THE LEGAL RIGHTS AND RESPONSIBILITIES OF THE PUBLIC SCHOOL PRINCIPAL IN VIRGINIA

by

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CHAPTER ONE

The Principalship in Virginia:

A Problem of Rights and Responsibilities

The principal of a public school in Virginia is faced with many problems today, problems which appear to increase in number and complexity each year. These problems originate in the social and political climate in which the principal functions. In a recent interview, Roland Barth was quoted as saying that

> The problems of being a principal have increased and the satisfactions have diminished. More is expected from schools these days, and yet fewer resources are available. Taxpayers don't want to pay for all the services they demand from schools. It is the principal's job to maintain high morale in an innovative learning atmosphere, but a multitude of forces run counter to that. Now we're responsible for the safe passage of children from home to school, for health education, sex education, and moral education. We're responsible for teaching children to evacuate buses and to ride their bikes safely. We're responsible for the condition of the school plant, the lunch program, and the breakfast program. We've accepted responsibility for minimum achievement standards, for children with special needs--gifted students, remedial students. We've taken on too much.[1]

The principalship is affected by many forces which attempt to clarify, expand, or limit the rights and responsibilities of the principal. Many times these factors do run counter to each other. For example, program specialists and teachers have assumed many of the instructional leadership tasks once held by the principal. However, this trend runs counter to the pressure applied by the public for the

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[1] Barbara Hendrickson, "Principals: Your Job is a Hazard to Your Health," The Executive Educator, March 1979, 1:22.

principal to exert greater control over the functions of the school and thereby insure accountability. Federal and state court decisions have restricted the principal's discretionary decision-making power in matters of personnel dismissal and student control; at the same time, legislatures have attempted to give statutory recognition to the position of principal in order to clarify and protect this unique role in the educational hierarchy.

It seems certain that the principal will be spending more and more time in the role of "personnel manager" as more specialized positions are added to the school staff in an attempt to meet the educational needs of an increasingly diverse school population. Concurrently, some staff positions will be eliminated because of declining enrollments and/or budgetary restraints.

This study will examine the legal basis for the position of the Virginia public school principal and the principal's unique role as both employer and employee in various personnel issues that have been litigated in the state and federal courts. This analysis will provide a document of practical value to both prospective and practicing Virginia principals by specifying their current legal status, their responsibilities, and their legal liabilities.

The Development of the Principalship

According to Richard Strahan, many of the early schools in our country were supervised by committees of local citizens who either had children in school or were interested in schools for religious or economic reasons. As schools became more sophisticated and the burden

of daily operation became too great for the volunteer citizenry, the need arose for professional personnel to operate the school program.[2] Professional educators first appeared at the state level during the early 1800s. One of the first state school superintendents was a young man named Gideon Hawley, who served the state of New York from 1812 to 1821. His duties were primarily fiscal in that he was responsible for supervising the collection of school monies and for reporting the expenditure of school funds.[3] Within a half century, all other existing states created a similar position.

As the need grew for additional information regarding local operation of schools, an intermediate position of county school superintendent evolved. In a court test this position was held to be constitutional, in compliance with the authority granted to the local school board by an 1874 Michigan court action.[4]

The position of principal did not have to undergo such a court test to gain permanence in the school structure. As schools grew in size, it became evident that someone, usually a teacher already assigned to the school, needed to be appointed as director of school building operations. In most instances, this person was called a "teaching principal." Due to the gradual development of the position, little effort was made to give the position of principal formal statutory

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[2] Richard D. Strahan, The Courts and the Schools (Lincoln, Neb.: Professional Educators, 1973), pp. 64-65.

[3] H. G. Good, A History of American Education (New York: MacMillan Co., 1962), p. 146.

[4] Strahan, op. cit., pp. 64-65.

recognition or legal protections. Courts also failed to develop a separate body of case law distinguishing between the roles of teacher and principal, treating both as one in the courtroom. When a tenured teacher became a full-time principal, the individual's employment status and tenure rights were not jeopardized or altered in any way. The job change simply involved an increase in "teaching duties," which could be withdrawn or modified as the board desired. The only problem with this arrangement was the matter of contractual salary: when the added salary was not specifically linked to the additional duties, the board incurred a legal obligation to continue such salary even if the additional duties were lifted.[5]

Because of the growth of the nation and the resultant growth in the size and number of the public schools, the position of principal has taken on added dimensions. This change has created a desire on the part of principals to clarify their own legal status. Other factors have also contributed to the acceleration of this clarification process. For one, school personnel no longer enjoy the protection from suit previously provided by the doctrine of governmental immunity, and secondly, the courts have questioned whether the principal really acts _in loco parentis_ in regard to student control and disciplinary proceedings.

Between the years of 1971 and 1976, the number of states in which the principalship had not attained any legal status or identification

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[5] E. Gordon Gee and David J. Sperry, _Educational Law and the Public Schools: A Compendium_ (Boston: Allyn and Bacon, 1978), p. A-20.

shrank from eighteen to nine.[6] The National Association of Secondary School Principals found in 1976 that at least twenty-four states and the District of Columbia provided the essentials of legal identity for the principalship through statutes or "administrative rules with the force of law." In addition, seventeen states mentioned the principal often or occasionally in their codes, but fell short of furnishing actual legal identity. Thus, there is a clear trend toward legislative recognition of the uniqueness of the principalship and toward the definition of the legal status of this position.

The position of principal has become separate and distinctly different from that of the teacher. State boards of education have established separate certification standards and certificates. Also, separate professional associations have been established, and colleges and universities have developed differentiated training programs. Because tasks have changed so dramatically, public acceptance of the principalship as a distinct role, separate from that of the teacher, is beyond debate.[7]

Purposes of the Study

The public school principal in Virginia, as in many states, is in a most vulnerable position. Not only must the principal enforce the policies and regulations of the local school board, the mandates from

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[6] "Statutory Protection for Principals," A Legal Memorandum (Reston, Va.: National Association of Secondary School Principals, November, 1976), p. 2.

[7] Gee, op. cit., p. A-21.

the state legislature, and the increasingly complex federal laws and regulations, but also he must respond to a multitude of daily crises, any one of which could result in litigation.

Today, the principal may also face the dilemma involved in bringing suit against his employer in cases which concern his own dismissal, nonrenewal, reassignment, or demotion. Job security is a vital issue in a time of declining student enrollment, taxpayer revolt, and a lessening of support for schools as reflected in the public opinion polls. Thus, the principal's responsibilities and rights, including the right to job security, are being questioned and deliberated upon in legislatures nationwide.

Survey results obtained from state and national associations, as well as observations made by knowledgeable attorneys and law professors, indicate that many principals do not fully understand their legal rights and responsibilities. (See Appendix A.) The principal's legal status in Virginia was clarified somewhat by the Virginia General Assembly in 1973, but the position, role, and responsibility of the principal continue to be described in very general terms. Knowing that they may have limited tenure as administrators and realizing that their only security rests in their right to reassignment to teaching positions, it is not surprising that principals often view controversial decision-making with apprehension.

The purposes of this study are (1) to examine and describe the current legal status of the public school principalship in Virginia; (2) to analyze and clarify the legal implications of the school principal's role as both employee and employer; and (3) to project likely

trends in decision-making by the courts applicable to Virginia as they relate to the constitutional and statutory issues discussed.

The knowledge gained in this study should help principals to make complex personnel decisions with a higher degree of confidence and legal soundness.

Research Method Used

The primary research method employed in this study is an analysis of the law through the legal case method. Since the American legal system is based on the doctrine of stare decisis, i.e., new cases are decided on the basis of precedents, the legal researcher must be familiar with past court decisions when confronted with a case involving similar circumstances. The researcher must locate authoritative statements of the law which would be considered binding or highly persuasive to the court making the final judgment in the case.

There are four basic methods for legal research: (1) the analytical or law chart approach, (2) the descriptive word index approach, (3) the table of cases approach, and (4) the words and phrases approach. To cope with the enormous body of law already established, a system of case digests has been developed. A digest of judicial decisions superimposes a subject classification upon chronologically published cases. The classification scheme consists of an alphabetically arranged scheme of legal topics and subtopics which can be approached through a detailed index. Brief abstracts of the points of law in decided cases are classified by subject and set out in the digests under appropriate headings. They can then be located and retrieved by the researcher

through the index to the digest. Although computerized search systems are rapidly developing more effective approaches, the digests of the West Publishing Company currently constitute the most comprehensive subject approach to case law.[8]

This researcher reviewed the provisions of the United States and Virginia Constitutions, the Virginia Statutes, the Rules and Regulations of the Virginia State Board of Education, and the judicial decisions of the state and federal courts. A bibliography was developed from all cases listed under the headings of "Schools" or "Schools and School Districts" which referred to the principal and/or his relationship to the school board, teachers, and other personnel.

Legal sources used include the following:

1. American Digest System.
2. National Reporter System.
3. American Jurisprudence.
4. Corpus Juris Secundum.
5. American Law Reports Annotated.
6. Shepard's Citations.
7. Index to Legal Periodicals.
8. Educational Resources Information Center (ERIC).
9. Virginia School Laws.
10. Cohen's Legal Research in a Nutshell.
11. West's Law Finder--A Research Manual for Lawyers.

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[8] Morris C. Cohen, Legal Research in a Nutshell (St. Paul, Minn.: West Publishing Company, 1978), pp. 65-66.

12. Opinions of the Virginia Attorney General.

13. National Organization on Legal Problems in Education Yearbooks.

14. Legal memorandums from the National Association of Secondary School Principals.

Delimitations

Since the laws regarding education vary from state to state--as opposed to constitutional decisions which have regional and/or national application, this study is delimited to those laws pertaining to the state of Virginia which delineate the legal basis for the position and the legal rights and responsibilities of the public school principal as an employee and as a "personnel manager."

Nature and Sources of School Law

According to Reutter and Hamilton, public education is one of society's most desirable functions--that is, the education of all the children of all its people. And while much law relates specifically to education, an infinitely greater body of law which relates generally to the operation of government affects education simply because the educational system is a part of government. Thus, it is important to understand the origins and types of laws under which the public schools must operate.[9]

Common Law

In medieval England, much attention was devoted to the search for

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[9] Edmund E. Reutter and Robert R. Hamilton, The Law of Public Education (New York: The Foundation Press, Inc., 1976), p. 1.

the laws of nature as a basis for solving existing problems. The study of court decisions, for example, was an attempt to discover the generally accepted view of natural law. Common law thus became "discovered" law, as opposed to the actual enacted law of constitutions. Common law, that which emerges from case decisions, is known as "case law."[10]

The early laws of the United States were based upon the common law of England. Certain customs became the accepted norm, and these were later crystalized into principles which were used by the courts to settle disputes. Courts tended to follow their earlier decisions; thus, the doctrine of _stare decisis_ came into being. This is interpreted as "let the decision stand."[11]

Courts accept _stare decisis_ as a standing policy, not as an absolute rule. The previous enactment of a law or its interpreted meaning may be overturned if there is ample evidence of good cause. Law is not static, but changes as social conditions and the courts themselves change. Therefore, the interpretation of a law is based upon previous court interpretations, if available, but is not restricted to them. Because law does not exist in a vacuum, its operation must be observed in real life situations rather than simply maintained as an unvarying principle.

The great portion of law today is still common law. The principles of land ownership, rights and responsibilities of parents relative to minor children, contracts, torts, and other legal concepts are based

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[10] Ibid.

[11] Reutter, op. cit., p. 2.

upon common law doctrines. As a result, much of the law affecting public education has its basis in common law, as well as in constitutional or statutory provisions.[12]

The Federal Constitution

The Constitution of the United States is the basic law of the land. All statutes passed by Congress or the state legislatures, all ordinances of local government, and all rules and regulations of the school board are subject to the provisions of the United States Constitution.[13]

The Constitution covers a wide area of powers, duties, and limitations, but at no point refers expressly to education. Thus, education becomes a state function under the Tenth Amendment to the Constitution, which provides that

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.[14]

The parts of the Constitution that have the greatest impact on schools are those which protect the civil rights of individuals. It is the constitutional restrictions on the power of Congress and the states to encroach upon the rights of individuals that are most controversial and most frequently come before the courts for interpretation. The main restrictions affecting education are found in the First, Fifth,

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[12] Ibid.

[13] Ibid.

[14] Ibid.

and Fourteenth Amendments.

The First Amendment was designed to insure certain basic personal freedoms or civil rights against encroachment by a central government. It provides:

> Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press; or the right of the people to peaceably assemble, and to petition the government for a redress of grievances.[15]

These restrictions relate solely to the power of Congress, but by interpretation of the Fourteenth Amendment, the Supreme Court has held that its provisions, as well as most of those in the Bill of Rights, also apply to the individual states.

The Fifth Amendment provides certain protections for persons accused of crimes and allows for due process before one may be deprived of life, liberty, or property. It also provides for just compensation if private property is taken for public use.[16]

The Fourteenth Amendment provides that

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any persons of life, liberty, or property, without due process of law nor deny to any person within its jurisdiction the equal protection of the laws.[17]

Since public education is a state function, the two clauses most

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[15] United States Constitution, Amendment I.

[16] United States Constitution, Amendment V.

[17] United States Constitution, Amendment XIV.

applicable to public education are the "due process" clause and the "equal protection" clause. The phrase "nor shall any State deprive" makes this restriction perfectly clear. As a result, the "due process" clause has probably been interpreted more frequently by the courts than has any other provision in the Constitution.[18]

Since the Fourteenth Amendment makes the provisions of the First Amendment applicable to the states, restrictions of the First and Fourteenth Amendments must be considered along with the restrictions of the state constitution when examining the validity of a state statute or local school board rule.[19]

There are two types of "due process": substantive and procedural. The former pertains to the substance of the legislation itself. A law must have a purpose within the power of government to pursue, and it must be clearly, rationally, thus substantively related to the accomplishment of that purpose. Procedural due process relates to the decision-making process followed in applying the law. It requires a basic fairness in the application of the law.[20]

State Constitutions

Where the federal government has authority of jurisdiction, its power is supreme. Even state constitutions are subject to its supremacy; thus, a state cannot take legal action which conflicts with the

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[18] Reutter, op. cit., p. 5.

[19] Ibid.

[20] Ibid.

federal constitution. A basic function of state constitutions is to restrict further the powers of state legislatures. For example, state constitutions often deal with the same matters which have been treated in the federal constitution. State constitutions establish an organization of government; also, they contain provisions for change, local government, taxation, and other state concerns. All state constitutions provide for a system of public education, a topic which is not even mentioned in the federal constitution.[21]

States may place even more restrictions on governmental relations with religious groups than are mandated by the federal constitution. States may also extend more rights to principals, teachers, and students than are required by the federal constitution. Because state constitutions are a direct product of the people themselves, no legislature, although it represents the people, can amend a state constitution by itself, for the legislature is only a creature of the constitution. Constitutional amendments require the vote of all the people. Thus, it is far easier for legislatures to pass laws than to make constitutional changes.[22]

Federal and State Statutes

The most abundant source of law affecting education is the statutes passed by Congress or state legislatures as the representatives of the people. These legislative bodies have much power and are subject only

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[21] Kern Alexander, Ray Corns, and Walter McCann, Public School Law (St. Paul, Minn.: West Publishing Company, 1969), p. 2.

[22] Reutter, op. cit., p. 5.

to the restrictions imposed by the federal or state constitutions.

The courts have repeatedly said that state legislatures have plenary power over their respective public educational systems. This power is, however, subject to the limitations of federal law and of the appropriate state constitution.

Secondary Sources of Law

Since the public school systems and other governmental agencies have become so complex, it would be impossible completely to control their administration by legislative acts. As a result, a regulatory process has emerged. Boards of education, school administrators, and classroom teachers have the authority to adopt and enforce reasonable rules and regulations for the efficient operation and management of the public school system. These rules and regulations have the "weight" of law, just like the enactments of Congress or those of a state legislature. They are also subject to the same constitutional limitations and therefore may not conflict with a higher level of authority. For example, a teacher cannot establish a rule for classroom management which violates a student's civil rights. Nor can a local school board establish a requirement which has been expressly prohibited by the state.

In Virginia, the State Board of Education has the authority to establish and enforce regulations and to take punitive action against those school divisions in non-compliance.

Judicial System Explanation

The following explanation of the structure of the courts is

primarily taken from Public School Law--Cases and Materials by Kern Alexander, Ray Corns, and Walter McCann. It encompasses the procedure and structure in civil, or noncriminal, proceedings; most school cases are civil in nature. The court system, being one of the three branches of government, is provided for in the constitutions of both state and federal governments.

State Courts

State constitutions provide for the separation of powers within the state and lay the framework for the court system of the state. State constitutions generally prescribe the powers and jurisdiction of the primary state courts. The legislature provides for the specific operation of the courts and may authorize the creation of new courts if that power is granted by the constitution. The types of state courts may be generally classified into four categories:

1. Courts of general jurisdiction, which are usually called district or circuit courts. They usually handle all cases except those reserved for special courts.

2. Courts of special jurisdiction. These handle cases in special subject matter areas, such as probate, domestic relations, and juvenile offenses.

3. Small claims courts. They handle lawsuits involving small amounts of money.

4. Appellate courts. These are courts to which appeals may be made concerning decisions of trial courts of general jurisdiction.[23]

The Virginia state court system, established by Article VI of the

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[23] Alexander, op. cit., pp. 9-10.

Virginia Constitution, is comprised of the following:

1. District Courts. The Virginia Statutes provide for thirty-one districts throughout the Commonwealth. Each district has the following two types of courts:

    A. General District Courts, which are not courts of record where transcripts and permanent records are maintained. They have jurisdiction over some civil actions, violations of local ordinances, and misdemeanors committed within the locality. General District Court judges are elected by the General Assembly. Decisions of the District Courts can be appealed to the Circuit Court, where new trials are heard.[24]

    B. Juvenile and Domestic Relations Courts, also not courts of record. They have jurisdiction over the custody, placement, support and control of delinquent, abandoned, neglected, or abused children. They have authority over criminal cases, except manslaughter or murder, of one member of a family against another. The judges are also elected by the General Assembly and serve the same geographical areas as do the General District Court judges.[25]

2. Circuit Courts. These are the lower courts of record where transcripts of court proceedings and permanent records are maintained; they are the principal trial courts in the state system. They have appellate jurisdiction in criminal and civil cases appealed from the district courts, and they have original jurisdiction over felonies, as well as the more important misdemeanors and civil cases. The circuit court has some important appointive powers, including the appointment of electoral boards, and, in some cases, the municipal boards of zoning appeals. Each circuit court has two or more judges who are appointed for eight-year terms by the General Assembly. There are also thirty-one circuit courts.[26]

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[24] George W. Jennings, Virginia's Government (Richmond: Virginia State Chamber of Commerce, 1980), p. 51.

[25] Jennings, op. cit., p. 54.

[26] Jennings, op. cit., p. 51-53.

3. Supreme Court, which is Virginia's highest court. It also is a court of record. Its primary purpose is to review decisions of lower courts which have been appealed. The Supreme Court determines the constitutionality of laws and decides whether the laws are being properly applied and interpreted. It has the authority to issue writs or orders of the following types:

   Mandamus--an order to a lower court, corporation, or person to perform some action;

   Habeas Corpus--an order from the court to show cause why a defendant is being held;

   Injunction--an order from the court to a lower court, corporation, or person to stop some action or practice.

   The Supreme Court consists of seven judges, each of whom has the title of Justice. The Justice having the longest period of continuous service is called the Chief Justice. The Justices are appointed by the General Assembly for twelve-year terms.[27]

Federal Courts

Article III of the United States Constitution provides in part: "The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the Congress may from time to time ordain and establish." Today, the federal court system in the United States is made up of District Courts, Circuit Courts of Appeals, Special Federal Courts, and the Supreme Court.

Each state has at least one District Court and usually more than two. Cases litigated before federal district courts generally can be classified as one of two types: (1) cases between citizens of different states, or (2) cases involving interpretation of federal statutes or the

[27] Virginia Constitution, Article VI, Sections 1, 2, and 7.

federal constitution. Decisions of the district courts may be appealed to the Federal Courts of Appeals. There are eleven Circuit Courts of Appeals, each in one of the eleven federal judicial circuits; each state is assigned to one circuit. Virginia is included in the Fourth United States Circuit Court of Appeals, as are the states of Maryland, West Virginia, North Carolina, and South Carolina.[28]

The Supreme Court of the United States is the highest court in the land. There is no appeal to a Supreme Court decision. Cases may be brought to the Supreme Court by appeal, writ of certiorari, or through the original jurisdiction of the Court. Many school cases reach the Supreme Court for review through writs of certiorari. This is a procedure whereby a higher court requests that a lower court send up a case for review. Cases may be taken to the United States Supreme Court from the state courts when the constitutional validity of a state or federal statute is questioned or when any title, right, privilege, or immunity is claimed under the Constitution.[29]

The United States Supreme Court has made it clear, however, that federal courts should not interfere with pending state court proceedings except under extraordinary circumstances, such as state harassment or demonstration of bad faith.[30] The Supreme Court has also determined that entitlement to the federal forum is more appropriate when a state

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[28] Alexander, op. cit., pp. 10-11.

[29] Ibid.

[30] Younger v. Harris, 401 U.S. 37, 27 L.Ed.2d 669, 91 S.Ct. 746 (1971).

litigant seeks to re-litigate a federal issue adversely determined in a completed state court proceeding.[31]

Overview of the Following Chapters

Chapter two is a discussion of the structure of public education in Virginia, of the principal's role as an employee, and of the law applied to the principal's employment, requirements, assignment, duties, probation, reassignment, termination, and grievances.

Chapter three concerns the principal's role as an employer, specifically the principal's legal position in employee termination, suspension, reassignment, probation, evaluation, identification of specific reasons for dismissal of tenured teachers, non-renewal of probationary teachers, procedures to be followed in dismissal of tenured and probationary employees, grievance procedure, collective bargaining, working to contract, and privacy of records.

Chapter four includes a summary, a survey of current trends, and conclusions.

Summary

The Virginia public school principal faces many complex problems today. The principal is called upon daily to react to a multitude of crises, any one of which could result in legal action.

The role of the principal evolved naturally as schools grew in size and complexity, but until the 1970s, little legal status was

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[31] Huffman v. Pursue, Ltd., 420 U.S. 592, 43 L.Ed.2d 482, 95 S.Ct. 1200 (1975).

afforded the position. This situation has now changed in most states; however, in many, the description of the principal's role is expressed in very general and vague terms.

Since the United States Constitution makes no mention of the establishment of an educational system, that function falls under state control. However, all school systems must function under the provisions and restrictions of the federal constitution and federal laws, as well as the respective state constitutional and statutory provisions. It is also well established that boards of education, administrators, and teachers have the authority to adopt and enforce reasonable rules and regulations for the efficient operation of schools. However, as a result of misapplication or misinterpretation of constitutional provisions, statutes, or local rules and regulations, many law suits are litigated against school personnel in the federal and state courts.

The federal courts are established on three levels: the Supreme Court, the Circuit Courts of Appeals, and the District Courts. The United States Supreme Court is the highest court in the land. There are eleven judicial Circuit Courts of Appeals, with Virginia being assigned to the Fourth Circuit. There are two district courts in Virginia, the Eastern and Western District Courts.

The Virginia state court system has three divisions: the Supreme Court, the Circuit Courts, and the District Courts. The District Courts include the General District Court and the Juvenile and Domestic Relations Court. There are thirty-one district and circuit courts in Virginia.

The United States Supreme Court has indicated that the federal courts should not interfere with pending state court proceedings except under such extraordinary circumstances as state harassment or bad faith actions.

CHAPTER TWO

The Rights of the Principal as an Employee

Introduction

The public schools in Virginia were established in 1870 when the Underwood Constitution was ratified by the General Assembly. This new constitution was required before Virginia was allowed to re-enter the Union after the Civil War. Prior to that time, the education of children had been provided by community private schools, known as "Old Field" schools, or by itinerant teachers, many of whom were clergymen attempting to supplement their income.[1]

The Underwood Constitution, which remained in effect for thirty years, "provided for a state superintendent of instruction, to be elected by the legislature, and for a board of education consisting of the governor, the attorney general, and the chief school officer." Their responsibilities included appointing and removing county superintendents and district school trustees, managing school funds, and regulating all matters involving the administration of the school system.[2] Since 1870, the Virginia Constitution has been completely revised twice, with these revisions occurring in 1902 and 1971.

The remainder of this chapter surveys the structure of public education in Virginia as outlined by the Virginia Constitution of 1971,

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[1] "A Certain Degree of Instruction," Richmond, Virginia: State Department of Education, July 1977.

[2] Ibid.

including the roles of the legislature, the Secretary of Education, the Board of Education, the Superintendent of Public Instruction, and the local school boards. The roles of the local school superintendent and the school principal as defined by the Code of Virginia are also examined as a part of that structure, with a detailed consideration of the rights of the public school principal as an employee.

Virginia Constitution

Education is first mentioned in the Virginia Constitution of 1971 in Section 15, Article I, of its Bill of Rights, wherein the qualities necessary for the preservation of free government are described:

> That free government rests, as does all progress, upon the broadest possible diffusion of knowledge, and that the Commonwealth should avail itself of those talents which nature has sown so liberally among its people by assuring the opportunity for their fullest development by an effective system of education throughout the Commonwealth.[3]

However, the primary focus on education occurs in Article VIII of the Constitution, and it is divided into eleven sections. Those sections are as follows:

Section 1. Public schools of high quality to be maintained.

Section 2. Standards of quality; State and local support of public schools.

Section 3. Compulsory education; free textbooks.

Section 4. Board of Education.

Section 5. Powers and duties of the Board of Education.

Section 6. Superintendent of Public Instruction.

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[3] Virginia Constitution, Art. I, Sec. 15.

Section 7. School Boards.

Section 8. The Literary Fund.

Section 9. Other educational institutions.

Section 10. State appropriations prohibited to schools or institutions of learning not owned or exclusively controlled by the State or some subdivision thereof; exceptions to rule.

Section 11. Aid to nonpublic higher education.

Of these sections, one through seven will be discussed more fully in the rest of this chapter.

General Assembly

The General Assembly is required under the Virginia Constitution to "provide for a system of free public elementary and secondary schools for all children of school age throughout the Commonwealth, and shall seek to ensure that an educational program of high quality is established and continually maintained."[4] This requirement is imposed at the state level, for, in accordance with the reservation of powers in the Tenth Amendment to the United States Constitution, education is a state function. The State's responsibility in providing such must also be exercised consistently with the other federal constitutional requirements and must not prohibit liberties such as equal protection and due process.

One cannot be denied the right to a free public education because of race; furthermore, the State may not remove from the public school system those schools which are integrated, as it did during the period

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[4] Virginia Constitution, Art. VIII, Sec. 1.

of "Massive Resistance," when those schools were deemed "not efficient" under the prior constitution.

The General Assembly and other state legislatures are said to have plenary power in education and in the establishment of educational policy. The 1971 Constitution included a section on Standards of Quality; these provisions are considered to be among the first standards of quality for public schools which a state ever established by constitutional mandate. These standards are prescribed and determined by the Board of Education, subject to revision only by the General Assembly. The General Assembly, which approves these standards for a two-year period, has to determine the manner in which funds are appropriated to maintain an educational program which meets the prescribed standards; it must also determine how such costs are to be divided between the Commonwealth and the local school divisions.[5]

The General Assembly is also required by the Constitution to "provide for the compulsory elementary and secondary education of every child of appropriate age, such eligibility and age to be determined by law."[6] Present law requires children between the ages of five to seventeen to attend school; however, the enforcement of this law is questionable, for truancy is now treated by the courts as a "status" offense. A status offense is one which would not be an offense if committed by an adult. Thus, since an adult cannot commit truancy and

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[5] Virginia Constitution, Art. VIII, Sec. 2.

[6] Virginia Constitution, Art. VIII, Sec. 3.

therefore be punished, neither can a child.[7]

Secretary of Education

In 1972 the General Assembly, at the request of Governor Linwood Holton, established six cabinet-level positions, including a Secretary of Education. The Secretary of Education reports directly to the Governor and serves during the Governor's four-year term as long as the Governor may require, subject to confirmation by the General Assembly. The Secretary is authorized to exercise such powers and to perform such duties as may be assigned by the Governor. All reports to the Governor from agency heads are made through the Secretary. Such agencies include the Department of Education, the State Council of Higher Education, the Virginia Commission on Higher Education Facilities, the Public Telecommunications Council, the State Department of Community Colleges, the State-supported institutions of higher education, and several other minor agencies.[8] The Secretary of Education has no direct control over the public schools of the Commonwealth. While the Secretary helps the Governor to make policy decisions and to manage more effectively the Executive Branch of the State, it is the Governor who is held responsible for making the decisions.

Board of Education

The Board of Education is established in Section 4 of Article VIII

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[7] Commonwealth v. Giesy, unpublished opinion in the Juvenile and Domestic Relations District Court of the City of Norfolk, April 4, 1979.

[8] Code of Virginia, Section 2.1-51.9.

of the Constitution:

> The general supervision of the public school system shall be vested in a Board of Education of nine members, to be appointed by the Governor, subject to confirmation by the General Assembly. Each appointment shall be for four years, except that those to fill vacancies shall be for the unexpired terms. Terms shall be staggered, so that no more than three regular appointments shall be made in the same year.[9]

The Board of Education has the following powers and duties: to divide the Commonwealth into school districts which will promote the standards of quality, subject to criteria and conditions prescribed by the General Assembly; to make annual reports to the Governor and General Assembly concerning the condition and needs of public education within the state and to identify any school division not meeting the standards of quality; to certify a list of qualified persons for the position of division superintendent and to appoint one if necessary; to approve textbooks and instructional aids used in courses in the public schools; and subject to the General Assembly, to "have primary responsibility and authority for effectuating the educational policy set forth in this Article, and it shall have other such powers and duties as may be prescribed by law."[10]

Superintendent of Public Instruction

The law provides that the Superintendent of Public Instruction be an experienced educator, who is appointed by the Governor, subject to General Assembly confirmation; this person usually serves for a term

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[9] Virginia Constitution, Art. VIII, Sec. 4.

[10] Virginia Constitution, Art. VIII, Sections 4 and 5.

coincident with that of the Governor making the appointment. The powers and duties of the Superintendent are prescribed by law.[11]

The Code provides that the Governor should consult with the Board of Education prior to making a selection. It also specifies the duties of the State Superintendent as follows:

1. To serve as secretary of the Board of Education;
2. To provide assistance for the proper and uniform enforcement of school laws in cooperation with local school authorities;
3. To prepare and furnish forms for attendance officers, teachers, and other school officials;
4. To perform other such duties as prescribed by the Board of Education.[12]

The Code also empowers the Superintendent to act as the "State Educational Agency" for the disbursement of funds received under the National School Lunch Act.[13] The Superintendent is also responsible for informing the Board of Education of problems, needs, and developments in public education, as well as for recommending policies and programs that further strengthen public education.

Local School Boards

The Constitution requires that "the supervision of schools in each school division shall be vested in a school board, to be composed of members selected in the manner, for the term, possessing the

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[11] Virginia Constitution, Art. VIII, Sec. 6.

[12] Code of Virginia, Section 22.1-23.

[13] Code of Virginia, Section 22.1-24.

qualifications, and to the number provided by law."[14]

A unique feature of Virginia's government is that both cities and counties exist as separate local governmental units. Counties have no jurisdiction over cities within their boundaries, as they do in some states. Thus, both county and city school systems exist within the Commonwealth, and each system is governed by a local school board. In 1981, there were forty-one city school systems, ninety-five county school systems, and five separate town school systems.

County school board members may be appointed by the School Board Selection Commission, which is composed of three or more qualified voters in the county who have been appointed by the circuit court judge. County school board members may also be appointed by the local board of supervisors if the supervisors have been given that power through a public referendum.[15] If the county has a county manager plan form of government, the school board is appointed by the supervisors and usually consists of no fewer than three or more than seven persons.[16] City and town school boards are appointed by their city or town councils; they usually include three appointees for each district of the city or town.[17]

School board members, once duly appointed, constitute "a body corporate and, in its corporate capacity, is vested with all the powers

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[14] Virginia Constitution, Art. VIII, Sec. 7.

[15] Code of Virginia, Sections 22.1-35 and 22.1-42.

[16] Code of Virginia, Section 22.1-47.

[17] Code of Virginia, Section 22.1-50.

and charged with all the duties, obligations, and responsibilities imposed upon school boards by law." The board may contract, be contracted, sue, be sued, purchase, take, hold, lease and convey school property, both real and personal. However, the board can act only as a whole body. Individual board members acting as individuals have no authority over the schools and may not interfere in daily school operations.[18]

The duties of a local school board include the following:

1. To see that school laws are properly explained, enforced, and observed;
2. To secure, by visitation or otherwise, information about the conduct of the public schools within the division and to take care that they are conducted efficiently and according to law;
3. To care for, manage, and control the property, and to provide the necessary buildings, equipment, and maintenance of such;
4. To consolidate schools when necessary to increase efficiency;
5. To determine the length of the school term, courses of study, methods of teaching, and government to be employed in the schools, all of which must be consistent with State statutes and regulations of the State Board of Education;
6. To perform other such duties as may be prescribed by Board of Education or as imposed by law.[19]

The power to operate, maintain, and supervise public schools in Virginia is, and always has been, within the exclusive jurisdiction of the local school boards and not within the jurisdiction of the State

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[18] Code of Virginia, Section 22.1-71.

[19] Code of Virginia, Section 22.1-79.

Board of Education.[20] However, the clear delineation of authority between a local school board and the General Assembly has been somewhat clouded by court decisions of recent years. Two of the most recent are Commonwealth v. County Board of Arlington County[21] and School Board of the City of Richmond v. Margaret W. Parham.[22]

In the Arlington case, the local school board and the board of supervisors had entered into a negotiated agreement with the local teachers' education association. The court was asked whether the local board had this authority, since such authority was not expressly granted by the General Assembly and since collective negotiations for teachers had been opposed at the state level. The Commonwealth argued that the local boards had exceeded their power and sought to have the agreements declared null and void. The local boards claimed that through their "implied" powers they had the right to negotiate if they so desired.

The Virginia Supreme Court ruled that local school boards could exercise the powers expressed by State statute, or ones which were implied or absolutely necessary to run the schools. However, collective negotiation was deemed neither expressed, implied, nor necessary; and in the absence of such expressed statutory authority, the right of a local board to bargain collectively is to date withheld by the

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[20] Bradley v. School Bd., 462 F.2d 1058 (4th Cir. 1972), aff'd, 412 U.S. 92, 93 S.Ct. 1952, 36 L.Ed.2d 771 (1973).

[21] Commonwealth v. County Board of Arlington County, 217 Va. 558, 232 S.E.2d 30 (Va., 1977).

[22] School Board of the City of Richmond v. Margaret W. Parham, 243 S.E.2d 468 (Va., 1978).

General Assembly.

The following year, the same Court was asked to determine the validity of a binding arbitration component of the grievance procedure, which had been promulgated by the Board of Education. The Richmond City School Board argued that such a component was an unlawful delegation of power by the Board of Education "insofar that it compelled arbitration which was binding on school boards in Virginia." The grievant, Mrs. Margaret Parham, had processed her grievance through the procedure until she had reached the arbitration stage. When the school board refused to arbitrate, she asked the court for a writ of mandamus to compel the school to submit the matter to arbitration.[23]

The Court determined that the binding arbitration provision had the effect of removing "from the local school board and transferring to others a function essential and indispensable to the exercise of the power of supervision vested by Section 7 of Article VIII" in the local board of the Virginia Constitution. This function involved "the application of local policies, rules, and regulations adopted for the day-to-day management of a teaching staff." The Court said that "it would be wholly unrealistic to say that Article VIII was designed to inject the State Board directly into the daily management of a local teaching staff."

The Court also noted that because the General Assembly has assigned the management of local teaching staffs to local school boards, such supervision as would be required would lack authority if the local board could not enforce its own policies, rules, or regulations.

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[23] Ibid.

In striking down the binding arbitration provision, the Court appeared to say that the power of the local school board is derived from the Constitution; however, according to the Arlington decision, the power appeared to be derived from the General Assembly, and that power could be conveyed or withdrawn at any time.

Division Superintendent

The division superintendent is appointed by the local school board from a list of eligible applicants who are certified by the State Board of Education. If a local school board fails to appoint a superintendent within the time frame prescribed by State statute, the State Board could name a superintendent to fill the vacancy.[24] The division superintendent serves a four-year term, and all terms state-wide expire at the same time. All terms will be up for renewal during January-March, 1985, and each four years thereafter. The division superintendent is a constitutional officer and, as such, must take and subscribe to the oath prescribed for all officers of the State.[25]

Each division superintendent is required to keep an accurate record of all receipts and disbursements of school funds and all statistical information which may be required by the State Board. Superintendents shall also perform all other such duties as may be prescribed by law, by the local school board, and by the State Board.[26]

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[24] Virginia Constitution, Article VIII, Sec. 5(c).

[25] Code of Virginia, Section 22.1-64.

[26] Code of Virginia, Section 22.1-68 and 22.1-70.

Among such duties are the following:

1. "To supply leadership to the school board, school system, and community;"

2. "To coordinate, direct, and supervise the work of all instructional and administrative departments of the school system;"

3. To execute the policies of the school board and to implement the necessary rules and regulations for such;

4. To select and recommend for employment all employees for school board approval. This includes teachers, principals, supervisors, aides, or anyone who is paid with public school funds.

5. To evaluate the performance of all employees for continued employment and to make recommendations to the school board regarding such;

6. "To handle all the business transactions of the school board."[27]

A superintendent who fails to discharge these duties properly "may be assessed a reasonable fine, suspended from office for a limited period, or removed from office by either the Board of Education or the school board." The superintendent may appeal such decisions to the appropriate circuit court and be entitled to a trial de novo on such appeal to determine if sufficient cause exists for the fine, suspension, or removal.[28]

Principal

Legal recognition for the positions of principal and assistant principal in Virginia was authorized by the General Assembly in 1973.

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[27] Virginia School Boards (Charlottesville: The Virginia School Boards Association, 1977), p. 32.

[28] Code of Virginia, Section 22.1-65.

Since 1973 Title 22 of the Virginia Code has been revised and much of the prior code deleted. Although some principals were concerned that the legal recognition of the principalship might be deleted, that section remained intact, with only minor changes in wording. Section 22.1-293 now reads:

"1. A school board, upon recommendation of the division superintendent, may employ principals and assistant principals. Persons employed in these positions shall hold certificates as prescribed by the Board of Education.

2. A principal shall provide instructional leadership in, shall be responsible for the administration of, and shall supervise the operation and management of the school or schools and property to which he has been assigned in accordance with the rules and regulations of the school board and under the supervision of the division superintendent.

3. A principal may submit recommendations to the division superintendent for the appointment, assignment, promotion, transfer, and dismissal of all personnel assigned to his supervision.

4. A principal shall perform other such duties as may be assigned by the division superintendent pursuant to the rules and regulations of the school board."[29]

Requirements

The Board of Education has established criteria for the certification of principals and assistant principals. These criteria, which became effective July 1, 1982, are as follows:

"a. The applicant shall hold a Postgraduate Professional Certificate;

b. The applicant shall possess leadership qualities and personal characteristics necessary to work effectively

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[29] Code of Virginia, Section 22.1-293.

with students, teachers, and parents as attested to by a division superintendent of schools, by the chief administrative officer of a private school, or by an official in an institution of higher learning who is in a position to evaluate the applicant's qualifications;

c. The applicant shall have completed graduate-level work in each of the following areas:

(1) school administration;

(2) supervision of instruction;

(3) school curriculum (appropriate for endorsement desired);

(4) school law;

(5) school-community relations;

(6) personnel administration;

(7) school finance.

d. The applicant shall have had three years of successful, full-time experience as a teacher, administrator or supervisor, one year of which must have been in the area or at the level to be supervised;

e. The applicant's course of study shall include, at the graduate or undergraduate level, training in substance-abuse education. Such training may constitute a separate course or may be included in one or more of the areas listed under Item "c" above."[30]

Assignment

The division superintendent has the authority to assign all teachers, principals, and assistant principals to their positions in the schools where they have been placed by the school board. If the school board adopts a resolution authorizing the superintendent to

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[30] Certification Regulations for Teachers and Qualifications for Administrative, Supervisory, and Related Instructional Personnel (Richmond: Board of Education, 1982), pp. 60-61.

reassign such persons, he may reassign them for that school year to any school within the division, provided such change during the year does not affect their salaries for that year.[31]

Duties

There have been many attempts to compile a concise, comprehensive list of all of the duties and responsibilities of the public school principal. Such duties are often grouped under several broad headings. For example, Morphet, Johns, and Reller group the duties and responsibilities as they relate to the central office staff, the school staff, the pupils, and the community.[32] Elicker divides the duties into eight areas. Among them he includes general administrative duties, personnel management, development of professional morale, and evaluation.[33] Vacca organizes the duties in relation to (1) student health and safety, (2) student conduct and discipline, (3) student admission and attendance, (4) building maintenance, (5) supervision of custodial and cafeteria personnel, (6) preparation of official reports to the superintendent, (7) performance and duties of teachers, (8) budget and finance, (9) supervision of instruction and extra-curricular activities, and

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[31] Code of Virginia, Section 22.1-297.

[32] Edgar L. Morphet, Roe L. Johns, and Theodore L. Reller, Educational Organization and Administration (2nd ed.; New Jersey: Prentice-Hall, 1967), pp. 341-349.

[33] Paul E. Elicker, The Administration of Junior and Senior High Schools (New Jersey: Prentice-Hall, 1964), p. 20.

(10) parent involvement and communication.[34] Campbell, Corbally, and Ramseyer group the administrative tasks according to six categories: staff-personnel, pupil-personnel, school-community relationships, physical facilities, curriculum and instruction, and finance and business management.[35]

A recent survey by the National Association of Secondary School Principals has revealed that sixty exemplary principals rank their duties in the following sequence, according to the amount of time each requires:

1. School management (weekly calendar, office, budget, correspondence, memos, etc.).
2. Personnel (evaluation, advising, conferences, recruiting).
3. Program development (curriculum, instructional leadership).
4. Student activities (meetings, supervision, planning).
5. Student behavior (discipline, attendance, meetings).
6. Planning (annual, long-range).
7. Community (P.T.A., advisory groups, parent conferences).
8. District office (meetings, task forces, reports, etc.).

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[34] Richard S. Vacca, "The Principal's Responsibility in Relation to Court Decisions Involving Public Education," The High School Journal, LIII (February, 1970), p. 325.

[35] Roald F. Campbell, John E. Corbally, Jr., and John A. Ramseyer, Introduction to Educational Administration (3rd ed. Boston: Allyn and Bacon, 1966), pp. 96-99.

9. Professional development (reading, attending conferences, etc.).[36]

In carrying out duties, principals act as agents of the school boards which are their employers. They may act only within the scope of their authority as defined by law, board policy, or reommendation. As private citizens, principals have no more authority than any employee under their charge. Although principals are held responsible to division superintendents, the principalship is considered to be a "line" position with definite decision-making responsibility, in contrast to a "staff" position, which is mostly advisory or supportive in nature. And while only the school board can hire or dismiss employees, principals usually have considerable input in such decisions, for they are the ones who must provide the necessary data to assist the superintendents in making their recommendations to the school board.

In some states, most notably Florida and New York, the building principal appears to be assuming more decision-making responsibility. This trend has apparently developed to satisfy the demand for greater accountability of tax funds for education and to meet state and local guidelines which call for more public involvement in the planning processes. Such legislative proposals are defining the role of principals in such a manner as to place the primary responsibility on them to ensure that appropriate and innovative educational programs are provided, instead of holding teachers and other instructional support

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[36] Richard A. Gorton and Kenneth E. McIntyre, The Senior High Principalship--Volume II: The Effective Principal (Reston, Va.: National Association of Secondary School Principals, 1978), p. 28.

personnel responsible.[37]

Statutes defining the duties and responsibilities of the principal were recently enacted in the states of Massachusetts, New Mexico, Florida, Minnesota, West Virginia, Iowa, Louisiana, and Arkansas. Such statutes delineate the principal's relationship to the superintendent and school board, define the principal's leadership role within the school building, give the principal the power to make certain recommendations, and hold the principal responsible for planning, managing, and evaluating the total educational program of the school.[38]

Probationary Period and Reassignment of the Principal

A person who is employed as a principal or supervisor in a school system in the Commonwealth must serve a probationary period of three years in that position before acquiring continuing contract status in that position. This requirement also includes a person who had previously achieved continuing contract status as a teacher. However, according to the Code of Virginia, "Continuing contract status acquired by a principal or supervisor shall not be construed (1) as prohibiting a school board from reassigning such principal or supervisor to a teaching position if notice of reassignment is given by the school board by April fifteenth of any year or (2) as entitling any such principal or supervisor to the salary paid to him as principal or supervisor in the case of any such reassignment to a teaching position;

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[37] Richard A. King, "The Principal and the Law," Administrator's Notebook. XXVIII:2, April, 1980.

[38] Ibid.

provided, however, that no such salary reduction and reassignment shall be made without first providing such principal or supervisor with written notice of the reason for such reduction and reassignment" and an opportunity to present his or her side of the situation with either the superintendent, the superintendent's designee, or the school board. However, the final decision of the reassignment and salary reduction will be at the sole discretion of the school board. The above provisions are procedural only, and nothing in the statute can be interpreted to mean that the school board must show cause for such reassignment and salary reduction.[39] While the above provisions do not mention specifically the position of assistant principal, it has usually been interpreted to include the position, since it is specifically mentioned in the legal recognition found in Section 22.1-293 of the Virginia Code. However, legislation was introduced in the 1982 General Assembly to mention assistant principals specifically in the probationary clause.

Thus, it appears that once a principal has completed a three-year probationary period in the principalship, that person has continuing contract status; however, such status means little since that person can be reassigned to a teaching position at a lower salary at the sole discretion of the board. No cause need be shown for such reassignment, and even if a reason or reasons are given, they do not have to be good ones. A 1978 case in the Culpeper Circuit Court illustrates the court's interpretation of the statute.

In 1972, Glenn C. Piper was employed as a principal in the Culpeper

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[39] Code of Virginia, Section 22.1-294.

County School System and continued in that position until 1977. On January 13, 1977, the school board notified Piper that he would not be approved for reappointment to the position of principal. The reasons given for such action were "the number of complaints by people in the community, dissatisfaction with his decisions, and his lack of tact in dealing with decisionmaking." He was advised that he might also meet with the school board if he desired more specific information. Piper requested a meeting, which was held February 14, 1977.[40]

On April 12, 1977, the board advised Piper it would continue his employment for the following year, but he would be reassigned to a teaching position. Piper was also advised that the board would provide a more detailed explanation of the reasons for its action, and Piper could request a hearing on the matter, at which time he could present information on his behalf. On April 15, 1977, the board notified Piper of his salary as would be set forth in the teacher's salary scale. On May 23, 1977, the board held a public hearing (alleged by Piper to be a "sham") to discuss the pending action. Following the hearing, the board reaffirmed its decision to reassign him. On June 20, 1977, Piper and the board executed a supplement to his contract, and he was reassigned to a teaching position.

Piper alleged in his defense that the board breached its contract in removing him from his "tenured" position without good and just cause. He further alleged that by reducing his salary, the board had breached

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[40] Piper v. Culpeper County School Board, unpublished opinion, Culpeper Circuit Court, October, 1978.

its contract. He also said the board had violated Section 22-217.4 of the Virginia Code by dismissing him from the principalship without cause, as his nine years of continuous service as a principal had vested him with certain property rights, and he was divested and deprived of these property rights without due process in violation of the Constitutions of Virginia and of the United States.

The attorney for the school board filed a demurrer, in which the board said it was immune from suit under the doctrine of sovereign immunity, none of the rights alleged by Piper to have been violated are protected by law, the statutory provisions regarding tenure which Piper relied upon were unconstitutional in that they deprived the local school board of its right to operate its own schools, and that Piper was not deprived of any due process.

After review, the court rejected the board's contention that it was immune from suit, for the Virginia Code declares that the school board is "a body corporate . . . and may in its corporate capacity sue or be sued, contract or be contracted with. . . ." The issue of the constitutionality of the state tenure statute was not resolved in this case, but the authority of the board to reassign without cause and without a hearing was fully explored.

The court said that the effect of the continuing contract section of the Code was to allow principals to acquire continuing contract status and to have

> The same right of tenure in their jobs as principals, the same safeguards against dismissal, probation, etc., the same rights to notice, hearing, and written decision as are given to teachers, EXCEPT that a school board is not prohibited from reassigning a principal to a teaching

> position, and EXCEPT that a school board is not prohibited from reducing a principal's salary to that of a teacher upon such reassignment. The bottom line is that once a principal has acquired continuing contract status, tenure protects him in all respects, EXCEPT that he may be reassigned to a teaching position at a teacher's salary.[41]

Piper's contention of being reassigned only for good and sufficient cause was deemed without merit. The court noted the statute contained no such qualifying language concerning reassignment. The court said "the board always has the right to dismiss, demote, or reassign for good and sufficient cause" and to require such for reassignment in the statute would be meaningless, since it would give the board no more authority than it already had.

Piper claimed his continuing contract vested him with the irrevocable right to continue as a principal as long as his performance was satisfactory and the position existed. The court, however, disagreed. Statutory law requires that teachers be given written contracts; this statute also applies to principals. The form of the contract is prescribed by the Superintendent of Public Instruction, and it integrates several effects promulgated by the General Assembly. (Thus, according to the Court, all the provisions of the contract, including the reassignment language, must be construed as if they were recited in the contract.)

Piper stated also that the contract allows reassignment only if such reassignment does not affect the salary of any teacher, and this "restriction against affecting a teacher's salary is, by inference and interpretation, applicable to principals." Judge Vance M. Fry again disagreed, saying, "Whether or not the legislature intended to

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[41] Ibid.

extend this salary guarantee to principals may be the subject of discussion. The fact is that the statute does not do so." (He further maintained that any such argument is refuted by the express language of the statute which says boards may so reduce such salary.)

Since the statute plainly states that reassignment to a teaching position at a teacher's salary can occur, "the question of cause does not arise, and since the question of cause is not involved, notice, hearings, and process are, also, not involved." Thus, since no contractual and/or statutory rights of Piper were violated by the board, it followed that no property rights or rights to due process as guaranteed by the Virginia Constitution or the Fourteenth Amendment to the United States Constitution were violated.

Had this been a dismissal charge rather than a reassignment, all of the questions regarding cause, hearings, due process, constitutionality, etc., would have been addressed, but the board's intent and actions made clear that this was a reassignment rather than a dismissal. The case was eventually settled, and no appeal was involved.

As Virginia and other states continue to feel the effects of a declining public school enrollment, as well as the demands of a public which now expects cost efficiency and accountability, reassignment of principals and other administrators to the classroom will become an issue that must be confronted more and more frequently.

Nonrenewal of a Probationary Principal

Since a principal in Virginia, like all teachers, must complete a three-year probationary period before acquiring continuing contract, it

would appear that the procedure for nonrenewal of a probationary principal, who does not have continuing contract status as a teacher, would be similar to the procedure described in Section 22.1-305 of the Code of Virginia for the nonrenewal of a probationary teacher. The law distinguishes clearly between the nonrenewal and the dismissal of employees. If a person does not have continuing contract in the position and if no constitutional violation or objective expectation of employment is involved, the person can be refused renewal upon the expiration of the contract without reasons being stated or hearings being granted unless required by statute.

The 1979 Virginia General Assembly required that a nonrenewed teacher must be given the specific reasons, if any, for nonrenewal if the teacher so requests, but the requirement that reasons be stated is designed only to give information to the employee and does not require "cause." Nonrenewal simply means that the terms of one contract have been fulfilled, but that a new contract for another school term will not be forthcoming.

The procedure followed in a nonrenewal case is as follows:

1. The superintendent notifies the person of his proposed recommendation. Upon written request within five days after such receipt, the person can meet with the superintendent or his designee to orally discuss the specific reasons, if any. Within ten days after orally receiving the reasons, the person can request in writing that he meet with the superintendent. Such conference shall be within thirty days of the request and must allow at least fifteen days' notice of the time and place of the conference.

2. The conference can be with the superintendent or his designee, except that such designee cannot have recommended the nonrenewal in the first place. The person being nonrenewed and the person who recommended such is allowed to participate in the conference, along with representatives of one or both. However, such representative(s) cannot be attorneys.

3. If the conference is with a designee, he shall communicate his recommendations to the superintendent and the person being nonrenewed.

4. The superintendent shall notify in writing, within ten days after the conference, his intention regarding the recommendation.

5. Within thirty days of step four above, if nonrenewal is recommended, the school board must notify that nonrenewal of the contract will occur. When such conference and procedure as above is requested, the restriction that notice must occur on or before April fifteenth is not applicable.

6. The conference and its contents are confidential and no written or oral communication of such conference is made to anyone other than the school board in executive session, and employees of the school division having an interest therein; provided, however, that the school division and the employee may provide, upon request, the reasons to a potential employer of the person.

7. These provisions don't apply when a decrease in enrollment, abolition of a particular subject, or reduction in the number of classes required in a particular subject causes the nonrenewal; however, a statement to that effect shall be placed in the file of each person so nonrenewed for such reasons.

8. The intent of this statute is procedural only, and nothing contained in the statute shall be construed as to require cause for nonrenewal. And even if the time requirements are not strictly adhered to, a person cannot use that failure as a basis for continued employment.[42]

Thus, the statute clearly states that cause is <u>not</u> required for

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[42] Code of Virginia, Section 22.1-305.

nonrenewal of a probationary principal, just as it is not required for the reassignment of a principal, whether probationary or tenured, to a teaching position. It is little wonder that many principals view their positions with apprehension, not knowing whether the superintendent or the school board will take such action against them for reasons which are not truly justified or educationally sound.

Dismissal of the Principal

Dismissal of the probationary principal during the term of contract and outright dismissal at any time of the principal or teacher who has achieved continuing contract status can occur only for cause, and the burden of proof rests with the school board in determining the employee's unfitness for the position.

In Virginia, teachers and principals "may be dismissed or placed on probation for incompetency, immorality, noncompliance with school laws and regulations, disability as shown by competent medical evidence, conviction of a felony or a crime of moral turpitude or other good and just cause."[43] These and other reasons for dismissal will be explored in depth in the following chapter, in which the rights of the principal as the school manager are discussed. However, cause for dismissal is not necessarily established if the "cause" factor is merely the exercise of one's constitutional rights, protected mainly in the First and Fourteenth Amendments to the United States Constitution. Those rights are centered in the areas of free speech, freedom of religion, right of

[43] Code of Virginia, Section 22.1-307.

assembly and petition, due process, and equal protection from discrimination based upon race, sex, and other factors. But the courts will look closely at the effect of such individual rights upon the school system in general and may declare that the overriding interests of the school system take priority over the rights of the individual involved. When a decision to terminate a person's employment seems to conflict with a constitutionally protected right, courts try to balance the interests of the school board against those of the individual, but note that such constitutionally protected rights are not an absolute shield against termination.

In a Virginia case,[44] the court noted that "the decision of a school board will not be disturbed by the courts unless the board acted in bad faith, arbitrarily, capriciously, or in abuse of its discretion, or there is no substantial evidence to sustain its action." Citing a New York case, the court said that "where there is a rational legal and factual basis for a school board's administrative determination, the court will not overturn such decision and substitute its own judgment even if it would have reached a contrary conclusion."[45]

In 1968 the United States Supreme Court[46] decided one of the leading cases relating to the freedom of speech provision of the First

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[44] County School Board of Spotsylvania v. McConnell, 212 S.E.2d 264 (Va., 1975).

[45] McConnell citing White v. Board of Education Union Free School District Number 3, 344 N.Y.S.2d 566 (N.Y., 1973).

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

Amendment as it applies to the rights of educators. In Pickering v. Board of Education of Township High School District 205, the Court upheld Pickering's right to send a letter to the editor of the local paper criticizing the manner in which the superintendent and the board of education raised funds for new schools and athletic expenditures. Although some of the statements in the letter were inaccurate, the Court was of the opinion that the letter was protected by Pickering's constitutional rights, since the statements were not "knowingly false" nor made with reckless disregard for the truth. However, if substantial negative results had occurred, the Court might have found in favor of the board.

In Watts v. Seward School Board,[47] a case similar to Pickering but differing in certain essential elements, the court upheld the dismissal of two teachers who wrote an "open" letter to the school board. The letter charged that the superintendent was detrimental to the morale of the teaching staff and the effectiveness of the school system. In deciding the case, the court pointed out several differences from Pickering. First, the statement concerned the teachers' immediate superior; second, several of the charges were false, and they could have been easily corrected from public records; third, rather than being greeted by the apathy that marked the Pickering incident, the letter led to intense public controversy; and fourth, the accusations were made in "reckless disregard of the truth."

In 1969 the United States Supreme Court issued a landmark decision

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[47] Watts v. Seward School Board, 454 P.2d 732 (Ak., 1969).

involving student and teacher rights. The case of Tinker v. Des Moines School District[48] involved a group of students who wished to protest the war in Vietnam and support a truce by wearing black armbands to school. Aware that the students were planning such a protest, the principals of the Des Moines schools adopted the policy that a student who wore a black armband would be asked to remove it. If the student refused, he was to be suspended from school until he returned without the armband.

The Supreme Court said:

> The wearing of armbands in this case was entirely divorced from actually or potentially disruptive conduct by those participating in it. It was closely akin to pure speech which, we have repeatedly held, is entitled to comprehensive protection under the First Amendment. . . . First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.

However, the Court added this counterbalancing point:

> On the other hand, the Court has repeatedly emphasized the need for affirming the comprehensive authority of the States and of school authorities, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools. . . . Our problem lies in the areas where students in the exercise of their First Amendment rights collide with the rules of the school authorities.[49]

The Court concluded that the record did not show any factors which would have led the school authorities to forecast disruption or interference with school activities. In fact, no such actions did occur.

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[48] Tinker v. Des Moines School District, 393 U.S. 503, 89 S.Ct. 723, 21 L.Ed.2d 731 (1969).

[49] Ibid.

The Court also noted that the principals had not banned all symbols of protest, but had taken action against only one such symbol--the black armband. Such a prohibition applied to one particular opinion, without evidence that it was necessary to avoid material and substantial disruption, was not allowable.

Tinker has been interpreted, however, by various courts to stand for the proposition that constitutional rights can be regulated in carefully restricted circumstances. Generally, courts have applied the rule that when the exercise of constitutional rights impairs the employee's effectiveness or conflicts with the performance of the employee's job, the school board may lawfully terminate the employee.

In two interesting employment cases, the rights of the school board were found to outweigh the rights of an employee; these cases involved teachers but could also have implications for principals. In Sullivan v. Meade Independent School[50] the court ruled that a teacher's right to privacy and association was not violated by discharge when she refused to discontinue living with a man to whom she was not married. And in Palmer v. Board of Education of the City of Chicago[51] a teacher was dismissed for refusing to teach portions of the prescribed curriculum concerning patriotic matters which she claimed conflicted with her own religious beliefs. The Court said that Palmer had no constitutional right to require others to submit to her views and that her

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[50] Sullivan v. Meade Independent School, 530 F.2d 799 (8th Cir. 1976).

[51] Palmer v. Board of Education of the City of Chicago, 603 F.2d 1271 (7th Cir. 1979), cert. denied 100 S.Ct. 689 (1980).

students would have to forego a portion of their education which they would otherwise be entitled to enjoy. Thus, the Court held that such dismissal did not violate her First Amendment rights.

On the other hand, courts have held that employees may not be discharged for the exercise of their freedom of speech when there is no relation to, or conflict with, job performance.[52] Evidently, the key ingredient for which the courts look is the effect of the protected conduct or alleged conduct on the employee's job performance and effectiveness.

A case which gave the school board the right to terminate an employee for the exercise of free speech and other reasons was heard before the United States Supreme Court in 1977. In Mt. Healthy v. Doyle[53] it was held that a school board could dismiss a teacher for good reasons even though unconstitutional reasons were also present. The Court held that although a teacher's constitutionally protected conduct played a "substantial part" in the actual decision not to renew, this factor did not necessarily amount to a constitutional violation justifying reinstatement. Therefore, a termination does not violate the United States Constitution if a school board can show by a preponderance of the evidence that it would have reached the same decision had the constitutionally protected conduct not occurred. The constitutional principle at stake is vindicated if the employee is placed in no

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[52] Zoll v. Eastern Allamakee Community School District, 588 F.2d 246 (8th Cir. 1978).

[53] Mt. Healthy v. Doyle, 429 U.S. 274, 97 S.Ct. 568, 50 L.Ed.2d 471 (1977).

worse a position than if this person had not engaged in the conduct in question. Thus, an employee who is about to be terminated for other reasons cannot engage in constitutionally protected conduct and then claim that such conduct was the basis for his termination.

Of all the constitutional rights, probably the two most important areas of concern for the principal as an employee, or for a teacher involved in a dismissal proceeding, are the constitutional rights to equal protection and due process. The Fourteenth Amendment to the United States Constitution prohibits public school districts from depriving any employee of ". . . liberty, or property, without due process of law."[54] The dismissal of a principal or teacher may involve a liberty or property interest, and if such interests are implicated in a particular case, the Due Process Clause generally provides both procedural and substantive protections to the employee.

In a constitution designed for a free country, the meaning of "liberty" must be broadly interpreted. A liberty interest involves "the right of an individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, to establish a home, to bring up children, to worship God according to the dictates of one's conscience, and to enjoy those privileges recognized . . ." as essential for freedom.[55]

In a dismissal case, an employee will be deprived of a liberty

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[54] United States Constitution, Amendment 14.

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

interest if a charge is made against that person which would seriously damage the employee's standing or associations in the community, including instances where the employee's good name, reputation, honor, or integrity is at stake, and/or if a stigma or other disability is attached so that an employee cannot take advantage of other employment opportunities.[56]

A property interest may be involved in the termination of a public employee if statutory tenure has been acquired, if there is an "objective expectancy" of continued employment, if a form of de facto tenure has been acquired and policies and guidelines imply the promise of continued employment, and if there is a valid contract for a specified time with the terms of the contract unexpired when termination occurred.[57] Such "property" interests are securities which an individual has already acquired and as such are entitled to constitutional protection.

During the 1970s the United States Supreme Court rendered several "landmark" decisions in the procedural due process area. Two of these, Board of Regents of State Colleges v. Roth and Perry v. Sindermann, are generally recognized as being the precedent which determines when a property interest exists in public employment. A third case, Bishop v. Wood, although a non-school case, had direct bearing on tenure protection as well as on constitutional guarantees of job security. These cases are almost always cited in detail when a case of similar

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

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

circumstances is argued. For that reason, they are detailed here.

David F. Roth was hired in 1968 for his first teaching job as an assistant professor at a Wisconsin state university for a fixed term of one academic year. The notice of his employment specified that the beginning date would be September 1, 1968, and that the contract would expire June 30, 1969. He completed the terms of the contract and was informed that he would not be offered employment for the following school term. Roth, a non-tenured professor, was not given any reasons for his nonrenewal, nor was he given a hearing at which he could challenge the decision. In order to obtain tenure, he needed to complete four consecutive years of employment as specified by statute. Once he had obtained tenure, he would have been entitled to continued employment "during efficiency and good behavior." But without tenure, state law clearly left the decision of whether to rehire a non-tenured teacher to the sole discretion of university officials. Wisconsin law simply stated that a non-tenured teacher who is not renewed for the next school term must be notified of such decision by February first, but that reasons for such nonrenewal need not be given.[58]

Roth sought to overturn the nonrenewal, alleging that it was an attempt to punish him for making certain statements critical of the university administration. He therefore maintained that his First Amendment right of free speech had been violated. He also alleged that failure to give him the reasons for nonrenewal and a proper hearing was in violation of his right to procedural due process. The District Court

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[58] Roth, op. cit.

for the Western District of Wisconsin granted summary judgment in favor of Roth on the due process claim only and ordered the university to grant him a hearing and provide him with the reasons for nonrenewal. The United States Court of Appeals for the Seventh Circuit affirmed the District Court's decision; however, the United State's Supreme Court reversed and remanded the decision on a 5-3 vote.

The Supreme Court held that (1) procedural due process applies only to the deprivation of interests encompassed within the Fourteenth Amendment's protection of liberty and property, and the range of such interests is not infinite, (2) procedural due process protects only those interests that a person has already acquired, (3) Roth was not deprived of any "liberty" interest in that the state did not place any stigma upon him which would make him unemployable elsewhere, (4) Roth was not deprived of an interest in "property" since his contract specifically stated when his employment was to terminate, (5) he was not constitutionally entitled to a statement of reasons for nonrenewal, nor was he entitled to a hearing on the decision, and (6) the partial summary judgment awarded by the lower courts should not have been granted since Roth had not shown that he was deprived of any interest in liberty or property as protected by the Fourteenth Amendment.[59] Chief Justice Burger, in voting with the majority, emphasized that the relationship between a state institution and one of its teachers is essentially a matter of state concern and state law, that it is only when a state-employed teacher has a right to re-employment under state

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[59] Roth, op. cit., pp. 548-549.

law, arising from either an express or implied contract, that he then has a right to some form of hearing as to the cause of his nonrenewal.[60]

The Court clearly noted that "It stretches the concept too far to suggest that a person is deprived of 'liberty' when he simply is not rehired in one job but remains as free as before to seek another." It also made clear that for a person "to have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it." He must have a legitimate claim of entitlement to it, not just a unilateral expectation of it.[61] Since Roth could show only an abstract concern in his being rehired, he did not have a sufficient property interest to require a hearing.

The same day that Roth was decided, the Supreme Court heard a similar case involving a nonrenewal. Robert Sindermann was also a college teacher who had been employed for ten years in the state college system of Texas. After teaching two years at the University of Texas and four years at San Antonio Junior College, he became an instructor of government and social science at Odessa Junior College, where he was employed for four years under a series of one-year contracts. During the 1968-69 school year, he became involved with a group which favored the junior college's becoming a four-year college, although such change was opposed by the Regents of the college. In May, 1969, Sindermann's contract expired, and the Regents voted not to offer him a new contract for the next academic year. The Regents did

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[60] Ibid.

[61] Roth, op. cit., pp. 560-561.

not give him any official statement of the reasons for nonrenewal nor the opportunity for a hearing at which he could have challenged the decision of nonrenewal.[62]

Sindermann filed suit, claiming that the reason for his nonrenewal was his criticism of the administration; he argued that nonrenewal of his contract was in violation of his protected right to freedom of speech. He also charged that denial of due process was in violation of his Fourteenth Amendment rights. The District Court for the Western District of Texas ruled against Sindermann and maintained that he had no cause for action since he had only a one-year contract and since the college had never adopted the tenure system. However, Sindermann appealed to the United States Court of Appeals for the Fifth Circuit, and it reversed the lower court's ruling.[63]

The Court of Appeals said that if the nonrenewal had been based upon Sindermann's exercise of free speech, such nonrenewal would have violated the Fourteenth Amendment's due process clause. Since the actual reason for the Regents' decision was in dispute during the proceedings, the Court remanded the case for a full hearing on that contested fact. It also held that even though the college had no formal tenure system, failure of the college to provide Sindermann a hearing violated his procedural due process if he could show that he had an "expectancy" of employment. The United States Supreme Court affirmed the Circuit Court's ruling by the same 5-3

[62] Sindermann, op. cit., p. 570.

[63] Ibid.

ruling as in Roth.[64]

The Supreme Court held that (1) the lack of a contractual or tenure right to re-employment, taken alone, did not defeat the teacher's claim, (2) the government cannot deny a benefit to a person on a basis that infringes on his right to free speech, (3) there is no requirement in the Constitution that a non-tenured teacher be afforded a hearing or reasons for nonrenewal unless the person is deprived of a liberty or property protected by the Fourteenth Amendment, (4) a teacher employed for a number of years at the same institution should, however, be permitted to show that while no formal tenure system existed, a de facto tenure system was fostered by the institution, (5) proof that such a system existed would not entitle the teacher to reinstatement, but would entitle him to a hearing, (6) at the hearing, the teacher could be informed of the reasons for nonrenewal and be given a chance to challenge the reasons, and (7) the District Court should not have granted summary judgment to the Board of Regents, rather that the teacher should be granted a hearing by the college board, after which the matter could be reviewed by the courts.[65]

The basic difference between the Sindermann and the Roth cases was that Sindermann had demonstrated a genuine interest in his continued employment. Also, while Sindermann had no formal tenure, he did have tenure under the de facto tenure program which was fostered and promulgated by the college. Sindermann was able to cite a provision

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[64] Sindermann, op. cit., p. 571.

[65] Ibid.

in the Odessa College Faculty Guide which stated:

> Teacher Tenure: Odessa College has no tenure system. The Administration of the College wishes the faculty member to feel that he has permanent tenure as long as his teaching services are satisfactory and as long as he displays a cooperative attitude toward his co-workers and his superiors, and as long as he is happy with his work.[66]

Thus, Sindermann was able to point to some objective criteria by which the school had led him to believe that his employment would be continued. Since continued employment was implied, a property interest in his employment was created, one which could not be taken away without due process. Proof of such property interest would not necessarily entitle him to reinstatement, but would obligate the college to grant him a hearing, at which Sindermann could be told the reasons for nonrenewal and given a chance to refute the charges.[67]

Four years later the United States Supreme Court rendered a decision which, although it concerned the termination of a policeman, had direct bearing on the interpretation of liberty interests and on constitutional guarantees of job security. In Bishop v. Wood,[68] a North Carolina policeman was discharged without a pre-termination hearing. He claimed that as a "permanent" employee, city ordinance specified that he was to be notified of his deficiencies; he was to be informed how he could improve; and even if cause were shown for his removal, he was to be entitled to written notice setting forth both

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[66] Sindermann, op. cit., p. 579.

[67] Sindermann, op. cit., pp. 580-581.

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

the date and the reasons for the termination. Bishop claimed that the city ordinance limited dismissal to "failure to perform work up to the standard of his classification, or if employee is negligent, inefficient, or unfit to perform his duties."[69] He also contended that his two and one-half years of service on the force and his "permanent" classification gave him a sufficient expectation of continued employment, which was enough to constitute a property interest.

The District Court granted the city official's request for summary judgment. The United States Court of Appeals for the Fourth Circuit affirmed the District Court's opinion, and after granting rehearing en banc, affirmed without opinion. On certiorari, the United States Supreme Court also affirmed by a 5-4 decision.[70]

In deciding the property right component of the case, the Supreme Court looked to the state law of North Carolina and found that an enforceable expectation of continued employment in that state can exist only if the employer, by statute or contract, has actually guaranteed such. The Court upheld an earlier principle decided by the Fourth Circuit in another case which held that the employee "held his position at the will and pleasure of the city," and that such employee is entitled only to certain procedural rights, which in Bishop's case, were not violated.

Bishop also claimed that he had a liberty right in that the reasons given for his dismissal, which he claimed were false, were so

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[69] Bishop, op. cit., p. 690.

[70] Bishop, op. cit., p. 684.

serious as to create a stigma upon his reputation in the community. The Court held that since the city manager had communicated the reasons for Bishop's termination to him orally and privately, no harm was done to his "good name, reputation, honor, or integrity." Such reasons became public knowledge only as a result of Bishop's litigation, which he initiated. The Court also maintained that since the reasons were conveyed to Bishop in private, even if the reasons were false, they had no more significant impact on his reputation than if they were true. In summation, the Court said:

> The federal court is not the appropriate forum in which to review the multitude of personnel decisions that are made daily by public agencies. . . . In the absence of any claim that the public employer was motivated by a desire to curtail or to penalize the exercise of a constitutionally protected right, we must presume that official action was regular and, if erroneous, can best be corrected in other ways. The Due Process Clause of the Fourteenth Amendment is not a guarantee against incorrect or ill-advised personnel decisions.[71]

Procedural Due Process

The need for procedural due process exists only if the interests encompassed within the Fourteenth Amendment's protection of liberty and property seem to have been deprived. When such protected rights are implicated, the right to some type of hearing is paramount. When a hearing is granted, it must contain the constitutional safeguards of due process. Generally speaking, due process requires a hearing to have the following components:

a. Adequate notice, usually specified in the individual state statute, although the court may determine what

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[71] Bishop, op. cit., p. 693.

is "adequate";

b. A sufficient specification of the charges against the employee to permit the showing of error, if any;

c. The opportunity to confront and cross-examine one's accusers;

d. A list of the names and the nature of the testimony of witnesses testifying against the accused;

e. A hearing during which the employee may present evidence in defense of self before an impartial board with sufficient expertise;

f. The right to have one's attorney present;

g. The right to have decisions based upon substantial evidence before a tribunal making written findings.[72]

In addition to the above, a school's governing body may have to follow certain local procedures if they have been disseminated in writing to the staff.[73]

An employee may waive the right to a hearing, in which case that individual cannot later contest the lack of procedural due process.[74] Also, the failure to accept the offer of a hearing may constitute a waiver of the claims which the employee would have presented in his defense.[75]

At all hearings involving dismissals, it is preferable to have a court reporter present, since any appeal or review by the courts will

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[72] Thomas v. Ward, 374 F. Supp. 206 (N.C., 1974).

[73] Greene v. Howard University, 412 F.2d 1128 (11th Cir. 1969).

[74] Abramovich v. Board of Education of Central School District No. 1, etc., 386 N.E.2d 1077 (N.Y., 1979), cert. denied 100 S.Ct. 89.

[75] Fern v. Thorp Public School, 532 F.2d 1120 (7th Cir. 1976).

be based upon the record made at the hearing. Some states permit a majority of the quorum of the school board to vote on a dismissal, while other states require that any dismissal must reflect a majority vote of the entire constituted board.

In the dismissal of an employee, whether tenured or non-tenured, the school board has the burden of proof in establishing the unfitness of the employee. The board's dismissal action must be supported by relevant and sufficient evidence. The board must be able to show in any dismissal that the employee's alleged misconduct will have or has had an adverse effect on his ability to perform properly in his capacity as administrator or teacher.

It has also been well established that because the school board acts as an investigative body, as a prosecutor, and as a judge, due process is not denied. The United States Supreme Court in Withrow v. Larkin[76] held that the combination of investigative and adjudicative functions in a decision-maker does not in itself constitute a due process violation by creating an unreasonable risk of bias in the decision-maker. Such a contention of bias by the employee must be weighed against the presumption of honesty and integrity of the board members. The Wisconsin Supreme Court has interpreted Withrow to mean that while it is not necessary to prove actual bias on the part of the board, special facts must show that the risk of unfairness is high. The Wisconsin Court indicated that bias may exist when the board members have a pecuniary interest in the outcome, or when a board member

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[76] Withrow v. Larkin, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975).

may have been the target of personal abuse or criticism by the discharged employee.[77]

The United States Supreme Court dealt with the Withrow principle again in Hortonville School District v. Hortonville Education Association.[78] In a 6-3 decision, the Supreme Court said that "the due process clause of the Fourteenth Amendment did not guarantee the employee that the decision to terminate their employment would be made by or reviewed by a body other than the school board." According to this decision, mere familiarity with the facts of a case gained by an agency in the performance of its statutory role does not disqualify a decision-maker. Permitting the school board to make the policy decision preserves its control over school district affairs, as intended by the state legislature. However, a school board may not act in an arbitrary or capricious manner. It must have supporting documentation for its decision, or the dismissal may be overturned. Courts have ruled that where the decision to terminate is based upon subjective evaluation, the court will decline to review the case unless it can be shown that a gross abuse of authority has occurred.[79]

Grievances

In 1980 a newly revised grievance procedure was adopted by the

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[77] State ex rel. Deluca v. Common Council, 242 N.W.2d 689 (Wis., 1976).

[78] Hortonville School District v. Hortonville Education Association, 426 U.S. 482, 96 S.Ct. 2308, 49 L.Ed.2d 1 (1976).

[79] Stebbins v. Weaver, 537 F.2d 939 (7th Cir. 1976) cert. denied 97 S.Ct. 241 (1977).

Virginia Board of Education in accordance with the statutory requirement of the Virginia Code, as amended, and as required by the Standards of Quality for local school divisions. This procedure for adjusting grievances applies only to teachers, not principals. It contains the provisions for a fact-finding panel, but not for binding arbitration, which was struck down in the Parham case previously discussed. The new procedure vests the final authority in the local school board, regardless of the recommendation of the fact-finding panel.

Many would say that an effective grievance procedure is a deterrent to state-wide collective bargaining, while others maintain that the grievance procedure is an attempt to reduce the amount of litigation coming before the courts. The trend appears to favor finding resolutions to problems through non-jury proceedings, lay panels, fact-finding, mediation, and in some other states, binding arbitration. However, principals, supervisors, or other administrators are not entitled to use the grievance procedure against their superiors or against a teacher under their supervision. The role of the principal when involved in a teacher-initiated grievance, will be discussed in chapter three, where the principal's role as a "personnel manager" is reviewed. Thus, the only recourse for the resolution of a problem involving an administrator is to utilize the "chain of command," whereby the principal may discuss the problem with the immediate superior, usually the superintendent. If the problem is not solved satisfactorily, the principal may choose to take it to the school board. Nevertheless, going to the school board without the superintendent's support for the resolution of the problem will probably place the principal's

job in jeopardy and may lead to reassignment. It therefore appears that not only does the principal have little or no tenure in his position, the principal also has no effective means for the resolution of a grievance which he might initiate. The principal can respond only to a grievance initiated by a subordinate who may, if dissatisfied with the principal's response, simply take the grievance higher, to the principal's superior, the superintendent or his designee. Either way, the principal has little voice in the final decision.

Summary

The public schools in Virginia were established in 1870 when the Underwood Constitution was ratified by the General Assembly. Since that time, the Virginia Constitution has undergone two complete revisions, with the latest revision occurring in 1971. The primary focus on education is found in Article VIII of the Constitution, which is divided into eleven sections.

Because education is a function granted to the state under the Tenth Amendment of the United States Constitution, the Virginia Constitution requires that the General Assembly provide for a system of free public elementary and secondary schools and that it ensure an educational program of high quality be maintained. It is thought that Virginia is one of the first states to require, by constitutional mandate, that standards of quality for public schools be maintained.

The Secretary of Education is appointed by the governor for a four-year term and is authorized to perform such duties and to exercise such powers as may be assigned by the governor. Although the Secretary

has no direct power over the public schools, this appointed official helps the governor to make policy decisions and is responsible for supervising several agencies.

The Board of Education consists of nine members, appointed by the governor and confirmed by the General Assembly. The Board is responsible for the establishment of local school divisions, makes annual reports to the governor and General Assembly, identifies school divisions not meeting the Standards of Quality, certifies those eligible for the position of division superintendent, approves textbooks, and makes educational policy for the Commonwealth.

The Superintendent of Public Instruction is an experienced educator, appointed by the governor, usually to serve a term coincident with that of the governor making the appointment. This individual serves as secretary of the Board of Education, enforces school laws, prepares forms, and recommends policy changes to the Board of Education.

The local school board is responsible for the day-to-day operation of the public schools in Virginia. In most states, education is controlled at the state level, but in Virginia, the earlier system of allowing local people to operate their own schools still prevails. Another unique feature of Virginia's government is that both city and county school divisions exist within the state, and the counties have no jurisdiction over cities within their boundaries, as they do in some states. County school board members may be appointed by the School Board Selection Commission, or they may be appointed by the local board of supervisors if it has been given that authority through a public referendum. City and town school board members are appointed by their

city or town councils. School board members, once duly appointed, constitute a body corporate and may contract, be contracted, sue, be sued, purchase, take, hold or lease school property. The board may act only as a whole body; individual school board members acting as individuals have no authority over the schools and may not interfere in their daily operation.

Each school division has a division superintendent who serves as its chief school officer. This individual is appointed for a four-year term, with all terms state-wide expiring at the same time. As a constitutional officer, the superintendent must take and subscribe to the oath required for all officers of the state. The duties of this official are prescribed by state law, by the state Board of Education, and by the local school board. The division superintendent may be fined, suspended, or removed from office for failing to discharge the duties of the office properly.

The position of principal was given legal recognition by the General Assembly in 1973. The principal's duties are set forth in the Virginia Code, and requirements for the position are established by the Board of Education. Principals are assigned to their positions by the division superintendent, who may also reassign them to other schools. Principals must serve a three-year probationary period in their positions before acquiring continuing contracts in the positions. However, a principal may be reassigned to a classroom teaching position at a teacher's salary without expressed cause. A principal who has not achieved continuing contract status in the position and who does not have such status as a teacher may be nonrenewed at the end of the

contract period. But dismissal during the contract period or dismissal of a tenured principal may occur only if cause is demonstrated. The burden of proof is on the school board to show that the principal is unfit or incapable of carrying out the responsibilities of the position. In Virginia, dismissal may be for incompetency, immorality, noncompliance with school laws, medical disability, conviction of a felony or a crime of moral turpitude, or other good and just cause. In all dismissal proceedings, the employee must be afforded the due process which is guaranteed under the Fourteenth Amendment to the United States Constitution. Of most importance, due process guarantees a hearing at which the employee may present material in self-defense and be given "fair play."

The principal, as an employee, is not allowed to use the Virginia Procedure for Adjusting Grievances; it is for teachers _only_. Thus, the only recourse in the resolution of a dispute involving a principal's employment is to use the "chain of command." However, principals who resort to the method may discover their positions in jeopardy and reassignment to the classroom a likely possibility.

CHAPTER THREE

The Principal as a Personnel Manager

Introduction

Because the lay public often recognizes the principal's authority only as it relates to the students under his or her care, the principal's authority over teachers and other staff persons is often overlooked. Whereas the control and discipline of students was the subject of much litigation in the late sixties and early seventies, today a considerable amount of the educational litigation involves teachers and other staff who are being suspended, disciplined, or dismissed. Many times such actions are the direct result of failure to obey the principal's orders and directives. As more numerous and varied categories of personnel are assigned to a school as a means of improving the educational program, an increased amount of the principal's time will be spent in the supervision of such employees.[1]

The Virginia Code gives high priority to the principal's function as a personnel manager by expressly saying that the "principal may submit recommendations to the division superintendent for the appointment, assignment, promotion, transfer, and dismissal of all personnel assigned to his supervision."[2] Even the Standards of Quality for Public Schools in Virginia require that each school division policy

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[1] Ralph D. Stern, The School Principal and the Law (Topeka, Kan.: National Organization on Legal Problems of Education, 1978), p. 13.

[2] Code of Virginia, Section 22.1-293.

manual contain "a cooperatively developed procedure for personnel evaluation appropriate to tasks performed by those being evaluated," and that "the principal and his or her staff shall provide for the cooperative evaluation of the teachers and other employees in his or her school. The evaluation of teachers shall be based on the objectives for classroom planning and management."[3]

As an agent of the local school board, the principal may exercise only that authority which is attached to the principalship either by statute or by board policy. The principal may not go beyond that authority. However, while only the school board can hire and fire and while only the superintendent can make recommendations about personnel matters to the board, the principal is the key person who provides the supportive data on which the superintendent bases those recommendations. Also, a principal has the right to make and enforce proper and reasonable rules and regulations for teachers to follow, although the rules should not contradict or be inconsistent with school board policies, statutes of the state or federal governments, or constitutional guarantees. Just as students must obey their teachers, teachers must obey the orders of their superiors, including the principal. Failure to do so may constitute insubordination, which is grounds for dismissal or other disciplinary action.

This chapter examines the role of the principal in matters of employee assignment, reassignment, probation, evaluation, nonrenewal, dismissal, suspension, grievances, collective bargaining, working to

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[3] Standards of Quality for the Public Schools of Virginia, 1980-82.

contract, and privacy of records.

Assignment

Teachers and all other school personnel who are paid from public tax funds may be employed by the local school board only upon recommendation of the division superintendent; the school board also assigns them to their respective schools.[4] Moreover, once personnel are assigned to a school, the superintendent has the authority to assign them to their respective positions within the school. "The school board has no control over the assignment of teachers within a school, since the superintendent is not acting as the agent of the school board," but is acting under his own authority as granted by the statute. Where a statute specifically confers a power on a school official, the board may not remove that power, even if they felt the assignment was unwise or arbitrary.[5] Furthermore, if the school board adopts a resolution giving the superintendent the necessary authority, the superintendent may reassign a teacher to another school within the school system for that year, provided the reassignment does not affect the teacher's salary for that year.[6] Such reassignment could be the result of a decline in enrollment of a particular school or grade level, the abolition of a particular subject, or another justifiable reason.

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[4] Code of Virginia, Section 22.1-295.

[5] Opinion of Virginia Attorney General of March 9, 1978 to Honorable William A. Truban, Member, Senate of Virginia.

[6] Code of Virginia, Section 22.1-297.

Since the principal is usually involved in the interviewing and selection process for vacancies existing at his or her school, the principal does have some input into the recommendation that the superintendent must present to the school board. Even in reassignments, the wishes and impressions of the principal of the receiving school are generally taken into consideration; however, it is the superintendent and/or the school board who makes the final decision. Thus a principal may be assigned a staff person who is not his or her personal choice; yet the principal is held responsible for that person's success or failure in the position.

Probationary Term

Virginia public school teachers must serve a probationary term of three years in the same school division before acquiring continuing contract status. Once a teacher has obtained continuing contract status in a school division in Virginia, he or she does not have to serve another probationary period in any other school division unless the new school division requires a probationary period, not to exceed one year, as a part of the contract of employment.[7]

School divisions may not require that a teacher serve a longer probationary period than that specified by statute, even if the teacher is willing to do so. The Virginia Attorney General ruled in a 1972 opinion that a school board must grant continuing contract status to a teacher having completed the probationary period and showing evidence

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[7] Code of Virginia, Section 22.1-303.

of good behavior and competent service.[8] Thus, the advice that many attorneys might give to principals, superintendents, and school boards would be to evaluate carefully all personnel, especially those eligible for continuing contract upon completion of probation; if there is any doubt whatsoever in regard to the employee's ability or efficiency, the person should not be recommended for continuing contract status. Once continuing contract status is achieved, the burden of proof is on the school administration to show cause for any dismissal action. Because it is much easier to nonrenew than it is to dismiss, many principals tolerate poor teachers on their staffs simply because they do not want to go through all the complications of a dismissal proceeding. However, school authorities have the right and duty to judge the effectiveness of teachers and other employees to maintain the integrity of the schools as a part of ordered society.[9] The key to the success of any school system lies in the process by which a school board evaluates the superintendent, the superintendent evaluates the principals, and the principals evaluate their staffs.

Evaluation

Of all the duties which the public school principal is expected to perform, participation in the evaluation process of all employees is probably the most difficult and time-consuming. Even though the principal is expected to be the instructional leader of the school and

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[8] Ibid.

[9] Adler v. Board of Education, 342 U.S. 485, 493, 96 L.Ed. 517, 524, 72 S. Ct. 380 (1952).

to devote at least forty to sixty percent of the workday to instruction, most principals would admit that they fall short of this goal because of the time required for administrative details. Student demands, parent-community concerns, day-to-day crises, and a host of other tasks all draw upon the principal's time, and if one is not careful, staff evaluation becomes a formality, a mere compliance with regulations.

Today there is much confusion and distrust regarding the purpose of staff evaluation. Many administrators would say that the real purpose of evaluation is to improve the instructional process and quality of services. However, many teachers say that evaluation is used simply to support personnel decisions, such as hiring, suspension, or dismissal. Most school professionals would probably agree that a good evaluation process should reward good teaching, while striving to strengthen that which is in need of improvement.

Unfortunately, anything that threatens the job security of teachers is viewed as frightening by teacher unions and teacher associations. And yet most teachers would agree that poor teaching should be eliminated, for it could affect the way in which all members of the school system are viewed by the community.

One of the keys to a good evaluation system is the involvement of the staff in the development of the process and forms to be used. It is for this reason that the Standards of Quality have required a cooperatively developed process of evaluation for all school divisions since 1972. Although the Virginia Department of Education initially gave approval to each locality's devised system of evaluation, most

divisions have subsequently revised their procedures since the 1972 guidelines were formulated.[10]

Many different types of evaluation systems are available to the principal. Some of these are checklists, rating scales, plan-teach-observe cycles, self-appraisal, peer evaluation, student evaluation, self-designed evaluation, and evaluations based on student outcome.[11] The model adopted by many school divisions in Virginia incorporates many of the basic features found in several of the above types:

1. Establishment of current standards of performance.

2. Self-appraisal in terms of these standards.

3. Establishment of a few select objectives to work toward during the current year or within a given period of time.

4. Indication of how these select objectives can be accomplished.

5. Assessment by both the teacher and principal concerning how well the objectives have been met.

6. Summary statement as to the overall effectiveness of the teacher, including plans for the future.

In most systems the person being evaluated does not have to agree with the evaluation and may submit a rebuttal statement which may be attached to the evaluation. However, the teacher does sign the

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[10] Tentative Report Evaluation of Personnel. Richmond, Va. State Department of Education, 1972.

[11] See Joan P. Kowalski, Evaluating Teacher Performance. Arlington, Va., Educational Research Services, Inc., 1978. Also Gerald D. Bailey. Teacher Self Assessment: A Means for Improving Classroom Instruction. Washington: National Education Association, 1981. Also Eliot G. Spack. Evaluating and Supervising Teachers: Research and Methods. Highland Park, N.J., Essence Publications, 1978.

evaluation to indicate that he or she has seen the evaluation and has received a copy of it.

The principal holds the key to the effectiveness of the evaluation process. Many principals lack the training necessary to implement the evaluation program properly. Others apparently are unwilling to be completely honest regarding deficiencies which they know exist. Consequently, some principals are evasive and try to make positive comments when, in reality, they should openly evaluate a teacher's deficiencies and warn that person that his or her job may be in jeopardy. Many administrators were taught that before one says something critical about a teacher's performance, one should say something complimentary. However, many times this habit serves only to confuse the issue, and the person being criticized does not perceive the criticism, only the compliment. When the conference is over, the principal may think the teacher has been warned, but the teacher may have received the impression that he or she is doing a good job.

Many principals evaluate superficially, and this lack of detail may later cause difficulty for the principal. Attorneys have often noted that if a teacher is given positive ratings for a period of years, it will be more difficult to build a case for incompetence later. Thus, the evaluation, especially during the probationary years, must be conducted carefully. Perhaps one reason that some principals evaluate too leniently is that almost all of them are former teachers; by recording only positive traits of teachers, the principal may maintain harmony among the staff. On the other hand, he may lose the respect of the staff for not exercising professional judgment and

expertise in the leadership of the school.

Principals must be willing to say specifically what the deficiency is, to offer specific suggestions for the remediation of such deficiencies, to give close supervision to the teacher, and to document in writing exactly what was done for improvement. The principal may enlist the help of central office personnel, assistant principals, or department heads in providing helpful suggestions for improvement. These persons may also be called upon to help evaluate personnel if the principal has more than twelve to fifteen persons to evaluate. In addition, the principal's job description may need to be altered somewhat in order to provide the time needed for classroom visitation. This alteration will occur, however, only if the principal is convinced that improvement in the instructional process can occur through effective evaluation. The principal's attitude and perspective will certainly be governed by the attitude of the superintendent and school board and their desire for a comprehensive and effective evaluation process.

Principals should also be aware that both the United States Supreme Court and the United States Court of Appeals for the Fourth Circuit recognize the difficulty that a principal faces during the evaluation process. They have noted that "the evaluation of teacher competence is a highly subjective determination that does not easily lend itself to precise quantification, nor to judicial review. It is an area in which school officials must remain free to exercise their

judgment and discretion."[12] They have also noted that "the federal court is not the appropriate forum in which to review the multitude of personnel decisions made daily by public agencies. We must accept the fact that individual mistakes may occur in the day-to-day administration of our affairs, but unless there was a desire to curtail or to penalize an employee for exercising his constitutional rights, we must presume that the official action was regular. If an error had been made, it could be corrected in other ways other than through the courts. The Fourteenth Amendment is not a guarantee that incorrect or ill-advised personnel decisions will not occur."[13] Courts have also stated that absent impermissible sex or racial discrimination or First Amendment restraints, federal courts will not interfere with the daily hiring, promotion, or discharge decisions made by school authorities that are based upon personnel evaluations of employees or job applicants.[14] However, despite that warning, persons aggrieved in their public employment aspirations continue to persuade lawyers to file complaints in federal court.[15]

Nonrenewal of Probationary Teacher

A probationary teacher is one who has not completed the required

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[12] Beauchamp v. Davis, et. al., 550 F.2d 959 (4th Cir. 1977).

[13] Bishop v. Wood, 426 U.S. 341, 48 L.Ed.2d 684, 693, 96 S.Ct. 2074 (1976).

[14] Kramedas v. Board of Education of Christina School District, 523 F. Supp. 1268 (Del. 1981).

[15] Lockhart v. Andes, Civil Action No. 82-0242-R, United States District Court for the Eastern District of Virginia, Richmond Division (1982).

three years of probationary service in a particular school division, or who may have completed such service in a former system but is now completing a one-year probation in a new school division. A teacher who completes probation, but who takes a year's leave of absence, may be required to complete another year of probation if such requirement is a part of the school board policies.[16]

After careful evaluation, if the principal decides to recommend that a probationary teacher not be renewed, the principal must communicate that decision either orally or in writing to the division superintendent. The superintendent will either support or overrule the principal's recommendation. If the recommendation is overruled, no further action is necessary. If the superintendent supports the principal's recommendation, the teacher must be notified of the superintendent's proposed recommendation to the school board. (See Appendix B.) Within five days after receipt of the superintendent's letter, the teacher may submit a written request that he or she be given orally the reason(s), if any, for such recommendation and the supporting documentation, if any. Nonrenewal can occur for many reasons or for no reason at all, but not for a constitutional, impermissible reason. The Virginia procedure simply gives the teacher an opportunity to discuss with the superintendent or the superintendent's designee why such action was taken and no cause need be presented by the administration.

After receiving orally the reason(s) for nonrenewal, the teacher may request a conference with the superintendent or the designee. Such

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[16] Beauchamp, op. cit.

request must be made in writing and must be submitted within ten days after receiving the reason(s). The conference must be held within thirty days of the request, and the teacher must be given at least fifteen days advance notice. (See Appendix C.) If the conference is to be with a designee, this person cannot be the one who recommended nonrenewal of the teacher in the first place. Instead, a principal of another school may be called upon to act as the superintendent's designee and to render a recommendation regarding the nonrenewal of a teacher. Attending the conference are the designee, the teacher, and the person who recommended nonrenewal to the superintendent (usually a principal); a representative of either or of both may attend provided such representative is not an attorney. The designee hears both sides of the case and communicates a recommendation to the superintendent and to the teacher. Within ten days after the conference, the teacher must be notified of the superintendent's intention regarding the recommendation.[17] (See Appendix D.)

When a teacher requests a conference as outlined above, written notice of nonrenewal of the contract by the school board must be given within thirty days after the teacher has been notified of the superintendent's intention regarding the recommendation. This new time frame supersedes the requirement of nonrenewal notice by April fifteenth.[18]

The conference is confidential in nature; neither oral nor written results shall be made known to anyone except to the school board in

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[17] Code of Virginia, Section 22.1-305.

[18] Ibid.

closed session and to other employees of the school system having a direct interest therein. However, the reasons for nonrenewal may be made available by either party to a potential employer of the teacher. If the nonrenewal is a result of a decrease in enrollment, the abolition of a subject, or a reduced number of classes, these provisions of 22.1-305 do not apply, but a statement as to the reason for nonrenewal will be placed in the file of the teacher.

Because the intent of the nonrenewal provision is procedural in nature only, it allows a teacher to discuss the reasons for nonrenewal with the superintendent or the designee. No cause is required for such nonrenewal, and the failure of the school board or the superintendent to adhere strictly to the time requirements of the statute do not form a basis for continued employment of the teacher.[19] (See Appendix E.)

Procedural due process as required by the Constitution is not applicable to those teachers who are not on continuing contract or who have not been given some implied promise of continued employment, for they have no property interest in the job. But if nonrenewal is for an impermissible reason, such as the exercise of a constitutional right, or if defamation occurs depriving one of a protected liberty interest, a full exploration of the constitutional issue is required, and, in all likelihood, the nonrenewal will be reversed. This principle was clarified by the United States Court of Appeals for the Fourth Circuit in Shumate v. Board of Education of the County of

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[19] Ibid.

Jackson,[20] whereby the Court declared that the school board can decline to renew a teacher's contract for a good reason or for no reason, but it may not do so for a bad reason if the bad reason is retribution for one's lawful exercise of constitutionally protected rights. A Fifth Circuit case had earlier noted that the exercise of one's First Amendment rights may not be the basis for nonrenewal of a non-tenured teacher unless the exercise of such rights clearly overbalances the teacher's usefulness as an instructor.[21]

Stated simply, the courts have determined that so long as due process (if required) and the requirements of the state statute are satisfied, a non-tenured teacher has no right to continued employment, even if that teacher is the best teacher imaginable.[22]

Dismissals

Overview

The process of dismissing for cause either a tenured or a probationary teacher is one of the most difficult problems facing a principal, superintendent, or school board today. It is a process which the general public perceives as uncomplicated, but, in reality, it is not. Not only does the school administration have to prove cause against the employee, it must also follow precisely the procedures

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[20] Shumate v. Board of Education of the County of Jackson, 478 F.2d 233 (4th Cir. 1973).

[21] Ferguson v. Thomas, 430 F.2d 852 (5th Cir. 1970).

[22] Sigmon v. Poe, 381 F. Supp. 387, appealed, 391 F. Supp. 430, affirmed, 528 F.2d 311 (4th Cir. 1975).

outlined in the state code or local policies. Oftentimes, the court may reverse the dismissal and order reinstatement, not because dismissal was a poor recommendation, but because the employee's rights were violated somehow or somewhere in the procedure.

Certainly it is the principal who feels the most pressure when teachers on his staff do not measure up to district standards or expectations or when their performance is unsatisfactory or inadequate. This pressure may be exerted by the community, which is becoming more conscious of minimum standards and increasing costs; by school boards and superintendents, who sense the mood of a community and feel most responsible when reacting to community concerns; and by the school staff, who exert a subtle type of pressure when one of their own is not performing up to standards.

To be able to react to this pressure, the principal must both know the statutes of his state as they pertain to dismissal and be able to provide through proper evaluations the data to support the recommendation. In order to sustain the dismissal, the principal, superintendent, or school board must be able to show that the employee has caused harm to the school district's pupils, to its program, or to the district itself. The recommendation must have had a rational basis for its determination, which must have been formulated in good faith. The recommendation must also reflect the consistent behavior of the principal, who must enforce policies and regulations equally among his staff. The principal must realize that his most marginal teacher sets the minimum standard for acceptable behavior in his school, and that this teacher is often the one by which others are

judged.

Reasons for Dismissal

Teachers may be dismissed only for reasons specified by the prevailing state statute. In Virginia, "teachers may be dismissed or placed on probation for incompetency, immorality, noncompliance with school laws and regulations, disability as shown by competent medical evidence, conviction of a felony or crime of moral turpitude, or other good and just cause."[23] In other states, the reasons for dismissal are varied: incompetence, inadequate performance or failure to fulfill responsibilities, immorality, noncompliance with school laws, insubordination, decrease in number of teaching positions due to enrollment decline or budgetary restraints, neglect of duty, inefficiency, physical or mental disability, unprofessional conduct, drug use, conviction of a crime of moral turpitude, cruelty, conviction of a felony, dishonesty, advocating the overthrow of government or disloyalty to the government, incapacity to teach, violation of state or federal law, unfitness to teach, inadequate performance, excessive absence, wilful failure to pay debts, failure to attend to duties or orders, disloyalty, inciting students to disobey state laws, failure to give evidence of professional growth, failure to maintain certification, membership in an unlawful organization, other good and just cause, or where cause is a negotiable item or is established by the

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[23] Code of Virginia, Section 22.1-307.

school board.[24]

The following discussion examines in detail the reasons for dismissal in Virginia.

Incompetence. A cause for dismissal which is cited by Virginia and most other states is incompetence. However, the word incompetence is somewhat difficult to define.

In 1958 The United States Supreme Court cited several sources in an attempt to define incompetence as it pertained to the case of Beilan v. Board of Education of Philadelphia.[25] According to its ruling, incompetence is

> 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; want of physical, intellectual, or moral ability; insufficiency; inadequacy; general lack of capacity or fitness; lack of special qualities required for a particular purpose.

After being warned that his position was in jeopardy if he did not answer, Beilan was charged with incompetency and dismissed from his position for refusing to answer questions about his alleged membership in a communist political association. The school board based its decision on his refusal to answer any inquiry about his relevant activities, not upon the activities themselves. The Pennsylvania court thus gave the term incompetency a broad interpretation. It ruled that

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[24] Statutory Requirements of Teacher Contract Laws: A Comparison of the Fifty States' Continuing Contract and Teacher Tenure Laws. Washington State Senate, December, 1976.

[25] Beilan v. Board of Public Education of School District of Philadelphia, 357 U.S. 399, 2 L.Ed.2d 1414, 78 S.Ct. 1317 (1958).

if a teacher does not command the respect and good will of the community and that if the record shows that such effect has been produced by the alleged conduct, this evidence of incompetency is conclusive. It also noted that incompetency as a term 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 gives the term a much wider meaning than that.[26]

It would appear that incompetence and inefficiency are closely related, and that both terms indicate that an employee lacks some required skill or ability to perform properly on the job. Lack of subject knowledge or the inability to impart knowledge to one's pupils would probably constitute incompetence, as would failure to maintain discipline. Physical mistreatment of pupils could result in a charge of incompetence, as might a physical impairment which hindered one from properly performing the duties of a teacher. Violation of school rules, mishandling of school funds, or improper behavior, even outside school hours, might be considered incompetent behavior. Constant tardiness, absenteeism, and refusal to accept supervision would also be deemed evidence of incompetence.

Incompetence is not usually based upon a single incident but is usually reflected in a pattern of behavior over a period of time. Persistently failing to supervise students, failing to conduct classroom properly, chronic tardiness, failing to maintain grade book in the manner prescribed, and failing to maintain lesson plans are

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[26] Ibid.

examples of such patterns.[27]

Edward Bolmeier further states that most courts have reasoned that the term incompetence may be associated with immorality, inefficiency, insubordination, poor teaching, lack of discipline, physical incapacity, mental unfitness, emotional instability, and lack of self-control.[28]

If incompetence is used as cause for dismissal, the principal must be aware that most courts have determined that if such cause could have been remediated, the teacher should have been given that opportunity. Even if not required by state statute, good policy would be to show that every attempt was made to allow the person the opportunity to remediate the deficiency before dismissal was recommended.

A sufficient time period must be allowed for such remediation to occur. A tenured Minnesota teacher with 17 years of service in her district and eight years elsewhere was terminated eight weeks following a notice of deficiencies. The deficiencies included: lack of clear directions to students, poor classroom control, poor listening skills, inappropriate record keeping, ineffective parent communications, use of vague and inconsistent criteria for pupil evaluations, inappropriate personal discussions, and lack of a cooperative attitude. The Supreme Court of Minnesota ordered the teacher reinstated with compensation provided by law since, in view of the teacher's length of service,

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[27] Hoffman v. West Chester Area District School Board, 397 A.2d 482 (Pa. 1979) and Strinich v. Clairton School District, 431 A.2d 267 (Pa. 1981).

[28] Edward C. Bolmeier, Judicial Excerpts Governing Students and Teachers (Charlottesville, Va.: The Michie Company, 1977), p. 195.

eights weeks to remedy deficiencies was unreasonable.[29] Some courts have questioned whether, if damage were done to the school, faculty, or students, would such damage have occurred if the teacher had been warned beforehand and given the opportunity to correct the questioned conduct? If the answer is negative, the dismissal may be overturned. The court has also noted that certain uncorrected causes for dismissal, which were originally remediable, if taken alone, may become irremediable in combination and if allowed to continue over a long period of time.[30]

In Gilliland, a teacher was dismissed for:

1. incompetency (ruining pupils' attitudes, lack of teacher-pupil rapport, irregular assignments),
2. cruelty (grabbing pupils by the arm, hair, or shoulder, harrassing students, uncontrollable temper), and
3. negligence (leaving class unattended, keeping pupils from recess or physical education for incomplete school work, sending pupils unsupervised to the library to complete work).

The court said that any one of the above causes, when taken alone, may be remediable, but all those causes in combination with others may well be irremediable. Here in this case the combination of causes and the continuous conduct over a long period of time were the basis for a finding of irremediability.[31]

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

[30] Gilliland v. Board of Education of Pleasant View Consolidated School District #622 of Tazewell County, 365 N.E.2d 322 (Ill. 1977).

[31] Ibid.

Immorality. While communities are more tolerant of varying life styles today than in previous eras, teachers still may not engage in activities which are clearly detrimental to classroom teaching and the sound operation of the school. Teachers are also held accountable for their actions outside of the classroom, for the community expects a somewhat higher moral standard of the teacher than of the average citizen. Teachers are entrusted with pupils who are impressionable in nature; thus, the character of the instructor is considered important to the child's development. Immorality has been judicially defined as: "a cause of conduct as offends the morals of a community and is a bad example to the youth whose ideals a teacher is supposed to foster and to elevate."[32]

At least thirty-three states list immorality as a cause for dismissal, and at least ten states list conviction of a crime of moral turpitude.[33] Virginia cites both of these among the reasons for dismissal. Often dismissals for immorality are not the subject of court action, for the person involved may choose to resign and quietly leave the area especially if such charges involve a teacher's misconduct with students under his charge. Such charges, once they become public, usually lead to intense public furor. Many of the court cases cited in the literature are from the West Coast states (California, notably)

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[32] Lesley v. Oxford Area School District, 420 A.2d 764 (Pa. 1980) citing Horosko v. Mount Pleasant Township School District, 6 A.2d 866 (Pa. 1939).

[33] Statutory Requirements of Teacher Contract Laws, op. cit., pp. 13-14.

and are illustrative of the reasoning of the courts. However, it must be noted that each state and community is unique in its' interpretation of community values, and the same circumstances could produce different verdicts in different courts. The key point in recommending dismissal for immorality is whether the person's ability to teach has been so impaired that the teacher's efforts are counterproductive. California courts have declared that a teacher's behavior in places other than the school environment cannot be viewed as sufficient cause for dismissal if the conduct does not impair the ability either to teach or to maintain sound school relationships.[34]

A recent West Virginia case involving a high school guidance counselor charged with shoplifting, clarified this point further.[35] The court noted that if the conduct involved immorality, and thus warranted suspension or dismissal, the court must determine if a rational nexus or link existed between the alleged immoral conduct and the duties to be performed by the teacher; the conduct of a state or public employee outside the job may be scrutinized, but disciplinary action against the employee based upon that conduct is proper only where there is a proven rational nexus between the conduct and the duties. The conduct must indicate unfitness to teach before it may provide a basis for dismissal; no abstract characterization of the conduct per se as immoral is sufficient. In this particular case, the

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[34] Morrison v. State Board of Education, 461 P.2d 375 (Cal. 1969).

[35] Golden v. Board of Education of Harrison County, 285 S.E.2d 665 (W. Va. 1981).

dismissal was reversed and remanded with instructions to reinstate the counselor. The court stated:

> To examine only the conduct of the teacher and not its effect on the teacher's fitness to teach or upon the school community before determining if it is immoral and warrants dismissal, would result in a statute which would be void for vagueness under substantive due process constitutional standards.[36]

A number of cases involving homosexuality have been litigated in the courts in recent years. Two California cases illustrate the diverse thinking regarding this volatile issue. In 1967 a teacher was dismissed as a result of a criminal conviction for a homosexual act that occurred on a public beach. In upholding the dismissal, the court noted that

> Homosexual behavior has long been contrary and abhorrent to the social mores and moral standards of the people of California as it has been since antiquity to those of many other peoples. . . . It certainly constitutes evident unfitness to teach in the public school system.[37]

However, two years later the California Supreme Court held in Morrison v. State Board of Education[38] that school officials must clearly demonstrate the connection between the homosexual act (cause for dismissal) and the employment-related requirements of the teacher. In this case the homosexual behavior was an isolated and single incident which occurred in the privacy of an apartment, as opposed to a public setting. Further, the publicity which followed was not attributed to

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[36] Ibid.

[37] Sarac v. State Board of Education, 57 Cal. Rptr. 69 (Cal. 1967).

[38] Morrison v. State Board of Education, 82 Cal. Rptr. 175, 461 P.2d 375 (Cal. 1969).

the plaintiff. The court said:

> The board failed to show that the petitioner's conduct in any manner affected his performance as a teacher. There was no evidence that he had failed to impress upon the minds of his pupils the principles of morality as required by the California Education Code. There is no reason to believe that the incident affected his satisfactory relationships with his co-workers.[39]

The court in Morrison also set forth certain factors to be weighed in establishing a test to determine if a logical nexus exists between a teacher's alleged activities and his fitness to teach. These included the following:

1. the likelihood of an adverse effect from the conduct upon students and other teachers;
2. the degree of adverse effect expected;
3. the type of teaching certificate held by the teacher;
4. the probability that the conduct would recur;
5. the proximity in time of the conduct to the beginning of dismissal proceedings; and
6. the presence or absence of any factors in mitigation.[40]

In 1977 the California Supreme Court again held in Board of Education of Long Beach Unified School District of Los Angeles County v. Jack M. that a teacher charged with a homosexual act in a public restroom could not be dismissed since no evidence was presented to demonstrate that the teacher's conduct rendered him unfit to teach. Rather, the evidence demonstrated that the teacher was quite competent, and the risk that such acts would be repeated or that harm to students and

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[39] Ibid.

[40] Ibid.

fellow teachers would occur did not materialize. The court, after considering all evidence of fitness, ordered reinstatement of the teacher.[41]

An opposite view was taken that same year by the Washington State Supreme Court. The dismissal of a Washington State teacher, who was an admitted homosexual, was upheld by that state's highest court, but not without a vigorous dissenting opinion. In Gaylord v. Tacoma School District No. 10[42] the teacher was dismissed by his school district on the grounds of "immorality" because he was a known homosexual. A lower court held that the dismissal was justified since the teacher was a homosexual, and, as such, his ability and fitness to teach was impaired, with resulting injury to the school. The Washington Supreme Court upheld this decision after considering two basic issues: 1) whether the evidence showed the teacher to be guilty of immorality and 2) whether this behavior impaired his fitness as a teacher. In terms of the first question, the court examined carefully the terms immorality and homosexuality and concluded that homosexuality, as the term is generally used in our society, connotes immorality; likewise, homosexuality was condemned as immoral during biblical times. The court stated that homosexuality is not a disease, but a volitional choice for which the chooser must be held responsible. As for the second issue, the court found that when the teacher's status as a

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[41] Board of Education of Long Beach Unified School District of Los Angeles County v. Jack M., 566 P.2d 602 (Cal. 1977).

[42] Gaylord v. Tacoma School District No. 10, 559 P.2d 1340 (Wash. 1977). Cert. denied 98 S.Ct. 234 (1977).

homosexual became known, the public knowledge of this trait definitely did impair his efficiency as a teacher; his dismissal therefore was necessitated to prevent injury to the school. It was also pointed out that it should not be necessary for the school board to await a harmful incident involving a homosexual act before taking preventive action.

The dissenters to this decision argued that the mere fact the teacher was an acknowledged homosexual did not necessarily mean immoral acts had taken place. They pointed out the burden of proof seemed to have been placed upon the teacher to prove his innocence rather than on the school district to prove his guilt.[43] Gaylord appealed to the United States Supreme Court, but his appeal was refused, thus leaving open the option of varying opinions by other courts.

The courts have been unanimous in upholding the dismissal of teachers for having sexual relations or immoral activities with students. This practice is clearly a violation of professional ethics, and often such cases are never appealed beyond the school board level if there is sufficient evidence for the charge. Teacher dismissals have been upheld also for showing a pornographic film to an eleventh and twelfth grade photography class,[44] and for making sexually suggestive remarks to students.[45] However, dismissal for other sexual activities and alleged immoral acts between a teacher and another

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[43] Ibid.

[44] Shurgin v. Ambach, 442 N.Y.S.2d 212 (N.Y. 1981).

[45] Pryse v. Yakima School District No. 7, 632 P.2d 60 (Wash. 1981).

adult has not always been sustained by the courts. For example, in Alabama an unmarried pregnant teacher's contract could not be cancelled on a charge of immorality. In this particular case the court ruled that the teacher's right to privacy had been violated by the manner in which the evidence had been gathered and that the term immorality was not specifically defined in the state's tenure law.[46] But in Sullivan v. Meade Independent School District, No. 101,[47] an elementary school teacher in a very rural setting was dismissed for living with a man to whom she was not married. Sullivan lived in a mobile home in close proximity to the school. When confronted with the issue and given the opportunity to cease the living arrangement, she refused. While her conduct was considered by many local residents to be immoral, the school board said that as long as she resided with the man, without being married, she was not competent to teach at the school.

By upholding the dismissal, the courts emphasized the age of the students with whom she taught and the fact that the younger the children are, the more likely they will be adversely affected, since younger children rely more upon the teacher as a parent and model than older ones do.

Charges of immorality have also been upheld for non sex-offenses such as the use of cocaine, marijuana, and other controlled substances.[48]

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[46] Drake v. Covington County Board of Education, 371 F. Supp. 974 (Ala. 1974).

[47] Sullivan v. Meade Independent School District No. 101, 530 F.2d 799 (8th Cir. 1976).

[48] Dominy v. Mays, et. al., 257 S.E.2d 317 (Ga. 1979).

Evidence of immorality may be inferred, even in the absence of criminal purpose or intent.[49]

Thus, it would appear that, despite changing moral attitudes, most communities and their school boards expect and demand that teachers observe historically approved standards of conduct and that the private lives of teachers remain private and not become public knowledge for all to judge. However, behavior which lacks a total "concern for privacy, decorum or preservation of the teacher's dignity and reputation" will not be supported by the courts.[50]

Dismissal may be justified if the conduct directly affects the teacher's classroom performance, or if the conduct has become the subject of such notoriety, without contribution on the part of school officials, as to significantly and reasonably impair the teacher's capability and credibility.[51]

Noncompliance with School Laws and Regulations. This reason for dismissal would most likely be interpreted as insubordination, which is cause for dismissal in many states. Insubordination has been defined as "the willful refusal of a teacher or employee to obey the reasonable rules and regulations of his or her employing board of

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[49] Dominy v. Mays, et. al., 257 S.E.2d 317 (Ga. 1979).

[50] Pettit v. State Board of Education, 109 Cal. Rptr. 665 (Cal. 1973).

[51] Golden v. Board of Education of Harrison County, 285 S.E.2d 665, 669 (W. Va. 1981).

education."[52] As an agent of the school board, certainly the principal has the right to establish reasonable rules and regulations for the efficient operation of the school(s) under his or her charge, so long as such rules and regulations are not in conflict with board policies, state or federal statutes, or constitutional protections.

It is only reasonable that the teacher be given adequate notice of the rules and regulations. Such notice should be written, though it may also be conveyed verbally. Teachers may be found guilty of insubordination for not allowing supervisory personnel to enter their rooms, for failing to complete forms and reports on time, and for refusing to carry out a direct and lawful order of the principal.[53] Excessive absences from teaching may be considered insubordination if the absences are of an unreasonable nature or are in direct violation of board policy or are taken after the request to be absent was specifically disapproved by school authorities.[54] Insubordination may also involve the following types of cases, some of which are described in detail later in this chapter: failure to comply with residency requirements, professional growth requirements, or dress code requirements; abuse of academic freedom; misuse of corporal punishment; participation in teacher protests regarding individual rights versus school system rights or in employee-employer conflicts.

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[52] State v. Board of Education of Fairfield, 252 Ala. 254, 40 So.2d 689 (Ala. 1949).

[53] Gilbertson v. McAlister, 383 F. Supp. 1107 (Conn. 1974).

[54] Fernald v. City of Ellsworth Superintending School Committee, 342 A.2d 704 (Me. 1975).

Physical and mental illness. Dismissal for physical illness has not been a source of extensive litigation, for almost all school systems now participate in some type of sick leave plan, and most boards respond leniently to a crisis involving illness. However, in earlier cases the courts sometimes upheld dismissal for reasons of physical illness.[55] The most controversial issue related to "physical disability" is the question of dismissal due to pregnancy and maternity leave. In 1974 the United States Supreme Court in Cleveland v. LaFleur and Cohen v. Chesterfield County[56] declared the requirement that teachers terminate their employment after a specified period of pregnancy, usually three to five months, to be invalid. In 1976 the Supreme Court held in General Electric v. Gilbert[57] that

> The exclusion of pregnancy-related disabilities from the company's disability plan did not constitute sex discrimination in violation of Title VII since (a) the exclusion of pregnancy was not in itself a gender-based discrimination, but instead merely removed one physical condition from coverage; (b) there was no showing that the exclusion was a mere pretext designed to effect invidious discrimination against women; and (c) there was no showing of gender-based discriminatory effects resulting from pregnancy exclusion.

But in 1977 the same court, in the case of Nashville Gas v. Satty,[58]

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[55] Riggins v. Board of Education, 300 P.2d 848 (Cal. 1956).

[56] Cleveland Board of Education v. LaFleur, 94 S. Ct. 791 and Cohen v. Chesterfield County School Board, 94 S. Ct. 791 (1974).

[57] General Electric Company v. Gilbert, 429 U.S. 125, 97 S. Ct. 401, 50 L.Ed.2d 343 (1976).

[58] Nashville Gas v. Satty, 434 U.S. 136, 98 S. Ct. 347, 54 L.Ed.2d 356 (1977).

ruled that the policy of requiring a leave of absence for pregnant employees rather than allowing them to take sick leave and the resultant loss of their accumulated job seniority violated Title VII of the Civil Rights Act of 1964. It also said that although Title VII does not require that greater economic benefits be made available to one sex or the other because of their different roles, the Act does not permit an employer to deprive female employees of employment opportunities because of those different roles.

Because of the uncertainty of exactly how pregnancy-related disabilities are to be treated, Congress passed The Pregnancy Discrimination Act, P. L. 95-555 in October, 1978, as an amendment to Title VII of the Civil Rights Act of 1964. The Act makes clear that discrimination on the basis of pregnancy, childbirth, or related medical conditions constitutes unlawful sex discrimination. The basic principle of the Act is that women affected by pregnancy and related conditions must be treated the same as other applicants and employees on the basis of their ability or inability to work. A woman is therefore protected against being fired or being refused a job or promotion merely because she is pregnant or has had an abortion. She usually cannot be forced to go on leave as long as she can still work. If other employees who take disability leave are entitled to get their jobs back when they are able to resume work, so are women who have been unable to work because of pregnancy. The same principle applies to the areas of fringe benefits, such as disability benefits, sick leave, and health insurance.[59]

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[59] Federal Register, 44:78, April 20, 1979.

The best policy therefore is for the employer and employee to establish a mutually agreed upon time for a leave of absence; however, the employer cannot dictate the terms of such, unless it can clearly be shown that the employee cannot fulfill the normal requirements of the job.

Dismissal due to mental illness or disorder has recently required the attention of the courts. A New York teacher who became a drug user because of a psychological problem was legally dismissed on the basis of mental and physical unfitness,[60] and the revocation of a California teacher's certificate was upheld when it was shown by psychiatric testing that the teacher was unfit.[61] In Newman v. Board of Education of City School District of New York,[62] it was found that the board need not grant a predismissal hearing to a tenured teacher found mentally unfit to teach. The court said she was not entitled as a matter of due process to an adversarial hearing before being placed on leave of absence for mental unfitness; the risk of harm that might occur if a teacher believed to be mentally unfit were permitted to continue teaching was considered too great to insist on retention while the issue of mental unfitness was being resolved. This situation is one where the teacher's due process interest should be satisfied through post-suspension procedures. But, the court ruled, the teacher is

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[60] Anonymous v. Board of Examiners, 318 N.Y.S. 2d 163 (N.Y. 1973).

[61] Alford v. Department of Education, 91 Cal. Rptr. 843 (Cal. 1971).

[62] Newman v. Board of Education of City School District of New York, 594 F.2d 299 (2nd Cir., 1979).

entitled to access to the evidence used against him or her, which in this case, had not occurred.

Teachers dismissed for alleged mental disorder and thus deprived of reputation and good name are entitled to a due process hearing with full opportunity to rebut the charges, if they so desire. This is true whether or not a teacher has acquired tenure.[63]

Although many teachers are citing "burnout" as a reason for leaving the profession and although there is no doubt that teaching is a stressful occupation, apparently burnout has not yet become a recognized cause for dismissal. The symptoms of burnout are more likely to be categorized under another heading, such as insubordination, incompetence, or other good and just cause.

Conviction of a felony or a crime of moral turpitude. Many state statutes list "conviction of a felony or a crime of moral turpitude" as a reason for dismissal. According to Robert Phay, this phrase actually contains two independent dismissal reasons that should be considered separately.[64]

1. Felonies. Conviction of a felony is usually interpreted to mean any felony conviction. Felonies are major crimes which are punishable by one or more years of imprisonment or death. Examples of such crimes include murder, rape, abduction, extortion, grand

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[63] Lombard v. Board of Education of City of New York, 502 F.2d 631 (2nd Cir., 1974).

[64] Robert E. Phay, Chapter VII. Employees. Institute of Government of North Carolina, 1977, p. 24.

larceny (over $200), breaking and entering, arson, forgery, and embezzlement.

A teacher who is convicted of a felony may choose to resign from the teaching position rather than fight a dismissal proceeding. However, merely being arrested is not a basis for dismissal, nor is conviction in all states. In some states, the guilty conduct must show potential harm to pupils and/or to the school system. If not, the dismissal may be reversed.

This principle of relating the conduct in question to the teacher's performance in the classroom was discussed in a recent Washington state case which involved dismissal due to grand larceny.[65]

In this case, a teacher was dismissed for being convicted of having purchased a stolen motorcycle. The lower court held that the conviction was harmful to the teacher-student relationship and therefore harmful to the district. However, the Court of Appeals reversed the decision and when appealed to the Supreme Court of Washington, they affirmed the Court of Appeals reversal. The higher courts concluded that a material fact issue existed as to whether this teacher's conduct affected his fitness to teach. Simply labeling a teacher as a convicted felon will not justify a discharge. The case was remanded for an evidentiary hearing as to the teacher's competency to teach.

A teacher who is tried on a felony charge and found not guilty may still be dismissed on other grounds by the school board, which can

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[65] Hoagland v. Mt. Vernon School District No. 320, 597 P.2d 1376 (Wash. 1979) remanded. 623 P.2d 1156 (Wash. 1979) appeal of remand.

conduct its own hearings on the affects of the criminal charges. Again, the board has the authority and duty to determine the deleterious effects of such charges on the system and the pupils. If such effects can be shown, the dismissal will be upheld.[66]

2. Crimes involving moral turpitude. The term "moral turpitude" has no clear definition. It refers to the moral standards of conduct which have been established by society, but these standards are constantly changing and vary from community to community. Conduct which is considered to be obscene or moral turpitude in Harrisonburg, Virginia may be acceptable conduct in Washington, D.C. There is no agreement nationally as to what crimes or conduct constitutes moral turpitude. Courts usually have to look at each case individually and the unique circumstances surrounding such. Phay indicates that such crimes as fraud, bribery, forgery, embezzlement, larceny, perjury, armed robbery, tax offenses, child-beating and rape are often held to involve moral turpitude. Phay also reports that if a school board judges that a crime involves moral turpitude, the courts will usually support the board's decision.[67]

Other good and just cause. This is a catchall category that combines all other reasons for dismissal not specifically enumerated by statute. Many of the reasons which are classified under this heading could also be labeled counter-productive conduct.

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[66] Moore v. Knowles, 466 F.2d 531 (5th Cir. 1972).

[67] Phay, op. cit., pp. 25-26.

Counter-productive conduct is usually based upon a single incident of a serious nature; it does not require the time for remediation that was discussed under incompetence. Such conduct could also be classified as insubordination in some instances.[68]

Insubordination has been defined as--"wilful disregard of express or implied directions or such a defiant attitude as to be the equivalent thereto."[69]

Disruptive Activities--While the courts protect a teacher's rights to demonstrate peacefully, petition for rights, and wear armbands and insignia which do not cause disruption, teachers are not protected when they incite students to cause disruption or when they cause disruption themselves.[70] Such disruptions are usually associated with personnel issues, which may cause teachers to strike, where permitted, or to engage in other forms of retaliatory actions such as walkouts, slowdowns, or working to contract. If teachers violate a court injunction ordering them back to work, they or their union may be held in contempt of court and fined accordingly. The ultimate penalty of dismissal or nonrenewal of contract may be imposed by some states and

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[68] Howell v. Alabama State Tenure Commission, 402 So.2d 1041 (Ala. 1981).

[69] Howell citing Ellenburg v. Hartselle City Board of Education, 349 So.2d 605 (Ala. 1977).

[70] Vanderzanden v. Lowell School District No. 71, 369 F.Supp. 67 (Ore. 1973) and Birdwell v. Hazelwood School District, 491 F.2d 490 (8th Cir., 1974).

has been upheld by the courts.[71]

Offensive Language--Teachers do not have absolute freedom to use whatever form of speech they wish. Language which some may consider to be offensive will always be balanced against the necessity of its use, as well as the rational relationship such language has to the subject content, the age of students, and the efficiency of the school operation. In some situations the courts have upheld a teacher's freedom to use language which many would consider to be offensive. For example, an Ohio teacher was dismissed for writing obscene letters to a student who had graduated the previous year. The boy's mother found the letters and turned them over to the police; the press later learned about them and ran stories about them. The court ruled in the teacher's favor and reversed the dismissal, saying that while some people might find the letters to be vulgar and offensive, an eighteen-year-old male would find them to be unsurprising and fairly routine. In any case, it was not the teacher who made the letters public; therefore, the teacher was not held responsible for the action of others.[72]

Personal Appearance--The problem of teacher appearance is not the issue today that it was in the late sixties and early seventies. The public seems to be generally more tolerant of differing life and dress styles. However, courts have held that both the dress and the personal

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[71] Dause v. Bates, 502 F.2d 865 (6th Cir. 1974) and Hortonville School District v. Hortonville Education Association, 426 U.S. 482, 96 S.Ct. 2308, 49 L.Ed.2d 1 (1976).

[72] Jarvella v. Willoughly East Lake School District, 233 N.E.2d 143 (Oh. 1967).

appearance of teachers may be regulated by the administration since they do have an effect on both student dress and the educational process.

Teachers may be dismissed for refusing to shave, if that refusal violates the school code. In Ball v. Board of Trustees of the Kerrville Independent School District,[73] a teacher was dismissed during his contract term for refusing to shave his Van Dyke beard. He appealed successfully to his State Board of Education, but the school board then appealed the State Board decision to the District Court of Kerrville County. When the school board filed their appeal, Ball filed a federal lawsuit against the school board claiming a liberty and equal protection violation. As relief, he sought monetary damages and reinstatement to his position. The District Court dismissed and directed Ball to seek relief in the state proceeding but left open the option to return to federal court. The Fifth Circuit Court of Appeals affirmed the dismissal and the Supreme Court refused to hear the case.

Ball returned to the state court and was successful in getting monetary damage equal to his full salary for the year, but he did not press his claim for reinstatement. Because of this, the Federal District Court determined that he did not litigate his claim in good faith and they declined to reinstate federal jurisdiction on his claim by dismissing the charge. Ball appealed the District Court's dismissal,

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[73] Ball v. Board of Trustees of the Kerrville Independent School District, 584 F.2d 684 (5th Cir. 1978), rehearing denied en banc 588 F.2d 828 (1978).

but the Court of Appeals affirmed the lower court, saying that he had failed to raise a substantial federal question. A due process claim for violation of a liberty interest entitling Ball to a full hearing would arise only if the reason for dismissal resulted in a "badge of infamy," public scorn, or the like. In this case, it did not. Since the state administrative procedures resulted in Ball being paid his salary in full for the term of his contract, no further redress was necessary.[74]

Even the United States Supreme Court has commented on the extent to which a person has a constitutionally cognizable liberty interest in his personal appearance. For instance, the court has ruled that a hair code for policemen is not unconstitutional since the regulations are reasonable and are related to job safety and performance.[75]

Courts have also upheld dress codes for teachers. In the case of East Hartford Education Association v. Board of Education of East Hartford, the Second Circuit held that a dress code requiring that a necktie be worn by a male teacher did not infringe on his First Amendment right to free expression. The court said that a dress code is a rational means of promoting respect for authority and traditional values and discipline in the classroom.[76] This decision followed by

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[74] Ibid.

[75] Kelley v. Johnson, 425 U.S. 238, 96 S.Ct. 1440, 47 L.Ed.2d 708 (1976).

[76] East Hartford Education Association v. Board of Education of the Town of East Hartford, 405 F.Supp. 94 (Conn. 1975). Affirmed 562 F.2d 838 (2nd Cir. 1977).

one year an earlier ruling in the Seventh Circuit in which that court said:

> If a school board should correctly conclude that a teacher's style of dress or plumage has an adverse impact on the educational process, and if that conclusion conflicts with the teacher's interest in selecting his own life style, we have no doubt that the interest of the teacher is subordinate to the public interest. Even if the assumption of the board is incorrect, the importance of allowing boards the latitude to discharge their duties effectively, even to make mistakes from time to time, outweighs the individual interest at stake.[77]

Neglect of duty--Neglect of duty, either purposeful or inadvertent, is an adequate cause for dismissal. However, like incompetence, the term neglect of duty is often hard to define specifically or to prove. Neglect may result from holding a second job, being willfully absent from the job, or violating sick leave policies.[78] However, neglect of duty is usually interwoven with other causes for dismissal which may be more specific in nature and thereby stated as the specific cause, according to the prevailing state statute.

Neglect of duty may also result from refusing to adhere to the prescribed curriculum concerning such patriotic matters as participation in the pledge of allegiance, singing of patriotic songs, or celebration of certain national holidays that conflict with one's religion. In Palmer v. Board of Education of the City of Chicago,[79] the dismissal of a kindergarten teacher was upheld because she refused

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[77] Miller v. School District No. 167, 495 F.2d 658 (7th Cir., 1974).

[78] Peterson, op. cit., p. 459.

[79] Palmer v. Board of Education of the City of Chicago, 603 F.2d 1271 (7th Cir. 1979). Cert. denied 100 S.Ct. 689 (1980).

to teach the prescribed curriculum. The court said that by refusing to teach the prescribed curriculum, she was denying her students an elementary knowledge and appreciation of their national heritage. "There is a compelling state interest in the choice and adherence to a suitable curriculum for the benefit of young citizens and society. It cannot be left to individual teachers to teach what they please." The United States Supreme Court in Beilan aptly described a teacher's role. They said "a teacher works in a sensitive area in the schoolroom. There he shapes the attitude of young minds towards the society in which they live. In this, the state has a vital concern. It must preserve the integrity of the schools."[80]

The dismissal of a South Dakota biology teacher was upheld when it was determined that the teacher spent more than the agreed upon time of up to one week teaching creationism and failed to cover basic biology principles. The school board had not forbid the teacher from discussing creationism, it only asked him to limit the time he spent on this material. When it was found that the teacher was not following the agreement, he was dismissed and the court found the dismissal to be justified.[81]

Neglect of duty may also be charged when a person takes unauthorized leave for the observance of religious holidays. The school board must make a "reasonable accommodation" for a teacher's religious

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[80] Beilan v. Board of Public Education of School District of Philadelphia, 357 U.S. 399, 2 L.Ed.2d 1414, 1419, 78 S.Ct. 1317 (1958).

[81] Dale v. Board of Education, Lemmon Independent School District, 316 N.W.2d 108 (S.D. 1982).

beliefs; however, if that accommodation becomes unreasonable and an undue hardship is created upon the conduct of the school's operation, such absences will not be upheld.[82]

Other reasons for dismissal--Dismissals of teachers have also been upheld for reasons such as drug use,[83] unprofessional conduct,[84] and shoplifting.[85] In these cases, it was usually shown that such conduct had an adverse effect on the school system and the pupils whom the teacher worked. Had this effect not been shown, the dismissal might have been reversed.

Teacher Dismissal Procedure

The procedure to be followed when a tenured teacher is dismissed or placed on probation is dictated by statute and must be followed to the letter of the law. If not, it is likely that the courts will rule that the discharged employee's rights have been violated, and the dismissal will be overturned.[86]

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[82] Edwards v. School Board of the City of Norton, Va., 483 F.Supp. 620 (Va. 1980).

[83] Chicago Board of Education v. Payne, 430 N.E.2d 310 (Ill. 1981).

[84] Gatewood v. Little Rock Public Schools, 616 S.W.2d 784 (Ark. 1981).

[85] Caravello v. Board of Education, 369 N.Y.S.2d 829 (N.Y. 1975).

[86] See Trimboli v. Board of Education of Wayne County, 280 S.E.2d 686 (W. Va. 1981); Massoud v. Board of Education of Valley View Community District No. 365, 422 N.E.2d 236 (Ill. 1981); Powers v. Currituck County Board of Education, 279 S.E.2d 8 (N. C. 1981); and State ex. rel. Head v. Board of Education of Thornton Fractional Township South High School District No. 215, 419 N.E.2d 505 (Ill. 1981).

The Virginia statute requires that once the division superintendent has determined to recommend dismissal or probation, written notice must be sent to the teacher informing him or her that within fifteen days after receiving the notice, the teacher may request a hearing before the school board or before a fact-finding panel. The notice should be hand-delivered or delivered by certified mail to insure proper receipt. The teacher may request that the superintendent provide the reasons for the recommendation, either in writing or through a personal interview.[87] If such reasons are requested, the superintendent should carefully avoid "suspect" words or explanations which could lead to a claim of constitutional violation. Such "suspect" words might include single, male, handicapping, age, and race.

The hearing before the school board must be held within thirty days of the request made by the teacher, and the teacher must be given at least fifteen days notice of the time and place. The hearing must take place in executive session unless the teacher requests that it be held in open session, which is open to both the public and the press.[88]

At the hearing all of the elements of due process outlined in Chapter Two must be allowed. These include the right to have one's attorney present, the right to be present oneself and to be heard, the right for the board to act as an impartial tribunal, the right to present testimony of witnesses and to cross-examine witnesses, the

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[87] Code of Virginia, Section 22.1-309.

[88] Code of Virginia, Section 22.1-311.

right to examine the evidence to be used at the hearing, and the right to have the tribunal make written findings based upon substantial evidence.[89]

The teacher may request that a hearing before a fact-finding panel occur before the school board takes any action. If so, the teacher and the superintendent each selects a member of the panel from among the other employees of the school division. The two selected panel members then must choose a third member. If they cannot agree on their choice of a third member, they shall request that the chief judge of the circuit court provide them with a list of five qualified and impartial fact finders, one of whom shall become the third member and chairman of the panel.[90]

The panel must set the time of the hearing within thirty days and must notify both the teacher and superintendent so that they may be present, either with or without counsel. The teacher may request a private hearing. If not, the panel will determine attendance; it may not allow those to be present who do not have a direct bearing on the case. Again, the elements of due process must be recognized at the hearing, allowing complete testimony and cross-examination of witnesses. The panel has thirty days from the completion of its hearing to present a written report of its findings and recommendations to the school board. Such recommendations must be based exclusively upon the evidence presented to the panel at the hearing. A copy also must be

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[89] Thomas v. Ward, 374 F.Supp. 206 (N. C. 1974).

[90] Code of Virginia, Section 22.1-312.

sent to the teacher and the superintendent.[91]

The recommendations of the fact-finding panel are advisory in nature only. Nothing in its report is binding upon the school board, which must render the final decision. A hearing before the school board may be held after the fact-finding panel has rendered its recommendations if so requested by either the school board or the teacher within ten days after receiving the fact-finding panel's recommendation. The school board's decision must be conveyed to the teacher within thirty days after the final hearing and requires a majority vote of the quorum of the school board. Such decision must be in written form and should be personally conveyed, if possible, to the teacher.[92] (See Appendix F.)

Grievances

Almost all states provide a grievance procedure for the orderly resolution of disputes concerning the application, interpretation, or violation of local school board policies, rules, and regulations as they affect the teachers of that school division. The Virginia Board of Education adopted a revised grievance procedure, minus the binding arbitration clause, in June, 1979, and minor wording changes were made by the 1981 General Assembly. Some members of the General Assembly view an effective grievance procedure as a deterrent to collective bargaining for public employees.

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[91] Ibid.

[92] Code of Virginia, Section 22.1-313.

The grievance procedure consists of two parts. According to Part A, one can object to the application, interpretation, or violation of any of the provisions of local school board policies, rules, and regulations as they affect the work of teachers, other than dismissals or probation. Part B covers the procedure for resolving disputes involving dismissal or the placement on probation of any teacher as outlined in the Virginia Code, Sections 22.1-309 to 22.1-313, as previously discussed under teacher dismissal procedure.

Part A emphasizes that an equitable solution should be secured at the most immediate administrative level, which is usually the building principal level. However, the procedure does not limit the teacher's right to discuss the concern at any level, nor does the procedure limit a school board's exclusive right of final authority over the management and operation of the school division. Part A is applicable to all employees of the school division involved in classroom instruction and all other full-time employees of the school division EXCEPT supervisory employees who have the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline, direct, or adjust the grievance of any other employee. Thus, the principal is excluded from utilizing this procedure.

> The term "grievance" means a complaint or a dispute by a teacher relating to his employment including but not limited to a) the application of 1) personnel policies, 2) procedures, 3) rules and regulations, 4) ordinances, and 5) statutes; b) acts of reprisal as a result of utilization of the grievance procedure; and c) complaints of discrimination on the basis of race, color, creed, political affiliation, handicap, age, national origin, or sex. In Part A, the term "grievance" shall <u>not</u> include a complaint or dispute by a teacher relating to a) establishment or revision of wages and salaries, position

> classifications or general benefits; b) suspension of a teacher; c) non-renewal of the contract of a teacher who has not achieved continuing contract status; d) the establishment or contents of ordinances, statutes, or personnel policies, written procedures, rules and regulations; e) failure to promote except where the teacher can show established promotional policies or procedures were not followed or applied fairly; f) discharge, layoff or suspension from duties because of 1) decrease in enrollment, 2) decrease in enrollment in a particular subject, 3) abolition of a particular subject, 4) insufficient funding; g) hiring, transfer, assignment and retention of teachers within the school division; h) suspension from duties in emergencies or; i) the methods, means, and personnel by which the school division's operations are to be carried on. While these management rights are reserved to the school board, failure to apply, where applicable, these rules and regulations, policies or procedures as written or established by the school board is grievable.[93]

The grievance must be raised within fifteen working days either after the event occurred or after the teacher knew or reasonably should have known of its occurrence. The first step is the Informal Step. At this step, the teacher meets with his immediate supervisor, who may be the principal, to state the nature of the grievance, and the immediate supervisor attempts to adjust the grievance. It is mandatory that the informal step be taken prior to proceeding to Step 2, Principal. If the grievance is not solved at the Informal level, it must be committed to writing on the prescribed forms used in the school division and must specify the relief expected through the use of the grievance procedure. Regardless of the outcome of Step 1, if a written grievance is not filed within fifteen days, the grievance will be barred.[94]

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[93] Code of Virginia, Section 22.1-306.

[94] S. John Davis, State Superintendent's Memo No. 120 to Division Superintendents, September 4, 1981, p. 4.

The principal and/or the principal's designee must meet with the teacher and/or the teacher's designee within five working days after receipt of the written grievance. At such meeting, the teacher may present witnesses and be accompanied by a representative other than an attorney. The principal must respond in writing within five working days following such meeting. If the principal requests more specific information regarding the grievance, the teacher must respond within ten working days, and the meeting must be held within five days thereafter.[95]

If the grievance is not settled at the Principal level, the following steps can be utilized:

Step 3 - Superintendent

Step 4 - Fact-Finding Panel

Step 5 - Decision by the School Board

Appeal through court action

In Part B the procedure, since it involves dismissal or probation, begins at the Superintendent level and may proceed to the Fact-Finding Panel and to a hearing before the school board. Expressed time restrictions must be adhered to, or the grievance is automatically dropped or moved to the next higher level, depending upon which party did not meet the time deadline. The procedure is also explicit in regard to selection of fact-finding members, payment of expenses incurred, hearing procedures, and the final decision of the school board, should

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[95] Ibid.

the grievance proceed through all the steps outlined.[96]

Either the superintendent or the teacher may request that the school board determine whether the issue in question is indeed grievable. This request shall be made, if desired, before any grievance is put in written form and prior to any board or panel hearing. If the school board fails to determine the grievability of an issue within the prescribed ten-day period, the matter can proceed as if the issue were grievable. School board decisions on the grievability of a matter may be appealed to the local circuit court having jurisdiction over the school division and to the Virginia Supreme Court. The courts may affirm, reverse, or modify the decision of the school board.[97]

An example of such court action took place recently in Rockingham County, Virginia whereby two former head coaches were grieving their non-appointment to head coaching positions at a newly consolidated high school.[98]

In accordance with the grievance procedure, the principal provided both teachers a written response to their grievance. He stated that the grievants were addressing a recommendation which was not grievable. The grievants appealed the principal's decision to the superintendent, who subsequently supported the principal's decision. Shortly

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[96] Davis, op. cit., pp. 14-21.

[97] Code of Virginia, Section 22.1-314.

[98] Susan Martindale and Randall Snow v. Rockingham County School Board, unpublished opinion Circuit Court of Rockingham County, October 21, 1980.

thereafter, the grievants requested a hearing by a fact-finding panel. The school board declined their request because the complaints concerned transfer of teachers within the school division, an issue explicitly excluded from the definition of grievance contained in the Virginia Code. The grievants then appealed to the Circuit Court of Rockingham County. The Circuit Court found that the record before it was insufficient to resolve the question of grievability, and with the consent of both parties, granted leave to the school board to supplement the record. The board supplemented the record, but the grievants did not, nor did they rebut the school board's supplement.

After considering the evidence and arguments, the court held that the complaints were not grievable. An appeal was filed by the grievants to the Virginia Supreme Court, but finding no reversible error in the Circuit Court's opinion, the Supreme Court refused the petition for appeal.[99]

Suspensions

According to the Code of Virginia, "a teacher may be suspended for good and just cause when the safety or welfare of the school division or the students therein is threatened or when the teacher has been charged by summons, warrant, indictment or information with the committing of a felony or a crime of moral turpitude." If teachers are suspended for a period of five to sixty calendar days by the superintendent or appropriate central office designee, they must be advised

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[99] Martindale, et. al., v. Rockingham County School Board. Record No. 810095 in the Supreme Court of Virginia, June 1, 1981.

in writing of the reasons for such suspension and given the right to a hearing before the school board with due process rights. During the suspension the teacher continues to receive his or her salary unless the school board determines otherwise after the hearing. If charged with a felony or a crime of moral turpitude, the teacher may be suspended with or without pay. If without, the pay normally received will be placed in an interest-bearing demand escrow account. If the teacher is found not guilty, the unpaid salary and interest will be paid to the teacher; however, no such payment may exceed one year's salary. If the teacher is found guilty, all funds in the escrow account are repaid to the school board. During suspension, a teacher may not have insurance benefits suspended or terminated.[100] Teachers may not be suspended for a period in excess of 60 days, even in a criminal situation, except where a teacher agrees to a longer suspension when grounds for dismissal exist or where a long suspension is imposed in lieu of dismissal.[101]

Collective Bargaining and Working to Contract

Collective bargaining for public school employees is not permitted within the Commonwealth of Virginia. In the Arlington[102] case previously discussed, the Virginia Supreme Court ruled that local school

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[100] Code of Virginia, Section 22.1-315.

[101] Opinion of Virginia Attorney General to Honorable George H. Heilig, Jr., Member, House of Delegates, Nov. 27, 1978.

[102] Commonwealth v. County Board of Arlington County, 217 Va. 558, 232 S.E.2d 30 (Va. 1977).

boards could exercise the powers expressed by state statutes or those which were implied or deemed absolutely necessary to run the schools. However, since collective negotiation is neither expressed, implied, or considered necessary, a school board cannot enter into a negotiated agreement, even if it wants to.

As an option to strikes, which most likely would occur if collective bargaining were allowed, many teacher education associations advocate the use of other types of "media events" to publicize their positions on issues such as salaries, budget cuts, and other similar restrictions. One of the most popular and advocated job actions is "work to rule" or "work to contract." When teachers work to contract, they do what is expressly required in their contracts and no more. Teachers arrive at the very minute their contracts dictate, usually in a group, and leave the premises at exactly the time stated. They fulfill the obligations of their contracts, but do not take work home, do not sponsor extracurricular activities which are not a part of their contracts, and perform only those tasks specifically ordered by the principal or administration. Although they are careful to avoid being insubordinate, they require that the administration expressly order the completion of all of the little duties that teachers normally perform to ensure efficient operation of the school.

The role of the principal as the middle manager becomes quite difficult in a work-to-contract situation. The principal is expected to administer and support board policies, rules, and regulations, although he or she often had no voice in their formulation. Furthermore, the principal is expected to be totally loyal to the

administration, even though his or her sympathy and concern may often rest with the teachers with whom the principal works on a day-to-day basis. The central office administration are generally far enough removed from the school building level that much of the displeasure and emotional frustration that occurs during such job actions never reaches them. Instead, it may be directed at the principal, who must remain calm and supportive of both sides.

When school budgets are reduced to minimal levels and when teachers are granted only small salary increases in times of continued inflation, it is little wonder that such job actions are being considered by teacher associations across the state. However, the principal can and must take an active role in convincing the school staff of the validity of the administrative position; he or she must be willing to strive continually to better the school in any way possible. Anything less, and the principal will be viewed with distrust and disrespect by both the administration and his or her own school staff.

Privacy of Records

It is most important that a principal have a clear understanding of the materials which should be contained in an employee's personnel file and the rights of both the principal and the employee if the contents of such a file are challenged. The prevailing statute in Virginia which outlines the safeguards and procedures which must be observed in the maintenance and dissemination of a public employee's record is the Privacy Protection Act of 1976, which is found in

sections 2.1-377 through 2.1-386 of the Virginia Code. The Act seeks to ensure that record-keeping adhere to the following principles:

1. There should be no personal information system whose existence is secret.

2. Information should not be collected unless the need for it has been clearly established in advance.

3. Information should be appropriate and relevant to the purpose for which it has been collected.

4. Information should not be obtained by fraudulent or unfair means.

5. Information should not be used unless it is accurate and current.

6. There should be a prescribed procedure for an individual to learn the purpose for which the information has been recorded and particulars about its use and dissemination.

7. There should be a clearly prescribed and uncomplicated procedure for an individual to collect, erase, or amend inaccurate, obsolete, or irrelevant information.

8. Any agency holding personal information should assure its reliability and take precautions to prevent its misuse.

9. There should be a clearly prescribed procedure to prevent personal information collected for one purpose from being used for another purpose.

10. The Commonwealth or any agency should not collect personal information except as explicitly or implicitly authorized by law.[103]

Teachers and other employees often fear that their employee files may contain material which they have not seen, material which could be considered derogatory or detrimental to continued or future employment, or material in which only one side of the situation is presented. This

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[103] Code of Virginia, Section 2.1-378.

is especially true of teachers, who may fear that the principal is building a case for dismissal. All formal evaluations, which the employee should have signed, acknowledging receipt of a copy, should be placed in the personnel file, but any raw data--notes or observations that the principal uses to help recall certain details--should remain a part of the principal's private file unless written into the evaluation. However, such data cannot be later used in its raw form as cause for dismissal if the employee has no knowledge of its existence. In addition, the law makes it quite clear that no information regarding the political or religious beliefs, affiliations, and activities of the employee should be maintained, used, or disseminated unless authorized explicitly by statute or ordinance, and that records must be maintained regarding who has access to the file and to whom such information has been sent.

If an employee desires to see his or her personnel file, the principal or appropriate official shall make the file available during normal working hours. However, the principal does not have to make it available at the very moment it is requested. A conference can be arranged at a mutually convenient time for both the employee and the principal to review the file page by page. If the employee wishes to challenge, correct, or explain further any information which is contained in the file, the following procedure is required:

1. The agency shall investigate and record the current status of the personal information.

2. If after the investigation, such information is found to be incomplete, inaccurate, not pertinent, not timely nor necessary to be retained, it shall be promptly corrected or purged from the file.

3. If the investigation does not solve the dispute, the employee may file a statement of not more than two hundred words setting forth his position, which shall be furnished to any previous recipient of information from the file, and any future recipient.

4. If any item in the file is corrected or purged, past recipients of such information shall be notified that the item has been corrected or purged.[104]

If an employee feels that his or her rights have been violated under the Privacy Protection Act, the employee may institute a proceeding for injunction or mandamus against the person or agency involved. The proceeding shall be filed in the circuit court of the city or county in which the defendant resides or has a place of business. If the employee's claims are supported by the court, "the person or agency enjoined or made subject to a writ of mandamus shall be liable for the costs of such action together with reasonable attorney's fees as determined by the court."[105]

Summary

The principal's role as a personnel manager is given high priority in both the Virginia Code and in the Standards of Quality for Public Schools in Virginia. Although many of the functions in the personnel process, such as hiring, dismissal, nonrenewal, and suspension, are reserved to the local school board, the principal is usually the manager who must make recommendations to the superintendent regarding such personnel actions. However, as an agent of the school board, the

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[104] Code of Virginia, Section 2.1-382.

[105] Code of Virginia, Section 2.1-386.

principal may exercise only that authority mandated either by statute or school board policy.

Teachers are initailly assigned to their respective schools by the school board, but the board may give the superintendent the authority to reassign teachers to other schools during a given year. Such a reassignment may pose a difficult problem for the receiving principal, especially if the teacher was marginal in performance at another school.

All public school teachers in Virginia are required to complete a probationary term of three years before acquiring continuing contract status. During the period of probation, a teacher may be nonrenewed for any reason or for no reason, except that the nonrenewal cannot be retribution for the exercise of one's constitutionally protected rights. The procedure which must be followed in a nonrenewal proceeding is found in the Virginia Code. However, the procedure does not require that any cause be shown for such nonrenewal action.

In order to support some reason for nonrenewal or dismissal, the principal must have an effective program of personnel evaluation. Such evaluation should be a cooperatively developed procedure for the purpose of improving the instructional program. If evaluation is given high priority by the principal, the results will become evident, and the process should not seem quite so threatening to the staff. This commitment will also have to be supported by the school board and the superintendent, and proper training will have to be provided so that principals will know how to evaluate personnel effectively.

If a teacher is recommended for dismissal, the burden of proof

rests with the school board to show cause as to why the person is being dismissed. Teachers may be dismissed only for causes enumerated in their respective state statutes. In Virginia these are "incompetency, immorality, noncompliance with school laws and regulations, disability as shown by competent medical evidence, conviction of a felony or crime of moral turpitude, or other good and just cause." A probationary teacher dismissed <u>during</u> the terms of the contract or a continuing contract teacher dismissed at any time is entitled to the rights of due process since the teacher has a property interest in his or her continued expectation of employment. This does not mean that the teacher cannot be dismissed; it means only that the teacher cannot be dismissed without due process. Due process normally involves a hearing before the school board in which the following components are present: the right to have one's attorney present, the right to be present oneself, the right to be heard so that one's side of the story is presented, the right for the board to act as an impartial tribunal, the right both to present witnesses on one's behalf and to cross-examine witnesses, the right to examine the evidence to be used at the hearing, and the right for the board to make written findings based upon substantial evidence. Teachers may also utilize a fact-finding panel in a dismissal proceeding, but the panel's recommendation is merely advisory in nature to the school board. The board retains final authority in all such matters.

Teachers also have access to a grievance procedure whereby they may grieve the application, interpretation, or violation of a school board policy, rule, or regulation. They cannot grieve the policy,

rule, or regulation itself, just the way it is applied to employees. Principals cannot utilize the procedure themselves; they can only react to a grievance filed against them. If the grievance, which must be filed in writing, usually at the principal's level, cannot be solved by the principal to the satisfaction of the teacher, the teacher is free to pursue it further. Such further steps involve the superintendent level, the fact-finding panel level, the school board level, and appeal through court action.

Because many teachers feel that their voices are not heard in regard to issues affecting their employment, they have advocated collective bargaining or negotiated agreements between school boards and teacher associations. However, the Virginia Supreme Court has denied the right of school boards to bargain collectively with teachers. As a result of the court's denial, many teacher groups now advocate the use of other types of so-called "media events" to publicize their positions on various issues. One such tactic is referred to as "working to rule" or "working to contract." In this type of job action, a teacher does only that which is specified in the contract or that which is expressly ordered by the administration. The teachers arrive at the very minute that is dictated by the contract, leave the very minute stated, take no work home, sponsor no extracurricular activities for which they are not paid or which the contract does not specify, and stop doing many of the little things which help the school operate smoothly. During such actions the role of the principal becomes increasingly difficult, for he is expected to keep peace among his staff and at the same time to support the administrative position

when, in many cases, he did not participate in its formulation.

The principal must be aware that the employee has certain rights to privacy related to information kept on file pertaining to the employee. The Privacy Protection Act of 1976 found in sections 2.1-377 through 2.1-386 of the Virginia Code protects all public employees, including the principal, from having items placed in their records which are secret, unneeded or irrelevant, inaccurate, collected by fraudulent means, or outdated. Such items may be challenged by the employee and, if found to be in violation of the Act, may be purged from the record or rebutted in a statement by the employee. The employee may also seek a proper remedy through the local circuit court if the issue is not settled to his or her satisfaction.

CHAPTER FOUR

Summary, Trends, and Recommendations

Summary

The purposes of this study have been to examine and report the current legal status of the public school principalship in Virginia, to analyze and clarify the law as it relates to the school principal's role as both employee and personnel manager, and to project trends in the handling of the constitutional and statutory issues discussed by the courts applicable to Virginia. With this knowledge, principals should be able to approach their tasks with a greater degree of confidence and legal soundness. To this end, attention has been given to the provisions of both federal and state constitutions and statutes, rules and regulations of the Virginia State Board of Education, rules and regulations of local school boards, and rulings in state and federal courts. On the basis of the above, the following summations may be justified in a consideration of the rights of the public school principal in Virginia.

The Principal as an Employee

1. Public schools were first established in Virginia in 1870.

2. The revised Virginia Constitution first mentions education in its Bill of Rights, but Article VIII clearly delineates its role and function.

3. The General Assembly has plenary power in education and in the establishment of educational policy.

4. The General Assembly is required to provide a system of free public elementary and secondary schools for all children of school age throughout the Commonwealth.

5. The Secretary of Education is a cabinet-level position, responsible to the Governor, but has no direct control over the public schools.

6. The State Board of Education, consisting of nine members, establishes school divisions, develops the Standards of Quality which are subject to revision by the General Assembly, and has primary responsibility for effectuating educational policy.

7. Rules and regulations of the State Board have the force and effect of law.

8. The State Superintendent of Public Instruction is an experienced educator who is appointed by the Governor and confirmed by the General Assembly. The duties of the State Superintendent are regulatory in nature and are prescribed by law.

9. Local school boards are responsible for the operation and control of schools within each school division.

10. Cities and counties in Virginia exist as separate local governmental units, with counties having no jurisdiction over the cities and towns within their boundaries. Thus, separate city and county school divisions exist within the Commonwealth.

11. School board members are appointed by the School Board Selection Commission, the County Board of Supervisors, or city and town councils.

12. A local school board constitutes a corporate body which may contract, be contracted with, sue, be sued, purchase, take, lease, hold, and convey school property. The board can act only as an entire body; individual board members acting as individuals have no authority over the schools.

13. The conflicting opinions of the _Arlington_ and _Parham_ decisions raise some doubt as to whether the powers of the local school board are derived from the Virginia Constitution or from the General Assembly.

14. Each school division has a superintendent appointed by the local school board for a four-year term, with

all terms expiring statewide at the same time. The superintendent is a constitutional officer, and the powers and duties of the superintendent are prescribed by law, by the local school board, and by the State Board of Education.

15. One of the duties of the superintendent is to recommend to the school board the employment, assignment, and renewal of all employees, including principals. If nonrenewal or dismissal is warranted, it must also be so recommended by the superintendent.

16. The position of principal was given legal recognition by the General Assembly in 1973. The powers and duties of the position are defined by law.

17. The criteria for certification of the principal are established by the State Board of Education and are revised periodically.

18. Principals may be reassigned by the superintendent to other buildings within the division, if such authority has been granted the superintendent by the school board.

19. Principals act as agents of the school board, but only within the scope of their authority as defined by law, board policy, or recommendation.

20. Principals are considered "line" positions with definite decision-making responsibility.

21. Principals must serve three years of probation in their positions before acquiring continuing contract status. Once continuing contract status is obtained, a principal can be dismissed only for cause, and due process must be followed. However, the school board can reassign a principal _without_ cause to a teaching position at a teacher's salary.

22. Probationary principals who do not have continuing contract status as teachers may be nonrenewed upon the expiration of the contract without reasons or hearings being granted, unless required by statute. Even if reasons are required, they do not have to be good ones. However, the reasons cannot be retribution for the exercise of one's constitutional rights.

23. Principals may be dismissed for cause, but the burden of proof rests with the school board to determine the employee's unfitness for the position.

24. Reasons for dismissal in Virginia are incompetency, immorality, noncompliance with school laws and regulations, disability as shown by competent medical evidence, conviction of a felony or crime of moral turpitude, or other good and just cause.

25. Principals are entitled to the same constitutional protections as are all other citizens, but such protections are not an absolute guarantee against dismissal. Courts will look closely at the effect of such individual rights upon the school system in general and may decide that the overriding interests of the school system take priority over the rights of the individual involved.

26. Decisions by the school board will not normally be disturbed by the courts unless the school board has acted in bad faith, arbitrarily, capriciously, or in abuse of its discretion, or unless there is no substantial evidence to sustain its action.

27. Dismissal of a principal may involve a liberty or property interest on the part of the principal, and if so, the principal is entitled to the constitutional rights of due process and equal protection as granted under the Fourteenth Amendment to the U. S. Constitution.

28. A dismissed principal may be deprived of a liberty interest if a charge is made against that person which would seriously damage the employee's standing or associations in the community, including instances where the employee's good name, reputation, honor, or integrity is at stake, and/or where a stigma or other disability is attached so that the employee cannot take advantage of other employment opportunities.

29. A property interest may be involved in the principal's dismissal if there is an expectancy of continued employment, if a form of *de facto* tenure has been acquired and policy and guidelines imply the promise of continued employment, or if there is a valid contract for a specified time with the terms of the contract unexpired when termination occurs.

30. When due process rights are implicated and a hearing granted, generally the hearing should have the following components:

    a. Adequate notice;

b. A sufficient specification of the charges;

c. Opportunity to cross-examine witnesses;

d. A list of the names and nature of testimony of witnesses testifying against the accused;

e. An impartial tribunal with sufficient expertise to judge the hearing;

f. The right to have one's attorney present;

g. The right to a decision based upon substantial evidence, and to have written findings.

31. The courts have upheld the principle, that school boards can act as an investigative and adjudicative body without denying due process, unless special facts can be shown that the risk of bias is unreasonable.

32. The Virginia procedure for adjusting grievances applies only to teachers, not principals. Principals may respond only to a grievance initiated by a subordinate. Principals must therefore utilize the "chain of command;" although using such procedure may put their jobs in jeopardy.

The Principal as a Personnel Manager

33. The Virginia Code gives high priority to the principal's function as a personnel manager by expressly saying that the principal may submit recommendations to the division superintendent for the appointment, assignment, promotion, transfer, and dismissal of all personnel assigned to the principal's supervision.

34. Although only the school board can actually employ and initially assign personnel to their respective schools, the superintendent has the authority to assign them to their respective positions within the school.

35. Teachers may be reassigned to another school by the superintendent for a year, provided such reassignment does not affect the teacher's salary for that year. The principal of the receiving school may be consulted regarding the transferee, but it is the superintendent and/or school board who makes the final determination.

36. Teachers must serve a three-year probationary term before acquiring continuing contract status. During this period, it is especially important for the principal to conduct thorough evaluations related to the teacher's performance, for it is easier to recommend nonrenewal than it is to dismiss for cause.

37. The procedure to be followed in the nonrenewal of a probationary teacher is defined by law. Reasons for the nonrenewal may be requested in writing by the teacher, and if any, they must be given orally to the teacher within five days. No cause has to be shown for nonrenewal. The law merely provides a procedure for the teacher to discuss the reason(s) for nonrenewal with either the superintendent or the superintendent's designee.

38. A principal may act as the superintendent's designee for nonrenewal of a teacher at a school under another principal's charge.

39. Teachers, like principals, cannot be nonrenewed for the exercise of their constitutional rights, unless the exercise of such rights clearly overbalances the teacher's usefulness as an instructor.

40. Dismissal of a probationary teacher <u>during</u> the terms of the contract and dismissal of a continuing contract teacher at any time must be for cause as defined in the statutes. Such cause must be supported by substantial evidence, and the recommendation must have a rational basis for its determination and be formulated in good faith.

41. Incompetence is one of the most often cited causes for dismissal. Many times the term <u>incompetence</u> is used interchangeable with immorality, inefficiency, insubordination, poor teaching, lack of discipline, physical incapacity, mental unfitness, emotional instability, and lack of self-control.

42. Courts appear divided as to whether immoral behavior in the community can be cause for dismissal. Some say that unless evidence can prove that a teacher's ability to teach or to maintain sound school relationships is affected, the dismissal will not be upheld. However, others demand that teachers observe historically approved standards of conduct which are accepted by a particular community, and that a teacher's private life remain private and not become public knowledge.

43. Teachers may not be dismissed or discriminated against due to pregnancy, childbirth, or related medical conditions.

44. A teacher's personal appearance and dress may be regulated by the school administration, provided such regulations have a rational basis and are related to the teacher's performance and/or job safety.

45. The procedure to be followed in a dismissal of a teacher is dictated by statute. All rights of due process, including a hearing, if requested, must be granted.

46. A teacher may request a hearing before a fact-finding panel, but the panel is empowered to make only an advisory recommendation to the school board. The fact-finding panel's recommendation is not binding on the school board, which has the final say in the determination of dismissal.

47. A hearing before a fact-finding panel does not preclude another hearing before the school board.

48. Dismissal in Virginia requires a majority vote of the quorum of the school board.

49. Teachers may utilize the grievance procedure regarding disputes concerning the application, interpretation, or violation of local school board policies, rules, and regulations as they affect the teachers of that school division. A principal may respond to a grievance initiated by a teacher, but a teacher may proceed to the principal's superior, the superintendent, if the teacher does not agree with the principal's decision.

50. The school board may determine if the issue is a grievable one. Its decision may be appealed to the local circuit court, which may affirm, reverse, or modify the school board's decision.

51. Teachers may be suspended for good and just cause when the safety or welfare of the school division or the students therein is threatened or when the teacher has been charged by summons, warrant, indictment, or information with the committing of a felony or a crime of moral turpitude.

52. Since collective bargaining and strikes for public employees are not permitted in Virginia, teachers are utilizing other types of so-called "media events," such as working to contract, to publicize their positions on various issues.

53. A public employee's personnel file must be maintained according to the safeguards and procedures as outlined in the Virginia Privacy Protection Act of 1976. If a person feels that his or her rights have been violated under the Act, a proceeding for injunction, or mandamus, against the person or agency involved may be instituted in the local circuit court.

Trends

Since the origin of school administration in Virginia, which occurred in the late 1800s, the principalship has evolved from common law status to its present state, in which legislatures tend to specify the duties of the position and distinguish it from that of the teacher. The civil rights movement of the 1960s caused a great transformation in many of our societal institutions, with the public schools among the prime targets. That transformation was characterized by teacher and student activism seeking to clarify their rights through court action. During that time the courts were inundated with cases regarding First Amendment Rights. Departing from their former role of noninvolvement in school matters, the courts began to take a closer look at the constitutional rights involved in school disputes and to examine the reasonableness of school authorities. The concept of *in loco parentis*, long considered the primary basis for discipline and control of students in the public schools, also was questioned frequently in the courts. Some states cast aside the doctrine of governmental immunity, a change which resulted in a higher incidence of legal actions against

all school personnel.

The legal status of the principal in Virginia was clarified somewhat in 1973 when the General Assembly adopted the first legal recognition of the position. However, many principals felt that this recognition did not address in detail the many areas of responsibility assigned to the principal. Although the Standards of Quality for Public Schools in Virginia specify objectives for the principal, many principals wanted the objectives to carry the weight of standards rather than objectives. However, the 1980 Legislature failed to approve such a change. The Legislature did approve a major revision in Title 22 of the Virginia School Code, which had never been revised. And while it first appeared that the legal recognition of the principalship might be deleted from the revision, it remained intact as section 22.1-293 of the Code. Thus, with proper legal recognition and clarification as to the procedure for reassignment, and/or dismissal, the principal's role is better defined than it was formerly.

The objectives for the principal as outlined by the Standards of Quality further define the role and responsibility of the position. These objectives include the following:

> The goals of education in Virginia require that each school establish a stimulating learning environment in which a variety of professional services are available to students according to their needs. To this end, each school division shall require the school principal to be responsible for instructional leadership and effective school management focused on the achievement of individual students. It shall be the duty of the principal to:
>
> A. Maintain an atmosphere of mutual respect and courtesy in the school;

B. Provide students with the time they need on tasks by protecting instructional time from interruptions and intrusions;

C. Limit the scope of the school day to teaching and learning activities;

D. Monitor instruction and evaluate its quality through:

   1. Establishment of specific and mutually developed objectives for each teacher;

   2. A systematic program of classroom observation and follow-up consultation with teachers;

   3. Professional assistance, in-service training, and other support based on the needs of teachers;

   4. Analysis and use of data on pupil achievement.

E. Prepare and follow a biennial school plan which is consistent with the divisionwide six-year plan and which is approved by the division superintendent;

F. Use the resources of the community and involve parents and citizens in:

   1. Evaluation of the school program;

   2. Development of the biennial school plan;

   3. Volunteer services in the school;

   4. Programs of supplemental instruction or enrichment.

G. Maintain a school handbook of policies and procedures which includes the school division's standards of student conduct and procedures for enforcement, along with other matters of interest to parents and students;

H. Recognize and reward students' academic achievements.

> The evaluation of principals required by Standard 12 shall include an appraisal of the extent to which each of these duties, as well as others which may be specified locally, have been fulfilled.[1]

It is evident that the principalship of the 1980s is quite different from that of previous decades. Today's principals must recognize that they are _under_ the law; they cannot safely assume that they _are_ the law. The principal's discretionary power has been eroded by numerous court rulings, legislative mandates, and even collective bargaining or powerful teacher lobbies. Thus, the principal has been forced to develop a new strategy of leadership, for the old style paternalistic autocracy or benevolent dictatorship is no longer acceptable. Principals find that today they must deal with more educated students, teachers, and parents, who are more knowledgeable about individual rights. Principals must also realize that they will receive considerable pressure from various interest groups who feel that the public schools should meet all needs of all people. But the principal is also caught in the middle of a management squeeze by a school board reacting to spiraling costs caused by inflation, combined with a slight decline in school population.

Although the courts have rendered decisions which many principals believe hinder their decision-making power, the courts have also recognized the many problems facing the school principal today. The courts are not waiting to catch a principal and penalize him. The courts have generally supported principals except in flagrant cases

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[1] _Standards of Quality for Public Schools in Virginia 1982-84_.

where due process, equal protection, or other constitutional rights of employees or students were violated. Reasonableness is what is required by the courts.

This author agrees with Hudgins and Vacca in their predictions that the courts appear to be returning to a "hands off" attitude toward public school personnel decisions and a renewed insistence that individuals seek remedies provided by state statutes before taking their complaints to a federal court. The federal courts have made it clear that they will not intervene unless there is clearly a gross violation of a constitutional or federal statutory law. The courts recognize that school boards and administrators must have the latitude to conduct the day-to-day operation of their schools, even if that means making a bad decision once in a while.

Principals must also recognize that the climate for teachers in Virginia, in the absence of permitted negotiations, is becoming more militant. Many teachers view school board members as representatives of the community's visible or hidden power structure, whose primary purpose is to keep expenditures down to the lowest possible level. School board members sometimes do not appear willing or able to recognize the need for teachers to have some say in the daily decisions affecting their livelihood. Thus, principals, as middle management, are trapped; they are expected to support fully and enforce administrative decisions, although they may have had no input in the decision-making process. Teachers in Virginia sometimes see bargaining in other states as the answer to some of their problems related to salary issues and job security, and they often feel that they must secure the

same rights and benefits of such bargaining, for they are facing the same problems now that the more urbanized states faced a few years earlier.

Recommendations

1. Principals should keep abreast of changes in the area of school law and continue to update their school law knowledge by taking courses and workshops. The axiom "ignorance of the law is no excuse" holds true for the principal. Indeed, courts are increasingly holding principals to higher standards of competence and knowledge.

2. Because rapid changes in the law often result from changes in the composition of the courts, principals should be required to update their school law knowledge by taking one such course every other five-year period as a requirement for recertification.

3. Curriculum models are being developed in the areas of teacher and student rights. The principal should be involved in the development and implementation of such models to insure that the principal's rights are also understood by all concerned.

4. A principal should not hesitate to seek the advice of an attorney who is competent in the area of school law to clarify legal procedures prior to taking any sort of legal action.

5. A principal should maintain an extensive and current professional library containing books, journals, and other periodic subscriptions which keep the principal informed of recent changes and decisions in the area of school law.

6. A principal should maintain a strong, viable membership in the state and national organizations which promote and protect his or her welfare. Extensive knowledge can be gained by attending regional and national conferences on the topic of school law.

7. The principal should continue to strive for more voice and better communications in the decision-making process at the local level, and to seek legislative changes at the state level regarding true tenure for principals, absent the threat of reassignment without cause.

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The New York Supplement. Reports decisions by the New York Court of Appeals and lower courts of record in New York from 1888 to present.
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The Southern Reporter. Reports decisions of the courts of last resort of Alabama, Florida, Louisiana, and Mississippi from 1887 to present.
The South Western Reporter. Reports decisions of the courts of last resort of Arkansas, Kentucky, Missouri, Tennessee, and Texas from 1886 to present.
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APPENDIX A

COLLEGE OF EDUCATION

VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY

Blacksburg, Virginia 24061

DIVISION OF ADMINISTRATIVE AND EDUCATIONAL SERVICES

August 17, 1979

Dear

As a doctoral candidate at Virginia Polytechnic Institute and State University, I am in the process of writing my dissertation on the "Legal Rights and Responsibilities of the Public School Principal in Virginia." In an effort to narrow the scope of the topic and to concentrate on the most current and crucial issues, I am asking your help in identifying those areas on the attached list for which you have recently been contacted for information.

It is my hope that the dissertation will result in a handbook which will provide the practicing and prospective principal with a working knowledge of recent and relevant court decisions regarding his present legal status and responsibilities.

Your assistance in this project will be greatly appreciated.

Sincerely,

Lanny W. Holsinger

Elementary Supervisor
Harrisonburg City Public Schools

Harrisonburg, Virginia 22801

SURVEY RESPONDENTS

Deputy Executive Director
National Association of
Elementary School Principals

Legal Counsel and
Memorandum Writer
National Association of
Elementary School Principals

Executive Director
Virginia Association of
Elementary School Principals

Executive Secretary
Virginia Association of
Secondary School Principals

Attorney At Law
Legal Counsel for Various
School Boards

General Counsel
Virginia Education Association

Chairman, Principal Rights Committee
Virginia Association of Elementary
School Principals

Executive Secretary
Virginia School Boards
Association

Executive Secretary
Virginia Association of
School Administrators

Executive Director
Virginia Association of
School Executives

Professor School Law
James Madison University

Director
Virginia Education Association

8/17/79

SUMMARY

Requests for information regarding the principal's rights and/or responsibilities have been received during the last six months in the following:

STAFF-PERSONNEL AREA

7 Teacher evaluations
10 Teacher/staff dismissal
7 Teacher reassignment or transfer
3 Personnel records
7 Due process
2 Equal protection
8 Tenure/continuing contract
4 Probationary period
2 Negotiations
8 Grievances
3 Equal Employment Opportunity
0 Vocational Rehabilitation Act
3 Civil Rights Act
2 Integration/segregation
0 Loyalty oaths
1 Academic freedom
2 Religious activities
2 Political activities
2 Sex-related activities
2 Personal appearance
4 Insubordination
5 Fringe benefits
5 Maternity leaves
0 Referrals for special education
1 Workman's Compensation
___ Other (Please list)

CURRICULUM/INSTRUCTION AREA

2 Standards of Quality
5 Minimum competencies
2 Length of school day or year
3 Supervision of instruction
3 Grouping or tracking
5 Federal programs
2 Textbook adoption
1 Library book selection
1 Homework
3 Right to retain students
___ Other (Please list)

FINANCE AREA

2 Conflict of interest
2 School funds and accounting
3 Budgets
1 Contracts
1 Purchase of equipment or services
0 Disposal of property
0 Bonding of principals
___ Other (Please list)

PUPIL-PERSONNEL AREA

3 Compulsory attendance
3 Immunizations required
3 Student fees
1 Religious activities
1 Dress codes
2 Graduation requirements
2 Behavior codes
1 Marriage and parenthood
0 Political expression
6 Discipline/corporal punishment
5 Expulsion/suspension
3 Use of grades to punish
3 Due process
0 Equal protection
4 Searches
3 Drugs and weapons
1 Convicted felons returned to school
1 Students on probation
4 Pupil records
1 Title IX
6 P.L. 94-142
2 Grouping or tracking
3 Extra-curricular activities
1 High school athletics
3 Student press
0 Fraternities/secret societies
2 Field trips
1 School lunch program
0 Off-campus classes
3 Child abuse
___ Other (Please list)

SCHOOL-COMMUNITY AREA

2 Uses of school property
3 Parent organizations
1 School volunteers
3 Report cards
0 School closings
___ Other (Please list)

PHYSICAL FACILITIES AREA

2 Transportation
0 Maintenance
2 Pupil safety
1 Cafeteria operations
3 Playground injuries
2 Athletics
1 Industrial shop
4 Insurance
___ Other (Please list)

Signed________________________ Date__________

Organization________________________

Please return this survey in the attached envelope to:

Lanny W. Holsinger

Harrisonburg, Va. 22801

APPENDIX B

APPENDIX B

Dear :

This is to advise you that I propose to recommend to the School Board that your contract not be renewed for the 1982-83 school year.

Sincerely,

Superintendent

(This is the initial notice which should be sent to probationary teachers who have been recommended for nonrenewal by their principals. It should be sent around mid-March so that adherence to the April 15 deadline is met. However, if the procedure of 22.1-305 is used by the teacher, the school board does not have to act on the superintendent's recommendation by April 15, as required in 22.1-304.)

APPENDIX C

APPENDIX C

Dear :

This is in response to your written request for a conference concerning my proposed recommendation that your contract not be renewed. I have scheduled the conference for (day of week), (date), in my office (or other place).

Sincerely,

Superintendent

(This notice must be sent _if_ the teacher requests a conference. It should be sent within two weeks after the request is received because the conference must be held within thirty days of the request and because the teacher must be given fifteen days advance notice.)

APPENDIX D

APPENDIX D

Dear :

Pursuant to Section 22.1-305 of the Virginia School Laws, this is to advise you that I will (or will not) present my recommendation to the School Board that your contract not be renewed for the 1982-83 school year.

Sincerely,

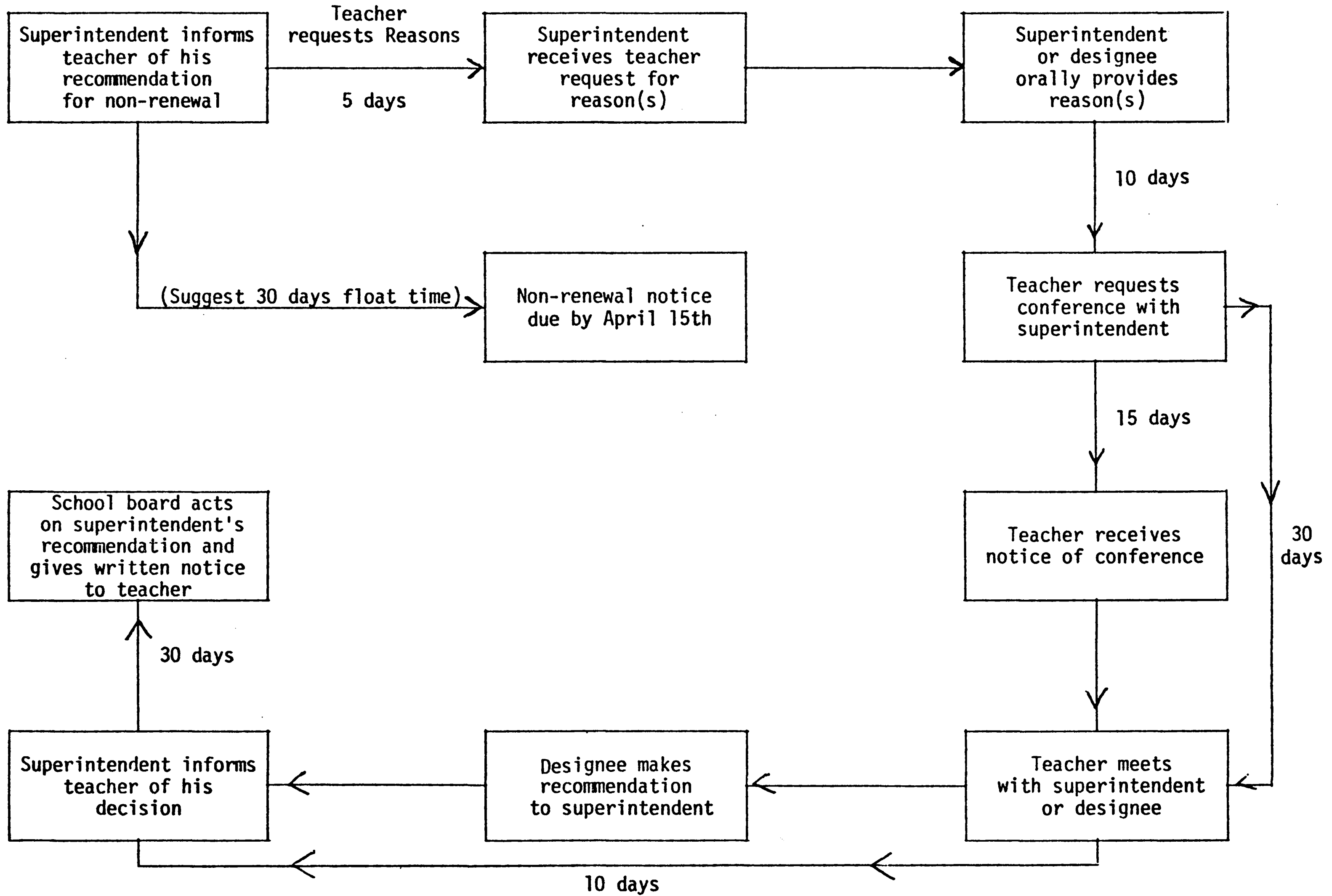
Superintendent

(This notice must be sent within ten days after the conference.)

APPENDIX E

APPENDIX E

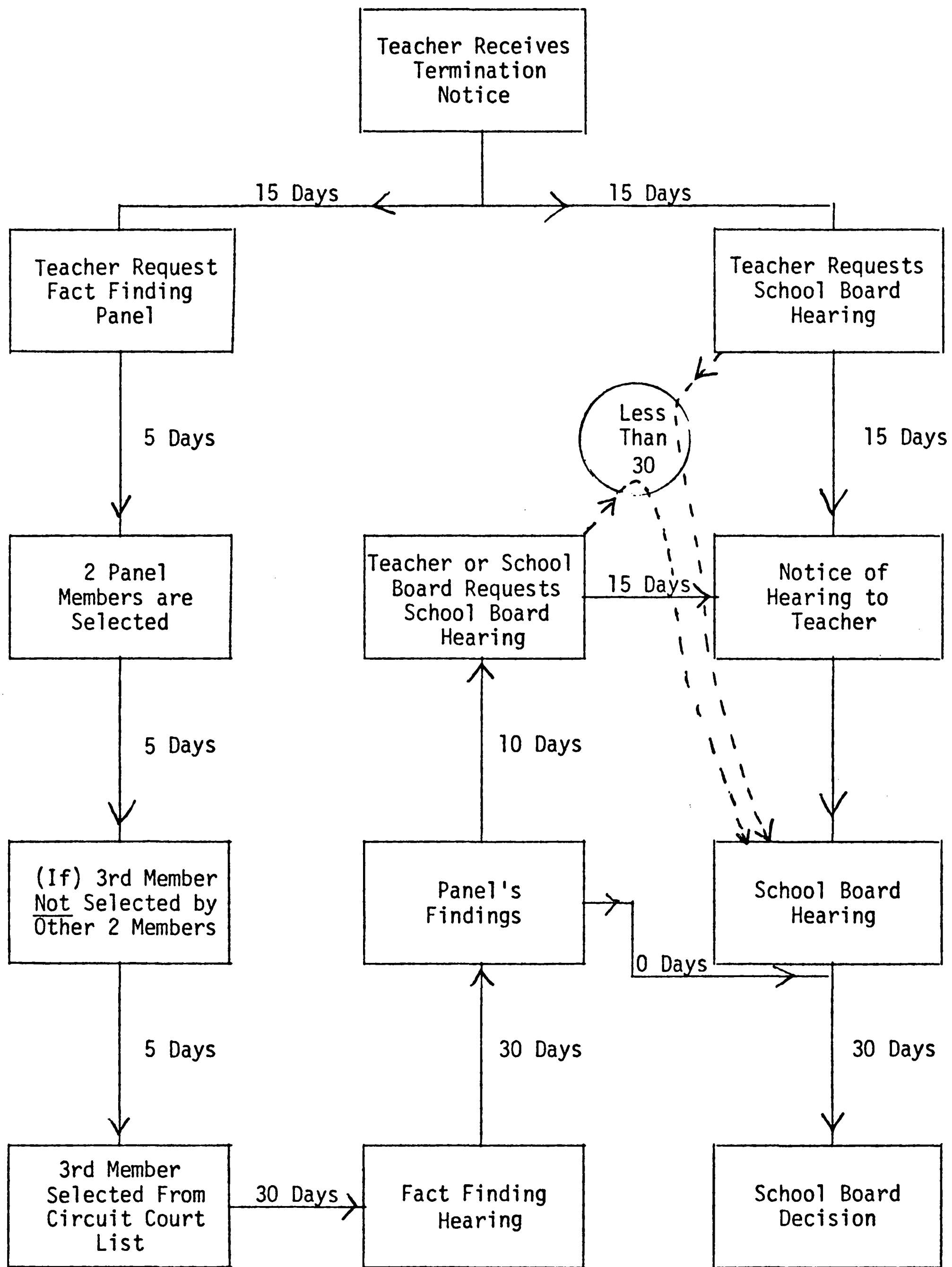
Non-Renewal of Probationary Teachers (22.1-305)



APPENDIX F

APPENDIX F

Teacher Termination Procedure



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THE LEGAL RIGHTS AND RESPONSIBILITIES
OF THE PUBLIC SCHOOL PRINCIPAL
IN VIRGINIA

by

Lanny W. Holsinger

(ABSTRACT)

The public school principal in Virginia is in a most vulnerable position. Not only must the principal enforce the policies and regulations of the local school board, state mandates, federal laws and regulations, but must also respond to a multitude of daily crises, any one of which could result in litigation.

The primary purposes of this study were to examine and report the current legal status of the public school principalship in Virginia; to analyze and clarify the law as it relates to the school principal's role as both employee and "employer;" and to project trends in the direction which the courts applicable to Virginia appear to be headed.

The courts have been very protective of one's constitutional rights, regardless of whether one is a principal, teacher, or student. Thus, principals should guard against violating the constitutional rights of persons under his charge. However, the courts are also sympathetic to the many problems facing schools and administrators, but do expect them to act in a reasonable and prudent manner.