THE TERMINATION OF TENURED PUBLIC SCHOOL TEACHERS FOR INCOMPETENCE

by

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ABSTRACT

The purpose of this study was to review state and federal court
cases from 1982 through February 1998 in which tenured public school
teachers were terminated for incompetence. This study provided a current
analysis of judicial opinions of teacher incompetence as a follow-up to
Shackleford’s (1982) study in which she reviewed state and federal
termination cases from 1958 through 1981.

Four research questions guided the study based on the
examination of 107 court cases. The study provided a current judicial
definition regarding the term “incompetency” and also provided a legal
frame of reference from which one could imply teacher incompetence.

The following conclusions were derived from the analysis of court
cases examined in this study.

1. The term “teacher incompetency” does not have a decisive
judicial definition. Consequently, teachers may be terminated
for multiple reasons of incompetency.

2. Courts have indicated that teachers should not be terminated for arbitrary or capricious reasons, but for just and reasonable cause.

3. The foremost purpose of teacher evaluation is remediation, not termination. Courts have indicated that teachers should be provided adequate time to find a solution to a problem.

4. Teachers must be provided adequate notice of the intent to terminate with a sufficiently detailed statement to inform the teacher of the allegations and charges so the teacher can prepare an adequate defense.

5. Teachers have a due process right to a fair hearing in which school officials must be able to exhibit a preponderance of evidence that the teacher is incompetent.

6. During hearings, teachers must be given an opportunity to cross-examine witnesses, testify, and present testimony of other witnesses and other relevant evidence.

7. A school board’s termination of teachers for incompetence will not be sustained if a teacher’s rights, guaranteed by the United States Constitution or state laws, are violated.
8. Teacher incompetency must be measured by the same standards required of others performing the same or similar duties.
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TABLE OF CONTENTS

Page

ABSTRACT ................................................................. ii

ACKNOWLEDGEMENTS .......................................... v

LIST OF TABLES .................................................... ix

CHAPTER 1: INTRODUCTION ........................................ 1

  Statement of the Problem ....................................... 5
  Purpose of the Study ............................................ 5
  Research Questions ............................................. 6
  Significance of the Study ...................................... 6
  Procedures ....................................................... 7
  Limitations ...................................................... 9
  Organization of the Following Chapters .................... 9

CHAPTER 2: REVIEW OF RELATED LITERATURE ............... 10

  Historical Review .............................................. 11
  Accountability and Teacher Evaluation .................... 24
  Teacher Competency Tests .................................... 27
  State Laws Relating to Tenured Teacher Termination ... 29
  Teacher Termination and Due Process ....................... 31
LIST OF TABLES

<table>
<thead>
<tr>
<th>Table</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>84</td>
</tr>
</tbody>
</table>

Termination of Tenured Teachers State By State
CHAPTER I

INTRODUCTION

In past decades, controversies regarding the termination of public school teachers were so few that they were perceived by the news media as spectacular. Accordingly, almost everyone was aware of the challenge to the established order when a teacher protested being terminated (Sistrunk & Guin, 1983). However, with the elaboration of liberty and property rights as a result of landmark decisions, and the chance of monetary gain as an award for damages, the number of teacher termination cases appealed in the courts has increased over the past 30 years (Madison, 1994). Nevertheless, to terminate incompetent teachers is a responsibility that cannot be ignored. Bridges (1992) suggested that students and parents are not the only ones who are being deprived by incompetent teachers. He noted that poor performing teachers tarnish the reputations of the vast majority of America’s teachers who are competent and conscientious professionals.

While the termination of nontenured teachers within the contract period necessitates full procedural protection, the release of a nontenured teacher at the end of the contract period generally requires only notice that the teacher will not be reappointed (Cambron-McCabe, 1983). Zirkel and Gluckman (1985) indicated that contrary to popular belief, teacher tenure is
not a guarantee of employment until retirement or resignation. “Rather, it is a guarantee of procedural protections in the termination process” (p. 91).

Bolmeier (1973) stated the following:

A tenure right is construed to mean the right of employment for a continuing or indefinite period of time, subject to removal only for a cause prescribed by law. Tenure laws are justified on the theory that they serve the best interests and welfare of the state by preventing school boards and others from removing capable teachers for unjust reasons (p. 192).

Hence, tenure should not be an assured process but awarded only after abundant evidence to substantiate that teachers have earned it.

Probation is designed to provide an opportunity for teachers to prove themselves, and it also eliminates incompetent teachers, which reduces the need to terminate. Additionally, actual termination is often avoided through forced resignations, counseling, self-evaluation, and early retirement. However, termination of tenured public school teachers continues to be a rare occurrence, despite the pressure for administrators to act (Millman & Darling-Hammond, 1990). Adams (1988), quoting Andrews, said:

Administrators, charged with the responsibility for the education of students, may find that the weight of tenure, the thrust of teacher unionism, the burdensome procedural requisites for discharge, and the tenor of the times make the prospective termination of an employee nearly im-
possible. In addition, the lack of a definition of the term incompetency, the inclusion of evaluations in some dismissal actions, a paucity of information as to what documentation is needed, and the procedural requirements necessary in order to satisfy the requisites of constitutional "due process" may influence the administrator to refrain from dismissal action (p. 2).

Peterson (1982) indicated that teachers are competent unless proven otherwise. He reported that this is the basic premise of all teacher termination defenses. "Seldom if ever, do teachers and/or their legal representatives attempt to prove they are, in fact, good or excellent in their field. Rather, the defense attempt is almost always to persuade the board of education that the principal's actions were inappropriate" (p. 87).

Bridges (1992) noted that because there is a lack of firm guidance from state statutes and the courts, administrators are generally left on their own to figure out what criteria, standards or both should be used for determining whether a teacher is incompetent. The reluctance of school officials to recommend termination of a tenured teacher's contract may be the result of the perceived difficulty of school districts to win when teachers take termination cases to court. Improper decisions about termination or fallacies during the process can be costly. Often, the termination of tenured public school teachers depends on judicial opinion through interpretation of the law. Bolmeier (1973) affirmed that judges, who render
decisions in a broad context, provide implications for future judicial interpretations as subsequent courts attempt to answer the question of whether the evidence produced by school officials supports the charge of teacher incompetence.

Teacher evaluation is an imperative factor in determining teacher incompetence. Cangelosi (1991) suggested that deficient teacher evaluation practices allow teacher incompetence to continue and contribute to the misuse of students’ learning time and the waste of tax dollars. Millman and Darling-Hammond (1990) indicated, however, that the evaluation process may be used to enforce the exit of incompetent teachers from their positions.

Thus, efforts to clarify teacher incompetency remains a complicated task for school officials and the courts. This is due in part to the fact that incompetence is a concept without precise technical meaning (Rosenberger & Plimpton, 1975).

Lavely, Berger, and Follman (1992) stated that there is considerable solicitude in the public today about the perceived high incidence of incompetent public school teachers. Madison (1994) indicated that the public is becoming perplexed with the seeming inability of school administrators to address this problem. Edwards (1971) denoted, however, that a teacher cannot be dismissed because of general dissatisfaction on
the part of parents and students. “Such evidence is not conclusive of incompetence. When a teacher is dismissed for incompetency, the burden of proof is upon the board of education” (p. 484). The termination of tenured public school teachers is an arduous task; consequently, competency in education must become an intrinsic goal for school officials.

**Statement of the Problem**

Educational leaders are under augmenting pressure to improve the accountability of teachers. The problem of this study was to examine and analyze legal grounds sustained by federal and state courts in cases involving the termination of tenured public school teachers for incompetence in an effort to define teacher incompetence.

**Purpose of the Study**

The purpose of this study was to review federal and state court cases from 1982 through February 1998 in which tenured public school teachers were terminated for incompetence. This study provided a current analysis of judicial opinions of teacher incompetence as a follow-up to Shackelford’s (1982) study, in which she reviewed federal and state teacher termination cases from 1958 through 1981. Shackelford recognized that the landmark case, *Beilan v. Board of Public Education* provided a judicial definition of incompetence; however, the rulings in *Tinker v. Des Moines Independent Community School District* and
Pickering v. Board of Education of Township High School District 205 clarified the fact that students and teachers have guaranteed rights under the First and Fourteenth Amendments to the United States Constitution. Behaviors and actions of tenured public school teachers that courts have sustained as evidence of incompetence since Shackelford were identified. This study provided a current judicial definition regarding the term “incompetency” and also provided a legal frame of reference from which one could imply teacher incompetence.

Research Questions

1. What constitutes teacher incompetence since the Shackelford’s (1982) study?
2. What judicial opinion have the courts rendered regarding incompetence of tenured public school teachers, and how have the courts defined incompetency?
3. What type of evidence was present in cases where termination was sustained?
4. What type of evidence was present in support of the teachers?

Significance of the Study

The effects that judicial opinions have on public school systems will change from time to time. Judicial opinions may impact the reasons sustained for teacher termination based on incompetence. As a follow-up
to Shackelford's (1982) study, this study provided a current analysis of judicial opinions regarding the term “teacher incompetence.” Also, this study determined what constitutes incompetency and provided a judicial definition of the term. Results of this study may assist school administrators in staying abreast of changes in judicial opinions as they occur in order to be prepared when faced with the problem of potential termination. It was anticipated that this study will help administrators decide whether there is appropriate evidence to withstand court tests. Study findings may be of interest and assistance to persons in higher education who prepare public school administrators.

**Procedures**

The first phase of the study involved the selection of federal and state court cases for the termination of tenured public school teachers for the reason of incompetence from 1982 through February 1998. One hundred-seventy court cases were located using WESTLAW computerized legal searches. Of that number, 102 cases were adjudicated in state courts, and five cases were adjudicated in federal courts.

The second phase entailed the examination of each case to determine its applicability to the study. It was necessary to determine whether there were enough court cases to conduct the study. During this phase, each case was analyzed to determine whether tenured teachers were terminated
for incompetence. Cases involving termination of tenured teachers for reasons other than incompetence were eliminated. Seventy-nine cases qualified for the study. Fifty-six cases were in favor of school districts, and 23 cases were in favor of teachers. Three of these cases were held in federal courts.

The third phase analyzed each case to determine categories of teachers’ behaviors or actions that were sustained by federal and state courts as evidence of incompetence. These categories were reviewed to determine if there have been changes in legal interpretations since the Shackelford (1982) study. During this phase, an analysis was made to determine the type of evidence present in cases where termination was sustained. A current judicial definition of the term “incompetency” was identified. Also during this phase, an analysis was made to determine the type of evidence present in cases adjudicated in support of the teachers.

The fourth phase of the study separated the behaviors and actions of terminated tenured public school teachers into five broad categories. Four of these categories, which included an inadequate preparation to teach, teaching methods, effect on pupils, and disability, were used in Shackelford’s study. Personal behavior was a fifth category added to this study. The specific teacher behaviors were listed according to state and frequency of incidence within each category and were exhibited in a table.
Limitations

The study was limited to federal and state court cases from 1982 through February 1998. Only court cases involving tenured public school teachers charged by school administrators as incompetent were examined. Consequently, only federal and state court cases which sustained or denied the charges of incompetence were included in the study.

Organization of the Following Chapters

Chapter two provided a review of related literature on teacher termination practices, which included landmark teacher termination cases. Chapter three summarized tenured teachers’ termination court cases and provided answers to the research questions. Chapter four provided a state by state overview of specific charges sustained by federal and state courts against tenured public school teachers for incompetence. Chapter five presented the summary, conclusions, and recommendations for further study.
CHAPTER 2
REVIEW OF RELATED LITERATURE

Incompetence of teachers in public education is a problem that has existed for many years. Since 1969, the Gallup organization has conducted an annual poll of the public’s attitudes toward the public schools, and survey results indicate parents have a serious concern about the quality of teaching in their local schools (Bridges, 1990). Bridges further noted that the quality of the teaching force is of greater concern to public school administrators. The price of teacher incompetence is astonishing.

“Failure by school administrators to take action results in decreased student achievement, low teacher morale, diminished confidence towards schools, teacher and administrator liability, and increased litigation” (McGrath, 1993, p. 30). Additionally, the perplexities and dynamics of classrooms dictate that teachers either continue to develop throughout their careers or become incompetent (Cangelosi, 1991). Identifying and terminating incompetent teachers is critical to improving the instructional process in public schools.

Incompetence may be a process rather than a condition. The descent into incompetence usually takes place over time. The process can proceed through stages: it might be gradual at first, and in these early stages may be remedied; in later stages it is likely to accelerate rapidly and be
irreversible (Jackson & Riffel, 1988).

Broadly speaking, incompetency is a generic term without specific or technical meaning that is often associated with inefficiency, unfitness, and inadequacy. There is little disagreement that incompetent teachers lack the required ability or skills to perform the duties required for the job. However, courts tend to rely on the judgment of school officials in determining what behaviors constitute teacher incompetency. Courts expect that charges be specific, well-documented, and substantiated (Jackson & Riffel, 1988). Jackson and Riffel further noted that courts will generally sustain the charges. However, “the courts will tend to rely upon their own standards of what constitutes incompetency when the charges are trivial, vague, indefinite, and unsubstantiated” (p.21).

**Historical Review**

Historically, performance in the classroom was the only catalyst used to determine competence of a teacher. Consequently, considerable attention was given to the classroom performance of teachers as early as the 1800’s (Adams, 1988, p. 15).

Prior to 1950, federal courts were hesitant to intervene in school board decisions to terminate incompetent teachers. However, from 1950 to 1975, the federal courts turned their attention to issues of individual and civil rights (Adams, 1988). Several landmark cases involving teacher termination were adjudicated during this period.
In 1958, the United States Supreme Court held, in the landmark case of Beilan v. Board of Education, that incompetence involves more than a teacher’s classroom performance. Beilan, a veteran teacher of 22 years, refused to answer questions asked by his superintendent concerning his fitness to teach. The questions pertained to his activities in certain allegedly subversive organizations. Beilan was terminated by the school board on the grounds of incompetency, and he appealed, indicating that he was denied “due process” under the Fourteenth Amendment. The Pennsylvania Supreme Court sustained the charges of incompetence. The United States Supreme Court affirmed the decision of the Pennsylvania Supreme Court, noting the following:

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

The United States Supreme Court stated in this case that a teacher’s classroom conduct is not the sole basis for determining his fitness. It noted that fitness for teaching depends on a broad range of factors, including incompetence. To this end, the Supreme Court rendered the following discourse regarding the term “incompetence:”
The term "incompetence" has a "common and approved usage." The context does not limit the meaning of the word to lack of substantive knowledge of the subjects to be taught. Common and approved usage give a much wider meaning. For example, in 31 (Corpus Juris Secundum) with reference to a number of supporting decisions, it is defined: "A relative term without technical meaning. It may be employed as meaning disqualification, inability, incapacity, lack of ability, legal qualifications, or fitness to discharge the required duty."

Thus, the United States Supreme Court suggested that incompetence is a term for broad interpretation and definition.

In dismissal cases of public school teachers for incompetence since 1958, judicial applications of the Supreme Court's ruling in Beilan have played an important role in teacher dismissal litigation (Shackelford, 1982).

In 1968, the United States Supreme Court adjudicated in Pickering v. Board of Education that a teacher's exercise of his right to speak on issues of public importance may not furnish the basis for his dismissal from employment (Shackelford, 1982). Alexander and Alexander (1992) referred to this case as "the watershed case in application of constitutional standards to teacher employment" (p. 604). This case involved First Amendment rights of teachers. Pickering, a teacher, was dismissed from his position by the Board of Education for sending a letter to a local newspaper that was subsequently published on the editorial page. The
letter was critical of the way the district handled financial resources. The letter also criticized the superintendent, charging him with attempting to prevent teachers in the district from making public comments about their dissatisfaction with the financial activities of the district.

The school board’s decision to dismiss Pickering was due to the belief that the letter created dissension among teachers, the administration, the Board of Education, and the residents of the district. The problem for the Supreme Court in this case was to arrive at a balance between the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interests of the state, as an employer, in promoting the efficiency of the public services it performs through its employees. The Supreme Court’s decision set forth the following guidelines: (1) teachers may comment on public issues just as any other citizen could comment, (2) if the public comments are essentially true, there are no valid grounds for dismissal unless the operation of the school is disrupted, and (3) if the public comments are not true, the comments would still need to have created a disruption within the school. If the statements were outright lies or were “recklessly made,” and if the learning environment was disturbed, termination may be considered (Madison, 1994).

In 1969, the United States Supreme Court heard a case involving the First Amendment rights of freedom of expression by students. Although
this case does not relate to teacher termination, it provided implications for certain rights and freedoms of teachers. In *Tinker v. Des Moines*, a group of students, in protest of the Vietnam War, wore black arm bands to school and subsequently were suspended. The court ruled in favor of the students since their conduct did not interfere with the work of the school, cause disorder or impinge upon the rights of other students. The court indicated that teachers and students do not lose their constitutional rights to freedom of speech or expression when they enter public schools.

In 1972, the United States Supreme Court indicated in *Board of Regents v. Roth* that the constitution does not require that nontenured teachers be granted procedural due process unless it can be shown that a liberty or property interest has been violated. Roth, a nontenured college assistant professor who was hired for one academic year, was not rehired for the upcoming academic year. He alleged that he was never given a notice or a hearing regarding any reasons for the nonrenewal of his contract. This, he claimed, infringed upon his Fourteenth Amendment rights, and he sought a court decision regarding a property interest in employment. This case enunciated that teachers have a substantive interest in employment. To deny employment as a teacher may implicate both liberty and property interests under the Due Process Clause. The word “liberty,” as applied to teacher employment, means the process of
guaranteeing the right to live and work at whatever job one desires. The word “property” means that a person may have a property interest in employment if he has tenure or a continuing and unlimited employment status (Alexander & Alexander, 1992). Roth did not have a liberty interest in this case because the state, in declining to rehire him, did not make any charge against him that was stigmatizing and thus seriously damaged possibilities for future employment. Had this been the case, notice and an opportunity to be heard would have been essential.

The United States Supreme Court differentiated a nontenured teacher from a tenured teacher and held that only tenured teachers have a reasonable expectation of continuing employment status, which created a property interest warranting due process protection. The nontenured teacher has a property interest only for the period of the contract and if they can establish an objective expectancy of reemployment. The United States Supreme Court noted that property interests are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law, rules, or understandings that secure certain benefits and that support claims of entitlement to these benefits. Unless local laws require it, schools are under no legal obligation to furnish reasons for not renewing the contract of probationary teachers (Fischer, 1990). Thus, the
terms of Roth’s appointment secured absolutely no interest in reemployment for the next year.

Also in 1972, the United States Supreme Court rendered a decision in Perry v. Sindermann. Sindermann, a college professor, was dismissed after 10 years of employment under one-year contracts in the Texas State College System. During his tenth year of employment, he made public statements critical of the Board of Regents, and his contract was not renewed for the next academic year. Sindermann then brought action alleging that his First Amendment rights had been violated. Also, he alleged that the Board of Regents’ failure to provide him an opportunity for a hearing violated the Fourteenth Amendment’s guarantee of procedural due process. The Court stated that while a teacher’s public criticism of his superior on matters of public concern may be constitutionally protected as enunciated in Pickering v. Board of Education, Sindermann did not show that the decision not to renew his contract was, in fact, made in retaliation for his critical public statements. The Court found, however, that property interests in employment did apply based on the rules and policies of the college. Although the college did not have a tenure system, the practices of the college created a “de facto” tenure system, thus affording the teacher property interests and entitlement to job tenure. The court noted, however, that proof of a property interest in employment did not automatically entitle
Sindermann to reinstatement as a teacher. It did bind school officials to allow a hearing where he could be apprised of the grounds for his dismissal and could challenge the adequacy of these grounds.

In 1977, the United States Supreme Court ruled in Mt. Healthy City School District v. Doyle that evidence in a teacher termination case must show that the teacher’s exercise of constitutional right was the motivating factor not to rehire before judicial action is justified (Alexander & Alexander, 1992). Doyle, president of the Teachers’ Association, had been employed by the school district for five years. He had been involved in several incidents not directly related to his role in the Teachers’ Association. The incidents included being engaged in an argument with another teacher, resulting in him being slapped, and subsequently, his refusal to accept an apology from that teacher; calling students “sons of bitches,” and making obscene gestures toward female students. Doyle had also called the local radio station, informing them of an administrative memorandum pertaining to teacher dress and appearance. Doyle’s contract was terminated at the end of the school year, and he filed suit, contesting that he had a constitutional right to communicate with the radio station and that the exercise of this right was the motivating factor not to renew his contract. He indicated that his rights under the First and Fourteenth Amendments to the United States Constitution had been violated.
The Supreme Court found that the burden of proof was on the respondent to prove that his dismissal was based on his exercise of free speech, and the board of education needed only to state the facts upon which the termination was based. The court proclaimed the following:

A borderline or marginal candidate should not have the employment question resolved against him because of constitutionally protected conduct. But the same candidate ought not to be able, by engaging in such conduct, to prevent his employer from assessing his performance record and reaching a decision not to rehire on the basis of the record, simply because the protected conduct makes the employer more certain of the correctness of its decision.

In 1983, the United States Supreme Court heard a case to determine whether a personal complaint by a public employee is protected by the First Amendment, which impacts freedom of speech by teachers. In Connick v. Myers, the respondent was employed as an Assistant District Attorney with the responsibility of trying criminal cases. When the petitioner District Attorney proposed to prosecute cases in a different section of the criminal court, the respondent strongly opposed the transfer. In response, Myers prepared and distributed a questionnaire to other assistant district attorneys, soliciting information about office morale and pressure to work in political campaigns. Myers was informed that she was being terminated for refusal to accept the transfer, and also that her
distribution of the questionnaire was considered an act of insubordination. The Supreme Court upheld Myers’s dismissal, finding that “when a public employee speaks not as a citizen upon matters of public concern, but instead as an employee upon matters only of personal interest, absent the most unusual circumstances, a federal court is not the appropriate forum in which to review the wisdom of a personnel decision taken by a public agency allegedly in reaction to the employee’s behavior.”

Myers’s First Amendment interest did not require the petitioner to tolerate any action that he reasonably believed would disrupt the office, undermine his authority, and destroy the close working relationship within the office. And the fact that the questionnaire emerged immediately after Myers’s transfer dispute requires that additional weight be given to the petitioner’s view that the respondent threatened his authority to run the office.

Alexander and Alexander (1992) stated the following concerning this case:

The speech test of the public employee can be summarized as follows: (1) public speech is a fundamental constitutional right, and allegations regarding teacher dismissal for exercise of freedom of speech place the burden of proof on the state (or school board); (2) speech can be denied if the interests of the state outweigh the interests of the employee in the exercise of that right; (3) public speech involving matters of public
concern imposes an extensive burden on the part of the state to justify denial, in which case the state must "clearly demonstrate" that denial was necessary in order to prevent "substantial interference"); (4) public speech involving private concerns involves a relatively low standard of proof by the state to justify dismissal, one that a school board can easily sustain by showing minimally, as was shown in Connick, that the exercise of speech can be reasonably believed to undermine authority, disrupt the decorum, or harm working relationships (p. 606).

The Connick test of public versus private concern is usually involved when a teacher has tenure or a nontenured teacher establishes the denial of a fundamental right such as speech.

Since the United States Supreme Court's ruling in Beilan v. Board of Education, federal and state courts have continued to employ the opinions of the high court where teachers have been terminated for incompetence. During the time frame from 1958 to 1969, usually characterized by its strong support for the rights of the individual, 20 cases were adjudicated by federal and state courts where the termination of tenured teachers for incompetence was sustained (Shackelford, 1982). Shackelford indicated that rarely are teachers dismissed for one reason alone, and found 11 recurring categories of tenured teachers who were dismissed for incompetence from 1958 to 1969. The 11 recurring categories of incompetence were:
1. Failure to Answer Questions of an Administrative Superior
2. Lack of Knowledge of Subject Matter ✓
3. Inadequate Planning and Coordination of Instruction
4. Teaching Inappropriate Subject Matter
5. Lack of Discipline
6. Mental Disability
7. Physical Disability
8. Lack of Proper Certification
9. Willful Neglect of Duty
10. Poor Relations with Other Staff Members
11. Unprofessional Conduct

Shackelford (1982) stated that “during the time from 1958 to 1969 an incompetent teacher was legally defined as an educator who has not obtained appropriate certification to teach and/or lacks an adequate knowledge of subject matter” (p. 24). She indicated however, although the United States Supreme Court had not given a precise definition of incompetence, that the 11 categories discussed could have provided a source of data from which one might construct such a precise definition for teacher incompetence.

During the time frame from 1970 to 1981, 91 court cases provided 12 recurring categories of incompetence displayed by tenured public school
teachers. “The courts during this time frequently did not uphold a teacher’s dismissal for an isolated charge, but for multiple charges of incompetence. Nevertheless, these categories provide a legal framework of judicial decisions sustaining teacher incompetence” (Shackelford, 1982, p. 29).

The 12 recurring categories of incompetence were:

1. Lack of Knowledge of Subject Matter
2. Teaching Inappropriate Subject Matter
3. Inadequate Planning and Coordination of Instruction
4. Lack of Discipline
5. Unreasonable Discipline
6. Mental Disability
7. Physical Disability
8. Lack of Proper Certification
9. Willful Neglect of Duty
10. Poor Relations with Other Staff Members
11. Unprofessional Conduct
12. Harmful Psychological Impact

Although no additional dismissal cases came before the courts concerning a teacher’s refusal to answer the questions of an administrative superior from 1970 to 1981, federal and state courts continued to adjudicate cases that carried common threads of incompetence as in the
time frame 1958 to 1969. Two new dimensions to this behavior category after 1969 were a teacher's use of unreasonable discipline and teacher behavior that produces a harmful psychological effect on students.

**Accountability and Teacher Evaluation**

Like a pendulum that swings from one position to the other, accountability in education has moved from a position of obscurity to a position of foremost importance in education. Never before has there been such a demand for educators to "stand and deliver" regarding their performance (Streshly & Newcomer, 1994).

The notion of accountability, in its broadest connotation, emanated from congressional legislation passed in the 1960's. Federal agencies responsible for funding innovative educational programs and verifying their effectiveness were the first to experience the pressures for accountability. Because many of these national initiatives dealt specifically with schools, the accountability demanded of them automatically raised questions about teachers who played an influential role in their implementation. Consequently, teacher effectiveness and the administrative accountability of schools frequently became the focus of attempts to monitor and evaluate federally funded programs (Borich, 1977).

As the accountability idea moved from the federal to the local level, it attained a more critical nature. By 1970 community members began to
take a strong stance on local schools, frequently demanding accountability in terms of student outcomes based on tax dollars spent. Some school officials replied to these pressures by paying strict attention to obvious indicators of effectiveness, such as student performance on national achievement tests, college admission, and the number of college scholarships awarded. Others began examining ways to ensure good financial decisions about the operation and management of their schools to justify that increased funds do produce an increase in effective teaching. School officials welcomed accountability practices to respond to community pressures in order to effectively defend the way school revenue was spent and to make internal decisions that could be validated to school boards and to community and professional groups. Influenced by both federal accountability and widespread community concern about higher, but apparently unproductive, school expenditures, state governments began to enact legislation requiring the appraisal of school district personnel (Borich, 1977). These state-generated movements for accountability were, in general, warmly accepted by the citizenry, cautiously accepted by the school personnel responsible for implementing them, and skeptically viewed by the teachers who were appraised.

In the 1970's, accountability became a buzzword in public education. Often, however, instead of putting this powerful management tool to use,
many educational leaders and the community chose to construe accountability to mean blame. “When the concept of accountability is misused in this way, the creative energy of the teachers shifts from promoting student achievement to protecting their livelihoods” (Streshly & Newcomer, 1994, p. 63). Wiggins (1996) said any hope teacher have to excel depends on accountability.

Duke (1995) said that accountability is often involved to justify the need for teacher evaluation. While the evaluation of teachers has been employed in our schools for decades, often evaluations were not viewed as job performance reviews but as instruments of assistance for teachers, providing positive rather than negative criticism. In the past, teacher evaluation generally has not been a high-stakes activity, in part because improving the quality of teachers has not been seen as critical for improving the quality of education (Millman & Darling-Hammond, 1990). “Instead, school improvement efforts over the past several decades have focused on improving the curriculum, altering school management methods, and developing new programs” (p. 17). Consequently, in past years, teacher evaluation repeatedly had diminutive effect on determinations regarding personnel.

Today, however, teacher evaluation has become a point of documentation for school boards attempting to dismiss teachers for
incompetence (Adams, 1988). Teacher evaluation has become a major activity of legislative and judicial bodies to make the educational system more accountable to the public.

**Teacher Competency Tests**

The practice of using tests to select teachers is not a new occurrence. In the early twentieth century competency tests of basic skills were administered to prospective teachers in most states because college graduation was not required for teachers. With increased requirements for teacher certification, the use of competency tests declined and became dormant for about 50 years (McCarthy, 1990).

The use of the results of teacher competency tests in employment decisions has gained new significance through cases litigated in courts. While several teacher competency tests exist, the National Teachers’ Examination (NTE) is the most commonly used test to assess teacher performance qualities. In the past, the foremost complaint against the use of the NTE was that it discriminated against minority teachers.

Forty-four states have adopted tests requirements as a prerequisite to initial teacher certification, and four states (Arkansas, Connecticut, Georgia, and Texas) have adopted test requirements for recertification. In 1984, the Texas State Legislature passed a bill for teacher competency testing by the State Board of Education which provides that public school
teachers, to retain their teaching certificates, must successfully complete an examination known as the Texas Examination for Current Administrators and Teachers (TECAT). The statute indicated that administrators as well as teachers who received certification prior to February 1, 1986, were required to pass the TECAT. Thus, in *State v. Project Principle, Inc.*, teachers under a continuing contract sought a trial court’s opinion regarding the statute. The trial court ruled that the statute was unconstitutional because teaching certificates are contracts with which the legislature may not interfere. The Supreme Court of Texas reversed the judgment of the trial court, indicating that a teaching certificate is not a contract but a license and confers no vested rights. The court noted that because teaching certificates are not contracts, prohibition against impairment of contracts is not violated when the legislature imposes new conditions for the retention of the certificate. The Supreme Court held that competency testing bears a rational relation to the legitimate state objective of maintaining competent teachers in public schools.

There are no indications that teacher-testing programs are declining in popularity among policy makers or the general public. Politically, testing programs are more acceptable than many other proposed educational reforms (McCarthy, Turners, & Hall, 1987). Because a momentous body of knowledge continues to develop regarding performance standards for
teachers, competency tests remain a critical issue for school officials.

**State Laws Relating to Tenured Teacher Termination**

Throughout the United States, state legislatures have established statutes for the termination of public school teachers. An examination of these statutes divulges that they vary in the extent of detail, with Maine and New Hampshire providing a very general overview of teacher termination, to a very detailed method, as stated in the statutes of California and Texas. Terminology also varies, with nonprobationary teachers being referred to as “continuing contract teachers” in Virginia, “career teachers” in North Carolina, “tenured teachers” in Connecticut, and “permanent teachers” in Oregon.

Consistently, teacher tenure is viewed as the overwhelming obstacle to the removal of ineffective teachers (Ward, 1995). Forty-five states have tenure laws in effect. Of the remaining states, teachers who have established themselves as a result of a certain number of years of service are afforded the right to receive proper notice of intent not to renew a contract by a specified date and have the right to a due process hearing.

There are numerous causes for teacher termination cited in state statutes. Arkansas statutes indicate that a “teacher may be terminated of any contract period for any cause which is not arbitrary, capricious, or discriminatory.” Idaho states “just and reasonable cause;” Louisana states
being a member of or contributing to any group, organization, movement or
corporation that is by law or injunction prohibited from operating in the
State of Louisiana. Nevada’s statutes represent the most extensive
grounds to teacher termination, citing 16 different causes that impact
postprobationary teachers. They are inefficiency, immorality,
unprofessional conduct, insubordination, neglect of duty, physical or mental
incapacity, decrease in number of positions, conviction of a felony or crime
involving moral turpitude, inadequate performance, evident unfitness for
service, failure to comply with board requirements, failure to show normal
improvement and evidence of professional growth, advocating the
overthrow of the government or teaching communism to indoctrinate
students, any cause which could lead to a revocation of a teacher’s license,
willful neglect or failure to carry out requirements, or dishonesty.

While numerous reasons for teacher termination exist, the word
“incompetence” or “incompetency” was found in 35 state statutes. The
State of Alaska was the only state in which statutes defined incompetency.

Incompetency is defined as the inability or
the unintentional or intentional failure to
perform the teacher’s customary teaching
duties in a satisfactory manner (Sec.14.20.030).

Hence, state laws relating to the termination of tenured teachers varies
from state to state.
Teacher Termination And Due Process

Substantive and Procedural Due Process

The term “due process” is found in the Fifth and Fourteenth Amendments to the United States Constitution. These amendments guarantee all people protection from deprivation of life, liberty, or property without due process of law. According to Alexander and Alexander (1992), teachers have a considerable interest in employment, and a right to be employed in one’s chosen occupation is protected by due process. The substance of due process establishes “the boundaries beyond which government cannot go in expanding its reach into the personal affairs of the individual” (p. 641). Two types of due process exist: substantive due process and procedural due process. Substantive due process assures that a law is impartial, and procedural due process guarantees that the procedures leading to the loss of a benefit are equitable. Accordingly, substantive rights are insignificant without procedural protection and vice versa.

Substantive due process involves constitutional rights such as freedom of speech, association, religion or privacy. An infringement of substantive due process guarantees occurs when “state actions are arbitrary or capricious or unfair in substance” (Sorenson, 1987, p. 12). A substantive interest in employment as a teacher may emit from a teacher having
tenure, possessing a permanent or continuing contract, or having a legitimate claim or entitlement to continued employment by state law or school board policy. Also, a continuing, long-term, undefined relationship which may lead to a teacher’s objective expectancy of reemployment may be sufficient to insure the teacher with a substantive property interest (Alexander & Alexander, 1992). Frase (1992) revealed that substantive due process should be categorized in standards of performance, evidence, and an opportunity to improve. Also, substantive due process encompasses just cause, substantial evidence, and sound reasons for administrative action. Judicial review determines whether a school district adhered to state statutes, provided sufficient evidence, and protected constitutional rights of the teacher under consideration for dismissal. Courts will usually sustain decisions of school boards when all three factors exist.

Procedural due process is the second form of due process and is grounded by the Fourteenth Amendment to the United States Constitution. Prior to being dismissed, tenured teachers are entitled to procedural due process (Millman & Darling-Hammond, 1990). Sorenson (1987) proclaimed that in cases involving teacher termination, certain procedures must be followed to insure that liberty or property interests are not denied unfairly.
Madison (1994) indicated that Neill and Custis noted the following procedural due process aspects when terminating teachers:

1. Notice
2. Right to Counsel
3. Judgment by impartial tribunal
4. Right to avoid self-recrimination
5. Presentation of evidence
6. Right to cross-examine
7. Right to have witness
8. Proof of guilt
9. Record of hearing
10. Right to appeal

Alexander and Alexander (1992), noting Jackson, said “most essential to due process is the requirement of ‘fair play’” (p. 653). Rawls (1985) denoted that “any fair-minded” person would agree that a teacher should be treated in an appropriate manner based on “valid” reasons. Bump (1990) attested that an investigation that may lead to the termination of a teacher for transgression must be appropriate to the individual situation, and notice of charges that shares evidence and an opportunity to respond prior to board action is imperative.
Summary

Prior to 1950, federal courts were reluctant to intercede in school board decisions to terminate teachers for incompetence. But from 1950 to 1975, federal courts focused their attention on issues of individual and civil rights. Seven landmark cases involving teacher termination were reviewed in this chapter. The cases were Beilan v. Board of Education, Pickering v. Board of Education, Tinker v. Des Moines, Board of Regents v. Roth, Perry v. Sindermann, Mt. Healthy City School District v. Doyle, and Connick v. Meyers.

Issues addressing accountability and teacher evaluation and teacher competency tests were also discussed in this chapter. An examination of state laws relating to the termination of tenured teachers throughout the United States was conducted. Forty-five states have tenure laws in effect, and the remaining states afford teachers with a certain number of years of service the right to proper notice of the intent not to renew a contract by a specified date, and a right to a due process hearing. Substantive and procedural due process rights provide protection to tenured teachers during the termination process.

The material covered in this chapter provided a background for court cases presented in this study to offer a better comprehension of judicial
opinion regarding the termination of tenured public school teachers for incompetence.
CHAPTER 3

ANALYSIS OF RESEARCH QUESTIONS

Research Question One

What constitutes teacher incompetency since the Shackleford's (1982) study?

Since the Shackleford's (1982) study, 56 cases have yielded 13 recurring categories of incompetence displayed by tenured public school teachers and provided a judicial definition of incompetency. Fifty-four cases were adjudicated in state courts and two cases in federal courts.

1. Lack of Knowledge of Subject Matter

In Eshom v. Board of Education of School District No. 54, Neb., 1985, a tenured secondary school teacher was dismissed for incompetency based primarily on her failure to use proper English and grammar; inadequate variety of materials and individualized instruction, and lack of teaching skills in that she did not use her voice properly (she failed to modify the shrillness of her voice), and did not maintain the required and standard degree of control of her class.

2. Teaching Inappropriate Subject Matter

In 1982, two cases were adjudicated seeking termination of teachers for teaching inappropriate subject matter. In Dale v. Board of Education, Lemmon Independent School District 52-2, S. Dakota, 1982, the Supreme
Court of South Dakota affirmed the decision of the school board for dismissal of a tenured teacher's contract. The Court held that termination of the teacher due to his devotion of excessive time to creationism or religion in his biology class and failure to cover basic principles was in accordance with policies and guidelines set and explained to the teacher by the board and was neither arbitrary, capricious, nor an abuse of discretion.

Also in Fink v. Board of Education of Warren County School District, Penn., 1982, a tenured elementary teacher's termination was upheld by the Commonwealth Court of Pennsylvania. The foundation for termination was actions by the teacher in conducting religious exercises at the beginning of each school day, including an audible extemporaneous prayer and the reading of a Bible story which violated the establishment clause and was not authorized by the state law.

3. **Inadequate Planning and Coordination of Instruction**

In 1982, the Supreme Court of Minnesota reversed the decision of the District Court and upheld the school board's finding that the teacher's students made unsatisfactory progress due to his poor teaching performance. The teacher excessively used worksheets to the extent that it frustrated students and inhibited their progress. An instruction consultant who visited the teacher's classroom testified that the teacher's undue
emphasis on the use of worksheets produced a poor learning environment. Also, the teacher demonstrated a lack of rapport with students and a lack of appropriate student discipline (Whaley v. Anoka - Hennepin Independent School District No. 11, Minn., 1982).

In 1984 a tenured teacher was dismissed for persistent negligence. In Harrison v. Capital Area Intermediate Unit, Penn., 1984, the Commonwealth Court of Pennsylvania affirmed the order of the Secretary of Education for dismissal on the grounds of (1) failure to keep proper student records; (2) properly update, prepare and revise individual programs of students; (3) conform instruction to individual student programs; (4) prepare adequate pre-lesson and substitute plans; (5) properly supervise his students; (6) follow directions of his supervisors; (7) give notice of his absences, and (8) failure to report for duty on time on numerous occasions.

In Wilson v. Des Moines Independent Community School District, Ia., 1986, the Court of Appeals of Iowa upheld the termination of a nonprobationary teacher for (1) unsatisfactory performance based on results of several evaluations indicating a need for improvement in areas of planning, meeting individual student's needs and improving classroom discipline; (2) failure to comply with school regulations, policies and directives by being repeatedly tardy to work and leaving classes
unsupervised, and (3) failure to use a clear, reasonable, and fair grading system for students. Specifically, eight students who had received either an “A” or a “B” for the first nine weeks were informed that they would receive a failing grade for the semester. In 1987 the United States Court of Appeals, Federal Circuit, in Rogers v. Department of Defense Dependents Schools, Germany Region, Ger., 1985, sustained the dismissal of a high school teacher employed at a government installation in Germany. Grounds for dismissal were based on a lack of an acceptable written grading system which provides feedback to students at least twice weekly, a course outline and correlation of his lesson plans, and classroom activities with outlines so as to meet requirements of performance standards.

In Belcourt v. Fort Totten Public School District No. 30, N. Dakota, 1990, the Supreme Court of North Dakota affirmed the dismissal of two mathematics teachers who had been “team” teaching students using an individualized teaching approach for lack of individualized lesson plans, inadequate communication, and general lack of organization.

In 1990, a tenured teacher appealed the school board’s decision to terminate his employment. In re the Proposed Termination of James E. Johnson’s Teaching Contract with Independent School District No. 709, Minn., 1990, the Court of Appeals of Minnesota upheld the school board’s
decision based on (1) poor rapport with students and insufficient communications with parents in that the administration received numerous complaints from students and parents wherein students described feelings of frustration and confusion regarding Johnson’s teaching methods and class assignments (many of these complaints were accompanied by requests for transfer out of Johnson’s class); (2) lack of student progress; (3) inappropriate use of class time, and (4) failure to follow the school’s adopted mathematics curriculum. Also in 1990 in Roberts v. Houston Independent School District, Tex., 1990, a former teacher whose employment was terminated for inefficiency or incompetency in performance of duties brought action against the school district. The Court of Appeals of Texas affirmed the dismissal holding that (1) the teacher’s procedural and substantive due process rights were not violated by virtue of failure to provide the teacher with a prehearing copy of a composite videotape of her teaching performance that revealed problems in teaching performance, (2) the teacher did not have reasonable expectation of privacy in her classroom such that videotaping violated privacy rights, and (3) videotaping without the teacher’s request or permission did not violate the school district’s own policy.

In 1991, a tenured physical education teacher brought action against the board of education to challenge his termination in Nevels v. Board of
Education of the School District of Maplewood-Richmond Heights, Mo., 1991. The Missouri Court of Appeals sustained the Board’s decision which found that the teacher used remedial games with seventh and eighth grade students not appropriate to the abilities, needs and interests of the students, such as “Simon Says.”

In 1993 in Board of School Commissioners of Baltimore City v. James, Md., 1993, two tenured middle school teachers were dismissed after failure to comply with the provisions of the Individualized Professional Assistance Plan to which they both had agreed. The Assistance Plans included needs to make learning objectives consistent with appraisal of individual student needs and requirements of the curriculum framework, to teach concepts rather than teaching by rote, and to improve attendance.

In 1994, a permanent teacher sought judicial review of her termination by the Board of Education. In Johnson v. Francis Howell R-3 Board of Education, Mo., 1994, the Missouri Court of Appeals, Eastern Division, sustained the decision of the Board for termination after the teacher failed to meet the requirements of a professional development plan. The teacher failed to give sufficient individualized attention to students, to convey prompt and accurate information about student performance, and maintain adequate discipline.
In 1995, in *Davis v. Board of Education of the City of Chicago*, Ill., 1995, a tenured automotive mechanics teacher was terminated after receiving a remediation period of 45 days with a consulting teacher who was his department chair. The Appellate Court of Illinois, First District, Fourth Division, sustained the dismissal based on unsatisfactory classroom performance after being afforded an adequate period of remediation and continued failure to improve deficiencies such as inability to explain the material, lack of organization, failure to assign homework, and failure to implement suggestions.

4. **Lack of Classroom Discipline**

In 1983, the Court of Appeals, Fifth District, California sustained the findings of the Superior Court in *California Teachers Association v. Governing Board of the Livingston Union School District*, Calif., 1983, in dismissing a permanent eighth grade teacher for incompetency. Over several years, the teacher demonstrated discipline problems in the classroom, including students fighting, wrestling, throwing objects, using vulgar language, and the teacher's failure to take action to terminate inappropriate behavior.

The same year in California, the Court of Appeals, Fourth District, in *Perez v. Commission on Professional Competence*, Calif., 1983, affirmed the dismissal of a permanent high school teacher for failure to maintain
sufficient classroom discipline regarding student tardiness, inattention, siestas, talking in class, disdain for discipline, reading unrelated paperback books, general goofing off, and setting a fire in the classroom. The teacher had received a summary evaluation report from the district in the past rating him unsatisfactory in all categories.

In Board of Education of Benton Harbor Area Schools v. Wolff, Mich., 1985, a tenured teacher was dismissed by the school board for failing to establish and maintain discipline. Students often wandered freely about the room and talked out of turn. Fighting was frequent, and the students entered and left the classroom without permission. Students exhibited a disrespectful attitude toward the teacher and refused to participate in instructional activities. The Court of Appeals of Michigan upheld the dismissal. The court indicated that the district had provided the teacher adequate opportunity to correct deficiencies and that reasonable and just cause for dismissal existed.

The Appellate Court of Illinois in Stamper v. Board of Education of Elementary School District No. 143, Ill., 1986, affirmed the Board of Education's decision to dismiss a tenured teacher, rather than transferring her, for failure to maintain classroom discipline. The teacher had been employed as a second grade teacher for 19 years and received consistently good evaluations in that position. However, after she
requested and was assigned a transfer to teach home economics at the junior high school level, and subsequently received poor evaluations over a four year period, she was dismissed for (1) failing to maintain classroom discipline, (2) failing to require students to regularly work on home economics assignments, (3) failing to follow curriculum guides, and (4) failing to follow administrative directives.

In 1987 in Mongitore v. Regan, N.Y., 1987, a tenured teacher was terminated for substantial evidence of documented instances of teacher’s inability to control her class and to effectively plan and teach lessons (specific details were not provided in the review of this case). The Supreme Court, Appellate Division of New York, upheld the board’s decision and indicated that the penalty of dismissal was not excessive.

In 1988 a tenured second grade teacher was terminated in Whitfield v. Little Rock Public Schools, Ark., 1988, and appealed, indicating that he was discharged for not rendering efficient and competent “service,” which entitled him to 60 days of probation. The Court of Appeals of Arkansas, however, sustained the decision of the district, noting that the teacher’s failure to maintain discipline in the classroom was “conduct” seriously prejudicial to the best interest of the school system, justifying termination without a 60-day probationary period. In one day, five fights occurred in the teacher’s classroom, and he was observed on three out of five fights to
be standing in the middle of the classroom as though he had neither seen nor heard anything. That same day, a parent of one of his students indicated that he threw a wastebasket at her child.

In 1990 in *Bradley v. Pittsburgh Board of Education*, the United States Court of Appeals, Third Circuit, 1990, affirmed the decision of school officials to dismiss a tenured teacher for his persistent use and advocacy of a classroom management technique he had developed known as “Learnball.” Learnball is an eclectic gathering of well-established ideas and techniques that involves students in a democratic model to maintain effective classroom discipline and good morale. Its basic elements include a sports format, peer approval, dividing each class into teams, student election of team leaders and an assistant teacher, giving students responsibility for establishing class rules and grading exercises, and imposing a system of rewards such as radio playing and shooting baskets with a foam ball in the classroom. The teacher claimed he was dismissed in violation of his right to free speech protected by the First Amendment because school officials disapproved of his use and advocacy of a classroom management technique he had developed. After repeated warnings, the teacher continued to use the method every day.

In 1995 a tenured teacher appealed the school district’s decision to terminate her under the Teacher Tenure Act on grounds of alleged
incompetency or inefficiency stemming from poor classroom management. Specifically, students constantly talked without permission, got out of their seats, beat on desks, and argued loudly without correction. The Missouri Court of Appeals reversed the decision of the Circuit Court, holding that (1) the district’s decision was supported by competent and substantial evidence, (2) the district’s warning letter complied with the Act’s specificity requirement, and (3) the district’s efforts to assist the teacher during creative periods complied with the Act’s “meet and confer” requirement (Newcomb v. Humansville R-IV School District, Mo., 1995).

Also, in 1996, in Childs v. Roane County Board of Education, Tenn., 1996, a case involving a state’s Teacher Tenure Act was heard by the Court of Appeals of Tennessee in which a tenured teacher sued the school board, alleging violation of the Act. The court ruled that the school board’s finding that the teacher’s dismissal was not arbitrary and capricious and was warranted by her incompetency, inefficiency, and neglect of duty based on her inability to control her classroom, maintenance of questionable methods for determining students’ grades, and the extraordinary assistance required from school administrators and parents to enforce discipline.

5. Unreasonable Disciplinary Action

in 1985, courts ruled on three unreasonable discipline cases. In
Russell v. Special School District No. 6, Minn., 1985, the Court of Appeals of Minnesota upheld the termination of a teacher with a continuing contract, who had a prior record of physical abuse toward students, for hitting and shoving two students. In another incident, a tenured teacher was dismissed for physical abuse of the emotionally disturbed students entrusted to his care. The Supreme Court, Appellate Division of New York in Pisculli v. Board of Education of the City of Mt. Vernon, N.Y., 1985, supported the hearing panel’s determination of guilt. The term “physical abuse” was not defined in this case. The Court of Appeals of Washington affirmed the school district’s dismissal of a certificated teacher in Simmons v. Vancouver School District No. 37, Wash., 1985, for continued use of corporal punishment despite repeated warnings not to use physical force against his students. The teacher pinched a student, causing a red mark on his neck, and hit another in his chest.

Also in the state of Washington in 1986, the Supreme Court of the state reversed the decision of the Court of Appeals in Mott v. Endicott School District No. 308, Wash., 1986, holding that a certificated teacher’s intentional striking of students in their genitals constituted sufficient cause for discharge, and that such conduct was not a remediable teaching deficiency.
In 1988, the Superior Court of New Jersey upheld the Board of Education’s decision in *Matter of Tenure Hearing of Cowen*, N.J., 1988, to dismiss a tenured high school teacher for verbal and physical abuse of students over a 10-year period of time. The local board certified 11 charges of misconduct alleged to have occurred during the years 1974, 1975, 1980, 1982, and 1984. The Commissioner of Education found that five of the charges were proved with a residuum of legal and competent evidence. The local board was patient and supportive before becoming punitive. The school administration dealt with each incident by promptly confronting the appellant with the allegations of misconduct, giving him an opportunity to explain, reprimanding him, denying him salary increments, affording him psychological counseling and finally, when all else failed, forwarding to the Commissioner the charges that resulted in his dismissal.

Most recently, in 1997, the Supreme Court of Colorado in *Board of Education of West Yuma School District RJ-1 v. Flaming*, Col., 1997, reversed the decision of the Court of Appeals and ruled in favor of the school board to terminate a tenured elementary teacher for intentionally tapping a student on the head with a three-foot wooden pointer. The teacher had prior violations of school district policies concerning physical discipline of students.
6. Mental Disability

In *Fitzpatrick v. Board of Education of the Mamaroneck Union Free School District*, N.Y., 1983, the Supreme Court, Appellate Division of New York, held that evidence in form of testimony by a psychiatrist and a clinical psychologist supported finding a tenured fourth grade teacher suffered from a serious personality disorder (this disorder was not defined), that dismissal based upon such finding was appropriate, and that “incapacity to teach” was the proper charge to be brought in hearing on the teacher’s dismissal.

Moreover, *In re Resolution for Immediate Discharge of Mark Johnson*, Minn., 1988, a former continuing contract teacher was discharged and sought *writ of certiorari* to challenge discharge. The Court of Appeals of Minnesota held that the teacher—who had experienced severe psychotic episodes in the past in which he was verbally abusive to his class and had assaulted and injured the school nurse, struck but did not injure a student, and struck school staff members who attempted to subdue him—was not entitled to a physician’s examination before discharge; substantial evidence showed that the teacher was incapable of performing teaching duties subsequent to a 12-month leave of absence and that some possibility existed of relapse of psychotic episode and harm to elementary students.
7. **Physical Disability**

In *Clarke v. Shoreline School District No. 412, King County, Wash.*, 1986, a visually handicapped and hearing-impaired teacher appealed his discharge and nonrenewal to the State Human Rights Commission, which held that the school district had sufficient cause to discharge his employment, and the teacher appealed. The Supreme Court of Washington held that: (1) the teacher’s visual handicap and hearing impairment materially and substantially affected his performance as a teacher and the school district thus had sufficient cause to discharge him regardless of whether it complied with probation requirements in statute, and (2) the school district was not required to take affirmative steps to help the visually handicapped and hearing-impaired teacher fill a position within the school district unless the teacher was qualified to fill it.

8. **Lack of Proper Certification**

In *Board of Education of Portland Public Schools v. Dowling, Mich.*, 1985, the Court of Appeals of Michigan upheld the school board’s policy of not assigning a teacher outside the scope of his teaching certificate or his major or minor fields of study without mutual consent. A tenured middle school home economics teacher, whose service was terminated because of reduction of personnel, sought a position as a mathematics teacher. The decision of the school board not to assign the teacher to a
mathematics position was not arbitrary or capricious in view of the fact that the teacher did not have a mathematics major or minor, had received unsatisfactory grades in mathematics during two semesters of basic freshman mathematics courses, and had received a failing grade in a graduate course. The superintendent was advised by representatives of the state university’s mathematics department that a person without a mathematics background would not be competent to teach the course.

9. Willful Neglect of Duty

In 1982 in Board of School Directors of the Eastern York School District v. Fasnacht, Penn., 1982, the Commonwealth Court of Pennsylvania reversed the order of the Secretary of Education and upheld the Board of School Directors’ decision to dismiss a tenured teacher for persistent sleeping while in charge of his class. Also, in 1983 a tenured teacher in Harrison-Washington Community School Corporation v. Bales, Ind., 1983, was terminated for persistent sleeping during the school day and inadequate supervision of students.

Two additional cases were tried in 1983. In Benke v. Neenan, Col., 1983, the Supreme Court of Colorado adjudicated in favor of the school board in dismissing a tenured teacher on grounds of incompetency and neglect of duty. The findings of fact were based on eyewitness accounts of a number of deficiencies, shortcomings, and neglected duties. This court
case did not give specific examples of deficiencies, shortcomings, and
neglected duties.

In *Bickford v. Board of Education of School District No., 82 of Hall
County, Neb., 1983*, the Supreme Court of Nebraska maintained the school
board's termination of a permanent teacher employed as a guidance
counselor. Grounds for termination were based on untruthful statements
made by the counselor to his superior. The counselor had been instructed
by his principal to contact parents of students having problems in
graduating on at least four separate occasions. The counselor assured the
principal that all parents of students experiencing academic difficulty had
been contacted. However, the administrator was suddenly confronted with
problems when they learned that there were many students who had
serious graduation problems whose parents had not been contacted.

In 1991 in *Burgess v. Ferguson Recognized School District, R-2, Mo.,
1991*, a tenured teacher's employment was terminated for wilful violation of
the school board's policy governing supervision of pupils. The Missouri
Court of Appeals sustained the board's termination holding that (1) the
school board's policy stating that pupils should not be left in the classroom
for more than a few minutes without a staff member being responsible was
not void for vagueness, (2) the school board could have reasonably
concluded from evidence that the teacher's conduct violated the school
board policy, and (3) substantial evidence supported the board’s finding that the teacher’s conduct in violating the policy was willful so as to justify termination under the Teacher Tenure Act.

10. Poor Relations With Other Staff Members

In 1983, a tenured elementary art teacher brought action for judicial review of the school committee’s decision to dismiss him. The Appeals Court of Massachusetts upheld the dismissal, indicating that the teacher’s use of insolent and abusive language to his principal and the district’s superintendent in the presence of students was unbecoming conduct sufficient to justify dismissal (Kurlander v. School Committee of Williamstown, Mass., 1983).

In 1984, a discharged tenured second grade teacher sought review of an order of the Secretary of Education which affirmed the decision of the school district to terminate her employment on grounds of incompetency. In Hamburg v. North Penn School District, Penn., 1984, the Commonwealth Court of Pennsylvania upheld the decision for dismissal based on findings that showed serious deficiencies in the teacher’s exercise of prudent judgment as well as her overall professional conduct. The record showed a professional employee who was a disruptive influence at her school, who not only demonstrated an inability to control her pupils, but also failed to maintain poise and composure in dealings with
other professional employees and parents, and who made repeated unfounded complaints, accusations, and threats against other professional employees, administrators, custodians and clerical staff after being warned of deficiencies over several years.

In 1990 in Cooper v. Williamson County Board of Education, Tenn., 1990, a tenured teacher employed as a high school principal was dismissed on grounds of insubordination, neglect of duty, incompetency and inefficiency. The grounds for dismissal as a principal also warranted his termination as a tenured teacher, since the charges reflected adversely on the principal’s ability to subject himself to the authority of superiors, and on his ability to perform work assignments in an efficient and competent manner.

11. Inappropriate Behavior

In 1982 in Pinion v. Alabama State Tenure Commission, Ala., 1982, a tenured teacher employed as a principal was dismissed for failure to maintain discipline, failure to properly assess and evaluate the faculty, failure to actively participate in the school’s accreditation process, failure to report sick days, and health problems due to alcohol and drug abuse. The dismissal was affirmed by the Court of Civil Appeals of Alabama.

In 1984, the courts adjudicated three cases involving inappropriate behavior. In Balog v. McKeesport Area School District, Penn., 1984, the
Commonwealth Court of Pennsylvania upheld the dismissal of a tenured teacher employed as Director of Vocational Education for (1) making false statements to district staff, (2) applying for money not authorized under the terms of his contract, (3) using pressure on staff members to answer questions on an evaluation form contrary to what they believed, (4) demeaning professional staff, (5) using papers prepared by another staff member that he submitted as his own in college courses he took, and (6) neglecting his duties by failing to revise a teacher's schedule and by failing to perform or supervise assignments.

In *Coupeville School District No. 204 v. Vivian*, Wash., 1984, the Court of Appeals of Washington affirmed the dismissal of a secondary school teacher for allowing two students to drink alcohol at his home. Also during that year, the Superior Court of New Jersey sustained the termination of a tenured high school teacher in *Matter of Tonelli*, N.J., 1984, following a conviction for being a disorderly person when he repeatedly telephoned his principal for the purpose of annoyance or molestation.

In 1991, the Supreme Court of Albany County, New York, upheld the dismissal of a tenured secondary teacher in *Jackson v. Sobol*, N.Y., 1991, for a consistent pattern of willful and deliberate misconduct. Specifically, the teacher had entered the principal’s office without permission, altered warnings contained in her personnel file without authorization, ignored
established procedures for disciplining students despite prior warnings, refused to meet with troubled students' parents, failed to send students' parents progress reports, did not have her lesson plan book available as required by school district policy on at least three occasions, and inaccurately graded students. During that same year in Alabama State Tenure Commission v. Lee County Board of Education, Ala., 1991, a tenured driver's education teacher was terminated following two arrests for driving while under the influence of alcohol. The Court of Civil Appeals of Alabama sustained the termination.

In Board of Directors of the Lawton-Bronson Community School District v. Davies, Ia., 1992, the Supreme Court of Iowa upheld the dismissal of a teacher with a continuing contract following an arrest for shoplifting, despite the teacher's claim that shoplifting was caused by medically induced mania.

In 1993, the Supreme Court, Appellate Division, Second Department in New York in Jones v. New York City Board of Education, N.Y., 1993, affirmed the dismissal of a tenured teacher for various acts of misconduct, (the court did not define the acts). The court indicated that the penalty of dismissal by the Board of Education was not excessive after reviewing the findings of the hearing panel. In 1995, the same court in Greenberg v. Cortines, N.Y., 1995, sustained the dismissal of a tenured kindergarten
teacher. After a hearing, the teacher was found guilty of numerous specifications of insubordination, incompetence, inefficiency, neglect, and misconduct (specifications were not defined).

In 1997 a tenured science teacher in Baldridge v. Board of Trustees, Rosebud County School District #19, Colstrip, Montana, Mont., 1998, was dismissed for unfitness to teach. The Supreme Court of Montana upheld the decision of the District Court for dismissal as the teacher made jokes about testes and about a student's menstrual periods; flipped off his students and viewed it as “the highest form of respect,” and made gender-based remarks and innuendoes in his classroom.

12. Harmful Psychological Impact

In 1982, the Court of Appeals of Washington in Potter v. Kalama Public School District, Wash., 1982, sustained the dismissal of a fourth grade teacher for inappropriate physical contact with female students. The teacher placed his hand in a caressing manner on the knee of a female student, blew a kiss to another female student and told her not to tell anyone, and lifted the dress of a girl in his class a few inches, allegedly to look at a bruise on her knee.

The Court of Appeals of Oregon reversed the decision of the Fair Appeals Board in Shipley v. Salem School District 24J, Marion County, Ore., 1983, which reinstated a permanent teacher for charges of assault
and battery against a 12-year-old child on 12 separate occasions. One of the incidents alleged was that the respondent put his hands under a boy's clothing and rubbed his body. The other 11 episodes all involved the respondent's touching the boy's genitals or forcing him to touch the respondent's genitals. The child did not attend the school where the respondent taught, and none of the acts were alleged to have occurred at school. In 1985, the Court of Appeals of Minnesota affirmed the dismissal of a tenured teacher employed as a junior high school guidance counselor in *Downie v. Independent School District No. 141*, Minn., 1985, for sexually harassing staff and students by making inappropriate remarks and staring at their bodies. Charges were also brought against the counselor for breaching students' confidentiality. The court found particularly offensive Downie's disclosure of an incest victim's confidences to teachers, who had no compelling professional need for such knowledge, in a social setting. In *Williams v. Concordia Parish School Board*, La., 1996, the Court of Appeal of Louisiana in 1996 affirmed the dismissal of a seventh grade teacher for reading sexually suggestive material and the use of profanity in the classroom, including the words "shit," "goddamn," and "smartass."

13. **Negligence**

In 1987 in *Westbrook v. Board of Education of the City of St. Louis*, Mo., 1987, four permanent sixth-grade teachers were dismissed following
the drowning death of a student during a field trip. The Missouri Court of Appeals sustained the dismissal and held that the regulation requiring teachers to use reasonable care to look out for the safety of students during a field trip was mandatory and not unduly vague.

**Research Question Two**

What judicial opinion have the courts rendered regarding incompetence of tenured public school teachers and how have the courts defined incompetency?

Continuously from the United States Supreme Court’s ruling in *Beilan v. Board of Education*, federal and state courts have proceeded to employ the eminent court’s opinion in cases where teachers have been terminated for incompetence. These courts have stated that teacher incompetency or neglect of duty is not measured in vacuum or against standard of perfection, but, instead, must be measured against standards required of others performing the same or similar duties (*Eshom v. Board of Education of School District No. 54*, Neb., 1985). “Incompetency” sufficient to justify termination of a teacher’s employment can mean disqualification, inability, or incapacity (*Pinion v. Alabama State Tenure Commission*, Ala., 1982). "Incompetency," as used in statutes governing termination of teacher’s employment on the basis of incompetence, encompasses deficiencies in personality, composure, judgment and attitude, which have a detrimental

Court cases listed below indicated that teacher evaluations that school districts attach to notices of incompetency to teachers (1) must be provided within time limits, (2) must include recommendations as to areas of improvement and performance of teachers, and (3) must contain a notice to teachers in writing that they are not performing their duties in a satisfactory manner (California Teachers Association v. Governing Board of the Livingston Union School District, Calif., 1983; Perez v. The Commission on Professional Competence, Calif., 1983; Wilson v. Des Moines Independent Community School District, Ia., 1986; Rogers v. Department of Defense Dependents Schools, Germany Region, Ger., 1985; Nevels v. Board of Education of the School District of Maplewood - Richmond Heights, Mo., 1991; Board of Education of Benton Harbor Area Schools v. Wolff, Mich., 1985; Newcomb v. Humansville R-IV School District, Mo., 1995; Davis v. Board of Education of the City of Chicago, Ill., 1995).

In the following case involving dismissal, adequate notice of dismissal must contain a sufficiently detailed statement to inform the teacher of the allegations and charges so the teacher can prepare an adequate defense. The notice must contain a statement of facts which expressly sets out the
nexus between the teacher’s conduct and his teaching responsibilities or from which such a connection may obviously be inferred (Shipley v. Salem School District 24J, Marion County, Ore., 1983); however, in Westbrook v. Board of Education of the City of St. Louis, Mo., 1987, the school board was not required by state law to give permanent teachers notice of the possibility that charges were being filed against them in the future before written charges were filed where none of five teachers were charged with inefficiency or incompetency.

The following cases noted that a teacher has a due process right to a fair hearing before the school board in a nonrenewal case, but the teacher must prove the existence of actual bias in contravention of his constitutional due process rights before the reviewing court will be willing to tamper with the decision of the school board (Dale v. Board of Education, Lemmon Independent School District 52-2, S. Dakota, 1982; Kurlander v. School Committee of Williamstown, Mass., 1983; Cooper v. Williamson County Board of Education, Tenn., 1990; Bradley v. Pittsburgh Board of Education, United States Court of Appeals, Third Circuit, 1990). During the hearing, the teacher must be given an opportunity to cross-examine witnesses, testify, and present testimony of other witnesses and other relevant evidence (Harrison-Washington Community School Corporation v. Bales, Ind., 1983). During some hearings, the rules of evidence are
somewhat relaxed and certain hearsay testimony is allowed. However, this
cannot be the sole evidence in a case (Benke v. Neenan, Col., 1983).

Courts are reluctant to substitute their judgment for that of school
boards where a board’s exercise of judgment does not violate law; it is
presumed that actions of the school board are not arbitrary and capricious,
but are reasonable unless there is clear violation to the contrary (Whaley v.
Anoka-Hennepin Independent School District No. 11, Minn., 1982; Belcourt
Francis Howell R-3 Board of Education, Mo., 1994; Childs v. Roane County
Board of Education, Tenn., 1996; Board of Education of West Yuma School
308, Wash., 1986, the court indicated that discharge or nonrenewal of a
teacher is authorized upon showing sufficient cause.

The determination of boards of education in dismissing tenured
teachers for being unable to control their classes effectively must be
supported by substantial evidence. Evidence such as a hearing panel’s
determination that placing the teacher back in the classroom after a lesser
penalty than dismissal would not improve classroom management and a
teacher’s failure to comply with established procedures for disciplining
students despite prior warnings were found in Morgitore v. Regan, N. Y.,
1987; Whitfield v. Little Rock Public Schools, Ark., 1988. The school
district may not discharge a teacher due to breakdown of classroom
discipline unless statutory procedures for improvement of work-related
deficiencies have been tried and have failed (Potter v. Kalama Public
School District, No. 402, Wash., 1982). However, in Williams v. Concordia
Parish School Board, La., 1996, the court indicated that the school board’s
failure to offer remediation prior to the teacher being charged with
incompetence did not preclude her termination, where she was also
charged with willful neglect of duty, a charge which did not require
compliance with remediation procedures.

Where a local school board has made findings of facts to support its
decision to dismiss a teacher and the Secretary of Education takes no new
evidence, the Secretary’s scope of review is limited to determining whether
there is substantial evidence to support the findings of the board (Board of
School Directors of the Eastern York School District v. Fasnacht, Penn.,
1982; Harrison v. Capital Area Intermediate Unit, Penn., 1984; Balog v.

In the Matter of the Tenured Hearing of Cowan, N.J., 1988, the court
noted that the local board acts like a grand jury in a criminal matter. Just
as a grand jury must find probable cause before the matter may proceed to
trial, a local board must find probable cause before the matter may proceed
to a hearing before the Commissioner of Education.
In cases relating to due process involving the decision of hearing officers, the officers must conduct extensive hearings and make detailed findings prior to recommendation to the school board (Pisculli v. Board of Education of the City of Mt. Vernon, N. Y., 1985; Simmons v. Vancouver School District No. 37, Wash., 1985; Downie v. Independent School District No. 141, Minn., 1985; Stamper v. Board of Education of Elementary School District No. 143, Ill., 1986; In re the Proposed Termination of James E. Johnson’s Teaching Contract with Independent School District No. 709, Minn., 1990; Jackson v. Sobol, N.Y., 1990); however, in Coupeville School District No. 204 v. Vivian, Wash., 1984, the decision of a hearing officer was set aside because the officer was found to have violated constitutional principles, exceeded his statutory jurisdiction and committed a clear error of law.

In Greenberg v. Cortines, N. Y., 1995, the Court of New York noted that in reviewing an administrative determination made after a hearing the court may not weigh evidence or reject the choice made by a hearing panel where there is conflicting evidence and room for choice exists. In Jones v. New York City Board of Education, N.Y., 1993, the hearing panel found that the teacher had failed to improve his performance despite many warnings and opportunities to do so and that he would not improve his skills if permitted to return to work.
In evaluating due process claims based on allegedly arbitrary state action in academic matters, the reviewing court must ascertain whether the state's action was such substantial departure from accepted academic norms as to determine that the person or committee responsible did not actually exercise professional judgment. In a suit challenging academic dismissal based on substantive due process, the reviewing court must determine from record whether there was some rational academic basis for decision; if such basis existed, the court may not override the state's action even though evidence may indicate such action was arbitrarily taken (Roberts v. Houston Independent School District, Tex., 1990).

In reviewing the State Board of Education's decision as to whether to dismiss a teacher, the reviewing court must determine if there is substantial evidence to support the Board's findings (Board of School Commissioners of Baltimore City v. James, Md., 1993 and Matter of Tanelli, N. J., 1984).

Judgment of the State Tenure Commission is final and may be reversed by courts on review by mandamus only if the Commission has failed to comply with tenure law's procedural requirements or has rendered judgment that is unsupported by preponderance and overwhelming weight of evidence (Alabama State Tenure Commission v. Lee County Board of Education, Ala., 1991).
Termination of a teacher's contract for medical reasons must involve application of criteria including the nature and extent of duties required by contract and character and duration of the illness, and the school board cannot merely engage in inquiry as to whether symptoms of the malady are volitional acts (Board of Directors of the Lawton-Bronson Community School District v. Davis, Ia., 1992); however, in Fritzpatrick v. Board of Education of the Mamaroneck Union Free School District, N. Y., 1983, the Court ruled that the testimony by a psychiatrist and a clinical psychologist supported findings that the teacher was suffering a serious personality disorder; In re Resolution for Immediate Discharge of Mark Johnson, Minn., 1988, the Court concluded that the school board could dismiss a teacher if he was incapable of performing duties subsequent to a medical leave of absence, and in Clarke v. Shoreline School District No. 412, King County, Wash., 1986, the Court indicated that an employer may discharge a handicapped employee who is unable to perform an essential function of the job, without attempting to accommodate that deficiency.

Under statutes allowing dismissal of teachers under grounds of "immorality, unfitness, incompetence, or violation of the adopted policies," only one of the statutory bases for dismissal needs to exist (Baldridge v. Board of Trustees, Rosebud County School District #19, Colstrip, Montana, Mont., 1998). In deciding whether to proceed under statute allowing
dismissal at the end of the school year or statute allowing immediate dismissal, the school board must determine whether conduct is remediable (Russell v. Special School District No. 6, Minn., 1985).

Statute permitting public school teachers, at the opening of every school day, to conduct a brief period of silent prayer or meditation, if the prayer or meditation is not intended to be and not conducted as a religious service or exercise, but is instead considered as an opportunity for silent prayer or meditation on a religious theme, is not void for vagueness (Fink v. Board of Education of the Warren County School District, Penn., 1982).

School Board policy stating that pupils should not be left in the classroom for more than a few minutes without a staff member being responsible was not fatally vague, even though the phrase “a few minutes” was indefinite, where the phrase was of such common usage that the policy was sufficiently clear and provided fair warning of prescribed conduct (Burgess v. Ferguson Reorganized School District, Mo., 1991).

Failure or refusal of a teacher to comply with or fulfill the duties of his position, as set out in written guidelines of the school outlining such duties, constituted “neglect of duty” (Bickford v. Board of Education of School District No., 82 of Hall County, Neb., 1983).

School board policy to assign teachers according to their area of greatest competence and not to assign a teacher outside the teacher’s
certificate or his major or minor fields unless there is mutual consent was a “qualification” for purposes of the Teacher Tenure Act provision that tenured teachers be appointed to the first vacancy for which they are certified and qualified (Board of Education of Portland Public Schools v. Dowling, Mich., 1985).

Incompetency Defined

While this study does not provide an exact judicial definition of teacher incompetency, cases adjudicated in federal and state courts during the time frame of the study provided a definition of the term. In Benke v. Neenan the court indicated, according to Webster's International Dictionary 1258 (2nd ed. 1961), the term “incompetency” indicates the inability to perform. Teacher competency must be measured against standards required of others performing the same or similar duties (Eshom v. Board of Education of School District No. 54). Incompetency encompasses deficiencies in personality, composure, judgment and attitude which have a detrimental effect upon a teacher's effectiveness (Hamburg v. North Penn School District). Johnson v. Francis Howell R-3 Board of Education defined incompetency as the inability to perform professional teaching duties in a manner acceptable to the board. An incompetent teacher may lack knowledge of the subject matter, teach inappropriate subject matter, be inadequate in planning and coordination of instruction, lack classroom
discipline skills or take unreasonable disciplinary action, have a mental or physical disorder that impairs instruction, lack proper certification, exhibit a willful neglect of duty, demonstrate poor relations with other staff members, display inappropriate behavior or have a harmful psychological impact on students, and prove to be negligent. Thus, as in Beilan v. Board of Education, incompetency remains a term for broad interpretation and definition.

Research Question Three

What type of evidence was present in cases where termination was sustained?

In the 56 cases adjudicated in favor of school districts, evidence was challenged in all cases. Also, complete documentation of the problem was found in each case. In analyzing the cases, five types of evidence were used during hearings: (1) detailed accounts to assist the teacher to improve, (2) reputable witnesses providing testimony during the hearing, (3) noncompliance with school district policies and regulations, (4) adequate warning of deficiencies that could lead to termination of the teacher's contract, and (5) sufficient notice of termination proceedings.

(1) Endeavors to assist teacher improvement were made in 14 cases. Assistance in the form of observations and follow-up conferences in evaluation proceedings where teachers failed to improve were found in
California Teachers Association v. Governing Board of the Livingston
Union School District, Calif., 1983; Perez v. The Commission on
Professional Competence, Calif., 1983; Wilson v. Des Moines Independent
Community School District, Ia., 1986; Rogers v. Department of Defense
Dependents Schools, Germany Region, Ger., 1985; Nevels v. Board of
Education of the School District of Maplewood-Richmond Heights, Mo.,
1991; Board of Education of Benton Harbor Area Schools v. Wolff, Mich.,
Board of Education of the City of Chicago, Ill., 1995; Belcourt v. Fort Totten
Public School District No. 30, N. Dakota, 1990; Eshom v. Board of
Education of School District No. 54, Neb., 1985; Hamburg v. North Penn
School District, Penn., 1984. Teachers were provided an Individualized
Professional Assistance Plan for improvement in Board of School
Commissioners of Baltimore City v. James, Md., 1993; Johnson v. Francis
Howell R-3 Board of Education, Mo., 1994; Cooper v. Williamson County
Board of Education, Tenn., 1990.

(2) Reputable witnesses were prominent in 11 cases. Four administra-
tors and seven teachers testified in support of the charges in Stamper v.
Board of Education of Elementary School District No. 143, Ill., 1986. In
Mongitore v. Regan, N. Y., 1987, six witnesses testified on behalf of the
Board of Education. They described the petitioner as a well-intentioned
human being but one who was not capable of being a teacher. A psychiatrist and a clinical psychologist’s testimony in *Fitzpatrick v. Board of Education of the Mamaroneck Union Free School District*, N. Y., 1983, was sufficient for the dismissal of a tenured fourth grade teacher. In *Downie v. Independent School District No.141*, Minn., 1985, several students, an education psychologist, and the school nurse testified about the harm that a guidance counselor may have caused. In *Kurlander v. School Committee of Williamstown*, Mass., 1983, the superintendent, the principal, and an administrative assistant testified that a teacher used insolent and abusive language to other school personnel. In *Benke v. Neenan*, Col., 1983, more than 15 witnesses were presented on behalf of the Board of Education at the hearing. In *Williams v. Concordia Parish School Board*, La., 1996, several students, a teacher, an assistant principal, and the school psychologist testified that the teacher read sexually suggestive material and used profanity to seventh grade students. A psychiatrist testified for the school district that a teacher had a psychiatric disorder (In re *Resolution for Immediate Discharge of Johnson*, Minn., 1988). Also in *Board of Directors of the Lawton-Bronson Community School District v. Davis*, Ia., 1992, a teacher’s psychiatrist and her personal physician, indicated that her charge of shoplifting was not caused by medically-induced mania. In *Board of School Directors of the Eastern York School District v.*
District v. Fasnacht, Penn., 1982, four school administrators testified that they observed a teacher asleep while in charge of his class. In Whaley v. Anoka-Hennepin Independent School District No. 11, Minn., 1982, the school district’s evidence consisted of testimony from three administrators who observed the teacher, four of the teacher’s students, and one parent.


(5) In one case, sufficient notice was the point of contention in dismissal proceedings. In *Shipley v. Salem School District 24J, Marion County*, Ore., 1983, the court ruled that the notice contained a sufficiently detailed statement to inform the teacher of the allegations and charges so that he could prepare an adequate defense.

**Research Question Four**

What type of evidence was present in support of the teachers?

Of the 79 cases identified in this study, 23 cases were adjudicated in favor of the teachers. Twenty-two cases were heard in state courts, and one case in federal court. In *Jager v. Ramona Board of Education, Ramona School District*, S. Dakota, 1989, the court ruled that a teacher cannot be dismissed for arbitrary or capricious reasons, or an abuse of discretion. The teacher was treated more harshly than other teachers for using inappropriate language in the presence of students, and evidence did not support the board’s position that the teacher’s performance was substandard. The court noted in *Sekor v. Board of Education of the Town*
of Ridgefield, Conn., 1997, while a board of education has the right, and indeed the duty, to terminate the employment of an incompetent teacher, it has to do so reasonably and fairly. In this case, a tenured teacher subject to termination was not afforded the property right to a fair hearing by being denied testimony from her counsel. In Boyle v. Board of Trustees of the Clark County School District, Nev., 1985, failure of the board of trustees to notify a tenured teacher of nonrenewal of employment by April 1 gave the teacher a statutory right to be employed by the school district for the ensuing school year. In Schafer v. Board of Education of Arlington Heights School District No., 25, Ill., 1987, a tenured teacher was discharged for incompetence without a proper hearing. In Clark v. School Board of Lake County, Fla., 1992, a teacher with a continuing contract was dismissed for incompetence without proper notice of charges against her and a chance to answer those charges.

In six cases the court established that the evidence did not support the charges brought against teachers for incompetence. In Schulz v. Board of Education of the School District of Fremont, Neb., 1982, evidence that school board members and parents were dissatisfied with a tenured teacher who continued to receive above-average ratings during the entire time she taught was insufficient to support the conclusion that the teacher should be terminated for incompetence.
In *Bennett v. Hertford County Board of Education*, N. C., 1984, the court proclaimed that the fact that a career teacher’s physical and health problems allegedly affected her past performance did not constitute substantial evidence of her present fitness for the job. Evidence showed that her past health problems had been alleviated if not cured and dismissal could not be based on health problems that occurred in the past.

In *Fontana Unified School District v. Burman*, Calif., 1988, findings by the Commission on Professional Competence that cause for discipline exists does not require the Commission to dismiss a certificated teacher if the dismissal is not warranted. Options such as suspension should be considered.

In addition, in *Trustees, Missoula County School District No. 1 v. Anderson*, Mont., 1988, the Court denied dismissal of a veteran teacher with 13 years of classroom teaching and satisfactory evaluations. Grounds for dismissal were based on poor performance in four structured interviews for another position after the teacher’s present position had been eliminated. In *Jones v. Rapides Parish School Board*, La., 1993, the court reversed the decision of the school board, which terminated a tenured teacher for showing an “R” rated movie to his junior high school class. The court ruled that the school board had no film policy in effect, and that the board had suspended, rather than dismissed, another teacher for showing
the same film in the same department on the same school day after the film was showed. Similarly, in *Terry v. Houston County Board of Education*, Ga., 1986, a physical education teacher who unintentionally showed two classes a film having an “R” rating, was not guilty of willful neglect of duty. The teacher, an elderly man, testified that he rented the movie thinking it was similar to a weekly television series involving professional athletes. The box depicting the rating was not included with the video. The teacher graded papers, paying no attention to the movie during the two classes. In another case, *Lauer v. Millville Area School District*, Penn., 1995, the court ruled that a teacher may be dismissed for persistent negligence. However, when charges have not occurred over several years and the teacher was not dismissed during the initial time of occurrence, new charges must be judged on present circumstances.

In *Collins v. Faith School District #46-2*, D. Dakota, 1998, the court held that the teacher's dismissal stemming from his indiscreet answer with regard to homosexual activity during a question and answer session following a sex education video, was arbitrary. When asked by a male elementary student if it was possible for two men to have sex, the teacher preceded his explanation with the disclaimers that this type of conduct is frowned upon, most people do not believe in it, and the boys would find it gross. He then described oral and anal sexual intercourse in explicit
language.

In six cases, school board policies and regulations did not sustain termination. In *Fredrickson v. Denver Public School District No. 1*, Colo., 1991, a tenured teacher whose employment was terminated after she physically disciplined two students who struck her in the classroom appealed the termination. Discipline measures included tapping one student on the shoulder and the other on the hand. School districts policy authorized teachers to use reasonable and prudent force for the purpose of reestablishing or maintaining order. In *Belasco v. The Board of Public Education of the School District of Pittsburgh*, Penn., 1985, two teachers were terminated for violation of the school board’s policy against corporal punishment. Both teachers hit a student with a paddle without hurting the student. The court indicated that while this act violated policy, it did not find them guilty of “intemperence,” “cruelty,” or “willful and persistent violation of school laws” as charged.

A special education teacher could not be terminated for willful and persistent violation of reasonable board of education regulations based on the teacher’s use of hot sauce in a student’s mouth, tipping a student backwards while strapped to chair, and placing a towel over a student’s head in an attempt to control the behavior of multi-handicapped students. These procedures are called “aversives” and are one form of behavior
management which is used in “differential reinforcement procedures” to reduce certain conduct. The school board failed to identify any rule or regulation violated, and the teacher did not harm or abuse students (James v. Trumbull County Board of Education, Oh., 1995).

In compliance with the Term Contract Nonrenewal Act, the school board adopted a published policy setting out “incompetency” among reasons for nonrenewal of a teacher’s contract. However, the board’s decision not to renew a tenured teacher’s contract was reversed because the board did not list “community feeling of incompetence” as a reason for nonrenewal, and the contract could not be renewed for “community feeling of incompetence” (Seifert v. Lingleville Independent School District, Tx., 1985). A school board regulation was challenged in Lacks v. Ferguson Reorganized School District, R-2, Mo., 1996, where the board failed to show that the teacher had intent to violate regulations by allowing students to use profanity in class-related activities. To determine whether the board may prohibit the use of profanity by students in classroom activities, the court must apply the pedagogical concerns test and consider, among other things, age and sophistication of students, the relationship between teaching methods and valid educational objective, and context and manner of presentation.
Additionally, in Walter v. Board of Education of Quincy School District No. 172, Ill., 1982, where, following a teacher’s dismissal for a decrease in teaching staff, when positions became available, if the teacher was “legally qualified” she was entitled to reinstatement before hiring of any probationary teacher.

In three cases, teachers were not afforded remediation to correct deficiencies. Two of the three cases were adjudicated in the state of Illinois, where statutes indicate that before service of notice of charges on account of causes that may be deemed to be remediable, the teacher or principal shall be given reasonable warning in writing, stating specifically the cause which, if not removed, may result in charges. The court indicated in Morris v. Illinois State Board of Education, Ill., 1990, that the test for determining whether conduct is “remediable,” within the meaning of the School Code provision governing dismissal for cause, is whether damage has been done to students, faculty or school and whether the conduct resulting in that damage could have been corrected had the teacher been warned. In this case, the court ruled that the teacher’s course work deficiency was remediable.

A first grade teacher’s use of excessive corporal punishment in disciplining an unruly student did not constitute irremediable cause for discharge in that the teacher was a long-time employee with a spotless
record until the incident. Although the student was swatted three times with his pants pulled down, and placed in a closet for several hours, because the teacher was convincing when stating that the conduct would not be repeated, her behavior was considered “remediable” (Swayne v. Board of Education of Rock Island School District No. 41, Ill., 1986). In Gunter v. Board of Trustees, Pocatello School District No. 25, Id., 1993, the court determined that the school district that elected not to renew a teacher’s annual contract on the basis of unsatisfactory performance had to first place the teacher on probation; only then could the district elect not to renew the contract for the coming year.

In Mullins v. Kiser, W. Va., 1985, the court adjudicated a case concerning whether a teacher could be removed pursuant to proceedings under statute providing for removal of public officials for official misconduct. The court ruled that a public school teacher was not a “public officer” and could not be removed for alleged misconduct filed by citizens.

Summary

Four research questions guided this study. Since the Shackleford’s (1982) study, federal and state courts have identified 13 categories for the termination of tenured public school teachers for incompetency. While the Shackleford study also identified 13 categories for termination, the category of failure to answer questions of an administrative superior was not found
in federal and state cases during the span of this study. However, a new
dimension involving negligence was present. During the time frame of this
study, many cases indicated that teachers may be terminated for multiple
reasons, including reasons outside the scope of their job responsibilities.
Judicial opinion rendered by the courts regarding incompetence of tenured
teachers and a definition of incompetency was presented. The type of
evidence present where termination was sustained and the type of
evidence present in support of teachers were also addressed.
Chapter 4

Categories of Teacher Incompetence
Analyzed According to State and Frequency of Occurrence

While state statutes vary among the 50 states in providing legal grounds for the termination of tenured public school teachers due to incompetency, there are commonalities among these grounds for the termination of teachers (Shackleford, 1982). As in the Shackleford study, these commonalities separated the behaviors and actions of terminated tenured teachers into five broad categories. The specific teacher behaviors were exhibited in a table to denote a state by state analysis of the frequency of grounds for teacher termination.

Inadequate Preparation to Teach

An inadequate preparation to teach, which entails a lack of knowledge of subject matter and proper certification, was evident in two cases. A teacher was terminated in Nebraska for his failure to use proper English and grammar and inadequate variety of materials and individualized instruction. In Michigan, the Court of Appeals sustained the school board’s policy of not assigning a teacher outside the scope of his teacher certificate or his major or minor fields of study (See Table 1).

Teaching Methods

Inadequate teaching methods consist of inadequate planning and
Table 1

Termination of Tenured Teachers State by State

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| c | Willful Neglect of Duty | 1  |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
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Number in box denotes the number of cases per state

*U.S. States Department of Defense Overseas Education Installation
coordination of instruction and lack of discipline. Eleven cases were adjudicated involving inadequate planning and coordination of instruction. In Illinois, a teacher was terminated after being afforded an adequate period of remediation and continual failure to improve deficiencies, such as inability to explain material, lack of organization, and failure to implement suggestions. In Minnesota, two teachers were terminated for lack of rapport with students, lack of appropriate student discipline, insufficient communications with parents, and inappropriate use of class time. In Iowa, unsatisfactory performance, unsatisfactory interpersonal relations with students and staff, and failure to comply with school regulations resulted in termination. In Missouri charges such as failure to meet the requirements of a professional development plan and teacher use of remedial games not appropriate to the abilities, needs, and interests of the students were upheld as reasons for termination. Also in Maryland, failure to comply with the provisions of a professional development plan was the reason for termination of two teachers. Pennsylvania Courts upheld termination due to the failure to keep proper student records, properly update, prepare and revise individual programs of students, and failure to conform instruction to individual student programs as grounds for termination. North Dakota affirmed the dismissal of two teachers who had been "team" teaching students for lack of individualized lesson plans, inadequate communication,
and general lack of organization. In Texas, the court sustained the termination of a teacher, indicating that videotaping without the teacher’s request or permission did not violate the school district’s policy.

In Germany, a federal court maintained the termination of a teacher for an unacceptable written grading system and an inadequate course outline that did not correlate with his lesson plans.

Lack of classroom discipline was often used in termination cases. In California, teachers were terminated for failure to maintain sufficient classroom discipline, including disrespect shown by students, students fighting, wrestling, throwing objects, using vulgar language, and the teacher’s failure to take action to terminate inappropriate behavior. Also in Michigan, Illinois, Arkansas, Tennessee, New York, and Missouri, teachers failed to establish and maintain proper classroom discipline. In Pennsylvania, a teacher was terminated for the use and advocacy of a classroom management technique he had developed.

Effects on Pupils

Certain behaviors demonstrated by teachers constituting incompetency have proven to be harmful to students, according to court decisions. These behaviors are described as unwholesome effects on students. Inappropriate subject matter taught by teachers was apparent in two cases sustained by the courts. In South Dakota, devotion of excessive time to
creationism or religion in a biology class was the cause for termination, and in Pennsylvania conducting religious exercises at the beginning of each school day violated the establishment clause.

In seven cases, teachers were terminated for unreasonable disciplinary action. In Washington the cause for termination was continued use of corporal punishment and striking students in their genitals. In Oregon, the court upheld the charges of assault and battery. Intentionally tapping a student on the head with a wooden pointer was the source of termination of a teacher in Colorado. Hitting and shoving students induced termination proceedings in Minnesota. In New Jersey, verbal and physical abuse of students caused termination. Abuse of emotionally disturbed students entrusted to the care of a teacher in New York was ample cause for dismissal.

Harmful psychological impact on students initiated by teachers is another reason sustaining termination of tenured teachers. In Louisiana, the reading of sexually suggestive material and use of profanity was the cause of dismissal. Sexually harassing staff and students and breaching students' confidentiality was sufficient cause for dismissal in Minnesota. In Washington, inappropriate physical contact with female students by a male teacher was grounds for termination.
Disability

When a teacher has a disability that affects his performance, and the deficiency is unremediable, courts have affirmed in favor of school districts' evidence of incompetency. In New York, the court held that a teacher suffering from a serious personality disorder was unfit to teach. A Minnesota court held that a teacher was incapable of performing teaching duties subsequent to a 12-month leave of absence and that the possibility existed of a relapse of a psychotic episode leading to harm to students. A teacher's physical disability in Washington was cause for discharge, and the school district was not required to assist the teacher in finding another position unless the teacher was qualified to fill it.

Personal Behavior

Personal behavior of teachers constituting termination addresses four categories. The first category involves poor relations with other staff members. In Massachusetts, the court upheld the termination of a teacher for use of insolent and abusive language to other school personnel. A Pennsylvania court sustained the dismissal for serious deficiencies in the teacher's exercise of prudent judgment as well as her overall professional conduct. In Tennessee, a tenured teacher employed as a principal was terminated on grounds of insubordination, neglect of duty, incompetency and inefficiency.
Inappropriate behavior is another category often found in cases supporting termination of teachers. Prohibited behavior including allowing students to drink alcohol in Washington, being a disorderly person in New Jersey, arrests for driving while under the influence of alcohol and health problems due to alcohol and drug abuse in Alabama, and an arrest for shoplifting in Iowa were grounds for termination in which courts indicated sufficient evidence for termination. Inappropriate behavior also included a teacher making false statements to district staff and applying for money not authorized under the terms of his contract in Pennsylvania and making jokes about testes and about a student's menstrual period in Montana. In two cases, the Supreme Court in New York held that the penalty of dismissal of teachers was not so disproportionate to the offenses committed as to be shocking to one's sense of fairness. Also in New York, a teacher altered information contained in her personnel file without authorization.

The third category of personal behavior pertains to willful neglect of duty. In Pennsylvania and Indiana, two teachers were terminated for persistent sleeping while in charge of students. A Missouri court sustained charges for termination of a teacher for leaving students unsupervised in the classroom for more than a few minutes. In Colorado, there was ample, direct and substantial evidence to support the 24 findings of fact made by
the hearing officer. In Nebraska, a guidance counselor was terminated for making untruthful statements to his superior.

The last category of personal behavior involved negligence. In Missouri, four sixth-grade teachers were terminated following the drowning death of a student during a field trip.

**Summary**

In this chapter, commonalities for the termination of tenured teachers for incompetency were identified in a state by state analysis. Five categories were used to determine the frequency of teacher termination cases, with inadequate teaching methods being cited 20 times. The categories consisted of 13 reasons for termination due to incompetency, with inadequate planning and coordination of instruction being cited 11 times. This was the most frequently cited category.

In this study, teachers were terminated most frequently in New York and Pennsylvania, each with six cases. Termination cases were not adjudicated in federal and states courts in 26 states.
CHAPTER 5

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

The termination of tenured public school teachers is an issue that continues to confront school officials. Teacher incompetency involves school administrators and school boards in situations in which legal procedures and requirements must be observed.

Summary

The purpose of this study was to review federal and state court cases from 1982 through February 1998 in which tenured public school teachers were terminated for incompetence. This study provided a current analysis of judicial opinions of teacher incompetence as a follow-up to Shackleford's (1982) study, in which she reviewed federal and state termination cases from 1958 through 1981.

The study was designed to answer the following questions:

1. What constitutes teacher incompetency since the Shackleford's (1982) study?

2. What judicial opinion have the courts rendered regarding incompetence of tenured public school teachers and how have the courts defined incompetency?

3. What type of evidence was present in cases where termination was sustained?
4. What type of evidence was present in support of the teachers?

To implement the study, court cases were located using WESTLAW computerized legal searches. Each case was examined to determine its applicability to the study. Cases involving termination of tenured teachers for reasons other than incompetence were eliminated.

Seventy-nine cases qualified for the study. Fifty-six cases were adjudicated in favor of school districts, while 23 cases were adjudicated in favor of teachers.

Review of Literature

A review of the literature indicates that prior to 1950, federal courts were hesitant to intervene in school board decisions to terminate incompetent teachers. However, from 1950 to 1975, the federal courts turned their attention to issues of individual and civil rights. Seven landmark cases involving teacher termination were reviewed in this chapter. In Beilan v. Board of Education, incompetence involves more than a teacher’s classroom performance. In Pickering v. Board of Education, a teacher’s exercise of his right to speak on issues of public importance may not furnish the basis for his dismissal. Tinker v. Des Moines provided implications for certain rights and freedoms of teachers. In Board of Regents v. Roth, the constitution does not require that nontenured teachers be granted procedural due process unless it can be shown that a liberty or
property interest has been violated. In Perry v. Sindermann, a “de facto” tenure system affords a teacher property interests and entitlement to job tenure. In Mt. Healthy City School District v. Doyle, evidence in a teacher termination case must show that the teacher’s exercise of constitutional right was the motivating factor not to rehire before judicial action is justified. In Connick v. Myers, it was found that the exercise of speech can be reasonably believed to undermine authority, disrupt the decorum, or harm working relationships.

Issues addressing accountability and teacher evaluation and teacher competency tests were also discussed in chapter two. An examination of state laws relating to the termination of tenured teachers throughout the United States was conducted. In all states, teachers who have established a certain number of years of service have the right to receive proper notice of the intent not to renew a contract by a specified date and the right to a due process hearing.

Substantive and procedural due process rights provide protection to tenured teachers during the termination process. Substantive due process assures that a law is impartial, and procedural due process guarantees that the procedures leading to the loss of a benefit are equitable. Consequently, substantive rights are insignificant without procedural protection and vice versa.
Analyses of Research Questions

An examination of the four research questions guiding this study was summarized.

Research Question One

What constitutes teacher incompetency since the Shackleford’s (1982) study?

This study revealed that the courts confirmed 13 categories of teacher incompetency. These categories are (1) lack of knowledge of subject matter, (2) teaching inappropriate subject matter, (3) inadequate planning and coordination of instruction, (4) lack of classroom discipline, (5) unreasonable disciplinary action, (6) mental disability, (7) physical disability, (8) lack of proper certification, (9) willful neglect of duty, (10) poor relations with other staff members, (11) inappropriate behavior, (12) harmful psychological impact, and (13) negligence. One category that was present in the Shackleford study from 1958 to 1969 involving the failure of a teacher to answer questions of an administrative superior was not present in this study. However, the category of negligence surfaced during the time span of this study.

Research Question Two

What judicial opinion have the courts rendered regarding incompetence of tenured public school teachers and how have the courts defined
incompetency?

A. Teacher evaluations that school districts attached to notices of incompetence to teachers, which were provided within time limits, which included recommendations as to areas of improvement and performance of teachers and which contained a notice to teachers in writing that they were not performing their duties in a satisfactory manner, were evident in this study.

B. Adequate notice of dismissal must contain a sufficiently detailed statement to inform the teacher of the allegations and charges so the teacher can prepare an adequate defense.

C. A teacher has a due process right to a fair hearing before the school board in a dismissal case, but the teacher must prove the existence of actual bias in contravention of his constitutional due process rights before the reviewing court will be willing to tamper with the decision of the school board.

D. Courts are reluctant to substitute their judgment for that of school boards where boards’ exercise of judgment does not violate law; it is presumed that actions of the school board are not arbitrary and capricious, but are reasonable unless there is clear violation to the contrary.
E. The determination of boards of education in dismissing tenured teachers must be supported by substantial evidence that indicates that teachers are unable to control their classes effectively.

F. Where a local school board has made findings of fact to support its decision to dismiss a teacher and the Secretary of Education finds no new evidence, the Secretary's scope of review is limited to determining whether there is evidence to support the findings of the board.

G. In cases relating to due process involving the decision of hearing officers, the officers must conduct extensive hearings and make detailed findings prior to recommendation to the school board.

H. In evaluating due process claims based on allegedly arbitrary state action in academic matters, the court must determine whether the state's action was a substantial departure from accepted academic norms to determine that a person or committee responsible did not actually exercise professional judgment.

I. A State Board of Education's decision to dismiss a teacher is dependent on the court's determination of substantial evidence to support the Board's findings.

J. Judgment of the State Tenure Commission is final and may be reversed only by the court's review by mandamus only if the
Commission fails to comply with tenure law's procedural requirements or unsupported and overwhelming weight of evidence.

K. Termination of a teacher’s contract for medical reasons must involve application of criteria including the nature and extent of duties required by contract and character and duration of the illness, and the school board cannot merely engage in inquiry as to whether symptoms of the malady are volitional acts.

L. Under statutes allowing dismissal of teachers on grounds of “immorality, unfitness, incompetence, or violation of the adopted policies” of the school board, only one of the statutory bases for dismissal needs to exist.

M. Failure or refusal of a teacher to comply with or fulfill the duties of his position, as set out in written guidelines of the school outlining such duties, constitutes “neglect of duty.”

N. School board policy to assign teachers according to their area of greatest competence and not to assign a teacher outside the teacher’s certificate or major or minor fields unless there is mutual consent was a “qualification” for purpose of the Teacher Tenure Act provision that tenured teachers be appointed to the first vacancy for which they are certified and qualified.
While this study did not provide an exact judicial definition of teacher incompetency, cases adjudicated in federal and state courts during the time frame of the study provided a definition of the term. As in Beilan v. Board of Education, incompetency remains a term for board interpretation and definition.

Research Question Three

What type of evidence was present in cases where termination was sustained?

In the 56 cases adjudicated in favor of school districts, evidence was challenged in all cases. Also, complete documentation of the problem was found in each case. In analyzing the cases, five types of evidence were used during hearings: (1) detailed accounts to assist the teacher to improve, (2) reputable witnesses providing testimony during the hearing, (3) noncompliance with school district policies and regulations, (4) adequate warning of deficiencies that could lead to termination of the teacher’s contract, and (5) sufficient notice of termination proceedings.

Endeavors to assist teacher improvement in the form of observations and follow-up conferences in evaluation proceedings where teachers failed to improve were found in 14 cases. Reputable witnesses were prominent in 11 cases. Witnesses included administrators, teachers, psychiatrists, psychologists, a school nurse, parents, and students.
Noncompliance with district policies and regulations were evident in 11 cases. Violations included failure to maintain classroom discipline; administering unreasonable discipline; displaying unprofessional conduct; willful neglect of duty; negligence; a lack of proper certification, and failure to comply with or fulfill the duties required of a teacher.

Teachers were provided adequate time to find a solution to a problem in 19 cases. In one case, sufficient notice was the point of contention.

Research Question Four

What type of evidence was present in support of the teachers?

Of the 79 cases identified in this study, 23 cases were adjudicated in favor of the teachers. Twenty-two cases were heard in state courts, and one case in federal court. Evidence included the following:

A. A teacher cannot be dismissed for arbitrary or capricious reasons.

B. Teachers must receive proper notice of nonrenewal.

C. Teachers have a right to a hearing and to other procedural safeguards.

D. Evidence must support the charges brought against teachers for incompetence.

E. Evidence that supported a teacher’s physical and health problems in the past does not constitute substantial evidence of a teacher’s present fitness for the job.
F. Cause that discipline exists does not require dismissal of a certified teacher if the dismissal is not warranted.

G. When the school board has no specific policy relating to a particular issue, a teacher cannot be terminated for violation of the board’s policy.

H. A single incident may not amount to “persistent” behavior in context of violation of school laws; the incident must be carried on for a “substantial” period of time.

I. Teachers must be afforded remediation to correct deficiencies before termination occurs.

J. Teachers are not public officials and cannot be terminated for alleged misconduct filed by citizens.

**Frequency of Occurrence of Teacher Incompetence**

Commonalities were found to exist among the grounds for the termination of tenured teachers for incompetency. These commonalities separated the behaviors and actions of terminated tenured teachers into five board categories. The categories were inadequate preparation to teach, teaching methods, effects on pupils, disability, and personal behavior. The specific teacher behaviors were exhibited in a table to denote a state by state analysis of the frequency of grounds for teacher termination.
Of the five board categories, inadequate teaching methods was the most frequently cited category, being cited 20 times. Personal behavior was cited 19 times, effects on pupils 12 times, disability three times, and inadequate preparation to teach twice. The categories consisted of 13 reasons for termination due to incompetency, with inadequate planning and coordination of instruction being cited most frequently (11 times). The areas that were cited least were lack of knowledge of subject matter, lack of proper certification, physical disability, and negligence, each cited once. Teachers were terminated most frequently in the states of New York and Pennsylvania, each with six cases. Termination cases adjudicated at the federal and state level were not found in 26 states.

**Conclusions**

The following conclusions were derived from the analysis of court cases examined in this study.

1. The term “teacher incompetency” does not have a decisive judicial definition. Consequently, teachers may be terminated for multiple reasons of incompetency.

2. Courts have indicated that teachers should not be terminated for arbitrary or capricious reasons, but for just and reasonable cause.
3. The foremost purpose of teacher evaluation is remediation, not termination. Courts have indicated that teachers should be provided adequate time to find a solution to a problem.

4. Teachers must be provided adequate notice of the intent to terminate with a sufficiently detailed statement to inform the teacher of the allegations and charges so the teacher can prepare an adequate defense.

5. Teachers have a due process right to a fair hearing in which school officials must be able to exhibit a preponderance of evidence that the teacher is incompetent.

6. During hearings, teachers must be given an opportunity to cross-examine witnesses, testify, and present testimony of other witnesses and other relevant evidence.

7. A school board’s termination of teachers for incompetence will not be sustained if a teacher’s rights, guaranteed by the United States Constitution or state laws, are violated.

8. Teacher incompetency must be measured by the same standards required of others performing the same or similar duties.

**Recommendations for Further Study**

1. As no cases were adjudicated in a federal or state court in Virginia during the time frame of this study, and because only one
case was adjudicated in the Shackleford study, the grounds for termination should be researched and documented for each statutory cause in the State of Virginia.

2. Further study should be conducted to examine and analyze legal grounds sustained by federal and state courts in cases involving the termination of tenured public school teachers for reasons other than incompetence.

3. This study should be replicated periodically to keep school officials abreast of current analysis of judicial opinion relating to the term “teacher incompetency.”
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