 87762, inclusive. Whenever in any school year the average daily attendance in all of the schools of a district for the first six months in which school is in session shall have declined below the corresponding period of either of the preivous two school years, or whever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, and when in the opinion of the governing board of said district it shall have become necessary by either of such conditions to decrease the number of regular employees in said district, the said governing board may terminate the services of not more than a corresponding percentage of the certificated employees of said district, regular as well as contract, at the close of the school year; provided, that the services of no regular employee may be terminated under the

provisions of this section while any contract employee, or any other employee with less seniority, is retained to render a service which said regular employee is certificated and competent to render.

Notice of such termination of services for a reduction in attendance or reduction or discontinuance of a particular kin of service to take effect not later than the beginning of the following school year, shall be given before the 15th of May in the manner prescribed in Section 87740 and services of such employees shall be terminated in the inverse of the order in which they were employed, as determined by the board in accordance with the provision of Sections 87413 and 87414. In the event that a regular or contract employee is not given the notices and a right to the hearing as provided for in Section 87740, he shall be deemed reemployed for the ensuing school year. The board shall make assignments and reassignments in such a manner that employees shall be retained to render only services which their seniority and qualifications entitle them to render.

COLORADO

23-10-101. Legislative declaration. (1) It is the purpose of this article:

(a) To provide a fair and orderly procedure for the terminatin of employment of faculty members at publicly controlled institutions of higher education in cases involving dismissal or nonrenewal of contract, whether by reason of reduction of force or other reasons;

(b) To adequately protect academic freedom and intellectual inquiry; and

(c) To minimize the need for judicial determination of such matters.

23-10-201. Grounds for dismissal and nonrenewal. The grounds for dismissal or nonrenewal of a faculty member shall be mental disability, neglect of duty, conviction of a felony, insubordination, moral turpitude, incompetency, or other good and just cause as determined by the failure to meet resonable written and published standards. No faculty member may be dismissed or nonrenewed due to temporary illness as defined by board policy, leave of absence granted previously, or military leave of absence.

23-10-202. Preliminary procedures - termination of employment by dismissal or nonrenewal of contract. (1) (a) Notice of dismissal may be given at any reasonable time.

COLORADO (continued)

(b) Notice of nonrenewal shall be given by the board no later than December 15 of the year prior to the year in which the nonrenewed contract is to expire; except that, in the case of a faculty member's first contract, the notice of nonrenewal shall be given no later than February 15 of the year in which the contract is to expire.

(c) Any such notice pursuant to this section shall be in writing, shall be sent by registered mail to the faculty member, and shall state the reasons for dismissal or nonrenewal of contract.

(2) (a) If the faculty member makes a request for a hearing in writing not more than ten calendar days after receipt of the notice of dismissal or nonrenewal, he shall be entitled to the following procedure: Within seven school days after the written request for a hearing, a campus hearing committee shall convene and attempt to reach an informal resolution of the dispute. The campus hearing committee shall consist of two persons selected by the faculty member, two persons selected by the chief administrative officer, and a fifth person mutually selected by the four appointees. The campus hearing committee and administration shall exchange all available pertinent data required for a complete investigation of the action, if requested by a member of the campus hearing committee. The campus hearing committee may propose disciplinary or corrective action different from that ordered by the administration. All five members of the campus hearing committee must be employees of that institution. If the campus hearing committee cannot reach a

resolution that is acceptable to both the faculty member and the chief administrative officer within seven calender days, unless extended by mutual consent, the faculty member shall be entitled to a full and fair hearing conducted in accordance with the provisions of section 24-4-105, C.R.S., before an impartial hearing officer.

(b) The campus hearing committee shall have the power to adopt its own rules of procedure. The faculty member shall have the option of attending all meetings of the campus hearing committee.

(c) The hearing officer shall be selected mutually by the faculty member and the chief administrative officer. If no agreement is reached withint ten days, the chief district judge of the judicial district in which the educational institution is located shall be notified, and the judge shall appoint a hearing officer within five days. Said just shall appoint a person totally disinterested in the proceeding.

(d) The hearing officer shall hold a hearing within five days and shall render his decision within twenty days after his initial appointment. The hearing officer shall make findings of fact and conclusions and prepare and transmit his initial decision to the board, which shall review and take action on the initial decision in accordance with the provisions of section 24-4-105 (15), C.R.S. The action of the board shall be subject to judicial review in accordance with the provisions of section 24-4-106, C.R.S.

(3) (a) A faculty member may be summarily suspended without prior implementation of the relevant procedures provided in this article, for

a period not to exceed fifteen days, upon a finding of the chief administrative officer that there is good cause to believe that:

(I) The continued presence on the grounds of the education institution would endanger the safety or well-being of the faculty member or other member of the educational institution; or

(II) The continued functioning of the faculty member in his position would substantially impair or substantially disrupt the normal functions of the educational institution.

(b) Benefits and salary shall remain in force during term of any suspension.

(c) Any faculty member suspended may request and shall be granted a hearing officer as provided in this section. Any finding of the hearing shall be subject to judicial review in accordance with the provisions of section 24-4-106, C.R.S.

(4) There need be no hearing granted on the nonrenewal of a faculty member's first three probationary annual contracts with an educational instituion.

23-10-203. Reduction in forces - reasons and priorties. (1) Reduction in forces resulting in the termination of a faculty member may take place for any one of the following reasons:

(a) When the institution is faced with a justifiable lack of work;

COLORADO (continued)

(b) When the institution or program area has experienced declining enrollment in any two consecutive fall semesters or fall quarters or the equivalent thereof;

(c) When the general assembly has failed to appropriate or a board has failed to allocate at or above the previous year's full-time equivalent faculty or full-time equivalent student, in which case the institution must provide the faculty member with a minimum of sixty days' written notice of termination;

(d) Any justifiable change in program;

(e) When the board declairs a fiscal emergency as defined in section 23-10-102, in which case the institution must provide the faculty member with a minimum of sixty days' written notice of termination.

(2) Any reduction in forces ahll be effected in accordance with section 23-10-202 and subsections (3) and (4) of this section. Notice of termination due to reduction in force shall be presented in person to the faculty member or be sent by certified mail to the last known address of the faculty member before December 15 of the year in which any such reduction in force is necessary, except as provided in paragraphs (c) and (e) of subsection (1) of this section, and shall state the reasons for termination.

(3) Normal attrition shall be considered prior to staff reduction, and part-time instructors in the program area affected shall be reduced prior to staff reduction of any other members.

COLORADO (continued)

(4) In the event that additional reductions beyond those specified in subsection (3) of this section are necessary and competency of faculty member is relatively equal, seniority in the program area affected shall prevail in considering which faculty members shall be reduced. The most recently employed faculty member shall be the first to be reduced and additional reduction shall proceed in that order.

23-10-205. Article provides minimum requirements. This article provides the minimum requirements for dismissal, nonrenewal, and reduction in force. Nothing in this article shall be construed as prohibiting an educational institution from adopting its own procedures which are consistent with the minimum requirements contained in this article.

CONNECTICUT

10a-6. Duties of the board of governors; establishment of statewide policy for higher education.

(6) Within the limits of authorized expenditures, the policies of the state system of higher education shall be consistent with the following goals . . .

(2) to protect academic freedom . . .

10a-72. Duties of board of trustees.

(a) . . . The board of trustees may employ the faculty and other personnel needed to operate and maintain the institutions within its jurisdiction. Within the limitation of appropriations, the board of trustees shall fix compensation of such personnel, establish terms and conditions of employment and prescribe their duties and qualifications. Said board of trustees shall determine who constitutes its professional staff. Said board shall annually submit to the commissioner of the administrative services a list of the positions which it has included within the professional staff.

. . . Subject to statewide policy and guidelines established by the board of governors, the board of trustees shall:

(4) establish policies which protect academic freedom and the content of courses and degree programs;

DELAWARE

14 9105. Powers and duties of Board.

(d) For the effectuation of the purposes of this chapter the Board in addition to such other powers expressly granted to it by this chapter, shall have the following powers:

(6) To appoint members of the administrative and teaching staffs of the institutions and to fix their compensation and terms of employment;

(16) To employ such persons as deemed desirable.

FLORIDA

240.335. Employment of community college personnel. Employment of all personnel in each community college shall be upon recommendation of the president subject to rejection for cause by the board of trustees and subject to the rules and regulations of the state board relative to certification, tenure, leaves of absence of all types, including sabbaticals, renumeration, and such other conditions of employment as the Division of Community Colleges deems necessary and proper; and to policies of the board of trustees not inconsistent with law.

240.339. Contracts with administrative and instructional personnel. Each person employed in an administrative or instructional capacity in a community college shall be entitled to a contract as provided by regulations of the state board.

240.132. Participation by students or employees in disruptive activities at state institutions of higher learning; penalties.

(1) Any person who shall accept the privilege extended by the laws of this state of attendance or employment at any state college, state community college or state university shall, by so attending or working at such institutions, be deemed to have given his consent to the policies of that institution, the Board of Regents of the Divison of Universities of the Department of Education, and the laws of this state. Such policies shall include prohibition against disruptive activities at state institutions of higher learning.

FLORIDA (continued)

(2) After it has been determined that a student or employee of a state institution of higher learning has participate in disruptive activities, the following penalties may be imposed against such person:

(a) Immediate termination of contract of such employee of the state instutition of higher learning, and thereafter such person shall not be employed by any state public school or state college, state community college, or state university.

GEORGIA

2-3-31. General powers. The board of regents shall have power:

(1) To make such reasonable rules and regulations as are necessary for the performance of its duties;

(2) To elect or appoint professors, educators, stewards, or any other officers necessary for all of the schools in the university system, as may be authorized by the General Assembly; to discontinue or remove them as the good of the system or any of its schools or institutions or stations may require; and to fix their compensations;

20-3-134. Regents to fix policies and standards; inspections and supervision; withholding state funds from substandard junior colleges. The board of regents shall adopt rules and regulations fixing policies and standards entitling the local operating authority to receive state aid for the support of junior colleges and shall have authority to make such inspections and supervision as shall be necessary to insure that such policies and standards by them are met as prescribed by the board. If there has been a failure to comply with such policies and standards by any such junior college, the board shall have authority to withhold or terminate the payment of any state funds which would otherwise be due under the terms of this article.

HAWAII

305-2. Powers of board. The board of regents shall have authority to establish and govern community colleges. It shall have the same powers with respect to the community colleges that it has to the university in general.

304-11. Faculty. The faculty of the university shall be under the direction of a president who shall be appointed by the board of regents. The board shall appoint such deans, directors, other members of the faculty, and employees as may be required to carry out the purposes of the institution, prescribe their salaries and terms of service, where such salaries and terms of service are not specifically fixed by legislative enactment, make and enforce rules governing sabbatical leaves with or without pay, consistent with the practice of similar institutions on the mainland, and not withstanding the laws of the state relating to vacations of the officers and employees of the state.

IDAHO

33-2107. General powers of the board of trustees. The board of trustees of each junior college district shall have the power:

(1) To adopt rules and regulations for its own government and the government of the college;

33-2108. President - Instructors and other employees - Requirements for admission and graduation - Certificates and diplomas - Textbooks and equipment. The board of trustees shall elect a president of the college and, upon his recommendation, appoint such officers, instructors, specialists, clerks, and other personnel as it may deem necessary; fix their salaries and prescribe their duties . . .

ILLINOIS

103B-2. Tenure. Any faculty member who has been employed in any district for a period of 3 consecutive school years shall enter upon tenure unless dismissed as hereinafter provided. However, a board may at its option extend such period for one additional school year by giving the faculty member notice not later than 60 days before the end of the school year or term during the school year or term immediately preceeding the school year or term in which tenure would otherwise be conferred. Such notice must state the corrective actions which the faculty member should take to satisfactorily complete service requirements for tenure. The specific reasons for the one-year extension shall be confidential but shall be issued to the teacher upon request. The foregoing provision is for a three-year period and optional one-year contracts which now or hereafter may provide for a lesser period of service before entering upon tenure. A tenured faculty member shall have a vested contract right in continued employment as a faculty member subject to termination only upon occurance of one or more of the following:

(a) just cause for dismissal; or

(b) a reduction in the number of faculty members employed by the board or a discontinuance of some particular type of teaching service or program.

103B-3. Dismissal of non-tenure faculty member. Every Board shall provide by rule or contract for a procedure to evaluate the performance and qualifications of non-tenure faculty members. If the implementation

of such procedure results in a decision to dismiss a non-tenure faculty member for the ensuing school year or term, the Board shall give notice thereof to the faculty member not later than 60 days before the end of the school year or term. The specific reasons for the dismissal shall be confidential but shall be issued to the teacher upon request. If the Board fails to give such notice, within the time period, the faculty member shall be deemed reemployed for the ensuing school year. If the Board fails to give such notice within the time provided during the third year, or during the fourth year in the case of a one year extension, the faculty member shall enter upon tenure during the ensuing school year or term.

103B-4. Dismissal of tenured faculty member for cause. If a dismissal of a tenured faculty member is sought for cause, the board must first approve a motion by a majority vote of all its members. The specific charges for dismissal shall be confidential but shall be issued to the tenured faculty member upon request. The Board decision shall be final unless the tenured faculty member within ten days requests in writing of the Board that a hearing should be scheduled. If the faculty member within 10 days requests in writing that a hearing be scheduled, the Board shall schedule such hearing on those charges before a disinterested hearing officer ona date no less than 45 days, nor more than 70 days after the adoption of the motion. The hearing officer shall be selected from a list of 5 qualified arbitrators provided by a nationally

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recognized arbitration organization. Within 10 days after the teacher receives the notice of the hearing, either the Board and the teacher mutually or the teacher alone shall request the list of qualified hearing officers from the arbitration organization. Within 5 days from receipt of the list, the Board and the teacher, or their legal representatives, shall alternately strike one name from the list until one name remains. The teacher shall make the first strike. Notice of such charges shall be served upon the tenured faculty member at least 21 days before the hearing date. Such notice shall contain a bill of particulars. The hearing shall be public at the request of either the tenured faculty member of the Board. The tenured faculty member 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 charges. The hearing officer upon request by either party may issue subpoenas requiring the attendance of witnesses and production of documents. 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 the Board shall employ a competent reporter to take stenographic or stenotype notes of all testimony. The costs of the reporter's attendance and services at the hearing and all other costs of the hearing shall be borne equally by the Board and the tenured faculty member. Either party desiring a transcript of the hearing shall pay the cost thereof. If in the opinion of the Board the interests of the district require it the Board after 20 days

notice, may suspend the tenured faculty member pending the hearing, but if acquitted, the tenured faculty member shall not suffer the loss of any salary by reason of the suspension. The hearing officer shall, within reasonable dispatch, make a decision as to whether or not the tenured faculty member shall be dismissed and shall give a copy of the decision to both the tenured faculty member and the Board. The decision of the hearing officer shall be final and binding.

103B-5. Reduction in number of faculty members. If a dismissal of a faculty member for the ensuing school year results from the decision of the Board to decrease the number of faculty members employed by the board or to discontinue some particular type of teaching service or program, notice shall be given the affected faculty member not later than 60 days before the end of the preceding school year, together with a statement of honorable dismissal and the reason therefor, provided that the employment of nontenured faculty member may be terminated under the provisions of this Section while any probationary faculty member, or other employee with less seniortiy, is retained to render a service which the tenured employee is competent to render. In the event a tenured faculty member is not given notice within the time provided, he shall be deemed reemployed for the ensuing school year. For the period of 24 months from the beginning of the school year for which the faculty member was dismissed, any faculty member shall have the preferred right to

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reappointment to a position entailing services he is competent to render prior to appointment of any few faculty member; provided that no non-tenured faculty member or other employee with less seniority shall be employed to render a service which a tenured faculty member is competent to render.

20-12-61-13 (28-26413). Powers and duties of boards of trustees. The board of trustees of the Indiana Vocational Technical College, and regional board of trustees of regional institutes within the framework of statewide coordination shall have the authority to:

(4) Develop and adopt the appropriate programs to be offered, to employ the necessary personnel, determine their qualifications and fix their compensation, including therein provisions with regard to employee group insurance and benefits.

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.

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 for 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 the 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 28A 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.

IOWA (continued)

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 recommendations at the private hearing. At least 3 days before the hearing, the teacher shall provide any documentation he or she 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 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 agrument 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

IOWA (continued)

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 fomal 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 resonably may be.

IOWA (continued)

At the conclusion of the private hearing, the superintendent and the teacher may file written briefs and agruments with the board and 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, ojections and rulings thereon.

IOWA (continued)

5. All findings and exceptions.
6. Any decision, opinion or conclusion by the board.
7. Findings of fact shall be based soley 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 accompained by a concise and explicit statement of the underlying facts and supporting the findings. Each conclusion of law shall be suported 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 discontinuing 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.

IOWA (continued)

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 witin 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 the 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 part shall remove the fist 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 cases may be shortened. The adjudicator may require or permit subsequent corrections or additions to the shortened record.

The record ceritifed 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 ot 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.

IOWA (continued)

The adjudicator may affirm board action or remend 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 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 ofthe 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.

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 a 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 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 statutory authority of the board or the adjudicatory; or

IOWA (continued)

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 judgement 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.

279.19. Probationary period. The first two consecutive years of employment of a teacher in the same school district are a probationary period. However, a board of directors may waive the probationary period for any teacher who previously served a probationary period in another school district and the board may extend the probationary period for an additional year with the consent of the teacher.

In the case of the termination of a probationary teacher's contract, the provisions of sections 279.15 and 279.16 shall apply.

IOWA (continued)

The board's decision shall be final and binding unless the termination was based upon an alleged violation of a constitutionally guaranteed right of the teacher or an alleged violation of public employee rights of the teacher under section 20.10.

279.27. Discharge of teacher. A teacher may be discharged at any time during the contract for just cause. The superintendent or the superintendent's designee, shall notify the teacher immediately that the superintendent will recommend in writing to the board at a regular meeting or special meeting of the board held not more than fifteen days after notification has been given to the teacher that the teacher's continuing contract be terminated effective immediately following a decision of the board. The procedure for dismissal shall be provided in sections 279.15(2) to 279.19. The superintendent may suspend a teacher under this section pending hearing and determination by the board.

KANSAS

72-5436. Definitions; exceptions. As used in this act: (a) "Teacher" shall mean any professional employee who is required to hold a teacher's certificate in any public school, any teacher or instructor in any area vocational-technical school or community junior college, except that "teacher" shall not include supervisors, principals, superintendents or any person employed under the authority of K.S.A. 72-8202b, or amendments thereto, or any person employed in an administrative capacity by any area vocational-technical school or community junior college.
(b) "Board" shall mean the board of education of any school district, the board of control of any area vocational-technical school and the board of trustees of any community junior college.

72-5437. Continuation of teacher's contracts; exceptions; 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, shall be deemed to continue for the next succeeding school year unless written notice of termination or nonrenewal is 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 fifteenth day of April . . .

72-5433. Contents of notice; hearing; designation of hearing committee members; appointment by district judge, when. Whenever a teacher is

KANSAS (continued)

given written notice of intention not to 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 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 hearings committee members.

KANSAS (continued)

72-5439. Procedural due process requirements. The hearing provided for in K.S.A. 725438, 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 whos testimony is presented by affidavit, and

(c) the right of each party to present such parties 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 scholl 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 presentation to the hearing committee, and

KANSAS (continued)

(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 is 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 ot 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. 1976 Supp. 75-3223a for miles actually traveled in going to and returning from the 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 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. 1976 Supp. 75-3223, and amendments thereto. The cost for the services of members of the hearing committee shall be borne equally by the three parties.

KANSAS (continued)

(c) Testimony at the 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 by 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 such testimony shall be presented at a hearing until the opposite party has had a 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.

KANSAS (continued)

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; and

(g) take any other action necessary to make the hearing and 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. Recommendation of hearing committee; findings of fact; determination of issues; decision by board; appeal to district court. Unless otherwise agreed by both board and the teacher, the hearing committee shall render a written recommendation not later than thirty (30) days after the close of the hearing, setting forth its findings of fact and recommendation as to the determination to the teacher and to the board which shall, after considering the hearing committee's recommendation and after hearing oral argument or receiving written briefs from a teacher and a representative of the board, decide whether the teacher's contract shall be renewed or terminated, which decision shall be final, subject to appeal to the district court as provided by K.S.A. 60-2101. The decision of the board shall be submitted to the teacher not later than thirty (30) days after the close of oral argument or submission of written briefs.

72-5445. Application of act; two years of employment required; waiver, when. The provisions of K.S.A. 72-5438 to 72-5443 inclusive, and amendments thereto, shall apply to those teachers who have at any time completed two (2) consecutive years of employment in the school district,

area vocational-technical school, or community junior college then currently employing such teacher, except where the teacher alleges his or her termination or nonrenewal is the result of his or her having exercised a constitutional right. Any board may waive such two (2) year requirement for any such teachers employed by it who, prior to such employment, were teachers who had completed no less than two (2) consecutive years of employment in any school district, area vocational-technical school, or community junior college in this state.

72-5446. Abridgement of constitutional right; procedure for determination. (a) In the event that any teacher, as defined in K.S.A. 72-5436, and amendments thereto alleges that the teacher's contract has been nonrenewed by reason of the teacher having exercised a constitutional right, the following procedure shall be implemented;

(1) the teacher allegeing an abridgement by the board of a constitutionally protected right shall specify the nature of the activity protected, and the times, dates, and placed of such activity;

(2) the hearing committee provided by K.S.A. 72-5438 shall thereupon be constituted and shall decide if there is substantial evidence to support the teacher's claim that the teacher's exercise of a constitutionally protected right was the reason for the nonrenewal;

(3) if the hearing committee shall determine that there is no substantial evidence to substantiate the teacher's claim of a violation of a constitutionally protected right, the hearing committee shall

dissolve, and the board's decision to not renew the contract shall stand;

(4) if the hearing committee shall determine that there is substanital evidence to support the teacher's claim, the board shall be required to submit to the committee any reasons which may have been involved in the nonrenewal;

(5) if the board has any substantial evidence to support its reason, the board's decision not to renew the contract shall be upheld.

(b) The provisions of this section shall be supplemental to the provisions of K.S.A. 72-5436 to 72-5445, inclusive, and any amendments thereto.

KENTUCKY

164.575. Definition for KRS 164.575 to 164.600 - As used in KRS 164.575 to 164.600, unless the context requires otherwise, "board" means the board of trustees of the University of Kentucky.

164.595. Powers of board. (1) The board has the same powers with respect to the community colleges that it has as to the University of Kentucky in general. The board shall designate each community college with a name that includes the words "community college."

The following section is in reference to University of Kentucky

164.230. Removal of professors, officers and employees. The board of trustees has full power to suspend or remove any of the officers, teachers, professor or agents that it is authorized to appoint, but no president, professor or teacher shall be removed until ten (10) days' notice in writing, stating the nature of the charges preferred, and after an opportunity has been given to make defense before the board by counsel or otherwise and to introduce testimony which shall be heard and determined by the board.

LOUISIANA

17:1381. Junior colleges to be under supervision of board of education. All junior colleges established pursuant to R.S. 17:1380 shall be placed under the direction and supervision of the state department of education. Such colleges must be operated in connection with a state high school, and offer two years of standard college work, in keeping with accredited colleges, in advance of the courses of study prescribed for state high schools. The department of education shall prescribe the courses of study and the hours of credit allowed, and make the rules and necessary regulations for the proper government of the colleges. These rules and regulations shall be enforced by the parish superintendents and the several parish school boards of the districts created.

17:411. Examination and certification of teachers. The State Board of Education shall prescribe the qualifications and provide for the certification of the teachers of elementary, secondary, trade, normal and collegiate schools...

17:441. Definitions. As used in this Subpart, the word "teacher" means:

(1) Any employee of any parish or city school board who holds a teacher's certificate.

17:442. Probation and tenure of parish or city school teachers. Each teacher shall serve a probationary term of three years to be measured

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 said probationary term, shall be notified in writing by the board that he has been discharged or dismissed; in the absence of such notification, such probationary teacher shall automatically become a regular and permanent teacher in the employ of the school board of the parish or city, as the case may be, in which he has successfully served his three year probationary term; all teachers in the employ of any parish or city school board as of July 31, 1946 who hold proper certificates and who have served satisfactorily as teachers in that parish or city for more than three consecutive years, are declared to be regular and permanent teachers in the employ of the school board of that parish or city.

17:443. Removal of teachers; procedure; right to appeal.

A. A permanent teacher shall not be removed from office except upon writen 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 hearing, the superintendent with approval of the school board shall furnish the teacher 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 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.

17:3101. Definitions. For the purposes of this chapter the following definitions shall apply:

(1) "Institution of higher learning" means any state owned and operated college or university now or hereafter established, and includes all state owned and operated junior colleges and branches of such colleges and universities.

17:3103. Distruptive acts defined; dismissal and notification thereof. Any student, member of the faculty, administrative official or other

employee of any institution of higher learning of this state who:

(1) Organizes, and/or participates in, and/or holds himself out to be a part of any demonstration, protest, riot or other activity on or immediately adjacent to the grounds of any such institution, the effect of which is willfully to interfere with or disrupt the normal educational process or administration at such institution; or

(2) Enters into any building or structure of such institution alone or as a member of a group, when the effect of such entry into or presence within the building or structure is willfully to interfere with or disrupt the normal educational process or administration at such institution; or

(3) Willfully destroys, defaces, disfeatures, disfigures or in any other way damages public property on the grounds of said institution; or

(4) Willfully fails to obey and lawful order of a peace officer or any person to whom is delegated the authority to act in such capacity at said institution; or

(5) In any way willfully and directly aids, abets, or encourages any of the foregoing acts may be expelled or dismissed from such institution effective immediately upon written notification of explusion or dismissal signed by the president or his designated representative and delivered by registered mail at the last known address of the recipient. Any person so dismissed or expelled shall have the right to appeal the decision by which such action was taken. All appeals shall be heard by a

LOUISIANA (continued)

panel which shall be composed of the members of the governing authority of the institution of higher learning; provided however, that either or both of said authorities may adopt rules and regulations authorizing the president and the governing authority to appoint a special panel, composed of not less than three no more than five members of the governing authority, to hear any appeal presented to it, and in such case the decision of the special panel shall constitute the decision of the governing authority in the same manner and to the same extent as if the hearing had been before the whole membership of the governing authority.

17:3104. Content of notification of dismissal. The notice of expulsion or dismissal shall specifically set forth the ground or grounds upon which expulsion or dismissal is based, as well as contain a short and clear statement of the facts upon which the expulsion or dismissal is based. In addition, the noticed shall inform the recipient that he may, within thirty days after the date of expulsion or dismissal order, request a hearing before the governing authority of the particular institution of higher learning in which he is enrolled and/or employed. The hearing before the governing authority shall be held and its decision rendered not later than thirty days after the date of the request for such hearing by the individual concerned.

LOUISIANA (continued)

17:3105 Rules and regulation; tenure laws. The governing authority of the various institution may adopt rules and regulations for the conduct of hearings to be held under the provisions of this chapter. Nothing in this Sub-Part shall be construed as authorizing the dismissal of a teacher except for the comission of any of the acts herein prohibited. In all other cases of dismissal of a teacher, the tenure laws of this state shall apply. All rules and regulations so adopted shall conform to the applicable provisions of Chapter 13 of Title 49 of the Louisiana Revised Statutes of 1950, as amended.

MAINE

26 1021 Purpose. It is declared to be the public policy of this state and it is the purpose of this chapter to promote the improvement of the relationship between public employers and their employees by providing a uniform basis for recognizing the right of the University of Maine employees, Maine Maritime Academy employees, vocational-technical institute employees and state schools for practical nursing employees to join labor organizations of their own choosing and to be represented by such organizations in collective bargaining for terms and conditions of employment.

26 1030 Hearings.

1. Conduct of hearings. Hearings conducted by the board shall be informal and the rules of evidence prevailing in judicial proceedings shall not be binding. Any and all documentary evidence and other evidence deemed relevant by the board may be received.

2. Power of chairman. The chairman shall have the power to administer oaths and to require by supoena the attendance and testimony of witnesses, the presentation of books, records and other evidence relative or pertinent to the issues presented to the board for determination. Witnesses subpoenaed by the board shall be paid by the Treasurer of State on warrants drawn by the state controller.

MAINE (continued)

26 1031. Scope of binding contract arbitration. A collective bargaining agreement between the university, the academy, the vocational-technical institutes or the state schools for practical nursing and a bargaining agent may provide for binding arbitration as the final step of a grievance procedure but the only grievances which may be taken to such binding arbitration shall be disputes between the parties as to the meaning or application of the specific terms of collective bargaining agreement.

26 1033. Review of arbitration awards.

(1) Court review. Either party may seek a review by the Superior Court of a binding determination by an arbitration panel. Such review shall be sought in accordance with the Maine Rules of Civil Procedures, Rule 80B.

(2) Determination final on questions of fact. In the absence of fraud, the binding determination of an arbitration panel shall be final upon all questions of fact.

(3) Power of reviewing court. The court may, after consideration, affirm, reverse, or modify any such binding determination or decision based upon an erroneous ruling or finding of law. An appeal may be taken to the law court as in any civil action.

ED 16-203. Powers of board of trustees. (a) In general. In addition to the other powers granted and duties imposed by this title, and subject to the authority of the State Board for Higher Education and the State Board for Community Colleges, each board of community college trustees has the powers and duties set forth in this section.

(d) Salaries and tenure. Each board of trustees may fix the salaires and tenure of the president, faculty and other employees of the community college.

ED 16-504. Baltimore County collective bargaining. (a) In general. The board of community college trustees for Baltimore County shall:

(1) Establish an orderly procedure for the classified employees of county community colleges and their representatives to participate in the formulation of labor relations and personnel policies; and

(2) Recognize the right of classified employees to organize and bargain collectively through representatives of their own choosing.

(b) Rules and regulations. The board of trustees shall adopt rules and regulations that specify with respect to classified employees:

(6) The definition of a grievance and the procedure for resolving grievences;

MASSACHUSETTS

15A 10. Powers and Duties of Boards of Trustees. Each board of trustees shall be responsible for establishing those policies necessary for the administrative management of personnel, staff services, and the general business of the institution under its authority, subject to the authority granted to the board of regents of higher education under the provision of this chapter. Each board shall . . . (c) appoint, transfer, dismiss, promote, and award tenure to all personnel of said institution, subject to policies promulgate or agreements entered into by the board of regents . . .

150E 8. Grievance Procedure May Be Included in Written Agreement; Binding Arbitration. The parties may include in any written agreement a grievance procedure culminating in final and binding arbitration to be invoked in the event of any dispute concerning the interpretation or application of such written agreement. In the absence of such grievance procedure, binding arbitration may be ordered by the commission upon the request of either party; provided that any such grievance procedure shall, wherever applicable, be exclusive and shall supercede any otherwise applicable grievance procedure provided by law; and further provided that binding arbitration hereunder shall be enforcedable under the provisions of chapter one hundred and fifty C and shall, where such arbitration is elected by the employee as the method of grievance resolution be the exclusive procedure for resolving any such grievance

MASSACHUSETTS (continued)

involving suspension, dismissal, removal or termination notwithstanding any contrary provisions of sections thirty-nine and forty-one to forty-five, inclusive, of chapter thirty-one, section sixteen of chapter thirty-two, or sections forty-two through forty-three A, inclusive, of chapter seventy-one.

MICHIGAN

15.615 (1124) Administrator or director; qualifications, term of office; business manager; other personnel. Sec. 124. The borad of trustees may: (b) Select and employ such administrative officers, teachers and employees and engage such services as shall be necessary to effectuate its purposes.

The following is an Attorney General opinion regarding the section above:

The board of trustees of a community college district is without authority to delegate to its president or other administrators the powers to hire and discharge . . . Op. Atty. Gen. Jan. 20, 1981, No. 5843.

MINNESOTA

The following section refers to the state board of community colleges:

136.62. Powers of board.

Subd. 4. Subject to the other provisions of sections 136.62 and 136.63, the board shall appoint the heads of each community college, the necessary teachers and supervisors, and all other necessary employees. All such appointed persons shall be subject to the provisions of chapter 43A in the same manner as such state civil service act is applicable to similar persons in the employ of the state university board.

43A.16. Probationary periods.

Subdivision 1. General. All unlimited appointments to positions in the classified service except as provided in this subdivision shall be for a probationary period the duration of which shall be determined through collective bargaining agreements or palns established persuant to section 43A.18 but which shall not be less than 30 days fo full-time equivalent service nor more than two years of full-time equivalent service. An appointing authority may require a probationary period for transfers, reemployments, reinstatements, voluntary demotions, and appointments from the layoff list of former employees of a different appointing authority. For employees in a bargaining unit as defined in section 179.741 the requirement of such a probationary period shall be subject to applicable provisions of collective bargaining agreements.

MINNESOTA (continued)

Subd. 2. Termination during probationary period. There is no presumption of continued employment during a probationary period. Terminations or demotions may be made at any time during the probationary period subject to the provisions of this section and collective bargaining agreements or plans established pursuant to section 43A.18. If during the probationary period an employee with permanent status is dimissed for inability to perform the duties of the new position or for other cause not related to misconduct or delinquency, the employee shall be restored to a position in the employee's former class and agency.

43A.33. Grievances

Subdivision 1. Discharge, suspension, demotion for cause, salary decrease. Managers and employees shall attempt to resolve disputes through informal means prior to the initiation of disciplinary action. No permanent employee in the classified service shall be reprimanded, suspended without pay, or reduced in pay or position, except for just cause.

Subd. 2. Just cause. For purposes of this section, just cause includes, but is not limited to, consistent failure to perform assigned duties, substandard performance, insubordination, and serious violation of written policies and procedures, provided the policies and procedures are applied in a uniform, nondiscriminatory manner.

MINNESOTA (continued)

Subd. 3. Procedures. Procedures for discipline and discharge of employees covered by collective bargaining agreements shall be governed by the agreements. Procedures for employees not covered by a collective bargaining agreement shall be governed by this subdivision and by the commissioner's and managerial plans. (a) For discharge, suspension without pay or reduction in pay or position, no later than the effective date of such action, a permanent classified employee not covered by a collective bargaining agreement shall be given written notice by the appointing authority. The written notice shall include a statement of the nature of the disciplinary action, the specific reasons for the action, the effective date of the action and a statement informing the employee of the employee's right to reply within five working days to the receipt of the notice in writing or, upon request, in person, to the appointing authority or the authority's designee. The notice shall also include a statement that the employee may appeal the action to the office of administrative hearings within 30 days of the effective date of the disciplinary action; provided, that an employee who elects to reply to the appointing authority may appeal to the office within ten working days of the receipt of the authority's response to the reply. If the appointing authority has not responded within 30 days of the authority's receipt of the employee's reply, the appointing authority shall be deemed to have replied unfavorably to the employee. A copy of the notice and the employee's reply, if any, shall be filed with the commissioner no

MINNESOTA (continued)

later than ten calendar days following the effective date of the disciplinary action. The commissioner shall have final authority to decide whether the appointing authority shall settle the dispute prior to the hearing provided under subdivision 4.

(b) For discharge, suspension or reduction in pay or position of any employee serving an initial probationary period, and for noncertification in any subsequent probationary period, grievance procedures shall be provided in the plan established pursuant to section 43A.18.

(c) Any permanent employee who is covered by a collective bargaining agreement may elect to appeal to the chief hearing examiner within 30 days after the effective date of the discharge, suspension or reduction in pay or position if the collective bargaining agreement provides that option. In no event may an employee use both the procedure under this section and the grievance procedure available pursuant to sections 179.61 to 179.76.

Subd. 4. Appeals; public hearings, findings. Within ten days of receipt of the employee's written notice of appeal, the chief hearing examiner shall assign a hearing examiner to hear the appeal.

The hearing shall be conducted pursuant to the contested case provisions of chapter 14 and the procedural rules adopted by the chief hearing examiner. If the hearing examiner finds, based on the hearing record, that the action appealed was not taken by the appointing authority for just cause, the employee shall be reinstated to his position, or an equal

position in another division within the same agency, without loss of pay. If the hearing examiner finds that there exists sufficient grounds for institution of the appointing authority's action but the hearing record extablishes extenuating circumstances, the examiner may reinstate the employee, with full, partial, or no pay, or may modify the appointing authority's action. The hearing examiner's order shall be the final decision, but it may be appealed according to the provisions of sections 14.63 to 14.68. Settlement of the entire dispute by mutual agreement is encouraged at any state of the proceedings. Any settlement agreement shall be final and binding when signed by all parties and submitted to the chief hearing examiner of the office of administrative hearings. Except as provided in collective bargaining agreements the appointing authority shall bear the costs of the hearing examiner for hearings provided for in this section.

MISSISSIPPI

37-29-63. Powers of the president. The president of any junior college shall have the power to recommend to the board of trustees all teachers to be employed in the district. He may remove or suspend any member of the faculty subject to the approval of the trustees . . .

37-29-211. Instructors, professors and other teachers shall file affidavit as to membership in organizations. No instructor, professor or other teacher shall be employed or elected in any junior college supported wholly or in part by public funds, by the trustees or governing authority thereof unit, as a condition precedent to such employment, such instructor, professor, or other teacher shall have filed with such board of trustees or governing authority an affidavit as to the names and addresses of all incorporated and/or unincorporated associations and organizations of which such instructor, professor, or other teacher is presently paying, or within the last five years has paid, regular dues or to which the same is making, or within the past five years, has made regular contributions.

37-29-215. Contracts of employment are void for failure to file affidavit. Any contract entered into by any board of trustees of any junior college supported wholly or in part by public funds, or by any governing authority thereof with any instructor, professor, or other instructional personnel, who shall not have filed the affidavit required

MISSISSIPPI (continued)

in section 37-29-211 prior to the employment or election of such person and prior to the making of such contracts, shall be null and void and no funds shall be paid under said contract to such instructor, professor, or other instructional personnel . . .

MISSOURI

178.860. Board to appoint employees - fix compensation - teachers to be members of public school retirement system. The board of trustees shall appoint the employees of the junior college, define and assign their powers and duties and fix their compensation. All certificated personnel shall be members of the state public school retirement system of Missouri under provisions of section 169.010, R S Mo.

The following Attorney General opinion refers to the above section:

Junior colleges organized pursuant to the provisions of 178.770 et. seg. are not subject to the provisions of the teacher tenure act, 168.102 et. seg. Op. Atty. Gen. No. 59, Ryen, 3-17-70.

In spite of the above attorney general opinion the courts have held that the tenure act does apply.

168.114. Board may terminate, grounds for. 1. An indefinite contract with a permanent teacher shall not be terminated by the board of education of a school district except for one or more of the following causes:

(1) Physical or mental condition unfitting him to instruct or associate with children;

(2) Immoral conduct;

MISSOURI (continued)

(3) In competency, inefficiency of in subordination in the line of duty;

(4) Willful or persistent violation of, or failure to obey, the school laws of the state or the published regulations of the board of education of the school district employing him;

(5) Excessive or unreasonable absence from performance of duties; or

(6) Conviction of a felony or a crime involving moral turpitude.

2. In determining the professional competency or efficiency of a permanent teacher, consideration should be given to regular and special evaluation reports prepared in accordance with the policy of the employing school district and to any written standards of performance which may have been adopted by the school board.

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 the 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

MISSOURI (continued)

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.

MISSOURI (continued)

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 names by the teacher; however, the school board may limit the numer 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 where upon 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.

MISSOURI (continued)

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 shasll 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 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

20-15-225. Powers and duties of trustees. (1) The trustees of a community college district shall, subject to supervision by the board of regents: (h) appoint and dismiss a president and faculty for the community college; appoint and dismiss any other necessary officers, agents and employees; fix their compensation; and set the terms and conditions of their employment;

NEBRASKA

79-1254.02. Teachers and school nurses; contract; renewed; exceptions; amend or terminate; notice; hearing; decision. The contracts of the teaching staff and school nurses employed by the governing board of any state technical community college, educational service unit, or any educational program administered by the State Department of Education, the Department of Public Institutions, or any political subdivision of the state, except a Class I, II, III, or IV school district, those colleges governed by the Board of Trustees of the Nebraska State Colleges, and any university governed by the Board of Regents of the University of Nebraska, shall require the sanction of a majority of the members of such governing board. Except as provided in section 79-1254.09, each such contract shall be deemed renewed and in force and effect until a majority of the board votes, sixty days before the close of the contract period, to amend or terminate the contract for just cause. The secretary of the board shall notify each teacher or school nurse in writing at least ninety days before the close of the contract period of any conditions of unsatisfactory performance or a reduction in teaching staff that the board considers may be just cause to either amend or terminate the contract for the ensuing year. Any teacher or school nurse so notified shall have the right to file within five days of receipt of such notice a written request with the board for a hearing before the board. Upon receipt of such request, the board shall order

NEBRASKA (continued)

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 school nurse. At the hearing, evidence shall be presented in support of the reasons given for considering amendment or termination of the contract, and the teacher or school nurse shall be permitted to produce evidence related thereto. The board shall render the decision to amend or terminate a contract based on evidence produced at the hearing.

79-1254-03. Teachers; contract; minimum standard. Sections 79-1254.02 and 791254.03 shall be construed as providing a mininum standard and not as repealing any law of a governing authority that provides for additional contract rights pertaining to the same subject matter.

79-1254.05. Board of education; reduction in force policy; adopt; requirements. Prior to January 1, 1979, every board of education or governing board of any educational institution in Nebraska covered by the provisions of sections 79-1254 to 79-1262, shall adopt a reduction in force policy covering employees subject to such statutory provisions to carry out the intent of sections 79-1254.05 to 79-1254.08. No such policy shall allow the reduction of a permanent or tenured employee while a probationary employee is retained to render a service which such permanent employee is qualified by reason of certification and endorsement to perform or where certification is not applicable, by

reason of college credits in the teacher area. If employee evaluation is to be included as a criterion to be used for reduction in force, specific criteria, such a frequency of evaluation, evaluation forms, and number and length of classroom observations shall be included as part of the reduction in force policy.

NEVADA

396.111. Community Colleges' Probation System for professional employees. The board of regents shall adopt and promulgate regulations establishing a system of probation for the professional employees of the community colleges of the University of Nevada System. The regulations must provide for a probationary period of such length as the board deems appropriate.

In the following sections "board of regents" refers to the state board.

396.315. Community Colleges: Dismissal system for professional employees. The board of regents shall adopt and promulgate regulations establishing a fair dismissal system for the professional employees of the community colleges who have completed probation as required by the board pursuant to NRS 396.311. The regulations must provide that no professional employee who has successfully completed his probationary period is subject to termination or nonrenewal of his contract except for good cause shown. The regulations must specify what constitutes good cause for such termination or nonrenewal of contract, and must include provisions for:

1. Adequate notice;
2. A hearing to determine whether good cause exists, to be held before an impartial hearing officer or hearing committee selected in a manner provided by the board; and

NEVADA (continued)

3. Opportunity for review of the decision of the hearing officer or hearing committee, in any case involving termination or nonrenewal of the contract of a professional employee who has completed probation.

396.320. Causes for dismissal, removal of certain personnel.

1. The willful neglect or failure on the part of any teacher, instructor, professor, president or chancellor in the University of Nevada System to observe and carry out the requirements of this chapter shall be sufficient cause for the dismissal or removal of such person from his position.

2. It shall be sufficient cause for the dismissal of any teacher, instructor, professor, president or chancellor in the University of Nevada System when such person advocates, overthrow of the Government of the United States or of any state by force, violence or other unlawful means.

NEW HAMPSHIRE

The two year college organization of New Hampshire was established by statute in 1983. The following section deals with the formation of personnel policies for that organization:

188-F:13. Instructional Personnel. The board of governers shall conduct an examination of existing state personnel policies, rules and laws and the manner in which they apply to instructional personnel of the department. The board shall, by January 1, 1985, submit a report to the general court detailing modifications in those policies needed to make them appropriate for instructional personnel. The report shall include recommendations for legislative or other action to make such modifications. In its review, the board shall seek the assistance of the department of personnel and representatives of the instructional personnel of the post secondary technical institutions.

NEW JERSEY

18A:60-1. Tenure. The services of all professors, associate professors, assistant professors, instructors, supervisors, registrars, teachers, and other persons employed in a teaching capacity, who are or shall hereafter to be employed, by the commissioner, in the Marie H. Katzenbach school for the deaf or in any other educational institution, or employed in any state college, or in any count college, shall be under tenure during good behavior and efficiency:

a. after the expiration of a period of employment of three consecutive calendar years in any such institution or institutions; or

b. after employment for three consecutive years with employment at the beginning of the next succeeding academic year in any such institution or institutions; or

c. after employment in any such institution or institutions, within a period of any four consecutive academic years, for the equivalent of more than three academic years.

An academic year, for the purpose of this section, means the period between the time school opens in the institution after the general summer vacation until the next succeeding summer vacation.

18A:60-2. Dismissal and reduction in salary. No such professor, associate professor, assistant professor, instructor, supervisor, registrar, teacher, or other person employed in a teaching capacity, so

under tenure, shall be dismissed or subjected to a reduction in salary except for inefficiency, in capacity, conduct unbecoming a teacher, or other just cause, and only in the manner prescribed by sub article B or article 2 of chapter 6 in this title.

18A:60-6. This act shall be known and may be cited as "The State and County College Tenure Act."

18A:60-7. Definitions. As used in this act, the following words and phrases shall have the following meaning:

a. "Academic rank" means instructor, assistant professor, associate professor and professor.

b. "Faculty member" means any full time member of the teacher staff appointed with academic rank. Pursuant to rules promulgated by the State Board of Higher Education, other full time professional persons shall be considered faculty members if they concurrently hold academic rank.

18A:60-8. Tenure in academic rank; conditions. Faculty members shall be under tenure in their academic rank, but not in any administrative position, during good behavior, efficiency and satisfactory professional performance, as evidenced by formal evaluation and shall not be dismissed or reduced in compensation except for inefficiency, unsatisfactory

NEW JERSEY (continued)

professional performance, incapacity, or other just cause and then only in the manner prescribed by sub article B of article 2 of chapter 6 of title 18A of the New Jersey Statutes, after employment in such college or by such board of trustees for

a. 5 consecutive calendar years; or

b. 5 consecutive academic years, with employment at the beginning of the next academic year; or

c. the equivalent of more than 5 academic years within a period of any 6 consecutive academic years.

18A:60-9. Tenure by exceptional action after 2 years service. Notwithstanding the provisions of section 3 of this act a board of trustees may, as an exceptional action and upon the recorded two-thirds majority roll call vote of all its members and upon the recommendation of the president, grant tenure to an individual faculty member after the employment in such college or by such board of trustees for 2 consecutive academic years. The provisions of this section shall not be negotiable as a term and condition of employment under the "New Jersey Employer-Employee Relations Act", P.L. 1968, c 303.

18A:6-18. Dismissal, reduction and compensation of persons under tenure in schools and institutions of higher learning. No professor, associate professor, assistant professor, instructor, supervisor, registrar,

teacher or other persons employed in a teaching capacity, in any state college, county college, or industrial school who is under tenure during good behavior and efficiency shall be dismissed or subject to reduction of salary, except for inefficiency, incapacity, conduct unbecoming a techer, or other just cause written charge of the cause or causes preferred against an individual shall be signed by the person or persons making the same and filed with the board of trustees of said college or school. Upon determination that the matter is a contested case, the board shall assign the matter for hearing and initial decision either to a subcommittee of three of its members or to the Office Administrative Law. A final decision shall be rendered by the full board of trustees. The person charged may be represented by counsel at all times and have compulsory process to compel the attendance of witnesses to testify therein as provided by law. Appeals from a decision of the board of trustees shall be made on the record to the Chancellor of Higher Education. Contested case hearing shall be conducted under rules and regulations established pursuant to "The Administrative Procedure Act", P.L. 1968, c. 410 (C. 52:14B-1 et seg.) and P.L. 1978, c. 67 (C.52:14F-1 et eg.)

18A:6-18.1. Charge against suspended person not determined within 180 days; payment of salary. If any tenured professor, associate professor, assistant professor, instructor, supervisor, registrar, teacher or other

person employed in a teaching capacity or any other tenured officer or employee in any state college, county college, or industrial school or any other officer of employee of the college or school who is subject to dismissal only in the manner prescribed by sub article B of article 2 of chapter 6 of Title 18A of the New Jersey Statutes, is suspended pending the determination of any charge against him, other than for indictment under the laws of the United States or the State of New Jersey, and should the determination of the charge not be made within 180 days after it is filed with the board of trustees of said college or school, excluding all delays which are granted at the result of such person, the full salary (except for said 180 days) of such person shall be paid beginning on the 181st day until a determination by the board of trustees is made. If the charge is dismissed, the person shall be reinstated immediately with full pay from the first day of the suspension. If the charge is dismissed and the suspension is continued during an appeal therefrom, then the person's full pay or salary shall continue until the determination of the appeal. However, the board of trustees shall deduct from the full pay or salary any sums received by way of pay or salary from any substituted employment assumed during the period of suspension. If the charge is sustained on the original hearing or an appeal therefrom, and the determination is appealed, then the salary suspension may be continued, reinstituted or instituted unless and until the determination is reversed, in which event the suspended person shall be

reinstated immediately with full pay as of the time of suspension. If the charges are sustained, the employer may recover any salary which was paid to the employee during the period of suspension.

18A:6-20. The right to testify; counsel; witnessess; compulsory process. Any party to any dispute or controversy or charged therein, may be represented by counsel at any hearing held in or concerning the same and shall have the right to testify, and produce witnesses to testify on his behalf and cross-examine witnesses produced against him, and to have compulsory process by subpoena to compel the attendance of witnesses to testify and to produce books and documents in such hearing when issued by (a) the president of the board of education, if the hearing is to be held before such board, or (b) the commissioner, if the hearing is to be held before him or on his behalf, or (c) the president and secretary of the state board, if the hearing is to be held before such board or before one of its committees, or (d) the chairman of the board of trustees of the state or county college or industrial school, if the hearing is to be held before such board, or (e) the chairman and secretary of the higher education board, if the hearing is to be held before such board or before one of its committee or before the chancellor.

The subpoena shall be served in the same manner as subpoenas issued out of the superior court are served.

NEW JERSEY (continued)

18A:6-25. Decisions in controversies and disputes. The determination of any controversy or dispute shall be made within 60 days after the close of the hearing and shall be in the form of a written decision which shall contain findings of facts upon which the determination is based, which shall be filed in the office of the commissioner and a copy of the decision shall be served upon the parties to the dispute, pursuant to rules made by the state board, and any such decision shall be binding unless and until reversed upon appeal.

18A:6-27. Appeals. Any party aggrieved by any determination of the commissioner may appeal from his determination to the state board.

Any party aggrieved by any determination of a board of trustees of any state college, county college or industrial school may appeal such determination to the chancellor.

Any party aggrieved by any determination of the chancellor may appeal from such determination to the board of higher education.

18A: 6-28. Appeals; how taken. An appeal to the state board of higher education shall be taken in the manner prescribed by rules of the respective board, within 30 days after the decision appealed from is filed, and such board shall have power to hear and determine any such appeal.

NEW JERSEY (continued)

18A:6-29. Conduct of hearing on appeal to the state board or the board of higher education. The state board or the board of higher education may refer to the hearing of any appeal, taken to it in the manner pursuant to law, to a committee of not less than three of its members, which committee shall hear the same and report thereon, recommending its conclusions, to the board and the board shall thereupon decide the appeal by resolution in open meeting.

NEW MEXICO

21-14-2. Establishment authorized; board; determination of need; agreements.

D. If need is established, the board, in accordance with the board of educational finance criteria for initiating a branch community college program, shall consult with the board of regents of the higher education institution selected to be the parent institution, and if the board and the board of regents agree to conduct a branch community college in the area, they shall transmit a proposal to establish a branch community college to the board of educational finance. The board of educational finance shall evaluate the need and shall notify the board and the board of regents of approval or disapproval of the proposal.

E. If the proposal is approved, the board and the board of regents of the parent instituion shall enter into a written agreement which shall include provisions for:

(1) the higher education institutions to have full authority and responsibility in relation to all academic matters;

(4) the cooperative use of facilities and teaching staff;

(5) consideration of applications of local qualified people before employing teachers of the local school system . . .

21-1-7. [Removal of president or faculty members; trial; compensation of secretary-treasurer restricted.] No president or member of the faculty of any state educational institution shall be removed during the term for

which he is selected, or appointed, except for cause, after trial by the board of regents of his institution, and that no secretary or treasurer of any such institution shall receive any compensation as such secretary and treasurer, or either.

NEW YORK

6306. Administration of community colleges - board of trustees.

2. The board of trustees of each community college shall appoint a president for the college, subject to approval by the state univeristy trustees, and it shall appoint or delegate to the president the appointment of other members of the staff. The staff of a community college shall consist of the professional service and the non-professional service. The professional service shall include positions requiring the performance of educational functions in agriculture, home economics, liberal and applied medicine, dentistry, nursing, academic administration, library service, student activities, student personnel services, and other professions required to carry on the work of the community colleges . . .

In a court decision related to the above section, the section was interpreted as giving the trustees the power to delegate employee dismissal to the president. (Charles v. Onondage Community College, 1979, 69 A.D. 2d, 418 N.Y.S. 2d. 718, appeal dismissed 48 N.Y. 2d. 650, 421 N.Y.S. 2d. 200, 396 N.E. 2d. 482.

NORTH CAROLINA

115D-20. Powers and duties of trustees. The trustees of each institution shall constitute the local administrative board of such institution, with such powers and duties as are provided in this Chapter and as are delegated to it by the State Board of Community Colleges. The powers and duties of the trustees shall include the following:

(2) To elect or employ all other personnel of the institution upon nomination by the president or chief administrative officer, subject to standards established by the State Board of Community Colleges. Trustees may delegate the authority of employing such other personnel to its president or chief administrative officer.

(7) To perform such other acts and do such other things as may be necessary or proper for the exercise of the foregoing specific powers, including the adoption of rules, regulations and bylaws for the government and operation of the institution under this chapter and for the discipline students.

The following attorney general opinion refers to the above section:

Chapter 115D of the General Statutes does not give the board of trustees of a community college authority to enact a tenure policy . . . N.C.G.S. 115D-20 delegates specific powers and duties to the boards of trustees of community colleges. Those powers do not include the authority to adopt a tenure system. To be sure, the powers and duties of the trustees include

the power to elect or employ personnel for the institution upon nomination by the president or chief administrative officer. N.C.G.S. 115D-20(2). Moreover, the trustees are empowered to perform such other acts and do such other things as may be necessary or proper for the exercise of their power of employment. N.C.G.S. 115D-20(7). But simple power to employ, in the opinion of this Office, does not include the power to establish a system of tenure. That power does not exist by implication. Op. Atty. Gen. Vol. 15, No. 2, R Edminston, 1982.

NORTH DAKOTA

15-10-01.1. Board of higher education to assume jurisdiction over junior colleges and off-campus education centers. The state board of higher education shall assume jurisdiction over each junior college that was established under chapter 15-18 and in existence on January 1, 1983 . . .

15-10-17. Specific powers and duties of the board of higher education. The state board of higher education shall have all the powers and perform all the duties necessary to the control and management of the institution described in this chapter, including the following:

1. To appoint and remove the president or other faculty head, and the professors, instructors, teachers, officers and other employees of the several institutions under its control, and to fix their salaries within the limits of legislative appropriations therefor, and to fix the terms of office and to prescribe the duties thereof, provided that the consideration of this appointment or removal of any such personnel shall be in executive session if the board chooses unless the person or persons involved request that the meeting shall be open to other persons of the public.

OHIO

3354.09. Powers of board. The board of trustees of a community college district may:

(D) Appoint the administrative officers, faculty and staff necessary and proper for such community college, and fix their compensation in instances in which the board of trustees has delegated such powers to a college or university operating such community college pursuant to a contract entered into by the board of trustees of the district;

OKLAHOMA

70 4405. Powers and duties of the board. The governing board of a community junior college shall have the supervision, management, and control of the community junior college, and shall have the following additional specific powers and duties;

a. Adopt such rules and regulations as it deems necessary to govern the community college.

b. Employ and fix the compensation and duties of such personnel as it deems necessary for the operation of the community junior college; and establish appropriate policies for retirement, group insurance, and other staff benefits as provided for employees of other public colleges in Oklahoma.

OREGON

341-290. General powers. The board of education of a community college district shall be responsible for the general supervision and control of any and all community college operated by the district. Consistent with any applicable rules of the State Board of Education, the board may:
(1) Subject to ORS Chapter 237, employ administrative officers, professional personnel and other employees, define their duties, terms and conditions of employment and prescribe compensation therefor, pursuant to ORS 243.650 to 243.782.

PENNSYLVANIA

No statutory provision for hiring, tenure or dismissal of community college faculty exists.

RHODE ISLAND

16-31-5. Capacity and general powers of board - Succession to other agencies - Said board shall be and is hereby constituted a public corporation, and is empowered to sue and be sued in its own name, to have a corporate seal, and to exercise all powers usually appeartaining to the public corporations entrusted with the control of state institutions of higher education. Said board is hereby invested with legal title in trust for the state to all property, real and personal, now publicly owned for the use of the University of Rhode Island and the system of Rhodes Island junior colleges, including all departments, division and branches thereof. Said board is empowered to hold and operate said property in trust for the state; to acquire, hold and dispose of said property and other property as deemed necessary for the best execution of its corporate purposes; to employ presidents, professors, instructors, and other employees, and to determine their salaries; to authorize establish, or otherwise provide for retirement plans or programs for such employees and the making of contributions to said plans or programs, -- to enact by-law for its own government and regulations for the government of the institutions under its control . . .

SOUTH CAROLINA

59-55-50. Powers of State Department of Education over junior colleges. The State Department of Education shall have the same supervision, control and powers over any such junior college, when established hereunder, as it now has over the other departments of the public school system of this state.

59-55-40. Requirements for establishment and maintenance.
(4) A junior college shall be a public school providing one or more two-year courses beyond the eleventh year of the public school course and it shall be located in a school district which maintains an accredited high school and employs a junior college dean and at least the equivalent of two junior college teachers who, together with the superintendent, shall constitute the faculty of the junior college;
(7) The superintendent of the college shall examine the certification of all persons under consideration as teachers in the junior college and recommend for employment only such persons as are found to be fully qualified in accordance with the standards established by the State Board of Education and he shall also keep a record of such certification and, on or before October first of each year, shall transmit a copy of this record to the State Department of Education.

59-1-130. "Teacher" means any person who is employed either full time or part time by any school district either to teach or to supervise teaching.

SOUTH CAROLINA (continued)

59-25-410. Notification of employment for ensuing year; notification of assignment. On or before April fifteenth of each year, the boards of trustees of the several school districts shall decide and notify, in writing, the teachers, as defined in 59-1-130 of the 1976 Code, in their employ concerning their employment for the ensuing year. If the board, or the person designated by it, fails to notify a teacher who has been employed by a school district for a majority of the current school year of his status for the ensuing year, the teacher shall be deemed to be reemployed for the ensuing year and the board shall issue a contract to such teacher as though the board had reemployed such teacher in the usual manner. Notices of intent not to renew an employment contract shall be given in writing no later than April fifteenth of each year.

On or before August fifteenth the superintendent, principal where applicable, or supervisor shall notify the teacher of his tenative assignment for the ensuing school year.

This section shall not apply to any teacher whose contract of employment is under appeal under 59-25-450.

59-25-420. Teacher required to notify board of acceptance; opportunity for hearing if not reemployed. Any teacher who is reemployed by written notification pursuant to 59-25-410 shall by April twenty-fifth first notify the board of trustees in writing of his acceptance of the contract. Failure on the part of the teacher to notify the board of

acceptance within the specified time limit shall be conclusive evidence of the teacher's rejection of the contract.

Any teacher receiving 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 pending resolution 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 evidence unfitness for teacher; 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 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 a 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 59-25-450, allow reasonable time for improvement.

59-25-450. Suspension of teachers; reinstatement. Whenever a superintendent has reason to believe that cause exists for the dismissal of a teacher and when he is of the opinion that the immediate suspension of the teacher is necessary to protect the well-being of the children of

the district or is necessary to remove substantial and material disruptive influences in the educational process, in the best interest of the children in the district, the superintendent may suspend the teacher without a hearing. The superintendent shall notify the teacher in writing of the suspension. Such written notice shall include the cause for suspension and 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 59-25-470.

The salary of a suspended teacher shall cease as of the date the board sustains the suspension. If sufficient grounds for suspension are not subsequently found, the teacher shall be reinstated without loss of compensation.

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 to the teacher by the District Board of Trustees and an opportunity for a hearing has been afforded the teacher. Such written notice shall include the fact that a hearing before the board is available to the teacher upon written request provided, such request is made in writing within fifteen days as prescribed by 59-25-470. Any such hearing shall be public unless the teacher requested in writing that it be private. The District Board of Trustees may issue subpoenas requiring the attendance of witnesses at any hearing and, at the request of the

teacher against whom a charge is made, shall issue such subpoenas, but it may limit the number of witnesses to be subpoenaed in behalf of the teacher to not more than ten. All testimony at any hearing shall be taken under oath. Any member of the board may administer oaths to witnesses. The board shall cause a record of the proceedings to be kept and shall employ a competent reporter to take stenographic or stenotype notes of all of the testimony. 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 a 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 for offer evidence and witnesses and may 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 the 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.

59-25-490. Depositions. Any part to such preceedings may cause to be taken the depositions of witnesses within or without the state and either by commission or de bene esse. Such depositions shall be taken in accordance with the subject to the same provisions, conditions and restrictions as apply to the taking of like depositions in civil actions at law in the court of common pleas; and the same rules with respect to the giving of notice to the opposite party, the taking and transcribing of testimony, the transmission and certification thereof and matters of practice relating thereto shall apply.

59-25-500. Service of subpoenas; witness fees. The county sheriffs and their respective deputies shall serve all subpoenas of the district board and shall receive the same fees as are now provided by law for like service. Each witness who appears in obedience to such subpoenas shall receive for attendance the fees and mileage of witnesses in civil cases in courts of the county in which the hearing is held.

SOUTH CAROLINA (continued)

59-25-530. Unprofessional conduct; breach of contract. Any teacher who fails to comply with the provisions of this contract without the written consent of the school board shall be deemed guilty of unprofessional conduct. A breach of contract resulting from the execution of an employment contract with another board within the State without the consent of the board first employing the teacher makes void any subsequent contract with any other school district in South Carolina for the same employment period. Upon formal complaint of the school board, substantiated by conclusive evidence, the State board shall suspend or revoke the teacher's certificate, for a period not to exceed one calendar year. State education agencies in other states with reciprocal certification agreements shall be notified of the revocation of the certificate. In addition to the junior colleges referred to above, South Carolina also maintains a system of technical institutions governed by a state board and offering vocational and technical diploma and associate degree programs. The following section refers to those institutes:

59-53-52. Powers and duties of area commissions, generally. The area commissioners shall:

(9) Employ such other personnel as may be necessary;

(10) Establish, promulgate and enforce reasonable rules and regulations for the operation of their facilities;

TENNESSEE

49-8-301. Authority of board. - (a) The [state] board of regents shall promulgate a tenure policy or policies for faculty at institutions within the state university and community college system of Tennessee, which policy or policies shall ensure academic freedom and provide sufficient professional security to attract the best qualified faculty available for the institutions.

(b) Pursuant to this part, the board shall:

(1) Define the nature of tenure at institutions, end the rights and responsibilities of faculty with tenure;

(2) Determine the minimum qualifications and requirements for eligibility of faculty for tenure, and the conditions precedent to the award of tenure by the board;

(3) Provide for the termination of faculty with tenure by institutions for adequate cause, for retirement or disability, and for financial reasons or curricular reasons in an institution in the discretion of the board or its designee; and

(4) Provide for all other matters relating to tenure deemed necessary by the board.

(c) (1) Tenure shall only be acquired by a faculty member in an institution upon positive approval by the board, and no other type of tenure or right similar thereto shall be acquired by a faculty member.

(2) Faculty with tenure shall be subject to all reasonable changes in the tenure policy adopted by the board, provided that faculty who have

previously been awarded tenure shall retain their tenured status under any new policy, and provided further that present faculty in probationary employment shall be given credit for service in an institution toward completion of any new probationary period.

49-8-302. Action against tenured employee - Grounds. - "Adequate cause" for termination of faculty with tenure shall include the following:

(1) Incompetence or dishonesty in teaching and research;

(2) Willful failure to perform the duties and responsibilities for which the faculty member was employed, or refusal or continued failure to comply with the policies of the board, the institution or the department, or to carry out specific assignments, when such policies or assignments are reasonable and nondiscriminatory;

(3) Conviction of a felony or crime involving moral turpitude and improper use of narcotics or intoxicants which substantially impairs the faculty member's fulfillment of his or her departmental and institutional duties and responsibilities;

(4) Carpicious disregard of accepted standards of professional conduct;

(5) Falsification of information on an employment application or other information concerning qualifications for a position; and

(6) Failure to mantain the level of professional excellence and ability demonstrated by other members of the faculty in the department or division of the institution.

TENNESSEE (continued)

49-8-303. Procedures for action against tenured employee. -

(a) The board shall develop procedures for the termination of faculty with tenure for adequate cause by the institutions following a hearing which ensures due process, which procedure shall include the following minimum requirements:

(1) The faculty member shall be notified of the specific charges in writing, and shall be notified of the time, place and nature of the hearing at least twenty (20) days prior to the hearing;

(2) The faculty member shall have the right to be represented by counsel of his or her own choice;

(3) A verbatum record of the hearing shall be made, and a type written copy made available to the faculty member for a reasonable fee at the faculty member's request;

(4) The burden of proof that adequate cause for termination exists shall be upon the institution, and shall be satisfied only by clear and convincing evidence in the record considered as a whole;

(5) The faculty member shall have the right to confront and cross-examine all witnesses; and

(6) The findings of fact and the decision will be based solely on the hearing record.

(b) The board shall adopt all additional procedures it deems necessary for such hearings, and may provide for review of the decision by the board or its designee based upon the record.

TENNESSEE (continued)

(c) A faculty member serving a probationary period shall be given an oral statement of the reason for his nonappointment to the institution's faculty.

49-8-304. Judicial review. - (a) A faculty member who has been awarded tenure, and who has been dismissed or suspended for cause, may obtain de novo judicial review of the final decision by filing a petition in a chancery court having jurisdiction within thirty (30) days of the final decision, and copies of the petition shall be served upon the board and all parties of record.

(b) Within forty-five (45) days after sevice of the petition, or within such further time allowed by the court, the board shall transmit to the court the original or a certified copy of the entire record of the proceeding.

(c) The chancellor shall reduce his findings of fact and conclusions of law to writing and make them parts of the record.

(d) The decree of the chancery court will be subject to review by appeal to the supreme court as provided in the Tennessee Rules of Appellate Procedure.

TEXAS

130-082. Governing Board of Junior College or Other Independent School District.

(d) . . . Said board shall be authorized to appoint or employ such agents, employees and officials as deemed necessary or advisable to carry out any power, duty, or function of said board; and to employ a president, dean, or other administrative officer, and upon the president's recommendation to employ the faculty and other employees of the junior college . . .

UTAH

53-48-15. [State] Board to appoint president for each institution - Duties and responsibilities. The board after consulting with the institutional council shall appoint or hire a president for each state university, state college and state junior college . . .

Unless the board shall reserve to itself such action, the president of each institution with the approval of the institutional council:
(4) May provide for the constitution and organization of the faculty and administration of each institution, and enact rules and regulations for the government of the faculty and employees of that institution, which shall include the establishment of a prescribed system of tenure for each institution.

VERMONT

No statutory provision for hiring, tenure or dismissal of community college faculty exists.

VIRGINIA

23-231. Enforcement of standards for personnel. - The Chancellor shall enforce the standards established by the [State] Board for personnel employed in the administration of this chapter and remove or cause to be removed each employee who does not meet with such standards.

28B.50.850. Faculty Tenure-Purpose. It shall be the purpose of RCW 28B.50.850 through 28B.50.869 to establish a system of faculty tenure which protects the concepts of faculty employment rights and faculty involvement in the protection of those rights in the state system of community colleges. RCW 28B.50.850 through 28B.60.869 shall define a reasonable and orderly process for appointment of faculty members to tenure status and the dismissal of the tenured faculty member.

28B.50.851. Faculty tenure- Definitions. As used in RCW 28B.50.850 through 28B.50.869:

(1) "Tenure" shall mean a faculty appointment for an indefinite period of time which may be revoked only for adequate cause and by due process;

(2)(a) "Faculty appointment", except as otherwise provided in subsection (2)(b) below, shall mean full time employment as a teacher, counselor, librarian or other position for which the training, experience and responsibilities are comparable as determined by the appointing authority, except administrative appointments; "faculty appointment" shall also mean department head, division heads, and administrators to the extent that such department heads, division heads or administrators have had or do have status as a teacher, counselor or librarian;

(b) "Faculty appointment" shall not mean special faculty appointment as a teacher, counselor or librarian or other position as enumerated in subsection (2)(a) of this section, which employment results from special

WASHINGTON (continued)

funds provided to a community college district from federal monies or other special funds which other funds are designated as "special funds" by the state board for community college education: Provided, That such "special funds" so designated by the state board for purposes for this section shall apply only to teachers, counselors and librarians hired from grants and service agreements and teachers, counselors and librarians hired in nonformule positions. A special faculty appointment resulting from such special financing may be terminated upon a reduction or elimination of funding or a reduction or elimination of program: Provided further, That a "faculty appointee" holding a faculty appointment pursuant to subsection (1) or (2)(a) who has been subsequently transferred to a position financed from "special funds" pursuant to subsection (2)(b) and who thereafter loses his position upon reduction or elimination of such "special funding" shall be entitled to be returned to his previous status as a faculty appointee pursuant to subsection (1) or (2)(a) depending upon his status prior to the "special funding" transfer. Notwithstanding the fact that tenure shall not be granted to anyone holding a special faculty appointment, the termination of any such faculty appointment prior to the expiration of the term of such faculty member's individual contract for any cause which is not related to elimination or reduction of financing or the elimination or reduction of program shall be considered a termination for cause subject to the provisions of this chapter;

(3) "Probationary faculty appointment" shall mean a faculty appointment for a designated period of time which may be terminated without cause upon expiration of the probationer's terms of employment;

(4) "Probationer" shall mean an individual holding a probationary faculty appointment;

(5) "Administrative appointment" shall mean employment in a specific administrative position as determined by the appointing authority;

(6) "Appointing authority" shall mean the board of trustees of a community college district;

(7) "Review committee" shall mean a committee composed of the probationer's faculty peers, a student representative, and the administrative staff of the community college: Provided, That the majority of the committee shall consist of the probationer's faculty peers.

28B.50-852. Faculty tenure - Rules and regulations - Award of faculty tenure - Maximum probationary period. The appointing authority shall promulgate rules and regulations implementing RCW 28B.50.850 through 28B.50.869 and shall provide for the award of faculty tenure following a probationary period not to exceed three consecutive regular college years, excluding summer quarter: Provided, That tenure may be awarded at any time as may be determined by the appointing authority after it has given reasonable consideration to the recommendations of the review committee.

28B.50.855. Faculty tenure - Written agreement embodying terms of employment furnished faculty. The appointing authority shall provide each faculty member, immediately upon employment, with a written agreement which delineates the terms of employment including all conditions and responsibilities attached thereto.

28B.50.856. Faculty tenure - Evaluation of probationer by review committee - Progress report, acknowledgment of receipt - Recommendation as to tenure. The probationary faculty appointment period shall be one of continuing evaluation of a probationer by a review committee. The evaluation process shall place primary importance upon the probationer's effectiveness in his appointment. The review committee shall periodically advise each probationer, in writing, of his progress during the probationary period and receive the probationer's written acknowledgment thereof. The review committee shall at appropriate times make recommendations to the appointing authority as to whether tenure should or should not be granted to individual probationers: Provided, That the final decision to award to withhold tenure shall rest with the appointing authority, after it has given reasonable consideration to the recommendations of the review committee.

28B.50.857. Faculty tenure - Decision not to renew probationary appointment, notice by appointing authority, when. Upon the decision not

to renew a probationary faculty appointment, the appointing authority shall notify the probationer of such decision as soon as possible during the regular college to the last day of the winter quarter.

28B.50.860. Faculty tenure - Tenure retained upon administrative appointment. A tenured faculty member, upon appointment to administrative appointment shall be allowed to retain his tenure.

28B.50.861. Faculty tenure - Dismissal only for sufficient cause. The tentured faculty member shall not be dismissed except for sufficient cause, nor shall a faculty member who holds a probationary faculty appointment be dismissed prior to the written terms of the appointment except for sufficient cause.

28B.50.862. Faculty tenure - Certain grounds constituting sufficient cause. Sufficient cause shall also include aiding and abetting or participating in:
(1) Any unlawful act of violence; (2) Any unlawful act resulting in destruction of community college property; or (3) Any unlawful interference with the orderly conduct of the educational process.

28B.50.863. Faculty tenure - Review prior to dismissal - Scope - Recommendations of review committee. Prior to the dismissal of a tenured

faculty member, or a faculty member holding an unexpired probationary faculty appointment, the case shall first be reviewed by a review committee. The review shall include testimony from all interested parties including, but not limited to, other faculty members and students. The faculty member whose case is being reviewed shall be afforded the right of cross-examination and the opportunity to defend himself. The review committee shall prepare recommendations on the action they propose be taken and submit such recommendations to the appointing authority prior to their final action.

28B.50.864. Faculty tenure - Appeal from decision for dismissal - Procedure. Any faculty member dismissed pursuant to RCW 28B.50.850 through 28B.50.869 shall have a right to appeal the final decision of the appointing authority in accordance with RCW 28B.19.150 as now or hereafter amended.

28B.50.867. Faculty tenure - Tenure rights upon transfer of employment to another community college. Upon transfer of employment from one community college to another community college within a district, a tenured faculty member shall have the right to retain tenure and the rights accruing thereto which he had in his previous employment: Provided, That upon permanent transfer of employment to another community college district, a tenured faculty member shall not have the right to retain his tenure or any of the rights accruing thereto.

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28B.50.869. Faculty tenure - Review committees, composition - Selection of teaching faculty representatives, student representative. The review committee required by RCW 28B.50.850 through 28B.50.869 shall be composed of members of the administrative staff, a student representative, and the teaching faculty. The representatives of the teaching faculty shall represent a majority of the members of each review committee. The members representing the teaching faculty on each review committee shall be selected by a majority of the teaching faculty and faculty department heads acting on a body. The student representative, who shall be a full time student, shall be chosen by the student association of the particular community college in such manner as the members thereof shall determine.

28B.19.150. Contested cases - Appeal from final decision in formal proceeding.

(1) Any party, including the involved, aggrieved by a final decision in a contested case where formal proceeding has been utilized, whether such decision is affirmative or negative in form, is entitled to judicial review thereof only under the provisions of this chapter, and such party may not use any other procedure to obtain judicial review of a final decision, even though another procedure is provided elsewhere by a special statute or a statute of general application. Where the institution's rules provide a procedure for rehearing or reconsideration,

WASHINGTON (continued)

and that procedure has not been invoked, the decision shall not be final until action has been taken thereon.

(2) Proceedings for review under this chapter shall be instituted by filing a petition in the superior court in the county wherein the primary office of the institution involved is located. All petitions shall be filed, together with an appropriate cost bond securing payment of costs necessary to prepare the record, within thirty days after the service of the final decision by the institution. Copies of the petition shall be served upon the institution or related board and all other parties of record.

(3) The filing of the petition shall not stay enforcement of the decision being appealed. Where other statutes provide for stay or supersedas of a decision, it may be stayed by the institution or the reviewing court only as provided therein; otherwise the institution may do so, or the reviewing court may order a stay upon such terms as it deems proper.

(4) Within thirty days after service of the petition, or within such further time as the court may allow, the institution shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review; but, stipulation of all parties to the review proceedings, the record may be shortened. Any part unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require [or] permit subsequent

corrections or additions to the record when deemed desirable.

(5) The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the institution now [not] shown in the record, testimony thereon may be taken in the court. The court shall, upon request, hear oral argument and receive written briefs.

(6) The court may affirm the decision appealed from, or remand the case for further proceedings; or it may reverse the decision if the substantial rights of the petitioners may have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(a) In violation of any state or federal constitutional provisions; or

(b) In excess of the statutory authority or jurisdiction of the institution; or

(c) Made unlawful procedures; or

(d) Affected by other error of law; or

(e) Clearly erroneous in view of the entire record submitted and the public policy contained in the act of the legislature authorizing the decision or order; or

(f) Arbitrary or capricious.

34.04.130. Contested cases - Judicial review. (1) Any person aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, is entitled to judicial review thereof

only under the provisions of this 1967 amendatory act, and such person may not use any other procedure to obtain judicial review of a final decision, even though another procedure is provided elsewhere by a special statute or a statute of general application. Where the agency's rules provide a procedure for rehearing or reconsideration, and that procedure has been invoked, the agency decision shall not be final until the agency shall have acted thereon.

(2) Proceedings for review under this chapter shall be instituted by filing a petition in the superior court, at the petitioner's option, for (a) Thurston county, (b) the county of the petitioner's residence or principal place of business, or (c) in any county where the property owned by the petitioner and affected by the contested decision is located. The petition shall be served and filed within thirty days after the service of the final decision of the agency. Copies of the petition shall be served upon the agency and all parties of record. If a timely petition is filed any party of record not filing or joining in the first petition who wants relief from the decision must join in the petition or serve and file a cross-petition within twenty days after service of the first petition or thirty days after service of the final decision of the agency, whichever period of time is longer. The court, in its discretion, may permit other interested parties to intervene.

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(3) The filing of the petition shall not stay enforcment of the agency decision. Where other statutes provide for stay or supersedeas of any agency decision, it may be stayed by the agency or the reviewing court may order a stay upon such terms as it deems proper.

(4) Within thirty days after service of the petition, or within such further time as the court may allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review; but, by stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require [or] permit subsequent corrections or additions to the record when deemed desirable.

(5) The reivew shall be conducted by the court without a jury and shall be confined to the record, except in cases of alleged irregularities in procedure before the agency, now [not] shown in the record, testimony thereon may be taken in the court. The court shall, upon request, hear oral argument and receive written briefs.

(6) The court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse the decision if the substantial rights of the petitioners may have been prejudiced because the administrative findings, inferences, or decisions are:

(a) in violation of constitutional provisions; or

(b) in excess of the statutory authority or jurisdiction of the agency; or

(c) made upon unlawful procedure; or

(d) affected by other error of law; or

(e) clearly erroneous in view of the entire record as submitted and the public policy contained in the act of the legislature authorizing the decision or order; or

(f) arbitrary or capricious.

WEST VIRGINIA

18-26-8c. Notice to probationary faculty members of retention or nonretention; hearing. The president of each state college, university or community college shall give written notice to probationary faculty members concerning their retention or nonretention for the ensuing academic year, not later than the first day of March for those probationary faculty members who are in their first academic year of service; not later than the fifteenth day of December for those probationary faculty members who are in their second academic year of service; and at least one year before the expiration of an appointment for those probationary faculty members who will not be retained shall be by certified mail, return receipt requested. Upon request of the probationary faculty member not retained, the president of the state college, university, or community college shall within ten days, and by certified mail, inform the probationary faculty member of the reasons for nonretention. Any probationary member who desires to appeal the decision may request a hearing from the board of regents within ten days after receiving the statement of reasons. The board of regents shall publish appropriate rules to govern the conduct of the appeal herein allowed. The board of regents shall, by such rules, prescribe either an unbiased committee of the board or appoint a hearing examiner to hear such appeals. Such hearing shall be held at the employing institution and within thirty days of the request. The rules of evidence shall not strictly apply. The faculty member shall be accorded substantive due

process, including the right to produce evidence and witnesses and to cross-examine witnesses, and to be represented by counsel or other representative of his or her choice. If the committee of the board or the hearing examiner shall conclude that the reasons for nonretention are arbitrary or capricious or without a factual basis, the faculty member shall be retained for the ensuing academic year. The decision shall be rendered within thirty days after conclusion of the hearing. The term "probationary faculty members", shall be defined according to regulations promulgated by the board of regents.

The rights herein provided to probationary faculty members are in addition to, and not in lieu of, other rights afforded them by other rules and regulations of the board of regents.

18-26-25. Effect of leave of absence on academic tenure, rank, etc. Any other provision of law to the contrary notwithstanding any tenured professional at any higher educational institution subject to the control and supervisions of the board of regents, who shall, with the consent of the governing authority of the higher educational institutions by which he is employed, absent himself from his duties at such institution to accept employment in any nonelected governmental capacity shall be afforded such benefits of academic tenure, rank and position as if such person had remained continuously in the position retained and held at such higher education institutions immediately preceeding any such

WEST VIRGINIA (continued)

absence: Provided, however, that tenure and rank may be retained during an absence of more than two years if the president of the institution from which such person is on leave of absence submits in writing during each of such years a request for such retention to the board of regents, and the board of regents approves such request for each such year: Provided further, that any individual who remains in governmental employment with leave granted in accordance with this section shall forfeit all rights to academic tenure, rank and position formerly held by him at such institution after the eighth year of such employment.

WISCONSIN

38.12. District board duties.

. . . (3) District director and other employees. (a) The district board shall employ and fix the compensation of . . . 2. such supervisors, coordinators, teachers and technical advisors and experts as are necessary.

118.22. Renewal of teacher contracts. (1) In this section:
(a) "Board" means a school board, vocational, technical and adult education district board, board of control of a cooperative educational service agency or county handicapped children's education board, but does not include any board of school directors in a city of the 1st class.
(b) "Teacher" means any person who holds a teacher's certificate or license issued by the state superintendent or a classification status under the board of vocational, technical and adult education and whose legal employment requires such a certificate, license or classification status, but does not include part-time teachers or teachers employed by any board of school directors in a city of the 1st class.
(2) On or before March 15 of the school year during which a teacher holds a contract, the board by which the teacher is employed or an employee at the direction of the board shall give the teacher written notice of nonrenewal of refusal to renew his contract for the ensuing school year. If no such notice is given on or before March 15, the contract then in force shall continue for the ensuing school year. A

teacher who receives a notice of renewal of contract for the ensuing school year, or a teacher who does not receive a notice of renewal or refusal to renew his contract for the ensuing school year on or before March 15, shall accept or reject in writing such contract not later than the following April 15. No teacher may be employed or dismissed except by a majority vote of the full membership of the board. No such board may enter into a contract of employment with a teacher for any period of time as to which the teacher is then under a contract of employment with another board.

(3) At least 15 days prior to giving written notice of refusal to renew a teacher's contract for the ensuing school year, the employing board shall inform the teacher by preliminary notice in writing that 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.

(4) A collective bargaining agreement may modify, waive or replace any of the provisions of this section as they apply to teachers in the collective bargaining unit, but neither the employer nor the bargaining agent for the employees is required to bargain such modification, waiver or replacement.

WISCONSIN (continued)

118.23. Populous counties; teacher tenure. (1) In this section "teacher" means any person who holds a teacher's certificate or license and whose legal employment requires such certificate or license, who is employed full time and meets the minimum requirements prescribed by the governing body employing such person and who is employed by a school board, board of trustees or governing body of any school operating under chs. 115 to 121 and lying entirely and exclusively in a county having a population of 500,000 or more. "Teacher" does not include any superintendent or assistant superintendent; any teacher having civil service status under ss. 63.01 to 63.17; any teacher in a public school in a 1st class city; or any person who is employed by a school board during time of war as a substitute for a teacher on leave while on full-time duty in the U.S. armed forces or any reserve or auxiliary thereof and who is notified in writing at the time of employment that the position is of a temporary nature.

(2) All teaches shall be employed on probation, but after continuous and successful probation for three years and the gaining of the 4th contract in the same school system or school, their employment shall be permanent except as provided in sub. (3) . . . Upon accepting employment in another school system or school to which this section applies, a teacher who has acquired permanent employment under this section shall be on probation therein for 2 years. After continuous and successful probation for 2 years and gaining the 3rd contract in such school system or school, employment therein shall be permanent except as provided in sub. (3).

(3) No teacher who has become permanently employed under this section

WISCONSIN (continued)

may be refused employment, dismissed, removed or discharged, except for inefficiency or immorality, for willful and persisteet 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 there at 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.

(4) If necessary to decrease the number of permanently employed teachers by reason of a substantial decrease in pupil population within the school district, the governing body of the school system or school may lay off the necessary number of teachers, but only in the inverse order of the appointment of such teachers. No permanently employed teacher may be prevented from securing other employment during the period he is laid off under this subsection. Such teachers shall be reinstated in inverse order of their being laid off, if qualified to fill the vacanacies. Such reinstatement shall not result in a loss of credit for previous years of service. No new permanent or substitute appointments may be made while there are laid off permanent teachers available who are qualified to fill the vacancies.

(5) A collective bargaining agreement may modify, waive or replace any of the provisions of this section as they apply to teachers in the collective bargaining unit, but neither the employer nor the bargaining agent for the employees is required to bargain such modification, waiver or replacement.

WYOMING

21-18-206. Same; duties. The community college district board shall:
(i) Prescribe and enforce rules and regulations for its own government and for government of the community college under its jurisdiction. Rules and regulations shall not be inconsistent with the rules and regulations of the community college commission;

21-18-211. Same; powers and duties. (a) The [community college] commission shall:
(vi) Act as a board of final appeal for the arbitration of disputes and differences between community colleges or which may arise on the staff or board of trustees of any of the community colleges whenever so requested to act by the local college district.