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COMMENT

DEFINING INADEQUATE PERFORMANCE UNDER THE NORTH CAROLINA TENURED TEACHER FAIR DISMISSAL ACT

INTRODUCTION

All states have established statutory grounds which must be found by school boards or other appropriate authorities before dismissing a tenured teacher. Generally these statutes delineate general and permissible grounds for dismissal and do not specify particular conduct justifying the dismissal of a teacher.

The North Carolina educational statutes provide that a teacher may be dismissed for "inadequate performance."¹ No attempt is made in the statute annotations to further define the specific conduct encompassed in "inadequate performance," and no material is readily available to provide insight into the legislative intent of the General Assembly in choosing this particular phrase. Additionally, no North Carolina caselaw is available interpreting "inadequate performance" as a ground for teacher dismissal.

The purpose of this comment is to provide a prospective definition for the term "inadequate performance" as it is used in the North Carolina Tenured Teacher Fair Dismissal Act. Through this effort, we hope that school boards and professional educators gain insight into the potential statutory constructions of "inadequate performance" and plan to avoid protracted litigation concerning a teacher's dismissal in North Carolina specifically on the grounds of "inadequate performance."

A major concern with any new legislation is the constitutionality of its provisions. This paper does not address any procedural constitutional problems directly, rather we focus on the term "inadequate performance" as a constitutionally sufficient standard. Emphasis in this section is on vagueness and the constitutional requirements, if any, that a legislature or other authority define with

1. N.C. GEN. STAT. § 115-142(e)(1)a. (Supp. 1979).

specificity proscribed conduct constituting inadequate performance before any disciplinary action can be taken under the statute.

We have assembled the limited North Carolina caselaw and discussed these decisions individually to determine what they contribute to understanding the statutory language. A particular emphasis in this section is the overall reaction of North Carolina courts interpreting the Fair Dismissal Act to provide some direction in analyzing and utilizing caselaw from other jurisdictions.

Since no decision in North Carolina has provided a definition of "inadequate performance" as used in the statutes, the second focus of this comment is on attempts at definition by courts of other jurisdictions. Also included in this section are judicial definitions of similar terms, including incompetency, inefficiency and gross inefficiency.

This absence of any statutory or judicial interpretation of "inadequate performance" in North Carolina necessitates an examination of the caselaw in other jurisdictions which defines conduct amounting to "inadequate performance," incompetency, inefficiency, and gross inefficiency. An attempt has been made to examine all cases in other jurisdictions and eliminate cases where the conduct complained of logically is not categorized as "inadequate performance" or which is specifically subsumed under other provisions of the North Carolina statute. The remaining cases are a persuasive guide to the probable definition and application of the term "inadequate performance" with a historical continuity and provide a good indicator of the judicial approach to specific behaviors likely to be followed in North Carolina.

Finally, the comment presents a summary of the statutes of all jurisdictions, comparing and categorizing the language utilized by the various states. An attempt has been made to identify those states potentially helpful in defining "inadequate performance" in North Carolina because of similar statutory language or the ready availability of caselaw providing specific instances of behavior and insight into a court's approach to the problem of teacher dismissal under a standard similar to "inadequate performance."

CONSTITUTIONAL IMPLICATIONS

The North Carolina Tenured Teacher Fair Dismissal Act has not, as yet, been examined for possible constitutional defects in the specific ground of "inadequate performance" for dismissal of a tenured teacher. Most existing constitutional caselaw in North Carolina and other states relates specifically to the procedural process

which must be afforded a teacher prior to and in the process of dismissal. This comment is not concerned with the requirements of due process in teacher dismissal; rather, the constitutional focus is whether the term "inadequate performance" fails to define and proscribe conduct to such a degree that it is unconstitutionally vague in application.

Attacking teacher dismissal acts as unconstitutionally vague is a common approach of teachers who seek reversal of their dismissals. Normally, a teacher is dismissed for conduct which is perceived by the school board to be within the conduct proscribed by the more general language of the statute. Typically, the teacher argues that the statutory grounds for dismissal [*e.g.*, inadequate performance, incompetency, inefficiency] have no plain and clear meaning to a person of reasonable intelligence, and therefore the teacher has no notice that the conduct complained of was proscribed by the statute:

The notion of due process requires that sanctions be imposed on individuals only if they could reasonably have known in advance that their questioned behavior had been proscribed. In accordance with this principle, the Supreme Court has held that a statute may be void for vagueness in order to ensure that individuals are fairly apprised in advance regarding the specific conduct which the legislature has prohibited.³

The constitutional requirement that penal statutes be drawn in such a way as to give notice of what they forbid³ applies equally to civil statutes.⁴ The test applied in teacher dismissal cases to determine statutory vagueness analyzes the actual conduct of the teacher who attacks the statute and not just a hypothetical situation which might come within the periphery of the statute's scope.⁵ Therefore, when a teacher is dismissed in North Carolina because of "inadequate performance," the court must determine if the statutory language gave sufficient notice in advance to the teacher that the conduct was proscribed.

Examination of the caselaw reveals that the jurisdictions are split as to the constitutional vagueness of statutory language such as inadequate performance, incompetency and inefficiency. No caselaw exists in North Carolina specifically addressing the vague-

2. *Di Leo v. Greenfield*, 541 F.2d 949, 953 (2d Cir. 1976).

3. *Connally v. General Construction Co.*, 269 U.S. 385 (1926).

4. *Cramp v. Board of Public Instruction*, 368 U.S. 278 (1961).

5. *United States v. Powell*, 423 U.S. 87, 93 (1975).

ness issue applied to "inadequate performance" as a ground for tenured teacher dismissal. In construing a substantially similar statute, the Oregon Court of Appeals has required that school boards adopt and publish all "standards of performance" and make them available to teachers before dismissal proceedings.⁶ Wyoming takes an entirely different approach to the same problem.⁷ The Wyoming Supreme Court has stated that:

[T]he legislature has not prescribed guidelines for determination of incompetency, and we do not propose to do so. Also, the legislature has not seen fit to require school boards to fix and make known a set of guidelines before it can make a finding of incompetency. We will not impose such a requirement.⁸

North Carolina courts have not, as yet, given any indication which approach might be adopted in determining statutory vagueness questions concerning the Tenured Teacher Fair Dismissal Act.

Problems with vagueness under the act, however, can be avoided by school boards and other school officials. First, the boards can proceed to define with specificity what conduct will amount to inadequate performance under the statute. Second, boards can adopt a due process approach that gives notice regarding specific conduct and provides an opportunity to change behavior or protest the application of the statute to the teacher. Of course, where the conduct of a teacher is clearly in violation of what any reasonable person would interpret the statute to mean, no vagueness problem exists with the dismissal.

Defining the conduct proscribed by the statute with specificity is the first potential approach to resolving any potential vagueness problems with the statute. This initial step would involve appropriate school officials defining specifically and clearly what "inadequate performance" means and adopting standards of performance expected of all teachers: "A school [board] does not have to put up with incompetency, poor performance, failure to abide by school regulations, lack of cooperation, or the like. All the [board] has to do is to develop objective, not subjective, criteria, in advance."⁹ By promulgating standards, the board would place the

6. *School Dist. No. 48 v. Fair Dismissal Appeals Bd.*, 14 Or. App. 634, 514 P.2d 1114 (1973). Note, OR. REV. STAT. 342.865(2) incorporated any *written* "standards of performance which shall be adopted by the board." (emphasis added).

7. *Bager v. Board of Trustees*, 494 P.2d 544, 546 (Wyo. 1972).

8. *Id.* at 546.

9. *United States v. Coffeerville Consol. School Dist.*, 513 F.2d 244, 248 (5th

teachers on notice of conduct amounting to "inadequate performance" to justify dismissal under the statute.

The major purpose of defining conduct in advance is to ensure that all teachers have a fair opportunity to know and abide by the rules and expectations of the school:

The root of the vagueness doctrine is a rough idea of fairness. It is not a principle designed to convert into a constitutional dilemma the practical difficulties in drawing . . . statutes both general enough to take into account a variety of human conduct and sufficiently specific to provide fair warning that certain kinds of conduct are prohibited.¹⁰

If school officials pursue this approach, an attempt should be made to develop formal policies which define conduct clearly within the statute and to provide limited latitude to apply the principles and purposes of the policy to a unique factual situation.

A second approach, potentially available to resolve any vagueness questions in the application of "inadequate performance" as a standard, is a due process procedure providing notice and an opportunity to correct deficiencies. If a teacher's conduct is determined inadequate, the supervisor would give the teacher written notice of the specific conduct which produced the inadequate rating. If the teacher, after a reasonable period of time, refuses or is unable to correct the enumerated deficiencies, he may be dismissed without any problem of statutory vagueness.

Finally, if a teacher's conduct is so severe that any reasonable person would know and understand that a teacher could be dismissed, the dismissal may occur immediately without fear of a vagueness attack. Whenever a violation is so clear and blatant that any reasonable person would know and understand that a teacher could be dismissed, the dismissal may occur immediately without fear of a vagueness attack. When an individual's behavior is so blatant that any reasonable person would be on notice not to engage in the conduct which gives rise to a dismissal, the basic notion of fairness inherent in the vagueness doctrine is not offended.

North Carolina's statute awaits determination of the constitutionality of "inadequate performance" as a ground for dismissal. School authorities can do much to improve their position in litigation by adopting procedures that are formal and self-limiting [ei-

Cir. 1975).

10. Colten v. Kentucky, 407 U.S. 104, 110 (1972).

ther by defined conduct or due process] so this limited "inadequate performance" plus the other safeguards provided through the administrative mechanism come safely within the constitutional requirement of specificity.

NORTH CAROLINA CASES

Since the enactment of the Tenured Teacher Fair Dismissal Act in 1973, few North Carolina cases have dealt with dismissal based upon "inadequate performance." No North Carolina court has articulated a definition of "inadequate performance," nor has any case dealt with this language directly. In *Kurtz v. Winston-Salem Board of Education*,¹¹ the North Carolina Court of Appeals sustained the dismissal of a teacher on the ground of "failure to comply with a Board Policy concerning corporal punishment."¹² The School Board dismissed the teacher on three grounds: 1) inadequate performance, 2) insubordination, and 3) failure to comply with the corporal punishment policy.¹³ The evidence presented tended to show that the teacher had slapped and pinched several students on different occasions. The court of appeals held that the charges of inadequate performance and insubordination were not supported by substantial evidence, but affirmed the dismissal based on the failure to comply with the existing corporal punishment policy.¹⁴

In *Kurtz*, the court of appeals at least implied that improper corporal punishment, even though administered on several occasions, would not support a dismissal based on inadequate performance. In *Baxter v. Poe*, however, the court of appeals affirmed the dismissal of a teacher on grounds of inadequate performance, insubordination, neglect of duty, and failure to comply with the regulations of the board. In *Baxter*, the court adopted the "whole record" test for review of a teacher dismissal and specifically affirmed on the ground of insubordination, but noted that there was ample evidence in the record to support affirmance on any of the other grounds specified.¹⁵

11. *Kurtz v. Winston-Salem Bd. of Educ.*, 39 N.C. App. 412, 250 S.E.2d 718 (1979).

12. *Winston-Salem/Forsyth Co. Bd. of Educ. Policy No. 5131, Art. 8* (1978).

13. *Kurtz v. Winston-Salem Bd. of Educ.*, 39 N.C. App. at 412, 250 S.E.2d at 719-721.

14. *Id.* at 420, 250 S.E.2d at 723.

15. *Baxter v. Poe*, 42 N.C. App. 404, 257 S.E.2d 71 (1979).

In *Thompson v. Board of Education*, the Supreme Court of North Carolina adopted the whole record test of review in teacher dismissal cases. The court reversed the dismissal of the teacher who had been dismissed on several grounds including inadequate performance.¹⁶ The teacher's conduct in *Thompson* included letting students fight, failing to control study hall, hitting students and calling a student a "whore."¹⁷

The conflict in these cases can best be understood by considering that the courts do not wish to be in the place of school administrators in considering the appropriateness or competency of a teacher. Rather, the court wishes to look at the unique facts of each case [e.g., the emphasis on the "whole record" approach], to review, and then determine if the basis for dismissal is supported by substantial evidence. This approach by the court in the few cases to date lends credence to the theory that school boards and officials have an open opportunity to define by policy or procedure what will constitute inadequate performance of teachers within the system and have the courts grant substantial deference to their determination.

CASELAW DEFINITIONS

No case has been found which provides a definition of "inadequate performance" as the sole ground justifying the dismissal of a school teacher. Instead, states have exhibited a strong tendency not to define but to interpret inadequate performance, inefficiency, and like terms as relative and without technical meanings.¹⁸ Only one case has been located in which "inadequate performance" constituted the sole ground for dismissal of a teacher.¹⁹ The teacher was charged *only* with "inadequate performance" under Oregon Revised Statutes § 342.865 (1) for conduct as follows:

1. Your communication with your students is ineffective and has resulted in low class morale and a high incidence of student drop-out from your classes.

16. *Thompson v. Wake County Bd. of Educ.*, 292 N.C. 406, 233 S.E.2d 538 (1977).

17. *Thompson v. Bd. of Educ.*, 31 N.C. App. 401, 403-405, 230 S.E.2d 164, 165 (1976). Note, the Court of Appeals decision was reversed by the North Carolina Supreme Court.

18. *Horosko v. School Dist.*, 335 Pa. 369, 6 A.2d 866 (1939).

19. *School Dist. No. 48 v. Fair Dismissal Appeals Bd.*, 14 Or. App. 634, 514 P.2d 1114 (1973).

2. Your teaching techniques are limited to the extent that they have resulted in a lack of student motivation. . . .
3. You have not brought about an acceptable standard of student involvement in your class activities. . . .
4. You have involved some students in disputes between yourself and the administration regarding the quality of your teaching performance.
5. You have not exhibited sufficient change in your performance as a result of the many suggestions. . . .²⁰

The Fair Appeals Dismissal Board found as a fact that the teacher's performance had not been shown inadequate as charged.²¹ The Oregon Court of Appeals affirmed on the ground that the Board of Education had not adopted written standards of performance relating to what constitutes inadequate performance, and therefore the charges could not be assessed against any objective standards determined in advance of the dismissal.²²

The *Fair Dismissal Appeals Board* case does little to advance the definitional problems of "inadequate performance" as a statutory standard. Rather, it states that, at least in Oregon, "inadequate performance" must be clarified and defined in advance to be applied at all. An alternative to this approach is to consider the existing caselaw on related grounds for dismissal [such as inefficiency, incompetency, etc.] and judicially approve a "clear" and "certain" meaning for the term that will gain acceptance through usage.²³

Examination of related areas provides substantial material for consideration. Two terms, incompetency and inefficiency, are most often used in state statutes to describe the same general intent as "inadequate performance" in the North Carolina statute. We begin, therefore, with an examination of the definitions of these terms in the case law of other jurisdictions.

In *Horosko v. School District*,²⁴ a 1939 case, the Pennsylvania Supreme Court provided the classic and often cited definition of incompetency:

A relative term without technical meaning. It may be employed as

20. *Id.* at ___, 514 P.2d at 1116.

21. *Id.* at ___, 514 P.2d at 1117.

22. *Id.* at ___, 514 P.2d at 1124.

23. *Id.* at ___, 514 P.2d at 1124; see *Barger v. Bd. of Educ.*, 494 P.2d 544 (Wyo. 1972).

24. *Horosko v. School Dist.*, 335 Pa. 369, 6 A.2d 866 (1939).

meaning disqualification; inability; incapacity; lack of ability, legal qualifications or fitness to discharge the required duty. [W]ant of physical, intellectual, or moral ability; insufficiency; inadequacy; specif., [sic] want of ability. Also a general lack of capacity or fitness, or lack of the special qualities required for a particular purpose.²⁵

Incompetency was also defined specifically in 1909 by an Indiana court as follows: "[I]ncompetency as employed in the contract, is a relative term, denoting a want of the requisite qualifications for performing a given act or service. Appellant failed where others, under like conditions, succeeded. . . ." ²⁶ Other definitions which have been used in the area of teacher competency include a lack of that knowledge necessary to competent instruction and inability to convey such knowledge effectively,²⁷ the lack of educational qualifications, or, where such qualifications were held by the teacher, the lack of ability to transmit knowledge to pupils.²⁸ Incompetency has also been defined as any physical, moral, or intellectual quality, the lack of which incapacitates one to perform the duties of his office.²⁹

Incompetency has also been defined in ways that did not relate directly to the ability or inability to perform a task. In *Brownsville v. Alberts*,³⁰ incompetency under the Pennsylvania statute was construed to include insubordination and lack of frankness, candor and intellectual honesty. It has also been used to refer to a lack of legal qualifications or fitness to discharge the required duty, including a want of physical, intellectual or moral fitness.³¹

These examples of definitions of incompetency illustrate that the statutory meaning of incompetency is relatively broad and that the precise meaning of the term is inexorably related to the factual context of the case.³² Considerable discretion, therefore, is left to

25. *Id.* at —, 6 A.2d at 869.

26. *Biggs v. School City of Mount Vernon*, 45 Ind. App. 572, 90 N.E. 105, 106 (1909).

27. *Wright v. Superintendent School Comm.*, 331 A.2d 640, 646 (Me. 1975).

28. *Fresno City High School Dist. v. De Caristo*, 33 Cal. App. 2d 666, 92 P.2d 668 (1939).

29. *Tichenor v. Orleans Parish School Bd.*, 144 So. 2d 603, 605 (La. App. 1962).

30. 436 Pa. 429, 260 A.2d 765 (1970).

31. *Tichenor v. Orleans Parish School Bd.*, 144 So. 2d 603, 605 (La. App. 1962).

32. *Blair v. Lovett*, 196 Colo. 118, 582 P.2d 668, 672 (1978).

the board of education to define the broad limits of incompetency in its own school system.³³

Two other closely related statutory terms—incapacity and inefficiency—have been utilized to dismiss teachers under circumstances potentially amounting to “inadequate performance” under the North Carolina statute. Incapacity has been defined as related to incompetency and directly related to fitness to teach based on proficiency, misconduct of teacher or students and the potential psychological harm to the students caused by the actions of a particular teacher.³⁴ Inefficiency, on the other hand, is more closely related to inadequate performance and has been defined more frequently. It has been defined as failing, to an intolerable degree, to produce the effects desired, *i.e.*, a manifestly incompetent or incapable person.³⁵ It does not consist of a single act, but embraces a course of conduct, a lack of integrity, or a limitation of capacity. Inefficiency has been distinguished from breach of duty or misconduct, however, in that inefficiency denotes incapability for office while misconduct denotes an improper discharge of duties while in office.³⁶ At least one court, however, has indicated that inefficiency and incompetence were synonymous and that dismissal of a teacher on grounds of inefficiency would stand even though the statute require dismissal for incompetence.³⁷

The available definitions of incompetency, inefficiency and inability do not make clear what North Carolina courts will do in defining inadequate performance. They do provide a good overview of virtually all attempts to define inadequate performance, incompetency, inefficiency, or inability in ways which might be relevant to the judicial and administrative development of “inadequate performance” as used in the North Carolina statute.

It should be recognized that a bare definition of inadequate performance or any related ground for dismissal is not particularly helpful in analyzing the court’s approach to a particular fact situation. The definitions take shape and meaning from the factual situations in which they have been applied, and cannot be properly understood outside that context. Proper understanding of the specific types of conduct that have been the subject of dismissals in

33. *Id.* at ___, 582 P.2d at 672.

34. *In re Grossman*, 127 N.J. Super. 13, 316 A.2d 39, 49 (1974).

35. *Conley v. Bd. of Educ.*, 143 Conn. 488, 123 A.2d 747, 751 (1956).

36. *Powell v. Young*, 148 Ohio St. 342, 74 N.E.2d 261, 268 (1947).

37. *Green v. Bd. of Educ.*, 133 W. Va. 356, 56 S.E.2d 100 (1949).

other jurisdictions will provide some guidance as to the specific types of conduct proscribed by "inadequate performance" in the North Carolina statute. The conduct potentially covered by the statute can be logically subdivided into four major groupings:

1. *Basic Qualifications*- Lack of proper qualifications to teach a particular subject or grade.
2. *Classroom Performance*- related to academic deficiencies and inadequate teaching methods/skills.
3. *Discipline*- failure to maintain discipline or the improper use of corporal punishment.
4. *Status*- a lack of effectiveness based on the status of the individual teacher.

1. BASIC QUALIFICATIONS

In North Carolina, the only statutory qualification for entry level public school teachers is the possession of an appropriate teaching certificate. To enforce this section, North Carolina law provides that failure to maintain a current teaching certificate is sufficient grounds for dismissal.³⁸ There are some instances, however, where the qualifications of a teacher not set out in the statute may be relevant to a finding of inadequate performance.

In many states, a tenured teacher is presumed competent and continues to remain competent to teach.³⁹ This presumption can be rebutted by evidence that the teacher has failed to perform adequately in his assigned duties. But, where a school board hired a qualified teacher, *i.e.*, held a valid certificate, to teach in public schools and knowingly assigned her to duties for which she was not qualified by her professional certificate, her inability to perform those duties adequately was not a valid reason for the termination of her contract.⁴⁰

In a similar case, a school board attempted to dismiss a teacher for her admitted inability to teach geometry, an optional course in the school's curriculum. The evidence showed that the board was aware of her precise qualifications, that she was not qualified to teach geometry, and that the teacher held a valid teaching certificate when hired. The court held that the school board could not dismiss the teacher for something not expected of

38. N.C. GEN. STAT. § 115-142(e)(1)m. (Supp. 1979).

39. *Fowler v. Young*, 77 Ohio App. 20, 65 N.E.2d 399 (1945).

40. *In re Womer*, 337 Pa. 349, 11 A.2d 146 (1940).

her in the original contract.⁴¹ One qualifying fact in this case was that the teacher had not provided *any* services under the contract. The court acknowledged, as in other cases, that a teacher may not be dismissed on grounds of incompetency when he or she has not yet taught under the contract.⁴²

The qualifications cases indicate that school officials are held to an estoppel where they have hired an individual with knowledge of an inability to do a specific job. Under these circumstances, it would not be inadequate performance to do a less than competent job when the school officials were aware that the teacher lacked the necessary qualifications at the time of employment.

2. CLASSROOM PERFORMANCE

The most obvious application of a dismissal standard such as inadequate performance is in a teacher's demonstrated inability to perform the instructional duties that are the essence of teaching. In this area, however, courts consistently defer to administrative and professional judgments about a teacher's ability to teach.

The right of a school board to dismiss a teacher for demonstrated inability to provide a professional and satisfactory level of teaching performance is beyond question. The maintenance of an efficient and competent school system has been accepted as a valid reason for the demotion or dismissal of a teacher on these grounds.⁴³ This proposition has been succinctly stated as follows: "A school district does not have to put up with incompetency, poor performance, failure to abide by school regulations, lack of cooperation or the like."⁴⁴ When a teacher accepts employment, he impliedly represents possessing the learning necessary to teach the subjects assigned and a capacity to impart that knowledge to others.⁴⁵ The lack of that knowledge would constitute incompetency, as would the inability of a teacher to impart such knowledge to his students.⁴⁶

41. *Farrell v. School Dist. No. 2*, 98 Mich. 43, 56 N.W. 1053, 1055 (1893).

42. *Id.* at ___, 56 N.W. at 1053, 1055.

43. *McCoy v. Lincoln Intermediate Unit No. 12*, 38 Pa. Commw. Ct. 29, 391 A.2d 1119 (1978), *cert. denied*, 441 U.S. 923 (1979).

44. *United States v. Coffeerville Consol. School Dist.*, 513 F.2d 244, 248 (5th Cir. 1975).

45. *Biggs v. School City of Mount Vernon*, 45 Ind. App. 572, 90 N.E. 105 (1909).

46. *Annot.*, 4 A.L.R.3d 1090 (1965).

In *Appeal of Muhollen*,⁴⁷ a teacher was dismissed based on her inability to teach effectively. The court cited the following examples of specific observed behavior justifying dismissal: little evidence of technical knowledge of skill, little evidence of preparation for the lessons, poor organization of academic material, specific errors in a geography lesson, poor spoken English, failure to use supporting materials, and past unsatisfactory ratings as a teacher. Other cases have also upheld teacher dismissals for poor overall knowledge of spoken English and failure to use correct grammar,⁴⁸ use of repression and ridicule to motivate learning [*e.g.*, cutting a child's hair in the presence of other classmates, causing a scalp wound on a student, running a lead pencil into a child's hand] and holding slow learning children up to ridicule for their impaired performance.⁴⁹

In summary, a variety of specific deficiencies have been cited as justifying the dismissal of a teacher based on poor classroom performance and poor understanding of the material to be imparted to the students. An excellent summary of the specific types of conduct which provide grounds for dismissal is found in *Fox v. San Francisco Unified School District*:⁵⁰

1. lacking in industry, dependability, initiative or resourcefulness;
2. failure to cooperate with students;
3. failure to assume proper responsibilities;
4. presented little material to his classes;
5. teaching results were poor;
6. had little contact with classes;
7. teaching methods were poor;
8. showed little interest in improvement; and
9. fundamental training was deficient.

3. DISCIPLINE

Another major area of teacher dismissal litigation related to inadequate performance has concerned the teacher's inability to

47. 155 Pa. Super. 587, 39 A.2d 283 (1944).

48. *Jenning v. Caddo Parish School Bd.*, 276 So. 2d 386 (La. Ct. App. 1973).

49. *Powell v. Young*, 148 Ohio St. 342, 74 N.E.2d 261, 265 (1947). The Court declined to adopt a list of specific criteria but suggested the textual material as a guide for school boards to develop guidelines and policies.

50. 111 Cal. App. 2d 885, 245 P.2d 603 (1952); *see Blunt v. Marion Co. School Bd.*, 366 F. Supp. 727 (M.D. Fla. 1973), *aff'd*, 515 F.2d 951, 954 (5th Cir. 1975).

maintain discipline and judiciously use disciplinary measures. These cases fall into three basic categories: 1) the lack of ability or disposition to maintain control of classes, 2) the inability of the teacher to maintain an even temper in disciplining students and maintaining order and 3) the inordinate or improper use of corporal punishment. The general rule in this area is that failure to maintain adequate classroom control using proper methods is serious enough to warrant an unsatisfactory rating for a teacher.⁵¹

In *Singleton v. Iberville School District*, the teacher's failure to maintain discipline was the primary ground upon which the court affirmed her dismissal. The evidence characterized the situation as an almost complete lack of discipline in the classroom. The teacher allowed her students to walk around at will and without correction, to talk without permission, to cheat on exams, and to keep unfinished exam papers over recess.⁵² In an Illinois case, evidence sustaining a dismissal showed that students used profanity without correction, that loud noise and disorder prevailed in the classroom and that the teacher often had heated exchanges with his students.⁵³ A dismissal has also been upheld where an art teacher allowed his students to refer to him as "Arty," encouraged an extremely informal atmosphere and often left his classes unsupervised.⁵⁴

Courts have also recognized that school authorities have a duty to ensure that teachers relate to students in a mature way and maintain composure at all times in relating to students. A teacher's fitness may not be measured "solely by his or her ability to perform the teaching function and ignore the fact that the teacher's presence in the classroom might, nevertheless, pose a danger of harm to the students for a reason not related to academic proficiency."⁵⁵ In *Powell v. Board of Trustees*,⁵⁶ the court refused to recognize an inability to maintain rapport with students as sufficient grounds for dismissing a teacher. Teachers have, however, been dismissed on remarkably similar facts based on findings of "emotional incompetence"⁵⁷ and poor relationships with

51. *Steffen v. Bd. of Directors*, 32 Pa. Commw. Ct. 187, 377 A.2d 1381 (1977).

52. 136 So. 2d 809 (La. App. 1962).

53. *Glover v. Bd. of Educ.*, 21 Ill. App. 3d 1053, 316 N.E.2d 534, 535 (1974).

54. *Devlin v. Bennett*, 26 Conn. Super. 102, 213 A.2d 725, 733 (1965); see Annot., 4 A.L.R.3d 1090 (1965).

55. *Gish v. Bd. of Educ.*, 145 N.J. Super. 96, 366 A.2d 1337, 1342 (1976).

56. 550 P.2d 1112 (Wyo. 1976).

57. *Cook v. Natchitoches Parish School Bd.*, 342 So. 2d 702, 704 (La. App.

students.⁵⁸

The courts do not consider it unreasonable to require that a teacher take appropriate remedial action and be able to control their personal feelings in dealing with students and issues of classroom control. Failure to do so constitutes inadequate performance and is sufficient grounds for dismissal.⁵⁹ When teachers use excessive or inappropriate disciplinary techniques, courts will sustain the action of school officials dismissing them on grounds of inadequate performance or incompetency.

In *Powell v. Young*,⁶⁰ the court upheld the dismissal of a teacher who had repeatedly cuffed students, slapped students, had stuck one student on the scalp and one student in the hand with a point of a lead pencil, and had apologized on previous occasions to parents as a result of too severe methods of classroom control. In *Sargent v. Selah School District No. 119*,⁶¹ the court affirmed the teacher's dismissal based on a pattern of disciplinary actions consisting of striking students with a ruler and kicking a student's chair causing a fall and minor injuries on the student's head. In *Glover v. Board of Education*,⁶² a finding that a teacher's class was observed in turmoil and the teacher had "collared" a student up against the wall was held sufficient to justify dismissal. At least one court, however, has held that an isolated case of reasonable corporal punishment does not constitute incompetency or grounds for dismissal or demotion.⁶³

Finally, at least one case has upheld the dismissal of a teacher for a single disciplinary action other than corporal punishment. In a 1973 case, a teacher learned from other students that two fifth grade female students had used vulgar language during their lunch period. He required them to write an obscene word one thousand times and hand in the work. The court held that the punishment constituted harsh and inappropriate treatment of the students and

1977).

58. *Pollard v. Bd. of Educ.*, 533 S.W.2d 667, 668 (Mo. Ct. App. 1976).

59. *Palicka v. Ruth Fisher School Dist. No. 90*, 13 Ariz. App. 5, 473 P.2d 807, 809 (1970).

60. 148 Ohio St. 342, 74 N.E.2d 261 (1947).

61. 23 Wash. App. 916, 599 P.2d 25, 28 (1979).

62. 21 Ill. App.3d 1053, 316 N.E.2d 534 (1974). The school board refused to condemn the punishment as administered because the record failed to disclose any "rules and regulations" on corporal punishment.

63. *Watts v. Winn Parish School Bd.*, 66 So. 2d 350 (La. Ct. App. 1953).

justified the teacher's dismissal.⁶⁴

There are numerous reported cases not discussed above in which dismissal of a teacher was upheld on grounds of incompetency or some related statutory language. These cases are not discussed at length because they properly fall under some other section of the North Carolina statute. Representative examples of these cases include dismissal based on improper dress to school, failure to make announcements and follow a regular routine, use of a grading philosophy inconsistent with the school board, permitting incidents between students to occur in the classroom and generally approving such incidents.⁶⁵ For a typical case, see *Werner v. Community Unit School District No. 4*,⁶⁶ where there was evidence of improper methods and a general lack of concern for the desires and policies of superiors.

4. STATUS

There is also a group of cases where teachers were dismissed on grounds of incompetency based on their status rather than affirmative acts. Generally these cases fall outside of the definition inadequate performance advanced above, but representative examples include: dismissal for status as conscientious objector,⁶⁷ for living together without the benefit of matrimony,⁶⁸ for having a sex change operation,⁶⁹ and for refusing to answer questions about affiliation with the Communist Party.⁷⁰

Once a definition of inadequate performance has been developed and matched to the caselaw in anticipation of specific factual situations, one major question still remains. The school board must determine the method of evaluation and type of proof it will accept in determining a teacher's proficiency. The basic methods of assessing performance are as follows: pupil performance, observation

64. *Celestine v. Lafayette School Dist.*, 284 So. 2d 650, 652 (La. 1972).

65. *Kenosha Teachers Union v. Wis. Employees Relation Bd.*, 158 N.W.2d 914, 915 (Wis. 1968).

66. 40 Ill. App. 2d 491, 190 N.E.2d 184 (1963); see *Wojt v. Chimacum School Dist. No. 49*, 9 Wash. App. 857, 516 P.2d 1099, 1101 (1973).

67. *Schweitzer v. Turner*, 155 Fla. 270, 19 So. 2d 832 (1944).

68. *Sullivan v. Meade Co. Independent School Dist. No. 101*, 387 F. Supp. 1237, 1247 (D.S.D. 1975), *aff'd*, 530 F.2d 799 (8th Cir. 1976).

69. *In re Grossman*, 127 N.J. Super. 13, 316 A.2d 39 (1974), *rev'd*, 157 N.J. Super. 176, 384 A.2d 855 (1978).

70. *Belian v. Board of Public Education*, 357 U.S. 399, *reh. den.*, 358 U.S. 858 (1958).

by superiors, peer evaluation,⁷¹ rating systems, and the official or anecdotal recording of a consistent pattern of deficient behavior.

One of the most interesting and perhaps prophetic methods of teacher evaluation is the monitoring of student progress toward instructional objectives. In *Scheelhaase v. Woodbury Central Community School District*,⁷² the federal district court held that a teacher could not be dismissed on grounds that her students did less well on the ITBS [Iowa Tests of Educational Development] than other students. The court of appeals reversed, holding that the school board was entitled to rely upon the opinion of the superintendent who concluded that the students' performance on these tests indicated an unsatisfactory teaching performance.⁷³

As school and parental concern for functional illiteracy in public school graduates increases and the testing of students for minimum competencies becomes more widespread, there may be a strong tendency to rely on pre and post tests in individual grades to determine student and teacher effectiveness in progressing toward educational objectives. This growing concern for public and functional accountability is reflected in the goals of the High School Competency Testing Act,⁷⁴ as follows:

- ii. To provide a means of identifying strengths and weaknesses in the education process, and
- iii. To establish additional means for making the education system accountable to the public for results.⁷⁵

If student capability is accepted as the criterion for evaluating educational systems, then teacher evaluation based on instructional objectives and pre/post tests of competencies cannot follow far behind.

A similar approach was followed in *McLain v. Board of Education*.⁷⁶ The teacher was dismissed for just cause, including the fact that her classes were substantially behind other teachers' progress in English and arithmetic. The court held that failure to keep pace with the progress of other teachers in similar circumstances constituted a valid basis for dismissal. This case again points out

71. See N.C. GEN. STAT. § 115-142(e)(3) (Supp. 1979).

72. 349 F. Supp. 988 (N.D. Iowa 1972).

73. *Scheelhaase v. Woodbury Central Comm. School Dist.*, 488 F.2d 237, 245 (8th Cir. 1973). (Bright, J., concurring opinion).

74. N.C. GEN. STAT. § 115-320.6 (1978).

75. N.C. GEN. STAT. § 115-320.6 *et seq.* (1978).

76. *McLain v. Bd. of Educ.*, 36 Ill. App. 2d 143, 183 N.E.2d 178 (1962).

that the existence of a valid specific standard of pupil progress can be utilized by school officials in determining the competency of a particular teacher.

A second major approach to teacher competency evaluation involves the subjective evaluation of teaching methods by peers and supervisors on an informal or irregular basis. In *Singleton v. Iberville School Parish*,⁷⁷ the school board dismissed a teacher on grounds of incompetency after observation by the principal, superintendant and officials from a nearby teachers' college who evaluated the teacher's performance as part of her degree work. The court held that the observations of school officials and the student teaching instructors were competent evidence in evaluating the ability of the teacher to perform in a classroom situation. Other cases with similar facts have upheld dismissals based on a "supervisor's report",⁷⁸ "gross inefficiency" found by an "expert" who had supervised teachers for fourteen years⁷⁹ and based on reports submitted by faculty, students, parents and members of the administration.⁸⁰

Informal evaluation procedures are routinely upheld by courts absent a finding that the evaluation was arbitrary, capricious or tainted by some improper motive on the part of a teacher for conduct informally evaluated which does amount to incompetency but is remedial in nature.⁸¹ When the court concludes that the teacher's deficiencies are remedial, and the school authorities have not provided a fair opportunity for the teacher to correct his behavior, it will treat the dismissal as arbitrary and capricious. But if a teacher has received ample notice of deficiencies and had an opportunity to improve performance, the court will uphold the school authorities' determination that the deficiency is permanent and affirm the dismissal.⁸² Note that the court is not really inquiring into the validity of the rating process when it decides that some behavior may be remedial but is rather insuring notice and an opportunity to correct as an element of due process.

Formal rating systems of teachers are not common but do pro-

77. 136 So. 2d 809 (La. Ct. App. 1962).

78. *Knox Co. Bd. of Educ. v. Willis*, 405 S.W.2d 952, 953 (Ky. 1966).

79. *Fowler v. Young*, 77 Ohio App. 20, 65 N.E.2d 399, 402 (1945).

80. *Steffen v. Bd. of Directors*, 32 Pa. Commw. Ct. 187, 377 A.2d 1381, 1384 (Pa. 1977).

81. *Fresno City High School Dist. v. De Caristo*, 33 Cal. App. 2d 666, 92 P.2d 668 (1939).

82. *Id.* at —, 92 P.2d at 668 (1939).

vide a stable procedure which may strengthen the entire process. Pennsylvania has a rating system mandated by statute to evaluate teacher competence.⁸³ A teacher rating card is used and the teacher is evaluated with regard to personality, preparation, technique and pupil reaction in accordance with standards and regulations which are uniform for all teachers.⁸⁴ Ratings are completed under the supervision of the superintendent of schools and no unsatisfactory rating is valid unless approved by the district superintendent.⁸⁵ Since its approval by the courts, it has been held out as a model system for evaluating professionals.⁸⁶ The Pennsylvania rating system has been in place for a long time⁸⁷ and should be considered by North Carolina school boards interested in formalizing a process for teacher evaluation.

It is clear that an evaluation of teacher competence is necessarily a highly subjective determination that does not easily lend itself to precise quantification or judicial review.⁸⁸ Courts have recognized this problem and tend to avoid second guessing school officials by imposing a high standard of proof before upholding a teacher dismissal on grounds of inadequate teaching performance.⁸⁹

The courts have consistently placed two requirements on teacher evaluation systems regardless of how they are conducted in a particular school system. First, notice must be given with particularity of the conduct alleged which amounts to the incompetency or inadequate performance. Second, the school authorities must find as a fact that the deficiency is permanent or must provide a reasonable opportunity for the teacher to improve his performance.⁹⁰

North Carolina imposes an additional statutory burden on school officials seeking to dismiss a tenured teacher. North Carolina provides that, except for dismissal on grounds of conviction of a felony or crime involving moral turpitude, the behavior com-

83. PA. STAT. ANN. tit. 24, § 11-1123 (Purdon 1962).

84. *Bd. of Pub. Educ. v. Pyhe*, 37 Pa. Commw. Ct. 386, 390 A.2d 904, 905 (1978).

85. *Id.* at ___, 390 A.2d at 905.

86. *Rosso v. Bd. of School Directors*, 33 Pa. Commw. Ct. 175, 380 A.2d 1328, 1329 (1977).

87. *Horosko v. School Dist.*, 335 Pa. 369, 6 A.2d 866 (1939).

88. *Beauchamp v. Davis*, 550 F.2d 959, 961 (4th Cir. 1977).

89. *Id.* at 961.

90. *See Annot.*, 4 A.L.R.3d 1090 (1965).

plained of must have occurred within three years of the date of the letter notifying the teacher of intent to dismiss.⁹¹ This statute codifies a general rule that would permit consideration of prior acts of misconduct extending back a reasonable period of time.⁹²

The common law rule is based on the belief that school authorities have a duty to be patient and work with a teacher to remedy any teaching deficiencies which can be cured. Where a school board makes a conscientious effort to aid an incompetent teacher, it should not be prevented from dismissing him merely because it did not do so at the earliest opportunity.⁹³ The effect of the North Carolina statute is to recognize the reasonableness of the common law rule and still provide some measure of protection for the teacher by imposing a statute of limitation for incidents and evaluations which can be used to justify his dismissal.

SURVEY OF STATE STATUTES

Legislative bodies in all fifty states have enacted statutes enumerating the grounds or conditions for dismissal of a career [tenured] teacher. The stated grounds for dismissal vary greatly in number and specificity. The statutes vary greatly ranging from very general language such as "[n]o teacher shall be dismissed . . . without good cause. . ."⁹⁴ to very specific language illustrated by "[h]abitual or excessive use of alcohol or nonmedical use of a controlled substance. . ."⁹⁵

The North Carolina statute specifies fourteen grounds for demotion or dismissal of a career teacher,⁹⁶ with "inadequate performance" the first listed ground for dismissal. Corresponding language in other state statutes include incompetency, gross inefficiency, unfitness, good cause, and "good and sufficient cause." A substantial number of states have used a "notice and due process" approach which does not list grounds for dismissal but provides for a trial-type due process as part of the dismissal proceedings.⁹⁷

91. N.C. GEN. STAT. § 115-142 (e)(4)(Supp. 1979).

92. *Powell v. Young*, 148 Ohio St. 342, 74 N.E.2d 261 (1947); *see also Sargent v. Selah School Dist. No. 119*, 23 Wash. App. 916, 599 P.2d 25, 29 (1979).

93. *State v. Peterson*, 208 Minn. 361, 294 N.W. 203, 205 (1940).

94. COLO. REV. STAT. § 23-63-111(1) (1974).

95. N.C. GEN. STAT. § 115-142(e)(1)f. (Supp. 1979).

96. N.C. GEN. STAT. § 115-142(e)(1) a.-n. (Supp. 1979).

97. ARK. STAT. ANN. § 80-1245 (1980).

One state statute is written in positive form, providing that “[a]ll contracts [of teacher employment] shall continue in full force and effect during good behavior and efficient and competent service. . . .”⁹⁸ This language replaced the traditional statutory form providing for enumerated grounds for dismissal.⁹⁹

The following chart has been prepared to classify the state statutes according to grounds for dismissal. Some states are listed more than once because their statutes provide several different and overlapping grounds for dismissal of a teacher.

Special attention should be given to several states that have statutes closely resembling North Carolina. Arizona,¹⁰⁰ Nevada,¹⁰¹ and Oregon¹⁰² also use “inadequate performance” as a ground for dismissal of a career teacher. Pennsylvania, Illinois, Indiana and Louisiana have statutes comparable to North Carolina’s and are an excellent source of case material on the subject of teacher dismissal in general.

It is important to note that the following chart does not list or compare all statutory grounds for dismissal of career teachers such as immorality or insubordination.¹⁰³ The statutory language is not internally consistent and a comparison of statutes based on some dismissal ground other than “inadequate performance” would produce a different result.

98. KAN. STAT. ANN. § 72-5411 (1980).

99. KAN. STAT. ANN. § 72-5406 (1973) (Repealed 1974).

100. ARIZ. REV. STAT. ANN. § 15-253(A)(1980).

101. NEV. REV. STAT. § 391.312 (1979).

102. OR. REV. STAT. § 34.865 (1979).

103. *See, e.g.*, MD. ANN. CODE § 6-202(a)(i and iii) (1979).

STATE STATUTORY GROUNDS FOR TEACHER DISMISSAL¹⁰⁴

INADEQUATE PERFORMANCE	INCOMPETENCY	GROSS INEFFICIENCY	INEFFICIENCY	UNFITNESS	COMMON LAW OR GOOD CAUSE	NOTICE OR DUE PROCESS
Arizona	Alabama	North Dakota	Connecticut	Maine	Colorado	Arkansas
Nevada	Alaska	Ohio	(incompetency)		Iowa	Michigan
(inefficiency)	California		Hawaii		New York	Washington
North Carolina	Connecticut		Massachusetts		Rhode Island	
Oregon	(inefficiency)		Minnesota		Utah	
(inefficiency)	Delaware		Nevada (inadequate performance)			
	Florida*		New Jersey			
	Georgia		Oregon (inadequate performance)			
	Idaho		Texas* (incompetency)			
	Illinois		Wisconsin			
	Indiana*					
	Kentucky					
	Louisiana					
	Maryland					
	Missouri					
	Mississippi					
	Montana					
	Nebraska					
	New Hampshire					
	New Mexico					
	Oklahoma					
	Pennsylvania					
	South Carolina					
	South Dakota					
	Texas*					
	Tennessee					
	Vermont					
	Virginia					
	West Virginia					
	Wyoming					

*State statute provides for during year dismissals and end of year dismissals.

Kansas — positively stated
NOTE: () indicates overlapping grounds

CONCLUSION

“Inadequate performance” as a statutory ground for dismissal of a career teacher has not been defined by any court in any case located to date. The best guidance for material relating to inadequate performance as a basis for teacher dismissal appears to be in the cases on incompetency, inefficiency and, to a lesser extent, those cases on dismissal for “just cause.” On reading these cases critically, the authors believe that conduct supporting teacher dismissal on grounds of inadequate performance will fall into the following categories:

- 1. Cases where the teacher has demonstrated a lack of academic grasp of the subject matter;**
- 2. Cases where the teacher has the requisite knowledge but lacks the skills to effectively impart this knowledge;**
- 3. Cases where the teacher has demonstrated an inability to maintain a relationship with students and has inappropriately utilized corporal punishment;**
- 4. Cases where the teacher has failed to respond to specific suggestions for improvement; and**
- 5. Cases where achievement scores of students [or progress of students toward instructional objectives] indicates a lack of teaching proficiency.**

Since no judicially approved definition of inadequate performance exists at present, it is important to offer, based on all available resources, a prospective definition of inadequate performance as it might be interpreted in North Carolina. Therefore, inadequate performance is prospectively defined as follows:

A teacher performs inadequately when he habitually fails to perform his duties with the same degree of quality and accuracy usually displayed by other persons or other teachers similarly situated, or when he commits a specific act clearly demonstrating a failure to meet the minimum standard of acceptable performance expected of other persons or teachers similarly situated. Inadequate performance may be due to a lack of ability, lack of experience, or the result of inattention or carelessness.

The authors believe that school boards should attempt to develop measures of performance which are directly related to the performance of students. The more teaching performance can be directly linked to student outcomes, the fairer and more impartial the procedure will be for all teachers. Dismissal of teachers because students under their tutelage are significantly inferior to others in

reaching instructional objectives would be an excellent method of focusing professional activity on the improvement of actual learning by the students.

Teachers must, of course, be evaluated on more than student progress toward objectives. Additional evaluation of administrative efficiency, however, could be built into the system with a lesser weight than student progress. Other provisions of the Tenured Teacher Fair Dismissal Act could be utilized to control and dismiss teachers for conduct which is inappropriate for a teacher but not related to student performance.

Adoption of this approach would allow for the development of a "real" meaning for inadequate performance as a statutory standard for the dismissal of a career teacher. Uncertainty would be greatly reduced, and the statute would be in harmony with the currently expressed state policy of bringing accountability back into public education. Moreover, the progress of students in the system should improve without a dilution of the statutory protections provided the professional educator.

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APPENDIX

List of State Statute Citations

- ALA. CODE § 16-24-8 (1977)
 ALASKA STAT. § 14.20.170(a)(1) (1979)
 ARIZ. REV. STAT. ANN. § 15-253(A) (1975)
 ARK. STAT. ANN. § 80-1264.4 (1980)
 CAL. EDUC. CODE § 44932(a) (West 1978)
 COLO. REV. STAT. § 22-63-116 (1974)
 CONN. GEN. STAT. ANN. § 10-151(b)(1) (West Supp. 1980)
 DEL. CODE ANN. tit. 14, § 1411 (1975)
 FLA. STAT. ANN. § 231.36(4), (6) (West Supp. 1981)
 GA. CODE ANN. § 32-2101c(a)(1) (1976)
 HAWAII REV. STAT. § 297-11 (1976 Replacement)
 IDAHO CODE § 33-513(4), § 33-1208(a), (b) (Supp. 1979)
 ILL. ANN. STAT. ch. 122, § 24-12 (Supp. Smith-Hurd 1980-81)
 IND. CODE ANN. § 20-6.1-4-10(a)(4) (Burns Supp. 1979)
 IOWA CODE ANN. § 279.27 (West Supp. 1980)
 KAN. STAT. ANN. § 72-5411 (1980)
 KY. REV. STAT. § 156.132(1) (1980 Replacement)
 LA. REV. STAT. ANN. § 17:462(A) (West 1981)
 ME. REV. STAT. ANN. tit. 20, § 473(4) (1965)
 MD. EDUC. CODE ANN. § 6-202(a)(1) (Supp. 1980)
 MASS. ANN. LAWS ch. 71, § 42 (Law. Co-op 1978)
 MICH. STAT. ANN. § 15.2001 (1979)
 MINN. STAT. ANN. § 125.17, Subd. 4(3) (West 1979)
 MISS. CODE ANN. § 37-9-59 (Supp. 1980)
 MO. ANN. STAT. § 168.071 (Vernon 1981)
 MONT. REV. CODES ANN. § 75-6010 (1971)
 NEB. REV. STAT. § 79-1234 (1976)
 NEV. REV. STAT. § 391.312 (1979)
 N.H. REV. STAT. ANN. § 189:13 (1977 Replacement)
 N.J. STAT. ANN. § 18A:6-10 (West 1968)
 N.M. STAT. ANN. § 22-10-22 (1978)
 N.Y. EDUC. LAW § 3020 (McKinney)
 N.C. GEN. STAT. § 115-142(e)(1)a. (Supp. 1979)
 N.D. CENT. CODE § 15-47-38(c) (Supp. 1977)
 OHIO REV. CODE ANN. § 3319.16 (Page Supp. 1980)
 OKLA. STAT. ANN. tit. 70, § 6-103 (West Supp. 1980-81)
 OR. REV. STAT. § 342.865 (1979)
 PA. STAT. ANN. tit. 24, § 11-1122 (Purdon 1962)
 R.I. GEN. LAWS § 16-12-6 (1969)

S.C. CODE § 59-25-430 (Supp. 1980)
S.D. COMP. LAWS ANN. § 13-43-15 (1975)
TENN. CODE ANN. § 49-1412 (1977 Replacement)
TEX. EDUC. CODE ANN. tit. 2, § 13.109, § 13.110 (Vernon 1972)
UTAH CODE ANN. § 53-51-1 (Supp. 1979)
VT. STAT. ANN. tit. 16, § 1752 (Supp. 1980)
VA. CODE § 22.1-307 (1980 Replacement)
WASH. REV. CODE ANN. § 28A-67.070 (Supp. 1980)
W. VA. CODE § 18A-2-8 (1977)
WIS. STAT. ANN. § 118.23 (West Supp. 1980)
WYO. STAT. § 21-7-110(a) (1977)