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**Legal aspects of teacher dismissal for insubordination**

**Singletary, Ronald Brooks, Ed.D.**

**The University of North Carolina at Greensboro, 1988**

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LEGAL ASPECTS OF TEACHER DISMISSAL  
FOR INSUBORDINATION

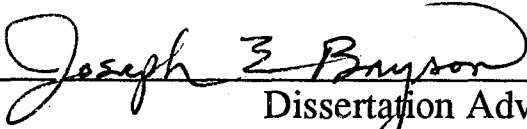
by

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APPROVAL PAGE

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Insubordination is often cited as the basis for the dismissal of employees and frequently appears among the causes for which tenured school employees may be dismissed. While the court's definition of insubordination in teacher dismissal cases has varied somewhat from one jurisdiction to another, the term includes a willful disobedience of, or refusal to obey, a reasonable and valid rule, regulation, or order issued by the school board or by an administrative superior.

The purpose of this study was to identify and analyze historical and legal aspects of insubordination as a cause for teacher dismissal. The legal/historical research traced the chronological development of using insubordination as a reason for teacher dismissal encompassing the colonial period until the present. State statutes related to teacher dismissal were analyzed. Commonalities and unique qualities were summarized.

The analysis of insubordination dismissal cases demonstrated that although the concept of insubordination has been clarified by the courts, the domain of insubordination as a particular dismissal ground is by no means well-defined. There is considerable overlap with other charges, such as neglect of duty and unprofessional conduct.

Public attitudes and opinion were found to influence teacher discipline both directly and indirectly. Changes in the mores of society were found to effect developments in the law and disciplinary practices of school boards. Attitudes regarding forbidden behavior for teachers changed from the colonial period to the present.

In reviewing the court's reaction to challenges to the dismissal of insubordination, the study found that the key word in insubordination charges is willful. It implies an obstinate and perverse determination to follow one's own will, despite arguments and advice to the contrary. If a teacher intentionally violates school authority and if the regulations broken are reasonably related to efficient management of the school system, then the courts are likely to uphold the dismissal.

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## CHAPTER 1

### INTRODUCTION

Never before in American history has so much attention been given the personal conduct of public officials and employees. Recent history has given America Watergate, sex scandals, political corruption, and Contra investigations and investigations of institutions never before so challenged.<sup>1</sup>

This general interest in public conduct has encompassed teachers. But, public concern appears to have existed since the establishment of formal education in America. This concern, resulting in part from the assumption that teacher conduct significantly influences pupil conduct, is expressed in legislation and court decisions affecting various aspects of the teacher's professional and personal life.

Beginning with the founding of America, the public has been far more restrictive in its expectation of the conduct of a teacher than conduct of the average lay citizen. This situation existed in colonial New England where religion and education were almost inseparable. The public was especially critical of teachers during the first half of the nineteenth century when it evoked the most rigid moral and religious standards.

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<sup>1</sup>Floyd G. Delon, "Legal Controls on Teacher Conduct: Teacher Discipline" Paper presented at the Annual Meeting of the American Association of School Administrators (February 17-20,1978), Atlanta, Georgia.



"As a public school teacher, he must exercise his right with due consideration and respect to the effect it will have on others, particularly school children and people in his teaching community. Teaching is a privilege extended to the individual by a governmental agency and not a constitutional right."<sup>2</sup>

State and local governments have a right to determine who will teach their children and initiate certain legal restrictions and requirements that it considers necessary in order to promote, maintain, and preserve the existing political structure. Moreover, by virtue of an extended privilege and with respect to performing a governmental function, a teacher must conform to these constitutional and statutory laws in order to uphold a position.

Furthermore, recent trends of teacher militancy, professional negotiations and liberal attitudes draw even greater attention to the conduct of teachers. In recent years, the conduct of some teachers has caused principals and school boards to agonize. Principals and school boards are confronted with situations in which it is sometimes difficult to determine whether an employee's behavior may be defined as insubordinate or whether the conduct is constitutionally protected.<sup>3</sup>

It is important for the efficient functioning of a school system that the authority of school boards to enforce discipline in teaching staffs be maintained. It is not surprising that "insubordination" is frequently one of the

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<sup>2</sup>Joseph E. Bryson, Legality of Loyalty Oath and Non-oath Requirements for Public School Teachers (Asheville: Miller Printing Co., 1963), V.

<sup>3</sup>John C. Walden, "Two Courts Look at Insubordination," National Elementary Principal 53, (November/December 1973): 52.

enumerated grounds upon which the dismissal of a public school teacher is permitted, either by statute, contract or judicial decision.

Even in the absence of statutory law, courts will generally support the dismissal of an employee who fails to follow the legitimate orders of a superior or who is so verbally abusive of a superior that the school's effectiveness is impaired. School boards have the authority, either expressed or implied, to regulate and govern the schools of the district. All employees have a duty to obey such rules and regulations-provided that the rules are not unlawful or constitutionally impermissible. <sup>4</sup>

Insubordination is often cited as the basis for the dismissal of an employee and frequently appears among the causes for which tenured employees may be dismissed.<sup>5</sup> While the court's definitions of insubordination in teacher dismissal cases have varied somewhat from one jurisdiction to another, it seems fairly clear that the term includes a willful disobedience of, or refusal to obey, a reasonable and valid rule, regulation, or order issued by the school board or by an administrative superior.

### Purpose

The purpose of this study is to identify and analyze historical and legal aspects of insubordination as a cause for teacher dismissal. The legal/historical research will be concerned with the chronological development of using insubordination as a reason for teacher dismissal encom-

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<sup>4</sup> John C. Walden "Law and the School Principal," National Elementary Principal 54, (January/February 1975): 72-74.

<sup>5</sup> Ibid, 72.

passing the colonial period until the present. The legal aspects will be analyzed to determine the extent to which these have been challenged and litigated. The court cases pertaining to teacher dismissal for insubordination will be analyzed for the possible consequences and implication in the field.

The major focus of this legal study is to examine and analyze judicial decisions which influenced policy making related to insubordination of educational personnel in public schools. The study also examines forces and issues behind personal insubordination problems in schools as well as legal guidelines for making decisions concerning dismissal of employees.

#### Questions to be Answered

This study has, as its ultimate goal, the creation of recommendations for developing legally defensible policies concerning insubordination. These recommendations could serve as a guide for school officials, school boards and board attorneys when formulating policy and when making decisions about teacher dismissal for insubordination. In the process of the development of these recommendations, certain questions will be answered. It should be pointed out, however that these questions are not intended to be all inclusive.

Listed are the key questions which will be answered through this research:

1. Under what circumstances are constitutional rights of teachers involved when he/she is faced with an insubordination situation?
2. Are there specific trends to be determined from analysis of court cases?

3. What is the judicial history of insubordination?
4. What magnitude of discrepancies would a comparison of the fifty state statutes reveal?
5. What are the specific areas the courts have identified in considering charges of insubordination?
6. What are the recognized court-approved procedures to be followed by a school board or school official in seeking the demotion or dismissal of a teacher for insubordination?

### Scope of the Study

This study has two major areas of focus. The first involves the historical review of insubordination as a method of teacher dismissal. The development of insubordination as a school board charge will be traced from the colonial period until the present. This historical review will involve a review of court cases throughout this time period. The focus of the review will be to analyze the patterns and trends of cases as influenced by the time period in which they occurred.

The second area of focus of this study will involve a review of insubordination statutes from each of the fifty states. This review will include some analysis of regional trends and patterns to assist one in understanding both similarities and differences.

### Methods, Procedures and Sources of Information

Locating education journal articles dealing with the general topic of teacher dismissals will be accomplished with the aid of Education Index and

The Reader's Guide to Periodical Literature. Pertinent articles appearing in legal journals will be traced through the Index to Legal Periodicals.

Research reports of the Office of Education and Educational Resources Information center will be located through the Research in Education. General books on education law will be searched through the University's card catalog.

A search of Dissertation Abstracts will be conducted to determine the kind and number of studies completed in this area of education law. State statutes and case law provide a foundation for the investigation. Statutes of the fifty states dealing with teacher dismissals will be located through a search of the education code of each state.

High court cases litigating questions of teacher insubordination and question of dismissal procedures will be located in case notes and education codes. Most cases are notated in the American Digest System. Citations will be noted under the heading "Schools and School districts-Teachers" and primarily under "Grounds for removal or suspension". Other citations will be obtained from the legal encyclopedias, Corpus Juris, Corpus Juris Secundum, and American Jurisprudence.

### Definition of Terms

#### Insubordination

Insubordination refers to the willful refusal of a teacher to obey the reasonable rules and regulations of his or her employing board of education. <sup>6</sup>

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<sup>6</sup>Jeffrey F.Ghent, "What Constitutes 'Insubordination' as Grounds

### Contract

A promissory agreement between two or more persons that creates, modifies, or destroys a legal relation is the definition utilized for contract.<sup>7</sup>

### Teacher

The term "teacher" will not be used in a narrow context when employed in connection with dismissals. It will encompass administrators and counselors, as well as classroom teachers. In short, it refers to the professional personnel in an educational organization or system.

### Design of the Study

The remainder of this study is divided into three major parts. Chapter 2 provides a review of the literature related to the history of insubordination and the effect of history on insubordination. Chapter 3 includes an analysis of the fifty states' statutes to determine grounds for teacher dismissal.

Chapter 4 contains a narrative of legal issues relating to insubordination. It also traces the development of the legal definition of insubordination. Chapter 4 also contains a discussion and analysis of major cases litigated over the past hundred years. Facts of the cases, decisions of the courts and discussions of the cases will be presented. This chapter will seek to determine what the courts have held to be evidence of insubordination. Because of the size of the body of case law in this area, the material will be

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for Dismissal of Public School Teachers". American Law Review 83 (1978): 85.

<sup>7</sup> Webster's Ninth New Collegiate Dictionary, 484.

organized according to subject matter of the board policy or administrative regulation violated and or the objectionable behavior involved.

Despite the length and number of court adjudications and a great variety of fact situations, all cases can and will be assigned to one of five major categories for discussion in this review. These categories are presented below for clarification and direction for the analysis and discussion:

### 1. Failure to Obey Superiors

- a. Refusal to Accept an Assignment
- b. Refusal to Attend a Meeting
- c. Refusal to Perform an Extra-Curricular Assignment
- d. Refusal to Re-Admit Students to Class
- e. Refusal to Admit Supervisors into Classroom
- f. Refusal to Fill-Out a Questionnaire
- g. Attending a Conference After Being Denied Permission
- h. Teaching That Which is Proscribed by Board

### 2. Violation of Board Rules

- a. Marrying
- b. Refusal to Retire
- c. Refusal to Alter Leave Status
- d. Failure to Complete College Courses
- e. Permitting Students to Teach
- f. Refusal to Follow Dress and Grooming Code
- g. Refusal to Take Mental Ability Test
- h. Failure to Live in District

- i. Refusal to Submit to Vaccination
  - j. Refusal to Discontinue Bible Reading
  - k. Refusal to Enforce Board's Smoking Policy
  - l. Inflicting Corporal Punishment on Pupils
3. Non-Cooperation
4. Hostile Actions
- a. Comments Critical of Superiors
  - b. Bringing Legal Action Against Superiors
5. Refusal to Discuss Loyalty with Superiors

Chapter 5 of the study contains a summary of the information obtained from the review of literature and from analysis of selected court cases. The questions asked in the introductory part of the study will be reviewed and answered in this concluding chapter. Conclusions will be presented and recommendations for further study will be suggested.



## CHAPTER 2

### HISTORICAL REVIEW

Traditionally, one of the outstanding sources of tension in the life of the average teacher has been the age-old demand of society that teachers conduct themselves as "models" in their personal and professional behavior.<sup>1</sup>

Determining or defining that "model of behavior" is the dynamic that makes a parallel review of the history of teacher dismissals and an examination of representative cases of teacher insubordination throughout the past 150 years of value to this study. This chapter will trace some of the influences on education, the discipline of teachers and the effects of social and societal influences on teacher behavior and expectations.

As defined in Chapter 1, insubordination refers to the "willful and persistent refusal to obey a direct or implied order which is reasonable in nature and which has been given by and with proper authority."<sup>2</sup>

Insubordination is constituted by persistent violation of or refusal to obey the school laws of the state and reasonable regulations of the school board or for negligence in the discharge of a teacher's duties.<sup>3</sup>

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<sup>1</sup>Story, M.L., "The Teacher's Personal Freedom," The Nation's Schools, 45, (March 1950):69.

<sup>2</sup>Shockley v. Board of Education, Laurel Special School District, 149 A.2d. 331.

<sup>3</sup>Los Angeles Board of Education v. Swan, 261 P. 2d. 261.

The American public has never before focused so much attention on the personal conduct of public officials and employees. Morality in government has received increasing emphasis in political campaigns as well as in the lives of any visible public servant. With this current scrutiny of public officials, it becomes important to review the historical perception.

Public concern about teacher conduct has existed since the establishment of formal education in America. This concern, results in part from the assumption that teacher conduct significantly influences pupil conduct. It is expressed in legislation and court decisions affecting various aspects of the teacher's professional and personal life.

### Unions, Collective Bargaining

During the past twenty years, the employee-employer relationship in public education has changed both in expectations and rights of both parties. The enactment by state legislatures of teacher collective bargaining laws is evidence of this change. Boards of education are entering into negotiated agreements with teachers' organizations in this country from coast to coast. Grievance procedures are often a part of the negotiated agreements and these grievance procedures are related to teachers' rights and therefore to areas of teacher discipline.

### A Parallel Review

Public attitudes and opinion influence teacher discipline, directly or indirectly; therefore, writings in this area provides needed background for a meaningful analysis of the cases as related to this area of study. Relating

changes in the mores of society to developments in the law and disciplinary practice of school boards as they regulate teachers' behavior is possible with an historical overview.

### Colonial America

Traditionally our society has held the behavior and living styles in a more restrictive expectation for the conduct of teachers than for the behavior and conduct of the average citizen. In colonial New England where religion and education were almost inseparable, this was particularly true. The public was especially critical of teachers during the first half of the nineteenth century when it evoked rigid moral and religious standards. In 1841, an annual report of the board of education in Boston expressed the necessity for teachers to set examples for pupils in "deportment, dress, conversation, and all personal habits."<sup>4</sup>

A case that illustrates the restrictions and standards imposed on the American teacher of the late 1800's is People ex rel. Murphy v. Maxwell<sup>5</sup> which was heard in the Court of Appeals of New York on February 23, 1904. At that time, in the Greater New York regulations governing teachers, it was stated that teachers in public schools should hold their positions subject only to the limitations of the act, and to reassignment or to removal

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<sup>4</sup>Elsbree, William S. The American Teacher (New York: American Book Company, 1939), 296.

<sup>5</sup>People ex. rel. Murphy v. Maxwell, Court of Appeals of New York, Northeastern Reporter, 1904.

for cause after trial on charges of gross misconduct, insubordination, neglect of duty, or general inefficiency.<sup>6</sup>

In February, 1891, the teacher in this case was appointed a teacher in one of the public schools of the city of Brooklyn. At that time, there was a by-law by the board of education which provided that should a female principal, head of department or teacher marry, her place shall thereupon become vacant. In this case, which will be discussed further in Chapter 4, the by-laws of the school board of the borough of Brooklyn, provided that, should a female teacher marry, her place shall become vacant, was ruled void and in conflict with the charter. This decision was reversed in appeal, and the teacher was discharged as originally charged.<sup>7</sup>

Beale wrote of incidents recorded during the 19th century in which teachers were reprimanded, dismissed, fined, imprisoned, and even subjected to mob harassment for real or imagined violations of prevailing public standards.<sup>8</sup> Advocating the abolition of slavery and teaching black children were among the violations included. The prevailing public image of the teacher was that of the "schoolmarm" or the "old maid school teacher," that staid, strong, severe, pious if not religious, uncompromising champion of the right as well as a purveyor of knowledge.<sup>9</sup>

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<sup>6</sup>Ibid.

<sup>7</sup>Murphy ex.rel. Murphy v. Maxwell, Court of Appeals of New York, Northeastern Reporter, 1904.

<sup>8</sup>Beale, Howard A History of Freedom of Teaching in American Schools (New York: American Book Company, 1941), 311.

<sup>9</sup>Ibid.

At the beginning of the century, state statutes contained provisions that prescribed the personal attributes required for teacher certification and also, in some instances, specified what could and could not be taught. An Arkansas statute stated that certification or license was not offered to "any person who is given to profanity, drunkenness, gambling, licentiousness or other demoralizing vices, or who does not believe in the existence of a Supreme Being."<sup>10</sup>

### The Twenties and Thirties

The temperance movement in the early 1900's had an impact on education of the twenties and thirties. A total of forty-seven states and territories required class instruction on the harmful effects of alcohol.<sup>11</sup> During the following two decades, legislators also focused their attention to forbidding the teaching of evolution. Between 1921 and 1929, thirty-seven anti-evolution bills were introduced into the legislatures of twenty states.<sup>12</sup>

Codes of ethics by the teaching profession were developed during this time period. Often widely misunderstood, these codes were viewed then as the profession's attempt to restrict admission. Court decisions of that day were divided concerning the legality of employment contracts that provided for dismissal of teachers at the option of the board.

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<sup>10</sup>Beale, Howard A History of Freedom of Teaching in American Schools (New York: American Book Company, 1941), 311.

<sup>11</sup>Ibid, 131.

<sup>12</sup>Ibid,3-11.

In a case which is representative of teacher insubordination cases of the 1920's, an Oklahoma teacher was dismissed for insubordination and neglect of duty. In this situation, the superintendent required that the staff perform extra duties or be discharged and subsequently not be entitled to compensation after the notice of dismissal.<sup>13</sup>

The teacher had, in disagreements with the superintendent, failed to perform extra duties and was given notice of dismissal on the 8th day of April and discharged from duties on May 7th. The plaintiff then brought suit for salary in the sum of \$101.50, the salary from date of suspension to the end of the term. The court found judgment in favor of the school board and was affirmed in appeal.<sup>14</sup>

In 1939, a study of the reported causes for teacher dismissal, Robert Anderson concluded "that in most states teacher dismissal was on a personal rather than a professional basis."<sup>15</sup> The distribution of causes in the samples reviewed in the Anderson study was as follows: incompetency and inefficiency (34), reassignment and transfer (26), insubordination (24), marriage and childbirth (25), neglect of duty (22), abolition of position (21), abandonment of position (18), immorality and rumors of immorality (17), general unpopularity (8), unprofessional conduct (7),

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<sup>13</sup>Urie v. Board of Education of City of Pryor Creek, 208 P.211 (Okla. 1922).

<sup>14</sup>Ibid.

<sup>15</sup>Anderson, Robert, "Trends in Causes of Teacher Dismissal Shown by American Court Decisions" (Ed.D. Diss. George Peabody College of Teachers, 1939),.9.

anticipated causes (6), and political activity (4).<sup>16</sup> Among the trends cited by the author were the following:

1. The courts' tendency to affirm dismissals of women for marriage;
2. The courts' invalidation of dismissals for "anticipated" causes;
3. The courts' consistent pattern of upholding dismissals for "immorality;"
4. The school boards' use of the charge of "abandonment of position" when the teacher was actually available and willing to continue service;"
5. The school boards' frequent reliance on "abolition of position" as a basis for teacher dismissal in districts operating under tenure laws.<sup>17</sup>

Anderson concluded that "court decisions showed little evidence on the part of the teaching profession to set its own house in order."<sup>18</sup> The cases cited above of Urie v. Board of Education and Murphy v. Maxwell support Anderson's conclusions.

A more liberal attitude toward teacher conduct accompanied a relaxation of moral standards by society in general during World War I. Anderson's study of teacher dismissal had provided little evidence of an immediate turn toward permissiveness with respect to teacher behavior. Beale found that rural communities were still quite restrictive through the

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<sup>16</sup>Ibid.

<sup>17</sup>Anderson, Robert, "Trends in Causes of Teacher Dismissal Shown by American Court Decisions" (Ed.D. Diss. George Peabody College of Teachers, 1939).

<sup>18</sup>Ibid.

1930's<sup>19</sup> Many teachers had very little freedom in their personal lives until the enactment of statewide tenure laws.

A case during the decade of the thirties illustrates the plight of teachers at this time as regards dismissal on the grounds of insubordination. In Johnson v. Taft School Dist., et al, a female teacher of junior high students was suspended and the principal of the school sought revocation or suspension of the teacher's junior high school credentials and her elementary life diploma. Although the teacher was found guilty of acts of insubordination and of maintaining an unprofessional attitude in her work, revocation of credentials and diploma was considered too severe a penalty to be inflicted.

Interesting, however, to this case which supports the Anderson conclusions are statements made in the proceedings.

The teacher is intrusted with the custody of children and their high preparation for useful life. His habits, his speech, his good name, his cleanliness, the wisdom and propriety of the unofficial utterances, his associations, all are involved. His ability to inspire children and to govern them, his power as a teacher, and the character for which he stands are matter of major concern in the teacher's selection and retention.<sup>20</sup>

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<sup>19</sup>Beale, Howard A History of Freedom of Teaching in American Schools (New York: American Book Company, 1941), 311.

<sup>20</sup>Johnson v. Taft School Dist. et al. District Court of Appeal, Fourth District, California, March 2, 1937.



### The Fifties and Sixties

While community pressures gradually decreased in the decades of the 50's and 60's, Bolmeir observed in 1960 that teachers were more restricted than most citizens in the exercise of their freedoms guaranteed by the Constitution.<sup>21</sup> By contrast, Calloway reported that 75 percent of Missouri teachers who responded to a survey felt no pressure against dancing, smoking, or card playing.<sup>22</sup> However, 58 percent responded that social drinking was "frowned on" by the community or the administration, and 20 percent said they found opposition to their participation in activities open to other citizens.<sup>23</sup> While some social mores appeared to be loosening for teachers, a review of court decisions on teacher involvement in subversive, political, union, and other controversial out-of-class activities during this time period by Bolmeir demonstrated the continuing vulnerability of teachers to strict standards of behavior.<sup>24</sup> Koenig, in an article for American School Board, discussed this continuing stricter standard of behavior and closed his discussion with the following recommendation:

"For the teacher who would avoid dismissal on the grounds of immorality or misconduct... guidelines would include the avoidance of illicit sexual activity; the avoidance of

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<sup>21</sup>Bolmeir, "Legal Scope of Teachers Freedoms," 24 Educational Forum 24(1960): 199-206.

<sup>22</sup>Calloway "Are Teachers Under Community Pressure?" 37 School and Community (1951):458

<sup>23</sup>Ibid.

<sup>24</sup>Bolmeir, "Legal Scope of Teachers Freedoms," 24 Educational Forum 24(1960): 199-206.

actions which might cast doubt on either character or reputation a thorough knowledge of the community in which service is being performed; and a readiness to forfeit a certain degree of personal independence and freedom of action."<sup>25</sup>

Also, in this same line of thinking, according to Nolte, the school board "may legally expect the teacher to exhibit exemplary behavior and comply with local mores in dress and conduct, especially in public."<sup>26</sup> Similarly, Garber adds another factor to the expectations of teachers and the limits of the Board. Garber concluded in 1968 that "the right of a school board to control the dress or appearance of the teacher is limited to occasions where the matter it desires to control has an adverse effect on students and/or learning conditions of the school."<sup>27</sup>

A case in March of 1969 illustrates this issue of teacher dress. The case of Edward Blanchet v. Vermilion Parish School Board involved a parochial school's regulation that male teachers wear neckties when teaching. Although the case was appealed on various issues one of which was the discriminatory factor since women were not required to wear neckties, the court and subsequent appeals upheld the Vermilion Parish School Board with their suspension of this teacher.<sup>28</sup>

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<sup>25</sup>Koenig, Robert A., Teacher Immorality and Misconduct, American School Board 155 (1968): 19.

<sup>26</sup>Nolte, Chester, "Teacher's Image, Conduct Important, American School Board".154 (1967):29.

<sup>27</sup>Garber, Lee O. "To Shave or Not to Shave: That Is the Requirement," Nation's Schools 82 (1968): 50.

<sup>28</sup>Blanchet v. Vermilion Parish School Board, 220 So. 2d 534 (La.1969).

Williams, in a 1967 dissertation, further supported the changing and sometimes inconsistent disposition of public school teacher dismissal cases.<sup>29</sup> Williams analyzed the legal causes for dismissal of public school teachers and noted that the states' statutory causes for dismissal lacked unity and that the courts' interpretations displayed a great deal of ambiguity among the causes.<sup>30</sup>

### The Seventies

During the early 70's, union activity, which increased significantly, became a frequent cause of disciplinary action against teachers<sup>31</sup> While the constitutionally guaranteed right of freedom of assembly or association should serve to advise school boards not to penalize teachers for participation in unions, insubordination or like charges were often the basis of dismissal or reprimand when teachers participated in activities against board wishes. An Instructor magazine teacher survey revealed that only 16 percent of those responding thought striking teachers should receive their regular salaries.<sup>32</sup> A survey of New Jersey teachers, who were jailed in 1971 because of an illegal strike, indicated that in spite of the criminal charges, they were still willing to strike if other alternatives for resolving disputes

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<sup>29</sup>Williams, R., "Legal Causes for Teacher Dismissal" 1. (1967) (Abstract-Ed.D. Dissertation, Duke University).

<sup>30</sup>Ibid.

<sup>31</sup>Nolte, Chester, "How Not to Pay Damages: Don't Penalize Teachers for Unionism," American School Board 156 (April 1969):8-10.

<sup>32</sup>"When Teachers Demonstrate Should They be Paid?" Instructor Teacher Opinion Poll (October 1968): 29.

failed.<sup>33</sup> This activity demonstrates continued restrictions on teacher behavior, but was in sharp contrast to the early cases involving marriage and early morning duties.

In 1973, Shannon wrote concerning new tactics used by plaintiffs, particularly teachers, in imposing their views and enforcing their rights against school boards.<sup>34</sup> Shannon, while making no value judgment concerning these tactics, pointed out that they are "realities" with which public school people must deal.<sup>35</sup>

In a case which demonstrates tactics by teachers to impose their views on the school board, a Minneapolis teacher, Glenn Ray, was charged with insubordination and discharged from his position of teacher. Mr. Ray had been asked to participate in an evaluation of the departments in which he taught and had refused to do so by intentionally providing responses to the evaluation form which were incomplete, unresponsive and argumentative. The court ruled against Mr. Ray and argued that the teacher could have filled out the forms as requested and made any criticism that he wanted to make, and could have used any other means to criticize the association or the administration. Therefore his first Amendment rights under the United States Constitution were not violated as charged by Mr. Ray.<sup>36</sup>

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<sup>33</sup>Barbaro, Fred. "Mass Jailing of Teachers," Clearing House 48 (September 1973): 18.

<sup>34</sup>Shannon, Thomas, "The New Tactics Used by Plaintiffs in Imposing Their Views on, or Enforcing Their Rights Against, Public School Boards-A Commentary," Journal of Law and Education 2 (January 1973): 77.

<sup>35</sup>Ibid.

<sup>36</sup>Ray v. Minneapolis Board of Ed., 202 N.W. 2d 375.

Teachers whose certificates were revoked for behavior associated with serious emotional and social problems such as extensive records of arrest for such violations as drunken driving, disturbing the peace, indecent exposure, lewd conduct, theft, and possession of dangerous drugs are another category of teachers reviewed.<sup>37</sup> While these violations will often fit in categories for dismissal other than insubordination, they are sometimes categorized under "willful disregard of orders from superiors or of board rules."<sup>38</sup>

In a like manner, the exercise of academic freedom or the claim of academic freedom when disobeying or disregarding school board rules, constitutes insubordination. During the 1970's, several writers dealt with the topic of the legal status of academic freedom in the schools. Nolte wrote that although there seems to be an inclination on the part of the courts to broaden the protected area of academic freedom in the classroom, this territory is still ill-defined and subject to further litigation.<sup>39</sup>

Knutson reviewed the historical development of academic freedom and analyzed the effect of state constitutional provisions on freedom to teach.<sup>40</sup> Knutson developed guidelines for teachers and submitted them to school attorneys for review and validation. Bartman, in another dis-

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<sup>37</sup>Ibid.

<sup>38</sup>Nolte, Chester, "Teacher's Image, Conduct Important," 29 American School Board (1967): 154.

<sup>39</sup>Nolte, Chester, "From Scopes to Epperson and Beyond: Academic Freedom in the Schools," NOLPE School Law Journal 47 (1973):3.

<sup>40</sup>Knutson, Everett John, "Academic Freedom: The Teacher in the Public School Classroom." (Unpublished Ed.D. diss., University of Denver, 1974).

sertation study, identified and described the legal parameters within which policy-making relative to academic freedom may take place. Bartman's study indicated that the courts referred to academic freedom as:

encompassing a teacher's unofficial acts, a teacher's utterances, and a teacher's teaching freedom within its scope, and that the protections for academic freedom in any of the categories are not absolute but must be balanced against other state interests.<sup>41</sup>

In an earlier case related somewhat to academic freedom and certainly to the imposition of the charge of insubordination against a teacher, an Oregon teacher was charged and successfully dismissed.<sup>42</sup> The teacher, Forman was discharged from her position in an Oregon school for teaching disloyalty to the government and disbelief in God, in violation of the instructions given her by the board. She was charged with stating that the government was "rotten to the core" and that "there is no God, and Jesus Christ is not the Son of God." When confronted by the board, Foreman exclaimed: "I teach as I darn please". When told to raise the flag in front of the school, she replied with characteristic gentility: "I won't do it; if you want the flag, you hoist it up yourself." Even though Forman contested the insubordination charge, she lost.<sup>43</sup>

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<sup>41</sup>Bartman, Robert Earl "The Legal Status of Academic Freedom in the Public Schools"( Ed.D.diss., University of Missouri-Columbus, 1975).

<sup>42</sup>Foreman v. School District No. 25 of Columbia County, 81 Ore. 587, 159 p. 1155 (1916).

<sup>43</sup>Davis, John D., "Immorality and Insubordination in Teacher Dismissals: An investigation of Case Law Statute Law and Employment Contracts" (Ph.D. diss.,University of Texas at Austin, 1971).

Fischer and Schimmel in a publication in 1973, authored a book that discussed teachers' rights associated with speech, private life, personal appearance, loyalty oaths, organization memberships, and political activity.<sup>44</sup> An article in *Today's Education* contained the observation that "even today, teacher behavior unrelated to professional matters has been the focus of school boards attention."<sup>45</sup> This theme which has been repeated throughout the review from the present study has been influenced by contemporary values; however, its thread is common to the Colonial school boards.

### Shifts in Focus

Walden, in 1974, wrote that "a teacher's private behavior, so long as it remains private, is not subject to an employer's scrutiny."<sup>46</sup> "A perceptible shift in judicial direction," was noted by Davis in the 70's. He concluded that in dismissing a teacher, a school board is now required to relate a teacher's misbehavior to his job performance or to the effect that misbehavior has on the education process or system.<sup>47</sup> Hudgins, in reviewing

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<sup>44</sup>Fischer, Louis, and David Schimmel, The Civil Rights of Teachers (New York: Harper & Row, 1973).

<sup>45</sup>Sinowitz, Betty, "Teacher's Right to Privacy" Today's Education 62 (November-December 1973): 89.

<sup>46</sup>Walden, John, "A Right to Privacy" The National Elementary Principal 53 (1974): 86.

<sup>47</sup>Davis, John C., "Teacher Dismissal on Grounds of Immorality," Clearing House 46 (1972): 422.

teacher misconduct, warned school boards against dismissing teachers without establishing this necessary connection.<sup>48</sup>

The wide public interest in teacher conduct was in evidence in an article, which appeared in the Wall Street Journal. The article titled "More Teachers Fight Efforts to Fire Them for Personal Conduct"<sup>49</sup> and another in Newsweek under the byline "Private Lives"<sup>50</sup> demonstrated this continuing public interest.

Cases heard by the courts during the 80's, continue to reflect the public interest in professionals who are in the public eye. An example case of the contemporary issues which maintain the traditional scrutiny of teachers is that of an Indiana teacher who was charged with insubordination. This teacher was dismissed in a case which involved improper and illegal conduct by the teacher and for which the school might ultimately be held liable. The teacher's personal relationship with a student was the focus of the charges and counter charges. The teacher's dismissal was upheld<sup>51</sup>

This review of the historical influences on teacher behavior and case results has demonstrated that while the scrutiny of the courts and the public remains diligent, it has been effected by the changing times. A case in point is the examples of the first and last cases presented in this study. The marital status of female teachers in 1916 v. the questionable and legal personal

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<sup>48</sup>Hudgins, H.C., Jr., "The Law and Teacher Dismissals" Nation's Schools 93 (1974):40.

<sup>49</sup>The Wall Street Journal, (New York) 93 1974,40.

<sup>50</sup>Seligmann, Jean. "Private Lives" Newsweek, (February 24, 1975): 87.

<sup>51</sup>Welch v. Board of Education of Chandler Unified School District, No. 80. 667 P.2d. 746.



relationship of a teacher and student in 1986 illustrates the range of societies' values and acceptances. In Chapter 4, the review of these and numerous cases by categories will present in detail the charge of insubordination as a cause for teacher dismissal.

## CHAPTER 3

### ANALYSIS OF STATE STATUTES

As of September, 1987, all fifty states, as indicated in Table I and in later text, have statutes pertaining to the dismissal of public school employees. The statutes vary from the simple dismissal charge of "good and just cause" to a comprehensive delineation of reasons and procedural due process steps mandated when granting a hearing to the employee. For example, Rhode Island states "good and just cause" as its only reason for teacher dismissal.

Table I delineates the grounds for dismissal on a state by state basis. Grounds range from the general "other and good cause" of 16 states to the detailed 16 categories outlined in Nevada's Teacher tenure law.

Before examining more closely the statutes or regulations that specifically describe insubordination, it is useful to analyze all statutes for commonality and differences. Grounds common to at least 21 states concerning teacher dismissal are (a) incompetency, (b) immorality, (c) insubordination and (d) neglect of duty. The twenty-one states who share these grounds are illustrated in Table II.

Table II lists forty-three reasons for dismissal. Partiality, misbehavior, member of illegal group, mental derangement, refusal to obey, communism, teacher absence, encouraging student to violate rules, and







Table ID

Causes	States									
	NM	NY	NC	ND	OH	OK	OR	PA	RI	SC
Incompetence		•				•		•		
Inefficiency		•		•	•		•			
Immorality		•	•	•	•	•	•	•		•
Insubordination		•	•	•			•			
Neglect of duty		•	•			•	•	•		•
Failure to perform duties			•	•						
Decrease teacher allotment			•							
Good and just cause					•				•	
Inadequate performance			•				•			
Conviction of a felony			•	•			•			
Conviction of moral turpitude			•			•	•			
Teacher absence										
Violation of rules										•
Substantial noncompliance of school laws										
Unbecoming conduct		•		•						
Nonconforming to regulations										
Conduct in violation of rules										
Unprofessional conduct										
Dishonesty										•
Unfit										
Mental derangement/disability							•			
Mental/physical disability		•	•	•			•			
Failure to comply to reasonable request										
Refusal to obey										
Communism										
Alcohol/drugs			•							•
Disloyalty										
Intemperance								•		
Drunkenness										•
Encouraging students to violate rules										
Maintaining training										
Breach of contract										
Revocation of certificate		•	•				•			
Partiality										
Misbehavior										
Member of illegal group										
Misconduct										
Willful violation of regulations					•			•		
Violation of professional code										
Cruelty/brutal treatment of pupils						•		•		
Debt			•							
Treason			•							
Un-American						•		•		



Table II

<b>Causes</b>	<b>Number of States Indicating Each Cause</b>
Incompetence	31
Inefficiency	13
Immorality	31
Insubordination	21
Neglect of duty	25
Failure to perform duties	2
Decrease teacher allotment	8
Good and just cause	16
Inadequate performance	4
Conviction of a felony	9
Conviction of moral turpitude	7
Teacher absence	1
Violation of rules	2
Substantial noncompliance of school laws	2
Unbecoming conduct	4
Nonconforming to regulations	1
Conduct in violation of rules	1
Unprofessional conduct	5
Dishonesty	3
Unfit	4
Mental derangement/disability	1
Mental/physical disability	12
Failure to comply to reasonable request	2
Refusal to obey	1
Communism	1
Alcohol/drugs	4
Disloyalty	2
Intemperance	3
Drunkenness	2
Encouraging students to violate rules	1
Maintaining training	1
Breach of contract	2
Revocation of certificate	6
Partiality	1
Misbehavior	1
Member of illegal group	1
Misconduct	3
Willful violation of regulations	5
Violation of professional code	1
Cruelty/brutal treatment of pupils	4
Debt	2
Treason	2
Un-American	2



maintain training are listed by only one state each. In contrast "good and just cause" is listed by sixteen states and "mental/physical disability" by twelve.

For example, the Texas Education Code Section 13.110 reads:

For good cause as determined by the local school board, good cause being the failure of a teacher to meet the accepted standards of conduct for the profession as generally recognized and applied in similarly situated school districts throughout Texas...<sup>1</sup>

Of the twelve states that list mental and physical disability as a cause for teacher removal only two states qualify the reason. For example, the Minnesota statute reads:

Continuing physical or mental disability subsequent to a twelve months leave of absence and inability to qualify for reinstatement...<sup>2</sup>

Missouri's statute in comparison reads: "Physical or mental condition unfitting him to instruct or associate with children."<sup>3</sup>

The states share ground on reasons for dismissal as illustrated by the fact that thirty-six reasons are listed by less than ten states. Three reasons-inefficiency, good and just cause, mental/physical disability-are listed by ten to twenty states. Insubordination and neglect of duty are listed by twenty-one and twenty-five states respectively. Incompetence and immorality are

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<sup>1</sup>Texas State Education Code, Section 13.110, 1987.

<sup>2</sup>Minnesota State Education Code, Section 125.12, 1987.

<sup>3</sup>Missouri State Education Code, Section 168.114, 1987.

each listed by thirty-one states.

Many reasons are listed in state statutes as grounds for teacher dismissals. Incompetence, inefficiency, immorality, insubordination, neglect of duty, good and just cause, and mental/physical disability range from twenty-four percent to sixty-two percent of states listing them respectively.

The terms incompetency, inefficiency and inadequacy are synonymous terms by definition and judicial application. When these terms are then viewed as a comparable grounds for dismissal, it becomes the most common cause for teacher dismissal in the current fifty state statutes. Eighty percent of the states use one or a combination of these three causes for dismissal. This combined view of this cause for dismissal is illustrated in Table III.

While most states that list incompetency do not choose to define it, Alaska does so as shown by the following section extracted from the state statute:

(1) incompetency, which is defined as the inability or the unintentional or intentional failure to perform the teacher's customary teaching duties in a satisfactory manner."<sup>4</sup>

Tennessee defines incompetency as well as inefficiency. The statute reads:

"Incompetence" means being incapable; lacking adequate power, capacity, or ability to carry out the duties and responsibilities of the position. This may apply to physical, mental, educational, emotional or other personal conditions.

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<sup>4</sup>Alaska State Education Code, Section 14.20.170, 1987.

Table III

<i>States</i>	<i>Causes</i>		
	<i>Incompetency</i>	<i>Inefficiency</i>	<i>Inadequacy</i>
Alabama	•		
Alaska	•		
Arizona			•
Arkansas			
California	•		
Colorado	•		
Connecticut	•		
Delaware	•		
Florida	•		
Georgia	•		
Hawaii		•	
Idaho	•		
Illinois			
Indiana			
Iowa	•		
Kansas	•		
Kentucky	•	•	
Louisiana	•		
Maine			
Maryland	•		
Massachusetts	•	•	
Michigan			
Minnesota		•	
Mississippi	•		
Missouri	•	•	

<i>States</i>	<i>Causes</i>		
	<i>Incompetency</i>	<i>Inefficiency</i>	<i>Inadequacy</i>
Montana	•		
Nebraska	•		
Nevada		•	•
New Hampshire	•		
New Jersey	•	•	
New Mexico			
New York	•	•	
North Carolina			•
North Dakota		•	
Ohio		•	
Oklahoma	•		
Oregon		•	•
Pennsylvania	•		
Rhode Island			
South Carolina			
South Dakota	•		
Tennessee	•	•	
Texas	•		
Utah			
Vermont	•		
Virginia	•		
Washington			
West Virginia	•		
Wisconsin		•	
Wyoming	•		•

It may include lack of training or experience. Evident unfitness for service; physical, mental, or emotional condition unfitting teacher to teach or associate with children; or inability to command respect from subordinates or to secure cooperation of those with whom he must work;

"Inefficiency" means being below the standards of efficiency maintained by others currently employed by the board for similar work; habitually tardy, inaccurate, or wanting in effective performance of duties...<sup>5</sup>

Table III indicates that no state lists the three terms-incompetency, inefficiency and inadequacy. Two states lists inefficiency and inadequacy-Nevada and Oregon. Nevada, North Carolina, Oregon, Wyoming, and Arizona are the only states that list inadequacy. Thirty-one states list incompetency and thirteen list inefficiency. Six states list incompetency and inefficiency. These numbers are not impressive until viewed in combination.

There is a wide range in the number of causes for teacher dismissals among the fifty states. The greatest number is Nevada with sixteen which surpasses North Carolina with fourteen and California with twelve. This contrast significantly with Arkansas, New Mexico, Utah and Washington which list no specific reasons for dismissals. The Arkansas statutes state..."that a teacher may be terminated for any cause which is not arbitrary, capricious, or discriminatory."<sup>6</sup> See Table IV for an account of the number of causes for dismissal listed by the state.

As described earlier, Nevada and North Carolina have the most detailed delineation of reasons for dismissal with sixteen and fourteen

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<sup>5</sup>Tennessee State Education Code, Section 49-5-511, 1987.

<sup>6</sup>Arkansas State Education Code,Section 80-1266,4,.1987.

Table IV

<i>States</i>	<i>Number of Causes</i>
Alabama	6
Alaska	3
Arizona	3
Arkansas	0
California	12
Colorado	7
Connecticut	6
Delaware	7
Florida	7
Georgia	8
Hawaii	4
Idaho	8
Illinois	0
Indiana	6
Iowa	4
Kansas	2
Kentucky	7
Louisiana	4
Maine	2
Maryland	5
Massachusetts	6
Michigan	1
Minnesota	9
Mississippi	6
Missouri	9

<i>States</i>	<i>Number of Causes</i>
Montana	4
Nebraska	7
Nevada	16
New Hampshire	4
New Jersey	4
New Mexico	0
New York	8
North Carolina	14
North Dakota	7
Ohio	4
Oklahoma	6
Oregon	10
Pennsylvania	8
Rhode Island	1
South Carolina	7
South Dakota	4
Tennessee	5
Texas	5
Utah	0
Vermont	3
Virginia	6
Washington	0
West Virginia	6
Wisconsin	4
Wyoming	5

respectively The Nevada statute list the following as reasons for teacher dismissal.

1. Inefficiency
2. Immorality
3. Unprofessional conduct
4. Insubordination
5. Neglect of duty
6. Physical or mental incapacity.
7. A justifiable decrease in the number of positions
8. Conviction of a felony or a crime involving moral turpitude.
9. Inadequate performance.
10. Evident unfitness for services
11. Failure to comply with such reasonable requirements as a board may prescribe.
12. Failure to show normal improvement and evidence of professional training and growth.
13. Advocating overthrow of the Government of the United States or of the State of Nevada by force, etc.
14. Any cause which constitutes revocation of a teacher's state certificate.
15. Willful neglect or failure to observe and carry out the requirements of the Title; or
16. Dishonesty.<sup>7</sup>

Tennessee, Nebraska, and Alaska are the only states whose statutes includes the definition of the words or phrases used in the regulation. Of special interest to this review is the definition of insubordination. The definition of the Tennessee statute defines insubordination as:

(A) Refusal or continued failure to obey the school laws of Tennessee, or to comply with the rules and regulations of the board, or to carry out specific assignments made by the

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<sup>7</sup>Nevada State Education Code, Section 391.312, 1987.

board, the superintendent or the principal, each acting within its own jurisdiction, when such rules, regulations and assignments are responsible and not discriminatory;

(B) Refusal to participate in an in-service training program as set up by the local Board of education and approved by the state board of education.

(C) Treason: any effort to sabotage or overthrow the government of the United States; or

(D) Refusal by the teacher to disclose to the board whether or not he is, or has been, a member of the Communist or any other party which advocates the overthrow of the government.<sup>8</sup>

It becomes evident, upon examination, that the variation in the number of grounds for dismissal among states may be a factor of how they are stated. In the Tennessee definition of insubordination are included four of the sixteen causes listed in the Nevada statute.

Insubordination is cited specifically as a cause for teacher dismissal in twenty-one state statutes. See Table V. It is pertinent also to examine those grounds for dismissal which are synonymous with insubordination. These include:

1. Violation of rules
2. Substantial non-compliance of school laws
3. Not conforming to regulations
4. Conduct in violation of rules
5. Failure to comply with reasonable regulations
6. Refusal to obey
7. Willful violation of regulations
8. Refusal to comply with regulations

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<sup>8</sup>Tennessee State Education Code, Section 49-5-511, 1987.

Table V

<i>States</i>	<i>Insubordination</i>
Alabama	•
Alaska	
Arizona	
Arkansas	
California	
Colorado	•
Connecticut	•
Delaware	•
Florida	•
Georgia	•
Hawaii	
Idaho	
Illinois	
Indiana	•
Iowa	
Kansas	
Kentucky	•
Louisiana	
Maine	
Maryland	•
Massachusetts	•
Michigan	
Minnesota	•
Mississippi	
Missouri	•

<i>States</i>	<i>Insubordination</i>
Montana	
Nebraska	•
Nevada	•
New Hampshire	
New Jersey	
New Mexico	
New York	•
North Carolina	•
North Dakota	•
Ohio	
Oklahoma	
Oregon	•
Pennsylvania	
Rhode Island	
South Carolina	
South Dakota	
Tennessee	•
Texas	
Utah	
Vermont	
Virginia	
Washington	
West Virginia	•
Wisconsin	
Wyoming	•



With the addition of the listed causes above, as synonymous with insubordination, there are a total of thirty-seven states who list one of these causes for dismissal. See Table VI. An example is the California statute which indicates the following as a ground for teacher dismissal:

Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing him...<sup>9</sup>

Since insubordination is one of the most common causes for teacher litigation regarding dismissal, it is expected to see this ground listed so frequently.

The variation in language, reasons for dismissal and specificity are factors which make the examination of teacher tenure laws both interesting reading as well as informative and reflective of states' values and perceptions of reasonable expectations of teachers. These statutes are printed in their entirety as related to teacher dismissal in the Appendix. For the purposes of this review, the word insubordination is italicized within the text of the statutes. It does not appear in this way in the original statutes.

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<sup>9</sup>California State Education Code, Section 44932, 1987.

Table VIA

<i>States</i>	<i>Insubordination</i>	<i>Violation of Rules</i>	<i>Non-Compliance With School Laws</i>
Alabama	.		
Alaska			.
Arizona			
Arkansas			
California			
Colorado	.		
Connecticut	.		
Delaware	.		
Florida	.		
Georgia	.		
Hawaii			
Idaho			
Illinois			
Indiana	.		
Iowa			
Kansas			
Kentucky	.		
Louisiana			
Maine			
Maryland	.		
Massachusetts	.		
Michigan			
Minnesota	.		
Mississippi			
Missouri	.		

<i>States</i>	<i>Insubordination</i>	<i>Violation of Rules</i>	<i>Non-Compliance With School Laws</i>
Montana			
Nebraska	.		
Nevada	.		
New Hampshire			
New Jersey			
New Mexico			
New York	.		
North Carolina	.		
North Dakota	.		
Ohio			
Oklahoma			
Oregon	.		
Pennsylvania			
Rhode Island			
South Carolina		.	
South Dakota			
Tennessee	.		
Texas			
Utah			
Vermont			
Virginia		.	
Washington			
West Virginia	.		
Wisconsin		.	
Wyoming	.		

Table VIB

<i>States</i>	<i>Nonconforming to Regulations</i>	<i>Conduct in Violation of Rules</i>	<i>Failure to Comply With Reasonable Rules</i>
Alabama			
Alaska			
Arizona		.	
Arkansas			
California			
Colorado			
Connecticut			
Delaware			
Florida			
Georgia			
Hawaii			
Idaho			
Illinois			
Indiana			
Iowa			
Kansas			
Kentucky			
Louisiana			
Maine			
Maryland			
Massachusetts			
Michigan			
Minnesota			
Mississippi			
Missouri			

<i>States</i>	<i>Nonconforming to Regulations</i>	<i>Conduct in Violation of Rules</i>	<i>Failure to Comply With Reasonable Rules</i>
Montana			
Nebraska			
Nevada			
New Hampshire	.		
New Jersey			
New Mexico			
New York			
North Carolina			
North Dakota			
Ohio			
Oklahoma			
Oregon			
Pennsylvania			
Rhode Island			
South Carolina			
South Dakota			
Tennessee			
Texas			.
Utah			
Vermont			.
Virginia			
Washington			
West Virginia			
Wisconsin			
Wyoming			

Table VIC

<b>States</b>	<b>Refusal to Obey</b>	<b>Willful Violation of Rules</b>	<b>Refusal to Comply With Regulations</b>
Alabama			
Alaska			
Arizona			
Arkansas			
California	.		
Colorado			
Connecticut			
Delaware			
Florida			
Georgia			
Hawaii		.	
Idaho			
Illinois			
Indiana			
Iowa			
Kansas			
Kentucky			
Louisiana			
Maine			
Maryland			
Massachusetts			
Michigan			
Minnesota			
Mississippi			
Missouri		.	

<b>States</b>	<b>Refusal to Obey</b>	<b>Willful Violation of Rules</b>	<b>Refusal to Comply With Regulations</b>
Montana		.	
Nebraska			
Nevada			.
New Hampshire			
New Jersey			
New Mexico			
New York			
North Carolina			.
North Dakota			
Ohio		.	
Oklahoma			
Oregon			
Pennsylvania		.	
Rhode Island			
South Carolina			
South Dakota			
Tennessee			
Texas			
Utah			
Vermont			
Virginia			
Washington			
West Virginia			
Wisconsin			
Wyoming			

## CHAPTER 4

### INSUBORDINATION AS A DISMISSAL GROUND

The efficient functioning of a school system relies on the authority of boards of educations to enforce discipline among teachers.<sup>1</sup> Insubordination is frequently one of the grounds upon which the dismissal of a public school teacher is permitted. Insubordination generally means a willful disregard of reasonable and valid directives or a defiant attitude of noncompliance toward board regulations or orders by an administrative superior. Disobedience is frequently used as a synonym for insubordination.

Not all violations of orders or rules, however, are proof of insubordination. In adjudicating dismissal actions based on this ground, the courts seek to determine the "reasonableness" of the demand. When rules or orders are found unreasonable, violation of them will not be cause for disciplinary action of any kind. The unquestioning obedience to orders which is often characteristic of the military has no place in America public education. In addition, the following circumstances must be proved; whether or not the teacher tried to comply with the rule or order, and whether the teachers' motive for violating the rule or order was

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<sup>1</sup>Shockley v. Board of Education (1959), sup 52 Del 237, 155 A 2d, reh den (Sup), 156 A2d 214.

admirable. This chapter seeks to determine what the courts have held to be evidence of insubordination.

### Categorization of Insubordination Cases

In order to review cases in which insubordination was the grounds for dismissal, it becomes necessary to establish an order for this review. An analysis of case law establishes five categories relative to dismissal for insubordination.<sup>2</sup>

These cases can be assigned to one of these five major categories:

1. Failure to Obey Superiors
2. Violation of Board Rules
3. Non-Cooperation
4. Hostile Actions
5. Refusal to Discuss Loyalty with Superiors

#### Failure to Obey Superiors

The failure to obey the orders given by superiors accounts for a sizeable number of the insubordination cases which have been litigated. These instances of disobedience can be separated into eight areas.

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<sup>2</sup>Davis, John D. "Immorality and Insubordination in Teacher Dismissals: An Investigation of Case Law, Statute Law and Employment Contracts" (Ed.D. diss., University of Texas at Austin, 1971).

### Refusal to Accept an Assignment

A school board's right to assign personnel has been firmly established by the judiciary. One of the earliest cases noted in this category was an Indiana teacher who was dismissed for insubordination when she failed to teach music two days per week in one school and three days in another.<sup>3</sup> Stiver's schedule was established by school officials. Evidently, plaintiff Stiver sacrificed music instruction in order to care for students in an assembly room. Her testimony regarding time expenditures conflicted with testimony given by other school employees. Although plaintiff Stiver insisted there was no "willful" disobedience, the court upheld dismissal, noting that "the element of willfulness is satisfied by an intentional act.

In a 1938 Pennsylvania case, Ganaposki, a physical education and history teacher, was relieved of his duties as football coach but retained as coach of the basketball team.<sup>4</sup> The teacher was not satisfied with this reassignment and refused to continue his basketball coaching duties, claiming that his contract was "to teach" - a contract which he felt did not encompass coaching. The court sustained school board's decision and Coach Ganaposki was without employment.

The judiciary has also firmly established a school board's right to re-assign personnel. In a 1942 Pennsylvania case, a senior high school principal was re-assigned to a junior high school.<sup>5</sup> Wesenberg, the administrator in question, refused to accept the new assignment. The judicial record is

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<sup>3</sup>Stiver v. State, 211 Ind. 370, 7 N.E. 2d 181 (1937).

<sup>4</sup>Appeal of Ganaposki, 332 Pa. 550, 2A. 2d 742 (1938).

<sup>5</sup>Commonwealth v. School District of City of Bethlehem, 24 A. 2d 673 (Pa. 1942).

unclear and circumstances complex. Nevertheless, the court maintained that Wesenberg's refusal to accept the re-assignment was insubordination, an act justifying the board's dismissal.

A year later, in the 1943 Mills case, the Oklahoma Supreme Court sustained school board's action dismissing an elementary teacher because she refused to teach the fourth and fifth grade classes.<sup>6</sup> Mills had been teaching seventh grade before her reassignment. The court maintained that in the absence of legislative restrictions, school boards have the discretionary power to assign, re-assign, and transfer teachers. Dismissal action was upheld.

The 1959 California Swan case has achieved a certain legal prominence because of the California Supreme Court's effort to correlate disobedience with causes enumerated by statutory law.<sup>7</sup> Swan, a principal with twenty-nine years of service in the school district, was discharged after: (1)refusing to accept a teaching assignment (to be carried out along with her administrative functions), (2)failing to attend meetings with the school superintendent, (3)dismissing students early; and (4)encouraging teachers to make duplicates of their school keys (a violation of school policy).

The court sustained Swan's dismissal, maintaining that her behavior justified employment termination on any of three counts: unprofessional

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<sup>6</sup>Consolidated School District No. 4, Bryan County v. Mills, 192 Oklahoma 687, 139 P. 2d 183 (1943).

<sup>7</sup>Board of Education of City of Los Angeles v. Swan, 261 P. 2d 331 (Cal., 1955).



conduct, evident unfitness for service, and/or persistent violation of or refusal to obey the school laws of California.

Similar to the above Swan case, the Delaware Supreme Court in the 1959 Schockley case sustained the school board's decision dismissing the school principal because he refused to teach two ninth-grade social studies classes.<sup>8</sup> In this case at law the school superintendent told the principal on February 10th to begin teaching the two social studies classes. The principal refused to do so. The superintendent on April 24th again asked the principal if he intended to begin the classes. Plaintiff Schockley said no, explaining that there were only twenty-seven days remaining in the term. The court noted that the superintendent had recommended the principal's retention for the following year at a board meeting. Only after being overruled by the school board did the superintendent change his recommendation to that of dismissal, justifying the action by citing Schockley's failure to teach the two classes. The court reversed the school board's dismissal of the principal. The judges were unable to reconcile a charge of "willful and persistent insubordination", with the single directive issued by the superintendent, followed up only after a lapse of two and one-half months. In addition, the court agreed that it was unreasonable for Schockley to assume the teaching responsibilities with only twenty-seven days of school remaining.

In 1964, Charles E. Chattin, a vocational education teacher, was dismissed for refusing to comply with his superiors request that he maintain

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<sup>8</sup>*Schockley V. Board of Education, Laurel Special School District*, 149 A 2d 331 (Del. 1959).

financial records in the manner prescribed by the school superintendent. When Chattin sued the school board, the Circuit Court found the charges and proof insufficient to justify the dismissal. However on appeal by the school board, the court found that all charges could be fairly classified as either insubordination, inefficiency, or incompetence, these being among the legal causes for dismissal authorized by KRS 161.790.<sup>9</sup>

In 1970 in Utah, Brough was a high school teacher and also a member of the Utah House of Representatives.<sup>10</sup> A staunch critic of federal aid to education, Brough was frequently at odds with some of his co-workers. Following his absolute refusal to attend a workshop for teachers because of the presence of federally funded materials, the teacher-politician was transferred from the Millard High School to the Delta Junior High School. He refused to accept the new assignment and, therefore, was dismissed for insubordination. The action of the school board was affirmed by the court.

In 1971, a Minneapolis teacher, Glenn Ray, was discharged for repeatedly refusing to comply with directives regarding the evaluation of the foreign language and social studies department. On June 24, 1971, the school board discharged Glenn Ray for insubordination. Mr. Ray had refused to complete requested evaluations of the foreign language and social studies departments and countered that to do so was violation of his constitutional rights including freedom speech.

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<sup>9</sup>Board of Education of Ashland School District v. Chattin, Ky., 376 S.W. 2d 693 (1964).

<sup>10</sup>Brough v. Board of Education of Millard County School District, 460 P. 2d 336, 463 P. 2d 567 (Utah, 1970).

While there was no statutory or common-law definition of insubordination, the decision of the school board and the concurrence of the trial court that such conduct was insubordination (as defined in Shockley) and was a proper determination affirmed.<sup>11</sup>

In a recent Louisiana case, a teacher was dismissed for insubordination when she refused to follow the principal's directive to work with students during her free period. On two occasions, the teacher refused the students either by locking the classroom door and leaving or by leaving the students unsupervised. Although the teacher claimed a violation of due process rights at the hearing level, the discharge was affirmed by the district court.<sup>12</sup>

#### Failure to Attend a Meeting

Grosjean was a San Francisco teacher with an unusually poor attendance record.<sup>13</sup> Having absented herself on numerous occasions without receiving prior permission as required by board regulation, she was sent for by the superintendent. When she did get to his office he was out. She then ignored the matter for a week, after which she telephoned the superintendent. Her failure to meet with the administrator and her apparent

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<sup>11</sup>Ray v. Minneapolis Board of Education, Special School District No.1, 202 N.W. 2d 375 (1972).

<sup>12</sup>Meyers v. Sabine Parish School Board, 499 So. 2d 690 (La. App. 3d Cir. 1986).

<sup>13</sup>Grosjean v. Board of Education of City and County of San Francisco, 181 P. 113 (Cal. 1919).

unconcern about so doing were accepted by the court as grounds for dismissal.

In an interesting Wisconsin case, *Millar*, a teacher with a reputation as a strict disciplinarian, received notice from the clerk of the school board to attend a board meeting.<sup>14</sup> Curious as to purpose of the meeting, Millar sought an explanation from several people. His principal told him that it would be about his discipline policies. The board president claimed ignorance of the meeting's purpose. The board clerk, however, was not reluctant to state the agenda. He informed Millar that his (Millar's) contract was not going to be renewed for the following year and that the meeting was designed to give him an opportunity to resign, "to save face professionally." Millar suggested that the clerk "go to hell" and stated that he had no intention of letting the board "put a ring in my nose." Millar's dismissal was predicated on the teacher's refusal to attend the meeting, not his disrespect or lack of teaching competence. The court insisted that the school board decision was unreasonable and ordered damages for Millar. It noted that the disrespect was provoked and that failure to attend a meeting which is called for the purpose of obtaining one's resignation is not an instance of insubordination.

A Pennsylvania teacher was faced with the choice of attending "Open House" at her school, as ordered by her superior, or of traveling to Pittsburgh as a chaperone for the children in her husband's school.<sup>15</sup> She chose

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<sup>14</sup>*Millar v. Joint School District No. 2*, 2 Wis. 2d 303, 86 N.W. 2d 455 (1957).

<sup>15</sup>*Johnson v. United School District Joint School Board*, 201 Pa. Super. 305, 191 A. 2d 897 (1963).

the latter, much to the irritation of her own school board. A strongly worded opinion from the court upheld the teacher's dismissal:

Any school teacher who lacks an understanding of her responsibilities to be present on this occasion and who arrogantly refuses to obey the direction of her employer can properly be held by the board employing her to be unfit to continue in the employment of that board.<sup>16</sup>

### Refusal to Perform an Extra-Curricular Assignment

In a rather unusual New York decision, a court acknowledged the validity of a board's charges against a teacher but revised the penalty assigned.<sup>17</sup> Moser was fired for "failing to report, pursuant to direction, to assist in the supervision of a student examination" and of failing "to maintain a complete plan book." The court reduced the penalty for these infractions from dismissal to a three-month suspension.

An Oklahoma teacher objected to reporting to school one-half hour before the usual time in order to supervise students on the playground.<sup>18</sup> The assignment was taken in turn by all the teachers. Urie, the objecting teacher, claimed that his contract did not require him to report early for such tasks. While remarking that : "He appeared to be very particular that he should not devote any additional time to his duties," the court concurred with the school board's dismissal actions.

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<sup>16</sup>Ibid.

<sup>17</sup>Moser v. Board of Education, 230 N.Y.S. 2d 298 (1962).

<sup>18</sup>Urie v. Board of Education, 208 P. 211 (Oklahoma, 1922).

One might argue that the next case to be examined should not be included in a section on extra-curricular assignment. Nevertheless, the assignment in question was different enough to justify special note.<sup>19</sup>

Williams was a shop teacher in Louisiana. The board was planning to have a sidewalk constructed at Williams' school. The teacher was told to build forms for the sixty-foot walk. It was to be a demonstration lesson for his classes and a means of saving money for the district. Once the forms were in place, a cement truck would bring in the mortar and men would be hired to complete the project. Williams refused to do the work. The court said:

It is not the function of a court to sit in judgment on the propriety of school curriculum, methods of teaching and demonstrations which school officials have determined necessary and proper. In the case at bar, there is no evidence that the order given plaintiff was unreasonable, arbitrary or capricious. It seems clear to us that there is a reasonable relationship between the instruction demonstration which plaintiff was instructed to give and the Industrial Arts curriculum which had been initiated at Carver High School.<sup>20</sup>

This is a clear statement of the impropriety of judiciaries attempting to administer schools. Nevertheless, the courts must make judgments on the reasonableness of administrative decisions. Indeed, the courts are asked to walk a very fine line in adjudicating disputes over teacher dismissals. In the instant decision, the court saw no reason for reversing the board's insubordination dismissal of Williams.

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<sup>19</sup>State v. Avoyelles Parish School Board, 147 So. 2d 729 (Louisiana, 1962).

<sup>20</sup>Ibid.

In Alabama, Wigley was dismissed on twelve counts.<sup>21</sup> The charges included failure to appear at a "land judging contest" (Wigley was a vocational agriculture teacher), failure to plant shrubs around the school, failure to inform the principal when leaving school grounds, and failure to submit progress reports on pupils. Testimony, however, failed to establish insubordination. The Supreme Court of Alabama dismissed all charges and voided Wigley's termination.

#### Refusal to Re-admit Students to Class

Leddy, an Illinois teacher, was told to re-admit a student who she had suspended.<sup>22</sup> The teacher, however, demanded a public apology from the student along with a promise that the pupil would not misbehave in the future. Leddy was removed for not following the superintendent's directive. The court agreed that the teacher had exceeded her authority.

Allione, another Illinois educator, was charged with several acts of insubordination.<sup>23</sup> The principal claimed that she refused to re-admit to class a pupil whom she had suspended a week earlier. Under questioning, however, the administrator admitted that he could not be certain that Allione knew it was he who sent the girl back to class. Furthermore, he acknowledged that he did not bring this alleged insubordination to the

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<sup>21</sup>State Tenure Commission v. Madison County Board of Education, 213 So. 2d 823 (Alabama, 1968).

<sup>22</sup>Leddy v. Board of Education of School District No. 99, 160 Ill. App. 187 (1911).

<sup>23</sup>Allione v. Board of Education of South Fork Community High School District, 173 N.E. 2d 13 (Illinois, 1961).

teacher's attention. A second charge was that after being informed of her dismissal from her home economics teaching position, Allione claimed that she would not have made the home visitations prior to the beginning of the next school year which the home economics teacher was required to make. Finally, she was accused of questioning the principal's competency.

The teacher's dismissal was overturned by the court. It determined that there could be no willful disobedience in not re-admitting a student when it was not known if she knew of the order. Second, the court was unimpressed by what Allione said she would have done about the visitation requirement. These remarks could not be used to justify a dismissal which had preceded them. With regard to the teacher's criticism of the principal, the court said: "It is unreasonable to assume that a teacher in private conversation may express her opinion of a fellow instructor only at the peril of losing her job."

#### Refusal to Admit Supervisor into Classroom

A 1962 Louisiana case reads like comic opera.<sup>24</sup> The results, though, were not particularly amusing, at least not to Tichenor. During a three-month period in 1961, Tichenor thwarted the efforts of four different school officials to enter his classroom for the purpose of observing his teaching. An acting principal, a district consultant, a director of secondary education, and an assistant superintendent were all rebuffed in their attempts to gain entry. The assistant superintendent even returned for a sec-

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<sup>24</sup>Tichenor v. Orleans Parish School Board, 144 So. 2d 603 (Louisiana, 1962).



ond try, but his persistence was not rewarded. Tichenor claimed that he was being harassed because of his efforts to promote desegregation in the New Orleans schools. The court found no evidence to support his contention and it affirmed Tichenor's removal.

### Refusal to Fill-out a Questionnaire

In 1943, the federal government's war program encouraged an increase in math and science instruction and physical education. In view of these recommendations, the New Orleans school board gave consideration to lengthening the school day.<sup>25</sup> Reed, a high school teacher and teacher organization leader in the district, raised the objection that a prolonged working day might have the adverse effect of interfering with teachers' war work. Consequently, the board constructed a "War Work Questionnaire" to determine the extent, if any, of disruption which a lengthened school day might cause. Mrs. Reed refused to complete the questionnaire, stressing an invasion of privacy. In finding for the board, the court stated:

If the school board had attempted to require plaintiff to account to it for the use of her time after her duties at school were ended, with the purpose of harassing her or otherwise prying into her private life, there would be some basis for the proposition she had advanced... But we cannot regard that the questionnaire in the instant case sought to inquire into plaintiff's private affairs... On the contrary, the issuance of the questionnaire not only had direct relation to school work (or a proposal to intensify the school curriculum to conform to the War effort ) but it emanated as a consequence of the protest

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<sup>25</sup>Reed v. Orleans Parish School Board, 21 So. 2d 895 (Louisiana, 1945).

of plaintiff and others...that the accelerated program might interfere with the War work of the teachers.<sup>26</sup>

### Misuse of Leave

Yuen was also a teacher organization leader.<sup>27</sup> He submitted a request for permission to be absent on two days so that he could attend a hearing of the Illinois School Problems Commission and a meeting of the National Department of Classroom Teachers. Permission was denied because the meetings were unrelated to Yuen's teaching field (physical education) and because there were no qualified substitutes available. He repeated his request but was refused again. Nevertheless, Yuen absented himself on the two days in question and attended the meetings. His dismissal was affirmed by the court which construed the board action as reasonable and the teacher's behavior as deliberately defiant.

The highest state court in New York upheld the suspension of a teacher for insubordination.<sup>28</sup> The school principal saw the teacher out walking during a day he was absent from school on sick leave. Since the teacher looked to be in good health, the principal telephoned him to come to the office for a conference. During the conversation the teacher asked "if he should bring a note from his doctor or his mother." The teacher attended the conference, and when asked for an explanation, he told the district superintendent to speak to his lawyer, then walked out, slamming the

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<sup>26</sup>Ibid.

<sup>27</sup>Yuen v. Board of Education of School Board No. U-46, 222 N.E. 2d 570 (Illinois, 1966).

<sup>28</sup>Peterkin v. Board of Educ, of Union Free School Dist. No. 5, 46 App. Div. 2d 676, 360 N.Y.S. 2d 53 (Sup. Ct. 1974).

door. The doctor provided a detailed description of the plaintiff's illness as well as the illnesses of the family members. The court pointed out that the district superintendent's investigation was appropriate and his request for an explanation was lawful and warranted a direct response.

In a case in Maine, teacher Jeanne Fernald was dismissed for insubordination from her tenured position.<sup>29</sup> Mrs. Fernald had requested a week's leave of absence to accompany her husband on a trip to Jamaica. The leave was denied but Mrs. Fernald was absent anyway. Mrs. Fernald appealed the dismissal, however the Supreme Judicial Court, Delhanty, J., held that plaintiff's absence from school duties after her plans to be absent had been disapproved by school authorities warranted dismissal.

The following case also involved a teacher who was absent from teaching duties without permission. The disposition, however, was different from Fernald. Mr. Carl Beverlin was absent on the first day of school in August, 1974 in order to register for a graduate class.<sup>30</sup> Although Mr. Beverlin reported that he attempted to contact his principal and assistant principal, he was dismissed for failure to report for duty. The grounds for dismissal were willful neglect of duty and insubordination.

The court found that Mr. Beverlin's actions did not support a finding of insubordination and willful neglect of duty. Although he missed the better part of one school day, his pupils did not suffer his absence, because they were not scheduled to attend classes until later. Moreover, the reason

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<sup>29</sup>Fernald v. City of Ellsworth Superintending School Committee, Me. 342 A. 2d 704 (1975).

<sup>30</sup>Beverlin v. Board of Education of County of Lewis, et al. 216 S.E. 2d 554 (1975).

for his absence was to augment his skills with graduate work. Beverlin's unexcused absence best might be described as an error of judgment, resulting in no harm to his employers. Mr. Beverlin was ordered reinstated and to be docked one day's pay for his unexcused absence on August 26, 1974.

### Teaching That Which is Proscribed by the Board

Foreman was discharged from her position in an Oregon school for "teaching disloyalty to the government and disbelief in God," in violation of the instructions given her by the board.<sup>31</sup> She was charged with stating that the government was "rotten to the core" and that "there is no God, and Jesus Christ is not the Son of God." When confronted by the board, Foreman exclaimed: "I teach as I darn please." When told to raise the flag in front of the school, she replied with characteristic gentility: "I won't do it; if you want the flag, you hoist it up yourself." It is difficult to imagine Foreman's contesting the insubordination charge. She did. And she lost.

### Violation of Board Rules

This dismissal charge has been made many times. As noted in Chapter II, statute law and the rules and regulations of the board of education are incorporated into the teacher's contract. This infraction differs from that just summarized in that here one is concerned with violation of written rules, not the oral commands of persons in authority.

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<sup>31</sup>Foreman v. School District No. 25 of Columbia County, 81 Ore. 587, 159 P. 1155 (1916).

## Marrying

In 1930, an Indiana board of education passed a regulation that said "no married women should be employed as teachers . . . after the end of the school year 1930-1931."<sup>32</sup> Griffin was a married teacher in the district with an indefinite contract. She refused to accept her own dismissal. The court wouldn't accept it either. In knocking down the board rule, the court declared:

The arbitrary determination of the school board that the marriage of women teachers (it is noted that the resolution of the school board attempted to operate against women only, and not against men teachers who married) was "good and just cause" for their removal is, as a matter of law, declared to be erroneous and invalid.<sup>33</sup>

The very next year another Indiana court re-affirmed the above opinion by ruling against a similar board rule in another district.<sup>34</sup> And yet another Indiana adjudication saw the court reverse a board's insubordination dismissal of a female teacher who, though secretly married, signed her contract with her maiden name.<sup>35</sup> However, despite the fact that contracts in restraint of marriage have often been declared void, some courts have upheld the dismissal of teachers who married. This

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<sup>32</sup>School City of Elwood v. State ex rel. Griffin, 203 Ind. 626, 180 N.E., 471 (1932).

<sup>33</sup>School City of Elwood v. State ex rel. Griffin, 203 Ind. 626, 180 N.E., 471 (1932).

<sup>34</sup>Kostanzer v. State, 205 Ind. 536, 187 N.E. 337 (1933).

<sup>35</sup>McKay v. State, 212 Ind. 338, 7 N.E. 2d 954 (1937).

was usually accomplished on the ground of "other good cause," not insubordination.

### Refusal to Retire

In the early thirties, another Indiana school board adopted a resolution which called for the mandatory retirement of teachers who had reached the age of seventy.<sup>36</sup> The state statutes were silent on this matter. Culver, a tenure teacher with thirty years of service in the district, attained the age of seventy, refused to retire, and was dismissed for insubordination. Noting that Culver had been given a "success grade" at ninety-six percent, the court commented that the 70-year retirement rule was created with the view that the efficiency or competency of teachers should not be impaired by the infirmities which quite often accompany old age, and it appears here that appellant [board] has resorted to the charge of insubordination as a substitute for a charge of incompetency.

Needless to say, the court did not look kindly upon the devious tactics of the board in this case. It found that the rule placed a ceiling on "indefinite" contracts, which is in itself a contradiction, and was therefore unreasonable. Culver was permitted to resume his duties.

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<sup>36</sup>School City of Evansville v. Culver, 94 Ind. App. 692, 182 N.E. 270 (1932).

### Refusal to Alter Leave Status

Snyder was granted a sabbatical "for the purpose of health" in 1939.<sup>37</sup> This enabled her to receive her salary minus the cost of obtaining a substitute. Later, however, the board learned that the teacher had given birth to a child during her leave. The board requested that she change her sabbatical to maternity leave. This would provide for a two-year leave of absence without pay. Snyder refused, claiming that she was unaware of her pregnancy at the time she requested the leave. The court was not swayed by this line of reasoning. Instead, it viewed the teacher's refusal to alter her leave program, once she learned of her true condition, as evidence of "willful violation of school laws." There was no judicial interference with the board's decision to terminate Snyder's services

### Failure to Complete College Courses

In 1961, an Illinois school board adopted a rule which required any teacher who did not hold a bachelor's degree and who had not taken college courses within the previous four years to complete six semester hours by a specified date.<sup>38</sup> Last had taught in rural schools for twenty-six years. Her educational background included the completion of sixty and one-half semester hours at Iowa State University in 1934. She had not been back to school thereafter. After the announcement of the board's new policy, Last

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<sup>37</sup>Board of School Directors, Etc. v. Snyder, 346 Pa. 103, 29 A. 2d 34 (1942).

<sup>38</sup>Last v. Board of Education of Community School District, 37 Ill. App. 2d 159, 185 N.E. 2d 282 (1962).

signed up for two correspondence courses (geography and mathematics) at Western Michigan University. However, when the deadline for completing the courses arrived, Last was far from finished. She alleged that her inability to conclude her work was a consequence of a disabling eye ailment (blurry vision at night) and a hip injury. The court was aware, however, that while suffering from these health deficiencies, Last had been able to perform her teaching duties and numerous farm chores. Her dismissal for insubordination was sustained.

#### Permitting Students to Teach

An early Missouri case involved the dismissal of a teacher for permitting "some of the older scholars to hear the recitations of the primary classes."<sup>39</sup> This violated a recently adopted board regulation. Perkins, the teacher in question, admitted that he was shown a hand-written copy of the rule while he was riding in a wagon. But he complained to the court that he had been unable to decipher the writing. This and the fact that testimony revealed that Perkins had always supervised the older students who heard lessons from the younger children caused the court to find in the teacher's favor. The board was ordered to compensate Perkins with back pay.

#### Refusal to Follow Dress and Grooming Code

Presently there is division among the courts over the extent of control a school board may exercise over the personal appearance of teachers

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<sup>39</sup>Perkins v. School District No. 2, 61 Mo. Ap. 512 (1895).



within its employ. In Massachusetts, a non-tenure teacher was dismissed for violating an unwritten school policy against the wearing of beards.<sup>40</sup> The court overturned this dismissal and awarded the teacher one thousand dollars in damages. The reasoning of the judiciary was not that the wearing of a beard is constitutionally protected. Rather, the court observed that there was no written policy requiring teachers to be clean-shaven, that the teacher was not given adequate notice of his infraction, nor was he informed of the consequences of that violation, and that he was not afforded a fair hearing at which time he might have defended his actions.

Though technically not a dismissal, the non-retention of a Negro teacher who refused to shave off his goatee was thwarted by a federal court.<sup>41</sup> That court viewed the board's demand as an arbitrary and unreasonable one which was symptomatic of an intolerance of ethnic diversity, thereby equating the goatee with black culture.

A Louisiana court recently addressed itself to the broader question of the judiciary's role in passing judgment on board regulations.<sup>42</sup> The consideration was occasioned by the dismissal of a rural teacher who refused to comply with a newly passed board regulation requiring teachers to wear ties. Blanchet, the teacher, claimed that his rights were being infringed upon and that the wearing of ties was totally unrelated to educational necessities. The court acknowledged that Blanchet's suit was not frivolous, but

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<sup>40</sup>Lucia v. Duggan, 303 F. Supp. 112 (Mass. 1969).

<sup>41</sup>Braxton v. Board of Public Instruction of Duval County, Florida, 303 F. Supp. 958 (Florida, 1969).

<sup>42</sup>Blanchet v. Vermillion Parish School Board, 220 So. 2d 534 (La. 1969).

was a sincere expression of this conviction. He had agreed to wear a tie if the court held the regulation to be reasonable. But he noted that even board members attended board meetings without benefit of ties and that most of the state's rural school districts did not insist upon that mode of dress for teachers.

The court took up the questions involved by citing another Louisiana court which stated:

There is nothing more firmly established in law than the principle that, within the limits of their authority, the power and discretion of legally created governing boards is supreme. Their wisdom or good judgment cannot be questioned by the courts. Members of these boards are appointed or elected because of their peculiar fitness for the post. Judges are elected because of their legal knowledge and ability. They are not experienced in the...conduct of a public school system. A presumption of legality and regularity attaches to the action of all government boards. It is only when it is clearly shown that the action of such a board is beyond its authority or is arbitrary, unreasonable, or fraudulent that a court is justified in interfering.<sup>43</sup>

Despite the prevalence of tie-less teachers in rural Louisiana (seemingly without adverse effect), disagreement among board members as to the appropriateness of various kinds of ties, and the petitioner's unquestioned sincerity, the court declared that "in view of the limited nature of judicial review of school agency actions, we do not find the regulation to be so unreasonable as to be beyond the school board's powers." The teacher's

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<sup>43</sup>State ex rel. Rathe V. Jefferson Parish School Board, 19 So. 2d 153 (La., 1944).

suspension was upheld, but the board was ordered to reinstate Blanchet after he agreed to comply with the regulation.

### Refusal to Take Mental Ability Test

In 1949, an Alabama school board passed a regulation which required all teachers to take a mental ability test.<sup>44</sup> A number of teachers balked at the rule and refused. Steele was said to have declined twice. However, the board admitted that she did seek a third opportunity to take the exam but was refused permission. Steele disputed the district's recollection of events. She testified that she, like many others, initially refused to submit to the test, but that she reconsidered and sought a second opportunity, only to be denied by the superintendent. She believed the administrator's denial was connected with his comment that he did not know that she was "head of a union." (Steele was acting president of the local teachers' union.) The dismissed teacher also pointed out that another teacher had been permitted to take the test on the same day which she (Steele) had been denied the opportunity. At her dismissal hearing before the board of education, Steele was unable to elicit a response from the superintendent about his feelings for unions or his permission to let others take the exam. The court felt that Steele was entitled to answers. It also decided that the teacher had been treated "differently." Consequently, the board's actions were overturned and the teacher was ordered reinstated.

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<sup>44</sup>State v. Board of Education of Fairfield 252 Ala. 254, 40 So. 2d 689 (1949).

### Failure to Live in District

Several insubordination dismissals involving the residency regulations of boards of education have reached the higher courts. In the early years of this century, a New Hampshire teacher contracted to teach a twelve-week term.<sup>45</sup> Part of the agreement called for her to live in a designated boarding house. After five weeks she informed the board that circumstances had arisen which made further residence at the home undesirable for her. She was dismissed. The court, however, overruled that termination. Nevertheless, the issue of the board regulation was not a primary consideration in the judgment. Rather, the teacher won her case because the board had not held a hearing before the termination.

The following year on the opposite coast, a San Francisco board regulation requiring all teachers to live within the city was declared reasonable and valid by a California court.<sup>46</sup> In a more recent adjudication, a North Dakota teacher's dismissal based on his move to an out-of-district residence was declared illegal.<sup>47</sup>

### Refusal to Submit to Vaccination

An early Pennsylvania case centered on a teacher's refusal to be vaccinated, as required by board mandate.<sup>48</sup> The court viewed vaccination as an act designed to protect the public and to promote its welfare. Even reli-

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<sup>45</sup>Horn v. School district of Chester, 75 N.H. 411, 75 A. 431 (1910).

<sup>46</sup>Stuart v. Board of Education, 161 Cal. 210, 118 P. 712 (1911).

<sup>47</sup>Miller v. South Bend Special School District No. 1, 124 N.W. 2d 475 (N.D., 1963).

<sup>48</sup>Lyndall v. High School Committee, 19 Pa. Super. Ct. 232 (1902).

gious conviction would not suffice to sustain a teacher's decision to disobey the rule. Therefore, the termination was affirmed.

### Refusal to Discontinue Bible Reading

Disputes over school prayer are not unique to our own times. At the turn of the century, the question of the role of religion in public education was considered by an Ohio school district.<sup>49</sup> Following the lead of the Cincinnati public schools, the district passed a regulation against prayer and Bible reading in school. Pulse, a principal, was shocked by this concession to the forces of evil and she adamantly refused to cease the practice of daily Bible reading. The court found for the board, obviously viewing the rule as one within the prerogative of the school officials.

### Refusal to Enforce Board's Smoking Policy

An early insubordination case witnessed the dismissal of an overly zealous Tennessee teacher whose own rules concerning students' use of tobacco were more stringent than those articulated by the board.<sup>50</sup> Parke, the dismissed teacher, prohibited smoking anywhere on school property. The board, on the other hand, limited its prohibition to the school house. Parker was unyielding, suspending students for using the "weed" anywhere on the grounds. Though he might have won support from Cotton Mather, the court viewed his steadfastness with something less than admiration.

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<sup>49</sup>Board of Education v. Pulse, 10 Ohio Superior and Common Pleas 17 (1900).

<sup>50</sup>Parker v. School District No. 38, 73 Tenn. 525 (1880).

Parker's behavior was adjudged as evidence of insubordination and his dismissal was affirmed.

### Inflicting Corporal Punishment on Pupils

A rather obvious, though extremely important principle, was acknowledged by a California court reviewing an insubordination dismissal in 1937.<sup>51</sup> The principle, simply stated, is that one cannot be dismissed for violating a rule which does not exist. Moody found his services terminated for violation of the rule against corporal punishment. The court, however, was unable to find evidence of such a rule. The insistence of a board that "everybody knows that" is no substitute for a written regulation. Moody was reinstated to his teaching position.

When a teacher violates a board rule proscribing corporal punishment, the school officials can base dismissal on several grounds: insubordination, incompetency, or inefficiency, to name a few. In fact, one can not help but be struck by the diversity of grounds used to promote dismissal actions for similar instances of misconduct. In Arkansas, however, insubordination was the term used to substantiate the contract termination of a teacher who had meted out two whippings with a paddle of flooring to a boy who, among other offenses, had used the teacher as a target for his spit-ball launchings.<sup>52</sup> There was a board prohibition against striking students.

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<sup>51</sup>Moody v. Board of Trustees of Whittier City School District, 68 P. 2d 392 (Cal. 1937).

<sup>52</sup>Berry v. Arnold School District, 137 S.W. 2d 256 (Arkansas, 1940).

This and the board's determination that the punishment was, in any event, excessive served to bring about the teacher's dismissal, a decision which the court was unwilling to alter.

### Non-Cooperation

It is often possible to differentiate non-cooperation from disobedience. And it is usually the later which comes to mind when insubordination is considered. Nevertheless, dismissals on the ground of insubordination have occurred even where there was no allegation that "willful disregard" of orders or board rules took place.

A superintendent sought the discharge of a teacher by charging:

From the first day of school she began complaining about the way the high school was run and has never failed to complain about many things. She just started in to complain the first day about taking her turn staying at noon hour one week each month as requested by the superintendent. Since which time she has complained about something at most teachers' meetings.<sup>53</sup>

The case occurred in Montana, a state where teacher dismissals were limited to four charges: (1) Immorality, (2) Incompetence, (3) Unfitness, and (4) Violation of rules. Hovland, the complaining teacher, was dismissed for violating rules; evidently her non-cooperation was interpreted as a violation of the superintendent's rules. Much to the board's chagrin,

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<sup>53</sup>Howland v. School District No. 52, 278 P. 2d 211 (Montana, 1955).

however, there was nothing indicating that teachers were required to obey the superintendent's rules. Hovland's contract referred only to those rules and regulations "adopted by the Board of Trustees" and to the laws of the state. Hence, the court found that the teacher had been illegally discharged. Reinstatement was ordered.

An Illinois teacher was not so fortunate in his efforts to avoid a dismissal which stemmed from a failure to cooperate.<sup>54</sup> The board informed Pearons that : "Due to your uncontrollable temper you fail to have proper cooperation with the administrators, your fellow teachers, and the students." Pearson had been suffering from a nervous condition. He had serious difficulty in maintaining discipline in his classes and his volatile temper erupted on numerous occasions. He had promised to see a doctor; whether he did so is not revealed in the court records. One thing seemed certain: there was no perceptible improvement in his behavior, at least not to the board. His dismissal was affirmed.

The Illinois courts were asked to review another dismissal based on a teacher's non-cooperation.<sup>55</sup> This particular educator was accused of "Throwing paper towels from a 3rd floor lavatory, interfering with discipline of other teachers, refusing to allow assigned reading in his study hall, refusal to write tardy slips for pupils he kept late, refusal to keep noise of his shop down." After hearing all the evidence, the court declared:

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<sup>54</sup>Pearson v. Board of Education, 12 Ill. App. 2d 44, 138 N.E. 2d 326 (1956).

<sup>55</sup>Robinson v. Community United School District No. 7, 35 Ill. App. 2d 325, 182 N.E. 2d 770 (1962).



The strained relationship existing between this plaintiff and his principal was not conducive to the best interests of the school. Without our placing all the blame on the plaintiff, it appears that it would be within the Board's right to call a halt to the trouble by taking the action it did.<sup>56</sup>

Similarly, the continued obstinacy and lack of cooperation displayed by a teacher when asked to adopt different methods and forms for making financial reports constituted insubordination in the eyes of a Kentucky court.<sup>57</sup> That judicial body also reversed an earlier decision and declared that the absence of dates in the charges does not invalidate the board's case.

The last litigation for non-cooperation which the research uncovered dealt with the insubordination accusation leveled at Osborne, a Kentucky teacher. The charges were:

1. Insubordination based upon the fact that you refuse to co-operate with the principal of your school in the conduct of the school and the orders issued by him and your conduct toward him has been such that it is disruptive of the progress of the school.
2. You have distributed alleged copies of the confidential records from files of the schools <sup>58</sup>

The court noted that evidence of non-cooperation is not necessarily evidence of insubordination. It then went on to dismiss the first charge on the ground that it was too vague to permit Osborne opportunity to prepare a

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<sup>56</sup>Ibid.

<sup>57</sup>Board of Education School District v. Chatten, 376, S.W. 2d 693 (Kentucky, 1964).

<sup>58</sup>Osborne v. Bullitt County Board of Education, 415 S.W. 2d 607 (Kentucky, 1967).

defense. The second charge was also overruled by the court on the basis that there was no rule prohibiting removal of records from the files. Along with the reversal, the court offered its philosophy of the proper role of the judiciary in dismissal actions.

The anomaly in procedure which permit the board of education, an administrative body, to serve in the triple capacity of complainant, prosecutor, and judge makes it vitally necessary that in reviewing administrative decisions, courts zealously examine the record with the view to protecting the fundamental rights of the parties, lest the rule against arbitrariness and oppressiveness become a mere shibboleth.<sup>59</sup>

Though only a single decision, this opinion reveals an increased concern for safeguarding the rights of teachers and a diminution of reluctance to question the actions of administrative bodies.

### Hostile Actions

#### Comments Critical of Superiors

As was seen in the preceding chapter, groundless personal attacks on school officials can result in the termination of one's employment for immorality, as can the utterance of expletives when such are aimed at persons in authority. Here again there is evidence that the overlapping in dismissal grounds is marked. In fact, it may well be that the choice of a particular ground is sometimes an arbitrary selection by a school board. Consequently, the principal of a girls' vocation school was released for in-

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<sup>59</sup>Ibid.

subordination when she "made unwarranted attacks upon her superiors, and their professional qualifications and administrative efficiency."<sup>60</sup> This same administrator also refused to accept or recognize the authority of a legally appointed administrator in the district and she even terminated a special program being conducted within the school system without receiving permission to do so. The court determination was that the principal's attacks "reveal in general a challenging reluctance alien to the zeal and spirit of cooperation which should characterize the school principal's relations with her superiors."

The question of provocation played a key role in the case of a Washington principal who had been dismissed for gross insubordination.<sup>61</sup> Coates, the principal, served in a community seriously divided over school policy and personnel. The superintendent had come under scathing attack by the press and some of the citizenry. The inflammatory nature of the situation is evident in one of the editorials from the local newspaper:

A crystal clear explanation of these unscholarly and dictatorial actions is due the public by the Kennewick school superintendent. Perhaps he will give one when he is through behaving like a Missouri mule knee-deep in clover.<sup>62</sup>

Coates attended a board meeting which resulted in the dismissal of the superintendent. He then proceeded to the office where the superintendent was gathering his personal effects. Several people were in the room, among

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<sup>60</sup>Harrison v. State Board of Education, 134 N.J. Law 502, 48 A. 2d 579 (1946).

<sup>61</sup>Appeal of Coates, 47 Wash. 2d 51, 287 P. 2d 102 (1955).

<sup>62</sup>Appeal of Coates, 47 Wash. 2d 51, 287 P. 2d 102 (1955).

them three board members, one of whom was publisher of a local newspaper, and the wife of a board member. The latter remarked that it was about time they "were getting rid of the crooks." This angered Coates. He began to voice his opinion of the board's tactics, calling them "communistic" and "black shirt." He then either tapped a board member on the chest or shook a finger at him, all the while saying "Don't print my name in your --- ---- dirty sheet." The "dirty sheet" alluded to was the newspaper published by that board member. A story appearing earlier in that paper had described Coates as "smugly" sitting outside the door of the library while the board held a secret meeting inside, an action vociferously denied by the principal.

After due deliberation the court reasoned:

Teachers are required to exercise a high degree of patience and self-control when dealing with their youthful charges; but in their relations with adults, including school board members, they should be judged by ordinary standards of civility applicable to the particular relationship. If sufficiently provoked, any person may momentarily lose his self-control, and his conduct must be judged accordingly.<sup>63</sup>

The court's judgment of Coates' conduct was that he was provoked. It did not hold the board member responsible for his wife's comments about "crooks," but it did note that none of the board members hearing it expressed disapproval. The board's decision was reversed.

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<sup>63</sup>Ibid.

### Bringing Legal Actions Against Superiors

In an unusual action, charges were brought against a school superintendent for his action in bringing charges against a board.<sup>64</sup> The circumstances included a school system rent with discord and the superintendent's allegation that the board was attempting to "usurp and perform certain duties conferred by law upon the superintendent of schools." The charge was made to the Kentucky State Board of Education. In a curious decision, the agency dismissed the charges, yet reprimanded the local administrative body for its conduct and interference with the superintendent. The local board then dismissed the superintendent for insubordination. However, the court would not uphold such a charge. Instead, it reasoned that the dismissed teacher had brought charges against the board in his individual rather than his official capacity. Therefore there was nothing to sustain the accusation of insubordination.

### Refusal to Discuss Loyalty with Superiors

The matter of teacher loyalty to the nation was given far greater attention by the courts during the 1950s and 1960s than it has been given lately. The right of teachers to avoid discussing their actions by acquiring the protection of the Fifth Amendment has been affirmed by the courts.<sup>65</sup> However, the judiciaries have also declared that teachers are required to

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<sup>64</sup>Smith v. Board of Education of Ludlow County, 264 Kentucky, 150, 94 S.W. 2d 321 (1936).

<sup>65</sup>Slochower v. Board of Higher Education of City of New York, 76 S. Ct. 637 (1956).

respond to a superintendent's questions about their loyalty or their reasons for involving the Fifth Amendment. A California court declared:

A governmental body may, of course, make reasonable inquiries into matters pertaining to the fitness of its employees... In this connection, it has been held that a public employer may constitutionally require its employees to disclose any past or present membership in the Communist Party.<sup>66</sup>

Many courts have reached similar conclusions. Disagreement, however, is again reflected on the charge confirmed by a teacher's refusal to respond to a superintendent's loyalty questions. A Pennsylvania court avoided any possible dilemma which might have arisen from such uncertainty by proclaiming that the behavior in question supported dismissal action for insubordination or incompetency.<sup>67</sup>

### Summary

Predicated on analysis of insubordination dismissal cases, the following conclusions may be drawn. (1) An obvious one is that although the concept of insubordination has been clarified by the courts, the domain of insubordination as a particular dismissal ground is by no means well-defined. (2) There is considerable overlap with other charges, such as neglect of duty and unprofessional conduct, and most boards of education will en-

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<sup>66</sup>Steinmetz v. California State Board of Education, 44 Cal. 2d 816, 285 P. 2d 617 (1955).

<sup>67</sup>Board of Education, School District of Philadelphia v. Soler, 176 A. 2d 653 (Pennsylvania, 1962).

counter little difficulty correlating behavior characteristics of insubordination with a number of other possible enumerations. The behavior in question normally involves willfully disobeying orders from superiors, knowingly violating board regulations, or being uncooperative with or defiant of one's superiors. The orders disobeyed or rules violated must, of course, be "reasonable". What constitutes reasonableness is difficult to say. Were it not, there would be only a small fraction of the litigation which has taken place. Relevant legislation and board regulations become a part of a teacher's contract. Nevertheless, the teacher must usually have to know of the existence of the rule in order to substantiate the charge.

## CHAPTER 5

### SUMMARY, CONCLUSIONS AND RECOMMENDATIONS FOR FURTHER STUDY

The purpose of this study has been to identify and analyze historical and legal aspects of insubordination as a cause for teacher dismissal. The research has included a review of the chronological development of litigation in the area of insubordination. State statutes have been examined and analyzed. An extensive review and analysis of court cases has been accomplished.

This research has provided the information needed to respond to the six questions set forth in Chapter 1. Below are the questions as stated in Chapter 1 and the information from this study which addresses those questions.

#### Questions

##### Question One—Constitutional Rights of Teachers

Under what circumstances are constitutional rights of teachers involved when faced with an insubordination situation? The United States Constitution is silent on the matter of education. Seemingly, by the passage of the Tenth Amendment in 1791, it was the implied message of this



Amendment to reserve to the states matters of education. This amendment states that powers not delegated to the United States by the Constitution, nor prohibited by it, are reserved to the states respectively, or to the people."<sup>1</sup>

Teachers, both tenured and nontenured, have the same Constitutional rights as all other citizens. School districts cannot generally censure teachers, dismiss them or fail to renew their contracts based on the exercise of Constitutional rights.

The teacher bears the first burden of proof when that teacher challenges school board action on the grounds that it involves unconstitutional infringement of his rights and in establishing that the board's action was in fact based on impermissible reasons. Even if the teacher can do this, however, the school board may be able to show that infringement of the teacher's rights is justifiable under the Constitution. Whether the state's interest outweighs that of the teacher is a matter of balance. The most frequent constitutional rights superintendents and boards are likely to encounter in dismissal cases are (a) freedom of speech, (b) right of association and (c) right to privacy.<sup>2</sup>

In addition, the Courts have ruled that both the First Amendment and the Fourteenth Amendment may be applied to the public schools. The First Amendment provides that Congress shall make no law respecting an establishment of religion or prohibiting the free

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<sup>1</sup>Drury, Robert & Kenneth O. Ray, Essentials of School Law, (New York:Appleton-Century-Crofts,1967), 7.

<sup>2</sup>Neill, Shirley Boes & Jerry Custis, Staff Dismissal: Problems & Solutions (California: Education News Service for the American Association of School Administrators, 1978) 39.

exercise thereof; or abridge the freedom of speech or of the press. This amendment also provides for the right of the people to peaceably assemble and to petition the government for a redress of grievances. While it is not a settled issue as to the extent to which the federal government should go in supporting education in the states, the courts have ruled that Congress may enact laws under the "general welfare" clause of the Constitution to support education in the United States.

The Fourteenth Amendment provides that no state shall make or enforce any law which shall abrogate the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.<sup>3</sup>

As a general rule of law, a board of education has only the legal authority as found in the various statutory provisions or which may be necessarily implied from these statutes. Boards of education, however, are ordinarily given certain areas in which they have the right to use their discretion and judgment, such as in the adoption of rules and regulations.

The state legislature must exercise its responsibilities for public education in such a manner as to be consistent with the provisions of the state and Federal constitutions, since public education is considered a state function and not a function of the Federal Government. Public education

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<sup>3</sup>Drury, Robert & Kenneth O. Ray, Essentials of School Law, (New York:Appleton-Century-Crofts,1967), 7.

administration in a state, however, should be kept separate from other local or municipal functions.<sup>4</sup>

### Question Two—Trends of Court Cases

Are there specific trends to be determined from analysis of court cases? The trends identified in the analysis of court cases are those related to the historical perspectives and values of the times and the evolving awareness of and respect for the rights of individuals.

Early cases involved marriage as an insubordination or disobedience issue for female teachers. More recent cases reflect the posture of the court that a teacher's private life is protected as long as it remains private and does not infringe on the rights of others. Boards must determine a relationship between the behavior of teachers and the effect on the classroom.

Other examples of changing times involved the personal attributes required for teacher certification and the more contemporary views of those personal attributes that are subject to review by a school board. In the 1940's, an Arkansas state statute stated that certification or license was not offered to "any person who is given to profanity, drunkenness, gambling, licentiousness or other demoralizing vices, or who does not believe in the existence of a Supreme Being."<sup>5</sup> While teachers in the sixties and seventies experienced a relaxation of some social mores, a review of court decisions during this period indicated the continuing vulnerability of teachers to strict

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<sup>4</sup>Ibid.

<sup>5</sup>Beale, Howard, A History of Freedom in American Schools (New York: American Book Company, 1941), 311.

standards of behavior. Cases during this period of time were more often those instances of teacher involvement in subversive, political, union and other controversial out-of-class activities.

The review of the historical perspective on teacher dismissals and the legal review which included an analysis of numerous cases has demonstrated that while the scrutiny of the courts and the public remain diligent, it has been affected by the changing times. The trends which can be discerned from this study include the influence history has played on the rights of public school employees. Further trends in what the courts have considered appropriate charges of insubordination and its support of these charges are delineated in the answer to Question Six.

### Question Three—Judicial History

What is the judicial history of insubordination? Chapter Four of this study provided a comprehensive review of the judicial history of insubordination. In most of the cases reviewed in that chapter, little distinction was made between dismissal for insubordination per se, or dismissal for "willful neglect of duty," incompetence, or other "good cause." There is a great deal of overlapping occurring and each case was examined on its own merit.

The cases reviewed spanned from the first cases in the early 1900's to the most recent cases available for review in the 1980's. Cases were reviewed in Chapter Four within five major categories of (a) failure to obey superiors, (2) violation of board rules, (3) non-cooperation, (4) hostile actions and (5) refusal to discuss loyalty with superiors.

## Failure to Obey Superiors

Twenty-six cases were reviewed in the category of failure to obey superiors. These ranged from the six earliest cases in the 1930's and 40's in which teachers refused to change teaching assignments or to assume new assignments. In these cases, the variation in disposition of the conflicts related to the reasonableness of the assignment rather than any dispute in the responsibility of a teacher to obey superiors.

The later cases under the category of failure to obey superiors, sub-category "refusal to accept an assignment" involved teachers refusing to comply with directives to attend workshops, maintain various records and to supervise students during free periods. These cases were all affirmed by the court, reinforcing the concept that reasonable requests and assignments by superiors are within the legal rights of boards of education.

Failure to attend a meeting was the second sub-category under "failure to obey". Three cases were reviewed under this category. These cases included a teacher's failure to respond to a summons to attend a board meeting and to others refusing extra-curricular assignments. The affirmation of these cases depended again on the reasonableness of the request.

Three cases were reviewed under the subcategories of refusing to admit students to class and refusing to admit supervisors to class. The case which was not affirmed by the courts involved the situation in which it could not be proven that the teacher knew that the student should have been readmitted to the class. In the other cases, the teachers had both exceeded their authority in refusing admittance to the classroom of a student who had

been suspended in one case and refusal to admit the teacher's supervisor in the other case.

Refusal to fill-out a questionnaire was a one case category which was reviewed in this study. In 1943, a New Orleans teacher refused to complete a questionnaire regarding the lengthening of the school day. The teacher refused to complete the questionnaire stressing an invasion of privacy. The court affirmed the teacher's dismissal and determined to its satisfaction that there was no invasion of privacy.

Misuse of leave and teaching that which is proscribed by the board are the last two sub-categories of the major category of "failure to obey superiors". The cases of misuse were determined in each case on the teacher's understanding expectations and reason for absence. In the one case under the category of teaching that which is proscribed by the board, the teacher was dismissed for teaching disloyalty to the government and disbelief in God. Her dismissal was upheld by the courts.

#### Violation of Board Rules

The violation of written rules, not the oral commands of persons in authority, is what differentiates this infraction from that just summarized. There were twelve sub-categories examined under this category which included marrying, refusal to retire, refusal to alter leave status, failure to complete college courses, permitting students to teach, refusal to follow dress and grooming code, refusal to take mental ability test, failure to live in district, refusal to submit to vaccination, refusal to discontinue Bible reading, refusal to enforce board's smoking policy, and inflicting corporal punishment on pupils.

The first subcategory of marrying involved cases all reviewed by the courts in the 1930's. Even though this requirement of female teachers being unmarried is now obsolete, it is interesting to review the courts stance on this cause of dismissal. In the three cases reviewed, the courts reversed the school board's dismissal of teachers.

There are seven subcategories, under the category of violation of board rules, which involve teachers' refusal to comply with a board rule or policy. The trend in these cases is that the courts tend to support board policies unless they interfere with constitutionally protected rights or privileges.

In a case under the category of violation of board rules, it was interesting to review the case of a California teacher who was dismissed for violating a policy against corporal punishment. The court, however, was unable to find evidence of such a rule. The insistence of a board that "everybody knows that" is no substitute for a written regulation.

#### Non-Cooperation

The category of non-cooperation is sometimes difficult to differentiate from disobedience as discussed earlier. The cases of non-cooperation occurred even where there was no allegation that "willful disregard" of orders or board rules took place. There is variation in the courts response to dismissal on this ground. Arbitrariness and a protection of the rights of individuals make this charge more difficult than others reviewed. However in some cases, the non-cooperation of a teacher when resulting in disruption of the educational process, was upheld by the courts.

## Hostile Actions

There are two sub-categories of reasons for dismissal under the category of hostile actions. These are "comments critical of superiors" and "bringing legal action against superiors." In the two cases reviewed regarding "comments critical of superiors", principals were the defendants in the courts' reviews. Both principals were zealously critical of their superiors and both dismissed as insubordinate under this category. In one case, the court ruled that in dealing with adults (board members and superintendent), this principal's behavior was provoked and any person may momentarily lose his self-control, and that his conduct must be judged accordingly.

Under the sub-category of "bringing legal action against superiors", a rather unusual sequence of events resulted in a superintendent being dismissed for insubordination after previous legal charges against the superintendent had been presented to the state board. The charge was not sustained.

The last group of cases reviewed in Chapter 4 was those under the category of "refusal to discuss loyalty with superiors". These cases were given much greater attention by the courts during the 1950's and 1960's than they have in recent decades. Fifth Amendment rights have been affirmed in most of these cases.

## Question Four—Discrepancies in State Statutes

What magnitude of discrepancies would a comparison of the fifty state statutes reveal? While all fifty states have statutes pertaining to the



dismissal of public school employees, there is a significant difference in the delineation of reasons. There is variation in language, in numbers of reasons and in the specificity of the reasons for dismissal.

Twenty-one states specifically cite insubordination as a cause for teacher dismissal. However, when looking at causes for dismissal which are synonymous with insubordination, there are sixteen additional states for a total of thirty-seven. These synonymous terms are violation of rules, substantial noncompliance of school laws, not conforming to regulations, conduct in violation of rules, failure to comply with reasonable regulations, refusal to obey, willful violation of regulations, and refusal to comply with regulations.

The most significant discrepancy in state statutes as determined by this researcher is the fact that thirteen states have no clear provisions for dismissal for the cause of insubordination. This becomes significant when considering the prevalence of this cause of teacher dismissal.

#### Question Five—Court Criteria for Upholding or Dismissing

What are the specific areas the courts have identified in considering charges of insubordination? In reviewing the courts' position in supporting or overturning dismissals on the basis of insubordination, there have been several factors or patterns that were evident. Although court definitions of insubordination vary from one jurisdiction to the next, most cases of teacher insubordination emphasize a refusal to obey a direct or implied reasonable order-or a consistent, intentional refusal to obey a reason

able order. Persistent, willful, and intentional defiance of or contempt for authority also usually constituted insubordination.

In general the courts have held that a teacher can be dismissed for insubordination in such cases as these:

1. Refusing the authorized and reasonable order of the superintendent to carry through on an assigned project;
2. Refusing the superintendent's reasonable request for information regarding whether the teacher intends to work the following year;
3. Refusing to allow a supervisory person to enter the classroom, even though the teacher has been advised that this is a board regulation;
4. Refusing to discuss aspects of a student's education program with superiors;
5. Refusing to meet with the principal to discuss leaving a class unattended;
6. Refusing to meet with the principal for purposes of improving teaching skills.

The courts also have upheld insubordination as a cause for termination when teachers refuse to complete forms to be used for evaluating a course, refuse to accept a change of teaching or school assignment, refuse to undergo an annual physical examination, or submit incomplete lesson plans that do not conform with required policy.

The key word in insubordination charges is "willful." It implies an obstinate and perverse determination to follow one's own will, despite arguments and advice to the contrary. If a teacher intentionally violates school authority-and if the regulations broken are reasonably related to ef-

efficient management of the school system-then the courts are likely to uphold the dismissal.

According to this review, the courts will not uphold the insubordination charge if (1) you cannot prove the alleged misconduct occurred; (2) you cannot prove the existence of a pertinent school rule or a superior order; (3) the teacher did not violate the pertinent rule or order; (4) the teacher tried, although unsuccessfully, to comply with the rule or order; (5) the teacher's motive for violating the rule or order was admirable; (6) no harm resulted from the violation; (7) the rule or order was unreasonable; (8) the rule or order was invalid and beyond the authority of the person making it; (9) enforcement of the rule or order revealed possible bias or discrimination against the teacher; or (10) enforcement of the rule or order violated the First Amendment right of free speech or academic freedom.

#### Question Six—Court Approved Procedures

What are the recognized court approved procedures to be followed by a school board or school official in seeking the demotion or dismissal of a teacher for insubordination? The American Association of School Administrators in its publication Staff Dismissal: Problems and Solutions, contains a section "Building a Dismissal Case"<sup>6</sup>. In this chapter, Theodore H. Lang, professor of education at the City University of New York, states that in dismissing a teacher, districts generally must meet five require-

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<sup>6</sup>Neill, Shirley Boes & Jerry Custis, Staff Dismissal: Problems & Solutions (California: Education News Service for the American Association of School Administrators, 1978) 39.

ments: 1. A legally permissible cause., 2. Compliance with the prescribed statutory process and with due process, 3. Record of observation and evaluation, citing specific efforts to warn the teacher and to assist in improvement, 4. Hard and substantial evidence, collected in a Constitutionally permissible manner and 5. An overlay of good faith in the process. While these five requirements are intended to guide school districts in the dismissal of tenured teachers in a variety of situations including incompetency, the steps are valid ones in pursuing dismissal on the grounds of insubordination.

In the determination of a legally permissible cause, the basis for dismissal must be within the general or specific causes for dismissal set forth in state statutes. Even where grounds are listed, case law must be examined to understand what type of conduct may reasonably be controlled. And, states Lang, the basis for the school board's action to dismiss must be both reasonable and substantial.

Generally, the cause must be related to the educational process and to working relationships within this process. A cause which is remediable entitles a teacher to notice of the complaint and time to rectify conduct. Districts will need legal advice in determining what is remediable and what is not.

Districts can expect to be challenged if they make an arbitrary judgment that irreparable damage has been done to students, the faculty or the school. They also can expect to be challenged if ample opportunity is not allowed a teacher to rectify questionable but remediable conduct.

School administrators are advised to ask legal counsel on how state courts have interpreted statutory charges for dismissal. If legal counsel advises that the basis for dismissal is a legally permissible cause and has generally been supported by the courts, then there will be a greater opportunity for success in the dismissal.

In reviewing the right of due process, most state statutes spell out specific requirements concerning notice, hearing, representation by counsel and appeal. Under teacher contracts, almost all states say specifically that notice of discharge or nonrenewal must be in writing. Several states allow for a personal interview in lieu of written notice. Some states require that the employee be informed of the cause of the dismissal or nonrenewal. Notices to dismiss, in some states, must contain reference to the specific statute or rule the teacher is alleged to have violated. Sometimes all pertinent evaluations must be provided along with the notice.

The right to a hearing may be automatic or available only on request from the employee. Boards should determine the hearing requirements and all details regarding a hearing, i.e. timelines, prior notice, and whether counsel is allowed, before proceeding with dismissal notices and implementation.

While observation and evaluation are more closely associated with dismissal of a teacher for incompetence, it is important to document the instances of insubordination and this may be an appropriate tool. State statutes obligate school districts to meet diverse requirements on evaluation. Since earlier recommendations for substantial documentation before recommending dismissal of school employees is advised, observation and

evaluation and the written reports of these evaluations can provide some of that documentation.

In determining good evidence, the burden of proof in dismissal cases is on the school district. The exception is when an employee claims that dismissal or nonrenewal is based on exercise of a Constitutional right. The employee bears the burden of proving the claim; then, the burden shifts to the school district. It must prove that the dismissal was actually based on another, valid reason.

The recommendation of an overlay of good faith, although unstated in state statutes, has a Golden Rule quality about it. It is best interpreted as being fair in all dealings with personnel, being consistent in the exercise of administrative prerogative and using common sense.

Actions that are arbitrary or capricious not only invite legal challenge, but also assure mistrust from employees. Districts that go into a hearing looking prepared, fair in their procedures, and determined to win have an excellent chance to do so. On the other hand, a district that gives the impression of cutting corners and using half-legitimate methods may cause the judge to look for a reason for finding against the district.

#### Recommendation for Further Study

It would be incumbent on any school district to maintain up-to-date review of the courts' posture on cases of teacher dismissal for insubordination. This vigilance will assist the school district in remaining prudent in its actions against employees. Further study, therefore would be a continuing study of the case law in the area of teacher dismissal.

Further study is also recommended in the area of sociological and historical affects on the expectations of teachers. The review within the present study indicates a fascinating effect of the reflection of society and its values on the expectations of public servants.

A last recommendation would be to utilize the data from this research to develop model policies regarding teacher dismissal. The procedures delineated in the answer to Question Six could provide the basis for a model policy. Further development of these procedures would be of value to school districts.

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State Codes  
Updated September 1987

Alabama

Code of Ala., section 16-24-8 Cancellation of contracts - Grounds.

16-24-8. Cancellation of an employment contract with a teacher on continuing service status may be made for incompetency, *insubordination*, neglect of duty, immorality, justifiable decrease in the number of teaching positions or for good and just cause, but cancellation may not be made for political or personal reasons. (Acts 1939, No. 499, p. 759; Code 1940, T. 52 sec. 358; Acts 1953,

Alaska

Alaska Stat., Sec. 14.20.170

Sec. 14.20.170. Dismissal.

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

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

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

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

(b) A teacher may be suspended temporarily with regular compensation during a period of investigation to determine whether or not cause exists for the issuance of a notification of dismissal according to 180 of this chapter. (2 ch 92 SLA 1960; am 21 ch 98 SLA 1966; am 1, 2 ch 104 SLA 1966)

#### Sec. 14.20.175. Nonretention.

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

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

- (1) incompetency, which is defined as the inability or the unintentional or intentional failure to perform the teacher's customary teaching duties in a satisfactory manner;
- (2) immorality, which is defined as the commission of an act, which, under the laws of the state, constitutes a crime involving moral turpitude;
- (3) substantial noncompliance with the school laws of the state, the regulations or bylaws of the department, the bylaws of the district, or the written rules of the superintendent; or
- (4) a necessary reduction of staff occasioned by a decrease in school attendance. (22 ch 98 SLA 1966; am 1 ch 11 SLA 1968; am 13 ch 46 SLA 1970; am 15 ch SLA 1975)

### Arizona

15-539. Dismissal of probationary or continuing teacher; written charges; notice; hearing on request

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

unprofessional conduct, conduct in violation of the rules, regulations or policies of the governing board or inadequacy of classroom performance.

### Arkansas

Ark. Stat. ann. sec. 80-1266.4. Termination during term of contract.

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

80-1266.4. A teacher may be terminated during the term of any contract period for any cause which is not arbitrary, capricious, or discriminatory, [;] the superintendent shall notify the teacher of the termination recommendation. Such notice shall include a simple but complete statement of the grounds for the recommendation of termination, and shall be sent by registered or certified mail to the teacher at the teacher's residence address as reflected in the teacher's personnel file. [Acts 1983, No. 936, 5,p. 2283.]

### California

Cal. Ed. Code Annotated

44932. Grounds for dismissal of permanent employee.

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

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

## Colorado

Col. Rev. Stat., Sec. 22-63-116.

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

## Connecticut

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

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

(d) The contract of employment of a teacher who has attained tenure shall be continued from school year to school year, except that it may be terminated at any time for one or more of the following reasons:

- (1) Inefficiency or incompetence;
- (2) *Insubordination* against reasonable rules of the board of education;
- (3) Moral misconduct;

- (4) Disability, as shown by competent medical evidence;
- (5) Elimination of the position to which the teacher was appointed, if no other position exists to which he may be appointed if qualified; or
- (6) Other due and sufficient cause.

### Delaware

Del. Code Ann., Tit. 14, sec. 1411, 1420

1411. Reasons for termination.

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

1420. Reasons for termination; rights of teacher.

Termination of any teacher's services during the school year shall be for 1 or more of the following reasons: Immorality, misconduct in office, incompetency, disloyalty, neglect of duty, or willful and persistent *insubordination*. Such teacher shall be given the same opportunity to be heard and right of appeal as provided in 1412, 1413, and 1414 of this title

and the board shall give notice in writing to such teacher of its intention to terminate the services of such teacher at least 30 days prior to the effective date of termination. Such written notice shall state the reasons for such termination of services. The board shall have the power to suspend any teacher pending a hearing if the situation warrants such action. (14 De. C. 1953, 1420, 50 Del. Laws, c. 39, 1.)

### Florida

Cit: Fla. Stat. Ann. Sec. 231.36

#### 231.36 Contracts with instructional staff

(6) Any member of the district administrative or supervisory staff and any member of the instructional staff, including any principal, may be suspended or dismissed at any time during the school year; provided that no such employee may be discharged or removed during the school year without opportunity to be heard at a public hearing after at least ten (10) days' written notice of the charges against him and of the time and place of hearing; and, provided further, that the charges must be based on immorality, misconduct in office, incompetency, gross *insubordination*, willful neglect of duty, drunkenness, or conviction of any crime involving moral turpitude. Whenever such charges are made against any such



employee of the school board, the school board may suspend such person without pay, pending a speedy hearing of such charges if requested by the employee, but if charges are not sustained he shall be immediately reinstated, and his back salary shall be paid. In cases of suspension by the county school board or by the county superintendent, the county board shall hold a public hearing if requested by the employee, after notice as above provided, to determine upon the evidence submitted whether the charges have been sustained and, if said charges are sustained, either to dismiss said employee or fix the terms under which said employee may be reinstated. If such charges are sustained by a majority vote of the full membership of the county board and such employee is discharged, his contract of employment shall be thereby canceled. If the employee is under continuing contract, any such decision adverse to him may be appealed by him in writing to the state board, through the state superintendent, for review; provided such appeal is filed within thirty (30) days after the decision of the county board, and provided further that the decision of the state board shall be final as to sufficiency of the grounds for dismissal.

## Georgia

Cite: Ga. Code Ann. 20-2-940

20-2-940. Grounds and procedure for terminating or suspending contract of employment.

(a) Grounds for termination or suspension.

The contract of employment of a teacher, principal or other employee having a contract for a definite term may be terminated or suspended for the following reasons:

- (1) Incompetency;
- (2) *Insubordination*;
- (3) Willful neglect of duties;
- (4) Immorality;
- (5) Inciting, encouraging or counseling students to violate any valid State law, municipal ordinance, or policy or rule of the local board of education; and
- (6) To reduce staff due to loss of students or cancellation of programs;
- (7) Failure to secure and maintain necessary educational training; or
- (8) For any other good and sufficient cause.

## Hawaii

Hawaii Rev. Stat., Tit. 18, Sec. 297-11

297-11 Causes for discharge or demotion; preferred eligibility list. Causes for the discharge or demotion of a teacher shall be inefficiency or immorality; willful violations of policies and regulations of the department of education, or for other good and just cause. The department without a hearing may terminate tenure rights of a teacher who fails to return to service, except when caused by illness, following the expiration of approved leave of absence. Teachers may also be dismissed because of decrease in number of pupils or for other causes over which the department has no control. Dismissals due to decrease in number of pupils or for causes over which the department has no control shall begin with those teachers with the least number of years of service, and the teachers so dismissed shall be placed on a preferred eligibility list and shall have the right to be restored to duty in the order of length of service whenever vacancies occur in which the teacher is qualified. (L 1959, c28, pt of 2; am L 1965, c 175, 19; Supp, 38-5.2)

## Idaho

Idaho Code, Sec. 33-1208

33-1208. Revocation of certificate -- Grounds.

The state board of education may revoke any certificate issued or authorized under section 33-1201 upon any of the following grounds;

- a. Gross neglect of duty;
- b. Incompetency;
- c. Breach of the teaching contract;
- d. Making any material statement of fact in the application for a certificate, which the applicant knows to be false;
- e. Revocation, refusal or denial of a certificate in another state for any reason constituting grounds for revocation in this state;
- f. Conviction in this or any other state of a crime involving moral turpitude;
- g. Any disqualification which would have been sufficient grounds for refusing to issue or authorize a certificate, if the disqualification existed or had been known of its issuance or authorization;
- h. Wilful violation of any professional code or standard of ethics or conduct, adopted by the state board of education.

### Illinois

S.H.A. Chapter 122, Section 10-22.4 Dismissal of Teachers.

10-22.4 Dismissal of teachers. To dismiss a teacher for incompetency, cruelty, negligence, immorality or other sufficient cause, to dismiss any

teacher who fails to complete a 1-year remediation plan with a 'satisfactory' or better rating and to dismiss any teacher whenever, in its opinion, he is not qualified to teach, or whenever, in its opinion, the interests of the schools require it, subject, however, to the provisions of Sections 24-10 to 24-15, inclusive. Temporary mental or physical incapacity to perform teaching duties, as found by a medical examination, is not a cause for dismissal. Marriage is not a cause of removal.

Amended by P.S. 79-954, 1, eff. Oct. 1, 1975; P.A. 84-126, Art.IV, 2, eff. Aug. 1, 1985; P.A. 84-972, 1 eff. Sept. 25, 1985.

### Indiana

Burns Ind. Stat. ann., tit. 20, ant. 6.1-4-10.

20-6.1-4-10. Cancellation of indefinite contracts.--(a) An indefinite contract with a permanent teacher may be canceled in the manner specified in section 11 [20-6.1-4-11] of this chapter for any the following grounds:

- (1) Immorality;
- (2) *Insubordination*, which means a willful refusal to obey the state school laws or reasonable rules prescribed for the government of the school corporation;
- (3) Neglect of duty;
- (4) Incompetency;
- (5) Justifiable decrease in the number of teaching positions; or
- (6) Other good and just cause.

When the cause of cancellation is ground (1) or (2), the cancellation is effective immediately. When the cause of cancellation is ground (3), (4), (5), or (6), the cancellation is effective at the end of the school term following the cancellation.

(b) An indefinite contract may not be canceled for political or personal reasons. [IC 20-6.1-4-10,as added by Acts 1976. P>L> 100,1.]

### Iowa

I. C. A. sec. 279-24

279-24. Discharge of teacher.

The board may, by a majority vote, discharge any teacher for incompetency, inattention to duty, partiality, or any good cause, after a full and fair investigation made at a meeting of the board held for that purpose, at which the teacher shall be permitted to be present and make defences, allowing him a reasonable time therefore.

### Kansas

K.S.A., V. 5A, 72-5411.

72-5411. Continuation of teachers' contracts; notice to terminate or discontinue; change by mutual consent.

All contracts of employment of teachers in the public schools in the state shall continue in full force and effect during good behavior and efficient and competent service rendered by the teacher, and all contracts of employment shall be deemed to continue for the next succeeding school year unless written notice of intention to terminate the contract is served by the board of education upon any teacher on or before April 10 or the teacher gives written notice to the board of education of the school district that the teacher does not desire continuation of the contract on or before May 10 or, if applicable, not later than 15 days after final action is taken by the board of education upon termination of professional negotiation absent a binding agreement under article 54 of chapter 72 of Kansas Statutes Annotated, whichever is the later date. Terms of a contract may be changed at any time by mutual consent of both the teacher and the board of education of the school district.

### Kentucky

Kentucky Rev. Stat. Ann., cited thus in the Reports: KRS 161.790.

161.790. Termination of contract by board--Causes for--Procedure--Suspension pending trial--Appeal.

(1) The contract of a teacher shall remain in force during good behavior and efficient and competent service by the teacher and shall not be terminated except for any of the following causes:

- (a) *Insubordination*, including but not limited to (1). violation of lawful rules and regulations established by the local board of education for the operation of schools, and (2) refusal to recognize or obey the authority of the superintendent, principal, or any other supervisory personnel of the board in the performance of their duties;
- (b) Immoral character or conduct unbecoming a teacher;
- (c) Physical or mental disability;
- (d) Inefficiency, incompetency, or neglect of duty, when a written statement identifying the problems or difficulties has been furnished the teacher involved.

(2) (a) Charges on the above causes shall be supported by written records of a teacher's performance by the superintendent, principal, or other contract.

## Louisiana

LSA - R. S. 17: 443

443. Removal of teachers; procedure; right to appeal

A. A permanent teacher shall not be removed from office except upon written and signed charges of willful neglect of duty, or incompetency or dishonesty, or of being a member of or contributing to any group, organization, movement or corporation that is prohibited by law or injunction from operating in the State of Louisiana, and then only if found



guilty after a hearing by the school board of the parish or city, as the case may be, which hearing may be private or public, at the option of the teacher. At least fifteen days in advance of the date of the hearing, the school board shall furnish the teacher with a copy of the written charges. The teacher shall have the right to appear before the board with witnesses in his behalf and with counsel of his selection, all of whom shall be heard by the board at the said hearing. Nothing herein contained shall impair the right of appeal to a court of competent jurisdiction.

## Maine

M.R.S.A., 20-A, 13202.

### 13202. Teacher dismissal

A school board, after investigation, due notice of hearing and hearing thereon, shall dismiss any teacher, although having the requisite certificate, who proves unfit to teach or whose services the board deems unprofitable to the school; and give to that teacher a certificate of dismissal and of the reasons for the dismissal, a copy of which the board shall retain. That dismissal shall not deprive the teacher of compensation for previous services.

## Maryland

Section 6-202. Suspension or dismissal of teachers, principals, or other professional personnel.

(a) Grounds and procedure for suspension or dismissal.--

(1) On the recommendation of the county superintendent, a county board may suspend or dismiss a teacher, principal, supervisor, assistant superintendent, or other professional assistant for:

- (i) Immorality;
- (ii) Misconduct in office;
- (iii) *Insubordination*;
- (iv) Incompetency; or
- (v) Willful neglect of duty.

(2) Before removing an individual, the county board shall send the individual a copy of the charges against him and give him an opportunity within 10 days to request a hearing.

(3) If the individual requests a hearing within the 10 day period:

- (i) The county board promptly shall hold a hearing, but a hearing may not be set within 10 days after the county board sends the individual a notice of the hearing; and

(ii) The individual shall have an opportunity to be heard before the county board, in person or by counsel, and to bring witnesses to the hearing.

(4) The individual may appeal from the decision of the county board to the State Board. In Baltimore City, this paragraph does not apply to the suspension and removal of assistant superintendents and higher levels.

(5) In Baltimore City the suspension and removal of assistant superintendents and higher levels shall be as provided by the city charter.

## Massachusetts

### M. G. L. A. C. 71 Section 42

#### Section 42. Discharge of Teachers and Superintendents.

The school committee may dismiss any teacher, but no teacher and no superintendent, other than a union superintendent and the superintendent of schools in the city of Boston, shall be dismissed unless by a two thirds vote of the whole committee. A teacher not employed at discretion under section forty-one and who has been teaching for more than ninety days shall not be dismissed for any reason unless at least fifteen days, exclusive of customary vacation period, prior to the meetings at which the vote is to be taken, he shall have been notified of such intended vote and, if he so requests, he shall have been furnished by the committee with a written statement of the cause

or causes for which the dismissal is proposed and if he so requests, he has been given a hearing before the school committee at which he may be represented by counsel, present evidence, and call witnesses to testify in his behalf and examine them, and the superintendent shall have given the committee his recommendation thereon. In every such town a teacher or superintendent employed at discretion under section forty-one or a superintendent employed under a contract, shall not be dismissed, except for inefficiency, incompetency, incapacity, conduct unbecoming a teacher or superintendent, *insubordination* or other good cause, nor unless at least thirty days, exclusive of customary vacation periods, prior to the meeting at which the vote is to be taken, he shall have been notified of such intended vote; not unless, if he so requests, he has been given a hearing before the school committee which may be either public or private at the discretion of the school committee and at which he may be represented by counsel, present evidence and call witnesses to testify in his behalf and examine them; nor unless, in the case of a teacher, the superintendent shall have given the committee his recommendations thereon.

The change of marital status of a female teacher or superintendent shall not be considered cause for dismissal under this section. Neither this nor the preceding section shall effect the right of a committee to dismiss a teacher whenever an actual decrease in the number of pupils in the schools of the town renders such action advisable. In case a decrease in the number of pupils in the schools of a town renders advisable the dismissal of one or more teachers, a teacher who is serving at the discretion of a school committee under section forty-one shall not be dismissed if there is a

teacher not serving at discretion whose position the teacher serving at discretion is qualified to fill. No teacher or superintendent who has been lawfully dismissed shall receive compensation for services rendered hereafter.-or a superintendent employed under a contract, shall not be dismissed, except for inefficiency, incapacity, conduct unbecoming a teacher or superintendent, *insubordination* or other good cause, nor unless at least thirty days, exclusive of customary vacation periods, prior to the meeting at which the vote is to be taken, he shall have been notified of such intended vote; not unless, if he so requests, he has been given a hearing before the school committee which may be either public or private at the discretion of the school committee and at which he may be represented by counsel, present evidence and call witnesses to testify in his behalf and examine them; nor unless, in the case of a teacher, the superintendent shall have given the committee his recommendations thereon. The change of marital status of a female teacher or superintendent shall not be considered cause for dismissal under this section. Neither this nor the preceding section shall effect the right of a committee to dismiss a teacher whenever an actual decrease in the number of pupils in the schools of the town renders such action advisable. In case a decrease in the number of pupils in the schools of a town renders advisable the dismissal of one or more teachers, a teacher who is serving at the discretion of a school committee under section forty-one shall not be dismissed if there is a teacher not serving at discretion whose position the teacher serving at discretion is qualified to fill. No teacher or superintendent who has been lawfully dismissed shall receive compensation for services rendered hereafter.

## Michigan

Michigan Stat., Ann., Section 15.2001.

15.2001. Discharge or demotion of teacher on continuing tenure; retirement.

Sec. 1. Discharge or demotion of a teacher on continuing tenure may be made only for reasonable and just cause, and only after such charges, notices, hearing, and determination thereof, as are hereinafter provided. Nothing in this act shall be construed as preventing any controlling board from establishing a reasonable policy for retirement to apply equally to all teachers who are eligible for retirement under Act No. 136 of the Public Acts of 1945 or having established a reasonable retirement age policy, from temporarily continuing on criteria equally applied to all teachers the contract on a year-to-year basis of any teacher whom the controlling board might wish to retain beyond the established retirement age for the benefit of the school system. (MCL Sec. 38.101.)

## Minnesota

## Section 125.12

## 125.12 Employment; contracts, termination

## Subdivision 6. Grounds for termination.

A continuing contract may be terminated, effective at the close of the school year, upon any of the following grounds;

- (a) Inefficiency;
- (b) Neglect of duty, or persistent violation of school laws, rules, regulations, or directives;
- (c) Conduct unbecoming a teacher which materially impairs his education effectiveness;
- (d) Other good and sufficient grounds rendering the teacher unfit to perform his duties.

A contract shall not be terminated upon one of the grounds specified in clauses (a), (b), (c), or (d), unless the teacher shall have failed to correct the deficiency after being given written notice of the specific items of complaint and reasonable time within which to remedy them.

## Subdivision 8. Immediate discharge.

A school board may discharge a continuing-contract teacher, effective immediately, upon any of the following grounds:

- (a) Immoral conduct, *insubordination*, or conviction of a felony;
- (b) Conduct unbecoming a teacher which requires the immediate removal of the teacher from his classroom or other duties;
- (c) Failure without justifiable cause to teacher without first securing the written release of the school board;
- (d) Gross inefficiency which the teacher has failed to correct after reasonable written notice;
- (e) Willful neglect of duty; or
- (f) Continuing physical or mental disability subsequent to a twelve months leave of absence and inability to qualify for reinstatement in accordance with subdivision 7.

### Mississippi

Mississippi code 1972 ann., section 37-9-59 etc.

Section 37-9-59. Suspension or removal of principal or teacher; prohibited grounds for denying employment or reemployment.

For incompetence, neglect of duty, immoral conduct, intemperance, brutal treatment of a pupil or other good cause the superintendent of schools may dismiss or suspend any certificated employee in any school district. Before being so removed or suspended any certificated employee shall be notified of the charges against him and he shall be advised that he is entitled to a public hearing upon said charges. In the event the continued presence of said employee on school premises poses a potential threat or



danger to the health, safety or general welfare of the students, or, in the discretion of the superintendent, may interfere with or cause a disruption of normal school operations, the superintendent may immediately release said employee of all duties pending a hearing if one is requested by the employee. In the event a certificated employee is arrested, indicted or otherwise charged with a felony by a recognized law enforcement official, the continued presence of the certificated employee on school premises shall be deemed to constitute a disruption of normal school operations. The school board, upon request for a hearing by the person so suspended or removed shall set a date, time and place for such hearing which shall be not sooner than five (5) days nor later than thirty (30) days from the date of the request. The procedure for such hearing shall be as prescribed for hearings before the board or hearing officer in Section 37-9-111. From the decision made at said hearing, any certificated employee shall be allowed an appeal to the chancery court in the same manner as appeals are authorized in Section 37-9-113. Any party aggrieved by action of the chancery court may appeal to the Mississippi Supreme Court as provided by law. In the event that a certificated employee is immediately relieved of duties pending a hearing, as provided in this section, said employee shall be entitled to compensation for a period up to and including the date that the initial hearing is set by the school board, in the event that there is a request for such a hearing by the employee. In the event that an employee does not request a hearing within five (5) calendar days of the date of the notice of discharge or suspension, it shall constitute a waiver of all rights by said

employee and such discharge or suspension shall be effective on the date set out in the notice to the employee.

The school board of every school district in this state is hereby prohibited from denying employment or reemployment to any person as a superintendent, principal or certificated employee, as defined in Section 37-19-1, or as a non-instructional personnel, as defined in Section 37-9-1, for the single reason that any eligible child of such person does not attend the school system in which such superintendent, principal, certificated employee or non-instructional personnel is employed.

### Missouri

Vernon's Ann. No. Stat., Section 168.114

168.114. Board may terminate, grounds for

1. An indefinite contract with a permanent teacher shall not be terminated by the board of education of a school district except for one or more of the following causes:

- (1) Physical or mental condition unfitting him to instruct or associate with children;
- (2) Immoral conduct;
- (3) Incompetency, inefficiency or *insubordination* in line of duty;

- (4) Willful or persistent violation of, or failure to obey the school laws of the state or the published regulations of the board of education of the school district employing him;
- (5) Excessive or unreasonable absence from performance of duties; or
- (6) Conviction of a felony or a crime involving moral turpitude.

2. In determining the professional competency of or efficiency of a permanent teacher, consideration should be given to regular and special evaluation reports prepared in accordance with the policy of the employing school district and to any written standards of performance which may have been adopted by the school board.

Added by Laws 1969, p. 275 (168.107)

### Montana

Montana Code Annotated. Section 20-4-207.

20-4-207. Dismissal of teacher under contract. (1) The trustees of any district may dismiss a teacher before the expiration of his employment contract for immorality, unfitness, incompetence, or violation of the adopted policies of such trustees.

## Nebraska

Neb. R.R.S. 1943, Ch. 79, Sec. 1260

79-1260 Teachers; indefinite contract; cancellation; grounds; time of taking effect. Nothing contained in this section shall prevent the suspension from duty of a permanent teacher in a fourth or fifth class school district, pending a decision on the cancellation of his contract. Cancellation of an indefinite contract may be made for (1) incompetency; (2) physical disability or sickness of any type which interferes with the performance of duty; (3) *insubordination*, which shall be deemed to mean a willful refusal to obey the school laws of this state, the rulings of the State Board of Education, or reasonable rules and regulations prescribed for the government of the schools of the district by the school board; (4) neglect of duty; (5) immorality; (6) failure to give evidence of professional growth; or (7) justifiable decrease in the number of teaching positions or other good and just cause, but may not be made for political or personal reasons. When the cause of cancellation of an indefinite contract is for immorality or *insubordination*, the cancellation shall go into effect immediately. For all other causes cancellation shall take effect at the end of the current school term. The decision of a school board to cancel an indefinite contract shall be final.

## Nevada

391.312. Grounds for suspension, demotion, dismissal and refusal to reemploy teachers and administrators; consideration of evaluations and standards of performance.

1. A teacher may be suspended, dismissed or not reemployed and an administrator may be demoted, suspended, dismissed or not reemployed for the following reasons:

- (a) Inefficiency;
- (b) Immorality;
- (c) Unprofessional conduct;
- (d) *Insubordination*;
- (e) Neglect of duty;
- (f) Physical or mental incapacity;
- (g) A justifiable decrease in the number of positions due to decreased enrollment or district reorganization;
- (h) Conviction of a felony or of a crime involving moral turpitude;
- (i) Inadequate performance;
- (j) Evident unfitness for service;
- (k) Failure to comply with such reasonable requirements as a board may prescribe;
- (l) Failure to show normal improvement and evidence of professional training and growth;

- (m) Advocating overthrow of the Government of the United States or of the State of Nevada by force, violence or other unlawful means, or the advocating or teaching of communism with the intent to indoctrinate pupils to subscribe to communistic philosophy;
- (n) Any cause which constitutes grounds for the revocation of a teacher's state certificate;
- (o) Willful neglect or failure to observe and carry out the requirements of the Title; or
- (p) Dishonesty

### New Hampshire

N.H. Rev. Stat. Ann., Chap. 189:13

#### 189.13 Dismissal of Teacher.

The school board may dismiss any teacher found by them to be immoral or incompetent, or one who shall not conform to regulations prescribed; provided, that no teacher shall be so dismissed before the expiration of the period for which said teacher was engaged without having previously been notified of the cause of such dismissal, nor without having previously been granted a full and fair hearing.

## New Jersey

## N.J.S.A. 18A:6-10

## 18A:6-10. Dismissal and reduction in compensation of persons under tenure in public school system

No person shall be dismissed or reduced in compensation,

(a) if he is or shall be under tenure of office, position or employment during good behavior and efficiency in the public school system of the state, or

(b) if he or shall be under tenure of office, position or employment during good behavior and efficiency as a supervisor, teacher or in any other teaching capacity in the Marie H. Katzenbach school for the deaf, or in any other educational institution conducted under the supervision of the commissioner except for inefficiency, incapacity, unbecoming conduct, or other just cause, and then only after a hearing held pursuant to this subarticle, by the commissioner, or a person appointed by him to act in his behalf, after a written charge or charges, of the cause or causes of complaint, shall have been preferred against such person, signed by the person or persons making the same, who may or may not be a member or members of a board of education, and filed and proceeded upon as in this subarticle provided.

Nothing in this section shall prevent the reduction of the number of any such persons holding such offices, positions or employments under the conditions and with the effect provided by law.

### New Mexico

New Mexico Statutes Ann. 1978, sec. 22-10-12, 22-10-14.2

#### 22-10-12. Notice of reemployment; termination

On or before the last day of the school year of the existing employment contract, the local school board or the governing authority of the state agency shall serve written notice of reemployment or termination on each certified school instructor employed by the school district or state agency. A notice of reemployment shall be an offer of employment for the ensuing school year. A notice of termination shall be a notice of intention not to reemploy for the ensuing school year. Failure of the local school board or the governing authority of the state agency to serve a written notice of reemployment or termination on a certified school instructor shall be construed to mean that notice of reemployment has been served upon the person for the ensuing school year according to the terms of the existing employment contract but subject to any additional compensation allowed other certified school instructors of like qualifications and experience employed by the school district or state agency. Nothing in this section shall be construed to mean that failure of a local school board or the governing authority of the state agency to serve a written notice of reemployment or



termination shall automatically extend a certified school instructor's employment contract for a period in excess of one school year.

22-10-14. Reemployment decisions; local school board; procedures.

A. A local board may decline to reemploy a certified school instructor with less than three years of consecutive service for any reason it deems sufficient. In assessing a certified school instructor for reemployment, the local school board may take into account and use as a basis for its decision not to reemploy a certified school instructor any factors deemed relevant to the school district's educational interests.

B. A certified school instructor who has been employed by a school district for three consecutive years and who receives a notice of termination pursuant to Section 22-10-12 NMSA 1978 may request an opportunity to make a statement to the local school board on the decision not to reemploy him by submitting a written request to the local superintendent within five calendar days from the date written notice of termination is served upon him. The certified school instructor may also request in writing the reasons for the board's action to terminate him, and upon this request the board shall disclose the reasons for its decision to the certified school instructor, provided that the local school board shall not publicly disclose its reasons for termination.

C. A local school board may not refuse to reemploy a certified school instructor who has been employed by a school district for three

consecutive years if its decision is based upon grounds that are arbitrary or capricious or legally impermissible.

## New York

McKinney's Consolidated Laws of New York, Education Law sec. 3012.

3012 Tenure: certain school districts

2. At the expiration of the probationary term of a person appointed for such term, subject to the conditions of this section, the superintendent of schools shall make a written report to the board of education or the trustees of a common school district recommending for appointment on tenure those persons who have been found competent, efficient, and satisfactory. Such persons, and all others employed in the teaching service of the schools of such union free school district, common school district, and/or school district employing fewer than eight teachers, who have served the probationary period as provided in this section, shall hold their respective positions during good behavior and efficient and competent service, and shall not be removed except for any of the following causes, after a hearing, as provided by section three thousand twenty-a of such law: (a) *insubordination*, immoral character or conduct unbecoming a teacher; (b) inefficiency, incompetency, physical or mental disability, or neglect of duty; (c) failure to maintain certification as required by this chapter and by the regulations of the commissioner of education. Each person who is not to be recommended for appointment on tenure, shall be so notified by the

superintendent of schools in writing not later than sixty days immediately preceding the expiration of his probationary period.

## North Carolina

### Article 22. Sec. 115C-325

115C-325. System of employment for public school teachers.

(e) Grounds for Dismissal or Demotion of A Career Teacher. -

(1) No career teacher shall be dismissed or demoted or employed on a part-time basis except for one or more of the following:

- a. Inadequate performance.
- b. Immorality.
- c. *Insubordination.*
- d. Neglect of duty.
- e. Physical or mental incapacity.
- f. Habitual or excessive use of alcohol or non-medical use of a controlled substance as defined in Article 5 of Chapter 90 of the General Statutes.
- g. Conviction of a felony or a crime involving moral turpitude.
- h. Advocating the overthrow of the government of the United States or of the State of North Carolina by force, violence, or other unlawful means.

- i. Failure to fulfill the duties and responsibilities imposed upon teachers by the General Statutes of this State.
- j. Failure to comply with such reasonable requirements as the board may prescribe.
- k. Any cause which constitutes grounds for the revocation of such career teacher's teaching certificate.
- l. A justifiable decrease in the number of positions due to district reorganization or decreased enrollment, or decreased funding provided that there is compliance with subdivision
- m. Failure to maintain one's certificate in a current status.
- n. Failure to repay money owed to the State in accordance with the provisions of Article 60, Chapter 143 of the General Statutes.

#### North Dakota

Cited in case: N.D.C.C. 15-47-38

15-47-38. Legislative intent in employment of teachers-  
Notification of discharge or failure to renew-Hearing.-

3. A school board may dismiss a teacher, effective immediately, for any of the following causes:

- a. Immoral conduct, *insubordination*, or conviction of a felony.
- b. Conduct unbecoming a teacher which requires the immediate removal of a teacher from his classroom duties.
- c. Failure without justifiable cause to perform contracted duties.

- d. Gross inefficiency which the teacher has failed to correct after reasonable written notice.
- e. Continuing physical or mental disability which renders him unfit or unable to perform his duties as a teacher.

## Ohio

Ohio Rev. Code Ann., sec. 3319.16

### 3319.16 Termination of contract by board of education.

The contract of a teacher may not be terminated except for gross inefficiency or immorality; for willful and persistent violations of reasonable regulations of the board of education; or by other good and just cause. Before terminating any contract, the employing board shall furnish the teacher a written notice signed by its treasurer of its intention to consider the termination of his contract with full specification of the grounds for such consideration. The board shall not proceed with formal action to terminate the contract until after the tenth day after receipt of the notice by the teacher. Within ten days after receipt of the notice from the treasurer of the board, the teacher may file with the treasurer a written demand for a hearing before the board or before a referee, and the board shall set a time for the hearing which shall be within thirty days from the date of receipt of the written demand, and the treasurer shall give the teacher at least twenty days' notice in writing of the time and place of such hearing. If a referee is demanded by either the teacher or board, the

treasurer shall also give twenty days' notice to the superintendent of public instruction. No hearing shall be held during the summer vacation without the teacher's consent. The hearing shall be private unless the teacher requests a public hearing. The hearing shall be conducted by a referee appointed pursuant to section 3319.161 (3319.16.1) of the Revised Code, if demanded; otherwise, it shall be conducted by a majority of the members of the board and shall be confined to the grounds given for such termination. The board shall provide for a complete stenographic record of the proceedings, a copy of the record to be furnished to the teacher. The board may suspend a teacher pending final action to terminate his contract if, in its judgment, the character of the charges warrants such action.

### Oklahoma

70 Oklahoma St. Ann, Sec. 6-103

#### 6-103. Dismissal of teacher - Grounds - Notice - Hearing

Upon hearing, as hereinafter provided, any teacher may be dismissed at any time for immorality, willful neglect of duty, cruelty, incompetency, teaching disloyalty to the American Constitutional system of government, or any reason involving moral turpitude. Before any teacher may be dismissed, written notice of the proposed dismissal shall be given him by the board of education in independent school districts, or by the county superintendent of schools in dependent school districts. Said notice shall contain a statement of the charges upon which a hearing is sought and by

whom brought. The teacher complained of shall be notified of the date of the hearing, which shall be not less than ten (10) days from the date of said notice. The teacher shall be entitled to be present and to be represented by counsel. In the case of a teacher in a dependent school district, the hearing shall be before the county superintendent of schools and the board of education of the district in which the teacher is employed. In independent schools districts it shall be before the board of education of such school district. In all cases a majority vote of those constituting the board, before which said hearing is held, shall be required in order to sustain the charges against the teacher charged and in dependent school districts the county superintendent of schools must concur. Provided in cases involving incompetency or neglect of duty, the decision arrived at at said hearing shall be final and in those involving moral turpitude an appeal may be taken to the district court of the county.

## Oregon

Oregon Revised Statutes. 342.865.

342.865 Grounds for dismissal of permanent teacher.

- (1) No permanent teacher shall be dismissed except for:
  - (a) Inefficiency;
  - (b) Immorality;
  - (c) *Insubordination*;
  - (d) Neglect of duty;

- (e) Physical or mental incapacity;
- (f) Conviction of a felony or of a crime involving moral turpitude;
- (g) Inadequate performance;
- (h) Failure to comply with such reasonable requirements as the board may prescribe to show normal improvement and evidence of professional training and growth;
- (i) Any cause which constitutes grounds for the revocation of such permanent teacher's teaching certificate.

### Pennsylvania

Pa. 24P.S., sec. 11-1122

#### 11-1122. Causes for termination of contract

The only valid causes for termination of a contract heretofore or hereafter entered into with a professional employee shall be immorality, incompetency, intemperance, cruelty, persistent negligence, mental derangement, advocacy of or participating in un-American or subversive doctrines, persistent and wilful violation of the school laws of this commonwealth on the part of the professional employee.



## Rhode Island

G. L. R. I. 1956, sec. 16-13-3.

### 16-13-3. Probationary period - Tenure after probation

Three successive annual contracts shall be considered evidence of satisfactory teaching and shall constitute a probationary period. Teachers who have given satisfactory service for three years prior to April 24, 1946, and therefore those who shall complete the probationary period, shall be considered in continuing service. No such teacher shall be dismissed except for good and just cause.

## South Carolina

Code of South Carolina 1986, sec. 59-25-430.

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 evident unfitness for teaching; provided, however that notice and an opportunity shall be afforded for a hearing prior to any dismissal. Evident unfitness for teaching is manifested by conduct such as, but not limited to, the following: persistent neglect of duty, willful violation of rules and regulations of district board of trustees, drunkenness, conviction

of a violation of the law of this State or the United States, gross immorality, dishonesty, illegal use, sale or possession of drugs or narcotics.

### South Dakota

SDCL 1982 Rev., section 13-43-15.

13-43-15. Grounds for dismissal of teacher.

A school board may dismiss any teacher at any time for plain violation of contract, gross immorality, incompetency, or flagrant neglect of duty.

### Tennessee

T.C.A. sec. 49-5-511.

49-5-511. Dismissal and suspension of teachers generally.

49-5-511. Dismissal or suspension of teachers generally.

49-5-511. Dismissal or suspension of teachers generally.

(1) No teacher shall be dismissed or suspended excepts as provided in this part.

(2) The causes for which a teacher may be dismissed are as follows: incompetence, inefficiency, neglect of duty, unprofessional conduct, and *insubordination*, as defined in 49-5-501.

49-5-501. Definitions. --Whenever the words or phrases defined in this section are used in this part, they shall have the meaning and application given in these definitions, unless the context and obvious intent definitely indicate otherwise:

(3) "Conduct unbecoming to a member of the teaching professions" may consist of but not be limited to one or more of the following:

- (A) Immorality;
- (B) Conviction of a felony or a crime involving moral turpitude;
- (C) Dishonesty, unreliability, continued willful failure or refusal to pay one's just and honest debts;
- (D) Disregard of the code of ethics of the Tennessee education association in such manner as to make one obnoxious as a member of the profession; or
- (E) Improper use of narcotics or intoxicants;

(4) "Incompetence" means being incapable; lacking adequate power, capacity, or ability to carry out the duties and responsibilities of the position. This may apply to physical, mental, educational, emotional or other personal conditions. It may include lack of training or experience. Evident unfitness for service; physical, mental or emotional condition unfitting teacher to teach or associate with children; or inability to

command respect from subordinates or to secure cooperation of those with whom he must work;

(5) "Inefficiency" means being below the standards of efficiency maintained by others currently employed by the board for similar work; habitually tardy, inaccurate, or wanting in effective performance of duties.

(6) "*Insubordination*" may consist of:

(A) Refusal to continued failure to obey the school laws of Tennessee, or to comply with the rules and regulations of the board, or to carryout specific assignments made by the board, the superintendent or the principal, each acting within its own jurisdiction, when such rulesregulations and assignments are reasonable and not discriminating.

(B) Failure to paticipate in an in-service training program set up by thelocal board of education and approved by the state board of education.

(C) Treason; any effort to sabotage or overthrow the government of the United States; or

(D) Refusal by the teacher to disclose to the board whether or not he is, or has been, a member of the Communist or any other party which advocates the overthrow of the government.

(7) "Neglect of duty" means gross or repeated failure to perform duties and responsibilities which reasonably can be expected of one in such capacity; continued unexcused or unnecessary absence from duty;

### Texas

V.T.C.A., Education Code sec. 13.110.

#### 13.310. Release at End of Year

Any teacher employed under a continuing contract may be released at the end of any school year and his employment with the school district terminated at that time, or he may be returned to probationary contract employment for not exceeding the three succeeding school years, upon notice and hearing (if requested) as hereinafter provided, for any reason enumerated in Section 13,109 of this code or for any of the following additional reasons:

- (1) incompetency in performance of duties;
- (2) failure to comply with such reasonable requirements as the board of trustees of the employing school district may prescribe for achieving professional improvement and growth;
- (3) willful failure to pay debts;
- (4) habitual use of addictive drugs or hallucinogens;
- (5) excessive use of alcoholic beverages;

- (6) necessary reduction of personnel by the school district (such reductions shall be made in the reverse order of seniority in the specific teaching fields);
- (7) for good cause as determined by the local school board, good cause being the failure of a teacher to meet the accepted standards of conduct for the profession as generally recognized and applied in similarly situated school districts throughout Texas; or
- (8) failure by a person to take an examination under Section 13.047 of this code to perform satisfactorily on at least one examination under that section on or before June 30, 1986.

## Utah

Utah Code Ann. 1953, Section 53-51-9.

53-59-9. Establishment of termination procedures by district board - Application to other personnel.

The board of education of each school district is hereby authorized and shall establish orderly dismissal procedures under this act for educators and contract classified school employees and may apply such procedures to other personnel of the district.

## Vermont

16 V.S.A. 1752

1752. Grounds and procedures for suspension and dismissal

(c) A superintendent may suspend a teacher under contract on the grounds of incompetence, or conduct unbecoming a teacher, failure to attend to duties or failure to carry out reasonable orders and directions of the superintendent and school board.

## Virginia

Virginia code ann. section 22.1-307 (replacement volume, 1985)

22.1-307. Dismissal, etc. of teacher; grounds.

Teachers may be dismissed or placed on probation for incompetency, immorality, noncompliance with school laws and regulations, disability as shown by competent medical evidence, or conviction of a felony or a crime of moral turpitude.

## Washington

Section 28A.58.450 Adverse change in contract status of certificated employee--Determination of probable cause--Notice--Opportunity for hearing

In the event it is determined that there is probable cause or causes for a teacher, principal, supervisor, superintendent, or other certificated employee, holding a position as such with the school district, hereinafter referred to as "employee", to be discharged or otherwise adversely affected in his or her contract status, such employee shall be notified in writing of that decision, which notification shall specify the probable cause or causes for such action. Such determinations of probable cause for certificated employees, other than the superintendent, shall be made by the superintendent. Such notices shall be served upon that employee personally, or by certified or registered mail, or by leaving a copy of the notice at the house of his or her usual abode with some person of suitable age and discretion then resident therein. Every such employee so notified, at his or her request made in writing and filed with the president, chairman of the board or secretary of the board of directors of the district within ten days after receiving such notice, shall be granted opportunity for a hearing pursuant to RCW 28A.58.455 to determine whether or not there is sufficient cause or causes for his or her discharge or other adverse action against his contract status.

In the event any such notice or opportunity for hearing is not timely given, or in the event cause for discharge or other adverse action is not established by a preponderance of the evidence at the hearing, such employee shall not be discharged or otherwise adversely affected in his contract status for the causes stated in the original notice for the duration of his or her contract.



If such employee does not request a hearing as provided herein, such employee may be discharged or otherwise adversely affected as provided in the notice served upon the employee. Transfer to a subordinate certificated position as that procedure is set forth in RCW 28A.67.073 shall not be construed as a discharge or other adverse action against contract status for the purposes of the section.

### West Virginia

West Virginia Code Ann., sec. 18A-2-8 (1987 Cum. Supp.).

18A-2-8. Suspension and dismissal of school personnel by board; appeal.

Notwithstanding any other provisions of law, a board may suspend or dismiss any person in its employment at any time for: Immorality, incompetency, cruelty, *insubordination*, intemperance or willful neglect of duty, but the charges shall be stated in writing served upon the employee within two days of presentation of said charges to the board. The employee so affected shall be given an opportunity, within five days of receiving such written notice, to request, in writing, a level four hearing and appeals pursuant to provisions of article twenty-nine [18-29-1 et seq.], chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

## Wisconsin

### Section 118.23

#### 118.23 Populous counties; teacher tenure

(3) No teacher who has become permanently employed under this section may be refused employment, dismissed, removed or discharged except for inefficiency or immorality, for willful and persistent violation of reasonable regulations of the governing body of the school system or school or for other good cause, upon written charges based on fact preferred by the governing body or other proper officer of the school system in which the teacher is employed. Upon the teacher's written request and no less than 10 nor more than 30 days after the receipt of notice by the teacher, the charges shall be heard and determined by the governing body of the school system or school by which the teacher is employed. Hearings shall be public when requested by the teacher and all proceedings thereat shall be taken by a court reporter. All parties shall be entitled to be represented by counsel at the hearing. The action of the governing body is final.

## Wyoming

W.S. 1977-July 1986, sec. 21-7-110.

21-7-110. Suspension or dismissal of teachers. - The board may suspend or dismiss any teacher for

- (a) incompetency,
- (b) neglect or duty,
- (c) immorality,
- (d) *insubordination*, or
- (e) any good or just cause
- (f) Physical or mental incapacity;
- (g) A justifiable decrease in the number of positions due to decreased enrollment or district reorganization;
- (h) Conviction of a felony or of a crime involving moral turpitude;
- (i) Inadequate performance;
- (j) Evident unfitness for service;