

TEACHER INCOMPETENCE: A COMPILATION OF THE  
LEGAL GROUNDS USED IN FEDERAL AND STATE CASES  
INVOLVING THE DISMISSAL OF TENURED PUBLIC SCHOOL TEACHERS,

by

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## DEDICATION

To \_\_\_\_\_, my husband, and \_\_\_\_\_, my  
parents, I dedicate this study. It is because of their high  
regard for educational excellence that this study was completed.

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## CHAPTER 1

### INTRODUCTION

Competence and excellence in education are among the essential goals for educators as outlined by the President's Commission for a National Agenda for the Eighties.<sup>1</sup> Although discipline continues to be the number one problem facing the local public schools according to the 13th Gallup Poll of the Public's Attitudes Toward the Public Schools, the difficulty of getting competent teachers is also a major concern.<sup>2</sup> The American Association of School Administrators has addressed the problem of the unhappy citizen who calls for the dismissal of teachers that "everybody knows" are not getting the job done.<sup>3</sup>

While few teachers can apply the breadth of knowledge of the researcher or the creative ingenuity of the theoretician to the problem of defining teacher competence, teachers are in immediate contact with all the problems of teaching as they occur.<sup>4</sup>

Moreover, attempts to clarify teacher incompetency have proven difficult for both educators and the courts. This is in part due to the fact that the word "incompetence" does not have a clear, legal, technical definition.<sup>5</sup>

Consequently, since in this country there is no single, national public school system, but fifty different state public school systems, there is no one single evaluation system for teachers (even within a state). Similarly, each state has its own statutes which specify causes that justify a teacher's dismissal for incompetence.

In addition, state laws generally accord local school boards the legal authority to dismiss tenured teachers under contract when cause exists to take such action. There are, however, commonalities among the "causes" from state to state which allow school boards to declare tenured teachers incompetent. Examples of these causes are inadequate preparation to teach, inappropriate teaching methods, a harmful effect on pupils, poor attitudes, and disability.<sup>6</sup>

Generally, the dismissal of a tenured public school teacher does not result in petitions for redress filed in a court of law. State statutes usually provide vehicles for settling disputes from the lowest administrative level within a school building to the highest level in the educational system. Occasionally, however, someone will challenge the actions of a school board, administrator, or teacher. If these actions are found to violate a federal constitutional law (due process and equal protection), they are often adjudicated through the federal court system. If they violate state contract law (tenure statutes and protections) they are tried in state courts.<sup>7</sup>

Over the years, courts have ruled in cases where alleged teacher incompetence was the issue. Judges, who render decisions in a broad context, provide implications for future judicial interpretations as subsequent courts attempt to answer the question: Does the evidence produced by school officials support the charge of teacher incompetence?<sup>8</sup>

In its narrowest interpretation, a court of law is where a citizen seeks protection from and remedies for injustice. Despite the fact that a court decision in each case applies to a specific jurisdiction, general principles develop from these decisions that are reflected in subsequent cases. These general principles originating from judicial interpretations can assist the members of local school boards in defining teacher incompetence.<sup>9</sup> By utilizing standards created by earlier decisions, the courts rule on the unique facts of each case concerning teacher incompetence.<sup>10</sup> Thus, it is the courts' accumulated judgment that provides a source of judicial interpretation for the term, teacher incompetence.

#### HISTORICAL REVIEW

In the landmark case, Beilan v. Board of Education,<sup>11</sup> the United States Supreme Court held that incompetence includes more than a teacher's classroom performance. In Beilan, a teacher refused to answer questions posed by his administrative superior pertaining to his fitness to teach. The case involved the Fourteenth Amendment directly and the First and Fifth Amendments indirectly.

Herman A. Beilan, a twenty-two year teacher, refused to answer his superintendent's questions regarding his activities with a subversive organization. The school board dismissed Beilan, and he appealed. The Pennsylvania Supreme Court sustained the charges of incompetence.

The United States Supreme Court in a 6-3 decision affirmed the decision of the Pennsylvania Supreme Court. The court stated that a teacher's classroom performance is not the sole basis for determining his fitness to teach. It held that fitness depended on a broad range of factors, incompetence being one. On this point, the Supreme Court offered the following discussion 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 CJ with reference to a number of supporting decisions, it is defined: "A relative term without technical meaning. It may be employed as meaning disqualification, inability, incapacity, lack of ability, legal qualifications, or fitness to discharge the required duty." In Black's Law Dictionary (3rd edition), page 945 and in Bouvier's Law Dictionary (3rd revision), p. 1528, it is defined as 'Lack of ability or fitness to discharge the required duty.' Cases construing the word to the same effect are found in Words and Phrases, 1st series, page 3510, and 2nd series, page 1013. Webster's New International Dictionary defines it as "want of physical, intellectual, or moral ability; insufficiency; inadequacy; specif., want of legal qualifications or fitness." Funk & Wagnalls Standard Dictionary defines it as 'General lack of capacity or fitness or lack of the special qualities required for a particular purpose.'

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

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.<sup>12</sup>

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.

#### STATEMENT OF THE PROBLEM

The problem of this study was to examine and analyze legal grounds upheld by federal and state courts in cases involving the dismissal of tenured public school teachers for alleged incompetence during the period beginning with the Supreme Court decision in Beilan v. Board of Education and ending with cases reported in 1981 in an effort to determine teacher incompetence.

#### PURPOSE OF THE STUDY

The study reviewed federal and state dismissal cases from 1958 through 1981 of public school teachers in order to identify those decisions in which the teachers were dismissed for incompetence. In addition, the study provided a historical analysis to see if the reasons that federal and state courts have upheld for the dismissal of tenured public school teachers have changed or remained the same since 1958 (Beilan). For the purpose of determining whether there has been a change, two periods were selected for comparison. The first was 1958 through 1969, and the second was 1970 through cases tried in 1981. The reason that the study was divided at this point was because two Supreme Court decisions began

a new time frame for the courts to adjudicate cases that represented certain rights and freedoms of teachers versus the effect that the exercise of these rights has on the school system that employs them. In 1969 in Tinker v. Des Moines,<sup>13</sup> a group of students in Des Moines, Iowa decided to publicize their antiwar views by wearing black arm bands. The United States Supreme Court ruled in favor of the students since their conduct did not interfere with the work of the school or impinge upon the rights of other students. The Court found that neither teacher nor students lose their constitutional rights to freedom of expression when they enter the public schools. In 1968 in Pickering v. Board of Education,<sup>14</sup> a high school teacher published a letter in the local newspaper which challenged the way his superintendent and school board raised and spent school funds. The United States Supreme Court adjudicated 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. The second time frame from 1970 to cases tried in 1981 began a new period for judges to interpret conflicts between the rights of teachers and the authority of school officials whose job is to provide competent educators. Third, the study identified behaviors and actions of tenured public school teachers that courts have upheld as evidence of incompetence. Finally, by identifying these behaviors and actions, the study not only attempted to provide a judicial interpretation to the term, "incompetence," but it also provided a legal

framework from which one also might infer teacher competence or incompetence.

#### LIMITATIONS

The study was limited to court cases which were adjudicated from Beilan (1958) to the cases reported in 1981. Cases during that period which reached the state appellate courts and the federal courts involving the dismissal of tenured public school teachers were used. Another limitation included litigation involving only tenured public school teachers who were charged by school officials with incompetence. In addition, only those cases where the federal and state courts have upheld the charges of incompetence were included.

#### SIGNIFICANCE

An extensive review of the literature yielded only one previous study that analyzed the legal aspects of teacher incompetence. A dissertation by Edward Ray Lakey on The Legal Aspects of Teacher Tenure Laws, Teacher Incompetency, and Due Process<sup>15</sup> revealed twelve recurring categories which the courts have upheld as evidence of teacher incompetence prior to 1976. No one has reviewed specific cases of teacher dismissal after 1976 with the intent to establish definitions of teacher incompetence. Nor has anyone provided an in-depth study to review all dismissal cases of tenured teachers for incompetence. Finally, no researcher has analyzed whether teacher

actions and behaviors upheld by courts as grounds for dismissal of tenured public school teachers for incompetence have changed from 1958 through 1981.

The legal definitions which may reflect historical changes in court attitudes toward acceptable grounds for the dismissal of tenured public school teachers for incompetence may have implications to be considered by teacher advocates who are training future teachers.

Currently, there are certain theoretical checkpoints at which teacher competence is evaluated. These are: 1) the admittance of a college student into a teacher preparation program, 2) the evaluation of a student's performance in practice teaching, 3) the college's decision to graduate the student from the teacher preparation program, 4) the state's determination to certify the applicant as a teacher, 5) a superintendent's decision whether to recommend to the school board that a teacher be offered employment, 6) the evaluation of the teacher's performance during probationary employment, 7) continuous decisions by school boards whether to renew or dismiss teachers and 8) reassessments by a state whether to recertify teachers.<sup>16</sup> Teacher advocates who train future teachers may find that alterations in these checkpoints are needed to strengthen the possibilities for more competent teachers.

## PROCEDURES

The first step of the investigation involved the selection of federal and state court cases for the dismissal of tenured public school teachers due to incompetence from 1958 through 1981. Court decisions related to the topic "Teacher Incompetence" were located under the topic "Schools and School Districts" in the Century, Decennial, and General Digests.

The second step employed the examining of each case in the appropriate source to determine its applicability to the study. Cases were reviewed to determine if they met the criteria for inclusion in the study. A tenured teacher in this study is synonymous with continuing contract or permanent teacher.

The third step analyzed each case to determine categories of a teacher's actions and behaviors that were held by federal and state courts as definitions of teacher incompetence. These categories were reviewed to see if there had been changes in legal interpretations of evidence over a twenty-four year time span.

The fourth step divided the behaviors and actions of tenured public school teachers involved in such cases into broad categories for placing them into chart form. These categories, which included an inadequate preparation to teach, teaching methods, effect on pupils, and personal attitudes, were originally used in a study by Rosenberger and Plimpton.<sup>17</sup> The category of disability was added after reviewing the state and federal dismissal cases of tenured

teachers. Within each category, the specific teacher behaviors were listed according to state and frequency of incidence.

#### OVERVIEW OF THE FOLLOWING CHAPTERS

This study was divided into five chapters. Chapter two analyzes appropriate cases following Beilan v. the Board of Education that spanned the time from 1958 to 1969 to determine categories of teacher incompetence against tenured public school teachers. In chapter three is a continuation of the historical analysis from 1970 to cases reported in 1981 to see if the categories of teacher incompetence for tenured public school teachers changed because of legal interpretations. Chapter four provides a state by state overview of specific charges that have been upheld against public school teachers for incompetence. Chapter five contains a summary and the legal implications reached through the study.

## FOOTNOTES

<sup>1</sup>Raymond F. Reisler, "An Education Agenda for the Eighties," Phi Delta Kappan, 63 (February, 1981), 413.

<sup>2</sup>George H. Gallup, "Gallup Poll of the Public's Attitudes Toward the Public Schools," Phi Delta Kappan, 63 (September, 1981), 34.

<sup>3</sup>David S. Rosenberger and Richard A. Plimpton, "Teacher Incompetence and the Courts," Journal of Law and Education, 4 (July, 1975), 469.

<sup>4</sup>Homer Coker, Donald M. Medley, and Robert S. Soar, "How Valid are Expert Opinions about Effective Teaching?" Phi Delta Kappan, 62 (October 1980), p. 471.

<sup>5</sup>Rosenberger and Plimpton, op. cit., p. 471.

<sup>6</sup>H.C. Hudgins, Jr. and Richard S. Vacca, Law and Education: Contemporary Issues and Court Decisions (Virginia: The Michie Company, 1979), p. 4-5.

<sup>7</sup>Ibid.

<sup>8</sup>Edward C. Bolmeier, The School in the Legal Structure (Ohio: The W.H. Anderson Company, 1973), p. 194.

<sup>9</sup>Hudgins and Vacca, op. cit., pp. 159-166.

<sup>10</sup>Rosenberger and Plimpton, op. cit., p. 471.

<sup>11</sup>Beilan v. Board of Education, 357 U.S. 399 (1958).

<sup>12</sup>Ibid., p. 407.

<sup>13</sup>Tinker v. Des Moines Independent School District, 393 U.S. 503 (1969).

<sup>14</sup>Pickering v. Board of Education, 391 U.S. 563 (1968).

<sup>15</sup>Edward R. Lakey, "Legal Aspects of Teacher Tenure Laws, Teacher Incompetence, and Due Process" (Doctoral dissertation in Education Department, University of North Carolina, 1976).

<sup>16</sup> Sally Boese and Katherine Goolsby, "Competency Tests in Use" (paper presented to the Joint Subcommittee on Teacher Competency, Richmond, Virginia, 1978).

<sup>17</sup> Rosenberger and Plimpton, op. cit., p. 472.

## CHAPTER 2

### LEGAL INTERPRETATIONS OF TEACHER INCOMPETENCE (1958-1969)

Since the United States Supreme Court's ruling in Beilan v. Board of Education,<sup>1</sup> state and federal courts have continued to apply the high court's opinion to cases where teachers have been discharged for alleged incompetence. During the time frame from 1958 to 1969, usually characterized by its strong support for the rights of the individual,<sup>2</sup> twenty cases were adjudicated by state and federal courts where the dismissals of tenured teachers for incompetence were upheld.

By the beginning of the 1960-61 school term, thirty-seven states had tenure laws in effect. Of the remaining thirteen states, five states had continuing contract laws requiring teacher notification by a specified date that his contract would not be renewed, and seven states provided annual or long-term contracts.<sup>3</sup>

There is a distinction between dismissal and nonrenewal of a teacher's contract. A dismissal is the discharge of any teacher during a contract term or the discharge of a continuing contract teacher. A nonrenewal is the refusal to issue any teacher's contract for a coming school year after the present contract term has ended. However, since a tenured teacher has a continuing contract, any discharged or removal of that teacher at any time would be considered a dismissal.<sup>4</sup>

Even though the word "incompetence" does not have a clear,

legal, technical meaning, it is recognized as a valid ground for dismissal in common law as well as under the statutes of most states.<sup>5</sup> Although teachers are rarely dismissed for one reason alone, eleven recurring categories of tenured teachers who were dismissed for incompetence provided an outline analysis for the time frame from 1958 to 1969.<sup>6</sup>

#### Specific Categories of Incompetence

##### 1. Failure to Answer Questions of an Administrative Superior

In addition to the Beilan cases, two other cases gave support to the court affirmation that a public school teacher could be charged with incompetence for the teacher's refusal to answer questions from his administrative superior. Each case involved questions concerning the teacher's loyalty.

In December, 1961, the Supreme Court of Pennsylvania in Board of Public Education, School District of Philadelphia v. Soler<sup>7</sup> sustained a charge of incompetence against William G. Soler by stating:

Certainly a teacher who refused to respond to a pertinent inquiry relative to his fitness to teach is not competent within the broad reach of that term, whether the inquiry concerns loyalty or any other proper subject of inquiry.

In 1962, in Board of Public Education School District of Philadelphia v. August, the Supreme Court of Pennsylvania held once again that:

the teacher's flat refusal to assist the superintendent in obtaining information on matters peculiarly

within his own knowledge amounted to insubordination as well as lack of frankness, candor and intellectual honesty which added up to incompetence.<sup>8</sup>

## 2. Lack of Knowledge of Subject Matter

Burton and Brueckner explicitly state that among the factors that affect instruction, the teacher's background, including scholarship, general culture, professional knowledge and background are important for effective teaching.<sup>9</sup> From this premise, a second example of alleged incompetent behavior involves a charge that the teacher lacks knowledge about the subject he or she is supposed to teach. In Singleton v. Iberville Parish School Board,<sup>10</sup> Louise Singleton was dismissed from employment. The Louisiana Court of Appeals sustained a charge of incompetence based on evidence presented by school officials of deficiencies in that teacher's grammar, spelling, punctuation, and general knowledge.

## 3. Inadequate Planning and Coordination of Instruction

Certainly the evidence is very clear that the effectiveness of teaching is closely related to the preparation the teacher makes for his work.<sup>11</sup>

Inadequate planning and lack of coordination of instruction also contributed to the court's sustaining Louise Singleton's dismissal. Evidence presented showed poor examples given students for the purposes of illustrating lessons. Singleton placed the students' desks so close together as to readily permit one student to look at his neighbor's examination papers. Not only did she provide an opportunity for cheating, but the teacher allowed students

to correct their own examination papers and to retain their test papers over the recess period, which afforded students the opportunity to obtain answers to examination questions from their classmates. In addition, Singleton used her own record player to furnish music for the amusement of the children while she dozed or slept in class.

A lack of preparation was also noted in Robel v. Highland Public Schools,<sup>12</sup> a case decided by the Supreme Court of Washington. In Robel, the high court affirmed the judgment of the Superior Court that Robel failed in the area of classroom organization. Said the court,

Classroom organization and planning are vital to the success of any teaching program. At the very least, teacher failure in this area would constitute sufficient cause for the nonrenewal of such teacher's contract.

#### 4. Teaching Inappropriate Subject Matter

Determination of which subjects or which topics within a subject should be taught in a classroom depend on the maturity and background of students, community attitudes, a teacher's preparation and skill, and anticipated consequences of having a class delve deeply into a subject.<sup>13</sup> Courts have not only upheld charges of inadequate teacher planning and dissemination of knowledge as evidence of competence, but also the appropriateness of subject matter taught. For example, if the teacher's choice of subject matter forfeits the good will and respect of the community, then the teacher may not only

be charged with a lack of good behavior, but incompetence.<sup>14</sup> In State v. Board of Directors of Milwaukee, student complaints supported the finding of the school board that activities of Edwin M. Wasilewski in discussing sex matters in class offered cause for his discharge from employment.<sup>15</sup>

#### 5. Lack of Discipline

A symptom of a teaching problem may be illustrated by the disorderly conduct of pupils.<sup>16</sup> The Louisiana Court of Appeals (in Singleton, supra) affirmed that the dismissal was reasonable and proper where her principal's testimony demonstrated the teacher's inability to maintain discipline in her classes.<sup>17</sup> Similarly, in Robel (supra) the nonrenewal of her contract was upheld by the Supreme Court of Washington for inefficiency in the control and discipline of her classes. Even though Robel had taught for sixteen years, her failure in this area, criticized by parents and her administrative superiors, justified her discharge from employment.<sup>18</sup>

#### 6. Mental Disability

Maladjusted teachers clearly produce maladjustment in children.<sup>19</sup> Consequently, courts have upheld the dismissal of tenured teachers who are rendered incompetent due to mental disability. In 1962, the Supreme Court of New York, Appellate Division, affirmed the dismissal of Estelle Weisman on the grounds of mental disability.<sup>20</sup> The court held that the psychiatrist's testimony

substantiated that the teacher was mentally incapable of preventing daily fights and scenes of disorder in her classroom.

Likewise, in Lombardo v. Board of Education of School District No. 27, Mario Lombardo was dismissed from employment because of his continued demonstrable emotional instability both in and out of the classroom. Testimony of colleagues, administrators and students substantiated that Lombardo had touched students improperly. The Superintendent testified that during conferences with Mr. Lombardo when the teacher was confronted with charges made by his students, the teacher became very emotional and went around the Superintendent's office screaming and crying. Lombardo requested that the Superintendent call Lombardo's wife and tell her that he was not going to come back home again. The teacher also stated that his actions in touching the students was an accident. The Appellate Court of Illinois affirmed the lower court's decision to dismiss the teacher.<sup>21</sup>

## 7. Physical Disability

A teacher's physical disabilities must be taken into account when considering his competency in the classroom.<sup>22</sup> Evidence of physical disability has been sustained by the courts as grounds for clarifying teacher incompetence. For example, as the Louisiana Court said in Singleton (supra):

she allowed herself to become so overweight (in excess of three hundred pounds) as to seriously impede

her functions as a teacher. Because of her size and obesity, she was unable to move among her pupils in such manner as to give them the individual attention normally required.<sup>23</sup>

#### 8. Lack of Proper Certification

States are continually changing certification standards. However, a lack of proper certification may result in the dismissal of a teacher.<sup>24</sup> For example, Frederick J. Feingold was granted tenure by the board of education despite the fact that he had not completed the course of study required by the New York State Education Department. A year later the Teacher Certification Section of the State Department of Education voided his teaching certificate. Because the voiding of his state certificate rendered him legally incompetent to teach in the public schools of the state, the school board dismissed him from employment. The Supreme Court of New York, Appellate Division, affirmed his dismissal.

#### 9. Willful Neglect of Duty

Teaching competencies also include effective participation in the activities of the school by the teacher's presence and his cooperative planning efforts.<sup>26</sup> Everett W. Granderson was dismissed for his tardiness on seventy-three days and absence of seventeen days during a one-hundred eighty school day year. The Louisiana Court of Appeals held that such conduct constituted "willful neglect of duty or incompetence."<sup>27</sup>

In another case, Frank Yuen submitted a request to his superior to be absent on April 16 and 17, 1964 so that he could attend the Illinois School Problems Commission hearing in DeKalb on April 16 and the National Department of Classroom Teachers meeting at Rockford on April 17. This request was denied because the meetings were not related to the teacher's subject area, physical education, and there was not a substitute teacher in the system who could take over Yuen's duties. The teacher left his work to attend the DeKalb Seminar, willfully violating the education board's order denying his request to be absent. Yuen's absence resulted in a denial of benefit of teaching to between one hundred sixty and one hundred seventy-five children. The Appellate Court of Illinois upheld his dismissal.<sup>28</sup>

Similarly, the Appellate Court of Florida, in Board of Public Instruction of Taylor County v. State,<sup>29</sup> upheld the dismissal of Laura Scott Reaves, who willfully absented herself from duty without school board permission.

James R. Worley, chairman of his high school's English Department, was dismissed by the school board for failing to file lesson plans two weeks in advance on five separate occasions from September 29 to October 15, 1959. On appeal, the New York Supreme Court, Appellate Division, affirmed the dismissal. The court stated:

...the machinery by which formal education is managed is in part a discipline for living in a

community both taught to the pupil and binding on the teacher. But this is not only a matter of object lesson by which the teacher's conformity to common rules seems for the pupil's edification; without discipline and management formal education would not have been possible and it would not exist.<sup>30</sup>

Similarly, as stated in the case of State ex. rel. de Bellevue v. Ladoux: "Incompetence may arise from gross ignorance of official duties or gross carelessness in the discharge of them."<sup>31</sup>

#### 10. Poor Relations with Other Staff Members

Competent teachers should believe in a cooperative approach to problems and must have a willingness to consider all viewpoints in arriving at final solutions. If a staff member does not cultivate positive relations with other staff members, he will be an ineffective and unhappy member of a staff that must work cooperatively.<sup>32</sup> In Moffet v. Calcasieu Parish School Board, Joseph Moffett had made a vulgar remark to his school principal in such a loud and angry manner that it could be overheard by persons in the vicinity. The Louisiana Court of Appeals affirmed his dismissal, stating:

Competence in your profession requires proper recognition of and respect to your superiors, and self-discipline that will be exemplary to the school children over whom you have authority. The disrespect you showed the principal of the school by your use of such abusive language, as well as your lack of discipline in managing your own conduct, indicates your incompetence for the jobs for which you are assigned.<sup>33</sup>

In another case, Jepsen v. Board of Education, Joseph Jepsen was dismissed by the school board on the grounds that the best

interest of the school required his dismissal. Three charges specified against the teacher were found to be true. Jepsen had been disrespectful of the Board of Education by stating to other employees of the district and to a son of one member of the Board of Education that the members were not qualified as to education, background, and standing in the community to be members of the Board. The teacher incited misunderstanding and distrust of the superintendent, principal, and the athletic coaches by stating to officials of other schools that the football coach did knowingly play an ineligible player in a football game. Finally, the teacher willfully and without justification accused the school principal of concealing or attempting to conceal the ineligibility of a football player. The Appellate Court of Illinois upheld the teacher's dismissal on the grounds that his behavior was detrimental to the discipline and efficiency of the school.<sup>34</sup>

In yet another case, Dale Robinson pursued a course of non-cooperation with his fellow teachers and superiors. Specific charges included the following: throwing paper towels from the window of a third floor washroom, tampering with his classroom clock, interfering with the discipline and control of other teachers, monitoring a washroom in defiance of his superiors, refusing to allow assigned reading in his study hall, confiscating permitted books from students, refusing to attend a luncheon meeting, making derogatory remarks about the discipline of the school, holding his

classes after the end of the period and refusing to write tardy slips for his students, and accusing a previous Superintendent of "scalping" tickets. The Appellate Court of Illinois affirmed his dismissal.<sup>35</sup>

Mr. Allen T. Tichenor refused to allow his school principal and his director of vocational education to enter his classroom. Even though both supervisors sought only to give direct assistance in teaching techniques and procedures, and the use and preparation of teaching materials, Tichenor still refused to cooperate. The Louisiana Court of Appeals justified his dismissal on the charges of incompetence and willful neglect of duty.<sup>36</sup>

Finally, Ruth McLain was charged with a lack of cooperation for her complete disregard of higher authority. When the principal made recommendations to change the teacher's practice of holding all students to the pace of the slowest and being extremely harsh in her treatment of her fourth grade boys and girls, the teacher responded that she would not accept any of the principal's recommendations. Her dismissal was affirmed by the Appellate Court of Illinois.<sup>37</sup>

#### 11. Unprofessional Conduct

Each teacher is required to meet certain expectations of his administrative superiors, his fellow teachers, the parents and patrons, and the students of a school community by acceptable,

professional conduct.<sup>38</sup> A teacher may be held to be incompetent if he conducts himself so as to forfeit the good will and respect of the school community.<sup>39</sup> In 1962, the Supreme Court of New Mexico affirmed the removal of Gilbert Lopez for being intoxicated and disorderly and the adverse publicity that resulted from his behavior.<sup>40</sup>

In 1966, the Arizona Court of Appeals affirmed the dismissal of Clifford Williams for disturbing the peace by being under the influence of intoxicants, attempting to fight, and displaying a gun.<sup>41</sup>

#### Summary

Although the United States Supreme Court has not given a precise definition of incompetence, the eleven categories discussed provide a source of data from which one might construct such a precise definition for teacher incompetence. 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. In addition, an incompetent teacher may also be unable to provide designated instruction due to his inability to plan adequately, his physical/mental incapacity and/or his ineffectiveness in controlling student behavior. Finally, the teacher may also exhibit conduct unbecoming a competent teacher by his refusal to obey school regulations, his inability to get along with his peers, his failure to answer

questions of an administrative superior, and/or his conviction of a specified crime.

## FOOTNOTES

- <sup>1</sup>Beilan v. Board of Education, supra (1958).
- <sup>2</sup>Richard Salmon, "Public Elementary and Secondary Education: The Transformation of a Great Institution," From Theory into Practice: A Journal for Educational Managers, 1 (1979), 7.
- <sup>3</sup>Joseph J. Cobb, Ph.D., An Introduction to Educational Law (Illinois: Charles A. Thomas, 1981), p. 39.
- <sup>4</sup>Richard D. Gatti and Daniel J. Gatti, Encyclopedic Dictionary of School Law (New York: Parker Publishing Company, Inc., 1975), p. 283.
- <sup>5</sup>E. Edmund Reutter, Jr. and Robert R. Hamilton, The Law of Public Education (Miniola, New York: The Foundation Press, Inc., 1976), p. 481.
- <sup>6</sup>Louis Fischer, David Schimmel, and Cynthia Kelly, Teachers and the Law (New York: Longman, Inc., 1981), p. 22.
- <sup>7</sup>Board of Public Education, Sch. Dist. of Phila. v. Soler, 187 A.2d 653 (1961).
- <sup>8</sup>Board of Public Ed., Sch. Dist. of Phila. v. August, 177 A.2d 809 (1962).
- <sup>9</sup>William H. Burton and Leo J. Brueckner, Supervision (New York: Appleton-Century-Crofts, Inc., 1966), p. 317.
- <sup>10</sup>Singleton v. Iberville Parish School Board, 136 So. 2d 809 (1961).
- <sup>11</sup>J. Galen Saylor and William M. Alexander, Curriculum Planning for Modern Schools (New York: Holt, Rinehart and Winston, Inc., 1966), p. 438.
- <sup>12</sup>Robel v. Highline Public Schools, Dist. No. 401, 398 P.2d 1 (1965).
- <sup>13</sup>Morris L. Bigge and Maurice P. Hunt, Psychological Foundations of Education (New York: Harper and Row, Publishers, 1962), p. 474.
- <sup>14</sup>Cobb, op. cit., p. 52.

<sup>15</sup>State v. Board of School Directors of Milwaukee, 111 N.W. 198 (1961).

<sup>16</sup>Burton and Brueckner, op. cit., p. 321.

<sup>17</sup>Singleton v. Iberville Parish School Board, supra (1961).

<sup>18</sup>Robel v. Highland Public Schools, Dist. No. 401, supra (1965).

<sup>19</sup>Burton and Brueckner, op. cit., p. 530.

<sup>20</sup>Weisman v. Board of Education of City of New York, 236 N.Y.S. 2d 283 (1962).

<sup>21</sup>Lombardo v. Board of Education of School Dist. No. 27, 241 N.E. 2d 295 (1968).

<sup>22</sup>Kimball Wiles, Supervision for Better Schools (New Jersey: Prentice-Hall, Inc., 1967). p. 224.

<sup>23</sup>Singleton v. Iberville Parish School Board, supra (1961).

<sup>24</sup>Ralph L. Mosher and David E. Purpel, Supervision: The Reluctant Profession (Boston: Houghton Mifflin Company, 1972), p. 183.

<sup>25</sup>Feingold v. Lynch, 299 N.Y.S. 2d 606 (1969).

<sup>26</sup>Burton and Brueckner, op. cit., p. 320.

<sup>27</sup>Granderson v. Orleans Parish School Board, 216 So. 2d 643 (1968).

<sup>28</sup>Yuen v. Board of Education of School Dist. No. U-46, 22 N.E. 2d 570 (1966).

<sup>29</sup>Board of Public Instruction of Taylor Co. v. State, 171 So. 2d 313 (1964).

<sup>30</sup>Worley v. Allen, 212 N.Y.S. 2d 236 (1961).

<sup>31</sup>State ex. rel. de Bellevue v. Ledoux, 3 So. 2d 188 (1941).

<sup>32</sup>Wiles, op. cit., p. 210.

<sup>33</sup>Moffett v. Calcasieu Parish School Board, 170 So. 2d 537 (1965).

<sup>34</sup>Jepsen v. Board of Education, 153 N.E. 2d 417 (1958).

<sup>35</sup>Robinson v. Community Unit School District No. 7, 182 N.E.

<sup>36</sup>Tichenor v. Orleans Parish School Board, 144 So. 2d 603 (1962).

<sup>37</sup>McLain v. Board of Education, School Dist. No. 52, 183 N.E. 2d 7 (1962).

<sup>38</sup>Cobb, loc. cit.

<sup>39</sup>Jacob W. Getzels, James M. Lipham, and Roald F. Campbell, Educational Administration as a Social Process (New York: Harper and Row, 1968), p. 319.

<sup>40</sup>Lopez v. State Board of Education, 372 P.2d 121 (1962).

<sup>41</sup>Williams v. School District No. 40 of Gila County, 417 P.2d 376 (1966).

## CHAPTER 3

### LEGAL INTERPRETATIONS OF TEACHER INCOMPETENCE (1969-1981)

During the time frame from 1969 to cases reported in 1981, ninety-one court cases provided twelve recurring categories of incompetence exhibited 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.<sup>1</sup> Nevertheless, these categories provide a legal framework of judicial decisions sustaining teacher incompetence.

#### Specific Categories of Incompetence

##### 1. Lack of Knowledge of Subject Matter

An example of an incompetent teacher is one who lacks knowledge about the subject he is to teach.<sup>2</sup> This example is demonstrated in Blunt v. Marion County School Board.<sup>3</sup> Hattie M. Blunt was dismissed for incompetence. Throughout her twenty-five years of experience, Blunt was determined by the court to be deficient in the correct use of standard English. In the opinion of the court, double negatives, incorrect verb tenses, misspellings and improper letter formations for handwriting resulted in incompetent teaching. Blunt would use capital letters improperly and left inadequate spacing between words which she wrote on the blackboard. Even the teacher's use of audio-visual aids was insufficient. On one occasion, Blunt

was observed while using a film strip, and she "half-framed" the entire film. The United States Court of Appeals for the Fifth Circuit sustained the charge of incompetence, stating that the teacher was not denied substantive due process.

In another case in point, the Louisiana Court of Appeals affirmed the dismissal of Frankie Mae Reeves Jennings for incompetence. The court ruled that not only did she frequently misspell words, but she also mispronounced them. Her insufficient knowledge of English grammar rendered her incompetent to teach.<sup>4</sup>

## 2. Teaching Inappropriate Subject Matter

Phillip H. Burns, a fifth grade teacher, brought a civil rights suit alleging that his civil rights had been violated when he was terminated from employment. The United States Federal District Court ruled that the teacher's discharge was not based on activities protected by the First Amendment. The court held that the teacher's "pen pal" program where his students received letters from his fiance espousing communism constituted incompetence. The court stated:

You have evidenced incompetence in the performance of your assigned teaching duties by using your classroom and your access to students in your classroom as a vehicle for the dissemination of your political convictions.<sup>5</sup>

## 3. Inadequate Planning and Coordination of Instruction

As has already been established in chapter two, the dismissal

of a teacher who does not or cannot carry on a constructive educational program has been upheld by the courts as evidence of incompetence.<sup>6</sup> In addition to Louise Singleton<sup>7</sup> and Frankie Mae Reeves Jennings,<sup>8</sup> who were dismissed not only for a lack of knowledge of subject matter, but for their inability to plan instruction properly for students, the following cases were litigated involving the same charges as evidence of incompetence.

a. failure to provide adequate lesson plans

In 1974, Freda Mae Meredith was dismissed by the school board for her failure to keep lesson plans as one of her teaching deficiencies. The Missouri Court of Appeals reversed the lower court's decision and upheld the teacher's dismissal based on her incompetence. The court held, among other charges, that:

The teacher had been neglectful in preparing lessons for pupils in her classroom in advance, in order to provide for an orderly course of instruction.<sup>9</sup>

The Michigan Court of Appeals also ruled in favor of the defendant school board when it upheld the dismissal of Marjorie Wetsman. The court indicated that the teacher failed to prepare and provide daily lesson plans in addition to her excessive absenteeism. During the 1970-1971 school year, the teacher was absent a total of thirty-five and one-half days and failed to have her lesson plans available for her substitute when she was absent.<sup>10</sup>

Three cases came before the courts in 1977 where teachers failed to provide adequate and purposeful lesson plans. In the

first instance, the Colorado Court of Appeals affirmed the dismissal of Dexter Robertson. The court found that the teacher had failed on several occasions to prepare and submit lesson plans as required, failed to turn in tests as required, and failed to grade and record grades as required.<sup>11</sup>

In the second case, the Commonwealth Court of Pennsylvania upheld the dismissal of Viola C. Rosso. Testimony given by school administrators revealed the findings that the teacher did not maintain adequate lesson plans for her French classes. Her method of instruction was teacher dominated and did not include a proper pace to insure that the scheduled program for the year would be completed.<sup>12</sup>

Finally, the New York Supreme Court, Appellate Division, sustained a lower court ruling that evidence against John Root warranted his dismissal. The court indicated that Root submitted lesson plans that were consistently inferior. Although the district required the writing of book reports, the teacher disagreed with the policy and did not require reports from his students. He did not use an English curriculum guide prepared for use by all the teachers in the English Department. In spite of consistent urging, the teacher sent only twenty-eight progress reports home for one hundred sixteen failing grades over a three year period.<sup>13</sup> In all three cases, the charge against the teacher was incompetence.

In 1981, the Supreme Court of South Dakota affirmed the

dismissal of Janet Tschetter, an English and journalism teacher. The school administration cited examples of the teacher's relying too much on workbooks to teach English grammar and not developing other methods of instruction. The teacher also failed to distinguish between class content and class assignments in her English lesson plans. For her journalism class, structured lesson plans were not given as the students used the time to complete the annual and school paper. During the spring semester of 1979, the teacher failed to submit seventeen lesson plans that were required by the school district policy.<sup>14</sup>

b. inadequate coordination of instruction

Not only is a teacher expected to plan adequately for his classes to be judged competent, but he must be able to coordinate those efforts into a program of instruction that provides for the students' learning needs (see, for example, Moore v. Board of Education Special School District of St. Louis County, p. 33.<sup>15</sup>)

Almost each year of the seventies decade brought forth a case against a tenured public school teacher where the courts affirmed the school board's action for dismissal due to incompetence because of this deficiency.

In 1970, the New Mexico Court of Appeals affirmed the dismissal of Harold W. Wickersham for inefficient teaching methods.<sup>16</sup> Wickersham was informed of deficiencies in instruction and grading. The school board found that his work performance was unacceptable,

and they detailed fifteen instances where the teacher had demonstrated incompetence.

Again in 1972, Edna Dugan was adjudicated incompetent by the Colorado Court of Appeals for her failure in the area of classroom organization.<sup>17</sup> Specific charges against the teacher included ineffective and inadequate teaching of her students, continued use of inadequate and ineffective teaching aids and materials, and the failure to grade students accurately.

In 1975, the Louisiana Court of Appeals upheld the dismissal of Doris T. Mims for her failure to recognize and to teach according to the needs of her students.<sup>18</sup> The principal furnished twelve pages of charges made against the teacher for incompetence. Mims taught a class of approximately fifteen mentally retarded children whose chronological ages differed substantially. One of the charges alleged by the principal was her inability to maintain control of the class and obtain and hold the attention of her students.

Mims permitted children to roam the classroom at will and to read aloud in competition to her. She failed to plan properly for class lessons to accommodate and provide for the differences in ages and learning abilities of her students. In addition, the teacher refused to obey instructions regarding pupil registration cards, lesson previews, grade distribution sheets, drop-out cards, and the maintenance of test papers in the classroom.

A significant increase of cases began appearing after 1976.

In 1977, the Commonwealth Court of Pennsylvania sustained charges against Grant D. Steffen for his inability to instruct and motivate students properly.<sup>19</sup>

Steffen taught two world culture classes in addition to four classes of special education. Visual observation by supervisors rating Steffen's performance indicated that his lessons were poorly prepared, and there was little long-range planning. The teacher also complained to parents of his inability to motivate or instruct his students. On December 18, 1974, Steffen's world culture class refused to open their textbooks or to engage in any discussion of the lesson because they felt that they were not learning anything.

That same year, the Illinois Supreme Court reversed the decision of the Appellate Court (which had reinstated Karen Gilliland) and affirmed her dismissal for general teaching incompetence, including "ruining pupils'" attitude toward school, lack of teacher-pupil rapport and irregular homework assignments.<sup>20</sup> Parents of eight of Gilliland's students testified to excessive homework requiring three and one-half to five hours per night for their elementary students. Four children testified to missing recess and physical education classes in order to complete their academic assignments. Several parents testified that their children cried in this teacher's class, feigned illness and complained of headaches and stomach aches to avoid going to school. Several parents testified that they did not ever want their children to have Gilliland as a teacher in

the future.

In 1978, the Missouri Court of Appeals ruled that two school boards had acted reasonably in dismissing Nadine Eddington for improperly teaching music fundamentals,<sup>21</sup> and Betty Conder<sup>22</sup> for her failure to observe daily teaching schedules and to keep students at work. Conder's deficiencies also included disorganized course planning and the poor evaluation of student grades.

Similarly, in 1979, the Illinois Appellate Court found Leila Lowe to be an incompetent teacher due to her failure to implement a program of instruction.<sup>23</sup> In the opinion of the court, the teacher's classroom environment was not conducive to learning. Bulletin boards were half torn off, there were no charts or interesting materials, and there were no centers of interest, such as a library corner or a science corner. Lesson plans were not understandable, and record keeping was inadequate.

The Alabama Court of Civil Appeals found Frank Marsh to be an incompetent teacher due to his inability to adapt his instructional program to the individual student.<sup>24</sup> Marsh failed to teach to stated school board objectives and did not evaluate his students as to their basic knowledge. The principal testified that upon making visits to Marsh's class, the students would be idle, and Marsh would begin class only upon the principal's arrival.

In 1980, the Supreme Court of Kansas upheld the dismissal of Mark Dice's teaching contract. The court found that the music

teacher had insufficiently prepared for the 1977 band competition and entered no competition in 1978. The teacher avoided public appearances of any solo or small ensembles in the band. Dice refused to follow directions of school officials, including refusing to wear his band uniform and failing to use school buses for activities. The high school band's ratings at music festivals dropped during the teacher's four years as an instrumental music instructor.<sup>25</sup>

Another case in 1981 involved the dismissal of Yvonne Busker for her inability to teach her students effectively. The Supreme Court of South Dakota supported the school board's dismissal of the teacher's contract for her unsatisfactory performance in creating an appropriate classroom atmosphere and her lack of positive qualities of organization. Busker's students seemed unable to grasp material under her instruction. The teacher refused to take suggested corrective measures made by her principal. Her students were randomly permitted to leave their seats and many placed their feet on their desks. Complaints were received by parents and students on Busker's teaching ability.<sup>26</sup>

On August 27, 1980, the Supreme Court of Iowa affirmed the dismissal of Ames Mroz for incompetence. The court found that Mroz's ineffective teaching resulted in students talking, daydreaming, wandering about the room, moving desks, and leaving the room without permission. Students testified that the teacher showed films as often as every other day with little preparation or follow-up to

assess comprehension. In addition, Mroz failed to follow district guidelines for teacher demonstrations and student experiments in science class.<sup>27</sup>

#### 4. Lack of Discipline

The lack of discipline has been the central issue in nine separate instances of tenured teacher dismissals for incompetence. The Missouri Court of Appeals in Moore v. Board of Education, *supra*, sustained the school board's finding that Willie J. Moore displayed complete inability to maintain discipline.<sup>28</sup> The court record cited the following examples:

...failure to follow administration directions by allowing students to leave class before the bell sounded..., left the cafeteria when...on duty,...sent...children to the gym even though there would be no gym class, and permitted children to leave classroom for recess even though it was not recess time.

The same court upheld dismissal proceedings against Freda Mae Meredith for failing to maintain adequate classroom discipline.<sup>29</sup> One student testified that the teacher had been "screaming all day long." The principal reported that the teacher had sent a disproportionate number of students to him for discipline and that she failed to contact parents of students who had become discipline problems.

The Louisiana Court of Appeals affirmed the dismissal of Doris T. Mims. The court ruled that the teacher failed to maintain discipline in her classes by permitting children to roam the classroom at

will and read aloud to the teacher.<sup>30</sup> Six other cases that contained similar examples of deficiency in the discipline of students were also adjudicated from 1970 through 1978.<sup>31</sup>

Although not a corollary of inadequate planning and coordination, additional cases continued to provide examples of judicial rulings where sustained evidence supported a charge of incompetence for a lack of discipline against public school teachers. In 1973, for example, the United States Court of Appeals affirmed the dismissal of Lyell J. Thomas for his inability to control and communicate with his classes. Testimony by administrators and students supported claims that:

He spoke too softly, that he allowed students to waste time, that he was an ineffective disciplinarian, and that his room was subject to excessive vandalism.<sup>32</sup>

In 1974, the Superior Court of Delaware upheld the dismissal of Walter Phillips for his inability to control the discipline of a large number of his students.<sup>33</sup> In like manner, the Supreme Court, Appellate Division of New York City, upheld the dismissal of Charles Sweet for not maintaining order in his classroom.<sup>34</sup> Moreover, the Missouri Court of Appeals sustained the school board's finding of incompetence against Rosita Rafael for her failure to provide an environment for learning due to her inability to control classroom behavior.<sup>35</sup>

John McConnell was dismissed from employment due to his repeated failure to maintain classroom management and discipline. By

January 24, 1977, McConnell had referred one hundred forty-seven disciplinary problems to the assistant principal's office since the beginning of the school year. The next highest number of referrals made by a teacher was forty-three. One of the school counselors recorded numerous problems and complaints from students, parents, and other staff members relating to McConnell's handling of student discipline. The Texas Court of Civil Appeals affirmed the teacher's dismissal based on the court's interpretation of a lack of classroom discipline.<sup>36</sup>

One of the most recent cases to come before the court was Linfield v. Nyquist, decided January 10, 1980. Esther Linfield was dismissed from employment for her inability to control a class of difficult special students with serious learning disabilities. The New York Supreme Court, Appellate Division, affirmed the dismissal.<sup>37</sup>

##### 5. Unreasonable Discipline

When Donald M. Kinsella used excessive physical force to discipline several students, the New York Supreme Court, Appellate Division, upheld the school board's charges of insubordination, incompetence, and conduct unbecoming a teacher.<sup>38</sup> The same court also affirmed the dismissal of William Jerry for:

...striking children with dodge balls, soccer balls, hands, and fists, the throwing or pushing of children against walls and floors so as to cause them to strike their heads and knees, the pulling of hair, the lifting up and carrying of children by the neck, and the pulling of a child by the ear.<sup>39</sup>

The court held:

That the penalty of dismissal has a grave impact on petitioner is obvious. But, by his actions he manifested a disregard for the School Board's right and duty to make and enforce policies fostering the physical, emotional, and educational well-being of students, the good will and confidence of their parents and the orderly administration of schools. Nor was petitioner's misconduct limited to a single isolated instance; rather, it was a persistent course of conduct in defiance of clear and repeated warnings.<sup>40</sup>

Kermit Gwathmey was dismissed for incompetence for requiring a student to stay in a bathroom as punishment, pulling a student's hair, pulling another's ear and pinching a student's shoulder. The United States Federal District Court affirmed his dismissal.<sup>41</sup>

These three cases are only three examples during the decade of the seventies of court decisions that sustained unreasonable punishment by public school teachers that rendered them incompetent to teach in school systems. In 1971, Helen P. Lenning appealed the affirmation of the State Board of Education not to reemploy her. The New Mexico Court of Appeals held that the teacher's striking students on the shoulder and head supported the findings of incompetency, insubordination, and violation of regulations in administering corporal punishment.<sup>42</sup>

In 1973, Allen Celestine required two fifth grade students to write a vulgar word one thousand times as a method of discipline. The Louisiana Court of Appeals found the evidence sufficient to support the school board's charge of incompetence. The court pointed

out:

...that the School Board has never forbidden teachers from requiring students to write words as a method of disciplining them, and that the School Superintendent has 'accepted as principle' this form of discipline....It was the bad judgment, or the incompetency, of the teacher in requiring that a vulgar word be used which brought about his dismissal.<sup>43</sup>

In 1976, courts ruled on several unreasonable discipline cases. The Commonwealth Court of Pennsylvania affirmed the dismissal of Paul D. Landi for grabbing a student by the shoulder, shaking him, pushing him into the blackboard, grabbing him by his hair and lifting him to his feet, then pushing him into the bookcase again where the student hit his head and fell to the floor.<sup>44</sup> The Supreme Court of Missouri held that evidence sustained the Board of Education's decision to terminate Maybelle Shank for striking students about their heads, shoulders, and buttocks.<sup>45</sup> The Oregon Court of Appeals affirmed the dismissal of John M. Barnes for grabbing a student, shoving him against a wall, and pinning him to the ground. In another incident, Barnes picked a student up from a chair by the back of the neck with one hand with the other hand over the student's mouth.<sup>46</sup> The North Carolina Court of Appeals found Leonard K. Thompson guilty of slapping a student, pulling the hair of another, "frogging" a male student, pulling a female student out of the girls' bathroom and kicking her, and permitting students to settle disputes by fighting with each other.<sup>47</sup> The United States Court of Appeals found Roger diLeo guilty of improper conduct towards students, including harras-

sing and humiliating them by making comments with sexual connotations.<sup>48</sup>

The State of Illinois adjudicated two additional cases of unreasonable discipline. In the first case, Fender v. School District No. 25, Arlington Heights, John D. Fender struck children on the face and head. One student testified that the teacher grabbed his hair, banged his head twice against the desk and then slapped the student twice in the face. Fender later discovered that he had punished the wrong child and apologized to the class.<sup>49</sup>

The second case, Rolando v. School Directors of District No. 125, County of LaSalle, Frank Rolando used a cattle prod to inflict an electric shock upon unruly students. The students testified that such treatment "hurt, stung, and made them shaky." For those students who pled for amnesty, their names were posted on the blackboard as a member of the "coward's list."<sup>50</sup>

Once again, in 1977, the Illinois courts adjudicated teachers who used unreasonable means of discipline. Karen Gilliland was found guilty of "excessive physical contact or punishment on students" by the Supreme Court of Illinois. Evidence supported that the teacher grabbed students by the arm, hair, or shoulder, shouted at students, kept students from recess and physical education because school work was incomplete, and made one student sit on the floor because she did not have her eyeglasses.<sup>51</sup>

The Appellate Court of Illinois affirmed the dismissal of

Jerry Welch. When one of Welch's students continued to play his radio during the lunch hour in defiance of school rules, the teacher used appropriate judgment in paddling the student. However, when the teacher paddled the same student some twenty minutes later for smiling about the first paddling, this was irremediable damage exceeding what was "reasonable and moderate" under the circumstances.<sup>52</sup>

In 1978, David G. McLaughlin was held "unfit to teach" by the Supreme Judicial Court of Maine. During a "pickup" basketball game, while the teacher was shooting for a basket, a student pushed him from behind. The teacher turned around, and with a single blow of his open hand, struck the student on his right cheek bone. The blow caused swelling and closure of the student's mouth, the loss of one tooth, and serious damage to another tooth. The student also sustained a bloody nose and black eye.<sup>53</sup>

The same year the Arizona Court of Appeals sustained charges for the physical abuse of students against Arvin G. Fike.<sup>54</sup> In Hawaii the Supreme Court found that Joseph A. Shorba used physical force that "could have been injurious to students."<sup>55</sup> According to the Kentucky Court of Appeals, Donald Mavis had engaged in the abusive treatment of his students by physically beating them.<sup>56</sup>

The year 1979 brought an appeal from Orville Harris, who disciplined unruly students by slapping them in the face and locking them in an isolated storage room. The Commonwealth of Pennsylvania affirmed his dismissal.<sup>57</sup> F. Leona Baxter physically abused her

handicapped students who suffered from cerebral palsy, muscular dystrophy, fragile bones, and malformed limbs by inflicting unreasonable corporal punishment on them. The North Carolina Supreme Court affirmed her dismissal.<sup>58</sup> Ross Sargent, a twelve year veteran, employed disciplinary methods that threatened the physical and mental well-being of his students by kicking or tipping the leg of a student's chair so that the student would fall backwards.<sup>59</sup>

Finally, in 1980, Benjamin Blascovich was charged with cruelty for assaulting his seventh grade student in the gym locker room.

One eleventh grade student testified that:

After gym class, in the locker room, the teacher had grabbed him by the collar, punched him in the chest four or five times, pushed him against the wall, twice punched him in the eye, nipping him in the nose, and knocking his glasses off.

The Commonwealth Court of Pennsylvania affirmed the discharge of the teacher.<sup>60</sup>

A similar case involved Donald Barber, who was dismissed for hitting students as a method of class discipline. The Supreme Court of Rhode Island affirmed his dismissal.<sup>61</sup>

## 6. Mental Disability

The Commonwealth Court of Pennsylvania ruled that:

The evidence more than adequately supported the school district's conclusion that Samuel R. Clark suffered from mental derangement which rendered him incompetent to perform his duties and responsibilities as a teacher.

The teacher had a paranoid problem that prevented him from taking

the pressures of the classroom setting. A report from a psychiatrist adequately supported the school board's finding that the teacher was incapable of qualifying as a competent teacher in a school.<sup>62</sup>

Likewise, in Kelly v. Board of Education of Monticello Independent School District, William A. Kelly was dismissed from employment due to physical and/or mental derangement. A physician testified that Kelly had used the drug Darvon excessively and suffered from chronic depression. The teacher's repeated confinement in psychiatric wards led to frequent absences from his classes. The Kentucky Court of Appeals affirmed the dismissal.<sup>63</sup>

## 7. Physical Disability

R. Michael Lammle began teaching in 1972 and was voted "Teacher of the Year" in the 1973-74 school year. Unfortunately, during the 1975-76 school year, Lammle contracted flu which developed into viral pneumonia. This illness necessitated that he be absent sixty-two days out of a school year of approximately one hundred-eighty days. Concern developed from students, parents, and department members that educational opportunities were not accomplished in the teacher's classes due to the large number of substitute teachers required during the teacher's absences. During the 1976-77 school year, Lammle missed fifteen of the first thirty-five working days and was dismissed by the board of education. The Arizona Court of

Appeals upheld the dismissal due to "the teacher's unfitness to discharge the duties assigned."<sup>64</sup>

#### 8. Lack of Proper Certification

Joseph E. Chapman was dismissed from employment because he lacked the state certification for legal employment. The Supreme Court, Appellate Division, of New York affirmed the teacher's dismissal. The court held that the punishment was not excessive since the teacher had more than nine years to attain permanent certification, but had made no effort to complete the required work.<sup>65</sup>

As already established in Feingold v. Lynch, the voiding of a teacher's teaching certificate renders him incompetent to teach.<sup>66</sup>

#### 9. Willful Neglect of Duty

As had already been established in Granderson v. Orleans Parish School Board, absence from school without school board permission constitutes "willful neglect of duty or incompetence."<sup>67</sup> Helen Aubuchon, an elementary school teacher, called her supervisor to report that she thought she was becoming ill. A half hour later, she was making her way to Las Vegas with her husband for a week's stay. The Missouri Court of Appeals affirmed her dismissal.<sup>68</sup>

In a similar case, Jeanne Fernald was denied school board permission to accompany her husband on a one week trip to Jamaica. The teacher took the unauthorized trip despite her school superintendent's express written disapproval. The Supreme Judicial Court of Maine

affirmed her dismissal by stating:

Where the teacher is willfully and unreasonably defiant, even one authorized absence embracing one evening or one event may be sufficiently flagrant to warrant dismissal, though the grounds of dismissal may be labeled unprofessional conduct, neglect of duty, or professional incompetence.<sup>69</sup>

In another case, Dexter Robinson was found guilty of refusing on four separate occasions to comply with rules and directions regarding leave and absence from duties. The Colorado Court of Appeals affirmed his dismissal.<sup>70</sup>

Cheryl Y. Rossetti appealed from the school board's decision directing her to return to her position as a teacher. The teacher, who had been on maternity leave, requested discretionary leave to perform her duties as a new mother which included breastfeeding her baby. The Supreme Court of Pennsylvania affirmed the teacher's dismissal for refusing to return to work. The court also denied sex discrimination in violation of the Human Relations Act, stating:

She was treated no differently than any male teacher would have been if he had to remain at home to care for a physically or emotionally disabled newborn infant.<sup>71</sup>

In the previously cited case of State ex. rel. de Bellevue v. Ladoux, incompetence may result from gross carelessness in the discharge of official duties.<sup>72</sup> One case which exemplified this weakness was Harrod v. Board of Education, City of St. Louis. James E. Harrod and Lloyd Buchanan were permanently terminated from employment for improperly supervising a school auditorium program that was

so racially inflammatory that it precipitated violence, property damage, and the closing of school for ten days. The Missouri Court of Appeals affirmed the dismissal of the teachers.<sup>73</sup> Another example of gross carelessness was in the case of Board of Education of Fort Madison Community v. Youel where James Youel was terminated from employment because of his improper handling of the football program, which resulted in its deterioration. The Iowa Supreme Court affirmed his dismissal.<sup>74</sup>

The following cases are also examples of courts affirming allegations against teachers for their failure to competently discharge their duties as teachers. The Appellate Court of Illinois affirmed the discharge of Peter J. Sobel for, among other charges, refusing to serve as a hall monitor,<sup>75</sup> and the dismissal of Janice Decaprio for her failure to supervise children on her assigned duty post during recess, to attend faculty meetings and to allow second grade children to participate in speech correction programs.<sup>76</sup> The Oregon Court of Appeals found Robert L. Mayer guilty of not always grading student papers and failing to inform supervisors of field trips. The court ruled that these two charges, in addition to others, justified his dismissal.<sup>77</sup> The Idaho Supreme Court affirmed the dismissal of Jacob Ferguson for using a grading system that did not relate to the level of difficulty of the work and failing to report the progress of his students to their parents accurately.<sup>78</sup> The Louisiana Court of Appeals upheld charges of willful neglect of duty

against Dan Columbus Simon for leaving his classroom unattended and refusing to accept constructive criticism.<sup>79</sup> The Michigan Court of Appeals affirmed the dismissal of Clare N. Sutherly for leaving his classroom unsupervised during the time that classes were scheduled and failing to schedule course-related activities for his classes.<sup>80</sup>

One case adjudicated which contained thirty-five incidents of misconduct or willful neglect was Gobla v. Board of School Directors of the Crestwood School District. Examples of the incidents were:

...holding a party in her classroom without prior administrative approval; using a rubber stamp to imprint the word 'bull shit' in one inch letters on a sheet on the counter in the main school office such that it was openly visible to staff, students, and visitors; using a wrench to remove the univent cover in her classroom and disconnecting the damper to raise the room temperature to over eighty degrees farenheit; failure to release a student from class after being instructed to do so by the principal; and deliberately using an unintelligible penmanship, resembling Japanese, to sign her name.... Prior to the disciplinary hearing, the teacher distributed to staff members a mimeographed flier bearing the words 'WHAT ME WORRY?' together with a likeness of a cartoon character from Mad Magazine named Alfred E. Newman. The flier called for a gathering of her sympathizers at a local bar after that hearing.

The Commonwealth Court of Pennsylvania affirmed the teacher's dismissal.<sup>81</sup>

#### 10. Poor Relations with Other Staff Members

As has been previously mentioned, the Louisiana Court of Appeals held in Moffett v. Calcasieu Parish School Board<sup>82</sup> that competence in teaching relies on the proper respect to one's

superiors as well as a self-discipline that exhibits the teacher as a proper model for his students. The Missouri Court of Appeals found Betty L. Conder to be incompetent, not only for her failure to plan, organize, and evaluate students, but also for her uncooperative attitude in discussing problems with her supervisors.<sup>83</sup> The Appellate Court of Illinois upheld the dismissal of Theodore Kallas for a lack of self control which prevented him from maintaining a proper rapport with his pupils, administrators, and parents. The evidence cited at least twelve incidents in which the teacher had displayed an uncontrollable temper. The court said:

The teacher, board, pupil, parent rapport in any school system is a delicate, nebulous and sometimes almost indefinable necessity for a successful school administration.<sup>84</sup>

Another case to come before the courts was McGuffin v. Willow Community School District, where the Iowa Supreme Court upheld the dismissal of Neal McGuffin for writing inflammatory notes to the superintendent of schools that criticized the superintendent's performance of his administrative duties.<sup>85</sup> Likewise, in Leach v. Board of Education of the New Castle County Vocational-Technical School District, Richard M. Leach's dismissal was affirmed by the Superior Court of Delaware for writing sarcastic letters to his superiors and consistently trying to embarrass them.<sup>86</sup> Mary Gilbertson had her dismissal affirmed by the United States District Court for passing out controversial leaflets in the school parking lot that denounced

several employees in the educational system, including her principal.<sup>87</sup> Finally, the United States Circuit Court of Appeals sustained the dismissal of Gary Whitsel for making statements to an unauthorized group of students contradicting the statements of the principal and superintendent that students should return to their classes.<sup>88</sup>

Another example of a teacher's not maintaining a proper rapport among school personnel is found in Pietrunti v. Board of Education of Brick Township, 319. Kathleen Pietrunti, who served as president of her local education association, delivered an incendiary speech at an orientation meeting of new teachers. The Superior Court of New Jersey held that that speech:

...which referred to dismissals of two nontenured teachers, superintendents' involvement in local politics, removal of books from English curriculum and dearth of black faculty, which described school system as a snakepit for young teachers and the superintendent as a villain, which suggested that nontenured teachers refrain from criticism until they obtained tenure, which described school district's hiring practices as callous economic gesture and which spoke generally against school administration and in particular, against superintendent, warranted her dismissal from employment.

The court also stated:

A teacher is something more than a classroom automation....We do not suggest that any teacher may not legally or constitutionally believe that a board of education or a superintendent of schools is not carrying out their functions properly and may not speak out publicly with respect to such belief....What we do suggest is that the exercise of these rights be accomplished professionally.<sup>89</sup>

The Supreme Court of Alaska upheld the dismissal of John

Renfroe, a special education teacher, for incompetency and non-compliance with the school laws of the state. Mr. Renfroe physically abused Klaus Holzer, another special education teacher who had come to the school where Renfroe was teaching to conduct testing of the special education students. Mr. Renfroe had pushed Mr. Holzer down a flight of stairs and shouted obscenities to him in the presence of several of the village children. The Professional Teaching Practices Commission stated that:

...an educator shall conduct business in such a way that he does not expose the student to unnecessary embarrassment.<sup>90</sup>

Marjorie Springgate was dismissed from employment for incapacity or conduct unbecoming a teacher. Springgate frequently interrupted other teachers' classes to shout accusations or take materials which were not hers. She was argumentative with the librarian over a filmstrip projector. She pushed a student to discipline him and chastised the student for being caught by the police where other students could hear her. The Appeals Court of Massachusetts upheld the teacher's dismissal for her persistent displays of rudeness in front of students and her uncivil manner with her colleagues.<sup>91</sup>

#### 11. Unprofessional Conduct

The Appeals Court of Georgia in Dominy v. Mays upheld the dismissal of a teacher for possession of cocaine, gluthelhimide, and marijuana.<sup>92</sup> The court quoted Beilan v. Board of Public Education<sup>93</sup>

by stating:

If the fact be that she 'now commands neither the respect nor the goodwill of the community' and if the record shows that effect to be the result of her conduct within the clause quoted, it will be conclusive evidence of incompetency. It has always been the recognized duty of the teacher to conduct himself in such a way as to command the respect and goodwill of the community, though one result of the choice of a teacher's vocation may be to deprive him of the same freedom of action enjoyed by persons in other vocations.<sup>94</sup>

In a similar case, the California Court of Appeals affirmed the dismissal of Selwyn Jones for the conviction of a charge of the possession of marijuana. The court upheld the teacher's "unfitness for service" as his return to school would adversely effect the faculty, students, and parents. The court also ruled that the evidence supported the school board's decision authorizing Jones' dismissal.<sup>95</sup>

The courts adjudicated several other cases during this decade that involved violations of the law. In all the following cases, charges against the teachers reduced the efficiency and/or competence of the teacher by negatively affecting the learning atmosphere of the student. In Ford v. Bay County School Board the Florida District Court of Appeals sustained the dismissal of Inez Ford for possession of illegal gambling paraphernalia and illegal gambling operations taking place in a liquor store that she owned.<sup>96</sup> The Supreme Court of Kansas upheld the nonrenewal of Jessie Mae Gillet for shoplifting charges.<sup>97</sup> When Leon N. Skripchuk entered guilty pleas of felonious

restraint, aggravated assault, theft by unlawful taking, and violation of a firearms act, the Superior Court of Delaware affirmed his dismissal.<sup>98</sup> The Indiana Court of Appeals found that the conviction of William H. Tankersley for disorderly conduct, resisting arrest by flight and the illegal possession of fireworks was sufficient evidence to warrant his dismissal.<sup>99</sup>

Another violation of the law is found in Meinhold v. Clark County School District Board of School Trustees of the Clark County School District where Alvin R. Meinhold persistently encouraged his daughters not to attend school, in defiance of state laws. The county board of school trustees refused to renew the teacher's employment contract, and the teacher appealed. The Nevada Supreme Court affirmed the teacher's dismissal by stating:

A teacher's influence upon his pupils is not limited to what he says and does in the schoolroom, and a teacher's right to teach cannot depend solely upon his conduct in the classroom.<sup>100</sup>

Other miscellaneous cases caused teachers to lose the community's goodwill. Joan LaRocca proselytized students to attend a religious meeting against their parents' wishes and to lie to them about their involvement in the religious group. The New York Supreme Court, Appellate Division, supported the board of education in her dismissal.<sup>101</sup> E. L. Autry was found to be an incompetent teacher for being intoxicated at school. The Alabama Supreme Court affirmed the cancellation of his teaching contract.<sup>102</sup> The Maryland Court

of Appeals found John Resetar's referring to certain pupils as "jungle bunnies" sufficient to justify his dismissal.<sup>103</sup> Likewise, the Commonwealth Court of Pennsylvania sustained the dismissal of Anthony Bovino for calling a fourteen-year-old student a "slut" and implying by his statement to her that she was a prostitute.<sup>104</sup>

## 12. Harmful Psychological Impact

Incompetence is directly related to fitness to teach. But fitness to teach is not based exclusively on a teacher's classroom proficiency or the absence of misconduct. It depends upon a broad range of factors. One of those factors must be the teacher's impact and effect upon his or her students.

The Superior Court of New Jersey applied the foregoing principle when it sustained the dismissal of Paula M. Grossman, a male teacher who underwent sex-reassignment surgery to change his external anatomy to that of a female. The court affirmed the New Jersey Commissioner of Education's opinion that this teacher was incapacitated and no longer fit to teach because of the potential psychological harm to students. The court quoted a statement found in Adler v. Board of Education of City of New York, 347 U.S. 485:

"...A teacher works in a sensitive area in a school-room. There he shapes the attitude of young minds toward the society in which they live. In this, the state has a vital concern. That the school authorities have the right and the duty to screen the officials, teachers, and employees as to their fitness to maintain the integrity of the schools as a part of ordered society cannot be doubted."<sup>105</sup>

The United States Circuit Court of Appeals affirmed the dismissal of D. Franklin Wishart, a sixth grade teacher. The court

found that charges that Wishart had dressed, undressed, and carressed a mannequin in a lewd and suggestive manner in public view on his property located in the town where he taught "would damage his effectiveness as a teacher in the school system and his working relationships within the educational process....It would destroy his ability to serve as a role model for young children."<sup>106</sup>

Jack Millette was dismissed for openly masturbating in a public restroom and soliciting a nonconsenting male adult to engage in lewd homosexual activities. The California Court of Appeals upheld the board of education by affirming the teacher's dismissal for immorality and unfitness for service. The court ruled that:

It was the act, not the conviction thereof, that formed the basis of his dismissal and evidence of his unfitness.

The court also stated that the conduct of the defendant adversely affected his teaching ability and the effect that this conduct would have on his students.<sup>107</sup>

The next five cases deal with teachers' improper sexual behavior toward students. The Illinois Appellate Court sustained charges of incompetence and conduct unbecoming a teacher against Peter J. Sobel. The teacher was dismissed for his improper remarks to female students and his improper touching of a female student's underclothing, in addition to other charges.<sup>108</sup> Likewise, the Supreme Court of Colorado affirmed the dismissal of Perry A. Weissman for touching minor female students on a school field trip

which indicated his "unfitness to teach."<sup>109</sup> The Washington Court of Appeals found that the admission of Gary L. Denton that he had sexual relations with a minor female student constituted "sufficient cause" for the teacher's dismissal.<sup>110</sup> Similarly, the United States Federal District Court found Howard T. Kilpatrick guilty of "highly unprofessional conduct" which justified his dismissal, for making sexual advances to some of his female high school students.<sup>111</sup> Finally, Thomas Urso was dismissed for two separate spanking incidents of two of his female high school students that were shown in court to be sexual in nature. The Commonwealth Court of Pennsylvania upheld the dismissal of the teacher.<sup>112</sup>

#### Summary

Thus, during the years 1970 to 1981 twelve categories of case law emerged, each dealing with the incompetence of tenured public school teachers. As an analysis of these twelve categories reveals, courts of law (federal and state) agree that school boards may not only dismiss teachers for behavior that is more directly related to job performance in their classrooms, but for behavior that is indirectly related to the duties of that job.

The time period 1970 to 1981 revealed that teacher dismissal for incompetence continued to be sustained due to a lack of proper certification and/or inadequate knowledge of subject matter. The teacher's classroom performance continued to include such behavior

categories as mental and/or physical capacity, the planning and coordination of instruction, and the ability to discipline students. A new dimension to this behavior category after 1970 was a teacher's use of unreasonable discipline.

Although no additional dismissal cases came before the courts concerning a teacher's refusal to answer the questions of an administrative superior, state and federal courts continued to adjudicate cases that carried the same common threads of incompetence as in the time frame 1958 to 1969. These common threads include a teacher's refusal to obey school regulations, his inability to get along with his colleagues, and/or his conviction of a specified crime. Teacher behavior that produces a harmful psychological effect on students was a new example of teacher incompetence introduced in the courts after 1972.

Thus the courts continued to examine teacher behaviors to define incompetence in terms of the teacher's preparation to teach, his classroom performance, and his personal actions that might affect the duties of his job.

## FOOTNOTES

- <sup>1</sup> Fisher, Schimmel, and Kelly, loc. cit.
- <sup>2</sup> Ibid., p. 22.
- <sup>3</sup> Blunt v. Marion County School Board, 515 F.2d 951 (1975).
- <sup>4</sup> Jennings v. Caddo Parish School Board, 275 So. 2d 386 (1973).
- <sup>5</sup> Burns v. Rovaldi, 477 F. Supp. 270 (1979).
- <sup>6</sup> Singleton v. Iberville Parish School Board, supra (1973).
- <sup>7</sup> Ibid.
- <sup>8</sup> Jennings v. Caddo Parish School Board, supra (1973).
- <sup>9</sup> Meredith v. Board of Ed. of Rockwood R-3 Sch. Dist., 513 S.W. 2d 500 (1975).
- <sup>10</sup> Wetsman v. Fraser Public School District, 233 N.W. 2d 500 (1975).
- <sup>11</sup> Robertson v. Board of Education, Otis Sch. Dist. R-3, 570 P.2d 19 (1977).
- <sup>12</sup> Rosso v. Board of School Directors of the Owen J. Roberts School Dist., 380 A.2d 1328 (1977).
- <sup>13</sup> Root v. Board of Ed. of Fulton Consol. Sch., 399 N.Y.S. 2d (1977).
- <sup>14</sup> Tschetter v. Doland Bd. of Ed., 302 N.W. 2d 43 (1981).
- <sup>15</sup> Moore v. Bd. of Ed. of Sp. Sch. Dist. of St. Louis County, 547 S.W. 2d 188 (1977).
- <sup>16</sup> Wichersham v. New Mexico State Board of Education, 464 P.2d 918 (1970).
- <sup>17</sup> Dugan v. Bollman, 502 P.2d 1131 (1972).
- <sup>18</sup> Mims v. West Baton Rouge School Board, 315 So. 2d 349 (1975).

<sup>19</sup> Steffen v. Bd. of Directors of South Middletown, Pa., 377 A.2d 1381 (1977).

<sup>20</sup> Gilliland v. Board of Ed. of Pleasant View, 365 N.E. 2d 322 (1977).

<sup>21</sup> Eddington v. St. Francis Cty. R-III Bd. of Ed., 564 S.W. 2d 283 (1978).

<sup>22</sup> Conder v. Board of Directors of Windsor Sch. 567 S.W. 2d 377 (1978).

<sup>23</sup> Lowe v. Bd. of Ed. of City of Chicago, 395 N.E. 2d 59 (1979).

<sup>24</sup> Wright v. Marsh, 378 So. 2d 739 (1979).

<sup>25</sup> Unified Sch. Dist. No. 461 v. Dice, 612 P.2d 1203 (1980).

<sup>26</sup> Busker v. Board of Ed. of Elk Point, 295 N.W. 2d 1 (1981).

<sup>27</sup> Board of Directors of Sioux City v. Mroz, 295 N.W. 2d 447 (1980).

<sup>28</sup> Moore v. Bd. of Ed. of Sp. Sch. Dist. of Louis County, supra (1975).

<sup>29</sup> Meredith v. Board of Ed. of Rockwood R-6 Sch. Dist., supra (1964).

<sup>30</sup> Mims v. West Baton Rouge Parish School Board, supra (1975).

<sup>31</sup> Wickersham v. New Mexico State Board of Education, supra (1970); Dugan v. Bollman, supra (1972); Hagerstrom v. Clay City Community U. Sch. Dist. No. 10, supra (1976); Steffen v. Bd. of Directors of South Middletown, Pa., supra (1977); Eddington v. St. Francis Cty. R-III Bd. of Education, supra (1978); Conder v. Board of Directors of Windsor Sch., supra (1978).

<sup>32</sup> Thomas v. Ward, 529 F.2d 916 (1973).

<sup>33</sup> Phillips v. Board of Education of Smyrna Sch. Dist., 330 A.2d 151 (1974).

<sup>34</sup> Sweet v. Board of Education of City of New York, 391 N.Y.S. 2d 470 (1977).

<sup>35</sup> Rafael v. Meramac Valley R-III Bd. of Ed., 569 S.W.2d 309 (1978).

- <sup>36</sup> McConnel v. Alamo Heights Ind. Sch. Dist., 576 S.W.2d 470 (1978).
- <sup>37</sup> Linfield v. Nyquist, 401 N.E. 2d 909 (1980).
- <sup>38</sup> Kinsella v. Board of Education of Central School District No. 7 of the Towns of Amherst and Tonawanda, Erie County, 407 N.Y.S. 2d 78 (1978).
- <sup>39</sup> Jerry v. Board of Ed. of City Sch. Dist., 376 N.Y.S. 2d 737 (1975).
- <sup>40</sup> Ibid.
- <sup>41</sup> Gwathmey v. Atkinson, 477 F. Supp. 1113 (1976).
- <sup>42</sup> Lenning v. New Mexico State Board of Education, 485 P.2d 364 (1971).
- <sup>43</sup> Celestine v. Lafayette Parish School Board, 284 S.2d 650 (1973).
- <sup>44</sup> Landi v. West Chester Area School District, 353 A.2d 895 (1976).
- <sup>45</sup> Bd. of Ed., Mt. Vernon Schools, Mt. Vernon v. Shank, 542 S.W. 2d 779 (1976).
- <sup>46</sup> Barnes v. Fair Dismissal Appeals Board, 548 P.2d 988 (1976).
- <sup>47</sup> Thompson v. Wake County Bd. of Ed., 230 S.E. 2d 164 (1976).
- <sup>48</sup> diLeo v. Greenfield, 541 F.2d 949 (1976).
- <sup>49</sup> Gilliland v. Board of Ed. of Pleasant View, supra (1977).
- <sup>50</sup> Rolando v. Sch. Dir. of Dist. No. 125, County of LaSalle, 358 N.E. 2d 945 (1976).
- <sup>51</sup> Gilliland v. Board of Ed. of Pleasant View, supra (1977).
- <sup>52</sup> Welch v. Bd. of Ed. of Bement Com. Unit Sch. Dist. No. 5 of Piatt County, Ill., 358 N.E. 2d 313 (1977).
- <sup>53</sup> McLaughlin v. Machias Sch. Com., 385 A.2d 53 (1978).
- <sup>54</sup> Fike v. Catalina Foothills School Dist., 589 P.2d 313 (1978).
- <sup>55</sup> Shorba v. Board of Education, 583 P.2d 313 (1978).
- <sup>56</sup> Mavis v. Board of Education of Owensbora Indep. Sch. 563 S.W. 2d 738 (1978).

- <sup>57</sup> Harris v. Commonwealth Secretary of Ed., 372 A.2d 953 (1979).
- <sup>58</sup> Baxter v. Poe, 257 S.E. 2d 71 (1979).
- <sup>59</sup> Sargeant v. Selah School Dist. No. 119, 599 P.2d 25 (1979).
- <sup>60</sup> Blascovich v. Board of School Directors, 410 A.2d (1980).
- <sup>61</sup> Barber v. Exeter-West Greenwich Schl. Com., 418 A.2d 13 (1980).
- <sup>62</sup> Clark v. Colonial School Dist., 387 A.2d 1027 (1978).
- <sup>63</sup> Kelly v. Board of Ed. of Monticello Independent School District, 566 S.W. 2d 165 (1977).
- <sup>64</sup> Board of Education of Tempe Union High School District of Maricopa County v. Lammle, 596 P.2d 48 (1979).
- <sup>65</sup> Chapman v. Bd. of Ed. of Honders City Sch. Dist., 394 N.Y.S. 2d 52 (1977).
- <sup>66</sup> Feingold v. Lynch, *supra* (1969).
- <sup>67</sup> Granderson v. Orleans Parish School Board, *supra* (1968).
- <sup>68</sup> Aubuchon v. Gasconade County R-1 School District, 541 S.W. 2d 322 (1976).
- <sup>69</sup> Fernald v. City of Ellsworth Superintendent Sch. Comm. 342 A.2d 704 (1975).
- <sup>70</sup> Robertson v. Board of Education, Otis Sch. Dist. R-3, *supra* (1977).
- <sup>71</sup> Bd. of School Directors of Fox Chapel Area School District v. Rossetti, 411 A.2d 486 (1979).
- <sup>72</sup> State ex. rel. de Bellevue v. Ledoux, *supra* (1941).
- <sup>73</sup> Harrod v. Board of Education, City of St. Louis, 500 S.W. 2d 1 (1973).
- <sup>74</sup> Bd. of Ed. of Fort Madison Community v. Youel, 282 N.W. 2d 677 (1979).
- <sup>75</sup> Sobel v. Bd. of Ed. of City of Chicago, 365 N.E. 2d 693 (1977).
- <sup>76</sup> Dicaprio v. Redmond, 350 N.E. 2d 199 (1976).

- <sup>77</sup>Lincoln County Sch. Dist. v. Mayer, 591 P.2d 755 (1979).
- <sup>78</sup>Ferguson v. Bd. of Trustees of Bonner Cty. Sch., 564 P.2d 971 (1977).
- <sup>79</sup>Simon v. Jefferson Davis Parish School Board, 289 So. 2d 511 (1974).
- <sup>80</sup>Sutherby v. Bd. of Ed. of Goblis Pub. Sch., 252 N.W. 2d 503 (1977).
- <sup>81</sup>Gobla v. Board of School Directors of the Crestwood School District, 414 A.2d 772 (1980).
- <sup>82</sup>Moffett v. Calcasieu Parish School Board, supra (1978).
- <sup>83</sup>Conder v. Board of Directors of Windsor Sch., supra (1978).
- <sup>84</sup>Kallas v. Board of Ed. of Marshall Com. U. S.D. No. C-2, 305 N.E. 2d 527 (1973).
- <sup>85</sup>McGuffin v. Willow Community School District, 182 N.W. 2d 165 (1970).
- <sup>86</sup>Leach v. Board of Education of the New Castle County Vocational-Technical School District, 295 A.2d 578 (1972).
- <sup>87</sup>Gilbertson v. McAlister, 403 F. Supp. 1 (1975).
- <sup>88</sup>Whitsel v. Southeast Local School District, 484 F.2d 1222 (1973).
- <sup>89</sup>Pietrunti v. Bd. of Education of Brick Township, 319 A.2d 262 (1974).
- <sup>90</sup>Renfroe v. Green, 626 P.2d 1068 (1980).
- <sup>91</sup>Springgate v. School Committee of Mattapoisett, 415 N.E. 2d 888 (1981).
- <sup>92</sup>Dominy v. Mays, 257 S.E. 2d 317 (1979).
- <sup>93</sup>Beilan v. Bd. of Public Education, supra (1958).
- <sup>94</sup>Dominy v. Mays, supra (1979).
- <sup>95</sup>Comings v. State Board of Education, 100 Cal. Rptr. 73 (1972).
- <sup>96</sup>Ford v. Bay County School Board, 253 So. 2d 199 (1971).

<sup>97</sup> Gillett v. Unified Sch. Dist. No. 276 Jewell County, 605 P.2d 105 (1980).

<sup>98</sup> Skripchuk v. Austin 379 A.2d 1142 (1977).

<sup>99</sup> Gary Teachers Union Loc. No. 4 A.F.T. v. School City of Gary, 332 N.E. 2d 256 (1975).

<sup>100</sup> Meinhold v. Clark County School District Board of School Trustees of the Clark County School District, 406 N.Y.S. 2d 348 (1978).

<sup>101</sup> La Rocca v. Board of Ed. of Rye City School District, 406 N.Y.S. 2d 348 (1978).

<sup>102</sup> Autry v. Board of Education of Randolph County, 235 So. 2d 651 (1970).

<sup>103</sup> Resetar v. State Board of Ed., 399 A.2d 225 (1979).

<sup>104</sup> Bovino v. Bd. of School Directors of Indiana Area School District, 377 A.2d 1284 (1977).

<sup>105</sup> In Re Grossman, 316 A.2d 39 (1974).

<sup>106</sup> Wishart v. McDonald, 500 F.2d 1110 (1973).

<sup>107</sup> Board of Ed. of Long Beach Unified School District of Los Angeles County v. Millette, 133 Cal. Rptr. 275 (1976).

<sup>108</sup> Sobel v. Board of Ed. of City of Chicago, supra (1977).

<sup>109</sup> Weissman v. Bd. of Ed. of Jefferson Cty. School Dist., 547 P.2d 1267 (1976).

<sup>110</sup> Denton v. South Kitsap School District, 516 P.2d 1080 (1973).

<sup>111</sup> Kilpatrick v. Wright, 437 F. Supp. 397 (1977).

<sup>112</sup> Penn-Delco School District v. Urso, 382 A.2d 162 (1978).

## CHAPTER 4

### TEACHER BEHAVIORS ANALYZED ACCORDING TO STATE AND FREQUENCY OF INCIDENCE

Even though state statutes differ among the fifty states in providing legal grounds for the dismissal of tenured teachers due to incompetency, there are commonalities among these grounds for the dismissal of teachers.<sup>1</sup> These commonalities are presented in the following tables to indicate a state-by-state analysis of the frequency of reasons given for teacher dismissals.

#### Inadequate Preparation to Teach

As seen in Table 1, an inadequate preparation to teach, which includes a lack of knowledge of subject matter and proper certification, were among the reasons put forth in court reviewed dismissals of tenured public school teachers. Two teachers in the state of Louisiana were dismissed for a lack of knowledge of English grammar, spelling, punctuation, and general knowledge<sup>2</sup> and the mispronunciation of words.<sup>3</sup> In Florida, an improper letter formation for handwriting denoted incompetence.<sup>4</sup>

New York State courts upheld the dismissal and voiding of teaching certificates for teachers failing to complete a course of study required by the New York State Department of Education.<sup>5</sup>

#### Teaching Methods

Inadequate teaching methods are used often as reasons for teacher dismissals and are displayed in Table 2. Reasons successfully

Table 1

States That Have Dismissed Teachers for  
Inadequate Preparation to Teach

State	Lack of Knowledge of Subject Matter	Lack of Proper Certification
Alabama		
Alaska		
Arizona		
Arkansas		
California		
Colorado		
Connecticut		
Delaware		
Florida	x	
Georgia		
Hawaii		
Idaho		
Illinois		
Indiana		
Iowa		
Kansas		
Kentucky		
Louisiana	xx	
Maine		
Maryland		
Massachusetts		
Michigan		
Minnesota		
Mississippi		
Missouri		
Montana		
Nebraska		
Nevada		
New Hampshire		
New Jersey		
New Mexico		
New York		xx
North Carolina		
North Dakota		
Ohio		
Oklahoma		
Oregon		
Pennsylvania		
Rhode Island		
South Carolina		
South Dakota		
Tennessee		
Texas		
Utah		
Vermont		
Virginia		
Washington		
West Virginia		
Wisconsin		
Wyoming		

forth in court reviewed dismissals of tenured teachers range from such general statements in Alabama as "failure to teach stated objectives"<sup>6</sup> to identifiable acts in New York State such as "the distribution of offensive material in the school."<sup>7</sup>

Very common among reasons given are those pertaining to the inadequate planning and coordination of instruction. In Illinois, these reasons were stated in such phrases as: "irregular homework assignments"<sup>8</sup> and deficiencies in instruction.<sup>9</sup> Evaluators in Missouri stressed such reasons as: failure to keep adequate lesson plans,<sup>10</sup> failure to provide for student learning needs,<sup>11</sup> failure to teach music fundamentals,<sup>12</sup> and failure to adhere to a teaching schedule.<sup>13</sup> In addition, Pennsylvania courts supported dismissal for a failure to maintain lesson plans<sup>14</sup> and an inability to properly instruct and motivate students.<sup>15</sup> Along these same lines, in Louisiana such charges as the inability to plan lessons,<sup>16</sup> the incapacity for organizing and carrying on a constructive instructional program,<sup>17</sup> and the failure to do the necessary planning required of an effective teacher<sup>18</sup> were upheld as reasons for teacher dismissal. Colorado courts upheld the failure to turn in tests as required<sup>19</sup> and deficiencies in the area of classroom organization<sup>20</sup> as reasons for dismissal. South Dakota courts found one teacher incompetent for relying too much on workbooks for classroom instruction and presentation of material so poor that students could not grasp the meaning of the subject matter.<sup>21</sup> Finally, New Mexico courts cited deficiency in grading,<sup>22</sup> Washington courts cited failure in classroom organization,<sup>23</sup> Michigan courts cited

Table 2

States That Have Dismissed Teachers  
for Inadequate Teaching Methods

State	Inadequate Planning and Coordination of Instruction	Lack of Discipline
Alabama	x	
Alaska		
Arizona		
Arkansas		
California		
Colorado	xx	x
Connecticut		
Delaware		x
Florida		
Georgia		
Hawaii		
Idaho		
Illinois	xx	x
Indiana		
Iowa	x	
Kansas	x	
Kentucky		
Louisiana	xxx	xx
Maine		
Maryland		
Massachusetts		
Michigan	x	
Minnesota		
Mississippi		
Missouri	xxxx	xxxxx
Montana		
Nebraska		
Nevada		
New Hampshire		
New Jersey		
New Mexico	x	x
New York	x	xx
North Carolina		x
North Dakota		
Ohio		
Oklahoma		
Oregon		
Pennsylvania	xx	x
Rhode Island		
South Carolina		
South Dakota	xx	
Tennessee		
Texas		x
Utah		
Vermont		
Virginia		
Washington	x	x
West Virginia		
Wisconsin		
Wyoming		

failure to provide daily lesson plans,<sup>24</sup> the Supreme Court of Kansas cited insufficient preparation for band competition,<sup>25</sup> and the Supreme Court of Iowa cited showing films every day with little preparation<sup>26</sup> as reasons for dismissal.

Another problem illustrative of teacher incompetence is a lack of discipline. In New York, the reasons for dismissal were stated as an inability to maintain order in the classroom<sup>27</sup> and an inability to control a class of special students with serious learning disabilities.<sup>28</sup> In Missouri, statements such as "inadequate classroom discipline,"<sup>29</sup> "inability to maintain discipline,"<sup>30</sup> "incompetence in classroom control,"<sup>31</sup> "failure to maintain proper classroom order,"<sup>32</sup> and "a failure to discipline students"<sup>33</sup> were given as reasons for teacher dismissal. Louisiana courts upheld the failure to maintain a conducive learning environment in the classroom<sup>34</sup> and a lack of classroom discipline<sup>35</sup> as reasons supporting teacher incompetence. Similar statements are provided in cases adjudicated in the state of Delaware,<sup>36</sup> Illinois,<sup>37</sup> Texas,<sup>38</sup> Colorado,<sup>39</sup> Washington,<sup>40</sup> Pennsylvania,<sup>41</sup> New Mexico,<sup>42</sup> and North Carolina.<sup>43</sup>

### Effect on Pupils

The frequency of certain teacher incompetencies held by the courts to have an unwholesome effect on pupils is shown in Table 3. Unwholesome effects upon students as a result of inappropriate subject matter being taught has been a reason for dismissal upheld by the courts. In Wisconsin, a discussion of sex matters in class warranted the teacher's dismissal<sup>44</sup> and in Connecticut, a "pen pal"

Table 3

States That Have Dismissed Teachers  
for Unwholesome Effects on Pupils

State	Inappropriate Subject Matter	Unreasonable Discipline	Harmful Psychological Impact
Alabama			x
Alaska			
Arizona		x	
Arkansas			
California			x
Colorado			x
Connecticut	x	x	
Delaware			
Florida			
Georgia			
Hawaii		x	
Idaho			
Illinois		xxxx	x
Indiana			
Iowa			
Kansas			
Kentucky		x	
Louisiana		x	
Maine		x	
Maryland			
Massachusetts			x
Michigan			
Minnesota			
Mississippi			
Missouri		x	
Montana			
Nebraska			
Nevada			
New Hampshire			
New Jersey			x
New Mexico		x	
New York		xxx	
North Carolina		xx	
North Dakota			
Ohio			
Oklahoma			
Oregon		x	
Pennsylvania		xx	x
Rhode Island		x	
South Carolina			
South Dakota			
Tennessee			
Texas			
Utah			
Vermont			
Virginia		x	
Washington		x	x
West Virginia			
Wisconsin	x		
Wyoming			

program where students received letters from a teacher's fiancée promoting communism justified the teacher's dismissal.<sup>45</sup>

Teachers were dismissed for their harsh treatment of students. Examples of improper forms of punishment in Illinois were the use of a cattle prod to discipline students,<sup>46</sup> striking students in the face and head,<sup>47</sup> paddling a child some minutes later for smiling about the first paddling,<sup>48</sup> and excessive physical contact on students.<sup>49</sup> In New York, excessive force on students<sup>50</sup> and potentially harmful corporal punishment were substantiated charges for dismissal.<sup>51</sup> Pennsylvania's court upheld charges for assaulting a seventh grade student,<sup>52</sup> for locking students in an isolated storage closet,<sup>53</sup> and punishment so severe as to justify dismissal on the grounds of cruelty.<sup>54</sup> Allowance of fighting among students to settle disputes<sup>55</sup> and the physical abuse of handicapped students<sup>56</sup> brought forth rulings for dismissal on the charge of incompetence in North Carolina.

Other incidents of unreasonable discipline include: in Louisiana, requiring students to write a vulgar word one thousand times;<sup>57</sup> in Connecticut, harrassing and humiliating students;<sup>58</sup> in Virginia, requiring a student to stay in a bathroom as punishment;<sup>59</sup> in New Mexico, striking students on the head and shoulder;<sup>60</sup> in Missouri, striking students about their heads, shoulders, and buttocks;<sup>61</sup> in Oregon, wrestling students to the ground;<sup>62</sup> in Maine, striking a student in his mouth which caused the loss of one tooth, a bloody nose and a black eye;<sup>63</sup> in Arizona, the physical abuse of students;<sup>64</sup> in

Hawaii, a physical force that could have been injurious to students;<sup>65</sup> in Kentucky, abusive treatment by physically beating students;<sup>66</sup> in Washington, kicking the legs of students' chairs so the students would fall backwards;<sup>67</sup> and in Rhode Island, physically abusing students.<sup>68</sup>

Causing psychological harm to students is another frequent allegation sustained by courts against tenured teachers. A teacher's "fitness to teach" became impaired in Washington when a teacher had sexual relations with a minor female student.<sup>69</sup> Other allegations include, in New Jersey, a sex reassignment surgery;<sup>70</sup> in California, engaging in lewd homosexual activities in a public restroom;<sup>71</sup> in Pennsylvania, two separate spankings perceived to be sexual in nature;<sup>72</sup> in Illinois, improper remarks to female students;<sup>73</sup> in Colorado, touching of a minor female student on a school field trip;<sup>74</sup> in Massachusetts, dressing and undressing a mannequin in a lewd manner;<sup>75</sup> and in Alabama, making sexual advances toward female students.<sup>76</sup>

#### Personal Attitude

Reasons related to the personal attitude of the teacher are represented by four categories in Table 4. The first of these categories addressed the refusal of teachers to answer their superintendent regarding their loyalty to this nation. The state of Pennsylvania witnessed three separate examples where teachers had charges of incompetency sustained for their lack of candor, frankness, and intellectual honesty in answering questions pertaining to

Table 4

States That Have Dismissed Teachers  
for Unacceptable Personal Attitudes

State	Failure to Answer Questions	Poor Relations with Other Staff Members	Unprofessional Conduct	Willful Neglect of Duty
Alabama			x	
Alaska		x		
Arizona			x	
Arkansas				
California			x	
Colorado				x
Connecticut		x		
Delaware		x	x	
Florida			x	x
Georgia			x	
Hawaii				
Idaho				x
Illinois		xxxx		xxx
Indiana			x	
Iowa		x		x
Kansas			x	
Kentucky				
Louisiana		xx		xx
Maine				x
Maryland			x	
Massachusetts				
Michigan				x
Minnesota				
Mississippi				
Missouri		x		xx
Montana				
Nebraska				
Nevada			x	
New Hampshire				
New Jersey		xx		
New Mexico			x	
New York			x	x
North Carolina				
North Dakota				
Ohio		x		
Oklahoma				
Oregon				x
Pennsylvania	xxx		x	xx
Rhode Island				
South Carolina				
South Dakota				
Tennessee				
Texas				
Utah				
Vermont				
Virginia				
Washington				
West Virginia				
Wisconsin				
Wyoming				

their loyalty to the United States.<sup>77</sup>

The teacher's poor relationship with other staff members is another category for dismissal in the personal attitude area. In Illinois, such reasons as casting a bad reflection on the school's integrity by accusing the principal that an ineligible player was participating in a football game,<sup>78</sup> pursuing a course of non-cooperation with co-workers,<sup>79</sup> maintaining an improper rapport with school administrators,<sup>80</sup> and continuing a lack of cooperation with other teachers<sup>81</sup> were affirmed by the state courts. Similar reasons adjudicated by Louisiana courts included vulgar remarks to the principal in such a loud voice as to be overheard by persons in the vicinity<sup>82</sup> and the refusal to allow supervisory personnel to enter a classroom counter to the regulations of a school board.<sup>83</sup>

Also, in this category (poor relationship with other staff members), New Jersey courts affirmed an incendiary speech against school personnel delivered at an orientation of new teachers,<sup>84</sup> Delaware courts sustained dismissal for the writing of sarcastic letters to one's superior,<sup>85</sup> Iowa courts supported dismissal for writing an inflammatory note to the superintendent,<sup>86</sup> Missouri courts confirmed dismissal for the passing out of controversial leaflets in the school parking lot,<sup>87,88</sup> Alaska courts ascertained that shouting obscenities to another teacher in the presence of students was ground for dismissal,<sup>89</sup> Massachusetts courts supported dismissal on grounds of persistent displays of rudeness in front of students,<sup>90</sup> and Ohio courts maintained that statements to students that contradicted statements

of the principal and superintendent were all examples within the context of poor relationships with other staff members for which tenured teachers were dismissed.<sup>91</sup>

Unprofessional conduct is a frequent allegation upheld by the courts as a charge that justifies dismissal. Illegal conduct such as being intoxicated while at school in Alabama,<sup>92</sup> disorderly conduct in Indiana,<sup>93</sup> theft in Delaware,<sup>94</sup> conviction for shoplifting in Kansas,<sup>95</sup> illegal gambling in Florida,<sup>96</sup> possession of illegal drugs in California<sup>97</sup> and Georgia,<sup>98</sup> and disturbing the peace by being intoxicated in Arizona<sup>99</sup> and New Mexico<sup>100</sup> were supportive examples which courts ruled as evidence for dismissal.

Other cases included calling a student a "jungle bunny" in Maryland<sup>101</sup> and a "slut" in Pennsylvania.<sup>102</sup> New York courts sustained charges against a teacher for proselytizing students to participate in a religious organization irrespective of their parents' wishes.<sup>103</sup> Nevada courts dismissed a teacher who persistently encouraged his daughters not to attend school.<sup>104</sup>

The final category of personal attitude has to do with a teacher's willful neglect of duty. In many cases the charge is very generalized. In Illinois, dismissal was upheld by the courts for the failure to discharge duties as a teacher,<sup>105</sup> refusal to follow directions of a superior,<sup>106</sup> and absence from teaching without school board approval.<sup>107</sup> In Louisiana, courts sustained dismissal for failure to plan adequately for instruction<sup>108</sup> and excessive tardiness and absences.<sup>109</sup> Colorado courts affirmed dismissal for failure to

comply with directives regarding leaves and absences from duties.<sup>110</sup> Cases in Missouri contained charges of incompetency for repeating an auditorium presentation that was obscene and precipitated the disruption of the school<sup>111</sup> and for excessive and unreasonable absences from teaching duties.<sup>112</sup> In Pennsylvania, a persistent negligence<sup>113</sup> and failure to return to work after a maternity leave<sup>114</sup> were established reasons for dismissal.

Other cases illustrative of a willful neglect of duty include leaving a classroom unsupervised in Michigan,<sup>115</sup> improper grading practices in Idaho,<sup>116</sup> not always grading students' papers in Oregon,<sup>117</sup> improper handling of the football program in Iowa,<sup>118</sup> unauthorized absence from teaching in Maine,<sup>119</sup> failing to submit lesson plans in New York,<sup>120</sup> and absence from duty without leave in Florida.<sup>121</sup>

### Disability

Disability, when obviously affecting a teacher's performance, has been affirmed by courts as evidence of incompetence as presented in Table 5. Physical disability sometimes has been held to be indicative of a teacher's unfitness to perform his assigned duties. In Louisiana, the dismissal of a teacher was sustained for an overweight problem that prevented the teacher from moving among pupils to give them individual help.<sup>122</sup> Arizona courts affirmed the dismissal of a teacher for physical disability due to excessive absenteeism caused

Table 5  
States That Have Dismissed Teachers for Disability

State	Physical	Mental
Alabama		
Alaska		
Arizona	x	
Arkansas		
California		
Colorado		
Connecticut		
Delaware		
Florida		
Georgia		
Hawaii		
Idaho		
Illinois		x
Indiana		
Iowa		
Kansas		x
Kentucky		
Louisiana	x	
Maine		
Maryland		
Massachusetts		
Michigan		
Minnesota		
Mississippi		
Missouri		
Montana		
Nebraska		
Nevada		
New Hampshire		
New Jersey		
New Mexico		
New York		x
North Carolina		
North Dakota		
Ohio		
Oklahoma		
Oregon		x
Pennsylvania		
Rhode Island		
South Carolina		
South Dakota		
Tennessee		
Texas		
Utah		
Vermont		
Virginia		
Washington		
West Virginia		
Wisconsin		
Wyoming		

by viral pneumonia.<sup>123</sup>

Not only may a teacher become incapacitated physically, but mentally as well. The courts in Illinois,<sup>124</sup> New York,<sup>125</sup> Pennsylvania,<sup>126</sup> and Kansas<sup>127</sup> all upheld mental disability as grounds for teacher dismissal.

#### Summary

Commonalities for the dismissal of tenured teachers due to incompetency were found in this state-by-state analysis. Among the five broad areas used to chart the frequency of teacher dismissal cases for incompetence, negative personal attitudes with forty-eight separate cases was the most frequently plotted category. The remaining four categories in order of frequency of teacher dismissals for incompetency were teaching methods, effect on pupils, disability, and an inadequate preparation to teach.

From the twenty-five year time span, the state with the largest number of teacher dismissals for incompetency was Missouri with twelve cases. The states of Arkansas, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, North Dakota, Oklahoma, South Carolina, Tennessee, Utah, West Virginia and Wyoming did not dismiss teachers for incompetence during the time span 1958 to 1982. Within the area of a teacher's effect on pupils, unreasonable discipline with twenty-one cases of teacher dismissal was the most frequent reason charted for teacher dismissal out of a total of thirteen reasons that were

divided into five charts.

## FOOTNOTES

- <sup>1</sup> Fisher, Schimmel, and Kelly, op. cit., p. 3
- <sup>2</sup> Singleton v. Iberville Parish School Board, supra (1975).
- <sup>3</sup> Jennings v. Caddo Parish School Board, supra (1973).
- <sup>4</sup> Blunt v. Marion County School Board, supra (1975).
- <sup>5</sup> Feingold v. Lynch, supra (1969); Chapman v. Bd. of Ed. of Yonders City Sch. Dist., supra (1977).
- <sup>6</sup> Wright v. Marsh, supra (1979).
- <sup>7</sup> Root v. Board of Ed. of Fulton Consol. Sch., supra (1977).
- <sup>8</sup> Gilliland v. Board of Ed. of Pleasant View, supra (1977).
- <sup>9</sup> Lowe v. Bd. of Ed. of City of Chicago, supra (1979).
- <sup>10</sup> Meredith v. Board of Ed. of Rockwood R-6 Sch. Dist., supra (1974).
- <sup>11</sup> Moore v. Bd. of Ed. of Sp. Sch. Dist., supra (1977).
- <sup>12</sup> Eddington v. St. Francois Cty. R-III Bd. of Ed., supra (1978).
- <sup>13</sup> Conder v. Board of Directors of Winsor Sch., supra (1978).
- <sup>14</sup> Rosso v. Board of School Directors, supra (1977).
- <sup>15</sup> Steffen v. Bd. of Directors of South Middletown, supra (1977).
- <sup>16</sup> Singleton v. Iberville Parish School Board (1977).
- <sup>17</sup> Jennings v. Caddo Parish School Board, supra (1973).
- <sup>18</sup> Mims v. West Baton Rouge Parish School Board, supra (1975).
- <sup>19</sup> Robertson v. Bd. of Education, Otis Sch. Dist., R-3. supra (1977).
- <sup>20</sup> Dugan v. Bollman, supra (1977).
- <sup>21</sup> Tschetter v. Doland Bd. of Ed., supra (1981).
- <sup>22</sup> Wichersham v. New Mexico State Board of Ed., supra (1970).

- <sup>23</sup> Robel v. Highland Public School, District No. 401, supra (1965).
- <sup>24</sup> Wetsman v. Frazier Public School District, supra (1975).
- <sup>25</sup> Unified Sch. Dist. No. 461 v. Dice, supra (1980).
- <sup>26</sup> Board of Directors of Sioux City v. Mroz, supra (1980).
- <sup>27</sup> Sweet v. Board of Education of City of New York, supra (1977).
- <sup>28</sup> Linfield v. Nyquist, supra (1980).
- <sup>29</sup> Meredith v. Board of Ed. of Rockwood R-6 Sch. Dist., supra (1974).
- <sup>30</sup> Moore v. Bd. of Ed. of Sp. Sch. Dist., supra (1977).
- <sup>31</sup> Rafael v. Meramec Valley R-III Bd. of Ed., supra (1978).
- <sup>32</sup> Eddington v. St. Francois Cty. R-III Bd. of Ed., supra (1978).
- <sup>33</sup> Conder v. Board of Directors of Windsor Sch., supra (1978).
- <sup>34</sup> Mims v. West Baton Rouge Parish School Board, supra (1975).
- <sup>35</sup> Singleton v. Iberville Parish School Board, supra (1961).
- <sup>36</sup> Phillips v. Board of Education of Smyrna Sch. Dist., supra (1974).
- <sup>37</sup> Hagerstrom v. Clay City Community U. Sch. Dist. No. 10, supra (1976).
- <sup>38</sup> McConnell v. Alamo Heights Ind. Schl. Dist., supra (1978).
- <sup>39</sup> Dugan v. Bollman, supra (1972).
- <sup>40</sup> Robel v. Highland Public Schools District No. 401, supra (1965).
- <sup>41</sup> Steffen v. Bd. of Directors of South Middleton, supra (1977).
- <sup>42</sup> Wickersham v. New Mexico State Board of Ed., supra (1970).
- <sup>43</sup> Thomas v. Ward, supra (1973).
- <sup>44</sup> State v. Board of School Directors of Milwaukee, supra (1961).
- <sup>45</sup> Burns v. Rovaldi, supra (1979).
- <sup>46</sup> Rolando v. School Dir. of Dist. No. 125, supra (1976).

- 47 Fender v. School Dist. No. 25, Arlington Hgts., supra (1976).
- 48 Welch v. Bd. of Ed. of Bement Com. Unit Sch., supra (1977).
- 49 Gilliland v. Board of Ed. of Pleasant View, supra (1977).
- 50 Jerry v. Board of Ed. of City Sch. Dist., supra (1975).
- 51 Kinsella v. Bd. of Ed., supra (1978).
- 52 Blascovich v. Board of School Directors, supra (1980).
- 53 Harris v. Commonwealth Secretary of Ed., supra (1977).
- 54 Landi v. West Chester Area School District, supra (1976).
- 55 Thompson v. Wake County Bd. of Ed., supra (1976).
- 56 Baxter v. Poe, supra (1979).
- 57 Celestine v. Lafayette Parish School Board, supra (1973).
- 58 diLeo v. Greenfield, supra (1976).
- 59 Gwathmey v. Atkinson, supra (1976).
- 60 Lenning v. New Mexico State Board of Ed., supra (1976).
- 61 Bd. of Ed., Mt. Vernon Schools v. Shank, supra (1976).
- 62 Barnes v. Fair Dismissal Appeals Board, supra (1976).
- 63 McLaughlin v. Machias Sch. Com., supra (1978).
- 64 Fike v. Catalina Foothills School Dist., supra (1978).
- 65 Shorba v. Board of Ed., supra (1978).
- 66 Mavis v. Board of Dir. of Owensboro Indep. Sch., supra (1978).
- 67 Sargeant v. Selah School Dist. No. 119, supra (1979).
- 68 Barber v. Exeter-West Greenwich Sch. Com., supra (1980).
- 69 Denton v. South Kitsap School District, supra (1973).
- 70 In Re Grossman, supra (1974).
- 71 Board of Ed. of Long Beach v. Millette, supra (1976).

- <sup>72</sup>Penn-Delco School District v. Urso, supra (1978).
- <sup>73</sup>Sobel v. Board of Ed. of City of Chicago, supra (1977).
- <sup>74</sup>Weissman v. Bd. of Ed. of Jefferson Cty. Sch. Dist., supra (1976).
- <sup>75</sup>Wishart v. McDonald, supra (1973).
- <sup>76</sup>Kilpatrick v. Wright, supra (1977).
- <sup>77</sup>Beilan v. Board of Education, School Dist. of Phila., supra (1958); Board of Public Ed., School Dist. of Phila v. Soler, supra (1961); and Board of Public Ed., Sch. Dist. of Phila. v. August, supra (1962).
- <sup>78</sup>Jepsen v. Board of Education, supra (1958).
- <sup>79</sup>Robinson v. Community Unit School District No. 7, supra (1962).
- <sup>80</sup>Kallas v. Board of Ed. of Marshall Com. U.S.D. No. C-2, supra (1973).
- <sup>81</sup>McLain v. Board of Education, School District No. 52, supra (1962).
- <sup>82</sup>Moffett v. Calcasieu Parish School Board, supra (1965).
- <sup>83</sup>Tichenor v. Orleans Parish School Board, supra (1962).
- <sup>84</sup>Pietrunti v. Bd. of Education of Brick Township, supra (1974).
- <sup>85</sup>Leach v. Board of Education of the New Castle County Vocational-Technical School District, supra (1972).
- <sup>86</sup>McGuffin v. Willow Community School District, supra (1972).
- <sup>87</sup>Conder v. Board of Directors of Windsor Sch., supra (1978).
- <sup>88</sup>Gilbertson v. McAlister, supra (1975).
- <sup>89</sup>Renfroe v. Green, supra (1980).
- <sup>90</sup>Springgate v. School Committee of Mattapoisett, supra (1981).
- <sup>91</sup>Whitsel v. Southeast Local School District, supra (1973).
- <sup>92</sup>Autry v. Board of Education of Randolph County, supra (1970).

- <sup>93</sup> Gary Teach. U., Loc. No. 4, A.F.T. v. School City of Gary, supra (1975).
- <sup>94</sup> Skripchuk v. Austin, supra (1977).
- <sup>95</sup> Gillet v. Unified Sch. Dist. No. 276, supra (1980).
- <sup>96</sup> Ford v. Bay County School Board, supra (1971).
- <sup>97</sup> Comings v. State Board of Education, supra (1972).
- <sup>98</sup> Dominy v. Mays, supra (1974).
- <sup>99</sup> Williams v. School Dist. No. 40 of Gila County, supra (1966).
- <sup>100</sup> Lopez v. State Board of Education, supra (1962).
- <sup>101</sup> Resetar v. State Bd. of Ed., supra (1979).
- <sup>102</sup> Bovino v. Bd. of Sch. Directors of Ind. Area, supra (1977).
- <sup>103</sup> La Rocca v. Bd. of Ed. of Rye City, supra (1978).
- <sup>104</sup> Meinhold v. Clark County School District, supra (1978).
- <sup>105</sup> Dicaprio v. Redmond, supra (1976).
- <sup>106</sup> Sobel v. Board of Ed. of City of Chicago, supra (1977).
- <sup>107</sup> Yuen v. Board of Education of School Dist. No. U-46, supra (1966).
- <sup>108</sup> Simon v. Jefferson Davis Parish School Board, supra (1974).
- <sup>109</sup> Granderson v. Orleans Parish School Board, supra (1974).
- <sup>110</sup> Robertson v. Board of Education, Otis Sch. Dist. R-3, supra (1977).
- <sup>111</sup> Harrod v. Board of Education, City of St. Louis, supra (1973).
- <sup>112</sup> Aubuchon v. Gasconade County R-1 School District, supra (1976).
- <sup>113</sup> Gobla v. Board of School Directors, supra (1980).
- <sup>114</sup> Bd. of School Directors v. Rosetti, supra (1979).
- <sup>115</sup> Sutherby v. Bd. of Ed. of Goblis Pub. Sch., supra (1977).

- 116 Ferguson v. Board of Trustees of Bonner Cty. Sch. supra  
(1977).
- 117 Lincoln County Sch. Dist. v. Mayer, supra (1979).
- 118 Bd. of Ed. of Fort Madison Community v. Youel, supra (1979).
- 119 Fernald v. City of Ellsworth Superintend. Sch. Com., supra  
(1975).
- 120 Worley v. Allen, supra (1961).
- 121 Board of Public Instruction of Taylor Co. v. State, supra  
(1964).
- 122 Singleton v. Iberville Parish School Board, supra (1961).
- 123 Board of Ed. v. Lammle, supra (1979).
- 124 Lombardo v. Board of Education of School Dist. No. 27, supra  
(1968).
- 125 Weisman v. Board of Education of City of New York, supra  
(1962).
- 126 Clark v. Colonial School Dist., supra (1978).
- 127 Kelly v. Bd. of Ed. of Monticello, supra (1977).

## CHAPTER 5

### SUMMARY AND RECOMMENDATIONS

#### Summary

The central purpose of this study was to compile the legal grounds upheld by federal and state cases involving the dismissal of tenured public school teachers (1958-1981) to provide judicial interpretation to the term "teacher incompetence." Two time frames provided a division to compare historically the reasons for dismissal of tenured teachers and the frequency of each incidence state by state.

During the time frame from 1958 to 1969, an analysis of twenty court cases revealed that the courts had established at least eleven categories when adjudicating teacher incompetency charges. These categories are: (1) failure to answer questions of an administrative superior, (2) lack of knowledge of subject matter, (3) inadequate planning and coordinating 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 relationships with other staff members and (11) unprofessional conduct.

An analysis of ninety-one cases from 1970 through cases reported in 1981 provided twelve categories of reasons that state and federal courts have upheld as examples of teacher incompetence. These categories include: (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 relationships with other staff members, (11) unprofessional conduct, and (12) harmful psychological impact. Ten of these reasons were found throughout the twenty-five year time period. These reasons include: (1) lack of knowledge of subject matter, (2) inadequate planning and coordinating of instruction, (3) teaching inappropriate subject matter, (4) lack of discipline, (5) mental disability, (6) physical disability, (7) lack of proper certification, (8) willful neglect of duty, (9) poor relationships with other staff members, and (10) unprofessional conduct. The one category that was unique to cases that were tried from 1958 to 1969 was the failure of a teacher to answer questions of an administrative superior. Two categories that were excluded from this time frame, but included after 1969, were unreasonable discipline and a harmful psychological impact of teachers on students.

Of the five broad areas (inadequate preparation to teach, teaching methods, effect on pupils, personal attitudes, and disability) used to chart the frequency of teacher dismissal cases for incompetence, the category of personal attitudes with forty-eight separate cases of teacher incompetence was the most frequently plotted category. Within this category, the state of Illinois had

the largest number of teachers (7) dismissed for poor relationships with other staff members and willful neglect of duty. The area with the least number of teacher dismissals was disability with only two teachers being dismissed for physical disability.

From the entire study, the state with the largest number of teacher dismissals for incompetency was Missouri with twelve cases. No dismissal cases were found in the states of Arkansas, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, North Dakota, Oklahoma, South Carolina, Tennessee, Utah, West Virginia and Wyoming. The one single item with the largest number of teachers dismissed (21) was unreasonable discipline, which was included within the area of a teacher's effect on pupils.

In addition to categories developed to help define the term incompetence and charts designed to plot the frequency of cases, the study also sought to show that competency in teaching involves more than the teacher's classroom performance. Although teaching methods which include adequate planning and coordinating of instruction and reasonable discipline are important aspects of competence, a teacher's non-teaching life has a direct bearing on his competence as a classroom teacher. This non-teaching life is evidenced in incompetence when the teacher loses the good will and respect of the community and/or produces a harmful psychological impact on his students by his behavior.

This examination of the one hundred eleven cases of teacher

dismissals reveals that many of the cases cite more than one cause for the action taken. Thus, one must be careful to ascertain whether isolated charges, standing alone, would elicit the same response from the courts. For example, a frequent charge is unreasonable discipline in the classroom. This problem may be contributed to by a lack of teacher knowledge, poor organization and planning, or other causes. These multiple causes should be considered when examining the reasons for teacher dismissal.

Incompetency is a common charge in teacher dismissal cases. Even though the term defies a clearcut definition, the courts are interpreting the incompetent teacher as one who lacks adequate professional preparation to teach, is unable to provide designated instruction in an appropriate learning environment, and/or exhibits unprofessional behavior such that the teacher's on-the-job duties cannot be continued successfully. Categories developed from specific instances of teacher dismissal for incompetence provide guidelines for interpretation. One might view this compilation of grounds as constructed on a three-prong legal framework. The first prong is appropriately designated as the preparatory dimension. This includes the teacher's certification and knowledge of subject matter. The second prong is the teacher's instructional skills, including his ability to provide necessary instruction in a learning environment that insures appropriate subject matter and discipline. The third prong is the personal attitude and actions of the

teacher, which affects his duties on the job. This includes the teacher's compliance with school regulations, his ability to get along with his peers, his effect on his students, and his fitness for service. Thus, the courts are stating that the incompetent teacher is one who lacks adequate professional preparation to teach, is unable to provide designated instruction in an appropriate learning environment, and/or exhibits unprofessional behavior such that the teacher's on-the-job duties cannot be continued successfully.

The burden of proof to establish incompetence rests clearly with school administrators and school board members who enter into contractual agreements with teachers. An inadequate preparation to teach may be established by examining the credentials that one brings to the job and/or by observing one's teaching methods. Observations by principals, assistant principals, department chairmen and/or curriculum coordinators may indicate an inadequate planning and coordination of instruction. These same observations may also detect a lack of discipline that allows the learning environment to be interrupted. Unprofessional conduct may be perceived from observation, but it may also be discerned from adverse publicity that affects the teacher's on-the-job duties. Physical and/or mental disability is usually verified by a competent physician. A review of the cases in this study should aid school administrators and school board members in establishing proof of teacher behaviors that will be upheld as examples of incompetence by the courts.

### Recommendations

In view of the foregoing data and documentation, this study is not intended to be used in the rendering of any legal aid or services. It is, however, intended to be of service to professional administrators by bringing to their attentions the behaviors and actions of tenured public school teachers that courts have upheld as evidence of incompetence that justifies dismissal. In this regard, even though the range of factors involved in teacher dismissal cases is diverse, the analysis of court decisions that provides recurring categories of teacher behaviors that are examples of teacher incompetence does provide insight for teacher dismissals.

The effects that future court decisions have on the public school systems will change from time to time. These court decisions may affect the reasons upheld for teacher dismissal based on incompetence. It is recommended that a follow-up study be added to this study to continue to provide a current analysis of legal interpretations to the term "teacher incompetence." It is the obligation of educational leaders to be abreast of changes in court decisions as they occur in order to place these changes in the proper perspective for compatible educational policies.

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TEACHER INCOMPETENCE: A COMPILATION OF THE  
LEGAL GROUNDS USED IN FEDERAL AND STATE CASES  
INVOLVING THE DISMISSAL OF TENURED PUBLIC SCHOOL TEACHERS

by

Patricia L. Shackelford

(ABSTRACT)

The purpose of this study was to review legal grounds upheld by federal and state courts in cases involving the dismissal of tenured public school teachers for alleged incompetence from 1958-1982 to determine a judicial definition of teacher incompetence. In addition, the study attempted to provide an historical analysis to determine if the reasons that federal and state courts have upheld for the dismissal of tenured public school teachers have changed or remained the same since 1958. Third, the study identified in recurring categories behaviors and actions of tenured public school teachers that courts have upheld as evidence of incompetence. Finally, the study sought to be of service to boards of education and professional administrators of the public schools by bringing to their attention the behaviors and actions of tenured public school teachers that courts have upheld as evidence of incompetence that justifies dismissal.

Court decisions related to the topic "Teacher Incompetence" were located under the topic "Schools and School Districts" in the Century,

Decennial, and General Digests. Cases were reviewed to determine if they fit within the delimitations of the study. Then each case was analyzed in chronological order to see if historically, there had been changes in legal interpretations of evidence that was substantiated by the federal and state courts as definitions of teacher incompetence for tenured public school teachers. Next, the behaviors and actions of public school teachers involved in such cases were divided into categories. Within each category, the specific teacher behaviors were listed according to state and frequency of incidence. These categories included: an inadequate preparation to teach, teaching methods, effect on pupils, personal attitudes, and disability.

This research reveals that courts are stating that the incompetent teacher is one who lacks an adequate professional preparation to teach, is unable to provide designated instruction in an appropriate learning environment, and/or exhibits unprofessional behavior such that the teacher's on-the-job duties cannot be continued successfully.