

**AN HISTORICAL STUDY OF THE APPEALS  
OF DISMISSED OR NONRENEWED TENURED  
TEACHERS IN OKLAHOMA: 1967-1992**

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**C O P Y R I G H T**

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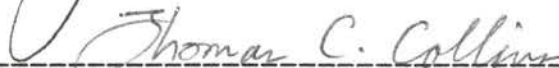
OKLAHOMA STATE UNIVERSITY

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## CHAPTER I

### INTRODUCTION

Historically, tenure was a creation of state statutes designed initially to maintain adequate permanent and qualified teaching staffs (Deskbook, 1990). Dismissal of tenured teachers could only be acted upon for cause by the local board of education, and the tenured teacher had to be provided with opportunity for due process procedures.

Tenure was

a status conferred upon teachers who had served a period which then guaranteed them continual employment, until retirement, subject to the requirements of good behavior and financial necessity. (Gee and Sperry, 1978, p. T-7)

In presenting a thorough analysis of the dismissal of tenured teachers in Oklahoma, an historical background of the development of tenure in the United States is used to foster a clear understanding of why teachers gained tenure.

#### The Development of Teacher Tenure

The development of teacher tenure in the United States can be traced back to the 1800's during the administration of Andrew Jackson. In 1883 the first civil service act was passed by Congress to protect federal

employees from arbitrary or political dismissal. Passage of this act was abetted by a reaction to the "spoils system" that was a prominent part of the political scene of the era (Lebels, 1939).

In 1885 tenure of school teachers was brought forth as a proposal by the National Education Association when it maintained that

tenure for public school teachers was for the good of the schools and the general public, and that it would protect the profession from personal or political influence and would be made free from the malignant power of spoils and patronage (A discourse on the purpose and history of tenure found in McSherry v. City of St. Paul, 202 Minn. 102, 277 N.W. 541 (1938).

Massachusetts adopted a statute in 1886 which allowed local school boards to offer tenure to their employees. The first statewide tenure law was enacted in New Jersey in 1909 (Paron, 1991). Tenure laws gave teachers security in their positions and protection against removal for unfounded and political reasons. Tenure served to benefit the public by assuring a competent and efficient teaching force. By 1980 nearly every state had adopted statewide tenure. State statutes which created teacher tenure have generally been upheld when challenged in a court of law (Stelzer and Banthin, 1980).

## Judicial Review of Tenure Statutes

The courts have had much to say about teacher tenure. Objectives sought by such legislation were to protect competent and qualified teachers in the security of their positions and were to assure them in their employment during competency and good behavior that they would not be removed for unfounded, flimsy, or political reasons (Ludes and Gilbert, 1952). Tenure laws were not intended to confer special privileges or immunity from statutes upon teachers (Mitchell v. Board of Trustees of Vilalia Union High School District, 42 P.2d 397, 5 Cal APP.2d 64 (1972)).

In 1974 the Oklahoma Supreme Court maintained that a teacher tenure law promoted good order and the welfare of the state and the school system by preventing the removal of capable and experienced teachers for reasons arising solely from political or personal whim (Lovelace v. Ingram, 518 P.2d 1102 (Okla. 1973)).

Since teacher tenure was a creation of statute no one could acquire the right of permanent tenure except in accordance with the provisions of the statute. Tenure statutes were not passed to deprive school boards of their power and responsibility for the administration of schools (Ludes and Gilbert, 1952). Tenure is not guaranteed by the federal constitution. A legislature, which by statute created tenure, had the power to eliminate tenure (Crawford

v. Sadler, 34 So.2d 38 (1982)). Accordingly, a legislature could, at anytime, repeal or modify tenure statutes and the Oklahoma Legislature has modified tenure numerous times since its inception in Okla. Stat. Ann. tit. 70, § 6-24 et seq. (West Supp. 1967).

#### Frequency of Dismissal of Tenured Teachers

Neither the Oklahoma Department of Education nor the state's Professional Practices Commission maintained a record of the total number of tenured teachers dismissed in the state. It is likely that many dismissals were never appealed from the local school board. Since dismissal or nonrenewal of a tenured teacher was a severe measure, some school officials would not even consider dismissal or nonrenewal as a method of disciplining a tenured teacher.

If Oklahoma school officials have been reluctant to pursue dismissal charges against tenured teachers in the past, it is likely that they might attempt dismissal in the future even less, due to provisions of the Teacher Due Process Act of 1990 requiring remediation of deficient teachers. Under this new Act admonishment and a plan of improvement allow up to two (2) months for remediation of causes including negligence and ineffective or unsatisfactory performance Okla. Stat. Ann. tit. 70, § 6-101.24(A) (1) (West. 1989).

## Statement of The Problem

If school officials are to be committed to pursue excellence in Oklahoma public schools they must address the problems of dismissal, nonrenewal, and remediation of ineffective teachers including those who are tenured. School administrators and local boards of education should be familiar with teacher employment statutes and due process procedures in order to undertake a dismissal action which will not likely result in a reversal on appeal. In an 1985 Illinois study of the dismissal of incompetent teachers reasons given for reluctance to dismiss included: effective intervention of teacher organizations, lack of knowledge on the part of administration regarding due process rights of teachers, the likelihood that teachers would appeal dismissal, and inadequate administrative documentation. This Illinois study concluded that the time, expense and chances of success involved in dismissal proceedings were not caused by complex tenure laws, but that the lack of "expertise" on the part of school administrators was the chief cause for the small number of dismissal cases (Jones, 1985).

Estimates of the proportion of active teachers who are incompetent or inadequate range from five to fifteen percent of the total teaching force (Bridges, 1986). A conservative acceptance of the lower estimate could lead one to conclude that there were approximately two hundred



and twenty-five ineffective teachers in Oklahoma during the 1992-93 school year. That number, by itself, is alarming but the number of students whose education could have suffered because of these teachers is substantially greater.

Dismissal, nonrenewal, and suspension of a tenured teacher are severe measures which could portend that the teacher will never again be able to practice the profession for which years of preparation have been invested. Implementing and enforcing adverse employment actions require school officials to inform the teacher, attempt remediation, and demonstrate, with documented evidence, that the problem teacher was a failure in his or her chosen occupation.

#### Purposes of the Study

The primary purpose of this study was to examine chronologically the development of Oklahoma teacher employment statutes and to analyze the dismissal or nonrenewal of tenured elementary and secondary teachers in public school districts within the state of Oklahoma. Of the issues addressed in this study, the focus is on the dismissal for statutory causes of tenured public school teachers between 1967 and 1992. All conclusions regarding teacher dismissal were reached by examining litigation and due process proceedings in light of teacher employment legislation.

A secondary purpose of this study was to compile a history of Oklahoma's tenure laws and court cases for future use by researchers, teachers, administrators, and school board members. It is hoped that this study can be useful as a tool for development of school district employment policies and can serve as a basis for future research regarding teacher dismissal.

Public school officials in Oklahoma need access to information regarding the expectations of the courts in termination cases in order to gain a degree of confidence sufficient to pursue dismissal charges against inadequate teachers. Therefore, another purpose of this study was to examine appeals of teacher dismissal actions to administrative hearing panels, to state, and to federal courts in order to identify factors which led to affirmations and reversals of local school board decisions.

A final purpose of this study was to examine remediation and evaluation requirements in terms of the remediability of a teacher's conduct and his/her appropriate opportunity to affect remediation. Generally, courts have insisted that adequate time and notice be afforded a teacher to remediate some behaviors before they are construed to be a cause for dismissal.

#### Summary of Purposes

1. To establish a chronological record of Oklahoma statutes regarding the termination of tenured teachers.

2. To examine Oklahoma case law and due process proceedings to identify factors which led to affirmations and reversals of appealed local school board dismissals of tenured teachers.

3. To compile a history of Oklahoma's statutory and case laws affecting the dismissal of tenured teachers for future use by researchers, teachers, administrators, and school board members.

4. To formulate a set of guidelines and recommendations to assist Oklahoma school officials in conducting a legally defensible termination, nonrenewal or suspension action against a tenured public school teacher.

5. To examine, chronologically, Oklahoma statutory requirements and case law for admonition, evaluation, and remediation of deficient tenured teachers in light of legally defensible dismissal proceedings.

From information acquired in the research of cases described a summary of findings was created.

Additionally, suggestions were stated to assist school officials in conducting a legally defensible termination, nonrenewal, or suspension action against a public school teacher in Oklahoma. A time line of the passage of teacher tenure legislation and a summary of the differences in tenure statutes and subsequent amendments disclosed evolving, legally defensible causes for successful dismissal of tenured teachers. See Appendix E, p. 208. A compendium of cases of terminated Oklahoma tenured teachers who appealed their decisions above the local board can be found in Appendixes C and D, p. 178, 186.

#### Organization of the Study

The issues addressed in this study (i.e., tenure, dismissal, due process, and remediation) are legally based on statutory law, case law, and attorney general rulings.

Oklahoma has had a teacher tenure law since 1967 when the Thirty-First Session of the Oklahoma Legislature approved Senate Bill 338 (West 1967). This Bill, which became Okla. Stat. Ann. tit. 70, § 6-24 (West. 1967), guaranteed contract renewal after three years of employment unless written notice of dismissal for cause was sent to the teacher. An unjust nonrenewal of contract with written notice when appealed only provided exoneration with no guarantee of reinstatement (West 1967). Procedures for tenured teacher dismissal or nonrenewal including administrative review of employment termination were amended in subsequent revised statutes.

#### Research Questions

Federal court cases involving Oklahoma public school teachers were viewed when the claims brought by the teacher were believed to be a violation of the United States Constitution. Decisions appealed to hearing panels and the Oklahoma Professional Practices Commission were examined in order to answer the following research questions:

1. What was the legal history of statutory law for the dismissal or nonrenewal of tenured teachers in elementary and secondary public schools in Oklahoma?

2. What was the legal history of case law for dismissal or nonrenewal of tenured teachers in elementary and secondary public schools of Oklahoma?

3. What were the legally defensible causes for dismissal of tenured teachers in elementary and secondary public schools in Oklahoma which were most often sustained upon appeal?

4. In Oklahoma appeals of school board dismissal of tenured public elementary and secondary teachers in which the decisions of the local board were reversed, what were the grounds on which the reversals were based?

## Variables Analyzed

In order to answer the posed research questions, Oklahoma statutes, court cases, and administrative hearing decisions were sectioned into time periods which were historically unique to teacher employment legislation governing the dismissal or nonrenewal of tenured teachers. The legal issue on which a teacher termination decision was based involved Oklahoma's state statutory law. Within each time period statutes, case law, and hearing proceedings were analyzed by the following variables:

1. Criteria for dismissal or nonrenewal of tenured teachers identified in Oklahoma statutes through 1967 to 1992.
2. Grounds for dismissal or nonrenewal cited by the school board.
3. Alleged actions and behaviors cited by the school board to establish grounds for nonrenewal or suspension.
4. Issues, including allegations of error, brought forward by the nonrenewed or dismissed tenured teacher in appealing the school board's dismissal action.
5. Rationale given by administrative and judicial bodies for affirmation or reversals of public school board decisions regarding dismissal or nonrenewal of tenured teachers.
6. Types of teacher dismissal cases heard by Oklahoma administrative and judicial bodies.

In order to implement a search which was both thorough and efficient a methodical plan of analyzing statutory and case law by content analysis was employed regarding the nonrenewal or dismissal of tenured Oklahoma public school teachers. See Appendix A., p. 142.

In their book, Fundamentals of Legal Research, Jacobstein and Merskey (1990) propose a design for conducting legal research. Their recommendations were

followed from the outset of this study. The methodology used in this study is described in Appendix A, p. 142.

### Limitations to the Study

1. The study was confined to Oklahoma appeals by tenured public elementary and secondary teachers and administrators who had gained tenure as teachers. Administrators no longer have tenure.

2. Usefulness of this study depends to large degree on whether courts continue to follow established precedents in Oklahoma appealed cases or the doctrine of "stare decisis".

3. The study was limited in application by the fact that all of the elements of Oklahoma's new teacher tenure law, the Teacher Due Process Act of 1990, have not been addressed by the courts due to its recency of passage.

4. Quantifiable data used in this study for the assessment of the appeals of nonrenewed and dismissed tenured public school teachers in Oklahoma was limited to the availability of records of administrative hearing panels and the professional practices commission. Records of the hearings of dismissed and nonrenewed tenure teachers by the Oklahoma Professional Practices Commission for the years 1967 to 1970 were not available in the State Archives of the Oklahoma Department of Libraries, at the State Department of Education, nor from the Oklahoma Education Association. Exonerated tenured teachers who had been nonrenewed during this period, from 1967 to 1970, had no guarantee of reinstatement.

5. Records of dismissed and nonrenewed tenured teachers who did not appeal their decision above the local school board level were not included in this study since it is likely that the only written record of these adverse employment actions exists in the local board minutes of more than 569 local boards of education, some of which have since disbanded or consolidated, throughout the state of Oklahoma.

6. Career teachers who have been dismissed or nonrenewed since July of 1990, when the Teacher Due Process Act of 1990 went into effect, are not included in this study. The initial appeal and court records of these proceedings are located at the district courts in Oklahoma's seventy-seven counties if termination and appeal took place.

## Definitions of Terms

Definitions specific to the proposed study are presented in this section.

- adjudicate** -- the determination of a controversy and a pronouncement of a judgement based on the evidence presented (Gifis, 1984)
- to settle in the exercise of judicial authority; to determine finally (Black, 1990)
- affirm** -- the assertion of the higher court that the judgement of the court below is correct and should stand (Gifis, 1984)
- to ratify, make firm, confirm, establish, reassert (Black, 1990)
- administrator** -- a duly certified person who devotes a majority of time to service as superintendent, principal, supervisor, vice principal or in any other administrative or supervisory capacity in the school district
- Okla. Stat. Ann. tit. 70, § 6-101.3(1)  
(West, 1989)
- amend** -- the alteration of an established law (Gifis, 1984)
- to improve; to change for the better by removing defects or faults; to change, correct, revise (Black, 1990)

- appeal** -- a resort to a higher court for the purpose of obtaining a review of a lower court decision and a reversal of the lower court's judgement on the granting of a new trial (Gifis, 1984)
- appellant** -- the party who appeals a decision and brings the proceeding to a review court (Gifis, 1984)
- the party who takes an appeal from one court or jurisdiction to another (Black, 1990)
- board** -- board of education, local school board
- career teacher** -- a teacher who has completed three (3) or more consecutive complete school years in such capacity in one school district under a teaching contract Okla. Stat. Ann. tit. 70, § 6-101.3 & .4 (West, 1970)
- cause** -- teacher dismissal reasons from employment as specified in state statute tenure law (Gifis, 1984)
- a ground of a legal action (Black, 1984)
- charges** -- specific acts or incidents which establish or support one or more of the causes for dismissal (Gifis, 1984)
- an accusation (Black, 1990)
- dismissal** -- discontinuation of the service of an employee by a school district during the term of a written contract (Black, 1990)



- the discontinuance of teaching service of an administrator or teacher during the term of a written contract as provided by law Okla. Stat. Ann. tit. 70, § 6-101.3(2) (West. 1985)
- hearing
  - the hearing before a local board of education after a recommendation for dismissal or nonre-employment of a teacher has been made but before any final action is taken on said recommendation, held for the purpose of affording such teacher all rights guaranteed by the United States Constitution and the Oklahoma Constitution under such circumstances and for enabling the board to determine whether to approve or disapprove the recommendations Okla. Stat. Ann. tit. 70, § 6-101.3 & .5 (West. 1975)
  - proceeding of relative formality . . . with definite issues of fact or law to be tried, in which witnesses are heard and parties proceeded against have right to be heard. . . . (Black, 1990)
- nonre-employment -- the nonrenewal of an administrator's or teacher's contract upon expiration of the contract Okla. Stat. Ann. tit. 70, § 6-101.3(3) (West. 1989)

**nonrenewal** -- the discharge of an employee at the end of a contract period by refusal of a school board to offer the employee a contract for the ensuing school year; written notice is required Okla. Stat. Ann. tit 70, § 6-101.3 (West. 1985)

**nontenured/probationary teacher** -- a duly certificated or licensed teacher who has completed less than three (3) consecutive complete school years of teaching service in one school district under a written teaching contract as provided by law Okla. Stat. Ann. tit. 70, § 6-101.3 (West. 1991)

**plaintiff** -- the party who initially brings a suit or seeks remedy in court; also referred to as litigant, accuser, and claimant (Gifis, 1984)

-- a person who brings an action; the party who complains or sues in a civil action and is so named on the record; a person who seeks remedial relief for an injury to rights; . . . a complainant (Black, 1990)

**probationary teacher** -- a teacher who has completed fewer than three (3) consecutive complete school years in such capacity in one school district under a written teaching contract Okla. Stat. Ann. tit. 70, § 6-101.3 & .6 (West. 1989)

**Professional Practices Commission**-- committee of 12 members appointed by state board of education to hear appeals of dismissed and nonrenewed teachers; made recommendation to state board of education; could suspend or revoke a teaching credential property interest

-- a legitimate claim of entitlement to continued employment (Gifis, 1984)

**remediation** -- a procedure for assisting employees in improving performance that has been judged unsatisfactory as a result of evaluation by a supervisor; identification and notice of deficiencies by the supervisor is given to the employee and provision is made for improvement and correction of inadequacies (Claxton, 1986)

**statutory law** -- an act of the legislature, adopted pursuant to its constitutional authority (Gifis, 1984)

-- that body of law created by acts of the legislature in contrast to law generated by judicial opinions and administrative bodies (Black, 1990)

**suspension** -- the temporary discontinuance of a teacher's teaching service as provided by law and does not involve loss in pay Okla. Stat. Ann. tit. 70, § 6-101.3 & .7 (West, 1990)

- a temporary stop, a temporary delay, interruption, or cessation (Black, 1990)
- teacher -- a duly certified or licensed person who is employed to serve as a counselor, librarian, or school nurse or in any instructional capacity; an administrator shall be considered a teacher only with regard to service in an instructional, nonadministrative capacity
- Okla. Stat. Ann. tit. 70, § 6-101.3 & .8 (West. 1989)
- one who teaches or instructs, especially one whose business or occupation is to teach others (Black, 1990)
- tenure -- . . . a right, term or mode of holding, occupying (Black, 1990)
- tenured teacher -- a duly certified teacher who has completed three (3) or more consecutive complete school years of teaching service in one school district under a teaching contract as provided by law Okla. Stat. Ann. tit. 70, § 6-102.1 & .6 (West. 1985)
- . . . (member) of a school's teaching staff who (holds the) position for life or until retirement; . . . may not be discharged except for cause (Black, 1990)

termination -- the discharge of any employee tenured or nontenured during the legal written term of his/her contract (Gifis, 1984)

-- . . . complete severance of relationship of employer and employee (Black, 1990)

writ of certiorari -- a common law writ, issued from a superior court to one of inferior jurisdiction, commanding the latter to certify and return the former record in a particular case (Gifis, 1984)

-- an order by the appellate court which is used when the court has discretion on whether, or not, to hear an appeal (Black, 1990)

writ of mandamus -- a writ issued from a court to an official compelling performance of a ministerial act that the law recognizes as an absolute duty, as distinct from other types of acts that may be a matter of the official's discretion (Gifis, 1984)

-- to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so (Black, 1990)

## Summary

The National Education Association initiated a campaign for teacher tenure more than 100 years ago. Questionable employment practices by school boards and administrators appear to have contributed to this demand. It seems that local school officials were arbitrarily dismissing teachers for capricious reasons including the creation of jobs for friends, relatives, and persons who were politically compatible. The National Education Association proposed that tenure be similar in substance to employment security granted to civil service employees. In the 1980's the National Education Association had achieved the goal of its century-long struggle when all states had acquired some form of tenure.

Oklahoma teachers obtained tenure in 1967 by legislative enactment. Having gained tenure, Oklahoma teachers were less vulnerable to arbitrary dismissal, or nonrenewal. Once granted tenure, teachers could be terminated only if school officials provided due process and proved statutory cause. From an historical perspective, the desire by teachers for tenure is understandable especially when one views past capricious acts of school officials. As an added guarantee, tenure helped to attract and retain quality teachers.

Opposition to tenure is attributable to a growing concern about accountability and incompetence in the

teaching profession along with the fact that tenure presents a major obstacle to removing incompetent teachers from the profession. Opponents of tenure argue that this form of employment status imposes excessive legal, financial, and time-consuming burdens on administrators and school boards.

This study attempts to explain the evolution of teacher tenure in Oklahoma and analyze adverse employment actions against Oklahoma tenured teachers.

## CHAPTER II

### AN HISTORICAL OVERVIEW OF TEACHER TENURE LEGISLATION IN OKLAHOMA

#### Introduction

This chapter provides both a chronological record and an overview of Oklahoma's teacher employment legislation from 1967 to 1992. The statutes discussed in this chapter created tenure and also endowed due process rights to tenured teachers within the state of Oklahoma. Chapter III will analyze litigation and Oklahoma case law resulting from appeals of local school board dismissals to state and federal levels for interpretive meaning of statutory law.

An explanation of due process rights of tenured teachers is given to enhance comprehension of statutory law and its ramifications regarding dismissed and nonrenewed tenured teachers. A teacher is considered to be a government employee, and his/her interest in continued employment is a protectable "property interest". Any termination of a teacher is subject to procedural and substantive due process safeguards. (Perry v. Sindermann, 408 U.S. 593, 33 L.E.2d 570, 92 S. Ct. 2694, 2698 (1972)).



## Due Process

Oklahoma's Teacher Fair Dismissal Act (1981) which governed nonrenewal and dismissal for Oklahoma teachers for nine years prior to House Bill 1017, and the Teacher Due Process Act of 1990 (part of House Bill 1017), provided for adverse employment actions against teachers only when statutory grounds exist. The procedural protections afforded suspended, dismissed, and nonrenewed teachers collectively constitute their due process rights. Due process of law is guaranteed by the Fifth and Fourteenth Amendments of the United States Constitution and comparable provisions in the Oklahoma Constitution.

Illegal termination or suspension of a teacher has often been shown to involve infringement of a protected property or liberty interest. A protected property interest usually is involved in the case of a tenured teacher. In Board of Regents v. Roth, 92 S. Ct. 1972, 408 U.S. 5674, 33 L.E.2d 548 (1972), the United States Supreme Court ruled that the test for the expectation of continued employment was based on a property interest which was protected by due process expectations.

Courts have held that full due process protections have to be accorded to a tenured teacher (Corrigan v. Conilen, 639 F.2d 834 (1st Cir. 1981); Perry v. Sindermann, 1972). Two types of due process, procedural and substantive, are guaranteed by the courts.

### Procedural Due Process

Procedural due process refers to administrative and judicial review and the procedures involved therein. Procedural due process is not an absolute right. An individual is entitled to procedural due process only if the school board has denied the person "life, liberty, or property." Since life issues are not involved in school district policy the teacher has to show a property or liberty interest to be entitled to procedural due process.

The courts have generally held that nontenured or probationary teachers do not have a vested property interest. An exception to that rule occurred in a 1980 Oklahoma case, Miller v. Independent School District No. 56. The school district had adopted a due process procedure stating that teachers whose contracts would not be renewed would be notified in writing and the reasons for nonrenewal given. When a probationary teacher was nonrenewed with no reasons given the courts ordered the teacher reinstated. The court was adamant that due process requirements afforded to a teacher which were in excess of that required by statute but written into policy were to be followed (Miller v. Independent School District No. 56, 609 P.2d 756 (Okla. 1980)).

### Substantive Due Process

The term due process found in the Fourteenth Amendment of the United States Constitution provides that no state will deprive any person of life, liberty, or property without due process of law. The substantive due process rights of educators are usually involved with the First and Fourteenth Amendments to the United States Constitution and comparable provisions in the Oklahoma Constitution. First Amendment concepts revolve around rights of teacher to exercise freedoms of speech, religion, assembly, and petition. Substantive due process protects a person's liberty or property from unfair governmental seizure or interference (Black, 1979).

The essence of substantive due process is to protect a person against arbitrary and unreasonable action. When adverse employment decisions involving tenured teachers are contemplated it is extremely important that the teaching employee be assured of this form of due process. The adequacy of substantive due process provided by school officials was one of the major issues in litigation involving adverse employment decisions found in one case.

In 1973 the Muskogee Board of Education dismissed the superintendent of schools on grounds of willful neglect of duty and incompetence (Staton v. Mayes, 552 F.2d 908 (10th Cir. 1977)).

The superintendent appealed to the Oklahoma Supreme

Court alleging a violation of both liberty and property interests. Charges of willful neglect of duty and incompetency were made public to the community in advance of termination with no "specificity" as to acts which constituted the offense. The Court found that the local school board had violated both the superintendent's substantive and procedural due process rights (Staton v. Mayes, 1977). The Court also ruled that due process required that advance notice of what the individual was charged with had to be in sufficient detail and "specificity" that it permitted the accused to defend himself (Staton v. Mayes, 1977). Deprivation of liberty rights were allegedly caused by the stigma of being labeled incompetent and guilty of willful neglect through public charges by school board members rather than by private notice.

#### Summary - Due Process

Generally, the due process issue has been the prevailing constitutional issue in dismissal proceedings involving school district employees. It often has been the strongest and most utilized basis for overturning a school district's disciplinary action against a teacher (Angel, 1983).

Public employment does not have the status of a constitutional right. When statutes have given an individual some assurance of continued employment and

dismissal is limited by statutes to "cause" the courts have upheld due process safeguards (Hawkins v. Board of Public Education, 468 F. Supp. 201 (D. Del. 1979)).

Decisions rendered under these conditions have ruled that employment is a property interest that cannot be taken away by law.

Dismissal of an employee for a cause that stigmatizes future employment opportunities can adversely affect an employee's liberty interest. If an employer causes an employee's good name to be diminished, the courts can find the employer has violated the employee's liberty interest, particularly if the employee has not had an opportunity to rebut the charges.

#### Administrative Procedures Act - 1971

Although every person should be afforded the opportunity to legally challenge the deprivation of his/her constitutional rights by any governmental agency, it is necessary for tenured teachers to exhaust administrative appeals before resorting to the courts (Harrah Independent School District v. Martin, 543 P.2d 1370 (Okla. 1975); on appeal 440 U.S. 194, S. Ct. 1062, 59 L.E.2d 248 (1975)). Appeals of administrative decisions were subject to judicial review under the Administrative Procedures Act Okla. Stat. Ann. tit. 75, § 308 (West. 1971); Adams v. Professional Practices Commission, 524 P.2d 932, 933 (Okla. 1974). The United States Supreme

Court, in McKart v. United States, 395 U.S. 185, 89 S. Ct. 1657, 23 L.E.2d 194 (1969), set forth several reasons for the exhaustion of administrative remedies before a defendant resorted to the Court. The doctrine which required exhaustion of administrative remedies was interpreted to mean that these remedies had to be pursued to their final outcome before judicial intervention was sought (Weinberg v. Bentex Pharmaceuticals, 412 U.S. 645, 654, 93 S. Ct. 2488, 37 L.E.2d 235 (1973)).

Generally, administrative appeals of school board dismissals and nonrenewals have been limited to tenured teachers. Administrators who had gained tenure as teachers had the same due process rights but only in the capacity of teacher Okla. Stat. Ann. tit. 70, § 6-122 (West Supp. 1974). Probationary teachers who were dismissed or not rehired had no legal recourse unless their due process rights were violated. Oklahoma teachers were granted tenure by the Oklahoma Legislature in 1967.

#### Tenure in Oklahoma, Early History,

1967 - 1974

Teacher tenure legislation originated out of a perceived need to provide a more secure and permanent status to the employment of Oklahoma public school teachers. An example of this perceived need can be seen in a 1925 Oklahoma case in which a contracted teacher was dismissed by the Blaine County School Board for failing to

do janitorial work. The local school board claimed that her refusal to build fires and sweep the schoolhouse constituted "incompetence and negligence" which were statutory grounds for dismissal (School District No. 25 of Blaine County v. Bear, 106 Okla. 172, 233 P. 427 (1925)). Fortunately, on appeal, this case was overturned on the grounds that there was no such custodial stipulation in her contract.

Oklahoma has had a teacher tenure law since 1967 when the Oklahoma Legislature stated that the failure of any board of education to renew a contract of any teacher, who had served three (3) years, would be invalid unless the local school board served written notice as to "cause" Okla. Stat. Ann. tit. 70, § 6-24 (West. 1967); Okla. Stat. Ann. tit. 70, § 6-101 (West. 1989); Okla. Stat. Ann. tit. 70, § 6-101 (West. 1989). The teacher had a right to a local school board hearing on the question of reconsideration of such action by the local school board Okla. Stat. Ann. tit. 70, § 6-24 (West. 1967); Okla. Stat. Ann. tit. 70, § 6-101 (West. 1967); Okla. Stat. Ann. tit. 70, § 6-101 (West. 1989). Before final decision on nonrenewal the tenured teacher was allowed to appeal the action of the local school board to the Professional Practices Commission and then to the Oklahoma State Board of Education Okla. Stat. Ann. tit. 70, § 6-24 (West Supp. 1967); Okla. Stat. Ann. tit. 70, § 6-101 (West. 1967). After reviewing the appeal, the Oklahoma State Board of

Education issued a decision which was the final administrative judgement. Exoneration provided no guarantee of reinstatement for cause unless due process rights were violated Okla. Stat. Ann. tit. 70, § 6-24 (West Supp. 1967); Okla. Stat. Ann. tit. 70, § 6-101 (West. 1967).

### The Professional Practices Commission

This commission consisted of twelve (12) members appointed by the Oklahoma State Board of Education from a list of nominees from the teaching profession of Oklahoma submitted to the State Superintendent of Public Instruction. Membership on the commission was composed of representatives of the following Oklahoma professional educational organizations:

1. State Board of Education
2. Oklahoma Association of Secondary Principals
3. Department of Elementary School Administrators of the Oklahoma Education Association
4. Oklahoma Association of School Administrators
5. Classroom Teachers Association of the Oklahoma Education Association Okla. Stat. Ann. tit. 70, § 6-117 (West. 1971)

The Professional Practices Commission was entrusted with many responsibilities, including the appeals of dismissed and nonrenewed teachers, the authority to rule on the ethical performance of members of the teaching profession, and the power to suspend or revoke a teaching credential. Grounds for revocation of teaching credentials could involve any of the grounds that



constituted "cause for dismissal" Okla. Stat. Ann. tit. 70, § 6-120 (West. 1971).

A compendium of cases heard by the Professional Practices Commission and the Oklahoma State Board of Education along with their final disposition has been created by this researcher from records in the state archives at the Oklahoma State Department of Libraries. This compendium can be found in Appendix C, p. 178 of this dissertation. After exhaustive research this appears to be the only known compilation of these hearings in Oklahoma. The information in this compendium evolved from categories during the research process.

#### Hearing by the State Board of Education

The Professional Practices Commission could make a recommendation to the Oklahoma State Board of Education on the matter of teacher dismissal, nonrenewal, and revocation of certificate. After reviewing the record of the Professional Practices Commission, the Oklahoma State Board of Education could make a decision, or, if the teacher or local school board requested, hold a hearing where both the teacher and the local board of education could be heard. After 1971, the Oklahoma State Board of Education could order reinstatement of the nonrenewed teacher Okla. Stat. Ann. tit. 70, § 6-120 (West. 1971). Initially, a finding that the teacher was nonrenewed without "cause" did not automatically reinstate his, or her, contract Okla. Stat.

Ann. tit. 70 § 6-24.14 (West Supp. 1967). "Cause" for dismissal at this time, 1967, was limited to immorality, willful neglect of duty, cruelty to students, incompetency, teaching disloyalty to the American constitutional system of government, or moral turpitude Okla. Stat. Ann. tit. 70, § 6-24 (West. 1989). Although this initial teacher tenure act was amended several times between 1967 and 1977, the procedural due process structure remained basically intact for ten years until June 17, 1977.

The order of appeal of nonrenewal for a tenured teacher was from the local school board to the Professional Practices Commission and then to the Oklahoma State Board of Education. The Oklahoma State Board of Education's decision was the final administrative determination in the matter.

#### House Bill 1389 - 1971

Due process rights of dismissed and nonrenewed tenured teachers were strengthened considerably by the passage of House Bill 1389 (1971). In 1971, Oklahoma enacted a comprehensive teacher tenure law which made Oklahoma's tenure law one of the strongest in the nation (French, 1977). This bill was an amendment to the original teacher tenure law. Essentially, the changes by the enactment of House Bill 1389 by the Second Session of the Thirty-third Oklahoma Legislature required a local board of education to extend for one (1) year the contract of a nonrenewed

tenured teacher who had been exonerated of "cause" by the Oklahoma State Board of Education (French, 1977).

Hopefully during this time the local school board and the accused teacher settled their differences out of court.

### Dismissal Versus Nonrenewal

#### - House Bill 1389

An additional effect of this amendment to the original teacher tenure law Okla. Stat. Ann. tit. 70, § 6-122 (West, 1971) was that the "causes" that were previously only applicable to the dismissal or firing of a probationary teacher became applicable to the nonrenewed, tenured teacher, as well (1972 Okla. Sess. Laws).

Before 1971 a tenured teacher's contract could be nonrenewed for any reason or "cause" by the local school board and if sufficient "cause" was not proven by the local board the teacher was not guaranteed re-instatement. This fact may account for the absence of records in the state archives of tenured teachers, who appealed their nonrenewal to the Professional Practices Commission, 1967-1970.

Teachers who could prove a violation of procedural due process, which could include no notice, no reasons, or no hearing had their contract automatically renewed (French, 1972).

House Bill 1389 became law during the 1972-73 school year. The effect of this Bill was to cause teacher

dismissal proceedings for a tenured teacher to be less complex since identical "causes" became applicable to both dismissal and nonrenewal proceedings. The distinction between dismissal and nonrenewal was that nonrenewal allowed the teacher to complete the balance of the school year. Dismissal did not allow the teacher to complete the school term (1972 Okla. Sess. Laws, 393).

#### The Dismissal Hearing - House Bill 1389

While a dismissal hearing was required by statute, a nonrenewed teacher was afforded a hearing only upon written request to the local school board by the teacher. If the hearing was requested there were no rigid rules regarding procedure, but the teacher did have the right to face his/her accuser(s) and to have counsel present. The Oklahoma Open Meeting Law did apply, and the local school board was not permitted to conduct the hearing in executive session Okla. Stat. tit. 25, § 201 (1961) as amended by Okla. Stat. Ann. tit. 25, § 201 (West. 1970).

#### Appellate Procedure - House Bill 1389

Appellate procedures for nonrenewal and dismissal were different. As for administrative review, dismissal for "cause" of the tenured teacher was final at the local school board level. Relief for nonrenewed, tenured teachers was for that teacher to request a review of his or her case by the Professional Practices Commission and

then the State Board of Education. Both of these hearing levels were required to follow the provisions of the Oklahoma Administrative Procedures Act Okla. Stat. tit. 75, § 308 (1971) (1975 Okla. Sess. Laws 484). These appellate procedures for the tenured teacher described above applied only to nonrenewal for "cause". An appeal to the district court and to the State Supreme Court were options available once administrative review had been accomplished. Appeals of school board dismissals based on a denial of due process at this time moved directly to the courts.

Since tenured teachers who were dismissed for "cause" did not have the right to appeal above the local school board they were more likely to find themselves dismissed rather than nonrenewed (French, 1972).

Courts broadly interpreted this new teacher tenure statute, House Bill 1389. In interpreting the provision for refusing to renew a contract, the Oklahoma State Supreme Court held that the causes listed for justifying such action had to be good legal causes related to the teachers' fitness or capacity to perform the duties (Lovelace v. Ingram, 518 P.2d 1102 (Okla. 1973)).

#### Grounds for Dismissal or Nonrenewal

- House Bill 1389.

Effective 1972-73 school year the grounds for dismissal or nonrenewal of all teachers dismissed at any

time remained immorality, willful neglect of duty, cruelty, incompetency, teaching disloyalty to the American constitutional system of government, or any reason involving moral turpitude Okla. Stat. Ann. tit. 70, § 6-103 (West. 1971). In cases involving moral turpitude an appeal could be taken to the district court of the county (French, 1972).

#### Annexation and the Tenured

##### Teacher - 1974

An additional amendment to the Teacher Tenure Law (1971) occurred in 1974 when the Oklahoma Legislature provided that any teacher who had accumulated tenure in one school district would not lose tenure if that school district was annexed Okla. Stat. Ann. tit. 70, § 6-122.1 (West. 1974). This statute was upheld by the Oklahoma Supreme Court (Independent School District No. 10 of Seminole County v. Lollar, 547 P.2d 1324 (Okla. 1976)).

##### Appellate Relief for Cause - 1975

In 1975 Oklahoma's teacher tenure laws were further strengthened by the Oklahoma Legislature when it amended, again, the 1971 Law to allow appeal of tenured teachers' dismissals by a board of education for "cause" to the Professional Practices Commission and then to the Oklahoma State Board of Education Okla. Stat. Ann. tit. 70, § 6-103 (West. 1975).

An administrative decision by the Oklahoma State Board of Education was considered final. A decision that a teacher was dismissed without sufficient cause or without procedural due process automatically reinstated the tenured teacher for the contract year involved.

This same Act located the site of all hearings of dismissal or nonrenewal before the Oklahoma State Board of Education and the Professional Practices Commission at the Oliver Hodge Memorial Building or another facility owned by the State of Oklahoma Okla. Stat. Ann. tit. 70, § 6-120.1 (West Supp. 1975).

#### Tenure in Oklahoma, 1977 - 1990

For historical purposes the researcher has chosen a chronological division of teacher tenure in Oklahoma predicated on a dramatic change in the administrative appeals process. During this period (1977-1990) administrative appeals of tenured teachers who were dismissed or nonrenewed went from the local school board to a three-judge hearing panel. Subsequent appeals were to the jurisdictions of state and federal courts.

#### Senate Bill 249 - 1977

Senate Bill 249 modified the procedure for teacher dismissal or nonrenewal, provided for an evaluation procedure, authorized temporary suspension of a teacher and designated a procedure for admonishment and correction

of certain conducts Okla. Stat. Ann. tit. 70, § 6-103 (West. 1977).

Evaluation - Senate Bill 249

Section Two of Senate Bill 249 required a written evaluation of tenured teachers at least once every three (3) years. Probationary teachers were evaluated at least twice each year with copies of the evaluation given to the teacher Okla. Stat. Ann. tit. 70, § 6-103.1 (West. 1977).

Admonishment - Senate Bill 249

Admonishment provisions in Senate Bill 249 required that the teacher be admonished in writing and be allowed up to two (2) months for remediation. Failure to correct "cause" resulted in recommendation for dismissal or nonrenewal Okla. Stat. Ann. tit. 70, § 6-103.2 (West Supp. 1977).

Suspension - Senate Bill 249

Senate Bill 249 also authorized suspension of a teacher by a superintendent without notice or hearing and without loss of pay when the superintendent deemed such action was in the best interests of the children in the school district Okla. Stat. Ann. tit. 70, § 6-103.3 (West Supp. 1977).

The length of a suspension under this Statute was limited to ten (10) days during which the superintendent



either initiates dismissal proceedings or exonerates the teacher of alleged wrong doing. In a case involving a criminal charge the suspension may be extended until adjudication at trial but not to appeal Okla. Stat. Ann. tit. 70, § 6-103.4 (West. 1977).

#### Hearing Judge - Senate Bill 249

The most far-reaching change of Senate Bill 249 was the replacement of the Professional Practices Commission with a three-judge hearing panel. These hearings became known as "249 Hearings" since they were based on Senate Bill 249.

A hearing judge's list of two hundred (200) attorneys with trial experience was provided by the Oklahoma Bar Association. No member of the Oklahoma Legislature was allowed to serve as a hearing judge Okla. Stat. Ann. tit. 70, § 6-103.5 (West. 1977).

The State Superintendent of Public Instruction designated twenty-one (21) individuals on the lists to be a potential judge. The tenured teacher and the local board of education selected the hearing judge by one of two methods. If both parties reached mutual agreement on one person's name, that person became the hearing judge. A second method of selecting the hearing judge was by single name elimination of ten (10) nominees, one at a time, until each party had eliminated ten names. The one name left became the hearing judge. The tenured teacher

had first choice in selecting the judges Okla. Stat. Ann. tit. 70, § 6-103.5 (West Supp. 1977).

The hearing judge was counseled and assisted by a person designated by the local board of education and a person designated by the tenured teacher. These three persons composed the hearing panel Okla. Stat. Ann. tit. 70, § 6-103.15 (West Supp. 1977).

Costs of appeals often served as a deterrent to both the tenured teacher and to the local school board. See Figure I, p. 221. Total hearing costs, including attorney fees, for one of the last cases decided by this process in 1990 were \$69,698.27 for Mark Chase v. Frank Tuttle AVTS District 21, 1990. See Appendix D, p. 207. Undoubtedly, such costs had to be a deterrent to local school boards' dismissals or nonrenewal of tenured teachers. According to statute, the local board of education and the tenured teacher were each responsible for fifty percent (50%) of the expenses, cost of the hearing, and official transcript, excluding attorney fees of the parties involved Okla. Stat. Ann. tit. 70, § 6-103.10 (West. 1977). The United States 10th Circuit Court of Appeals ruled on June 2, 1989 that the statute requiring teachers to pay half the costs of a posttermination hearing violated the teacher's due process rights (Johnny Lee Rankin v. Independent School District No. 1-3 of Noble County, 876 F.2d 838, 54 Ed. Law Rep. 159 (10th Cir. 1989)). After this ruling it appears that local school boards would have had to pay all the costs of future

hearings.

The 1990 costs for services of the hearing judge were \$40.00 per hour not to exceed \$250.00 per day (Garrett, 1991). Costs for transcripts of testimony and preparation of reports were additional expenses and are not shown in Figure I, p. 221. Most requests for hearing judge decisions were settled without the hearing taking place. Between 1979 and 1990 there were 209 requests for hearings but only eighty-five took place. See Table IV, p. 220.

Due to legislation in 1989 records on teacher's hearings were only kept for the first six months of 1990 (1989 Okla. Sess. Laws Supp.; Garrett, 1991). Beginning July 1, 1990, a hearing panel no longer adjudicated nonrenewal or dismissal actions. Appeals of hearing judge decisions are still pending for adjudication at the time of this writing (Ruth Young v. Smithville Public Schools I-014, 1990). See Appendix D, p. 206. Although hearing panels heard appeals of tenured teachers from 1979 to June of 1990 statutory grounds for dismissal or nonrenewal of tenured teachers were significantly changed by the passage of Senate Bill 308.

#### Senate Bill 308 -

#### Teacher Fair Dismissal Law

In 1981 during an extra session of the Thirty-eighth Oklahoma Legislature, Senate Bill 308 was passed, which affected teacher dismissal and nonrenewal for the next

nine years. In actuality this Bill contained a series of amendments to the 1977 Law relating to the suspension, dismissal, and nonrenewal of tenured and probationary teachers (1981 Okla. Sess. Laws).

The most controversial provision of Senate Bill 308, the Teacher Fair Dismissal Law, concerning employment or nonreemployment of certified personnel was the provision addressing the delivery of an admonition by a principal Okla. Stat. Ann. tit. 70, § 6-102.2 (West. 1977).

Although the Oklahoma Supreme Court held that an admonition was not a condition precedent to a school district's authority to nonrenew or dismiss a teacher, it appears that the legislature intended to include admonishment as a requirement for some adverse employment actions (Jackson v. Independent School District No. 16 of Payne County, 648 P.2d 26, 5 Ed. Law Rep. 597 (Okla. 1982) in 1977 Okla. Sess. Laws).

In a recent telephone conversation with Larry Lewis, legal counsel for the Oklahoma State School Boards Association, regarding the requirement of admonishment under the Teacher Fair Dismissal Law, Mr. Lewis indicated that case law seemed to indicate that issuance of an admonishment before termination may have been contingent on the initial source of the recommendation for nonreemployment. Apparently if the superintendent initiated the dismissal, admonishment may not have been necessary. Later hearing panel decisions appear to make

admonishment a precondition to termination (L. Lewis, personal communication, February 2, 1993).

The admonishment provision of the Teacher Fair Dismissal Law provided for written admonishment, assistance and a reasonable time for remediation. One Oklahoma court of appeals decision ruled on the question of whether a teacher could be terminated in the absence of a written admonishment. The Court ruled that the failure of the school district or the administrator to admonish the teacher did not automatically preclude a district from terminating a teacher's employment (Winslett v. Independent School District No. 16, 657 P.2d 1208, 9 Ed. Law Rep. 386 (Okla. Ct. App. 1982)).

One might want to look at a 1992 decision in the Oklahoma Court of Appeals (Independent School District No. 4 of Harper County v. Orange, 63 Okla. B.J. 48, (Okla. 1992)). This termination of a tenured teacher with fourteen years experience was overturned because the local school board failed to prove by a preponderance of evidence willful neglect and incompetency. Although evaluation and admonition had taken place the teacher alleged inadequate time to correct teaching deficiencies (thirteen school days). Most of the testimony in this case centered around whether or not the teacher had been given reasonable time for improvement.

It appears that the evaluation, admonishment, and time for improvement provisions of the Teacher Fair

Dismissal Law (1981) were not followed closely enough to provide a preponderance of evidence at the hearing judge level (Day, 1993).

Grounds for Termination of a Tenured  
Teacher - Senate Bill 308

Statutory grounds for dismissal or nonrenewal of a tenured public school teacher in Oklahoma continued to be the same as under the 1977 Law - immorality, willful neglect of duty, cruelty, incompetency, teaching disloyalty to the American constitutional system of government, or any reason involving moral turpitude Okla. Stat. tit. 70, § 6-103.4 (1981); Okla. Stat. Ann. tit. 70, § 6-103 (West. 1977). In addition, failure to accumulate the staff development points required by the local school board staff development panel and conviction of a felony also constituted grounds for dismissal. Also, the 1985 Oklahoma Legislature provided that criminal sexual activity or sexual misconduct "that has impeded the effectiveness of the individual's performance of school duties" constituted grounds for dismissal or nonreemployment of a teacher Okla. Stat. Ann. tit. 70, § 6-103.15 (West. 1989, 216).

The procedures for dismissal or nonreemployment under the Teacher Fair Dismissal Law included the requirement that a recommendation of the superintendent of schools was presented to the local board of education. A written notice as to dismissal or nonrenewal was given to the

teacher with an explanation of cause and the right to appeal to a hearing panel Okla. Stat. tit. 70, § 6-103.8 (1981). See Figure II, p. 225.

Pretermination Hearing. A tenured teacher served with notice of nonrenewal or dismissal had additional rights as a result of Cleveland Board of Education v. Loudermill. Any teacher was entitled to a pretermination hearing in order for the local school board to explain the reasons underlying the potential decision. The teacher was entitled to an opportunity to respond to allegations before a local school board could decide to dismiss or nonrenew a teacher (Cleveland Board of Education v. Loudermill, 53 U.S.L.W. 306, 470 U.S. 532, 105 S. Ct. 1487, 84 L.E.2d 494 (1985)). The due process right of a pretermination hearing was upheld in the Oklahoma litigation of Short v. Kiamichi Area Vocational-Technical School District No. 7 of Choctaw County in 1988. The teacher did not have the right to call witnesses or cross examine the administration during the hearing (Short v. Kiamichi, 761 P.2d 472 (Okla. 1988)).

Post Termination Hearing - Three-judge Hearing Panel. The hearing entitlement for the tenured teacher included the pretermination hearing as well as a post termination hearing. The probationary teacher had a right to a hearing before the local board of education and the tenured teacher had a right to a second hearing.

Prior to implementation of the Teacher Due Process Act of 1990 and subsequent to June, 1977, the second hearing for a tenured teacher was before a hearing panel. The hearing panel's decision was final unless the tenured teacher or the district superintendent appealed to district court Okla. Stat. Ann. tit. 70, § 6-103.12 (West. 1977).

A compendium of appeals for hearing panel decisions has been expanded by adding to and updating charts produced by the Oklahoma State Board of Education in 1990 (Appendix D, p. 186. Appeals from hearing panels are still being heard at the time of this writing in 1993. Update and expansion was facilitated from data in the state archives, human resources including telephone calls to school superintendents, court clerks, pertinent attorneys, and from records of recent court proceedings.

Tenure in Oklahoma, 1990 - present,

#### The Career Teacher

Significant changes regarding teacher tenure grew out of the recommendations of the governor appointed committee, "Task Force 2000". An education reform proposal, known as House Bill 1017, was passed on April 19, 1990 by the Oklahoma Senate and signed by Governor Henry Bellmon on April 26, 1990. Preceding passage of the emergency clause by the Senate, the Oklahoma Education Association called for a five day walk out during the week of April 15 - 21, 1990. Aggressive political action by



Oklahoma teachers undoubtedly influenced the passage of this Bill and its emergency clause.

Speaker of the House, Steve Lewis, stated that this Bill ". . . will go a long way toward preparing Oklahoma for the economic and social challenges of the next decade and the next century" (Thompson and Peltier, 1990, p. 5).

#### House Bill 1017 - 1990

Extensive reconstruction of Oklahoma statutes affecting teacher employment and educational conditions in the public schools occurred during an extraordinary session of the Oklahoma Legislature in 1989 when this Bill was written. Section 77 of this new law spelled out new reasons for teacher dismissal or nonre-employment Okla. Stat. Ann. tit. 70, § 6-101.22 (West, 1989). The term "tenure" was eliminated and "career" was substituted in its place.

#### Teacher Due Process Act of 1990

A career teacher can be terminated for the following causes:

1. Willful Neglect of Duty
2. Repeated Negligence in Performance of Duty
3. Mental or Physical Abuse of/or to a Child
4. Incompetency
5. Instructional Ineffectiveness
6. Unsatisfactory Teaching Performance
7. Any reason involving Moral Turpitude
8. Conviction of a Felony Offense

9. Engaging in Criminal Sexual Activity\* or Sexual Misconduct\* that impedes the effectiveness of the performance of one's duties.

(\* Sexual activity means the act of sodomy; sexual misconduct means the soliciting or imposing of criminal sexual activity Okla. Stat. Ann. tit. 70, § 6-101.22 (West. 1989, p. 221)

Under the new law, Section 80 of House Bill 1017, recommendation for dismissal by the superintendent of a career teacher to the local board of education had to specify statutory grounds and the underlying facts supporting the recommendation (Figure IV, p. 224). The teacher, under this Act, is guaranteed notification, the right to a termination hearing, and the right to know the underlying facts supporting the recommendation for termination Okla. Stat. Ann. tit. 70, § 6-101.25 (West. 1989). Only after a hearing, and in an open meeting, the local school board votes on the adverse employment action. The burden of proof is on the superintendent and the standard of proof is the preponderance of the evidence presented at the pretermination hearing Okla. Stat. Ann. tit. 70, § 6-101.26 (West. 1989). The career teacher is entitled to compensation and benefits until such time as the teacher's case is adjudicated in a trial de novo, if the career teacher petitions for such Okla. Stat. Ann. tit. 70, § 6-101.26(A,B,C) (West. 1989); Okla. Stat. Ann. tit. 70, § 6-101.27(A) (West. 1989). Although compensation and benefits are paid for a career teacher through the trial de novo they are not paid through

subsequent appeals Okla. Stat. Ann. tit. 70, § 6-101.26(C) (West, 1990).

### The Administrative Hearing Process

Both the career teacher and the probationary teacher have the same hearing procedure which was adopted by the Oklahoma State Board of Education. Dismissal and nonrenewal causes are not the same (Lewis, 1993).

Rights afforded to both tenured and nontenured teachers include the right to counsel, to present witnesses, interrogatories, affidavits, and depositions. Teachers also have the right to a list of witnesses, to cross examine witnesses, to testify in their own behalf, and to present evidence and defense of all allegations. Additional rights include an orderly and impartial hearing based on the evidence presented (Lewis, 1993).

An outline of the administrative hearing procedures required by the Oklahoma State Board of Education is available by request from the Oklahoma State Department of Education. These procedures are also outlined in a publication from the Oklahoma State School Boards Association (Lewis, 1993).

### Trial de Novo

The career teacher has the right to petition for a trial de novo in the district court within ten days of receipt of said decision by the local school board Okla.

Stat. Ann. tit. 70, § 6-101.26(C) (West. 1990). See, also, Figure II, p. 222. Under the Teacher Due Process Act of 1990 the trial de novo is a new trial in which the dismissed or nonrenewed teacher has a fresh opportunity to present reasons why he/she should be reinstated to his or her employment.

The 1990 Act provides that

the trial shall occur not less than ten (10) days nor more than thirty (30) days following the filing of the answer to the teacher's petition by the school district Okla. Stat. Ann. tit. 70, § 6-101.27(C). (West. 1990, p. 224)

The career teacher is entitled to a trial de novo in the district court of the county in which the public school district was located. Okla. Stat. Ann. tit. 70, § 6-101.27(A) (West. 1990, p. 224).

At the nonjury trial all issues of fact and law are presented anew.

The judge at this trial can enter judgement directing the following:

- (1) that the local school board reinstate the career teacher with full employment status,
- (2) that the decision of the local school board be sustained,
- (3) that the prevailing party be awarded attorney fees and court costs Okla. Stat. Ann. tit. 70, § 6-101.27(D) (West. 1990, p. 224)

The decision of the district court is final unless appealed in the manner provided by law for the appeal of civil cases from the district court Okla. Stat. Ann. tit.

70, § 6-101.2; Okla. Stat. Ann. tit. 70, § 6-101.27(F) (West. 1989). See, also, Figure II, p. 222.

Summary of Oklahoma Dismissal or  
Nonrenewal Legislation Affecting  
Tenured Teachers

The granting of tenure to Oklahoma teachers in 1967 has had the effect of vesting teachers with a property right to continued employment. In school district adverse employment decisions the courts have defined this property interest to be a "legitimate entitlement" to continued employment.

A liberty interest becomes a factor in employment cases when government actions deny First Amendment freedoms, create a stigma, and/or unfairly damage the employee's reputation to the extent that it precludes other employment opportunities. Once it is established that an adverse employment action is required the principal issue becomes one of to what legal processes is the employee entitled?

This chapter attempts to explain the historical evolution of this entitlement in statutory law in Oklahoma. House Bill 1017 included a number of education reforms including the creation of the Teacher Due Process Act of 1990 (1989 Okla. Sess. Laws Supp., Sections 75-85). This Act incorporates some of the same grounds for teacher termination that were included in the former law.

Implications to the legislation cited in this chapter are to familiarize Oklahoma school officials with statutory provisions governing the dismissal and nonrenewal of tenured teachers in Oklahoma and to compile a statutory record of laws which have governed adverse tenured teacher employment action. Statutory grounds for teacher termination still include Willful Neglect of Duty, Incompetency, and any act involving Moral Turpitude (Table I, p. 215). Definitions for all of legal causes are not given by statute and rely on the interpretation of the administrative and judicial hearings which are reviewed in Chapter III.

Future researchers are now guaranteed teacher due process information from termination hearings. Local school boards are now required to send hearing information to the Oklahoma State Department of Education on an existing form. Final disposition of the case, cause(s), costs, names, and appeal results must be submitted as a result of new legislation (Lewis, 1993).

## CHAPTER III

### A REVIEW OF CASE LAW AND LITIGATION WHICH ESTABLISHED LEGAL PRECEDENT AFFECTING THE DISMISSAL OR NONRENEWAL OF TENURED TEACHERS

#### Introduction

Although the Oklahoma State Legislature is constitutionally vested with the power to create law it is the judiciary which interprets and applies these statutes to tenured teachers.

Chapter III provides a record of case law which established the legal precedent used by administrative and judiciary hearings regarding the dismissal or nonrenewal of Oklahoma tenured teachers.

Prior to the Teacher Due Process Act of 1990 the grounds for termination of a tenured teacher at a public school in Oklahoma included incompetency, willful neglect of duty, immorality, cruelty, and moral turpitude. Attorneys arguing cases needed to look to prior interpretations by the Oklahoma Practices Commission, hearing panels, and case law for precedent and legal definition.

The grounds for dismissal or nonrenewal of a tenured teacher in Oklahoma which were common in due process hearings were incompetency and willful neglect of duty (Long, 1983).

### Incompetency

Statutory law failed to identify a definition of incompetency. Therefore, one needed to look to case law to define incompetency as the term related to adverse teacher employment action. One important administration hearing panel decision related to the termination of a tenured teacher which was frequently cited in establishing a definition of incompetency was Independent School District No. 8 of Tulsa County, Oklahoma at Sperry, Oklahoma v. Opal Walker (1978). Ms. Walker, a tenured teacher, was being nonrenewed for failure to maintain discipline in her classroom. There was no definition offered for incompetency from the Oklahoma Legislature or from the Oklahoma Supreme Court. Jesse Swift, the Hearing Judge, adopted the definition of incompetency to mean

Incompetency, as used in Okla. Stat. tit. 70, § 6-103(A) (1977), is found to mean the inability or failure to perform the job or task at the level or degree of performance set by and expected by the employer. An alternate way of stating this is failure to perform one or more of the essential parts of the job requirements, or failure to perform one or more



necessary or imperative criteria without which the performance is inadequate or unacceptable. Incompetent employment performance is that kind of performance which is in some essential part below the level, degree, or standard of performance established and expected by the employer. (Lewis, 1978, p. 27)

Although the Sperry case was often cited as a definition of incompetence, each appeal studied appeared to establish its own definition on a case-by-case basis.

Another case involving teacher dismissal for incompetency, frequently cited as a definition, was Cafferty v. Southern Tier Publishing Company, 123 N.E. 76 (1919). The Court stated that

the term incompetency must be given a broad meaning and therefore cannot be limited merely to a lack of mental equipment and knowledge of the subject matter or ability to teach. It must have an association with the work and the position to which the teacher was assigned. (Cafferty v. Southern Tier, 1919, p. 78)

In a 1982 Oklahoma case, Jackson v. Independent School District No. 16, the Oklahoma Supreme Court did not object to dismissal based on incompetency even though no specific performance or conduct allegations were made. What made this case even more interesting was the failure of the school administration to follow prescribed evaluations and admonishment procedures. The Court held that this failure on the part of the administration simply did not violate

the teacher's due process (Jackson v. Independent School District No. 16 of Payne County, 648 P.2d 26, 5 Ed. Law Rep. 597 (Okla. 1982)).

#### Summary - Incompetency

Criteria generally appraised for incompetency included the following:

1. Was the teacher performing at an acceptable level?
2. Was the teacher's unacceptable level of performance in conflict with employment requirements expected by the local board of education?
3. Was the teacher's duty to perform the questioned behavior in a certain manner clearly communicated by evaluation, admonishment, or school board policy?
4. Was the teacher aware of the school board's expectations and did the teacher understand the consequences for failure to meet employee requirements?
5. Was the unacceptable performance due to lack of ability, fitness to teach, or legal qualifications? (Long, 1983, p. II-19)

It seems that there is a widespread assumption that tenure laws force public schools to put up with incompetent teachers. Tenure laws authorize dismissal for cause of incompetent tenured teachers. These laws do not require schools to continue to employ incompetent teachers. The statutory requirements for dismissal are designed to protect due process rights based on the constitution, so they must be followed exactly.

Administrators reluctant to initiate dismissal procedures often put up with unsatisfactory teachers or transfer them to other schools and place the blame on the tenure system. It appears that as long as teachers'

procedural rights are followed, the judiciary is unwilling to second-guess educators on academic decisions related to the competence of a teacher.

A teacher's competence and qualifications for tenure or promotion are by their very nature matters calling for highly subjective determinations; determinations which do not lend themselves to precise qualifications and are not susceptible to mechanical measurement or the use of standardized tests. These determinations are in an area in which school officials must remain free to exercise their judgement . . . courts are not qualified to review and substitute their judgement for these subjective discretionary judgements of professional experts . . . . (Clark v. Whiting, 607 F.2d 634, 639-40 (4th Cir. 1979, p. 639)

When procedural requirements are followed, schools have generally been successful in dismissing teachers for incompetency (Rosenberger and Primpton, 1975). In many cases inferred legal problems are more perceived than real. Contrary to public assumption, it is not impossible to dismiss incompetent tenured teachers. It appears that Incompetency and Willful Neglect of Duty have been general charges which any teacher could have been susceptible to who was not liked (Rosenberger and Primpton, 1975).

### Willful Neglect of Duty

A second cause of teacher dismissal commonly cited in teacher dismissal cases was the willful neglect of duty (Long, 1983. Like negligence, willful neglect of duty had no definition in Oklahoma statutes, and one needed to review administrative appeals and court cases to obtain a legal meaning.

Interpretation of willful neglect was adopted in the 1977 case of Rance Robison v. Wagoner Board of Education of Independent School District No. 19 (Lewis, 1978).

The hearing judge based an interpretation of willful neglect on the 1939 Oklahoma case, Shields v. State, in which it was stated that

a willful neglect of duty means that the act or failure to act was for a bad or evil purpose . . . .  
Mere thoughtless acts with no bad or evil purpose will not justify removal on the ground of willful and habitual neglect of duty. (Shields v. State, 184 Okla. 618, 89 P.2d 756, 760 (1939) p. 760)

In the Robinson case the hearing judge established a difference between careless conduct and conduct that was knowingly and purposefully wrong (Rance Robison v. Wagoner Board of Education, 1977).

A commonly cited dismissal case involving an Oklahoma tenured teacher who was nonrenewed for willful neglect of duty was in the matter of the appeal of Boyce Harrison v.

Board of Education of Kingston, OK, 1977 (Lewis, 1978).

The hearing judge concluded in interpreting Okla. Stat. Ann. tit. 70, § 6-103 (West, 1977) that the Oklahoma Legislature intended only a knowing and purposeful violation definition of willful neglect be applied in order for a teacher to be guilty of willful neglect of duty (Boyce Harrison v. Board of Education, 1977). Judge Lane stated that the contention by the defendant that neglect of duty by a teacher would have had to have been undertaken with either evil intent or purpose to do harm before dismissal or nonrenewal proceedings was invalid (Lewis, 1978). Instead Judge Lane ruled that the conduct of the teacher had to be assessed only on the basis that the teacher's conduct was intentional and purposeful action (Lewis, 1978).

A third Oklahoma case involved the termination of a tenured teacher on the grounds of incompetence and willful neglect. In 1981 the Supreme Court of Oklahoma affirmed the appeal decision of a hearing panel upholding the termination of a teacher. The case was significant since it also stated a definition of willful neglect. Here the Court provided

in interpreting Okla. Stat. tit. 70, § 6-103 (West, 1925), we find that the Oklahoma Legislature intended only a 'knowingly and purposeful' violation definition be applied in order for a teacher to be guilty of willful neglect of duty . . . . (Childers v.

Independent School District No. 1 of Bryan County,  
645 P.2d 992, 4 Ed. Law Rep. 867 (Okla. 1981), 676  
F.2d 1338, 4 Ed. Law Rep. 36 (10th Cir. 1982 at 1338))

The Oklahoma Supreme Court reversed the decision of the District Court and upheld the decision of the hearing panel for termination. Rationale given by the Court was justified by the large number of acts of neglect and repeated defiance which constituted willful neglect of duties: "Repeated tardiness of a teacher can amount to willful neglect of duty" (Hoeltzel, 1990, p. 113).

#### Summary - Willful Neglect

Willful neglect of duty was found when the teacher performed an act of omission or commission in his/her duties as a teacher. If the teacher knowingly and intentionally performed an act of omission or commission, then it fell under the category of willful neglect of duty.

It appears from cases cited as examples of willful neglect that the principal test of willful neglect is a knowing and purposeful act committed by a teacher. Oklahoma statutes are silent on what acts or omissions constitute willful neglect of duty.

One school board appeal of a 1990 hearing panel decision was decided by the Oklahoma Court of Appeals during November of 1992 for the teacher. Susan Orange, a tenured teacher, was reinstated with pay retroactive for one and one-half years with resumption of duties on

February 1, 1993. This was the second unsuccessful attempt by the local board at termination of this teacher. Willful neglect and incompetence were alleged statutory causes in this case (See case 200, Appendix D, p. 206).

The hearing panel ruled in this case that the district had failed to prove by a preponderance of evidence that the teacher had "knowingly and purposefully failed to perform one or more of the job duties" (Independent School District No. 4 of Harper County v. Orange, 63 Okla. B.J. 48, p. 3782 (Okla. Ct. App. 1992)). The teacher alleged that there was no credible evidence because she was afforded only thirteen instructional days to correct deficiencies in her teaching performance. Final disposition was in the Oklahoma Court of Appeals which reversed the district court ruling. The district court had held in favor of the local board reversing the hearing panel decision (District No. 4 v. Orange, 1992).

The court of appeals ruled that the district court could not reverse the hearing panel's decision unless the reversal was based on an error of judgement by the panel when it had considered all the relevant facts.

The Teacher Due Process Act of 1990 continues to list willful neglect of duty as grounds for dismissal and nonrenewal Okla. Stat. Ann. tit. 70, § 6-101.22(A) (West. 1989). It is likely that it will continue to be one of the common grounds for dismissal and nonreemployment of teachers. However, unlike the past, dismissal based on

this cause will definitely require admonition and an opportunity for remediation (Table I, p. 215).

### Immorality

Historically, teachers, more than any other group of public employees, have been required to adhere to the moral code of a community and to project an image of rectitude (Francis and Stacey, 1977). Teachers are still considered mandatory role models, but community moral standards do not bear as heavily on teachers today as in the past. Generally, teachers may act as they please as long as their actions do not impair their effectiveness in the classroom or adversely affect the operation of the school (DeMitchell and DeMitchell, 1990).

In 1939 a teacher in Pennsylvania was dismissed for immorality. The Pennsylvania Supreme Court sustained the school board's action and discussed immorality and the exemplary nature of the teaching profession. The Court held that

immorality is not essentially confined to a deviation from sex morality; it may be such a course of action as offends the morals of a community and is a bad example to foster and elevate. (Horosko v. School District of Mount Pleasant Township, 6 A.2d 866, 868 (Pa. 1939), p. 868)

The Court also indicated that a different standard of conduct and public scrutiny is required of teachers that is



not required of others. It further held that the teacher must

conduct him/herself in such a manner as to command the respect and good will of the community even though it deprives him/her of the same rights enjoyed by persons in other vocations. (Horosko v. Mount Pleasant, 1939, p. 868)

It appears that teachers are still subject to the compelling interests of the state and the community in which they work. An often cited case dealing with a teacher's out of school activities and dismissal for immorality set a new standard by which a teacher's out of school conduct can be used for dismissal (Morrison v. State Board of Education, 82 Cal. Rptr. 175, 461 P.2d 375 (1969)).

Morrison admittedly engaged in homosexual conduct in private outside the school setting with another consenting adult. The California State Board of Education revoked Morrison's life teaching credential on the grounds that the incident constituted immorality. Although this was a California case, it has been cited as legal precedent through out the nation (DeMitchell and DeMitchell, 1990).

The Court listed considerations which could be utilized to determine the impact of a teacher's out of school conduct on the school setting as follows:

1. the proximity or remoteness in time of the conduct
2. the age of the students that the teacher works with
3. did the conduct adversely affect the students or

fellow teachers

4. the extent to which disciplinary action may inflict a chilling effect on the rights of teachers

5. the likelihood of recurrence

6. the extenuating or aggravating circumstances surrounding the conduct

7. the praiseworthiness or blameworthiness of the motives resulting in the conduct (DeMitchell & DeMitchell, 1990, p 384).

The California Supreme Court set aside the California State Board's decision and stated "today's morals may become tomorrow's ancient and absurd customs" (Morrison v. State Board of Education, 1969, p. 375). The Court held that

immoral conduct could stretch over a wide range of behaviors and that immorality statutes did not empower an employer or agency to dismiss any employee whose personal private conduct incurred its disapproval.

(Morrison v. State Board of Education, 1969, p. 382)

The Court devised a new standard for judging a teacher's out of school behavior which can be used as a basis for adverse employment action: has the behavior had an adverse effect on the teacher's fitness to teach (Morrison v. State Board of Education, 1969).

Oklahoma statutes, since the time that tenure was established, have included references to immorality and moral turpitude as grounds for teacher termination. Any teacher "could be dismissed at any time or not reemployed for immorality . . . or any reason involving moral turpitude" Okla. Stat. Ann. tit. 70, § 6-103.2 (West. 1947, p. 541); Okla. Stat. Ann. tit. 70, § 6-103(A) (West. 1978).

Moral turpitude and immorality were cited as causes for dismissal in the matter of appeal of Ray Thompson v. Board of Education of Independent School District No. 89 of Oklahoma County, State of Oklahoma, 1978. The hearing judge in the Thompson case pointed out that the status of being immoral was different from committing an immoral act (Lewis, 1978). The commission of an immoral act was moral turpitude while immorality was sustained only when overwhelming evidence proved that a person was without morals (Lewis, 1978).

Immorality is defined in Oklahoma case law as a state of being immoral, vice, wickedness, unchastity, a vice hostile to the welfare of the general public. It is conduct which is willful, flagrant and shows an indifference to the opinions of the good and respectful members of the community and inimical to public welfare according to standards of a community (Warkentin v. Kleinwachter, 116 Okla. 218, 27 P.2d 160 (1933); In re Hicks, 163 Okla. 29, 20 P.2d 896 (1933)).

#### Summary - Immorality

It appeared from these cases that to support a finding of immorality against an employee, the local school board had to prove that the employee was without morals and had the status of being amoral or lacking any semblance of being moral.

In a 1990 decision, a teacher was dismissed for immorality (Don Birdwell v. Elk City Board of Education, I-6, Beckham County, Oklahoma. Actions construed by the hearing panel and hearing judge which justified dismissal on grounds of immorality included the following:

1. the soliciting of oral sodomy directed toward a student while intoxicated in the teacher's pick-up truck
2. the teacher's long history of a drinking problem
3. the teacher's effectiveness in the performance of his school duties had been impeded
4. a continuous pattern of sexual activities and transgressions during previous school years (Don Birdwell v. Elk City Board of Education, I-6, Beckham County, Oklahoma, 1990, in Oklahoma Department of Libraries Archives, Box 16).

As noted in Table I on p. 215, the Teacher Due Process Act of 1990 did not cite immorality as grounds for dismissal but did list moral turpitude Okla. Stat. Ann. tit. 70, § 6-101.2(A) (West. 1989). Criminal sexual activity means the act of sodomy Okla. Stat. Ann. tit. 21, § 886 (West. 1989). Sodomy under the 1990 Act continues to be grounds for dismissal as noted in Table I on p. 215. Okla. Stat. Ann. tit. 70, § 6-101.2(A) (West. 1989).

#### Moral Turpitude

Moral turpitude infers commission of an immoral act. Moral turpitude was defined in Oklahoma as "conduct contrary to justice, honesty, and good morals" (In re Williams, 64 Okla. 316, 167 P. 1149 (1917)).

In a separate case, Kelly v. City of Tulsa, 1977, another definition of moral turpitude was given.

Moral turpitude implies something immoral in itself regardless of whether it is punishable by law. The doing of the act itself and not its prohibition by statute determines the moral turpitude. The elements of intent and knowledge are regarded as important, and if the wrong is unintentional or if the act is made improper by statute without regard to the mental element, it is not moral turpitude. (Kelly v. City of Tulsa, 569 P.2d 455, 457 (Okla. 1977, p. 457))

One could assume from these cases that a board of education would need to have proven that an immoral act was committed and that intent and knowledge of the person accused was present.

As previously cited, a 1969 case involving the private sexual conduct of a public school teacher set some parameters regarding moral conduct of teachers outside the school setting (Morrison v. State Board of Education, 82 Cal. Rptr. 175, 461 P.2d 375 (1969)). A precedent was established in this case regarding a teacher's out of school behavior. Basically, this precedent requires that a rational nexus had to be established between the teacher's behavior and the teacher's inability to teach or positively interact with students (Lewis, 1978).

Immoral acts of sexual exploitation by a male teacher with a minor female student were dealt with numerous times by the courts. Such conduct was construed to be moral turpitude and detrimental to both the student-teacher

relationship and to the school district (Board of Trustees v. Stubblefield, 16 Cal. App. 3d 820, 94 Cal. Rptr. 318 (1974); Denton v. South Kitsap School District, 516 P.2d 1080 (Wash. App. (1973))).

In the Oklahoma case of Ray Thompson v. Board of Education of Independent School District No. 89 of Oklahoma County, State of Oklahoma, 1978, the hearing judge, Judge Goodman, found the alleged deliberate in-school sexual contact of a principal and student was an offense involving moral turpitude (Lewis, 1978). This behavior was construed to be contrary to acceptable moral standards and harmful to the student principal relationship (Lewis, 1978).

Although this study is limited to tenured teachers, before 1984, administrators including superintendents were allowed to gain tenure as a teacher, not as an administrator, and had the same appellate rights as a tenured teacher Okla. Stat. Ann. tit. 70, § 6-122 (West Supp. 1974); Okla. Stat. tit. 70, § 6-101 (1971).

In 1984 an Oklahoma attorney general ruling stated that if an administrator who had acquired tenure as a teacher becomes employed full time as an administrator the tenure rights are lost. This case (Ray Thompson v. Board of Education, 1978) also included under acts of moral turpitude sexual advances of a principal toward an adult female teacher subject to implied intimidation by her supervisor on school premises during normal school hours (Lewis, 1978).

Moral turpitude refers to specific immoral acts. Morrison v. State Board of Education (1969) found that it was necessary to make a distinction between immoral acts committed during school and immoral acts committed outside of the school setting (Lewis, 1978).

#### Summary - Moral Turpitude

An act which might be construed as moral turpitude in one community by a school board might not be so construed in another. Dismissals for moral turpitude of tenured teachers were scrutinized on appeal by the hearing judge and were subject to review by the courts if appealed to that level.

It was and still is believed that teachers must lead an exemplary life so as to mold children's virtues (Francis and Stacey, 1977). The Supreme Court of California, in 1969, devised a standard which has been cited as a basis for moral turpitude. Has the activity had an adverse effect on the teacher's fitness to teach? Morrison v. State Board of Education, 1969, stated that a nexus must be shown to exist between the teacher's activity and a diminishment of his or her ability to perform the job (Lewis, 1978). Moral turpitude continues to be a legal cause for dismissal under the Teacher Due Process Act of 1990 in Oklahoma as shown in Table I, p. 215. Since there is still no statutory definition of this cause, decisions will continue to be based on definitions cited in

case law that refer to Okla. Stat. Ann. tit. 70, § 6-101.22 (West. 1990). Actually, any reason involving moral turpitude has been rather vague, subject to abuse, and must be decided on a case-by-case basis using legal precedent of case law (Long, 1983).

Generally, immoral acts which were committed inside the school with knowledge and purpose were construed by the courts to be moral turpitude as found in Ray Thompson v. Board of Education of Independent School District No. 89 of Oklahoma County, State of Oklahoma, 1978 (Lewis, 1978). If the alleged wrong was unintentional or unknown (accidental) then moral turpitude may not have existed (Kelly v. City of Tulsa, 569 P.2d 455, 457 (Okla. 1977)).

#### Homosexual Activity or Conduct

Oklahoma Statute provided for the dismissal of teachers who engaged in homosexual activity or conduct Okla. Stat. Ann. tit. 70, § 6-103.15 (West. 1978). This Act was derived from House Bill 1629 (1978) and defined public homosexual conduct as

advocating, soliciting, imposing, encouraging, or promoting public or private homosexual activity that creates a substantial risk that such conduct will come to the attention of school children or school employees. Okla. Stat. Ann. tit. 70, § 6-103.15 (West. 1978, p. 381)

Statutory law in Oklahoma forbade teachers from



engaging in " 'crimes against nature' with a person of the same sex that were indiscreet and public" (Berryman v. State of Oklahoma, 283 P.2d 558, 563 (Okla. Ct. App. 1955), p. 558)). The 1978 Act allowed for the suspension or dismissal of a teacher who engaged in indiscreet public acts of oral or anal intercourse defined as crimes against nature (Berryman v. State of Oklahoma, 1955).

Grounds for dismissal or nonrenewal under the Oklahoma Teacher Due Process Act of 1990 included the finding that a person had engaged in criminal sexual activity Okla. Stat. Ann. tit. 70, § 6-101.22(D) (West, 1989). Criminal sexual activity meant the act of sodomy as it was defined in Section 886 of Title 21 of the Oklahoma Statutes and part D 1, 2 of Section 6-101.22 of Title 70 of the Oklahoma Statutes (1989 Okla. Sess. Laws).

The most well-known challenge to Oklahoma's statute against public homosexual acts was Board of Education of the City of Oklahoma City, Oklahoma v. National Gay Task Force which was decided by the United States Supreme Court on March 26, 1985. The Court stated that any teacher who promoted or encouraged the practice of sodomy created a risk of immoral and corruptible information being conveyed to school and merited no constitutional protection (Board of Education of the City of Oklahoma City, Oklahoma v. National Gay Task Force, 470 U.S. 903, 84 L. Ed.2d 776, 105 S. Ct. 1858 (1984))

One of the last hearing panel decisions, Don Birdwell

v. Elk City, 1990, cited the soliciting of homosexual acts as grounds for dismissal (Don Birdwell v. Elk City Board of Education, I-6, Beckham County, Oklahoma, 1990). This dismissal was sustained on appeal to the hearing panel for immorality and moral turpitude (Appendix D, p. 205. House Bill 1569 in 1985 amended the 1983 Law by calling such activity criminal sexual activity (1985 Okla. Sess. Laws).

#### Summary - Homosexual Acts

The issue of homosexuality by school teachers was dealt with by the Oklahoma Legislature in Okla. Stat. Ann. tit. 70, § 6-103.15 (West. 1978) where public homosexual conduct or activity became statutory grounds for dismissal, nonreemployment, and suspension. Public homosexual activity involved persons of the same sex and had the quality of being indiscreet and not practiced or advocated in private (1978, Okla. Sess. Laws p. 381).

The Teacher Due Process Act of 1990 lists as cause for dismissal a finding that the teacher had engaged in criminal sexual activity (sodomy) or sexual misconduct that impeded the effectiveness of performance in his/her school activities Okla. Stat. Ann. tit. 70, § 6-101.22(D) (West. 1989).

Sexual misconduct means soliciting or imposing of criminal sexual activity Okla. Stat. Ann. tit. 70, § 6-101.22(D)2 (West. 1989). Criminal sexual activity means commission of an act of sodomy as defined in Section 886 of

Title 21 of the Oklahoma Statutes (1989 Okla. Sess. Laws Supp.). Sodomy is defined in Black's Law Dictionary as oral or anal copulation between persons who are not husband and wife or consenting adult members of the opposite sex or between a person and an animal or coitus with an animal. (Black, 1979, p. 1245)

### Cruelty

Cruelty was first listed as statutory grounds for teacher termination in Okla. Stat. Ann. tit. 70, § 6-103.17 (West, 1913). However, there have been no statutory provisions which defined cruelty. Two hearing panel decisions gave the definition of cruelty from Black's Law Dictionary (Marjorie Buchanan v. Pawnee Board of Education, Pawnee, Oklahoma, 1985; Harold Powers v. Weatherford Public School District, 1984).

The intentional and malicious infliction of physical suffering upon living creatures, particularly human beings, or as applied to the latter, the wanton, malicious, and unnecessary infliction of pain upon the body or the feelings and emotions; abusive treatment, inhumanity, outrage (Lewis, 1984, p. 4; 1985, p. 10).

Frequently the term abuse of children was used to describe acts of cruelty inflicted on children. The word abuse had a different meaning than an act of cruelty and was subject to interpretation by different people. Verbal and physical abuse, to be classified as cruelty by the

dictionary definition, would have had to have been strong, hateful, and demeaning (Lewis, 1985).

In Oklahoma legislative statute empowered teachers regarding the discipline and control of students

The teacher of a child attending a public school shall have the same right as a parent or guardian to control and discipline such child according to local policies during the time the child is in attendance or in transit to or from the school or any other function authorized by the school district or classroom presided over by the teacher. (Hoeltzel, 1990, p. 130)

In Harold Powers v. Weatherford, 1984, Judge Oldfield found that Mr. Powers' actions toward students specifically including verbal threats, intimidation, arm wrestling, hitting, locking students in the closet, and kicking students were ". . . intentional and malicious infliction of physical suffering. . ." on human beings and therefore, constituted cruelty (Lewis, 1984-85, p. 20).

Legal precedent for a single incident of cruelty as grounds for teacher termination was set in 1976 when the Court found that a single incident of severe cruelty by a teacher with no previous record of abuse was sufficient grounds for dismissal (Landi v. Westchester Area School District, 353 A.2d 895 (Pa. 1976)). In 1990 a Mannford, Oklahoma teacher was dismissed for hitting a student with a rope. The teacher had a previous satisfactory record but alleged grounds of cruelty were upheld by the hearing judge

(Steven Dale Firey v. Mannford I-003, 1990). See Hearing Panel case 208, Appendix D, p. 206.

#### Summary - Cruelty

Cruelty is no longer a statutory cause for teacher termination per se. Instead the corresponding reason stated under House Bill 1017 (1989) as cause for teacher nonrenewal and dismissal is mental or physical abuse of children Okl. Stat. Ann. tit. 70, § 6-101.22(A)3 (West, 1989).

Since statutory definitions are not present, case law will likely serve as precedent for definition in future court cases. Previous cases on cruelty cited Black's Law Dictionary definition of cruelty as

The intentional and malicious infliction of physical suffering upon living creatures, particularly human beings, or as applied to the latter, the wanton, malicious and unnecessary infliction of pain upon the body or the feelings, and emotions, abusive treatment, inhumanity, outrage. (Lewis, 1982, p. 4)

It is possible that adjudication under the law now will use this definition of cruelty in assessing physical abuse as the wanton, malicious and unnecessary infliction of pain upon the body with knowledge and intent to do harm. It is also possible that mental abuse may be construed as the wanton, malicious and unnecessary infliction of pain on the feelings and emotions with knowledge and intent to do harm.

### Reduction-In-Force

. . . the board of education may legally choose not to renew the contract of a tenured teacher where the board in good faith, bases the non-renewal on a loss of attendance, the lack of available funds caused by a reduction in federal funds or a mandatory retirement age policy 6 Op. Att'y Gen. 1973 (In re Hoeltzel, 1990 a).

Attorney General Opinion No. 76-194, issued on June 29, 1976, stated that the elimination of a teaching position was a valid reason for the nonrenewal of a tenured teacher's contract (In re Hoeltzel, 1990 b, p. 113). Additionally, this same attorney general ruling had the force of law. This ruling said that if a reduction in enrollment caused a full time position to be reduced to part time the contract of a tenured teacher could be "reduced to one-half time and the salary reduced proportionately" (In re Hoeltzel, 1990 b, p. 113).

Another attorney general opinion on June 1, 1979, Attorney General Opinion No. 79-151, stated that the local board of education could "refuse to renew the contract of a teacher, whether probationary or tenured, when (the) teaching position (was) eliminated" (In re Hoeltzel, 1990 c, p. 113).

Attorney General Opinion No. 81-288, on January 27, 1982, stated that although tenured teachers could only be

dismissed for statutory grounds, a local school district could nonreemploy a tenured teacher for reduction-in-force required by funding limits. The nonrenewal "does not bring into play the appeals procedure normally guaranteed by statute" (Hoeltzel, 1990 d, p. 141.)

Teacher tenure statutes applicable to case law regarding reduction-in-force policies before 1990 were found in Section 6-101 of Oklahoma Statutes Title 70 (West, 1981). The 1989 Oklahoma Legislature either repealed or renumbered statutes regarding the reduction-in-force policies affecting tenured teachers in the Teacher Due Process Act of 1990 (1989 Okla. Sess. Laws Supp. SS 75-85).

Reduction-in-force policies are generally designed to deal with declining enrollment within a school district. School districts are given great discretion in formulating reduction-in-force policies. Teacher tenure law was intended to give job security and protection from dismissal and nonrenewal for political and personal whim to experienced teachers. There are important implications regarding tenure and reduction-in-force (Ludes and Gilbert, 1952).

A 1990 case dealing with the nonrenewal of a tenured teacher based on the reduction-in-force policy of the Inola Public Schools was reversed by the Oklahoma State Supreme Court because the reduction-in-force policy gave priority for retention to a nontenured teacher with the same certification (Babb v. Independent School District No. I-5

(Inola) of Rogers County, Oklahoma, 1992 WL 67950 (Okla. 1992). The Oklahoma State Supreme Court ruled that the local school district's reduction-in-force policy had the effect of adding an additional "cause" for the nonrenewal of a tenured teacher (Babb v. Independent School District No. 1-5, 1992).

Independent School District No. 1-5 of Rogers County (Inola, Oklahoma) alleged that the only limitation on the school district's authority to eliminate a tenured teacher's position during a reduction-in-force was that the decision be made in good faith, be in the best interests of the school district, and be pursued as part of a reasonable school board policy. For the first time the Court in this 1990 decision recognized that the board does have the authority to implement a reduction-in-force policy (Day, 1992).

The Oklahoma Supreme Court ruled that while a local school board was always free to reduce its teaching staff to meet economic limitations it could not eliminate the claim to a preferential status that tenured faculty had over nontenured staff through a reduction-in-force policy (Babb v. Independent School District No. 1-5, 1992). Implications of this decision for school boards in Oklahoma are that the teacher tenure law as found in the Oklahoma School Code gives the career teacher priority over a nontenured teacher if the career teacher is certified to teach the same subject or grade for which a nontenured



teacher might be retained. This decision modifies somewhat Attorney General Opinion 79-151 which legitimized Reduction-in-force (Day, 1992).

Essentially, the Inola School District reassigned Babb from the position of elementary teacher to elementary librarian. Babb had gained tenure as an elementary classroom teacher but was assigned to a nonteaching classification (librarian). The local school board's reduction-in-force policy excluded tenured nonteaching personnel from the privilege of replacing a nontenured teacher with the same certification. The local school board's decision was reversed on appeal (Babb v. Independent School District No. 1-5, 1992). Babb returned to full-time service in the Inola School District during the Fall of 1992. Her salary was paid by the local board retroactively.

#### Summary - Reduction-in-force

Reduction-in-force policies have resulted from declining enrollments, financial shortfalls, and school consolidations. Legal challenges to these actions are usually based on whether abolition of the position is bonafide and whether the release of a specific individual is justified (Webb Et Al., 1987). Employees released because a position is abolished generally have no right to that position. Case law in Oklahoma indicates that a tenured employee dismissed in such an action does have the

right to replace a probationary teacher who has the same certificate (Babb v. Independent School District No. 1-5, 1992).

The abolition of a position has to be bonafide. The abolition of a position and the release of the job holder followed by filling the same position with a new employee has been found not to constitute a defensible release. In Viemeister v. Board of Education of Borough of Prospect Park, 68 A.2d 768 (N.J. 1949), a principal's position was abolished for economic reasons and a teaching principal was hired into a newly-created position with the same duties. The Court ordered the original administrator reinstated.

Certification, merit, seniority, and tenure all seem to be factors in determining order of release in a reduction-in-force policy. It appears that merit by itself is not upheld as the sole criterion for determining who is to be reduced-in-force. Seniority rights are qualified by other factors such as tenure and merit "when considering order of dismissal" (Zirkel, 1983, p. 173).

Recall for qualified teachers affected by reduction-in-force generally occurs in inverse order to release. Qualified tenured teachers are generally called back before probationary teachers in order of seniority rank (Webb Et Al., 1987).

Deficiency of Continuing Education or  
Staff Development Requirements

The Teacher Due Process Act of 1990 lists as grounds for dismissal and nonreemployment of teachers the failure to accumulate the staff development points required by the local school board staff development plan. See Table I, p. 215.

The United States Supreme Court has held that Oklahoma teacher continuing education requirements are legitimately related to public objectives. The Court stated that

the school district's concern with the educational qualifications of its teachers cannot under any reasoned analysis be described as impermissible . . . .

The sanction of contract nonrenewal is quite rationally related to the board's objective of enforcing the continuing education obligation of its teachers. (Harrah Independent School District v. Martin, 440 U.S. 194, 99 S. Ct. 1062, 59 L. E.2d 248 (1979, p. 248))

It appears that the Court assumed that this type of requirement was closely related to the goal of better qualified teachers.

The failure to accumulate staff development points is listed as grounds for nonreemployment (see Table I, p. 215) but according to statute the teacher has five years to earn staff development points including time after the

April 10 deadline for the notification of nonrenewal to be mailed (Lewis, 1993).

Summary - Deficiency of Continuing  
Education Requirements

A school board's nonrenewal of a tenured teacher for failure to comply with a continuing education requirement was held not to violate due process and equal protection of the Fourteenth Amendment. Nonrenewal by the board was based on the teacher's failure to enroll in continuing education courses as required in the teacher's contract. The local board alleged that this failure by the teacher constituted willful neglect of duty which was a statutory ground for dismissal or nonrenewal Okla. Stat. Ann. tit. 70, § 6-122, (West, 1976). The Court ruled that "the sanction of contract nonrenewal was rational and related to the school board's objective of enforcing the continuing education obligation of its teachers" (Harrah v. Martin, 1979, p. 248).

Oklahoma's staff development programs for certified and licensed teachers and administrators are covered in Section 172 of School Laws of Oklahoma (Garrett, 1992).

Summary of Administrative and Judicial  
Interpretation of Causes for or  
Termination of Tenured Teachers

A Colorado case expresses the attitude of the courts

toward teacher discipline in the following excerpt

The power of the board of education to dismiss and discipline teachers is not merely punitive in nature and is not intended to permit the exercise of personal moral judgements by board members; rather it exists and finds its justification in the state's legitimate interest in protecting the school community from harm, and its exercise can only be justified upon showing that such harm has occurred or is likely to occur. (Weisman v. Board of Education of Jefferson City School District, 547 P.2d 1267, 1270 (Colo. 1976))

School boards cannot act with virtual impunity in disciplinary actions regarding a teacher's behavior and performance in or out of the classroom. Decisions by school officials must be tempered with reason and knowledge of the law. Teachers, in general, may act as they please so long as their actions do not impair their effectiveness in the classroom or detract from the efficient operation of the school. Teachers are still considered mandatory role models. They may speak out on matters of public concern but they cannot disrupt the efficient operation of the school. It appears that teachers do enjoy many rights but they are still subject to the compelling interests of the state and the community in which they work.

An implication for school officials from case law discussed in this chapter is that familiarity with

statutory and due process rights of tenured teachers is important; but, equally important is a familiarity with administrative and judicial interpretations of statutory causes for dismissal, nonrenewal, and suspension of tenured teachers. The Teacher Due Process Act of 1990 still fails to define what constitutes incompetency, willful neglect of duty, repeated negligence in the performance of duties, instructional ineffectiveness, and unsatisfactory teaching performance. Case law will be cited in legal hearings as definitions for some of these statutory causes for dismissal and nonreemployment. School administrators need some degree of certainty that deficiencies described in their evaluations and admonishments fall into judicially interpreted statutory causes for termination. Legal causes which are new will rely on future judicial interpretation to define what actions or inactions constitute definition.

Homosexuality and immorality are no longer statutory grounds for dismissal or nonrenewal. Moral turpitude, criminal sexual behavior, and sexual misconduct encompass some of the behaviors formerly associated with these two dismissal causes. See Table I, p. 215.

An extremely important finding for Oklahoma school officials from the case law cited in this chapter is that, while admonishment was not always a precondition to termination under the Teacher Fair Dismissal Law (see Jackson v. Independent School District No. 16 of Payne County, 648 P.2d 26, 5 Ed. Law Rep. 597 (Okla. 1982), a

written admonishment as well as reasonable time for improvement are explicitly required for conduct related to job performance under the Teacher Due Process Act of 1990. See Table I, p. 215. Administrators and school board members can rightfully assume that without proper documentation and an attempt at remediation, dismissal or nonrenewal actions of tenured teachers based on improper performance will be overturned upon appeal.

Chapter IV, which follows, provides the historical development of legal requirements for teacher evaluation, admonishment, and remediation. Failure of administrators to follow current statutory requirements governing these processes will likely lead to a reversal of adverse employment actions.

It should be emphasized that the real purpose of evaluation, remediation, and admonishment is neither to dismiss nor nonrenew tenured teachers. Instead, it is a proactive measure to maintain and improve the quality and effectiveness of learning going on in the classroom.

These processes are viewed from a reactive perspective when they become an inherent part of the administrative processes which are legally indispensable in the dismissal or nonrenewal of the irremediable tenured teacher. Reactive measures which often follow may include reprimand, suspension, demotion, nonrenewal, and termination.

## CHAPTER IV

### TEACHER EVALUATION, ADMONISHMENT, AND REMEDIATION

#### Establishment of Written Policy of Evaluation

Oklahoma statutes have required periodic evaluation of teachers and have prescribed specific procedures for doing so. Senate Bill 249 (1977) required written evaluation of tenured teachers every three years. Each school board was required, prior to October 15, 1977, "to establish and articulate a written policy of evaluation for all teachers" Okla. Stat. Ann. tit. 70, § 6-102.2 (West. 1977). This same statute required a "true copy" of the evaluation to be presented to the teacher and the teacher was required to acknowledge receipt by affixing a signature thereon. The teacher had two weeks to respond to the evaluation and the teacher's response became part of the evaluation Okla. Stat. Ann. tit. 70, § 6-102.3 (West. 1977).

#### Admonishment

Oklahoma statutes spell out specific procedures requiring admonishment of a teacher for reasons which may lead to teacher dismissal or nonre-employment. A



reasonable time for improvement is allowed. The nature and gravity of a teacher's conduct is considered in determining reasonable time for remediation. Generally, this time allotment has not been allowed to exceed two (2) months Okla. Stat. Ann. tit. 70, § 6-103.6 (West. 1971); Okla. Stat. Ann. tit. 70, § 6-102.2 (West. 1983); Okla. Stat. Ann. tit. 70, § 6-103.2 (West. 1983).

The Teacher Fair Dismissal Law (1982) continued to provide these same provisions of written admonishment and a reasonable time for improvement which was not to exceed two (2) months. While these required actions by the principal could lead to an adverse employment action against a teacher, there was no certainty that the absence of a written admonishment would preclude a school district from terminating a tenured teacher for instructional deficiencies Okla. Stat. tit. 70, § 6-103.2 (1981).

#### Case Law - Admonishment

The question of whether a teacher could be terminated in the absence of a written admonishment under the Teacher Fair Dismissal Law prior to House Bill 1017 was answered by the Oklahoma Court of Appeals. In rendering its verdict in Winslett v. Independent School District No. 16 of Comanche County, 1982, the Court ruled that the failure of an administrator or school district to admonish a teacher in writing did not automatically deny the district the right to terminate a teacher's employment (Winslett v.

Independent School District No. 16, 657 P.2d 1208, 9 Ed. Law Rep. 386 (Okla. Ct. App. 1982)). This decision ignoring the statutory requirement of admonishment prior to House Bill 1017 was upheld by the Oklahoma Supreme Court in Jackson v. Independent School District No. 16 (648 P.2d 26, 5 Ed. Law Rep. 597 (Okla. 1982) and Wood v. Independent School District No. 141 (661 P.2d 892, 10 Ed. Law Rep. 819 (Okla. 1983)). The Court ruled that statutory evaluation and admonishment procedures do not constitute procedural due process rights and that failure of a principal or school board to follow the prescribed evaluation and admonishment procedures did not constitute due process violations.

Although the point seems moot, the Oklahoma Supreme Court ruled on the question of what constituted a reasonable time for improvement which is now included in the new law (not to exceed two (2) months) in Childers v. Independent School District No. 1 of Bryan County, 645 P.2d 992, 4 Ed. Law Rep. 867 (Okla. 1981), 676 F.2d 1338, 4 Ed. Law Rep. 36 (10th Cir. 1982). This case considered the duty of a school district to provide assistance to a teacher who had been admonished for employment deficiencies and subsequently affording the employee with a reasonable time for improvement. The Oklahoma Supreme Court held that problems regarding a lack of discipline in the classroom and the teacher's failure to work with administrators and fellow teachers were problems which were personal to the

teacher and

. . . these types of problems do not lend themselves to assistance or a program for improvement . . .

'a reasonable time for improvement' is based upon the nature of the teacher's conduct and the particular circumstances involved. (Childers v. Independent School District No. 1, 1981, p. 992)

#### New Law - House Bill 1017 - Admonishment

The section of the Fair Dismissal Law related to admonishment Okla. Stat. tit. 70, § 6-103.2 (1981) was repealed by the 1989 special session of the Oklahoma Legislature. This new law dealing with evaluation of performance and admonishment is found in Okla. Stat. Ann. tit. 70, § 6-101.24 (West. 1990). It is clear under this new law that admonishment is required in those cases where the performance or conduct of a teacher is in question. Under this new law the teacher still must be admonished in writing and allowed a reasonable time for improvement not to exceed two (2) months Okla. Stat. Ann. tit. 70, § 6-101.24 (West. 1990).

The new law requires that a career teacher cannot be dismissed for repeated negligence, willful neglect, incompetency, instructional ineffectiveness or unsatisfactory teaching performance unless and until the provisions of this statute regarding admonishment and remediation have been complied with Okla. Stat. Ann. tit.

70, § 6-101.24 (West. 1990). See Table I, p. 215.

It appears that there are no substantial changes in the statutory provisions for admonishment under the new law. However, since the new admonishment provision is explicit about the type of conduct which requires admonishment, it is probable that if challenged by a teacher in the courts the admonishment requirement will be strictly interpreted.

Local school boards cannot fire a tenured teacher for causes of repeated negligence, incompetency, willful neglect of duty, unsatisfactory teaching performance or instructional ineffectiveness unless the teacher has been warned in writing and assisted with a written plan of improvement. Prior warning is not required when a teacher is being fired for moral turpitude, mental or physical abuse of a child, or conviction of a felony (Lewis, 1993).

Therefore, it is imperative that school districts which seek to terminate tenured teachers for conduct related to job performance comply with the admonishment provision. One Oklahoma attorney versed in school law recommends that the minimum requirements for an admonishment include:

(1) A description of the conduct which is the subject of the admonishment

(2) The assistance which will be provided to the teacher in an effort to address the subject of the warning

(3) The time which will be allotted for improvement (not to exceed two months)

(4) The consequences of the failure to improve

(5) Acknowledgment by the teacher of receipt of the admonishment (Long, 1991, p. 7)

Oklahoma school districts and administrators which fail to issue admonishments to teachers for improper performance and conduct which may lead to dismissal or nonrenewal are faced with the likelihood that a terminated employee will be reinstated.

Reversal of a dismissal action will likely result in reinstatement of the teacher with local officials faced with the aftermath. Often, when terminated teachers return to their former positions, the same problems that caused the termination continue to exist. Most of the teachers who rated poorly in one study when reinstated continued to rate poorly after reinstatement (Gold and Graham, 1978).

#### Administrative Awareness of Legal Aspects of Evaluation and Dismissal

It is apparent that teacher evaluation, remediation, and admonishment are procedures characterized by a plethora of legal restrictions and guidelines. When an administrator has attempted remediation and decides that a tenured teacher needs to be dismissed he/she should probably seek the expert guidance and counsel of a competent legal attorney.

Obviously, not all attorneys are equally well versed in school law. Many schools today have an attorney on retainer or seek local counsel from experts in this area. Generally, teacher evaluation and dismissal decisions are governed by state statutes, the United States Constitution,

school board regulations, and agreements reached with local collective bargaining units. Since education is governed largely by state statutes it is essential that Oklahoma administrators have knowledge of statutory provisions relating to criteria for effective teaching, methods of evaluation, required remedial assistance, hearings, appeals, and deadlines associated with these procedures.

#### Documentation

Frels and Cooper (1982) give guidelines for administrators in preparing written records of recurring deficiencies by tenured teachers who are being considered for termination.

The administrator needs written proof to substantiate that:

1. The evaluator was impartial
2. The teacher received copies of evaluations, plans for remediation and admonishments
3. Documentation was given to the teacher in a timely manner
4. The teacher was given an opportunity to comment on or refute what the evaluator had written
5. Person(s) who compiled all written documentation would be available later to testify regarding authenticity (Frels and Cooper, p. 12)

It is likely that in any dismissal procedure the dismissed teacher or his/her representative will attempt to destroy the credibility of written documentation.

Superintendents and boards of education need to be convinced that a defensibly strong case exists to justify expenditure of school district time and money in a teacher

termination proceeding. Therefore, administrators need the ability to prepare written records which cannot be refuted by legal or other adversarial third parties during a dismissal proceeding.

Administrators also need to be familiar with rules and regulations which school boards have adopted relating to teacher evaluation and dismissal. These guidelines must be adhered to by administrators during evaluation and dismissal proceedings.

### Tenured Teacher Evaluation and

#### House Bill 1017

Section 6-102.2 of the 1990 Oklahoma Session Laws Supplement lists changes in statutory requirements for evaluation of certified personnel including tenured teachers. Significant features of the current evaluation statutes include the following:

1. Annual review of the written policy of evaluation including consultation with representatives selected by local teachers
2. For school districts which have negotiations the evaluation process will include the minimum standards of performance and conduct established by the State Board of Education and in addition any additional criteria negotiated by the local bargaining agent and the local board of education
3. All evaluations must be based on a set of minimum criteria developed by the Oklahoma State Board of Education See Table II, p. 216
4. All persons subject to the local evaluation policy and subsequent amendments must be availed of the criteria to be evaluated
5. All evaluations must be made in writing and be maintained in a personnel file and be available for the evaluated teacher. Every tenured teacher must be evaluated at least once per year

6. All certified personnel will be evaluated by certified administrative personnel designated by the school board Okla. Stat. Ann. tit. 70, § 6-101.5 (West. 1990)

Oklahoma administrative personnel conducting evaluations are required to participate in training conducted by the Oklahoma State Department of Education prior to doing evaluations Okla. Stat. Ann. tit. 70, § 6-101.16 (West. 1990).

A true copy of each teacher's evaluation shall be presented to such teacher who acknowledges receipt by signing the original. Evaluated teachers have two weeks to respond to the evaluation and the response will become part of the teacher's evaluation record. The evaluation documents are available only to the evaluated teacher, the board of education, the administrative staff of the incumbent teacher's school and the board and staff of any school to which the evaluated teacher applies for employment. These records may also be made available to other persons as specified by the teacher in writing and are also subject to disclosure at a trial de novo Okla. Stat. Ann. tit. 70, § 6-101.11 (West. 1990); Okla. Stat. Ann. tit. 70, § 6-102.3 (West. 1989).

In common practice the minimum criteria developed by the Oklahoma State Department of Education are used as a basis for teacher evaluations. Local board and negotiation teams may establish additional criteria Okla. Stat. Ann. tit. 70, § 6-101.6 (West. 1990).



## Performance Evaluation

Although evaluation of performance is still a function of local administration the increased involvement of state authorities in teacher evaluation means that the state has become a partner of the local district in evaluating teacher performance. This collaboration can be viewed as an opportunity for improving teacher effectiveness at the local level.

A 1984 study on teacher evaluation concluded that effective teacher performance evaluation practices usually have the following characteristics:

1. The involvement of teacher input to improve the quality of evaluation
2. School districts decide the purposes which they hope to achieve and match the evaluation process to those purposes
3. Successful teacher evaluation systems correspond to the goals, concepts of teaching, community values, and management style of the local district
4. Teacher evaluation is seen to have utility by top level administrators, the school board, and the community (Wise Et Al., 1984)

In states where statutes have been created relative to teacher evaluation courts have insisted on strict compliance to legislative mandates (Thomas Et Al. (1983). Oklahoma school districts which have adopted standards related to evaluation and employment have been required by the courts to follow policy (Miller v. Independent School District No. 56, 609 P.2d 756 (Okla. 1980).

Courts have generally held that adopted evaluation procedures should not only be followed but that the

procedures be fair and reasonable. Factors determined by the courts which contribute to fairness include notice of evaluation criteria, statements of deficiency, and plan for remediation, availability of the evaluative report, and time to correct deficiencies (Beckham, 1985). One plan for remediation was construed by the federal district court to be both "vague and ambiguous" and, thereby, failed to define what actions might lead to remediation (Cantrell v. Vickers, 495 F. Supp 195 (N.D. Miss. 1980)).

Oklahoma Minimum Criteria for Effective  
Teacher Performance

Education Improvement Act of 1985

The Fortieth Session of the Oklahoma Legislature, in 1985, passed House Bill 1466 which mandated change in the way in which Oklahoma teachers were evaluated. Previous statutes required boards of education to have a written policy for evaluating all teachers. House Bill 1466 amended existing statutes by stating that the evaluation policy of a school district must be based on minimum criteria developed by the Oklahoma State Department of Education Okla. Stat. Ann. tit. 70, § 6-102.1(1) (West, 1985).

Table II on p. 216 shows the minimum criteria developed through a committee process and approved by the Oklahoma State Board of Education. A local school

district's evaluation policy has to include at least these minimum criteria. Local boards of education can create additional components appropriate to specific personnel needs or to meet the guidelines of a negotiated master agreement with the local teachers' organization.

Provisions of the evaluative procedure are mandatory topics of professional negotiations; however, the criteria which are negotiated and adopted may exceed but must include the minimum criteria adopted by the Oklahoma State Board of Education (Op. Att'y Gen. 86-146 (1987)).

#### Causes of Unsatisfactory Performance

Steinmetz (1969) cites three major causes of unsatisfactory teaching performance. One of these causes is managerial in nature and includes such problems as too many preparations, too few resources, and a failure to communicate the criteria for evaluation (Steinmetz, 1969).

A second major cause of unsatisfactory performance by teachers is personal and unique to the individual teacher. Such conditions as a lack of skill, ability, motivation, or effort fall into this arena (Steinmetz, 1969). Emotional distress, alcoholism, drug addiction, and mental and emotional illness are also listed in this category (Steinmetz, 1969). Some of these conditions are likely to require attempts at remediation under the new statutes in Oklahoma. See Table I, p. 215.

A third major cause for unsatisfactory teaching

performance results from influence outside the school. Examples of external factors affecting performance in the classroom include marital and family problems, legal, and financial problems (Steinmetz, 1969).

Teachers cannot usually be dismissed for managerial shortcomings and good administrators should maximize their efforts to eliminate such factors causative of inadequate teacher performance. The type of remediation which a principal might utilize will largely depend on the inherent cause of the deficiency and what constitutes appropriate ameliorative measures.

#### Remediation and the Tenured Teacher

It is imperative that school districts adopt and implement evaluation policies that are both fair and reasonable and which will be sustained by state and federal judicial scrutiny. Procedural and substantive due process requirements must be observed. Statutory regulations, school board policies, and collective bargaining agreements must be followed (Pope, 1983).

When evaluation or observation discloses that a career teacher suffers from a deficiency in classroom performance or noninstructional duties an administrator will likely have to determine if the deficiency is remediable. Generally, this determination might have to consider (1) whether the deficiency is an isolated incident or a sustained pattern of behavior, (2) whether or not damage

has been done to the students or the school, (3) whether or not the deficiency is reasonably correctable, and (4) whether or not the teacher's continued behavior will pose potential danger to students (Prager, 1988).

If the evaluator determines that a teacher's deficiency is remediable then the school official responsible for teacher supervision or evaluation needs to notify the teacher of the existing problem and provide an improvement plan with specified actions that the teacher should adopt to eliminate the deficiency. A reasonable period of time is prescribed for this professional development plan to take place. Teacher participation in such a plan should enhance the likelihood of acceptance and cooperation by the deficient teacher.

Bridges (1986) lists nine types of remediation which can be used to improve teaching performance.

1. Goal Setting - usually clarifies what behaviors or outcomes are expected of the teacher.

2. Instructional Input - includes pedagogical information regarding a particular skill or ability. This information is usually relayed in the form of articles, books, classes, and workshops.

3. Practice - enables the teacher to experience and try out a new skill before incorporating the practice into the classroom. Role playing is an example of this practice.

4. Modeling - enables the teacher to observe examples of a teaching performance which exemplifies desired skills and behaviors. Modeling can be accomplished by arranging for the deficient teacher to visit and observe classrooms where the desired skill is being employed successfully or by staged demonstrations in the problem teacher's classroom by professionals competent in the skill.

5. Feedback - the teacher can listen to or observe an audio or videotape of his/her own performance in the classroom. These tapes can also be critiqued by fellow professionals.

6. Reinforcement - could be in the form of praise, recognition, or the pride and satisfaction one acquires from a newly acquired skill.

7. Therapy - personal pathologies such as drug addiction, alcoholism, and mental illness are subject to treatment by support groups, physicians, psychologists, and psychiatrists. Generally, treatment is intensive and therapeutic in nature.

8. Counseling - employee assistance programs in larger school systems offer counseling help to professional educators. Crisis situations and personal problems that impede and interfere with instructional performance and effectiveness are assisted with this type of remediation.

9. Environmental Change - refers to a change of the situation in which the teacher works. Situational changes include reassignment to another grade, building, subject, classroom, or supervisor (Bridges, 1986, p. 41).

Generally, remediation involves a combination of these strategies depending on the identified cause(s) of the deficiency of the teacher (Bridges, 1986).

At the end of the time allowed for remediation it is essential that the school official who identified the deficiency and wrote the plan of improvement reevaluate the teacher in question according to the specifications for measuring progress stated in the plan for improvement. Failure of the teacher to make progress toward the improvement plan may necessitate school officials to begin dismissal proceedings.

When a statutory requirement exists that teachers be assisted in remediation of deficiencies courts have defined expectations of administrators in the way of assistance. In 1981 the Oklahoma Supreme Court, commenting on the failure of school officials to make suggestions for improvement, stated that the nature of a teacher's deficiencies may have "a definite bearing on what can

reasonably be expected from the administration in the way of assistance" (Childers v. Independent School District No. 1 of Bryan County, 645 P.2d 992, 995, 4 Ed. Law Rep. 867 (Okla. 1981), 676 F.2d 1338 4 Ed. Law Rep. 36 (10th Cir. 1982), p. 995). Oklahoma courts have held that inadequate discipline (Childers v. Independent School District No. 1, 1982) and failure to work cooperatively with administrators and other teachers (Childers v. Independent School District No. 1; Wood v. Independent School District No. 141, 661 P.2d 892, 10 Ed. Law Rep. 819 (Okla. 1983)) in a school did not necessitate administrative assistance or a program for improvement. However, unlike in the past, under the new law, House Bill 1017, it is apparent that admonishment and remediation will be required for certain statutory causes Okla. Stat. Ann. tit. 70, § 6-101.24 (West. 1990). See Table I, p.215.

#### Formal and Informal Observations

Career teachers by statute in Oklahoma must be evaluated at least once per school year "every teacher to be evaluated once every year, except as otherwise provided by law" (Garrett, 1992, p. 70).

School officials are not precluded by statute from observing a career teacher in their classroom more than once. Hopefully, school districts will not negotiate a requirement that teachers must have prior knowledge of evaluation before formal or informal observation. It is

possible that even a weak teacher with adequate notice can rehearse and deliver a decent lesson.

Documentation of teacher performance indicators is an integral part of the formal and informal evaluation process. If an evaluator cannot record a teacher's weaknesses on paper and communicate the evaluation to the teacher there is little chance that the ineffective behavior will be improved (Lewis, 1990). Once a principal identifies a weakness or a problem it is essential that it be brought to the teacher's attention by written documentation and the creation of a plan for improvement.

Oklahoma administrators are required since the 1986-87 school year to undergo training pursuant to statewide criteria for the minimum performance of teachers before conducting personnel evaluations Okla. Stat. Ann. tit. 70, § 6-102.7 (West, 1985). Failure or refusal of a school district to comply with the minimum standards for evaluation is grounds for withholding state aid funds Okla. Stat. Ann. tit. 70, § 6-101.10 (West, 1990).

#### Summary - Evaluation, Admonishment, and Remediation

The dismissal or nonrenewal of incompetent tenured teachers in Oklahoma is a realistic, legally defensible, and politically expedient possibility if an administrator or school district is willing to use a systematic approach. Administrators must be able to describe remediation if a



teacher is to be found to be deficient in any particular criterion requiring admonishment. Supervisors who are unable to prescribe appropriate remediation may be reluctant to judge a teacher's performance as being unsatisfactory. Failure to prescribe remediation or a plan of improvement is likely to become a fatal legal defect and prejudice a district's case against a tenured teacher. Hopefully, an effective system of performance, evaluation, and remediation will void the need for dismissal or nonrenewal of many tenured teachers. If viewed by teachers and administrators as a beneficial process, evaluation provides an opportunity for professional growth and personal enhancement. The real focus of any evaluation should likely be improvement of the teaching-learning process.

No mention was made in this study of formative and summative evaluation tendencies since the focus of this study was directed toward legal aspects of teacher dismissal or nonrenewal. It appears that both forms of evaluation, if based on the minimum criteria outlined by the Oklahoma State Department of Education, would be statutorily satisfactory to meet the legal requirements of evaluation.

School administrators may be faced with a moral dilemma when recommending dismissal or nonrenewal of a tenured teacher. Should the administration continue to support an ineffective tenured teacher who has given years of

satisfactory service to the children of a community but who has failed to respond to remediation? The political manifestations of retention or termination may affect the tenure of the administrator making the decision.

Although costs including attorney fees for dismissal of tenured teachers may be high the costs of retaining deficient teachers may be even higher. Failure of administrators to admonish, provide remediation, and dismiss incompetent tenured teachers could result in subsequent lowering of morale and standards for competent teachers along with diminished educational opportunities for students. It is a fallacy that tenured a teacher cannot be dismissed and Oklahoma school officials who perpetuate and administer that myth are probably doing an injustice to the teachers, children, and patrons of the districts in which they serve. A school district which ignores its incompetent and inadequate tenured teachers could well undermine the political and financial support of its patrons. Ineffective teaching practices which are not detected and corrected may become so exacerbated that termination becomes the only acceptable alternative.

School districts which deal decisively with both remediable and irremediable unsatisfactory tenured teachers can probably retain or improve public confidence in their institutional effectiveness. Concomitant increases in teacher morale and the quality of instruction for all students are likely to occur.

## CHAPTER V

### FINDINGS, RECOMMENDATIONS, AND CONCLUSIONS

#### Introduction

The central focus of this research was the study of the legal rights associated with the dismissal or nonrenewal of tenured teachers in Oklahoma between 1967 and 1992. Both statutory and case law were perused for historical ramifications relevant to past and current procedures and process. Historical records of legislative, administrative, and judicial proceedings were established in the process.

Case law for the dismissal or nonrenewal of tenured teachers in elementary and secondary public schools of Oklahoma was examined in the appeal process by use of content analysis. See Appendix A., p. 142.

Empirical data were used in the conclusion to this qualitative study for purposes of description and explanation. The focus of this study is based on an analysis of the content of documents. Themes which emerged from these documents were used to arrive at the conclusions stated in this chapter, and to make recommendations to Oklahoma school officials and tenured

teachers.

## Findings

### Research Question 1:

What is the LEGAL HISTORY OF STATUTORY LAW for the dismissal or nonrenewal of tenured teachers in elementary and secondary public schools in Oklahoma?

#### 1. Initial Legislative Grant of Tenure -

The 1967 act which granted tenure to Oklahoma teachers applied only to renewal and not dismissal. Dismissed tenured teachers had no right to administrative appeal before 1975. In 1967 nonrenewed tenured teachers had the right to appeal to the Professional Practices Commission. If exonerated there was no guarantee of reinstatement before 1971. See Appendix E, p. 208.

#### 2. Legal Protection for Teachers Before Tenure -

Before the Teacher Tenure Act (1967) a few legal safeguards were embodied in the Oklahoma School Code to afford teachers due process before being discharged from a teaching position. Dismissed and nonrenewed teachers had a right to a hearing but if exonerated, there was no guarantee of reinstatement unless their due process rights were violated. Due process rights included notice, statement of cause, and opportunity for a hearing. See Chapter II, p. 21.

#### 3. Interpretation of Tenure Legislation -

Often tenure legislation was not clear in meaning. Judicial interpretation, administrative review, and

attorney general rulings were often necessary to interpret the meaning and intent of legislation. Additional legislative amendments were often necessary to clarify the original intent of statutes.

#### 4. Admonishment -

Admonishment and adequate time for remediation were part of the Teacher Fair Dismissal Law (1981) which governed teacher dismissal and nonrenewal for nine years (1981 - 1990) prior to House Bill 1017.

Under the Teacher Due Process Act of 1990, (part of House Bill 1017) it appears that admonishment and a reasonable time for improvement will be required by the courts in termination proceedings resulting from deficiencies in performance and conduct. See Table I, p. 215.

#### 5. Due Process - The Teacher Due Process Act of 1990

This Act specifies procedures which must be followed to guarantee a teacher subjected to adverse employment decisions procedural due process rights. Career teachers are guaranteed the right to a termination hearing and a right to know the underlying facts including alleged statutory grounds supporting a recommendation for termination.

A. Vote for dismissal or nonrenewal must take place in an open meeting.

B. Preliminary notice of intent to nonrenew a tenured teacher in Oklahoma must be provided by the April 10th

deadline.

C. Post termination appeal is to the district court where a trial de novo is held. See Figure II, p. 222.

#### 6. "Statutory Causes" -

Any "cause" related to inadequate teaching performance including negligence in the performance of duty, incompetency, and instructional ineffectiveness can no longer be grounds for dismissal unless the admonishment provisions provided for in Oklahoma Statutes have been complied with. There are no statutory definitions for "causes" which relate to inadequate teaching performance in Oklahoma. Administrative and judicial interpretations of "cause" are based on legal precedent for definition. It appears from cases examined in this study that definition of "cause" was often decided on a case-by-case basis.

##### A. Willful Neglect of Duty

Willful neglect of duty was the most common "cause" listed for adverse employment action in this study. Frequently cited actions which constitute willful neglect of duty are failure to enforce or abide by school or board policies, improper use of instructional time, inadequate record keeping, and inadequate planning. Repeated tardiness is willful neglect in Oklahoma.

##### B. Incompetency

Generally deficiencies found in classroom management, discipline, lesson plans, and instruction fall under this area. Incompetency has been defined as a lack of ability,

legal qualifications, or fitness to discharge required duties.

#### C. Moral Turpitude

Moral turpitude involved a single immoral act. Conviction or guilt of a crime, such as illegal possession of marijuana, cocaine, shoplifting could constitute moral turpitude. In Oklahoma, any felony conviction would result in loss of the teaching credential and preclude further employment in accredited schools. Moral turpitude is defined as conduct contrary to justice, honesty, and good morals in Oklahoma case law.

D. Criminal sexual activity is sodomy. Sexual misconduct is the soliciting or imposing of criminal sexual activity, especially if such activity impedes the effectiveness of teaching duties.

#### 7. Recommendations for Dismissal/Nonrenewal of the Career Teacher - Teacher Due Process Act of 1990

Only the superintendent can make these recommendations to the local school board. The recommendation must be in writing and contain both the statutory grounds and underlying facts for the action.

School board members, the superintendent, or any other administrator can make a recommendation for evaluation and admonishment of a career teacher to the responsible administrator. See Figure II, p. 222.

#### 8. Admonishment and Remediation - House Bill 1017

Since admonishment and remediation are now required

before adverse employment action, proper documentation will become even more critical under this Act.

#### 9. Vote for Nonreemployment -

Prior to House Bill 1017 a local school board had to vote for nonrenewal prior to April 10. This requirement is no longer applicable to the tenured teacher who is being nonrenewed. However, the local school board must receive written recommendation for nonrenewal from the superintendent and must mail notice to the tenured teacher by April 10 of a time, date, and place for a hearing regarding this recommendation. The local school board must set a hearing whether the teacher requests it or not, but the teacher does not have to attend the hearing.

#### 10. Redundancy as to Cause -

It appears that new statutory grounds for teacher nonreemployment are redundant. Instructional ineffectiveness and repeated acts of negligence can also fall under case law definitions of "incompetence" and "willful neglect".

Although future case law may expand on these definitions it appears there really may be no new grounds for nonreemployment of the career teacher (Lewis, 1993).

#### 11. Administrative Termination -

A request by the administrator for a hearing must be made within ten days after notification of a proposed nonreemployment action. The administrator must be given a written statement of the reasons for the proposed action



and notice of a right to a hearing before the local board. There is no legal requirement that this notice of nonreemployment action of administrators take place by certified mail Okla. Stat. Ann. tit. 70, § 6-102.4 (West. 1992).

#### Research Question 2:

What was the LEGAL HISTORY OF CASE LAW for dismissal or nonrenewal of tenured teachers in elementary and secondary public schools in Oklahoma?

##### 1. Admonishment

For nine years prior to House Bill 1017 (1981 - 1990) the courts clearly held that admonishment was not a condition precedent to dismissal or nonrenewal of a tenured teacher (Jackson v. Independent School District No. 16 of Payne County, 648 P.2d 26, 5 Ed. Law Rep. 597 (Okla. 1982; Wood v. Independent School District No. 141 of Pottowatomie County, 661 P.2d 892, 10 Ed. Law Rep. 819 (Okla. 1983).

##### 2. The Professional Practices Commission, 1967 - 1977 -

A compendium of the cases of dismissed and nonrenewed tenured teachers who appealed to these administrative hearing bodies has been created by the researcher and can be found in Appendix C, p. 178.

Tenured teachers and administrators appealed negative employment decisions by local school boards to the Professional Practices Commission at least seventy-eight times between 1970 and 1977 according to records in the Oklahoma State Archives. See Appendix C, p. 178. Appeals of these initial requests continued through 1979. At least

sixty-four hearings took place during this time and forty-five or seventy percent of the decisions were found to favor the tenured employee.

It is simply not known if these records are complete. However, these archived records appear to be the only source of appeal records of tenured teachers for this time period.

### 3. Three-judge Hearing Panels, 1977-1990 -

The three judge hearing panels heard appeals of dismissed and nonrenewed tenured teachers and some administrators from June 1977 to June 1990. During that time 209 nonrenewed and dismissed tenured teachers and administrators requested hearings before hearing judges as provided for by 1977 Senate Bill 249 (101 cases have been resolved without hearings). Eighty-five hearings were held during this period. Of hearings held, thirty decisions were found in favor of the teacher while forty-eight (fifty-six percent) of the appeals ended with the teacher's termination. See Appendix D, p. 186.

### 4. Multiple Nonrenewal and Dismissal Cases -

Multiple nonrenewal and dismissal cases appear for the same teacher with varying degrees of success. On more than one occasion a tenured teacher who appealed and lost his/her appeal of negative employment action in one district was employed by another school district and subsequently gained tenure and lost a second appeal. School districts also have made more than one

unsuccessful attempt to terminate the same teacher. See cases number 189 and number 200 by Hearing Panels; also, see cases number six and number twenty-five by Hearing Panels in Appendix D, p. 186.

5. Due Process - "Due process rights" is, by far, the most frequently cited constitutional issue in appeals of tenured teachers.

A teacher is entitled to procedural due process if dismissal action impairs his/her property or liberty interest. Oklahoma's tenure statutes have conferred upon teachers a property interest in continued employment and tenured teachers can be dismissed only for statutory "causes".

A teacher's due process rights require, at a minimum, that the teacher be notified of charges and be provided with an opportunity for a hearing. The tenured teacher, in a termination hearing, has the right to representation by counsel, to examine and cross examine witnesses, and to have a record of the hearing.

Lack of proper notice can result in reinstatement of the teacher. The notice must adhere to statutory deadlines, specify charges, and allow the teacher time to prepare for a hearing. See Figure II, p. 224.

#### 6. Reduction-in-force

Tenured teachers can generally be nonrenewed for lack of available funds or a decrease in attendance. Reduction-in-force generally does not bring into play the

appeals procedure guaranteed by statute. However, in Oklahoma, tenured teachers do have the right to claim the position of nontenured teachers in any such action within a district if the tenured teacher holds the proper certification (Babb v. Independent School District No. I-5, 1992).

#### 7. Recommendations for Dismissal/Nonrenewal of the Career Teacher -

In termination proceedings deliberation by the local school board may be in executive session, but the board must vote on findings of fact and the acceptance or rejection of the superintendent's recommendation in open session.

The burden of proof and the responsibility for the presentation of evidence lies with the superintendent or his/her designated attorney. The standard of proof is by a preponderance of the evidence. The evidence must be more probably true than not and it must support the underlying reasons for the proposed dismissal.

#### 8. Administrative tenure

Prior to a 1984 attorney general ruling, those administrators who had gained tenure within a district and subsequently had been assigned to full-time administrative duties retained tenure as a teacher in that district and were assumed to have corresponding due process rights. This entitlement explains why administrative appeals were heard by the Professional Practices Commission and hearing

judges before 1984 (Op. Att'y Gen No. 83-143).

Administrators still have the right to a termination hearing in the spirit of "Loudermill" with proper notice and a chance to refute the charges made against them.

**Research Question 3:**

**What are the LEGALLY DEFENSIBLE CAUSES FOR DISMISSAL of tenured teachers in elementary and secondary public schools in Oklahoma which were MOST OFTEN SUSTAINED UPON APPEAL?**

**1. The Professional Practices Commission, 1967 - 1977 -**

Seventy percent of the appeals were found to favor the tenured teacher. Willful neglect of duty is by far the most common statutory cause cited by the local school district. Although multiple statutory causes are commonly cited, willful neglect was alleged by the local district in sixty-four percent of appeals. Willful neglect is also the statutory cause which was most often sustained on appeal. Of nineteen termination decisions sustained for the local district, willful neglect was cited in twelve cases.

The second most common statutory cause cited by the district and upheld on appeal was incompetence. One-third of the successful cases for local school boards alleged incompetence. These two statutory causes, willful neglect and incompetency, also seemed to be the most prevalent charges in hearing panel decisions.

**2. Three-judge Hearing Panels, 1977 - 1990 -**

Willful neglect of duty and incompetency were the statutory causes filed by school boards during this time period which were most often sustained upon appeal.

Decisions which were construed to be favorable for the district included situations where the teacher resigned before final disposition. Resignation did not necessarily mean that the teacher was guilty of alleged statutory grounds. It simply meant that the final outcome favored the board's initial action. It is often impossible to determine statutory causes alleged by the board when the teacher resigned. This information may have been deleted from the file as part of the settlement. See Appendix D, p. 186. Of the 209 appeals made to hearing panels by tenured teachers only eighty-five were heard. The final outcome favored the school board in fifty-six percent of the hearings.

#### Research Question 4:

In Oklahoma appeals of school board dismissal of tenured public elementary and secondary teachers in which the decision of the local board was reversed, what were the GROUNDS ON WHICH THE REVERSALS WERE BASED?

##### 1. Due Process -

A. Violation of due process rights of tenured teachers is the major constitutional grounds which lead to reversals of local school board dismissals and nonrenewals of tenured teachers.

B. Admission of hearsay evidence at a school board hearing for adverse employment action does not appear to be irreversible error as long as sufficient other legitimate evidence is provided.

C. Generally, school boards are required to make

findings of fact and conclusions of law and, in order to satisfy due process requirements, must vote to adopt findings of fact. Failure to base decisions on these criteria will result in reversal of their decision on appeal.

## 2. Violation of the Open Meeting Law -

One of the primary causes for reversal of adverse employment actions of local boards found in this study is failure by the local board to follow the provisions of this Act. A discussion of the Act follows in "Recommendations to Oklahoma School Officials".

## 3. Documentation -

The failure of school boards to sustain alleged statutory "causes" for dismissed and nonrenewed tenured teachers on appeal was often due to the absence of proper documentation by school officials. Documentation frequently failed to withstand legal scrutiny.

### Summary of Findings

Most appeals of the nonrenewal or dismissal of tenured teachers under statutory and case law for the time period from 1967 to 1977 were won by the teacher (seventy percent). These appeals were heard by the Professional Practices Commission and, subsequently, the State Board of Education.

Appeals of tenured teachers governed by statutory and case law for the time period from 1977 to 1990 were heard

by hearing judges. Although most appeals were never heard, favorable decisions were most often found for the local school board. Costs of appeals became a deterrent to negative employment action by school districts toward tenured teachers.

Historically, willful neglect of duty and incompetency have been the major statutory "causes" for adverse teacher employment action by local boards which have been upheld upon appeal. New state legislation has drastically changed the due process rights of tenured teachers (Teacher Due Process Act of 1990). Appeal of dismissal or nonrenewal for the "career" teacher is now at the district court.

#### Recommendations to Oklahoma School Officials

##### 1. Consultation

Consultation with an attorney competent in school law can minimize the likelihood that any adverse employment action will be reversed upon appeal. Many such practitioners are cited in this paper.

##### 2. Evaluation and Remediation

A regular program of evaluation and remediation for all teachers, including those who are tenured, which is both fair and equitable will minimize the likelihood that a dismissal or nonrenewal of a tenured faculty member will be necessary. Should dismissal or nonrenewal become necessary, proper documentation of evaluation,



admonishment, and remediation are crucial.

### 3. Documentation

Documentation is an integral and legally indispensable part of any evaluation program.

Administrators need to know how to prepare legally defensible evaluations, admonishments, and plans of improvement for deficient teachers. This process is thoroughly discussed in Chapter IV, p. 85.

### 4. Constitutionally Impermissible Reasons

Adverse employment actions which are based on a person's race, sex, religion, ethnicity, age, or handicapping condition cannot be used to deny a teacher continued employment nor to change a teacher's job condition.

### 5. Other Discriminatory Practices

Generally, allegations of this kind revolve around the protected First Amendment rights regarding the exercise of free speech and/or association. In general, if speech is found to be on a matter of public concern it is probably protected by the First Amendment. These same rights apply to association within an organization.

If the practice of these rights does not disrupt the efficient operation of the school then they are not subject to review in teacher disciplinary actions.

### 6. Oklahoma's Open Meeting Law

Frequently, challengers to school board actions ask for copies of the agenda and minutes of the school board

meeting. It is often the quickest and easiest way to overturn school board decisions. Administrators need to be able to write an agenda that can survive an attack. Agendas and minutes are integral components of all board actions. Important board decisions can be overturned if agendas of school board meetings are not properly prepared and posted in a timely manner, if the county clerk is not notified of yearly meetings before December 15, or if the county clerk is not notified of special meetings forty-eight hours prior to the meeting.

Fired tenured teachers can be and have been reinstated because of violation of this law. School board members and school officials are subject to fines and imprisonment for willful violations of this law.

Generally, mistakes occur when agendas are too brief, lack specificity, or are not properly posted.

Agendas must be posted twenty-four hours prior to a regular or special meeting. If an agenda is challenged in a court of law, the court may have to decide whether the posted agenda was specific enough to inform a person of "ordinary education and intelligence" what the school board would be doing at the meeting (Haworth Board of Education v. Havens 637, P.2d 902 (Okla. Ct. App. 1981)).

Any change in the time, date, or place of a regular school board meeting must be given to the county clerk at least ten days prior to implementation of the change.

In all adverse employment actions, school board

minutes must show how each individual school board member voted.

In personnel actions, a common mistake which school boards make is failure to list specific acts that a school board is going to perform. When school boards are going to vote on renewal of teacher contracts, the agenda item should state specifically what the board is going to do (vote), what the school board is voting on (renewal) and specifically for whom they are voting.

School boards simply cannot vote in executive sessions and such activity is grounds for reversals of all school board decisions made under these conditions.

#### Recommendations to Oklahoma Tenured Public School Teachers

1. Professional organizations generally provide free legal advice and intervention on behalf of member public school teachers involved in due process proceedings. Liability insurance coverage is an added legal incentive for membership in professional organizations.

2. Generally the uniserve directors of the state teacher organization are well-experienced and trained about teacher due process rights. These people need to be contacted well in advance of any pending due process proceedings.

3. Adversarial roles between teachers and administrators can serve to alienate both teachers and administrators from the profession for which they are trained.

4. Although administrators are required by statute to evaluate, admonish, and reprimand ineffective teachers, local teachers organizations could become a partner in any plan of improvement and assist with the remediation and the evaluation processes. Toledo, Ohio, already has such a plan negotiated with the local teachers' organization.

5. The deficient teacher needs to be a contributing partner in any plan of improvement or efforts at remediation. Involvement is likely to increase both commitment and success.

6. Close contact with local, state, and national professional organizations provides access to human resources and literature regarding teacher rights and privileges.

7. Teachers need to be aware that they are still mandatory role models (exemplar) and their actions cannot disrupt the efficient operation of the schools.

8. Teacher dismissal has resulted when a rational nexus can be shown between out of school behavior and impaired fitness or capacity to teach.

9. Freedoms of speech, press, and assembly cannot be impaired so long as they do not disrupt the efficient operation of the school. Generally the teacher has the right to criticize school policy.

10. Teachers need to be familiar with master agreements between local school boards and teacher organizations. They can and often do extend additional legal rights to local

teacher associations over and above what is guaranteed by state statute.

11. Teachers can be nonrenewed for lack of available funds or a decrease in attendance but the order of the release cannot provide preference for a nontenured over a tenured teacher with the same certification.

12. Teachers have a property interest in continued employment and tenured teachers can be dismissed only for statutory causes. Notice of cause must contain specificity sufficient to enable the teacher to defend himself/herself or show error.

#### Conclusions

This writer found no previous effort to compile a complete chronological record of statutory and case law for the entire time frame from 1967 to 1990 which has affected tenure and due process rights of Oklahoma's tenured teachers.

The granting of tenure to Oklahoma teachers in 1967 had the effect of granting a property right to continued employment. This entitlement guarantees tenured teachers basic due process rights during adverse employment actions.

Historically, due process rights for Oklahoma teachers have included the right to appeal their terminations to administrative hearing bodies and then through the courts. From 1967 to 1977 tenured teachers and administrators could appeal their negative employment actions to the

Professional Practices Commission and Oklahoma State Board of Education. Dismissed and nonrenewed tenured teachers won about seventy percent of these appeals.

New legislation in 1977 allowed tenured teachers to appeal adverse employment actions from local boards to a hearing judge. This process continued for thirteen years until 1990. During this time local school boards won about fifty-six percent of the appeals. Most cases were settled without a hearing.

The costs of these hearings became prohibitive, especially when the United States Tenth Circuit Court of Appeals, in 1989, ruled that the Oklahoma statute requiring teachers to pay half of the costs of a post-termination hearing violated the teacher's due process rights (Johnny Lee Rankin v. Independent School District No. I-3 of Noble County, 1989).

House Bill 1017 (1990) and its 1990 Teacher Due Process Act was an extensive reconstruction of teacher employment statutes. Appeals of adverse employment actions of tenured teachers by local boards now take place in district court.

The suggestions given for administrators in this paper are not being made as legal advice to Oklahoma school officials. Instead, the proposals are management recommendations to assist school administrators in the effective operation of their schools. Awareness of legal aspects and due process rights of employees can enable

school officials to assist competent counsel by providing credible evidence. It is essential for school officials to obtain and involve legal counsel in the early stages of any anticipated adverse employment action against a tenured teacher.

Oklahoma school officials need to utilize an effective system of performance, evaluation, and remediation of deficiencies in order to prevent professional inadequacies which require drastic measures. If a teacher's conduct and/or performance cannot be reasonably corrected, it is imperative that school officials implement prudent dismissal proceedings which are characterized by fair treatment of the employee and good faith on the part of school administrators. Cases of tenured teachers examined in this study seem to indicate that judicial bodies are reluctant to overrule local school boards when evidence supports a finding that the district made a conscious and competent effort to deal fairly and reasonably with the tenured teacher.

In the final analysis, the site administrator, the school board and the superintendent will have to weigh the seriousness of the problem, the net effect of efforts and energies already expended toward remediation on behalf of the teacher, and the prospects for improvement against anticipated potential loss of educational opportunity for pupils because of an inadequate teacher. Eventually, school officials who really believe that the student's

right to quality education outweighs the irremediable, tenured teacher's right to continued employment will recommend retirement, resignation, nonrenewal, or dismissal.

The suggestions given for teachers in this chapter are not being made as legal advice. They are professional recommendations arrived at from the analysis of statutory and case law examined during this study. Although this study was written from one administrator's perspective, the awareness of legal aspects and due process rights of tenured teachers can enable them to assist legal counsel in any defense.

Protection for teacher against arbitrary, political, capricious acts by school officials can be had for the price of membership in national, state, and local teachers' organizations. Members of these organizations must communicate their needs to officials of the organization.

Ultimately teachers and administrators must work together for the common good of the profession and the clients which they serve. The real problem with any discussion of legal rights of teachers and administrators is the polarization of educators into adversarial roles.

Mention has been made in this paper of utilizing local teacher organizations in remediation, evaluation, and dismissal proceedings. Much criticism has been made by the public of teacher tenure because of the difficulty and expense of dismissing tenured teachers. A collective



approach at maintaining competence in the profession which includes parents, teachers, and administrators might serve to unify the practice, prevent disengagement, and promote public confidence in the process of schooling.

Hopefully, the day will come when teachers, administrators and community can focus on practice in a common effort guided by shared values and beliefs. Authority could be derived from a moral commitment to excellence based on a collective practice and shared norms. Perhaps then, the profession can regain the confidence which has slowly eroded the foundations of this nation's public schools.

#### Recommendations for Further Study

Future researchers interested in Oklahoma termination proceedings are now guaranteed information from the Oklahoma State Department of Education. As a result of recent legislation, local school boards are required to submit hearing information on an existing form after final disposition of a case.

Due to recency of passage it was not possible in this study to examine dismissals under Oklahoma's new teacher tenure laws. An examination of the new dismissal "causes" and subsequent case law definition should prove interesting especially when compared to past case law definitions.

Of special interest will be the success of local school boards upholding tenured teacher termination

appeals.

In the past remediation of "cause" has been subject to various court interpretations. A more detailed analysis of remediation requirements and their application to case law under new statutes will likely reveal different results.

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70 Oklahoma Statutes Annotated 1992, § 6-102.4  
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## APPENDIX A

### METHODOLOGY OF THE STUDY

#### Introduction

The primary purpose of this study is to examine, chronologically, the development of Oklahoma teacher employment statutes and to analyze the dismissal or nonrenewal of tenured elementary and secondary teachers in public school districts within the state of Oklahoma for statutory causes.

#### Population

The population of this study consisted of teachers and administrators in Oklahoma who had acquired the status of tenure (career) and who appealed their dismissal or nonrenewal to administrative and judicial hearing bodies at the state and federal levels between 1967 and 1990.

#### Instrumentation

The primary data gathering instrument in naturalistic inquiry is the researcher. Lincoln and Guba (1985) state that

the naturalistic researcher elects to use him or herself as well as others as the primary data

gathering instruments. . .because it would be virtually impossible to devise a priori: a nonhuman instrument with sufficient adaptability to encompass and adjust to the variety of realities that will be encountered. . . . p. 39)

### Procedure

The meaning of content analysis is evolving. The naturalistic approach at inquiry is associated with inductive thinking and encompasses a variety of research techniques including content analysis. The research is usually written in ordinary language and is carefully documented by corroboration with multiple sources (Owen 1982).

In documents, content is generally not under the inquirer's control. Messages need to emerge from the material itself. Absence of previous exposure by the researcher to the documents used in a study tends to guarantee that the categories which emerge will be grounded in the data as well as the context of their message (Borg and Gall, 1983).

From a naturalistic perspective the importance of context and meaning obtained by content analysis is magnified when one considers the creative element of human involvement. Messages coming from the documents eventually force the researcher to make inferences from the data in the interpretative process of formulating grounded theory.

Some of these messages are tacit and require interpretation on the part of the researcher. Other messages are explicit and simply require identification and coding by the researcher in his/her quest for meaning.

Lincoln and Guba (1985) state

The naturalist prefers inductive (as opposed to deductive) data because that process is more likely to identify the multiple realities to be found in those data; because this process is more likely to describe fully the setting and to make decision about transferability to other settings; . . .and because values can be an explicit part of analytic structure. ( p. 40)

Systematic inquiry in this study was guided by the inclusion and exclusion of content and categories in so far as the content related to predetermined categories.

Ernest G. Borman (1965) in his book, Theory and Research in the Communicative Arts, describes the procedures used by scholars to evaluate related sources as being either primary or secondary. "Firsthand accounts under study are primary sources. All other accounts are secondary" (p. 172).

The research used in this study was compiled during the spring, summer and fall of 1992. During this time the researcher located primary and secondary source documents relevant to the subject and discussed the topic with his doctoral committee in the form of a proposal. Initial interest was generated from papers and presentations made

in graduate classes on teacher due process. This study was divided into four separate and distinct phases.

### Procedure - Phase I

In the first phase sources of information were located. Human resources provided direction to the researcher on the location of documents which subsequently revealed the information on which this study is based. The audit trail recommended by Lincoln and Guba (1985) was maintained and consultation with experts in school law and naturalistic inquiry provided insight and feedback.

Attorneys experienced in school law provided an important source of direction. Andrea Kunkel, J. Douglas Mann, Karen Long, and John Moyer, Jr. of the law firm, Rosenstein, Fist, and Ringold, in Tulsa, Oklahoma, provided assistance and advice and direction on locating and obtaining records of hearing proceedings of dismissed and nonrenewed tenured teachers in Oklahoma. Andrea Kunkel ran the West's Electronic Search which revealed important federal and state judicial decisions regarding Oklahoma tenured teachers. This law firm and its attorneys represents many schools in Oklahoma regarding legal and judicial decisions related to school law. Kunkel is a member of the Board of Directors of the Oklahoma School Board Attorneys' Association and President of the Tulsa Women Lawyers' Association.

Larry Lewis, legal counsel for the Oklahoma State

School Boards Association, provided insight and documents, including eight volumes of Oklahoma Hearing Judge Decisions, 1978 to 1985 which he compiled.

The Oklahoma State Department of Education assisted with the Summary Report of Teacher Hearings, June 1977 through June 1990 which was published by the Oklahoma State Board of Education in 1991.

David Morris, legal counsel for the Oklahoma Education Association, and Marion Bottoms, paralegal aide for the Oklahoma Education Association, directed the researcher to additional sources including the Oklahoma State Archives and provided information on the final disposition of some appeals of hearing panel decisions.

During phase one of this study secondary source literature was reviewed in order to obtain familiarity with the chronology of important legislative, judicial, social, and political events unique to teacher tenure.

An important feature related to the collection of documents and use of relevant materials was the access to major research libraries which had superb holdings of related material. These libraries and their affiliate institutions are as follows:

The McFarlin Library of the University of Tulsa,  
Tulsa, Oklahoma

The Taliaferro Savage Law Library at the University  
Tulsa Law School, Tulsa, Oklahoma

The Edmond Lowe Memorial Library of the Oklahoma State  
University, Stillwater, Oklahoma.

The library of the University Center of Tulsa, Tulsa,  
Oklahoma

The Tulsa City-County Library System - Central Library, Tulsa, Oklahoma

The State Archives Division of the Oklahoma Department of Libraries, Oklahoma City, Oklahoma

The library of the Tulsa County Bar Association, Tulsa, Oklahoma

Literature related to teacher tenure, dismissal, evaluation, and due process was located using a computer search of the resources of Oklahoma State University's Lowe Library and the University of Tulsa's McFarlin Library. On-line searches revealed publications in the form of books, legal journals, articles and newsletters related to teacher tenure. The DATRIX program was used to access the Educational Research Information Center (ERIC) tapes of Resources in Education (RIE) and the Current Index to Journals in Education (CIJE).

The data base of Dissertation Abstracts International (DAI) was searched for related literature including dissertations on similar topics.

Abstracts of related dissertations and articles were reviewed. Studies and publications of significance to this research were both borrowed from libraries and purchased from publishers. DAI revealed historical studies which have been completed on teacher tenure in other states but no similar study of this topic was found about Oklahoma's tenured teachers.

The purpose of the first phase of this study was to locate and review appealed teacher termination proceedings along with statutes and case law which would influence

hearing outcomes.

### Data Analysis - Phase II

Phase two involved the collection of data from the following primary sources:

1. Oklahoma Session Laws and Annotated Oklahoma Statutes, 1967 to 1991 (West)

These initial sources were used to ascertain the text of state statutes and attorney general opinions which interpret the law. Amendatory history of applications to state statute were initiated through the use of the annotated codes. This source was utilized to identify additional cases not located through other primary sources.

2. School Laws of Oklahoma, 1992, 1990, and School Laws of Oklahoma Supplement, 1989

These publications of the Oklahoma State Department of Education contain the Oklahoma school code. This code contains statutes which govern the establishment, organization, operation, and support for the state system of public education. These documents contain provisions of House Bill 1017 including the Teacher Due Process Act of 1990 and numerous related attorney general rulings.

3. The Oklahoma state Archives Division of the Oklahoma Department of Libraries

Located in Oklahoma City, the Archives retains 24 boxes of records of appeals of dismissed and nonrenewed tenured teachers and administrators. These files were

perused for adverse employment actions against tenured teachers and constituted the principal source of case law cited by the Professional Practices Commission, the Oklahoma State Board of Education, and hearing judges when reviewing the administrative appeals of tenured teachers. Administrators who had gained tenure as teachers could appeal their termination prior to House Bill 1017 Okla. Stat. tit. 70 § 6-122 (West 1974); Okla. Stat. tit. 70 § 6-101 (West 1971); also, see Appendixes C and D, p. 178, 186). These records are by no means complete and appeals of terminated tenured teachers from 1967 to 1970 are not included. Exonerated nonrenewed tenured teachers for these years had no guarantee of reinstatement.

4. Oklahoma Hearing Judge Decisions, 1978 to 1985, Volumes 1-7

These volumes were compiled by Larry Lewis, legal counsel for the Oklahoma State School Boards Association, Oklahoma City, Oklahoma. These records of hearing judge decisions are very complete and were a major source of hearing panel data that were included in this study for the years from 1977 to 1985. Hearing panel decisions continued through June of 1990. See Appendix D, p. 182. Records of Hearing Judge proceedings and appeals from 1986 to 1990 were also accessed from the Oklahoma State Archives Division of the State Department of Libraries and from the Tulsa law firm of Rosenstein, Fist, and Ringold.

5. The Summary Report of Teacher Hearings, June 1977



through June, 1990, Oklahoma State Board of Education (Garrett, 1991)

This summary report, which was analyzed in this study, listed teacher hearing decisions rendered and alleged grounds for dismissal of teachers in Oklahoma.

6. Westlaw (1992) Electronic "key" Search

This computer search of legal indices was used to locate federal and state cases relating to dismissed and nonrenewed teachers in Oklahoma since 1967. Key words used in this computer search were Oklahoma, teacher, administrator, principal, dismissal, terminate, dismiss, nonreemploy, nonrenew, renew, nonrenewal, reemploy, school, and teacher tenure. Once case law was identified regarding tenured teachers in Oklahoma the legal causes for dismissal were scrutinized by examining Oklahoma and pertinent federal statutes. When supplements were available, both the original source and the supplements were examined for relevant information.

7. West's Oklahoma Digest 2d, 1990

West's Oklahoma Digest 2d (1990) was accessed for summaries of state and federal cases decided in Oklahoma since 1967 for tenured teachers. This digest is composed of a collection of state and federal cases originating in Oklahoma. Cases in this legal index are arranged by subject classification which corresponds to West's (1990) "key" number system. This source enables one to identify statutes and case law by subject classification including

some causes for teacher dismissal.

#### B. Shepard's Citations, 1990

Statutes and case law cited in this study were "shepardized" to determine subsequent history. Shepard's Citations (1990) is a periodical citation service which identifies subsequent sources which have referred to an authority such as a statutory provision or a judicial decision. Shepard's Citations (1990) analyzes published materials including case law, statutory law, administrative decisions, attorney general rulings, legal journals, and law reviews which refer to a statutory provision or judicial decision.

"Shepardizing" of statutory law reveals whether a statute has been amended or repealed. "Shepardizing" case law reveals affirmations, reversals, and modification in succeeding actions. Shepard's Citations (1990) identifies cases by statutory code section or by case names.

#### Procedure - Phase II

Inductive analysis has been defined as "making sense" of data collected in the field (Lincoln and Guba, 1988). Inductive content analysis occurred as an ongoing process throughout this study. The sources of data that were analyzed were appeals by Oklahoma tenured teachers of their terminations by local school boards to administrative and judicial hearing bodies. Content analysis was also used to obtain data and messages from pertinent Oklahoma statutes,

legal journals, and legal publications.

This process provided both descriptive and inferential information about statutes, hearing proceedings, and due process rights of teachers. Individual 5" x 8" index cards were completed with specific units of information and utilized to obtain data related to the predetermined categories which were used to answer the research questions proposed for this study. The research questions are:

1. What was the legal history of statutory law for the dismissal or nonrenewal of tenured teachers in elementary and secondary public schools in Oklahoma?

2. What was the legal history of case law for dismissal or nonrenewal of tenured teachers in elementary and secondary public schools of Oklahoma?

3. What were the legally defensible causes for dismissal of tenured teachers in elementary and secondary public schools in Oklahoma which were most often sustained upon appeal?

4. In Oklahoma appeals of school board dismissal of tenured public elementary and secondary teachers in which the decisions of the local board were reversed, what were the grounds on which the reversals were based?

Major categories used in this study to guide the analysis of statutory law included the following:

1. Statutory grounds for terminations of tenured teachers.

2. Due process requirements which are guaranteed by statute for the terminated teacher

3. Kinds and levels of hearings provided by statute for terminated tenured teachers

4. Chronology of statutory law regarding appeals, procedures, and due process rights of tenured teachers

Major categories used to analyze case law were:

1. Statutory causes for dismissal or nonrenewal alleged by school boards

2. Level of final disposition of appealed termination

3. Chronological development of case law and statutes used in the interpretation of teacher due process rights

4. Legal grounds for affirmations and reversals of appealed terminations of tenured teachers

Coding of primary and secondary sources continued these major categories as a guide to elicit messages from the data.

### Content Analysis - Phase III

The third phase consisted of focused exploration of themes which began to emerge out of the major categories identified during Phase II.

Glaser and Strauss (1967) in their book, The Discovery of Grounded Theory, discuss the constant comparison method as a means for grounding theory during the analysis process. They recommend that

while coding an incident for a category, compare it with previous incidents in the same and different groups coded in the same category. (p. 106)

Grounded theory evolved from the context, meaning, and properties of identified categories rather than preceding them. While discussing the constant comparison method in their book, Glaser and Strauss (1967) state that:

This constant comparison of the incidents very soon starts to generate theoretical properties of the category. The analyst starts thinking in terms of the full range of types of continua of the category and its dimensions, the conditions under which it is pronounced or minimized, its major consequences, its relation to other categories, and its properties. (p. 106)

### Procedure - Phase III

Emerging themes were checked by examining adverse employment actions of tenured teachers, chronologically relevant statutes, and case law cited as legal precedent in the appeals of tenured teachers. Oklahoma Session Laws, Annotated Oklahoma Statutes, and the Oklahoma School Code were checked to verify authenticity and chronology of statutes. Multiple sources increased the trustworthiness of both statute and case law.

### Content Analysis - Phase IV

Information which had begun to involve in Phase III was analyzed for consistency with emerging grounded theory. Modifications in theory were made in order to eliminate irrelevant properties and to correlate details into interrelated categories. Negative case analysis was used to eliminate "outliers" or exceptions and the hypothesis were continually revised until the "fit" seemed to be perfect (Kidder, 1981).

Kidder (1981) in her book, Scientific Inquiry and the Social Sciences, compares negative case analyses in qualitative research to quantitative research.

Both are means to handle error variance.

Qualitative research uses errors to revise hypothesis; quantitative analysis uses error variance to test the hypothesis, demonstrating how large the treatment

affects are compared to error variance. (p. 244)

Negative case analysis was used in this study to explain adverse teacher employment action which deviated from judicial and statutory precepts.

A compendium of cases was created by arranging appeals of tenured teachers in chronological order, integrating and assembling data into charts. See Appendixes C and D, p. 178, 186. Every available case regarding the appeal of a dismissed or nonrenewed Oklahoma tenured public school teacher in which a final decision was rendered and which was discovered through the methodology employed for legal research outlined in this paper was included in this compendium. Final disposition of highest appeal was used to determine whether or not the local school board's adverse employment action was sustained or reversed.

The cases cited in this compendium were influenced by statutory law and attorney general opinions affecting tenured teachers in Oklahoma. This compendium is by no means inclusive of all appeals by tenured teachers since complete records were not available. However, because of exhaustive research, these records probably included the vast majority of cases which were appealed above the local school board level from 1967 to 1990 by tenured teachers in Oklahoma.

#### Procedure - Phase IV

The fourth and final phase of this study included the writing of a draft of the report with member checks by attorneys who provided assistance in the form of insight and direction. In writing the draft the 5" x 8" cards were categorized according to major themes. The themes and messages contained within were used to provide content for an outline. Subsequently, a provisional report was created.

Copies of the provisional report were submitted to pertinent attorneys versed in school law. Revisions were made based on recommendations of my thesis advisor and those who provided input.

#### Summary of Methodology

The simultaneous analysis and collection of data which occurred in this study enabled the researcher to control the data collection process in an efficient and effective manner, as well as to develop a content base that was both parsimonious and relevant.

## APPENDIX B

### REVIEW OF THE LITERATURE

#### Introduction

The main purpose for this review of the literature was to provide an overview of related literature and research regarding the dismissal or nonrenewal of tenured teachers. Through much of the 1970's, 1980's and into the 1990's legislative, administrative, and judicial rulings have molded due process rights of tenured teachers. A vital part of the controversy surrounding teacher termination involves interpretation of statute and case law by school officials and legal authorities. Therefore, legal documents including statutes and records of hearing proceedings constitute the principal source of content analyzed in this study.

While content analysis has been described in the methodology section of this study, (see Appendix A, p. 142) a design for conducting legal research by Jacobstein and Merskey (1990) was used to provide direction and access to pertinent legal documents.

It was, therefore, important to review related literature including litigation and statutes to make accurate inferences about the development and



manifestations of teacher tenure for use by Oklahoma school officials.

To achieve this goal of reviewing related literature a two part organization based on the sources being either primary or secondary was devised. Primary sources included the following:

- A. Oklahoma statutes
- B. Case law of Oklahoma tenured teachers
- C. Case Reporters

Secondary sources included the following:

- A. Legal aides and indices
- B. Legal journals and publications relating to due process rights of teachers
- C. Educational journals and articles and dissertations related to teacher due process

Since this study was arranged chronologically with a stated purpose of establishing an historical record, considerable statutory and case law are embodied in the first four chapters. It would have been redundant to review all pertinent state statutes and case law which relate to teacher tenure in this section since they have been cited previously in this dissertation. Therefore, the description of legal documents in this appendix was limited to a general discussion of the substance of the primary sources used in this study. Dissertations, journals, and articles were reviewed as major secondary sources in more detail.

## Primary Sources

### Oklahoma Statutes

(1) Oklahoma Session Laws is published on an annual basis and contains all new and amended statutes enacted during each session of the Oklahoma legislature. Editions of these state session laws are available at many libraries which hold legal publications. Oklahoma Session Laws is arranged by title and section and indexed in the back of each volume.

(2) Annotated Oklahoma Statutes contains the text of state statutes, attorney general opinions, and amendatory history of state statutes for the state of Oklahoma. Editions are published annually.

(3) School Laws of Oklahoma is published bi-annually with supplements available for intervening years. The 1992 edition contains not only the Oklahoma School Code but also miscellaneous laws which impact local school districts and school officials. Appellate court decisions and/or opinions issued by the Oklahoma Attorney General follow sections to which those decisions apply.

(4) Archives of the state of Oklahoma provide what Owens (1987) would refer to as referential adequacy material. An audit trail of the archived material relevant to this study was established by the writer. Materials in the archives include copies of court records, volumes of hearing panel decisions, and pertinent documents from the

Oklahoma State Department of Education.

Case Law

(1) Hearings by the Professional Practices Commission and the Oklahoma State Board of Education Administrative agencies act as quasi-judicial bodies and interpret their regulations through administrative decisions and orders. These decisions and orders are subject to review by the courts but are generally applicable as legal precedent. This seems to have been true for both the Professional Practices Commission and the Oklahoma State Board of Education which acted in administrative capacity when hearing appeals of terminated teachers.

Hearing panels were presided over by an attorney but their jurisdiction was as an administrative hearing body.

(2) Oklahoma Hearing Judge Decisions, 1978 to 1985

These annual volumes were compiled by Larry Lewis, legal counsel for the Oklahoma State School Boards Association in Oklahoma City, Oklahoma. These volumes are very complete and are often quoted in this study specifically for definitions of statutory causes of dismissal. The Oklahoma Hearing Judge Decisions volumes are a major source of hearing panel data and information from this source was used to assist in the completion of Appendix D. Records of hearing judge proceedings and appeals from 1986 to 1990 were also accessed from the

Oklahoma State Archives and from the Tulsa law firm of  
Rosenstein, Fist, and Ringold.

(3) The Summary Report of Teacher Hearings, June 1977  
through June, 1990

This summary report, published by the Oklahoma State Board of Education, reported teacher hearing decisions rendered and alleged grounds for dismissal of teachers in Oklahoma from June, 1977 through June, 1990. Appeals by tenured teachers were categorized by teacher v. school board, type of termination, alleged grounds, dates of hearings, findings, decisions/final resolutions, and further appeals/rulings.

Case Reporters

Court decisions are compiled chronologically by date and published in volumes called Case Reporters. Cases decided by the United States Supreme Court are collected and published in a series of books, the United States Reports, which is the official governmental reporter of these decisions.

United States Court of Appeals decisions from all circuits are found in the Federal Reporter published by West Publishing Company. The second series, F.2d., covers the period from 1924 to the present.

The Pacific Reporter is a regional digest with a key number system published by West Law which consists of all reported appellate cases including federal court cases that

arose in or were appealed from a geographical region which includes Oklahoma as well as fourteen other states.

Pacific Reporter contains state court opinions and decisions arranged alphabetically by state. Published by West Publishing Company, the Pacific Reporter contains reprints the full text of opinions from courts in the Oklahoma region.

West's Oklahoma Digest 2d. is a collection of state and federal cases originating in Oklahoma. Cases in this legal index are arranged by subject classification which corresponds to West's (1990) "key" electronic number system. This digest enables one to identify statutes and case law by subject classification including some causes for teacher dismissal.

#### Secondary Sources

Access to these secondary sources enabled the researcher to find instant background information on teacher dismissal or nonrenewal before beginning a search of primary sources.

Probably the greatest benefit of encyclopedias and law reviews is their ability to supply instant background information. Several kinds of secondary legal sources exist to help one gain an initial overview of statutes and case law affecting teacher tenure.

### Legal Encyclopedias

(1) Corpus Juris Secundum (1990) published by Westlaw attempts to restate the entire body of American law in encyclopedic form. Articles are arranged in alphabetical order by subject and are written in both procedural and substantive narrative form. Reported federal and state decisions supporting particular points of law are cited with emphasis on the prevailing rule of law.

(2) American Jurisprudence (1989) is published by Lawyers Cooperative. It also has topics arranged in alphabetical order. It summarizes rules developed by federal and state courts but does not critically analyze the law.

### Law Reviews

(1) The Oklahoma Bar Journal, a weekly publication of the Oklahoma Bar Association, contains articles which critique noteworthy court decisions, statutes, and legal doctrines. Orientation of The Oklahoma Bar Journal appears to be toward practicing lawyers and the focus is on legal matters of interest to Oklahoma.

"An analysis of Oklahoma's new teacher tenure law" by Larry French, then Attorney General of Oklahoma, was published in this journal May 27, 1972. This article explained 1971 amendments to the original tenure law, House Bill 1389, in light of due process requirements for tenured

teachers (French, 1972).

(2) American Law Reports Annotated (A.L.R.) reprints opinions of selected state and federal cases which are usually followed by a detailed analysis of a point of law. A.L.R. covers mostly appellate court decisions.

(3) Oklahoma School Law, Publication No. 162, published by the Oklahoma Bar Association's Department of Continuing Legal Education, was a six-chapter publication authored by six prominent attorneys versed in school law - Karen Long, Larry Lewis, Arthur Angel, Eric Groves, Lana Tyree, and John Moyer, Jr. (Long, Et Al., 1983).

Karen Long's chapter on "Statutory rights of the probationary and tenured teacher" was especially helpful in ascertaining due process rights of tenured teachers under the Teacher Fair Dismissal Act (Long, Et Al., 1983).

Arthur Angel's discussion, "Constitutional rights of school district employees", gave an excellent explanation of issues regarding First Amendment due process rights (Long, Et Al., 1983).

(4) "Suspension, dismissal, and nonreemployment of teachers" was a paper authored by Karen Long and presented at the 1991 School Law Symposium on Employee dismissal or nonrenewal. This paper provided an excellent condensed description of changes in due process requirements resulting from the Teacher Due Process Act of 1990 (Long, 1991).

(5) Teacher Termination Procedures Coloring Book for Oklahoma School Administrators and Board Members, by Larry Lewis (1987), provided step-by-step procedures and rules, along with sample letters of legal notice for most nonreemployment actions of public school teachers, and the Teacher Fair Dismissal Law.

### Citators

(1) Shepard's Citations (1990) is a periodical citation service which identifies subsequent sources which have referred to an authority such as a statutory provision or a judicial decision. Shepard's Citations analyzes published materials including case law, statutory law, administrative decisions, attorney general rulings, legal journals, and law reviews which refer to statutory provisions or judicial decisions.

"Shepardizing" of statutory law reveals whether a statute has been amended or repealed. "Shepardizing" case law reveals affirmations, reversals, and modifications in succeeding actions. Shepard's Citations identifies cases by statutory code section or by case numbers.

"Shepardizing" is the final step in conducting legal research and it is necessary to update the law.

(2) Westlaw (1990) electronic "key" search searches legal indices to locate related federal and state cases. Key words used in this computer search were Oklahoma, teacher, administrator, principal, dismissal, terminate,



dismiss, nonreemploy, nonrenew, renew, nonrenewal, reemploy, school, and teacher tenure. Once case law was identified regarding tenured teachers in Oklahoma the legal causes for dismissal were scrutinized by examining Oklahoma and pertinent federal statutes.

Relevant Educational Literature Related to Teacher Due Process

Numerous articles related to evaluation, dismissal, and nonrenewal of tenured teachers are found in journals, magazines, and books which are educationally oriented. The bibliography to this paper cites many such sources. This section examines literature and research associated with teacher tenure, due process rights, and accompanying litigation and legislation. Three of the more relevant general sources include the following:

1. Journal of Law and Education publishes articles on a quarterly basis related to legal considerations which affect education. Recent developments in the law are reviewed in terms of their impact on education.

Christine Citron, an attorney who specializes in education law, authored an article in this journal entitled "An overview of legal issues in teacher quality" (Citron, 1985). This article contained an especially good narration on teacher evaluation and the establishment of objective criteria for evaluating teachers.

Another article by Collins and Nelson (1983) discussed

substantive and procedural restraints, and legal pitfalls. This article titled, "Reducing the teacher workforce: a management perspective", also discussed due process clauses which school officials must consider when electing to enforce a reduction in workforce (Collins and Nelson, 1983).

2. School Law Reporter published monthly by the National Organization on Legal Problems of Education (NOLPE) contains a digest of teacher employment court cases appearing in both state and federal courts. Specific legal issues of court decisions are discussed for both higher education and common education.

3. American School Board Journal is published monthly by the National School Board Association. It discusses legal issues facing public school officials including board members. Articles frequently allude to legal, regulatory, and legislative topics.

The November, 1985 issue of this journal contained an article by Benjamin Sendor on First Amendment rights entitled, "Fairness is the key to balancing your authority with teachers' academic freedom". This article described a recent court decision regarding the teaching of a controversial subject. The teacher won this case on violation of academic freedom and denial of teacher due process (Sendor, 1985).

An article in the July, 1985 edition of this journal by Kathleen McCormick discussed a nonreemployment plan

backed by a teachers' union! Her article entitled, "This union-backed program is ridding Toledo schools of incompetent teachers", described a joint effort by the union's committee and the building principal at intervention to compel an unsatisfactory teacher to undergo a plan of remediation (McCormick, 1985). Oklahoma administrators should consider involving the local teachers organization in plans of improvement as this article suggested.

Merri Schneider-Vogel wrote an article in the summer, 1986 edition of the American School Board Journal entitled, "Gay teachers in the classroom - a continuing Constitutional debate". This article gave a comprehensive discussion of procedural and substantive due process rights of teachers including those who are tenured. The right to privacy and whether it extends to all private sexual conduct between consenting adults and corresponding case law was discussed in depth. The National Gay Task Force v. Board of Education of the City of Oklahoma City (1984) was discussed in this article (Schneider-Vogel, 1986).

Another article about dismissal of tenured teachers, published in this journal, was "What your board should do when administrators ask for a hearing to dismiss a tenured teacher" (MacDonald, 1983). This article discussed the process of conducting a school board hearing on a teacher's incompetence in terms of legal procedures that a school board president must follow. Guidelines for conducting the

hearing were given in sequential order.

4. Yearbook of School Law is published annually by the National Organization on Legal Problems in Education (NOLPE). Significant judicial interpretations regarding educational issues are summarized and compared with other cases of a similar nature (Delon).

Other educational resources used in this study included journals, articles, dissertations, academic papers, and books.

A fine monograph for administrators responsible for supervision and evaluation of teachers was written in 1984 at Stanford University and entitled, "Managing the incompetent teacher". This publication provided an eight-step approach to identify, remediate, and terminate irremediable teachers (Bridges and Groves, 1984). Ideas expressed in this article may help to Oklahoma administrators to manage tenured teachers.

Frels and Cooper (1982) wrote a twenty-five page paper, "A documentation system for improvement or termination", in which they addressed the process by which administrators can prepare credible written records which will withstand legal scrutiny. Lack of adequate documentation has been a major cause of reversals of Oklahoma dismissals.

Legal Issues in Public School Employment, by Beckham and Zirkel (1983), discussed statutory causes for teacher dismissal. Chapter Eight of this book, written by Perry

Zirkel (1983) and entitled, "Good cause basis for dismissal of education employees", discussed citations of state cases for legal cause in relation to the nature of the teacher's behavior (Zirkel, 1983). Chapter Nine of this same book, "The law on reduction in force: an overview and update", discussed the loss of positions by public school teachers for nonpersonal reasons including decline in enrollment, budgetary constraints, consolidation, and reorganization (Zirkel, 1983). Zirkel suggested that it appears that courts tend to rule for the local school board unless the teacher can show the preferred reason to be a subterfuge (Zirkel, 1983). It appears that courts construed Babb RIF to be a subterfuge (Babb v. Independent School District No. 1-5, 1992 WL 67950 (Okla. 1992)).

Ron Day, legal counsel for Cooperative Council of Secondary School Administrators (CCOSA), wrote an article in the September, 1992, issue of Better Schools regarding reduction-in-force especially as it applied to Babb v. Independent School District No. 1-5, 1992 (Day, 1992).

Employee Performance Evaluation, by Larry Lewis, is published each year by the Oklahoma State School Boards Association. Chapter Four of the August, 1990 edition gave a helpful narration on documentation of communications regarding directions given to teachers. Lewis' Chapter Five contained an excellent discussion on observations and documentation. Chapter Nine gave direction on what was to be done when little progress is made on a plan of

improvement (Lewis, 1990).

Termination Procedures for Employees of Oklahoma School Districts, by Larry Lewis, was published in 1993 by the Oklahoma State School Boards Association. This booklet summarizes due process proceedings required under House Bill 1017. Examples of legal forms which can be used and guidelines for conducting a dismissal hearing are excellent and Oklahoma school officials who are involved in teacher termination hearings will possibly benefit from a review of this booklet.

Oklahoma Minimum Criteria for Effective Teaching and Administrative Performance (1990) was a publication developed by the Oklahoma State Board of Education. Performance indicators were research-based in effective schools and effective teaching research. Each Oklahoma school district's evaluation policy has to include at least these minimum criteria (Folks, 1990).

Bruce Beezer (1990) wrote an article in West's Education Law Reporter, titled, "Teacher dismissal: indictment or conviction for nonsexual-related behavior", in which he discussed numerous statutory causes to dismiss a teacher because of criminal conviction of felonies and misdemeanors. Generally these grounds include immorality, moral turpitude, and unfitness to teach (Beezer, 1990). In Oklahoma felony conviction is legal grounds for dismissal of teachers.

Edwin Bridges (1984) co-authored a report, "The

dismissal of tenured teachers for incompetence". This paper reported on an exhaustive study of court cases which involved the dismissal of tenured teachers for incompetence from 1939 to 1982 (Bridges and Gumport, 1984). Cases were examined to determine the nature of classroom deficiencies, the types of evidence used and the outcomes of each case (Bridges, 1984). A conclusion of this study was that supervisory ratings are poor indicators of how much students are learning (Bridges and Gumport, 1984). Suggestions given by Bridges should assist Oklahoma officials in documentation of teacher incompetence.

In a 1982 article Robert Phay discussed a proposed nine point nonreappointment policy which could be used by a school board as a guide for assuring that teachers would be selected who provide the best learning opportunities. In his article, titled, "Seeking excellence: not reappointing an 'average' teacher in order to employ a better teacher", he recommended nonrenewal in the first year of employment (Phay, 1982). This approach is proactive at improving the quality of teaching personnel.

Phay also authored an article in the April, 1984 issue of School Law Bulletin on the legal aspects of teacher renewal. Phay emphasized that school boards needed to nonrenew average probationary teachers in order to increase the competency of staff (Phay, 1984). He contended that school boards are subject to few restraints in exercising their powers to appoint and reappoint only the best

teachers (Phay, 1984). Oklahoma's statutory granting of tenure at the end of the third year allows for probationary teachers who prove to be mediocre to be nonrenewed before tenure is granted if sufficient cause is established.

An article by David H. Larson in the February, 1983 School Administrator, titled, "Dismissing incompetent staff", discussed incompetence, immorality, and elimination of position. Larson thoroughly analyzed incompetence and what teacher behaviors are construed by the courts to constitute this "cause" (Larson, 1983). Oklahoma case law definition parallels this concept.

"The teacher tenure battle: incompetency versus job security", by Ernest L. Brown, appeared in the 1982 issue of Clearinghouse. Brown, a proponent of tenure argued that the problem of incompetent teachers was not caused by tenure but was the result of administrators not properly preparing cases for dismissal. He sees broad repercussions for the elimination of tenure including a subsequent teacher shortage. This is an unusual perception by Brown of the benefits of tenure.

Principal (1990) contained an article, titled, "When tenured teachers fail", by Beth Randklev and Donald K. Lemon. This article by an elementary principal and a professor of educational administration offered insight into effective techniques to assist in evaluation, remediation, admonishment, and nonrenewal using a series of skills known by the acronym, T.I.G.H.T (Randklev and Lemon,



1990).

An examination of the appeals of Oklahoma tenured teachers in this dissertation shows that a lack of adequate documentation precludes findings of preponderance of evidence. Therefore, the techniques offered by Randklev and Lemon may be useful to Oklahoma administrators.

A December, 1990, article in Phi Delta Kappan by James Van Sciver, a school superintendent, discussed the need for teachers' unions, school boards, and administrators to commit themselves to making teacher dismissals a realistic option. He pointed out that school systems are failures at purging their ranks of teachers who are unqualified to teach. This perspective recommended a team approach at upgrading professionalism.

### Dissertations

Janice Paron (1991) wrote a doctoral dissertation at Loyola University, entitled, An historical study of dismissal of tenured teachers in Illinois, 1941-1989. The development of tenure in Illinois occurred independently from the processes which led to Oklahoma tenure. However, national, social, political, and legislative trends seem to have had a common influence on the tenure movement in all states. This dissertation contained an excellent description of due process rights both within the state of Illinois and in the United States (Paron, 1991).

A dissertation by Diane Knight Prager (1988),

entitled, Due process requirements for teacher dismissal in Georgia, found that the most common legal issue cited in Georgia's cases by teachers on appeal was violation of procedural due process rights. Seventy-seven percent of appeals to the state school board were held in favor of the local district (Prager, 1988). Paralleling the findings of this study, due process was also found to be the most common constitutional issue brought forward in appeals by tenured teachers in Oklahoma.

A dissertation by A.C. Jones (1985) in Illinois, titled, Content analysis of teacher dismissal cases for incompetence under the Illinois teacher tenure hearing officer act, 1975-1983, identified reasons for the rare occurrence of teacher dismissals in Illinois. Lack of expertise on the part of school administrators seemed to be the principal cause for the small number of dismissals (Jones, 1985). Similar reasons may exist in Oklahoma since the cause of some reversals appeared to be the lack of knowledge of legal rights and procedures.

Francie Velazquez (1990) wrote a dissertation at the University of Massachusetts, entitled, An attitudinal survey of school administrators toward due process and its implications in an urban Massachusetts school district. Velazquez discussed how litigation has a negative impact on school budgets and the work environment. She also discussed why administrators lose on due process related legal cases in courts and recommended remedies (Velazquez,

1990). In a telephone conversation with the attorney for the Oklahoma State School Boards Association, Larry Lewis, cost was cited as one of the chief reasons for failure of Oklahoma school boards to pursue adverse employment (L. Lewis, personal communication. June 15, 1992). Also, see Table I, p. 215.

### Conclusions of the Review of Literature

This section of the appendix attempted to explain the two categories of literature related to teacher tenure in Oklahoma. These sources were either primary or secondary. Primary sources included the following:

- A. Oklahoma statutes
- B. Case law of Oklahoma tenured teachers
- C. Case Reporters

Secondary sources included the following:

- A. Legal aides and indices
- B. Legal journals and publications relating to due process rights of teachers
- C. Educational journals and articles and dissertations related to teacher due process

The literature discussed in this appendix enabled this researcher to make a logical assessment of the legal constraints and moral and social responsibilities which school officials encounter when considering termination proceedings of tenured teachers.

Even with this thorough examination of primary and

secondary sources of literature and research related to dismissal or nonrenewal of Oklahoma tenured teachers, this writer found no previous effort to compile a complete chronological record of statutory and case law for the entire time frame from 1967 to 1990 which has affected tenure and due process rights of Oklahoma's tenured teachers. Two publications which were found, Larry Lewis' Oklahoma Hearing Judge Decisions, Volumes 1-7 (1978 -1985) and the Oklahoma State Board of Education's Summary Report of Teacher Hearings, June 1977 through June, 1990, are important chronological records which, however, only cover portions of the 1967 to 1990 history for teacher tenure in Oklahoma.

Therefore, this study was undertaken to historically compile and update Oklahoma's statutory and case law, to develop a comprehensive record of legislative and judicial proceedings regarding teacher tenure, and to make management recommendations to Oklahoma school officials regarding legally defensible causes for dismissal or nonrenewal of tenured teachers and grounds on which reversals of appeals were based. This study was developed as one administrator's perspective and is not meant to be used in lieu of competent legal counsel.

**APPENDIX C**  
**APPEALS TO THE PROFESSIONAL PRACTICES COMMISSION**

No.	Report of 1970 through 1977 Teacher v. School Board	Type of Termination	Alleged Grounds	Date of Hearing	Decision for Teacher/Board		Decisions and Final Resolutions	Further Appeals and Rulings
1	George Ayres Clark v. Oklahoma City I-89	Nonrenewal	Willful Neglect of Duty	10-29-70		B	Absence from school 51 1/2 days diminished teacher effectiveness; disrupted administration of school	State Board of Education
2	Leatrice Sluder & Betty Lewis v. Blanchard I-5	Nonrenewal	Emotional Instability Willful Neglect of Duty	09-21-72	T T		cause not statutory grounds insufficient evidence	State Board of Education
3	Billy G. Sanders v. Muskogee I-20	Nonrenewal	Incompetency Willful Neglect of Duty	11-28-72		B*	disproved PPC findings	State Board of Education
4	Mrs. Joe Miller v. Shawnee I-93	Nonrenewal	(insubordination) (uncooperativeness)	04-25-73		B*	notice & hearing were not complied with by local board but evidence sufficient	State Board of Education
5	Robert L. Smith v. Indianola I-25	Nonrenewal	Willful Neglect of Duty	06-02-73	T		not in building 8 to 5 each day during summer was not willful neglect of duty	
6	Margaret Baxley v. Wilson I-43	Nonrenewal	"since we are losing funding & 2 teachers"	06-04-73	T		teacher reinstated; improper cause given	
7	L.N. Wilson (Principal) v. Boswell I-1	Nonrenewal	Willful Neglect of Duty	06-05-73	T		insufficient evidence	
8	Ruth Barrow v. St. Louis D-66	Nonrenewal	Incompetency Willful Neglect of Duty	06-25-73		B*	local board showed insufficient evidence for incompetency; sufficient evidence shown for neglect	
9	Joe Anne Jackson v. Calera I-48	Nonrenewal	continued to come to work after 8:00 a.m. failed large portion of students high portion of low grades	07-23-73	T		cause were not pursuant to statutory law; no evidence proved by local board	State Board of Education
10	Tommie Alexander v. Haskell I-2	Nonrenewal	Willful Neglect of Duty	08-21-73	T		insufficient evidence	State Board of Education

No.	Report of 1970 through 1977 Teacher v. School Board	Type of Termination	Alleged Grounds	Date of Hearing	Decision for Teacher/Board		Decisions and Final Resolutions	Further Appeals and Rulings
11	Janice Briggs v. Newkirk I-29	Nonrenewal	No grounds listed in file	08-21-73	T		failed to meet statutory requirements case settled without a hearing	
12	Claud Treat (Superintendent) v. Keystone D-15	Nonrenewal	(Willful Neglect of Duty)	08-22-73		B	sufficient evidence presented by local board	State Board of Education
13	J.C. Kidwell v. Okmulgee I-1	Nonrenewal	Willful Neglect of Duty	08-23-73	T		insufficient evidence presented by local board	State Board of Education
14	Max Boothe v. Washita Heights I-9	Nonrenewal	Willful Neglect of Duty	08-27-73		B*	evidence established sufficient	State Board of Education
15	Carmen Mora v. Tulsa I-1	Nonrenewal	Incompetency	08-28-73		B*	local board established evidence	State Board of Education
16	Robert Brown (Principal) v. Cleveland I-6	Nonrenewal	Willful Neglect of Duty	08-28-73		B	failed to uphold dress code	
17	Gertrude Edwards & Rollen Ary v. Hulburt I-16	Nonrenewal	Willful Neglect of Duty Incompetency	09-17-73	T T		without sufficient cause	State Board of Education
18	Shirley Nero v. Oklahoma City I-89	Nonrenewal	Incompetency	09-18-73	T		insufficient evidence	State Board of Education
19	Lois Edna Lovelace v. Hinton I-161	Nonrenewal	grading system teaching method	09-25-73	T		no cause stated in board's letter	State Supreme Court
20	Margaret Baxley v. Wilson I-43	Nonrenewal	personality conflict	06-21-74	T		personality conflict not a statutory cause	

No.	Report of 1970 through 1977 Teacher v. School Board	Type of Termination	Alleged Grounds	Date of Hearing	Decision for Teacher/Board		Decisions and Final Resolutions	Further Appeals and Rulings
21	Opal Randolp v. Muldraw I-3	Nonrenewal	Willful Neglect of Duty	07-12-74	T		local board failed to appear at hearing	State Board of Education
22	Pat Armor v. Bokchito I-23	Nonrenewal	Willful Neglect of Duty	07-22-74	T		insufficient evidence	State Board of Education
23	Glenda Sue Keeling v. Terral I-3	Nonrenewal	potential loss of ADA	08-05-74	T		neither local board nor counsel appeared to PPC for hearing	
24	Ruth K. Roller v. Bray I-42	Nonrenewal	(no cause stated in notice)	08-15-74	T		teacher did have tenure even with annexation local board failed to state a cause in notice letter	State Board of Education
25	Yvonne Miller v. Temple I-101	Nonrenewal	Incompetency	02-18-75		B*	state board of education authorized by state legislature to be final tribunal on issue of "cause" for nonrenewal	Oklahoma Court of Appeals, Division No. 1
26	John Dennington v. Hodgen D-14	Nonrenewal	Cruelty	05-31-75	T		insufficient evidence	
27	Phillip Whitney v. Tulsa I-1	Nonrenewal	Incompetency	06-24-75	T		insufficient evidence	
28	Clyde Ellis Nail v. Wolf-Maude D-13	Nonrenewal	Willful Neglect of Duty	07-11-75	T		local board dismissed appeal to State Board 10-20-75	
29	Gilbert Fleming v. Ft. Townson I-2	Nonrenewal	Willful Neglect of Duty	07-18-75	T		insufficient evidence	
30	Marie Duerson v. Turpin I-128	Nonrenewal	met district retirement age	07-24-75	T		age not a statutory cause	

No.	Report of 1970 through 1977 Teacher v. School Board	Type of Termination	Alleged Grounds	Date of Hearing	Decision for Teacher/Board		Decisions and Final Resolutions	Further Appeals and Rulings
31	Eugene Moore v. Stroud I-54	Nonrenewal	Incompetency	08-07-75		B	burden of proof met by local board	State Board of Education
32	L.D. Mayton v. Lone Grove I-32	Nonrenewal	Willful Neglect of Duty	08-08-75	T		insufficient evidence	State Board of Education
33	Jerry Hull v. McAlester I-80	Nonrenewal	no "cause" found in file	08-11-75	T		appellant was renewed automatically by 4-10; PPC stated it had no jurisdiction	
34	Harold Powers v. Weatherford I-26	Nonrenewal	no cause given board gave "conditional" contract which Powers refused to sign	08-14-75	T		local board did not send registered notice of nonrenewal letter to teacher; showed no proof to substantiate changes	State Board of Education
35	Wilma Ramuson v. Ardmore 1-19	Nonrenewal	Willful Neglect of Duty	08-28-75		B*	local board's action confirmed substantial evidence	State Board of Education 5 to 1 vote
36	Warren Melson v. Davenport I-3	Nonrenewal	Willful Neglect of Duty Incompetency	09-04-75	T		insufficient evidence of charges; resignation not submitted by registered mail	State Board of Education
37	Helen Austin**, Diane Burrell**, & David Greer** v. Crooked Oak I-53 (**class action lawsuit)	Nonrenewal	RIF	09-23-75		B*	district had right to RIF Attorney General ruling per tenured/nontenured teachers; 09-08-75	Oklahoma District Court
38	Jeanette McGee v. Woodall-Tahlequah D-21	Nonrenewal	Willful Neglect of Duty	09-24-75	T		insufficient evidence	State Board of Education
39	Kermit O. Selzer v. Alex I-56	Nonrenewal	Willful Neglect of Duty	09-24-75		B	local board did not receive teacher resignation by registered or certified mail	State Board of Education
40	Larry Randolph Oldham v. Drummond I-85	Nonrenewal	(elimination of position)	10-28-75	T		violated open meeting law	Oklahoma Supreme Court



No.	Report of 1970 through 1977 Teacher v. School Board	Type of Termination	Alleged Grounds	Date of Hearing	Decision for Teacher/Board		Decisions and Final Resolutions	Further Appeals and Rulings
41	T.J. Allen (Superintendent) v. Tonkawa I-87	Nonrenewal	Willful Neglect of Duty	(12-05-75)	T		settled for money without hearing 12-05-75	
42	Randa Bloomfield v. Burbank I-20	Nonrenewal	(RIF)	12-17-75	T		local board did not vote publicly; no vote recorded	State Board of Education
43	Wayne Lollar v. I-10 I.S.D. 10 of Seminole County	Nonrenewal	tenure/annexation	01-03-76	T		1/2 days counted toward tenure	Oklahoma Court of Appeals, Division No. 1
44	Lonnie McPeak (Superintendent) v. Yale I-103	Dismissal	Willful Neglect of Duty	01-23-76	T		failed to file for Title money	
45	Lenore Cruzan v. Whiteoak I-1	Dismissal	Willful Neglect of Duty	02-14-76	T		local board failed to provide proper statutory notice and state "willful neglect of duty" instead of "Neglect of duty"	
46	Jean Duggin v. Gage I-39	Nonrenewal	no "cause" found in file	07-07-76	T		teacher reinstated by PPC insufficient evidence	
47	Roy McAdoo v. Madill I-2	Nonrenewal	Incompetency Willful Neglect of Duty	07-07-76	T		insufficient evidence	
48	Ronald F. Glenn v. Heavener I-3	Dismissal	Willful Neglect of Duty	07-08-76	T		absence from school for 1 day did not constitute willful neglect of duty	
49	James Pabst v. Kiamichi Area Vo-Tech	Nonrenewal	Willful Neglect of Duty Incompetency	07-13-76	T		insufficient evidence	
50	Robert Sanford v. Glencoe I-101	Nonrenewal	no "cause" found in file	(07-29-76)			PPC granted continuance; settled out of court	

No.	Report of 1970 through 1977 Teacher v. School Board	Type of Termination	Alleged Grounds	Date of Hearing	Decision for Teacher/Board		Decisions and Final Resolutions	Further Appeals and Rulings
51	Warren Melson v. Davenport I-3	Nonrenewal	failure of board to resolve differences	07-30-76	T		local board did not state statutory grounds	
52	Phil Kaniatobe v. Copan I-4	Nonrenewal	no "cause" information found in file	(07-31-76)			PPC granted continuance; no other resolution information	
53	J. Jerald Davis v. Walter I-1	Dismissal	Willful Neglect of Duty	08-09-76		B*	evidence sufficient	State Board of Education
54	Wanda Louise Boatman Donica v. Nashoba D-15	Nonrenewal	Willful Neglect of Duty	08-17-76	T		insufficient evidence	State Board of Education
55	Judy Cavin v. Cave Springs I-30	Nonrenewal	Willful Neglect of Duty	08-18-76	T		teacher reinstated insufficient evidence	State Board of Education
56	Paul Gordon v. Kiamichi Area Vo-Tech	Nonrenewal	Incompetency Willful Neglect of Duty	09-20-76		B*	preponderance of evidence shown by local board	State Board of Education
57	Norman Barton v. Vian I-2	Nonrenewal	Incompetency	(06-02-77)			case never heard	
58	Twanda W. Hill v. Mannsville I-7	Nonrenewal	Willful Neglect of Duty Incompetency	(06-02-77)			case never heard	
59	Delbert Dumas v. Asher I-112	Nonrenewal	Willful Neglect of Duty	(06-03-77)			case never heard	
60	Rodney Jones v. Muskogee I-20	Nonrenewal	Willful Neglect of Duty Incompetency	(06-08-77)			case never heard	

No.	Report of 1970 through 1977 Teacher v. School Board	Type of Termination	Alleged Grounds	Date of Hearing	Decision for Teacher/Board		Decisions and Final Resolutions	Further Appeals and Rulings
61	Leona M. Couch v. Davenport I-3	Nonrenewal	Willful Neglect of Duty	06-09-77	T		local board failed to present any evidence	
62	J.T. Toney v. Calvin I-48	Nonrenewal	Incompetency Willful Neglect of Duty	06-22-77	T		no evidence to support grounds	
63	Joan Ziegler Ferguson v. Enid I-57	Nonrenewal	Incompetency	07-13-77		B*	teacher voluntarily dismissed proceedings to State Board	
64	Jim Phillips v. Woodward I-1	Nonrenewal	Willful Neglect of Duty	07-14-77		B*	sufficient evidence presented; appeal to State Board dismissed 09-07-77	
65	Luke Benton v. Whitesboro I-69	Nonrenewal	no causes given in notification	07-21-77	T		no statutory grounds cited by local board	
66	Gloria Herren v. Panola I-4	Nonrenewal	Willful Neglect of Duty	(08-09-77)			case never heard	
67	Shirley Ann Thomas v. Tushka I-19	Nonrenewal	Willful Neglect of Duty	08-09-77	T		local board did not sustain burden of proof	
68	Jeweldean Adair v. Caddo I-5	Nonrenewal	RIF "special education programming being eliminated"	08-29-77	T		nonrenewal was without statutory notice and/or sufficient statutory cause	State Board of Education
69	Gayle Petty v. Skiatook I-7	Nonrenewal	Willful Neglect of Duty	09-14-77	T		insufficient evidence to prove statutory cause	State Board of Education
70	Harry Cavett v. Geary I-80	Nonrenewal	no "cause" listed due to administrator status	12-16-77		B	had not acquired tenure status as a superintendent; no written contract ever given	District Court of Oklahoma

No.	Report of 1970 through 1977 Teacher v. School Board	Type of Termination	Alleged Grounds	Date of Hearing	Decision for Teacher/Board		Decisions and Final Resolutions	Further Appeals and Rulings
71	Russell Reck v. Muskogee I-20	Nonrenewal	Willful Negelect of Duty Incompetency	12-20-77		B*	board showed evidence to support causes	State Board of Education
72	Jerry Graybill v. Taloga I-10	Nonrenewal	Incompetency	09-26-78		B*	sufficient evidence presented by local board; open meeting law was not violated	Oklahoma State Supreme Court
73	Mary J. Martin v. Harrah I-7	Nonrenewal	*failure to meet continued education requirements*	02-06-79		B*	lower court's ruling based on "amalgam" of constitutional rules; Martin not deprived of equal protection law	United States Supreme Court
74	Robert D. Scherich v. North Enid I-42	Nonrenewal	Willful Neglect of Duty	02-13-79	T		PPC had no jurisdiction	Oklahoma Court of Appeals, Division No. 2

\* Board action prevailed  
Source: State Archives, Oklahoma Department of Libraries, Oklahoma City, OK. Boxes 1-24. 1970-1990

**APPENDIX D  
APPEALS TO THE HEARING PANEL - "249 HEARINGS"**

No.	Report of 1977 through 1990 Teacher v. School Board	Type of Termination	Alleged Grounds	Date of Hearing	Decision for Teacher/Board		Decisions and Final Resolutions	Further Appeals and Rulings
					T	B		
1	Rance Robinson v. Wagoner I-19	Dismissal	Incompetency	11-02-77	T		Teacher reinstated	
2	Dennis A. Tomlison v. Tulsa I-1	Dismissal	Incompetency	(12-14-77)		B	Settlement - Teacher withdrew; dismissed with prejudice	
3	Charles Evans v. Oklahoma City I-89	Dismissal	Immorality & Moral Turpitude	03-08-78		B	Teacher appealed to District Court	District Court acquitted teacher on criminal charges (shoplifting)
4	Sharon Kay Whorton v. Fort Gibson I-3	Dismissal	Moral Turpitude	03-23-78 & 04-06-78	T		teacher reinstated after School Board appealed to district court	District Court ruled to reinstate teacher
5	Dennis Sanders v. Rocky Mountain D-24	Dismissal	Willful Neglect of Duty	05-03-78	T		reinstated as a teacher not a principal	
6	Don Maupin v. Afton I-26	Nonrenewal	Incompetency Moral Turpitude	07-21-81	T		reinstated as a teacher with no coaching duties	Oklahoma Supreme Court
7	Gerald Sergeant v. Afton I-26	Nonrenewal	Incompetency Willful Neglect of Duty	05-06-78	T		teacher reinstated	
8	Joyce L. Gross v. Lawton I-8	Nonrenewal	Incompetency Willful Neglect of Duty	no hearing		B*	teacher withdrew request and left after 04-06-78	
9	Dale K. Jenkins v. Jay I-1	Nonrenewal	Moral Turpitude	no hearing		B*	teacher allowed to resign - release executed 05-23-78	
10	Carol Sue Shilling v. Kingston I-3	Nonrenewal	no information found in file	no hearing	T		Board chose to rehire teacher after 04-11-78	

No.	Report of 1977 through 1990 Teacher v. School Board	Type of Termination	Alleged Grounds	Date of Hearing	Decision for Teacher/Board		Decisions and Final Resolutions	Further Appeals and Rulings
11	Jean Duncan v. Tulsa I-1	Nonrenewal	Incompetency	no hearing		B*	teacher withdrew request and moved to Florida after 04-11-78	
12	Gladys Langston v. Wynnewood I-38	Nonrenewal	Willful Neglect of Duty	05-04-78	T		teacher reinstated admonishment not followed by corrective assistance by principal	
13	Boyce Harrison v. Kingston I-3	Nonrenewal	Willful Neglect of Duty	07-17-78 & 10-28-78		B	Board's action sustained. Teacher dismissed	
14	Morey Vilareal v. Tulsa I-1	Nonrenewal	Incompetency	no hearing		B*	teacher allowed to resign after 04-14-78	
15	Lena Liggins v. Beggs I-4	Nonrenewal	Willful Neglect of Duty	06-14-78	T		teacher reinstated	
16	Eleven Teachers v. Enid I-57	Nonrenewal	not a statutory ground	no hearing	T		Welfare Department was able to fund the contracts	
17	Ray Thompson v. Oklahoma City I-89	Dismissal	Immorality Moral Turpitude	07-17-78 & 08-23-78		B	Board's action sustained; teacher dismissed	Dismissed in state district court
18	Opal Walker v. Sperry I-8	Nonrenewal	Immorality Moral Turpitude	06-15-78		B	Board's action; teacher dismissed	Oklahoma Supreme Court reverted back to district court case closed; teacher dismissed
19	Clovos Hull v. Madill I-2	Nonrenewal	no cause found in file	no hearing		B*	settlement - agreement reached; teacher resigned after 07-26-78	
20	June Brandt v. Moore I-2	Dismissal	Willful Neglect of Duty	01-23-79		B	Board action sustained	

No.	Report of 1977 through 1990 Teacher v. School Board	Type of Termination	Alleged Grounds	Date of Hearing	Decision for Teacher/Board		Decisions and Final Resolutions	Further Appeals and Rulings
21	James Martin v. Midwest City-Del City I-52		Grievance matter at local level	no hearing authorized by State Board				
22	Carolyn Alcorn v. Shawnee I-93	Dismissal				B	Teacher nontenured and not eligible for hearing	
23	Carrel Bowman v. Lawton I-9	Dismissal	Willful Neglect of Duty Moral Turpitude	04-05-79		B	teacher dismissed Board action sustained	
24	Ralph Christian v. Maud I-177	Nonrenewal	no cause found in file	(06-29-79) set no hearing	T		Settlement agreement; teacher reinstated - declined and retired	
25	Don Maupin v. Afton I-26	Nonrenewal	Incompetency Willful Neglect of Duty	(05-17-89) set no hearing		B*	Settlement - board withdrew charges and teacher resigned - dismissed with prejudice	
26	Patricia G. Johnson v. Keys D-2	Dismissal	Willful Neglect of Duty	06-04-79	T		teacher reinstated	Oklahoma District Court (criminal charge)
27	Sharon K. Whorton v. Fort Gibson I-3	Nonrenewal	Willful Neglect of Duty Incompetency	05-22-79	T		teacher reinstated	Oklahoma District Court overturned hearing panel; Oklahoma Supreme Court upheld district court
28	William Steve Buoy v. Arnett I-3	Nonrenewal	no cause found in file	no hearing		B*	settlement - teacher resigned after 04-09-79	
29	Douglas Shaw v. Blanchard I-29	Nonrenewal					Teacher nontenured and not eligible for hearing	
30	Michael Childers v. Silo I-1	Nonrenewal	Willful Neglect of Duty Incompetency	10-20-81	T			Oklahoma Supreme Court

No.	Report of 1977 through 1990 Teacher v. School Board	Type of Termination	Alleged Grounds	Date of Hearing	Decision for Teacher/Board		Decisions and Final Resolutions	Further Appeals and Rulings
31	Maurine Rausch v. Paoli I-5	Nonrenewal	Incompetency	06-29-79	T		Teacher reinstated	
32	H. Haskell City v. Haworth I-6	Nonrenewal	Willful Neglect of Duty	07-02-79	T		Teacher reinstated Board failed to comply with statutory laws	
33	Rebecca Vaughan v. Bethany I-88	Nonrenewal	Willful Neglect of Duty	no hearing	T		Teacher reinstated after 04-16-79	
34	Joe Kimerer v. Quapaw I-14	Nonrenewal	Willful Neglect of Duty	06-28-79		B*	settlement - teacher withdrew and left	
35	Danny Lynch v. Blanchard I-29	Nonrenewal	Willful Neglect of Duty	03-21-80	T		1st and 14th Amendment Rights violated unlawful procedure decision of hearing panel	Oklahoma District Court
36	Nancy Young v. Blanchard I-29	Nonrenewal	not a statutory cause	no hearing		B	teacher reinstated after 04-23-79 SB 249 - Oklahoma nepotism; husband came on local school board	
37	Judy Faye Boswell v. Oklahoma City I-89	Dismissal	Willful Neglect of Duty	07-27-79	T		teacher reinstated with conditions	Oklahoma Supreme Court ruled in favor of local board
38	Deborah Lambert v. Kremlin-Hillsdale I-18	Nonrenewal	Willful Neglect of Duty	no hearing	T		settled without hearing after 03-14-80	
39	Britten Ray McCabe v. Duncan I-1	Nonrenewal	Incompetency Willful Neglect of Duty	05-12-80		B	teacher dismissed board - sustained	
40	Robbie Vursels v. Mountain Park I-6	Nonrenewal	no cause found in information	no hearing held	T		reinstated as a teacher after 04-01-80	



No.	Report of 1977 through 1990 Teacher v. School Board	Type of Termination	Alleged Grounds	Date of Hearing	Decision for Teacher/Board		Decisions and Final Resolutions	Further Appeals and Rulings
41	Vicky Brady v. Falls-Lakeview D-31	Nonrenewal	Willful Neglect of Duty	no hearing	T		teacher reinstated after 04-07-80 settled without hearing	
42 43 44	Marilyn J. Kemp, Kathleen A. Johnson, & Florence M. Matthews v. Miami I-23	Nonrenewal	RIF	no hearing	T T T		settled without hearing after 04-09-80 funds made available for contracts	
45	Ramona Jackson v. Putnam City I-1	Nonrenewal	Incompetency Willful Neglect of Duty	04-17-80		B	teacher dismissed; Board action prevailed	
46	Clarence Randles v. Porter I-3	Nonrenewal	Willful Neglect of Duty	06-02-80		B	teacher dismissed	denied in Oklahoma Supreme Court case closed; mutual agreement - cost settlement
47	Richard Nissen v. Sperry I-8	Nonrenewal	(financial shortage)	no hearing		B	hearing panel dismissed case 08-11-80	settled with monetary payment to teacher 08-16-82, case closed
48	John Barnett v. Tulsa I-1	Nonrenewal	Incompetency	07-01-80		B	teacher dismissed	
49	Bob G. Cone v. Tulsa I-1	Nonrenewal	no grounds found in file	no hearing		B	teacher dismissed 05-23-80	
50	Iris Ikard v. Tulsa I-1	Nonrenewal	Incompetency	07-23-80		B	teacher dismissed board sustained	
51	Anna Miller v. Newcastle I-1	Nonrenewal	Willful Neglect of Duty	no hearing	T		teacher rehired, settled without hearing	
52	Cindy Weiden v. Waynoka I-3	Nonrenewal	no information found in file	05-05-80			not required to keep record; teacher probationary	

No.	Report of 1977 through 1990 Teacher v. School Board	Type of Termination	Alleged Grounds	Date of Hearing	Decision for Teacher/Board		Decisions and Final Resolutions	Further Appeals and Rulings
53	Jane Ann Finch v. Oklahoma City 1-89	Dismissal	Willful Neglect of Duty	05-28-80		B	teacher dismissed	
54	Joe P. Johnson v. Waynoka I-2	Dismissal	Willful Neglect of Duty	no hearing	T		settlement reached after 05-12-80	
55	Ben Sanders v. Indian Camp D-23	Nonrenewal	no cause found in information	07-05-80	T		case dismissed without prejudice; district court ruled in favor of teacher	Oklahoma District Court
56	Joyce Rawley v. Broxton-Apache I-68	Dismissal	no cause found in information	no hearing	T		settlement reached	
57	Frank Bryant (superintendent) v. Wellston I-4	Dismissal	Willful Neglect of Duty	no hearing		B		settled in 10th Circuit Court of Appeals after 07-31-80
58	John R. Vincent v. Tulsa I-1	Dismissal	no cause found in information	no hearing	T		dismissed, prejudice by agreement after 09-22-80	
59	Bryant Followell v. Muldrow I-3	Dismissal	Willful Neglect of Duty	no hearing	T		teacher rehired after 10-30-80; took six personal days to hunt without board approval; admonishment statute not followed correctly	
60	Lewis Morris (superintendent) v. Vici Board of Education I-5	Nonrenewal	Incompetency	no hearing	T		appeal directly to Oklahoma Supreme court; ruled no jurisdiction	dismissed - remanded back to local board
61	Emma Eldridge v. Hardesty I-15	Nonrenewal	Loss of ADA	05-12-81 hearing cancelled		B	settlement without prejudice	
62	W.H. "Bill" Phillips (superintendent) v. Valiant I-11	Nonrenewal	no information found in file	05-20-81	T		case dismissed; ruled no jurisdiction	Oklahoma District Court of McCurtain County dismissed case

No.	Report of 1977 through 1990 Teacher v. School Board	Type of Termination	Alleged Grounds	Date of Hearing	Decision for Teacher/Board		Decisions and Final Resolutions	Further Appeals and Rulings
63	Sharon Long v. Lomega I-3	Nonrenewal	Incompetency	05-18-81		B	settled; board rescinded; teacher rehired	
64	D.C. Taylor (superintendent) v. Caney I-26	Dismissal	no information found in file	no hearing		B	settled out Oklahoma District Court after 04-01-81	
65	Belva Dilbeck v. Okemah I-26	Nonrenewal	Willful Neglect of Duty	07-21-81		B	teacher dismissed	
66	Dean Dunnam v. Okemah I-26	Dismissal	no grounds found in file	no hearing	T		teacher reinstated after 04-07-81	
67	Billy Ray Wheeler v. Harrah I-7	Nonrenewal	reduction in program	no hearing		B	teacher dropped request after 04-16-81	
68	Donna Beauchamp v. Harrah I-7	Nonrenewal	reduction in program	no hearing	T		teacher reinstated after 04-16-81	
69	Betty Ingram v. Schwartz (MWC) D-4	Nonrenewal	RIF	no hearing	T		teacher resigned after 04-16-81	
70	Donna Jernigan v. Anadarko I-20	Nonrenewal	Willful Neglect of Duty Incompetency	no hearing	T		board action rescinded after 04-16-81	
71	Charles Mowdy v. Smithville I-14	Nonrenewal	RIF	no hearing	T		teacher reemployed after 04-20-81	
72	Louise White v. Oklahoma City I-89	Nonrenewal	Incompetency	07-21-81		B	board action sustained	

No.	Report of 1977 through 1990 Teacher v. School Board	Type of Termination	Alleged Grounds	Date of Hearing	Decision for Teacher/Board		Decisions and Final Resolutions	Further Appeals and Rulings
73	Vernon Smith v. Lawton I-8	Dismissal	Immorality Willful Neglect of Duty Moral Turpitude	no hearing		B	teacher withdrew after 06-24-81	
74	John Randle Hayes v. Pleasant View D-17	Dismissal	Moral Turpitude	no hearing		B	dismissed with prejudice after 01-06-82	
75	Rowland Ross v. Oklahoma City I-89	Dismissal	Moral Turpitude Immorality	10-05-81		B	arrested on morals charge; teacher resigned and received settlement	
76	Evelyn Elnora Wands v. Wann I-2	Dismissal	no information found in file	no hearing		B	settled; teacher resigned after 01-06-82	
77	Shirley Baskin v. Cave Springs I-30	Dismissal	no information found in file	no hearing		B	settled; teacher resigned after 02-04-82	
78	Donnie J. Cooksey v. Pawnee I-1	Nonrenewal	no information found in file	no hearing	T		settled; board rescinded the action, rehired teacher after 03-16-82	
79	Joe Bob Dawson v. Wayne I-10	Nonrenewal	no information found in file	no hearing		B	settled, withdrew request for hearing after 03-17-82	
80	Tura A. Fulton v. Wilson I-43	Nonrenewal	no information found in file	no hearing	T		settled, teacher rehired after 03-22-82	
81	Cindy Shipman v. Empire I-21	Nonrenewal	Willful Neglect of Duty	06-24-82	T		reinstated teacher; (barrel racing for students at fair) "moonlighting" found not to be Willful Neglect of Duty	
82	Marjorie G. Buchanan v. Pawnee I-1	Nonrenewal (also Dismissal)	Cruelty	06-07-89	T		reinstated teacher; statutory procedures not followed by board; insufficient evidence; violated open meeting law	

No.	Report of 1977 through 1990 Teacher v. School Board	Type of Termination	Alleged Grounds	Date of Hearing	Decision for Teacher/Board		Decisions and Final Resolutions	Further Appeals and Rulings
83	Wanda Louise Boatman Donica v. Nashobia D-15	Nonrenewal	Willful Neglect of Duty	06-29-82		B	dismissed the teacher	
84	James Boatright v. Yarbrough-Goodwell I-1	Nonrenewal	Incompetency	no hearing		B	dismissed, teacher died after 04-23-82 and before hearing	
85	David Autry v. Moore I-2	Dismissal	Moral Turpitude	no hearing		B	agreement for settlement and compromise 06-01-82	
86	Chris Bolen v. Moore I-2	Dismissal	Moral Turpitude	01-08-83		B	resigned; dismissed with prejudice; later rehired	
87	Elmer Heck v. Moore I-2	Dismissal	Moral Turpitude	07-26-82		B	conceded - took lesser assignment	
88	Kenneth Mobbs v. Moore I-2	Dismissal	Moral Turpitude	no hearing		B	agreement for settlement and compromise; later rehired after 06-01-82	
89	Mike Ossenkop (principal) v. Moore I-2	Dismissal	Moral Turpitude	08-05-82	T		in lieu of appealing to district court, agreement of settlement and compromise was made; later rehired	
90	Gene Ross v. Moore I-2	Dismissal	Moral Turpitude	11-09-82		B	settled outside of Oklahoma district court; later rehired	
91	Bobby Dale Dismuke v. Lawton I-8	Dismissal	no information found in file	no hearing		B	agreement for settlement and compromise after 08-23-82	
92	Jearl Tincer v. Oaks-Mission I-5	Dismissal	Moral Turpitude	no hearing		B*	agreement for settlement and compromise after 11-29-82	

No.	Report of 1977 through 1990 Teacher v. School Board	Type of Termination	Alleged Grounds	Date of Hearing	Decision for Teacher/Board		Decisions and Final Resolutions	Further Appeals and Rulings
93	Gerald Stevens v. Oklahoma City I-89	Dismissal	Incompetency Willful Neglect of Duty Moral Turpitude	no hearing		B	teacher withdrew request for hearing	
94	James C. Wilson v. Delaware I-30	Dismissal	no information found in file	no hearing			teacher nontenured and not eligible	
95	Lynette Gourd v. Fairland I-31	Dismissal	incompetency	no hearing		B*	Settlement - teacher withdrew request; dismissed with prejudice	
96	Gene Branscum v. Wewoka I-6	Nonrenewal	Willful Neglect of Duty	07-07-83	T		teacher reinstated; failure to get masters degree was not willful neglect	
97	Ronald Smith v. Stuart I-54	Nonrenewal	Incompetency (coaching)	no hearing	T		settlement; teacher reinstated after 03-29-83	
98	Marquetta Sousebee v. Ringling I-14	Dismissal	Incompetency	05-06-83		B	settlement - dismissed with prejudice	
99	Mildred Sheker v. Putnam City I-1	Dismissal	Incompetency Willful Neglect of Duty	06-03-83		B	teacher dismissed; board showed sufficient evidence and followed statutory procedures	
100	Francis Royal v. Lawton I-8	Nonrenewal	Incompetency Willful Neglect of Duty	07-06-83		B	Settlement - teacher received pay and resigned; teacher agreed to drop Civil Rights Claims	
101	Peggy Crawford v. Marble City D-35	Nonrenewal	Incompetency Willful Neglect of Duty	06-28-83	T		teacher reinstated; local board did not show sufficient evidence	Board appealed to Oklahoma District Court; case closed
102	Margaret Miller v. Stillwater I-16	Nonrenewal	Incompetency Willful Neglect of Duty	06-13-83		B	teacher dismissed; incompe- tency proven insufficient evidence for willful neglect	

No.	Report of 1977 through 1990 Teacher v. School Board	Type of Termination	Alleged Grounds	Date of Hearing	Decision for Teacher/Board		Decisions and Final Resolutions	Further Appeals and Rulings
103	Voncille Sparkman v. Shawnee I-93	Nonrenewal	Incompetency Willful Neglect of Duty	08-23-83	T		teacher reinstated	
104	Richard Sparks v. Putnam City I-1	Nonrenewal	Incompetency Willful Neglect of Duty	05-23-83		B	Dismissed with prejudice; teacher retired	
105	Betty Ingram v. Schwartz D-4	Nonrenewal	no information found in file	no hearing		B	teacher resigned after 04-19-83	
106	Morris Medearis v. Tulsa I-1	Nonrenewal	Incompetency	no hearing		B	teacher elected to early retirement after 04-19-83	
107	Rick Smith v. Okmulgee I-1	Nonrenewal	no information found in file	no hearing		B	teacher resigned after 04-20-83	
108	Nancy Dillard v. Helena-Goltry I-89	Dismissal	no information found in file	no hearing		B	settled - dismissal with prejudice	
109	John Arnold v. Putnam City I-1	Dismissal	Willful Neglect of Duty Incompetency Cruelty	08-11-83		B	board action sustained; teacher dismissed	Oklahoma District Court ruled in Board's favor
110	Larry Parton v. Watson D-56	Dismissal	Immorality Incompetency	no hearing	T		settlement was reached 11-11-83 teacher agreed to \$21,000.00	
111	Foy Ledbetter v. Kiamichi Area Vo-Tech School Board of Education No. 7	Dismissal	Moral Turpitude Homosexual Conduct	no hearing		B	teacher resigned after 11-21-83	
112	Russell Turley v. Grove I-2	Dismissal	Willful Neglect of Duty	01-23-83		B	teacher resigned (refused to sign loyalty oath)	

No.	Report of 1977 through 1990 Teacher v. School Board	Type of Termination	Alleged Grounds	Date of Hearing	Decision for Teacher/Board		Decisions and Final Resolutions	Further Appeals and Rulings
113	Edward Chuning v. Bamsdall I-29	Nonrenewal	Incompetency	no hearing	T		board rescinded all prior actions relating to teacher after 03-14-84	
114	Anita Sue Evans v. Owasso I-11	Nonrenewal	no information found in file	no hearing		B	teacher withdrew request for hearing after 03-19-84	
115	Earl S. Chesnut v. Walters I-1	Nonrenewal	Willful Neglect of Duty	06-13-84		B	board action sustained; teacher resigned	
116	Clarence Green v. Ketchum I-6	Dismissal	no information found in file	no hearing		B	teacher nontenured and not eligible	
117	William Allen Vaughn v. Tulsa I-1	Nonrenewal	Incompetency, Willful Neglect of Duty, Immorality and acts involving moral turpitude	05-24-84		B	board action sustained	
118	Donna S. Skeen v. Fairfax I-25	Nonrenewal	Willful Neglect of Duty	no hearing		B	teacher resigned and withdrew request for hearing after 04-27-84	
119	Ronald W. Skeen v. Fairfax I-25	Nonrenewal	Willful Neglect of Duty	no hearing		B	settlement was reached; teacher resigned	
120	Beatrice Grant v. Hanna I-64	Nonrenewal	no information found in file	no hearing		B	settlement was reached; teacher resigned	
121	Harold Powers v. Weatherford I-26	Dismissal	Cruelty Incompetency Willful Neglect of Duty	07-18-84		B	board action sustained; board had violated open meeting law	
122	Randy Hart v. Yale I-103	Dismissal	Willful Neglect of Duty Incompetency Moral Turpitude	03-26-85	T		teacher reinstated	



No.	Report of 1977 through 1990 Teacher v. School Board	Type of Termination	Alleged Grounds	Date of Hearing	Decision for Teacher/Board		Decisions and Final Resolutions	Further Appeals and Rulings
123	Lois Broderson v. Kellyville I-31	Dismissal	Willful Neglect of Duty	07-19-84	T		Board directed to reinstate teacher with full employment status and benefits; insufficient evidence	
124	Ronnie Sands v. Porter I-3	Dismissal	Cruelty	no hearing		B	settlement was reached; teacher resigned after 10-25-84	
125	Theodore Alexander v. Tulsa I-1	Dismissal	Incompetency Willful Neglect of Duty	02-07-85	T		teacher reinstated; one-time incident	Oklahoma District Court affirmed hearing officer's decision
126	Dennis Eagon v. Putnam City I-1	Dismissal	Incompetency Willful Neglect of Duty	no hearing		B	teacher withdrew request for hearing after 01-02-85	
127	Fran Walkingstick v. Putnam City I-1	Dismissal	Willful Neglect of Duty Moral Turpitude Immorality	no hearing	T		dismissed with prejudice; teacher reinstated after 01-25-85	
128	Yvonne Parker v. Tulsa I-1	Dismissal	Incompetency Willful Neglect of Duty	02-26-85		B	teacher dismissed on grounds of willful neglect of duty	appealed to Oklahoma District Court - dismissed
129	Etta Robinson v. Tulsa I-1	Dismissal	Incompetency Willful Neglect of Duty	03-26-85		B	teacher dismissed on grounds of incompetency	appealed to Oklahoma District Court - dismissed
130	Linda Caldwell v. Plainview, Texhoma D-1	Nonrenewal	none given in file	pretrial conference 04-23-85; no hearing	T		teacher reinstated; superinten- dent did not recommend nonrenewal, only principal	
131	Don Falling v. Talequah I-23	Nonrenewal	Incompetency Willful Neglect of Duty Moral Turpitude	no hearing		B	teacher resigned after 03-20-85	
132	Tommie Milam v. Broken Arrow I-3	Nonrenewal	Willful Neglect of Duty Cruelty Incompetency	06-05-85		B	teacher dismissed on grounds of willful neglect - vote 4 to 1	

No.	Report of 1977 through 1990 Teacher v. School Board	Type of Termination	Alleged Grounds	Date of Hearing	Decision for Teacher/Board		Decisions and Final Resolutions	Further Appeals and Rulings
133	John Rankin v. Red Rock I-3	Nonrenewal	no grounds found in file	06-02-89			U.S. Court of Appeals 10th Circuit reversed and remanded district court ruling; cited status requiring tenured teachers to pay half cost of hiring was burden on due process rights	U.S. Court of Appeals 10th Circuit
134	Don Keeling v. Terral I-3	Nonrenewal	none found in file	no hearing	T		board rescinded action; teacher reinstated after 04-10-85	
135	Glenda Sue Keeling v. Terral I-3	Nonrenewal	none found in file	no hearing	T		board rescinded action; teacher reinstated after 04-10-85	
136	Patty Ann Goff v. Deer Creek-Lamont I-95	Nonrenewal	Willful Neglect of Duty	06-04-85	T		teacher reinstated; absence four days during Spring Break did not constitute willful neglect	
137	Johnny Short v. Kiamichi Area Vo-Tech No. 7	Nonrenewal	Willful Neglect of Duty	07-19-88	T	B	superintendent did recommend nonrenewal	Oklahoma Court granted prospective relief only
138	Kay Butler v. Putnam City I-1	Nonrenewal	no information found in file	no hearing			settlement reached; teacher re- signed after 04-16-85	
139	Jackie McCaughtry v. Anadarko I-20	Nonrenewal	Willful Neglect of Duty	no hearing	T	B	settlement reached; teacher re- instated after 04-18-85; due pro- cess violated	
140	Sandra Higgins v. Choteau-Mazie I-32	Nonrenewal	no information found in file	no hearing		B	board rescinded action; teacher resigned after 04-15-85	
141	Jacque Rutledge v. Talihina I-52	Nonrenewal	no grounds found in file	no hearing		B	settlement reached; teacher re- signed after 04-22-85	
142	Louis Board v. Chichasha I-1	Nonrenewal	Incompetency Willful Neglect of Duty	no hearing			settlement reached; teacher re- signed after 04-24-85	

No.	Report of 1977 through 1990 Teacher v. School Board	Type of Termination	Alleged Grounds	Date of Hearing	Decision for Teacher/Board		Decisions and Final Resolutions	Further Appeals and Rulings
143	Janice Kelse v. Schulter I-6	Nonrenewal	no grounds found in file	no hearing		B	teacher not eligible not statutory grounds	
144	Gregg Barnes v. Quapaw I-14	Nonrenewal	Willful Neglect of Duty Incompetency	no hearing		B	settled by agreement teacher left after 03-17-86	
145	Rosalie Carlyle v. Battiest I-71	Nonrenewal	local board mandatory retirement policy	02-19-91	T		hearing panel recommended case be heard in court grounds was not a statutory cause	Oklahoma Court of Appeals, Division No. 3 reversed and remanded
146	Roberta Young v. Waynona I-30	Nonrenewal	Willful Neglect of Duty	no hearing	T		settled by agreement teacher left after 04-21-86	
147	Thomas Hutchinson, Jr. v. Oklahoma City I-89	Nonrenewal	failure to meet staff development requirements	no hearing	T		request cancelled/dismissed after 04-21-86	
148	Barbara Randolph v. Oklahoma City I-89	Nonrenewal	failure to meet staff development requirements	no hearing	T		request withdrawn after 04-21-86	
149	Bill McIntosh v. Guthrie I-1	Nonrenewal	Willful Neglect of Duty Incompetency	07-23-86	T		teacher not afforded all rights due - reinstated	
150	Luther Bohanon v. Guthrie I-1	Nonrenewal	Moral turpitude	07-21-86		B	settled by agreement teacher left	
151	Annette Parker v. Leedey I-3	Nonrenewal	Willful Neglect of Duty	no hearing		B	teacher resigned; received settlement after 03-24-87	
152	Carla Basden v. Kiefer I-18	Nonrenewal	RIF	no hearing		B	not a nonrenewal for cause under 70 OS S 6-103	

No.	Report of 1977 through 1990 Teacher v. School Board	Type of Termination	Alleged Grounds	Date of Hearing	Decision for Teacher/Board		Decisions and Final Resolutions	Further Appeals and Rulings
153	Alan Ambrister v. Oklahoma City I-89	Nonrenewal	Willful Neglect of Duty	07-24-87		B	decision of local board upheld; teacher resigned	
154	Durfrey Thompson v. Putnam City I-1	Nonrenewal	Imcompetency Willful Neglect of Duty	no hearing		B	teacher resigned; after 04-15-87; nonrenewal rescinded	
155	Connie Travis v. Bristow I-2	Nonrenewal	RIF	no hearing		B	not a nonrenewal cause under 70 OS S 6-103	
156	Paula Walcott v. Weleetka I-31	Nonrenewal	Willful Neglect fo Duty	no hearing		B	teacher resigned; received settlement after 04-16-87	
157	Maris Ward v. Bristow I-2	Nonrenewal	RIF	no hearing		B	not a nonrenewal for cause under 70 OS S 6-103	
158	Betty Ford v. Bristow I-2	Nonrenewal	RIF	no hearing		B	not a nonrenewal for cause under 70 OS S 6-103	
159	Kathy Lindley v. North Enid I-42	Nonrenewal	RIF	no hearing		B	not a nonrenewal for cause under 70 OS S 6-103	
160	Charles Curliss v. Hartshome I-1	Nonrenewal	RIF	no hearing		B	not a nonrenewal for cause under 70 OS S 6-103	
161	Karen Smith v. Hartshome I-1	Nonrenewal	RIF	no hearing		B	not a nonrenewal for cause under 70 OS S 6-103	
162	Burl Ford v. Christie School D-12	Nonrenewal	RIF	no hearing		B	not a nonrenwal for cause under 70 OS S 6-103	

No.	Report of 1977 through 1990 Teacher v. School Board	Type of Termination	Alleged Grounds	Date of Hearing	Decision for Teacher/Board		Decisions and Final Resolutions	Further Appeals and Rulings
163	Phyllis Littleton v. Big Cabin I-50	Nonrenewal	Deficiency in staff development points	07-07-87	T		teacher reinstated with full tenure with no interruption in service	Oklahoma District Court reversed hearing panel's decision; settlement in lieu of appeal
164	Linda Clinton v. Eufaula I-1	Nonrenewal	willful Neglect of Duty	no hearing		B	teacher resinged and nonrenewal rescinded after 06-05-87	
165	Judy Massey v. Panama I-20	Nonrenewal	Incompetency Willful Neglect of Duty Immorality Moral turpitude	11-02-87		B	appeal dismissed with prejudice; parties entered into settlement	Oklahoma District Court appeal dismissed
166	Lueine Steeley v. Briggs D-44	Dismissal	Immorality Willful Neglect of Duty Incompetency Moral turpitude	02-26-88	T		teacher reinstated and suspended; board failed to follow statutory law	appeal to Oklahoma Supreme Court teacher under indictment for felony
167	Donald R. Fuss v. Ponca City I-71	Dismissal	Willful Neglect of Duty Incompetency	02-29-88	T		teacher reinstated	appeal to Oklahoma District Court dismissed 05-28-88
168	Yolonda McArthur v. Sweetwater I-15	Dismissal	Incompetency Willful Neglect of Duty			B	teacher stopped action on hearing after 03-17-88	
169	Louis Carter v. Ninnekah I-51	Nonrenewal	Incompetency Willful Neglect of Duty		T		settlement reached; rescinded action; teacher resigned after 04-13-88	
170	Earnest L. Dates v. Tulsa I-1	Nonrenewal	Incompetency Willful Neglect of Duty			B	appeal dismissed with prejudice after 04-18-88	
171	Don Randolph v. Kiefer I-18	Dismissal	no cause stated				not a tenured teacher	
172	Sharon Lewis v. Nowata I-14	Nonrenewal	Incompetency Willful Neglect of Duty	06-27-88		B	decision to nonreemploy sustained; evidence established and sufficient	

No.	Report of 1977 through 1990 Teacher v. School Board	Type of Termination	Alleged Grounds	Date of Hearing	Decision for Teacher/Board		Decisions and Final Resolutions	Further Appeals and Rulings
173	Jack Wagoner v. Wyandotte I-1	Nonrenewal	Incompetency failure to meet required plan of improvement			B	dismissal with prejudice after 04-18-88	
174	Dale F. Gilliland v. Minco I-2	Nonrenewal	Incompetency		T		settlement reached; board rescinded action; teacher resigned after 04-22-88	
175	Charles Lee Casey v. Noble I-40	Nonrenewal	Willful Neglect of Duty Cruelty Incompetency	07-20-88	T		reinstatement with full employment status and benefits board failed to show cause	
176	Zelda Cline v. Varnum I-7	Dismissal	Cruelty Incompetency Willful Neglect of Duty	04-19-89		B	board's decision sustained based on Oklahoma Supreme Court: Carlyle v. ISD-71 ruling	U.S. District Court for Western District of Oklahoma
177	Carol Walsh v. Robin Hill High School C-16	Dismissal	Willful Neglect of Duty	no hearing		B	teacher resigned after 02-28-89	
178	Velma Winship v. Haworth I-6	Dismissal	Willful Neglect of Duty	05-23-89	T		teacher reinstated	board appealig to Oklahoma District Court
179	Lenna Kordis v. Dell City I-3	Dismissal	Incompetency Willful Neglect of Duty	no hearing			reinstated by agreement, then resigned after 03-02-89	
180	Joe Phillips v. Big Cabin I-50	Nonrenewal	Incompetency Willful Neglect of Duty	no hearing	T		teacher reinstated with full employment status and benefits ater 04-13-89	
181	Nancy Taylor v. Oklahoma City I-89	Nonrenewal	Incompetency Willful Neglect of Duty	07-24-89		B	board decision upheld	appeal to Oklahoma District Court waived by board
182	Walter W. Rickey, Jr. v. Piedmont I-22	Nonrenewal	Willful Neglect of Duty	06-19-89	T		teacher reinstated with full employment benefits; principal failed to tell teacher he could be fired	

No.	Report of 1977 through 1990 Teacher v. School Board	Type of Termination	Alleged Grounds	Date of Hearing	Decision for Teacher/Board		Decisions and Final Resolutions	Further Appeals and Rulings
183	Carolyn Ley v. Millwood I-37	Nonrenewal	Incompetency Willful Neglect of Duty	06-26-89		B	board's decision upheld; teacher had been served with 58 discipline referral forms	
184	Alma Washington v. Millwood I-37	Nonrenewal	Willful Neglect of Duty	07-26-89		B	board's decision upheld	appealed to Oklahoma District Court
185	Jerry Diane Trout Harwood v. Oklahoma City I-89	Nonrenewal	Willful Neglect of Duty	07-24-89		B	board's decision upheld	
186	Kay Sammon v. Wayne I-10	Nonrenewal	Willful Neglect of Duty	no hearing			compromise settlement; teacher received money, then resigned after 04-17-89	
187	Douglas P. Landess v. Crooked Oak I-53	Dismissal/ Nonrenewal	Incompetency Willful Neglect of Duty	06-19-89  separate facts led to a separate dismissal following initial nonrenewal; dismissal and nonrenewal were consolidated into one hearing by hearing judge		B	mutual agreement reached; board action and teacher resigned	
188	Leo Thompson v. Oklahoma City I-89	Nonrenewal	Willful Neglect of Duty	03-09-91		B	preponderance of evidence	State Board of Education
189	Susan Orange v. Buffalo I-4	Dismissal	Willful Neglect of Duty	no hearing	T		teacher rehired after 04-28-89	
190	Jane A. Lessly v. Norman I-29	Dismissal	Willful Neglect of Duty	06-28-89		B	board's decision upheld	

No.	Report of 1977 through 1990 Teacher v. School Board	Type of Termination	Alleged Grounds	Date of Hearing	Decision for Teacher/Board		Decisions and Final Resolutions	Further Appeals and Rulings
191	Douglas P. Landess v. Crooked Oak I-35	Incompetency Willful Neglect	06-19 & 20-89				Mutal agreement reached, Board rescinded action and teacher resigned	
192	Dwayne Patten v. Sayre I-31	Dismissal	Incompetency Willful Neglect of Duty	08-28-89		B	board's decision upheld; teacher suspended 05-18-89	
193	Billy L. Autry v. Bartlesville I-3	Dismissal	Willful Neglect of Duty	no hearing		B	compromised settlement; teacher received money, then resigned after 09-25-89	
194	Anthony Reamy v. Catoosa I-2	Dismissal	Moral turpitude Incompetency Willful Neglect of Duty	no hearing		B	Compromised settlement; teacher received money, then resigned after 11-13-89	
195	Edwin Moore v. Pawnee I-1	Dismissal	Willful Neglect Immorality Moral turpitude	04-24-90		B	board's decision sustained	
196	Dwight McArthur v. Sweetwater I-15	Dismissal	Willful Neglect of Duty Incompetency			B	compromised settlement; teacher received money then resigned after 12-12-89	Oklahoma District Court
197	Don Bridwell v. Elk City I-6	Dismissal	Incompetency Immorality Willful Neglect of Duty Moral turpitude engaging in sexual conduct as defined by 70 OSS 6-103.15(A)2 which has impended the effectiveness of performance of school duties	08-16-90		B	board's decision	
198	Donnie Littlefield v. Salina I-16		Willful Neglect of Duty Incompetency	03-23-90	T	B	teacher appealed to district court	Oklahoma Court of Appeals



No.	Report of 1977 through 1990 Teacher v. School Board	Type of Termination	Alleged Grounds	Date of Hearing	Decision for Teacher/Board		Decisions and Final Resolutions	Further Appeals and Rulings
199	Agnes Morris v. Oklahoma City I-89	Dismissal	Willful Neglect of Duty Incompetency	01-17-90	T		pending	Oklahoma Court of Appeals
200	Susan Orange v. Buffalo I-4	Nonrenewal	Incompetency Willful Neglect of Duty	07-11-90 & 11-10-93	T		teacher reinstated as of 02-01-93 with 1 1/2 years retroactive pay	Oklahoma Court of Appeals
201	Willie O. Reid v. Oklahoma City I-89	Dismissal	Willful Neglect of Duty Incompetency	05-01-90	T		insufficient evidence	
202	Brenda Horton v. Oklahoma City I-89	Dismissal	Willful Neglect of Duty Incompetency	11-27-90		B	board's decision upheld	Oklahoma District Court
203	Mary Lake v. Woodward I-1	Nonrenewal	Willful Neglect of Duty Incompetency	06-26-90		B	board's decision sustained	
204	Roy Young v. Smithville I-14	Nonrenewal	Discontinuance of carpentry program	no hearing			settled out of court and \$35,000 teacher resigned	
205	Ruth Young v. Smithville I-14	Nonrenewal	Willful Neglect of Duty Incompetency	08-09-90	T		pending	Oklahoma Supreme Court
206	Maxine Umstead v. Smithville I-14	Nonrenewal	RIF 1/2 time	04-20-90		B	contract reduced to 1/2 day; teacher resigned	
207	Jane Murphy v. Tulsa I-1	Dismissal	Willful Neglect of Duty Incompetency	09-13-90		B	board's decision sustained	
208	Steven Dale Firey v. Manford I-3	Dismissal	Cruelty Willful Neglect	08-15-90		B	board's decision sustained	

No.	Report of 1977 through 1990 Teacher v. School Board	Type of Termination	Alleged Grounds	Date of Hearing	Decision for Teacher/Board		Decisions and Final Resolutions	Further Appeals and Rulings
209	Mark A. Chase v. Francis Tuttle Area Vo-Tech District 21	Dismissal	Willful Neglect of Duty Incompetency	11-14-90		B	board's decision sustained	

\* Board action prevailed

Source: Garrett, S. (1991). Summary Report of Teacher Hearings, June 1977 through June 1990. Oklahoma City, Oklahoma: Oklahoma State Board of Education.

## APPENDIX E

### TIMELINE: TEACHER TENURE LEGISLATION IN OKLAHOMA

- 1967 - Senate Bill 338: -Oklahoma's first Teacher Tenure Law
- Failure of local board of education to renew a contract after 3 years is invalid unless the local board serves notice as to cause.
  - Tenured teacher has right to reconsideration hearing.
  - Appeal for nonrenewal is to Oklahoma Practices Commission then to State Board of Education (70 Oklahoma Statutes Supplement, 1967 S6-24)
  - No guarantee of reinstatement if teacher is exonerated
- 1971 - House Bill 1389: -Requires local school board to extend for 1 year contract of tenured teacher who has been nonrenewed but exonerated on appeal.
- Cause for dismissal or nonrenewal become the same.
  - Adverse employment action by local board must be in open session.
  - Dismissal of tenured teacher is final. No appeal except local board hearing unless cause for dismissal is moral turpitude.
  - Teachers dismissed for moral turpitude may appeal to district court.
  - Professional Practices Commission composition redefined.
- 1975 - House Bill 1657: -Any teacher who has accumulated tenure in the school district will not lose tenure if that district is annexed (70 OS 1974 S6-122.1).
- Amendment to 1971 law.

- Allows appeals of tenured teachers dismissed for cause to Professional Practices Commission and State Board of Education (70 O.S. 1974 S 6-122).
- 1977 - Senate Bill 249: -Creation of hearing judge  
-Teacher Fair Dismissal Law-Teacher suspension for "best interest of children" (70 O.S. 1978 S 6-103.3,4)  
-Decision of hearing panel is final administrative appeal for tenured teacher  
-Additional appeals go to district court  
-Modifies procedure for dismissal or nonrenewal.  
-Requires written evaluation of tenured teachers every three (3) years
- 1978 - House Bill 1629: Dismissal for homosexuality
- 1979 - Senate Bill 55: Dismissal for felony conviction
- 1981 - Senate Bill 308: -Teacher Due Process Act Requires admonition as condition before termination
- House Bill 1261: -Restates cause for nonrenewal and dismissal.  
-Additional grounds for dismissal:  
--failure to accumulate staff development points  
-Pretermination hearing before vote by local board in open session.
- 1983 - Senate Bill 217: -Professional Practices Board repealed per "sunset law".  
-Professional Standards Board recreated until July 1, 1989.
- 1985 - House Bill 1569: -Sodomy and sexual misconduct become grounds for dismissal  
-Replaces dismissal for homosexuality
- 1989 - House Bill 1366: -Professional Standards Board continues until 1995 (70 O.S. 1989 S6-101.22).
- House Bill 1017: -Education Reform Act  
-Names Sections 75-85 "Teacher Due Process Law"

- Probationary teacher dismissal for cause.
- Professional Standards Board abolished.
- Educational Professional Standards Board created.
- Hearing Panel and hearing by State Board of Education replaced by appeal from local board of education to district court for trial de novo for a career teacher.
- Appellate relief through court
- Defines criminal sexual activity-  
Standards for professional conduct  
Additional grounds for dismissal:
  - unsatisfactory teaching performance
  - instructional ineffectiveness
- Defines how superintendent must conduct dismissal/nonrenewal procedure.
- Requires admonition and remediation time before dismissal or nonrenewal

APPENDIX F

**SUMMARY OF MAIN STATUTORY CHANGES ON  
DISMISSAL/NONREEMPLOYMENT OF TEACHERS**

The following comparison is in step-by-step order. Not every detail is covered. Only the main features are presented.

**OLD LAW**

(Full text of the old-law sections can be found in *Oklahoma Statutes 1981* and the *1989 Supplement* thereto.)

**STANDARDS.** Consideration of any written state or education-oriented organization standards permitted, but not required, when determining adequacy of performance. (§ 6-103)

**WRITTEN EVALUATIONS.** Based on state minimum criteria. Probationary teachers evaluated twice a year, tenured teachers once a year. (§ 6-102.2)

**HB 1017**

(Full text of the HB 1017 language can be found in the *1990 Supplement to Oklahoma Statutes 1981*.)

**STANDARDS.** State Board standards shall be considered. Education-oriented organization standards may be considered. (§ 6-101.21)

**WRITTEN EVALUATIONS.** Based on state minimum criteria. Probationary teachers evaluated twice a year, career teachers once a year. (§ 6-102.2 was renumbered to § 6-101.10.)

**HEARING.** Board could vote to terminate without holding a hearing beforehand, but board then had to notify teacher of right to a hearing, before the board, after the vote, after which board could change its decision.

**HEARING.** A hearing as defined in § 6-101.3 must be conducted by the local board according to procedures established by the State Board. Both sides have opportunity to present testimony and other evidence. Burden of proof is on the superintendent (or designee) and standard of proof is preponderance of evidence. (§ 6-101.26)

**TERMINATION DECISION.** Made by vote of local board on its own volition or on receipt of superintendent's recommendation. If decision was to dismiss or nonreemploy a tenured teacher, board notified teacher of right to post-termination hearing before a hearing panel. If decision was to dismiss or nonreemploy probationary teacher, board notified teacher of right to post-termination hearing before local board, conducted according to regulations promulgated by State Board of Education. Board's decision at such hearing for probationary teacher was final. (§ 6-103.4)

**TERMINATION DECISION.** Made by vote of local board in open meeting following pre-termination hearing. If decision is to dismiss or nonreemploy a career teacher, board advises the career teacher of right to petition for trial de novo in the district court within 10 days of receipt of notice. Board's decision regarding a probationary teacher is final. (§ 6-101.26)

**POST-TERMINATION PROCESS FOR TENURED TEACHERS.** If tenured teacher chose to have post-termination hearing before hearing panel, process was as follows. From a list of qualified persons, hearing judge selected by mutual agreement of the teacher and a representative of the board. Local board designated a second person to counsel and assist the hearing judge, and teacher designated a third person to do likewise. Thus was composed the hearing panel, which conducted due process hearing according to statutory provisions and regulations of the State Board. Panel, in a report written by the hearing judge, either ordered reinstatement of the teacher or sustained the board. Statutes called for 50-50 division of costs, but courts found that provision unconstitutional. The panel's decision was final unless appealed to district court. (§'s 6-103.5 through 6-103.12)

**POST-TERMINATION PROCESS FOR CAREER TEACHERS.** If career teacher petitions district court for trial de novo, district court conducts an entire nonjury civil trial as a "new thing" -- as if the pre-termination hearing has not been held. Burden of proof is on the superintendent of the district (or designee) and standard of proof is the preponderance of the evidence. Court either reinstates the career teacher or sustains the decision of the local board. Court may enter an order regarding attorneys' fees and costs. Decision of the court is final unless appealed to higher court. (§ 6-101.27)

**GROUND.** Probationary teachers subject to dismissal or nonreemployment for cause.

For tenured teachers, action had to be based on specific statutory grounds (§ 6-103) as listed below:

Immorality (deleted in HB 1017);

Teaching disloyalty to the American Constitutional system of government (deleted in HB 1017);

Willful neglect of duty;

Cruelty;

Incompetency;

Moral turpitude; or

Conviction of a felony.

§ 6-103.15 also listed "criminal sexual activity or sexual conduct that has impeded the effectiveness of the individual's performance of school duties," and § 6-158 said any teacher could be nonreappointed for failure to meet local staff development requirements.

**GROUND.** Probationary teachers still may be dismissed or nonreemployed for cause.

For career teachers, action must be based on specific statutory grounds (§ 6-101.22) as listed below:

Willful neglect of duty;

Mental or physical abuse to a child;

Incompetency;

Moral turpitude;

Conviction of a felony;

Repeated negligence in performance of duty (new);

Instructional ineffectiveness (new);  
or

Unsatisfactory teaching performance (new).

Grounds of criminal sexual activity or conduct, and failure to meet staff development requirements were retained as a basis for dismissal, nonreemployment, or refusal of employment.



**ADMONISHMENT.** Teacher given written statement, assistance, and up to two months to correct whatever problems were noted by principal who evaluated the teacher. (§ 6-103.2)

**ADMONISHMENT.** Same process, now in § 6-101.24, but emphasis is on requirement that admonishment process must be completed before any recommendation is made to dismiss or nonreemploy a career teacher on grounds of repeated negligence in performance of duty, willful neglect of duty, incompetency, instructional ineffectiveness, or unsatisfactory teaching performance, or to dismiss or nonreemploy a probationary teacher for any cause related to inadequate teaching performance.

**RECOMMENDATION FOR DISMISSAL OR NONREEMPLOYMENT.** Superintendent submitted recommendation in writing to board. In case of tenured teacher, recommendation had to cite statutory grounds. Board member could also initiate action for dismissal or nonreappointment. (§ 6-103.4)

**RECOMMENDATION FOR DISMISSAL OR NONREEMPLOYMENT.** If administrator who evaluated and admonished teacher believes poor performance or conduct cited has not been corrected in required time, that administrator recommends dismissal or nonreemployment to the superintendent. (If another administrator or a board member identifies poor performance or conduct, evaluating administrator is advised and admonishment process is initiated.) Superintendent makes written dismissal/nonreemployment recommendation to the board, citing statutory grounds in case of career teacher or cause in case of probationary teacher. Superintendent also specifies supporting facts. (§ 6-101.25)

**NOTICE OF RIGHT TO HEARING.** On receipt of superintendent's recommendation for dismissal or nonreemployment, board notifies teacher of right to hearing, date (within 20 - 60 days after teacher receives notice), time, and place, and provides teacher a copy of the recommendation and a statement setting forth the statutory grounds (career teacher) or the cause (probationary teacher) and the supporting statement of facts. (§ 6-101.26)

TABLE I

1990 TEACHER DUE PROCESS ACT  
GROUNDS FOR DISMISSAL OR NON  
REEMPLOYMENT OF TEACHERS

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1. Willful neglect of duty (Admonition Required)
2. Repeated negligence in performance of duty  
(Admonition Required)
3. Mental or physical abuse to a child
4. Incompetency (Admonition Required)
5. Instructional ineffectiveness (Admonition Required)
6. Unsatisfactory teaching performance (Admonition  
Required)
7. Any reason involving moral turpitude
8. Conviction of a felony (no presidential or  
gubernatorial pardon issued)
9. Finding that teacher engaged in criminal sexual  
activity or sexual misconduct (that impeded  
effectiveness of performance of school duties)
10. Other cause (probationary teacher) Note: Admonition  
required if cause related to inadequate teaching  
performance
11. Failure to accumulate the staff development points  
required by the local school board staff  
development plan
12. Deficient certification (separate law)

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Source: Long, K. (1991). Suspension, dismissal and non-reemployment of teachers. 1991 School Law Symposium Employee Dismissal and non-renewal Tulsa, OK: Rosenstein, Fist & Ringold.

TABLE II

## MINIMUM CRITERIA FOR EFFECTIVE TEACHING PERFORMANCE

## I. Practice

## A. Teacher Management Indicators

## 1. Preparation

The teacher plans for delivery of the lesson relative to short-term and long-term objectives.

## 2. Routine

The teacher uses minimum class time for non-instructional routines thus maximizing time on task.

## 3. Discipline

The teacher clearly defines expected behavior (encourages positive behavior and controls negative behavior).

## 4. Learning Environment

The teacher establishes rapport with students and provides a pleasant, safe, and orderly climate conducive to learning.

## B. Teacher Instructional Indicators

## 1. Establishes Objectives

The teacher communicates the instructional objectives to students.

## 2. Stresses Sequence

The teacher shows how the present topic is related to those topics that have been taught or that will be taught.

## 3. Relates Objectives

The teacher relates subject topics to existing student experiences.

4. **Involves All Learners**  
The teacher uses signaled responses, questioning techniques and/or guided practices to involve all students.
5. **Explains Content**  
The teacher teaches the objectives through a variety of methods.
6. **Explains Directions**  
The teacher gives directions that are clearly stated and related to the learning objectives.
7. **Models**  
The teacher demonstrates the desired skills.
8. **Monitors**  
The teacher checks to determine if students are progressing toward stated objectives.
9. **Adjusts Based on Monitoring**  
The teacher changes instruction based on the results of monitoring.
10. **Guides Practice**  
The teacher requires all students to practice newly learned skills while under the direct supervision of the teacher.
11. **Provides for Independent Practice**  
The teacher requires students to practice newly learned skills without the direct supervision of the teacher.
12. **Establishes Closure**  
The teacher summarizes and fits into context what has been taught.

## II. Products

### A. Teacher Product Indicators

#### 1. Lesson Plans

The teacher writes daily lesson plans designed to achieve the identified objectives.

#### 2. Student Files

The teacher maintains a written record of student progress.

#### 3. Grading Patterns

The teacher utilizes grading patterns that are fairly administered and based on identified criteria.

### B. Student Achievement Indicators

Students demonstrate mastery of the stated objectives through projects, daily assignments, performance, and test scores.

TABLE III

SUMMARY OF APPEALS TO THE PROFESSIONAL  
PRACTICES COMMISSION 1967  
THROUGH MID JUNE 1977(9)

Years	67	68	69	70	71	72	73	74	75	76	77	78	79	Total
Requests for Hearings	---	---	---	---	---	---	---	---	---	---	---	---	---	
Hearings Held	0	0	0	1	0	2	16	5	17	12	10	(1)	(2)	= 65
Settle- ments without Hearings	*	*	*	0	0	0	0	0	1	1	0	(0)	(0)	= 2
Other								1	1	2			(1)	= 4

\* Covers only the first six months of 1977  
Appeals continued through 1979

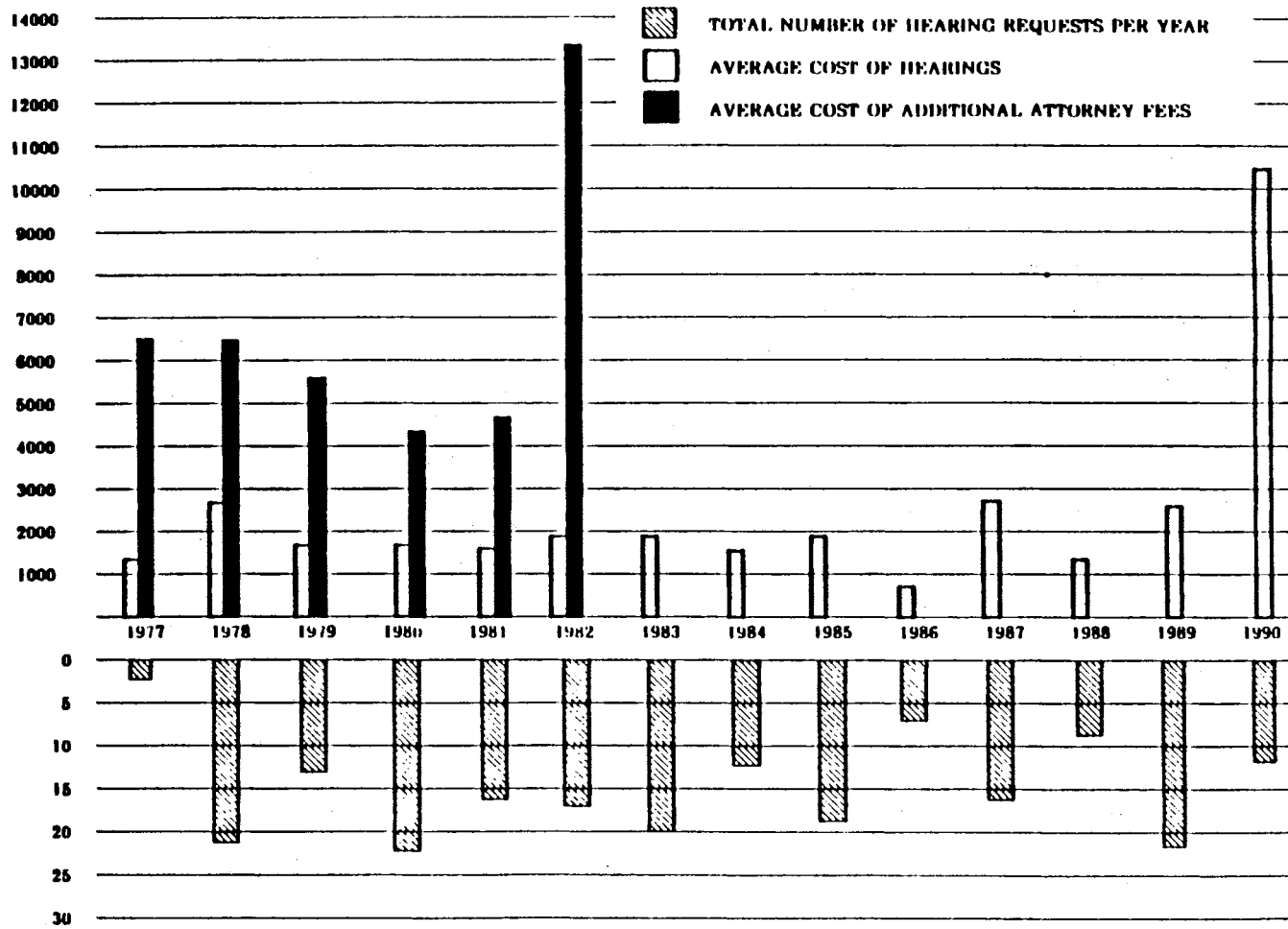
Source: State Archives, Oklahoma State Department of  
Libraries, Oklahoma City, OK., Boxes 1 - 24.

TABLE IV  
SUMMARY OF HEARING PANEL APPEALS  
"249 HEARINGS"

Years	79	80	81	82	83	84	85	86	87	88	89	90*
Total												
Requests for Hearings	37	22	16	17	20	12	19	7	17	8	22	12
												= 209
Hearings Held	20	6	3	7	10	5	6	3	4	2	11	8
												= 85
Settlement without Hearings	14	15	13	10	9	6	12	4	5	5	7	1
												= 101
Other	3	1	0	0	1	1	1	0	8	1	4	3
												= 23

\* Covers only the first 6 months of 1990

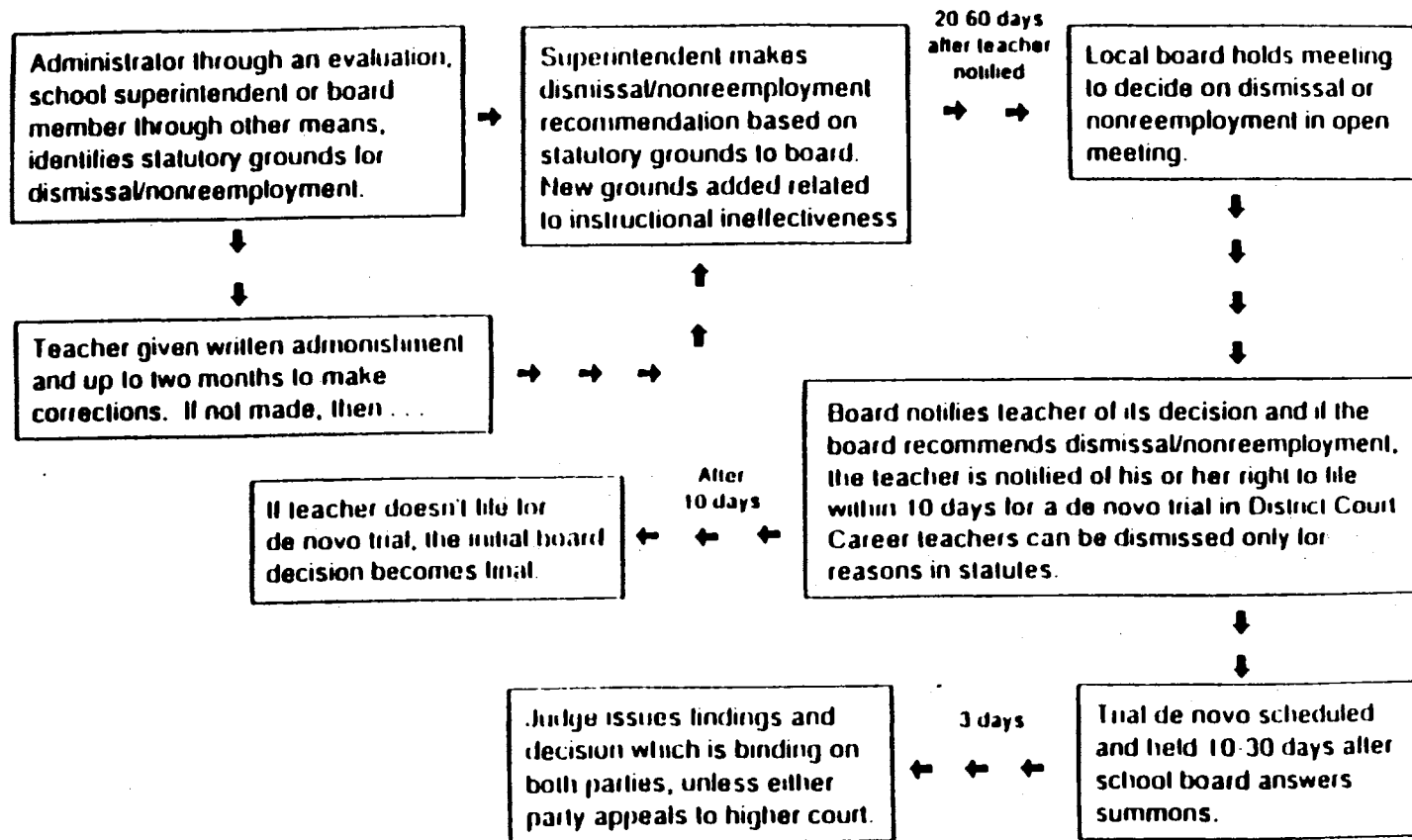
Source: Garrett. (1991). Summary Report of Teacher Hearings, June 1977 - June 1990. Oklahoma City, OK: State Board of Education, p. 4.



Source: Garrett, S. (1991). Summary Report of Teacher Hearings, June 1977 - June 1990. Oklahoma City, OK: State Board of Education.

Figure 1. Hearing Costs

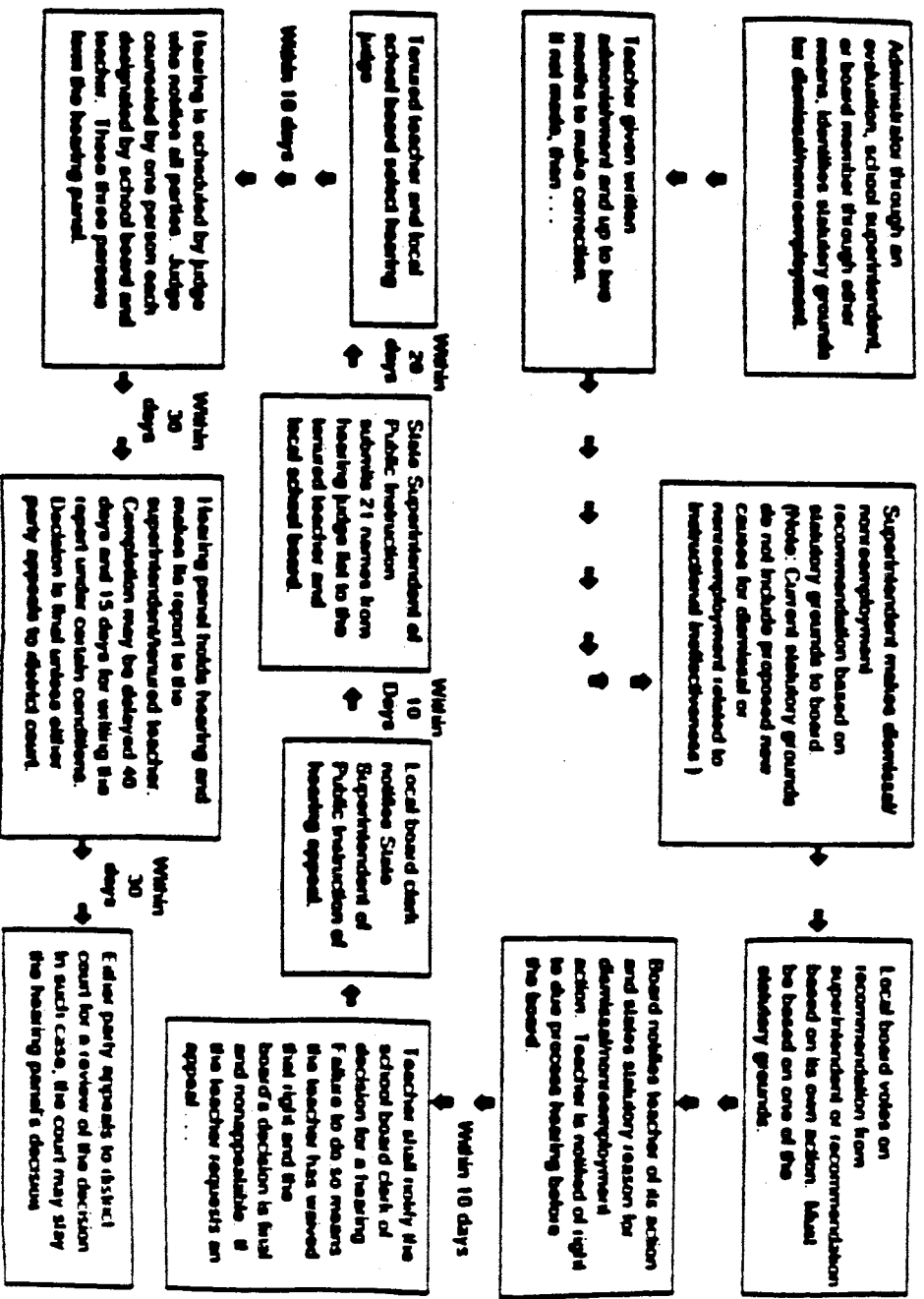




"Career teachers" are teachers who have completed three or more consecutive school years in one school district. Probationary teachers may be dismissed/nonreemployed for cause, and they do not have a right to the de novo trial.

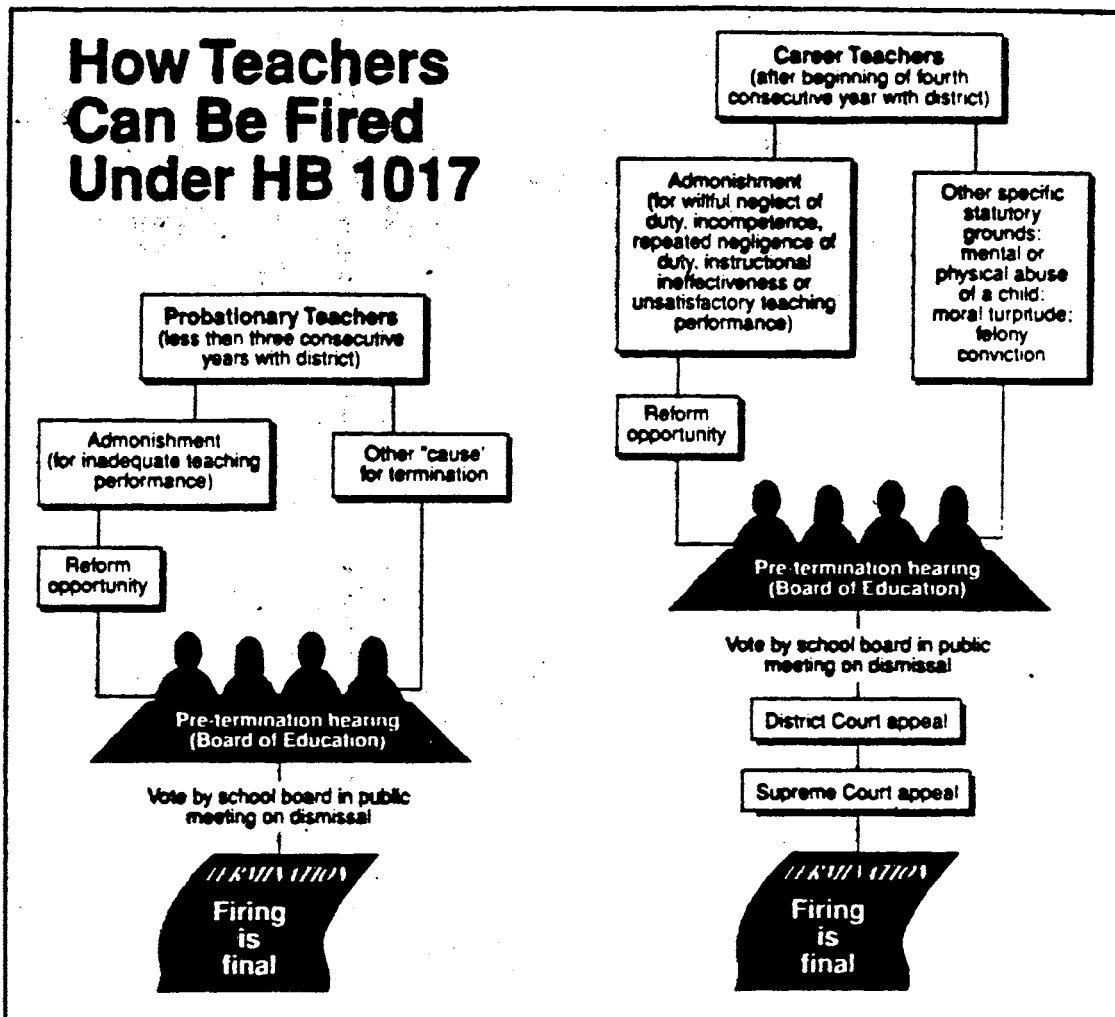
Source: Thompson, C. and Peltier, W.J. (1990). Education Update. Oklahoma City, OK: House Education Committee.

Figure 2. Process for Dismissal/Nonreemployment of Career Teachers



Source: Thompson, C. and Peltier, W.J. (1990). Education Update. Oklahoma City, OK: House Education Committee.

Figure 3. Teacher Fair Dismissal Act, 1981 - 1990



Source: Joint Legislative Report on HB1017

Tulsa World Graphic David Housh

Source: The Tulsa World, September 16, 1991, Page 9, Section A.

Figure 4. How Teachers Can be Fired Under House Bill 1017

VITA

Robert Edward Brown

Candidate for the Degree of  
Doctor of Education

**Thesis:** AN HISTORICAL STUDY OF THE APPEALS OF DISMISSED OR  
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