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## Tenured teacher dismissal for incompetence and the law: A study of state legislation and judicial decisions, 1983–2003

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**TENURED TEACHER DISMISSAL FOR INCOMPETENCE  
AND THE LAW: A STUDY OF STATE LEGISLATION  
AND JUDICIAL DECISIONS, 1983 - 2003**

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A Dissertation

Presented to

The Faculty of the School of Education

The College of William and Mary

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In Partial Fulfillment

Of the Requirements for the Degree

Doctor of Philosophy, Education

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by

Marguerita Kalekas DeSander

April, 2005

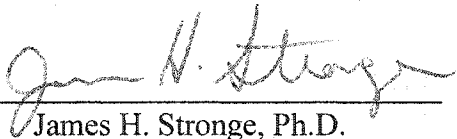
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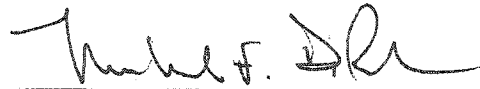
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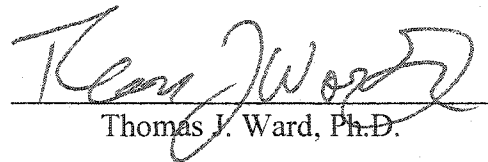
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## DEDICATION

In memory of my beloved and cherished father, Very Reverend Basil J. Kalekas,  
who taught me to listen with my heart to find my path in life,  
who prepared me to learn from my failures and appreciate my successes,  
who encouraged me to follow my dreams,  
who inspired me to reach for the stars . . .

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To my beloved and cherished husband, Ronald DeSander, who has selflessly encouraged  
and supported me to listen with my heart and find my path in life, who has walked the  
long and circuitous road with me, helping me to learn from my failures and appreciate  
my successes, who never stopped encouraging me to follow my dreams, and who always  
has inspired me to reach for the stars.

For his continued love and support, I am forever grateful.



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I know the price of success: dedication, hard work and an unremitting devotion to the things you want to see happen.

--Frank Lloyd Wright

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You all share in my success. Indeed, I am truly blessed.

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TENURED TEACHER DISMISSAL FOR INCOMPETENCE AND THE LAW:  
A STUDY OF STATE LEGISLATION AND JUDICIAL DECISIONS, 1983-2003

Abstract

Educational reform initiatives post-1983 have focused on matters of teacher accountability and quality of instruction. Estimates show that 5-15% of classroom teachers are incompetent and less than one-half of one percent of those teachers are dismissed for incompetence annually. The purposes of this study were (a) to examine dismissal-specific statutes among the 50 states and the District of Columbia to determine the impact of reform efforts from 1983-2003; (b) to review federal and state case law predicated on tenured teacher dismissal for incompetence from 1983-2003; and (c) to analyze the similarities and differences of statutory and case law for tenured teacher dismissal for incompetence between union and non-union states. The results of this study demonstrate that national reform efforts have had little impact on the dismissal of tenured teachers for incompetence. First, only 12 state laws currently attempt to provide a definition of incompetence or guidelines for making such determinations. Second, the average number of appellate cases has dropped over time from 6 per year in the 1980s to less than 2 per year by 2003. Third, no significant differences were discovered between union and non-union states in terms of the number of cases litigated or the dispositions of the lawsuits between union and non-union states. Implications of this study include the long-term effects of the teacher shortage nationwide; and the financial impact of litigation on school districts.

**TENURED TEACHER DISMISSAL FOR INCOMPETENCE  
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AND JUDICIAL DECISIONS, 1983-2003**

## CHAPTER 1: THE PROBLEM

We propose an audacious goal . . . by the year 2006, America will provide all students in the country with what should be their educational birthright: access to competent, caring, and qualified teachers.

Excerpt from: *What Matters Most: Teaching for America's Future*

*National Commission on Teaching and America's Future (1996)*

### Introduction

The history of teacher dismissal parallels that of the enterprise of public education in the United States. It has implications that not only touch and concern the teacher directly affected by the dismissal action, but also the administrator, school district and profession of public education as well. During the early years of public education in the United States, teachers were dismissed from their duties for a variety of reasons, including, but not limited to the following: social relationships, marital status, maternity, religion, public comments, and teaching style, in addition to insubordination, immorality and incompetence (Alexander & Alexander, 1995).

The concept of "tenure," that is, providing teaching professionals with a vested property interest in their job, emerged in the mid-1800s as a way to protect teachers from disciplinary actions for exercising constitutionally protected rights and from arbitrary and capricious dismissals by school districts (Alexander & Alexander, 2005; Alexander & Alexander, 1995; Bridges, 1990; Fischer, Schimmel, & Stellman, 2003; Imber & van Geel, 1993; LaMorte, 1995; Valente, 1998; Yudof, Kirp, Imber, van Geel, & Levin,

1982). Tenure provides public school teachers with two essential rights: (a) a vested property interest in continued employment; and, (b) due process rights in the event that a school district chooses to deny continued employment. "Tenure laws are designed to assure competent teachers continued employment as long as their performance is satisfactory" (McCarthy & Cambron-McCabe, 1992, p. 387). It is not a guarantee of permanent employment for the teacher.

Every state has promulgated and enacted legislation that incorporates due process safeguards for protecting the rights of the individual tenured teacher guaranteed by federal or state law (Alexander & Alexander, 2005; Lewis, 1998; McCarthy & Cambron-McCabe, 2004). The purposes of such laws are to ensure that dismissal is not an arbitrary and capricious act without merit or legal basis (Alexander & Alexander, 2005; LaMorte, 1995; McCarthy & Cambron-McCabe, 2004). Therefore, any litigation based upon dismissal and due process rights are founded in state courts, rather than federal courts (Alexander & Alexander, 2005; Alexander & Alexander, 1995; McCarthy & Cambron-McCabe, 2004).

Thus, every state has enacted legislation that provides grounds for dismissing tenured teachers (Alexander & Alexander, 2005; Alexander & Alexander, 1995; Fischer, et al., 2003; Imber & van Geel, 1993; LaMorte, 1995; Valente, 1998; Yudof, et al., 1982); however, the grounds vary significantly among the states ranging from a broad all-inclusive statement of "good and just cause" to a highly detailed list of specific grounds for dismissal (Alexander & Alexander, 2005; Alexander & Alexander, 1995; McCarthy & Cambron-McCabe, 2004). Articulating clearly defined legal grounds for dismissal is important, in that it provides school districts with a means to lawfully dismiss teachers

and withstand the rigors of legal scrutiny (Alexander & Alexander, 2005; Alexander & Alexander, 1995; Fischer, et al., 2003; LaMorte, 1995; Rebore, 1995). Yet despite codified law, teachers still look to the courts for redress of school district disciplinary and dismissal actions. As a natural result of court involvement, a considerable body of case law has emerged that has provided teachers with “safeguards against arbitrary dismissal” (LaMorte, 1995, p. 189). It is within that context that the guiding legal principles of dismissing tenured public school teachers were explored in the current study.

### Background of the Study

#### *Educational Reform and Teacher Dismissal*

Educational reform initiatives have been chronicled throughout the history of public education in the United States and have taken many forms (Bracey, 1995). In the last 20 years, for example, focus of reform efforts has shifted from matters of access and equity in education to matters of teacher accountability and quality of instruction, or “excellence” and “restructuring” (DuFour & Eaker, 1998). This shift was first realized with the 1983 publication of *A Nation at Risk: The Imperative for Educational Reform*, a report that catapulted teacher accountability and quality of instruction to the forefront of the most recent reform movement (Cohen & Murnane, 1986; DuFour & Eaker, 1998; Sadowski & Miller, 1996).

*A Nation at Risk* served as a catalyst for a flurry of school improvement initiatives throughout the United States that came to be known collectively as the Excellence Movement. Within two years of the report, more than 300 state and national task forces had investigated the condition of public education in America. (DuFour & Eaker, 1998, p. 3)



Although noble in its endeavor, the criticism of the state of education pronounced by *A Nation at Risk* and its call for excellence generated few, if any, concrete strategies for improvement. The reform initiative commenced in the 1980s sparked an excellence movement that evolved in the 1990s to an era of educational restructuring (DuFour & Eaker, 1998). The dissemination of the 1996 report *What Matter Most: Teaching for America's Future* further solidified the direction of reform initiatives by heightening the scrutiny of the competence of the teaching profession and developing strategies for improving the state of education. The legislative progeny of the restructuring movement included a plethora of federal initiatives, including: Goals 2000, Educate America Act of 1994; Improving America's Schools Act of 1994; IDEA (amendments to the Individuals with Disabilities Education Act, 1997).

Most recently, the federal government passed the single largest educational reform initiative of modern time, the No Child Left Behind Act (2001), the reauthorization of Elementary and Secondary Education Act (1965). This law not only raised the bar on teacher quality and accountability by ensuring that *all* teaching professionals are "highly qualified," but in addition provided sanctions for school districts that fail to achieve prescribed levels of student performance.

Federal intervention in the enterprise of education is viewed by some as the primary means to bring about desired changes in educational systems (Lipsky & Gartner, 1997; Meyen & Skrtic, 1995). Others, like Elmore (2002), view the federal role in education as nothing more than politics as usual – and, "that political decisions and actions are the result of competing groups with different resources and capacities vying for influence in a constitutional system that encourages conflict as an antidote to the

concentration of power” (p. 2). Regardless of whether or not one embraces the educational reform movement and federal involvement in education, teacher accountability and quality of instruction remain issues not likely to move off the radar screen of the enterprise of public education in the near future.

We *know* good teaching matters. We *know* that good teachers have “the ability to make a difference in students’ lives” (Stronge & Tucker, 2000, p. 1). We *know* the empirical evidence supports the assertion that good teachers have a significant impact on student learning (Cawelti, 1999; Johnston, 1999; Sanders & Horn, 1998; Sanders & Rivers, 1996; Schalock & Schalock, 1993; Stronge & Tucker, 2000; Wright, Horn, & Sanders, 1997). And, we *know* that teachers who are “certified in the subjects they teach” have enjoyed greater levels of student performance than teachers who are not certified (Stronge & Tucker, 2000, p. 2).

Student learning is *the* outcome for measuring successful teaching (Cawelti, 1999; Johnston, 1999; Sanders & Horn, 1998; Sanders & Rivers, 1996; Schalock & Schalock, 1993; Stronge & Tucker, 2000; Wright, et al., 1997). Teachers, like other professionals, must be held accountable for the outcomes of their efforts. In the medical, legal and other professions, for example, incompetence can lead to a variety of consequences, including termination of employment and permanent revocation of one’s license to practice. Much like in the medical, legal and other professional fields, incompetence in the teaching profession, when identified, must be addressed with action (Bridges & Groves, 1990). Indeed, incompetent teacher performance garners more public criticism than any other profession (Neill & Custis, 1978; Painter, 2000; Wragg, Haynes, Wragg, & Chamberlin, 2000). According to Schalock & Schalock (1993):

We regard evidence of learning gains by students taught as the most important accomplishment to monitor. We argue that student learning is both the professional touchstone for teachers and the reason why schools exist, and that regardless of what else is examined in assessing a teacher's work or a school's worth, the learning gains of students must be taken into account. (p. 103)

Research conducted by Wright and colleagues (1997) found that "the most important factor affecting student learning is the teacher" (p. 63). That assertion was substantiated through later research by Sanders and Horn (1998), who found that "students assigned to ineffective teachers continue to show the effects of such teachers even when these students are assigned to very effective teachers in subsequent years" (pp. 253-254). Simply stated, teacher incompetence has profound and staggering effects on student achievement over an extended period of time.

#### *Legally Defensible Grounds for Teacher Dismissal*

Incompetence, insubordination and immorality comprise the "Three I's" – the three broad areas that provide a legal basis for the dismissal of both tenured and non-tenured public school teachers for cause (Alexander & Alexander, 2005; Alexander & Alexander, 1995; Fischer et al., 2003; LaMorte, 1995; McGrath, 1995; Rebore, 1995; Whitaker, 2002). According to McGrath (1995), incompetence is one of the most common reasons for teacher dismissal. Yet, it is perhaps the most illusive category of the "Three I's" in that it is rarely defined by statute or standards. Thus, it has been called "a concept without precise technical meaning" (Bridges, 1986, p. 4). While teacher incompetence refers to classroom performance, a number of cases across the country

predicated on a teacher's personal behavior have sustained the rigors of court scrutiny for incompetence. For example, in the 1985 California case of *San Dieguito Union High School v. Harris*, the California Court of Appeals affirmed the dismissal of a teacher for incompetence based upon a pattern of habitual absenteeism (21%) over a four year period. The California Court of Appeals found that the lack of consistent instruction by the teacher rendered her unfit to discharge the duties required of a teacher.

Although some states have attempted to provide an operational definition of incompetence through legislation, dismissal on the grounds of incompetence remains illusive – and in many instances, building a case involves a tremendous amount of time, energy and effort on the part of the school district (McGrath, 1995; Rebore, 1995; Whitaker, 2002).

Insubordination and immorality round out the other two areas of the “Three I’s” – the other broad categories that provide a legal basis for just and reasonable cause for dismissing tenured teachers nationwide. Typically, insubordination refers to “refusal or repeated refusal to follow directions,” “conduct that engenders a detrimental environment in the school,” or “continued violation of school policy” (Alexander & Alexander, 2005, pp. 579-580). Examples of insubordination can include a teacher's refusal to stop using materials that are prohibited by a school board, failure to show up for work during contracted hours without advance notice or after leave was appropriately denied, or, for failure to comply with school district policies or regulations (Alexander & Alexander, 2005; McCarthy & Cambron-McCabe, 2004; McGrath, 1995; Whitaker, 2002).

Finally, immorality is generally specified by state statute. According to Alexander and Alexander (2005), the term “immorality” has “been attacked as

unconstitutionally vague . . . it generally has been upheld by the courts, especially when it relates to the fitness to teach and where there is a rational nexus between the prohibited activity and the individual's position as a teacher . . ." (p. 584). Examples of immorality include (but are not limited to) sexual activities with students or non-students, lying, moral turpitude, criminal convictions, misdemeanor convictions, or drug-related offenses (Alexander & Alexander, 2005; Fischer et al., 2003; McCarthy & Cambron-McCabe, 2004).

Every state has enacted legislation that defines the grounds for teacher termination within their respective jurisdiction, and provides teachers with procedural due process rights (Alexander & Alexander, 2005; Alexander & Alexander, 1995; Fischer et al., 2003; Imber & van Geel, 1993; LaMorte, 1995; McGrath, 1995; Rebore, 1995). Some states have created legislation that not only define the grounds for termination, but also characterize what actions, omissions and personal behaviors fall into the broad categories of incompetence, insubordination, and immorality (Lewis, 1998; Shackleford, 1982). Yet, despite the enactment of such clearly defined grounds and due process protections, lawsuits for teacher dismissal continue to be filed on an annual basis for "wrongful termination."

#### Statement of the Problem

##### *Purposes of the Study*

The purposes of this study were (a) compare, contrast, and analyze existing teacher dismissal-specific statutes among the 50 United States and the District of Columbia; (b) review the characteristics of state and/or federal case law pertaining to the issues of teacher dismissal among the 50 United States and the District of Columbia;

(c) analyze the outcomes of the state and/or federal teacher dismissal litigation, including cases in courts of original jurisdiction and/or at the appellate level; and, d) compare and contrast the differences among state statutes and litigation vis-à-vis state collective bargaining status.

The research questions were explored in three phases. Phase 1 entailed a legislative review of the 50 states and the District of Columbia. Phase 2 consisted of a judicial review of relevant state and federal case law predicated on the basis of wrongful termination of teaching personnel in the public school setting in all 50 states and the District of Columbia. Phase 3 of the study involved a comparative analysis of statutory and case law of the 50 states and the District of Columbia by collective bargaining status.

The research questions that served as the basis for this study follow, identified in accordance with the respective phase of the investigation.

#### *Research Questions*

By seeking to address the broad purposes as presented above, this study was designed around the following specific research questions:

##### Phase 1: State Statutory Law

- 1.1 What are the major similarities and differences among the state laws and the District of Columbia regarding teacher dismissal?
- 1.2 What are the emergent features of teacher dismissal legislation from the states and the District of Columbia?

##### Phase 2: Federal and State Case Law

- 2.1 What are major similarities and differences of law suit dispositions among the state and federal jurisdictions for the period of 1983-2003?

- 2.2 What are the significant characteristics of lawsuits among the state and federal jurisdictions for the period of 1983-2003?

Phase 3: Statutory and Case Law Comparison between Union and Non-union States

- 3.1 What are the major similarities and differences of state laws regarding teacher dismissal between collective bargaining states and right-to-work states?
- 3.2 Is there a relationship between the disposition of law suits and a state's collective bargaining status?

*Definition of Key Terms*

Every profession relies on a glossary of terms and definitions that are unique to the profession. Many different professions use common terminology, then develop and operationalize definitions specifically for the profession. For example, in the field of education, the term “administrator” generally refers to a school principal, superintendent or other member of a school district’s management team with supervisory and evaluation responsibilities. By contrast, in the legal field, the term “administrator” refers to “one appointed to handle the affairs of a person who has died intestate; one who manages the estate of a deceased person who left no executor” (Gifis, 1984, p. 11).

The drafting of legislation and judicial opinions relies on a lexicon that is very different from, and, sometimes conflicting with, the language and common terminology used in the field of education. Therefore, it was important to set forth operational definitions for the purposes of this study. Definitions listed below are taken from *Black's Law Dictionary* (Black, 1990, 2000):

Action: A civil or criminal judicial proceeding

Affirm: To confirm a judgment on appeal

Appeal: To seek review from a lower court's decision by a higher court

Appellant: A party who appeals a lower court's decision, usually seeking reversal of that decision

Appellee: A party against whom an appeal is taken and whose role is to respond to that appeal, usually seeking affirmance of the lower court's decision

Arbitrary: Depending on individual discretion rather than by fixed rules or law; founded on prejudice or preference rather than on reason or fact

Capricious: Characterized by or guided by unpredictable or impulsive behavior; contrary to the evidence or established rules of law

Case law: The law to be found in the collection of reported cases that form the body of law within a given jurisdiction

Certiorari: [Law Latin "to be more fully informed"] An extraordinary writ issued by an appellate court, at its discretion, directing a lower court to deliver the record in a case for review

Code: A complete system of positive law, carefully arranged and officially promulgated

Collective bargaining: Negotiations between an employer and the representatives of organized employees to determine the conditions of employment, such as wages, hours and fringe benefits

Constitution: The fundamental and organic law of a nation or state, establishing the conception, character, and organization of its government, as well as prescribing the extent of its sovereign power and the manner of its exercise



Decision: A judicial determination after consideration of the facts and the law; especially a ruling order, or judgment pronounced by a court when considering or disposing of a case

Defendant: A person sued in a civil proceeding or accused in a criminal proceeding

Dictum: A statement of opinion or belief considered authoritative because of the dignity of the person making it

Dissenting opinion: A disagreement with the majority opinion, especially among judges

Due process: The conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including notice and the right to a fair hearing before a tribunal with the power to decide the case

Finding: A determination by a judge, jury, or administrative agency of a fact supported by the evidence in the record, usually presented at the trial or hearing

Incompetence: Lack of ability, legal qualifications, or fitness to discharge the required duty

Judgment: The court's final determination of the rights and obligations of the parties in a case

Majority opinion: A court's written statement explaining its decision in a given case, usually including the statement of facts, points of law, rationale, and dicta

Original jurisdiction: The court's power to hear and decide a matter before any other court can review the matter

Per curiam: An opinion handed down by an appellate court without identifying the individual judge who wrote the opinion

Plaintiff: The party who brings a civil suit in a court of law

Precedent: A decided case that furnishes a basis for determining later cases involving similar facts or issues

Remand: To send a case or claim back to the court or tribunal from which it came for some further action

Remedy: The means of enforcing a right or preventing or redressing a wrong

Right-to-work law: A state law that prevents labor-management agreements requiring a person to join a union as a condition of employment

Stare decisis: [Latin “to stand by things decided”] The doctrine of precedent, under which it is necessary for a court to follow earlier judicial decisions when the same points arise again in litigation

Suit: A proceeding by a party or parties against another in a court of law

Summary judgment: A judgment granted on a claim about which there is no genuine issue of material fact and upon which the movant is entitled to prevail as a matter of law

Trial: A formal judicial examination of the evidence and determination of legal claims in an adversary proceeding

Ultra vires: Unauthorized; beyond the scope of power allowed or granted by a corporate charter or by law

Union: An organization formed to negotiate with employers on behalf of workers collectively, about job-related issues such as salary, benefits, hours, and working conditions

Vacate: To nullify or cancel; make void, invalidate

Writ: A court's written order, in the name of a state or other competent legal authority, commanding the addressee to do or refrain from doing some specified act

### *Significance of the Study*

According to research on teacher quality and accountability, 5-15% of teaching professionals are marginal or incompetent in the classroom (Bridges, 1986a, 1986b; Ellis, 1984; Frase & Streshly, 2000; Fuhr, 1993; McGrath, 1993; McGrath, 1995; Tucker, 1997; U.S. Department of Education, 1993; Ward, 1995). That percentage translates into 120,000-360,000 classroom teachers who are marginal performers nationwide.

While research on teacher quality and accountability has demonstrated that poor performing teachers have detrimental effects on the students they serve extending more than five years after they have taught them (Sanders & Horn, 1998; Sanders & Rivers, 1996; Wright et al., 1997), the research on teacher quality and accountability demonstrates that less than one half of one percent of public school teachers are terminated annually for incompetence and/or poor performance (Tucker, 1997; U.S. Department of Education, 1993). The disparity between the estimated numbers of incompetent classroom teachers and the actual numbers of teachers dismissed annually for incompetence is alarming in light of the demonstrated detrimental effects incompetent teachers have on student achievement. Further, it serves to justify the public's continual

focus on matters of teacher accountability, quality of instruction and student achievement. Indeed, this disparity may also justify the explosion of federal legislation as it relates to the enterprise of education.

Legal grounds for termination of tenured public school teachers are defined through either statutory/codified law or through judicial decisions based on matters of case and controversy. Each body of laws impacts the other and may, from time to time, affect or change the meaning and significance of what constitutes appropriate, legally defensible grounds for teacher termination. This study was a quasi follow-up to that of Shackleford (1982) and Lewis (1998), and provides a current review and analysis of statutory and case law for termination of employment based upon tenured teacher commencing at the start of the most recent era of educational reform, 1983.

The significance of the study is twofold: (a) provide a repository of factual, meaningful information about the legal facets of tenured teacher dismissal for incompetence through legislative analysis and case law; and, (b) dispel the myths and inaccurate perceptions commonly held by academics, administrators and teachers surrounding the procedural aspects and judicial outcomes for dismissing incompetent tenured teaching personnel. The results of this study will be of interest to school districts to aid with the understanding of legally sustained grounds for teacher termination based upon incompetence; to individuals who are engaged in preparing public school administrators; and, to public school teachers to be informed regarding legal rights to employment.

### *Limitations of the Study*

The study was limited to state and federal court cases adjudicated from January 1983 through December 2003. The review included only those state and federal cases that were based, in whole or in part, on dismissal of tenured public school teachers accused of incompetence by school administrators. Therefore, only litigation that affirmed or denied the charges of incompetence at the state or federal level (appellate only) was considered. Cases that were litigated to a conclusion but not appealed by either the school district or the teacher were not reviewed or included as part of the study. Likewise, cases that were settled prior to adjudication were not reviewed or included.

### *Delimitations of the Study*

Typically, litigation is not one-dimensional – predicated on only one legal basis. Rather, most lawsuits are complex and include multiple grounds requiring legal review. This study only reviewed lawsuits that included at least one viable legal claim that was predicated on the grounds of teacher incompetence. There are other grounds for lawful dismissal of tenured teachers besides teacher incompetence, including insubordination, immorality, misconduct or other good and just cause.

Although legislation that defines multiple grounds for teacher dismissal, including incompetence, was reviewed, the study included a review of only those state statutes that identify “incompetence,” express or implied, as a legal ground for dismissal in accordance with the study by Lewis (1998).

*Major Assumptions*

Two basic assumptions guided this study and are delineated below:

1. Educational reform efforts post-1983 focus on teacher accountability and quality of instruction as a means to increase student achievement.
2. Every state has developed and promulgated legislation that articulates the legal grounds for dismissal of tenured public school teachers.

## CHAPTER 2: THE LITERATURE

Excellence is an art won by training and habituation. We do not act rightly because we have virtue or excellence, but we rather have those because we have acted rightly. We are what we repeatedly do.

Excellence, then, is not an act, but a habit.

--Aristotle

## Introduction

Incompetent tenured teachers exist in virtually every school district across the country (Bridges, 1986a, 1986b, Ellis, 1984; Fuhr, 1993; McGrath, 1995; Tucker, 1997; U.S. Department of Education, 1993; Ward, 1995). Anecdotal information suggests that some school districts: (a) elect to ignore the problem and allow the teachers to continue to teach; (b) attempt to minimize the problem through reassignment or transfer of the teachers to other non-instructional positions; or (c) encourage incompetent tenured teachers to seek teaching jobs in other districts, thereby passing the problem onto someone else. State legislation and case law indicates that most, if not all school districts, require a plan for remediation through professional development when the performance behaviors are identified as remediable. When those efforts fail, some school districts have addressed the problem of tenured teacher incompetence straight-on and moved to dismiss the teachers from their position.

Although teacher accountability, quality of instruction and student achievement remain central themes in the contemporary educational literature due to reform efforts in recent decades (Dufour & Eaker, 1998; Frase & Streshy, 2000; Tucker, 1997), dismissing incompetent tenured teachers continues to present a host of challenges for school

districts, despite statutory guidelines and case law precedents (Whitaker, 2002). The literature reviewed provides an overview of the following subject matter:

(a) contemporary educational reform efforts since 1983 and the role of the federal government; (b) incompetence; (c) tenure; (d) substantive and procedural due process rights; and, (e) landmark case law. Each topic has influenced the promulgation of state statutory law and contemporary federal and state judicial decisions regarding the dismissal of tenured public school teachers for incompetence. It is within this context that the dismissal of incompetent tenured teachers was explored.

#### Contemporary Educational Reform: Accountability and Quality of Instruction

Although not expressly stated in the U.S. Constitution, it is a widely accepted and understood principle that the enterprise of public education rests with the individual states (McCarthy & Cambron-McCabe, 2004; Williams & DeSander, 1999). This principle is implied by the language of the tenth amendment to the U.S. Constitution: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” Since the enterprise of public education is not specifically addressed in the Constitution, the responsibility falls within the purview of the states, respectively.

#### *Historical Primer*

##### *Function of the Federal Government*

The landmark case of *Brown v. Board of Education of Topeka* (1954) set the tone and tenor for the direction of the educational reform movement for the last half of the Twentieth Century. On its face, the *Brown* decision opened the doors that accessed equal educational opportunities for students of color; however, the pronouncement from



the Court was significantly more far reaching than originally anticipated. The *Brown* decision set the stage for eliminating the “separate but equal” doctrine for educational services for other groups of “minority” students, including those identified for special education services, homeless, migrant, limited English proficiency, and women.

From 1954 through the mid-1990s, the primary focus of legislation enacted and promulgated by the federal government centered on *access to* and *equity of* educational opportunities for all classifications of groups designated as minorities (i.e., race, gender, disability, etc.). Although important, quality of instruction and accountability of educational professionals played lesser roles in education reform until the early 1980s, as discussed in the previous chapter.

In 1994, the new direction of educational reform accelerated, as Congress began enacting a string of legislation that propelled issues of standards and accountability in public education to the vanguard of the national educational reform agenda. This sequence of federal legislation included such laws as Goals 2000, the Educate America Act of 1994, Improving America’s Schools Act of 1994, IDEA (amendments to the Individuals with Disabilities Education Act, 1997), the Stewart B. McKinney Homeless Assistance Act, and most recently, the No Child Left Behind Act (2001) (the reauthorization of Elementary and Secondary Education Act of 1965). In brief, since the mid-1950s the federal government has played an *active* and *significant* role “in the development and implementation of a variety of educational initiatives” (Williams & DeSander, 1999, p. 38).

With the publication of *A Nation at Risk: The Imperative for Educational Reform* in 1983, teacher accountability and quality of instruction came to the forefront of

educational issues (DeSander, 2000). Citing the National Commission of Excellence in Education (1983), Tucker (1997) stated,

In summarizing the key recommendations of the report, one of which was effective evaluation system, the report stated ‘excellence costs. But in the long run, mediocrity costs far more. . .’ This statement applies to all aspects of educational reform but seems particularly poignant in the context of teacher competence. ( p. 22)

Almost 20 years after the release of *A Nation at Risk*, federal, state and local education agencies continue to struggle with teacher competency, as evidenced by the most recent enactment of federal legislation, the No Child Left Behind Act (2001).

According to Timar and Kirp (1988), “[i]f the state of education reform effort since the Commission on Educational Excellence issued its report in 1983 is measured in terms of sheer numbers, the overall effort would surely be pronounced a success” (p. 111). Yet, reform efforts have been focused on accountability and quality of instruction for the last 20 years, only half of the equation for meeting the goal of ensuring that all students will have access to competent, caring and qualified teachers has been met: Public education, through recent federal legislation, has begun to tighten the standards for entry into the teaching profession (Timar & Kirp, 1988). Thus, anecdotal information suggests that the most critical piece of the equation has not been adequately addressed: diluting or revising the due process protections guaranteed by law that make it difficult, if not impossible, to dismiss an incompetent tenured teacher.

The No Child Left Behind Act (2001), hailed by some as perhaps the most significant piece of federal legislation ever enacted in education (Elmore, 2002),

mandates that all teachers must meet the standard of “highly qualified.” The Act defines highly qualified to mean meeting each state’s requirements for teacher certification under teacher licensure guidelines. In theory, teachers who fail to meet the requirements of “highly qualified” under the act could be terminated for cause based upon incompetence. In practice, however, state tenure laws and due process safeguards will most likely override the provisions of No Child Left Behind, as the evidence necessary to prevail in cases of dismissal for incompetence may not exist, preventing the action from surviving the rigors of court scrutiny.

### *Incompetence Defined*

Historically, both state and federal courts have broadly defined teacher incompetence. “Although it usually refers to classroom performance, it has been extended in some instances to a teacher’s private life” (McCarthy & Cambron-McCabe, 2004, p. 412). *Black’s Law Dictionary* (Black, 1990) provides the following definition for the term “incompetence”: “lack of ability, legal qualifications, or fitness to discharge the required duty” (p. 765). Although it appears to be vague and overbroad, this definition is relied upon by the courts for review of litigation based upon the dismissal of tenured public school teachers for incompetence in the absence of state codified standards.

Dismissals for incompetency have included a wide range of charges . . . dismissals have been upheld for incompetency where a teacher brandished a starter pistol in an attempt to gain control of students and an assistant principal permitted teachers to conduct a strip search of a fifth- and sixth-

grade physical education class against explicit school board policy.

(McCarthy & Cambron-McCabe, 2004, p. 413)

Allegations of teacher incompetence are reviewed on a case-by-case basis, making it virtually impossible to develop an all-inclusive list of actions and behaviors that meet the legal threshold of incompetence, as defined by Black (1990). It is because the term “incompetence” is so elusive that many administrators are reluctant to terminate teachers on that basis (Whitaker, 2002). In addition, incompetence is rarely based on isolated incidences; generally, a number of factors or patterns rise (or descend) to the legal level (McCarthy & Cambron-McCabe, 2004).

Broadly speaking, incompetency is a generic term without specific or technical meaning that is often associated with inefficiency, unfitness, and inadequacy. There is little disagreement that incompetent teachers lack the required skills to perform the duties required for the job. However, courts tend to rely on the judgment of school officials in determining what behaviors constitute teacher incompetency. (Lewis, 1998, p. 11)

Therefore, to build a case of incompetence requires much time and documentation, and in some jurisdictions, lengthy remediation (Whitaker, 2002).

#### *Operational Definition of Incompetency*

Shackleford (1982) and Lewis (1998) attempted to provide an operational definition of teacher incompetence, based upon their separate reviews of statutory and case law. Through their respective studies, these authors identified 13 frequently recurring reasons that rise to the level of incompetence and have sustained the rigors of court scrutiny:

- Lack of knowledge of subject matter
- Teaching inappropriate subject matter
- Inadequate planning and coordination of instruction
- Lack of classroom management skills
- Unreasonable disciplinary action
- Mental disability
- Physical disability
- Lack of proper certification
- Willful neglect of duty
- Poor relations with other staff members
- Inappropriate behavior
- Harmful psychological impact
- Negligence

Lewis (1998) later subsumed the 13 reasons for incompetence into five overarching categories that have been sustained through the legal process by judicial review as evidence of incompetence:

- Inadequate preparation to teach
  - Lack of knowledge of subject matter
  - Lack of proper certification
- Teaching methods
  - Teaching inappropriate subject matter
  - Inadequate planning and coordination of instruction
  - Lack of classroom management skills

- Effects on pupils
  - Unreasonable disciplinary action
  - Harmful psychological impact
- Disability
  - Mental disability
  - Physical disability
- Personal behavior
  - Willful neglect of duty
  - Poor relations with other staff members
  - Inappropriate behavior
  - Negligence

Although some states provide operational definitions, the courts have consistently allowed school districts to define incompetence on a case-by-case basis in the absence of a universally accepted legal definition and have commonly sustained charges of incompetence levied by school districts, provided that the charges are explicit, corroborated and well documented (Alexander & Alexander, 2005; Fischer et al., 2003; Jackson & Riffel, 1998; McCarthy & Cambron-McCabe, 2004). “The courts will tend to rely on their own standards of incompetence when the charges are trivial, vague, indefinite, and unsubstantiated” (Jackson & Riffel, 1998, p. 21). Therefore, incompetence remains a concept that is subject to broad interpretation, as allowed by the courts.

## Dismissal of Incompetent Tenured Teachers

### *Tenure Defined*

What exactly is tenure? According to Alexander and Alexander (1995), “[t]enure is a privilege bestowed upon the teaching profession by the legislature. The privilege may be prospectively altered by legislative action, but not by local school boards” (p. 348). School districts have the authority to grant tenure; however, they cannot alter the provisions of tenure as defined by legislation (Alexander & Alexander, 2005; Alexander & Alexander, 1995; McCarthy & Cambron-McCabe, 2004).

Depending upon the jurisdiction, the concept of tenure has many designations, including, but not limited to the following: continuing contract teacher, permanent teacher, master teacher, career teacher, and, professional teacher. Tenure is a designation that denotes a level of permanence in one’s position. Moreover, it is a status that is attached to teachers, who have successfully demonstrated, during a probationary period, that they are competent and able to carry out the essential functions of the position. For the purposes of this study, the designation of tenure was used when referring to individuals who have achieved a permanent status – that is, a vested property interest in their job with an expectation in continuing employment.

According to Finn (1993), the first teacher tenure law appeared in Massachusetts in 1844. Enacted as the Fair Dismissal Law, the act was politically motivated to protect teachers for exercising political rights as private citizens, including union activities, as well as protection “from retribution for such things as failing a student” (Bridges, 1990, p. 27). Modern history suggests the primary purposes for establishing tenure for public school teachers were to (a) eliminate political abuse from the teaching profession; (b)

eliminate arbitrary and capricious actions by school boards; (c) create a stable and *competent* teaching force; and (d) safeguard *competent* professionals through job security (Alexander & Alexander, 2005; LaMorte, 1995; Rebore, 1996; Valente, 1998; Yudof et al., 1982). Protecting and enhancing competence was at the core of establishing tenure for public school teachers. Regrettably, despite the intent of tenure protections, tenure laws are “blind,” thus protecting *all* teachers who attain the status, without regard to professional competence.

#### *Probationary Status vs. Tenure Status*

Typically, beginning teachers (i.e., those teachers without teaching experience or fully credentialed) are commonly referred to as probationary teachers and generally do not enjoy the same protections afforded to teachers who have attained tenured status (Alexander & Alexander, 2005; Alexander & Alexander, 1995; Dawson & Billingsley, 2000; LaMorte, 1995; Neill & Custis, 1978; Rebore, 1996; Valente, 1998; Ward, 1995; Yudof et al., 1982). A probationary period usually defined by state statute, typically three to five years, is provided to beginning teachers. The intent of the probationary period is to allow for the acquisition and refinement of teaching skills necessary to become a competent teaching professional. It is also a phase which allows for the critical assessment of those skills and potential for success by the school district.

#### *Probationary Teachers*

Unlike their tenured counterparts, probationary status teachers may be non-renewed at the end of the contract period for any reason or no reason, hence most school districts are not required to provide evidence of incompetence or make available strategies for remediation so long as the teacher is informed of the non-renewal decision



as specified by law (Alexander & Alexander, 1995; Larson, 1983; Rebore, 1996; Rebell, 1990). However, probationary-status teachers do have limited protections during the term of the contract, and as such, school districts must provide evidence of incompetence or other just and reasonable cause for dismissal actions commenced when the contract is in full force and effect (Alexander & Alexander, 1995; Dawson & Billingsley, 2000; LaMorte 1996; Neill & Custis, 1978; Rebore, 1996; Valente, 1998; Ward, 1995; Yudof et al., 1982). Failure on the part of the school district to provide procedural due process for probationary teachers dismissed during the term of the contract has resulted in a nullification of the dismissal and reinstatement of the teacher in many instances.

### *Tenured Teachers*

Typically, teachers automatically attain tenure status after the conclusion of the probationary period, provided a decision for non-renewal has not been exercised. Some state codes allow for extending the probationary period under limited circumstances, but as a general rule, tenure is bestowed only after the conclusion of the probationary period (Alexander & Alexander, 1995; Dawson & Billingsley, 2000; LaMorte, 1995; Neill & Custis, 1978; Rebore, 1996; Valente, 1998; Ward, 1995; Yudof et al., 1982). Once tenure has been attained, dismissal proceedings may only be commenced for grounds outlined within a state code (Alexander & Alexander, 1995; LaMorte, 1995; Larson, 1983; McCarthy & Cambron-McCabe, 2004; McGrath, 1993, 1995; Rebore, 1996).

Additionally, tenure status provides teachers with procedural due process rights, in other words, a vested property interest in the position. Procedural due process requirements (which vary from state to state) place the burden of proof for dismissal on the school board (Alexander & Alexander, 2005; Alexander & Alexander, 1995; Bridges,

1990; LaMorte, 1995; McCarthy & Cambron-McCabe, 2004; McGrath, 1993, 1995; Rebore, 1996; Valente, 1998; Ward, 1995; Yudof et al., 1982). In addition, they also create a higher threshold for dismissal (and other disciplinary actions) that is much more difficult to sustain (Alexander & Alexander, 2005; Alexander & Alexander, 1995; Bridges, 1985, 1992, 1990; Frase & Streshly, 2000; LaMorte, 1995; Larson, 1983; McCarthy & Cambron-McCabe, 2004; McGrath, 1993, 1995; Rebore, 1996; Sullivan & Zirkel, 1998; Tucker, 1997; Valente, 1998; Ward, 1995; Whitaker, 2002; Yudof et al., 1982). Due process requirements are explored and explained more fully below.

Tenure was designed to “protect the best teachers from wrongful termination” (Schweizer, 1998, p. 41). However, it has resulted in a system that turns a blind eye to the issue of competence, in favor of the marginally performing teacher who has detrimental effects on student achievement.

#### *Dismissing the Incompetent Tenured Teacher*

According to Whitaker (2002), most school administrators avoid at almost any cost dismissing a tenured teaching professional on the basis of incompetence. “[i]f you can show insubordination, this may be preferable to attempt to prove incompetence. Insubordination is more measurable and finite” (p.138).

Typically, it takes a great deal of evidence to demonstrate teaching practices and behaviors that clearly demonstrate teaching incompetence and withstand the rigors of court scrutiny, as the courts generally set the standard for evidence to be a preponderance or majority (Alexander & Alexander, 2005; McCarthy & Cambron-McCabe, 2004). Further, many states’ due process requirements call for attempts at remediation before a

teacher can be dismissed on the basis of incompetence (Alexander & Alexander, 2005; McCarthy & Cambron-McCabe, 2004; Whitaker, 2002).

Although teacher tenure laws first began to emerge in the mid- 1800s as a protective measure to thwart the efforts of school boards to dismiss teachers in an arbitrary and capricious manner (Alexander & Alexander, 2005; Bridges, 1990; Imber & van Geel, 1993; LaMorte, 1995; Valente, 1998; Yudof et al., 1982), school board power over decisions to dismiss teachers went virtually unchecked by the courts prior to 1950 (Frase, 1992). According to Adams (1988), stated that prior to 1950, federal courts “were reluctant to interfere in the decisions of local school boards to dismiss incompetent teachers” (p. 66). In many instances, it is believed that dismissal occurred in an arbitrary and capricious manner.

The 1950 decision of *Applebaum v. Wulff* began the decline of unchecked school board power and provided the first working guidelines for procedural due process in matters of teacher dismissal. Specifically, *Applebaum* set forth the following due process standards:

- A. Fair procedures which include sworn testimony, cross-examination, rebuttal witnesses, formal rules of evidence, subpoena powers, etc.;
- B. Admission of trustworthy evidence;
- C. Preclusion of privileged communications for confidential relationships; and,
- D. Witness protection from involuntary confessions and/or self-incrimination.

The year 1950 was a milestone for educational law and teachers rights, as it sparked an era of 25 years that produced a sizeable body of landmark federal decisions that “have provided teachers with safeguards against arbitrary dismissals” (LaMorte, 1995, p. 189). That trend continues to guide the courts in matters of teacher dismissal for cause. For example, during that period, the federal courts began to focus on issues of individual and civil rights (Adams, 1988) and matters of due process rights came to the forefront of educational jurisprudential issues. By the end of that era, due process rights protecting teachers from arbitrary and capricious employment decisions were deeply embedded into the legislative fabric of almost every jurisdiction.

More than 25 years later, in 1976, the Missouri Supreme Court refined the guidelines from *Applebaum* in the case *Valter v. Orchard Farm School District*, which provided “minimal requirements of fair play to allow the teacher the opportunity to refute the charges” (Alexander & Alexander, 1995). Predicated on the guidelines from *Applebaum*, the Missouri Supreme Court, in *Valter*, refined the guidelines and expanded the rights of teachers faced with dismissal for just and good cause. The guidelines were set forth as minimal requirements:

1. The opportunity to be heard
2. The opportunity to present evident to refute the charges
3. The opportunity to present witnesses
4. Representation by legal counsel
5. The opportunity to cross-examine witnesses
6. Access to all evidence, such as written reports, in advance.

(Alexander & Alexander, 1995, p. 377)

(A more thorough discussion of due process will follow later in a subsequent section of this chapter).

What began in 1950 in the Ohio courts and later expanded by the Missouri courts vis-à-vis due process rights for teachers quickly spread to almost every other state in the nation (Bridges & Gumport, 1984). It was during this era in education history that teacher unions increased in popularity and recognition within the teaching ranks. Teacher unions became widely regarded as a force to be reckoned with by school districts nationwide (Frase, 1992). By 1980, through the strength and influence of teacher unions, 48 states had amended teacher tenure laws to include procedural due process guidelines (Bridges & Gumport, 1984). Thus, it became the responsibility of the school board to prove incompetence through tangible, corroborated evidence, that a tenured teacher has been appropriately and legally dismissed for incompetence. Acceptable standards for tangible and corroborated generally include documentation and evaluation, in addition to demonstrating that appropriate due process safeguards have been afforded to the teacher (Jackson & Riffel, 1998). If that threshold is met, the courts will typically defer to the decision of the school district.

## Due Process Rights

### *Introduction*

Due process of law is a basic tenet of the U.S. Constitution and is embodied in the Fifth and Fourteenth amendments. The purpose of due process guarantees is to “protect individuals against arbitrary governmental action impairing life, liberty or property interests and ensure that procedural safeguards accompany any governmental

interference with these interests” (McCarthy & Cambron-McCabe, 2004, p. 513). The Fifth Amendment to the Constitution states, in part that, “[n]o person shall . . . be deprived of life, liberty, or property, without due process of law.” The Fourteenth Amendment operationalized the Fifth Amendment guarantees, vis-à-vis states, “*No state* shall . . . deprive any person of life, liberty, or property, without due process of law” (emphasis added).

The tenets of the Fifth and Fourteenth Amendments provide two layers of safeguards, precluding both federal and state governments from depriving the citizenry of fundamental rights through governmental action. As public schools are state entities, school boards are required to ensure and safeguard those rights that are guaranteed by law to individuals who have received such privileges by virtue of tenure laws within the jurisdiction.

Two fundamental forms of due process are considered by the courts: substantive and procedural (Alexander & Alexander, 2005; Fischer et al., 2003; LaMorte, 1995, McCarthy & Cambron-McCabe, 2004). Substantive due process questions involve the development of laws and policies that have a potential for a “chilling effect” on individual freedoms and liberty, as it provides the government with a mechanism to deprive, restrict or interfere with and individual’s interests in life, liberty or property. Conversely, procedural due process questions entail guarantees that individuals will be treated fairly and have the opportunity to oppose and challenge actions that seek to deprive constitutionally protected rights. Procedural due process provides individuals with a modus operandi that places the burden of fairness and the notion of equity on the

government arm seeking to deprive one of life, liberty or property. Most tenured teacher dismissal challenges are based on procedural rather than substantive due process matters. The core function of due process of law is to provide a systematic check and balance process that balances the government's need to interfere with life, liberty and property interests versus the individual's need for freedom from such interferences.

### *Substantive Due Process Defined*

Substantive due process issues concern issues of fairness and equity of laws and policies that affect or interfere with the rights of individuals. Simply stated, substantive due process refers to the legitimacy of law. This constitutional safeguard requires that "all legislation be in furtherance of a *legitimate* governmental objective" (Gifis, 1984, p. 145) (emphasis added) or "based on a valid objective with means reasonably related to attaining the objective" (McCarthy & Cambron-McCabe, 2004, p. 14). Therefore, legislation or school district policies that provide defined grounds and rationale for dismissal must be able to withstand the test of fairness and equity and not sanction the deprivation of property in an arbitrary and capricious manner.

Typically, judicial review on the basis of substantive due process is limited to deciding whether a law (or policy) is "rationally related to a legitimate government purpose." Only in circumstances where the law has a discriminatory effect upon *suspect* or *quasi-suspect* categories of individuals (e.g., race, religion, gender, ethnicity) does the court employ a higher standard for review; hence, a standard higher than a "rational relationship to a legitimate government purpose" must be established to pass court scrutiny. Table 1 illustrates the three levels of scrutiny employed by the federal courts

and the rationale for the level of review in matters of substantive due process challenges to federal or state laws, regulations and policies.

*(continued on next page)*



Table 1  
*Judicial Scrutiny for Substantive Due Process Matters*

Level of Scrutiny	Classification		
	Non-Suspect	Quasi-Suspect	Suspect
Rational	The Fourteenth Amendment does not take from the state the power to classify in the adoption of laws, unless the law is arbitrary and capricious. Federal Courts will presume validity of state statutes if it is "rationally related" to a government goal.		
Example:	Laws that require all school personnel to submit to a criminal history and background check fall under this category. The government can "rationally relate" clear criminal histories of personnel to maintaining a safe environment for students.		
Reasonable		For review of legislation regarding gender or age. More scrutiny than "rational basis" and less than that for suspect classification. Law must be "reasonably related to a legitimate government purpose."	
Example:	Laws that require mandatory retirement for individuals at a specific age must have a reasonable nexus to a legitimate government purpose (e.g., health, safety or welfare of the citizenry).		
Compelling			Affects fundamental rights. For review of legislation that singles out special treatment for class of persons based upon alienage, nationality, religion, and race. The law must be the "least intrusive means necessary to achieve a compelling state interest."
Example:	Affirmative action laws would fall under this category as a means to prevent discrimination based on race, religion, nationality.		

In general, laws, regulations and policies that touch and concern the operation of public education and seek to interfere with or affect an individual's life, liberty and property interests fall within the non-suspect classification and require simply a "rational basis" for promulgation. Given that classification and the low-level burden to sustain such interference, the government typically prevails in matters of substantive due process questions.

### *Procedural Due Process Defined*

Procedural due process seeks to guarantee "procedural fairness where the government would deprive one of his property or liberty" (Gifis, 1984, p. 146). Procedural due process requires that an individual is given notice and a hearing prior to being deprived of his/her property or liberty interest (Alexander & Alexander, 1995; LaMorte, 1995; Lewis, 1998; Valente, 1998). This is especially true in cases where a tenured public school teacher is recommended for dismissal, since by virtue of attaining tenure status, the teacher has a property interest in his/her job that the school district (government) seeks to extinguish. Generally, it is issues of procedural due process that the courts are called upon to review and resolve in instances for teacher dismissal based upon incompetence, rather than substantive due process challenges.

### *Requirements of Procedural Due Process*

"Courts have noted that no fixed set of procedures apply under all circumstances" (McCarthy & Cambron-McCabe, 2004, p. 402), as each state's due process requirements vary. However, the notion of procedural due process is a balancing of the individual and government interests that are affected in each circumstance. In the case of *Mathews v.*

*Eldridge* (1976), the U.S. Supreme Court set forth the following considerations for a thorough review of procedural due process claims:

... first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. (p. 335)

The above considerations would require significant due process safeguards in dismissing a tenured teacher (Alexander & Alexander, 2005; Alexander & Alexander, 1995; Imber & van Geel, 1995; LaMorte, 1995; McCarthy & Cambron-McCabe, 2004; Valente, 1998).

As a minimal requirement, the Fourteenth Amendment creates an obligatory duty by the state to establish rules and standards in the instance of tenured teacher dismissal (Alexander & Alexander, 2005; Alexander & Alexander, 1995; Imber & van Geel, 1995; LaMorte, 1995; McCarthy & Cambron-McCabe, 2004; Valente, 1998). As such, most jurisdictions' due process safeguards include the following elements:

- Notice of the charges
- Opportunity to be heard
- Adequate time to prepare a defense to the charges
- Unfettered access to evidence and names of witnesses
- Fair hearing before an impartial tribunal
- Representation by legal counsel

- Opportunity to present rebuttal evidence and witnesses
- Opportunity to cross-examine unfavorable witnesses
- Fair decision based upon evidence and findings
- Full and complete transcript of the hearing
- Opportunity to appeal an unfavorable decision

The above safeguards are minimal requirements for procedural due process; therefore, states, localities and school boards are free to confer additional rights or protections beyond those specified. For example, some states include as part of due process that an opportunity for improvement (remediation) must be afforded to the teacher prior to dismissal (Alexander & Alexander, 2005; Fischer et al., 2003; LaMorte, 1995; McCarthy & Cambron-McCabe, 2004; McGrath, 1995; Valente, 1998). Even in the absence of statutory due process requirements that mandate an opportunity for improvement, the courts will usually require remediation in cases of dismissal for incompetence if the actions or omissions of the teacher are deemed remediable. However, once the due process safeguards have been buttressed with additional criteria, “failure to comply with these stipulations may invalidate the school board’s action under state law” (McCarthy & Cambron-McCabe, 1992, p. 382). In short, due process is the bedrock of fair play and equity in matters of tenured teacher dismissal.

#### Landmark Case Law Related to Incompetence

As mentioned, beginning in 1950, the courts began to review decisions of school boards that had previously gone unchecked. Matters of individual and civil rights were being adjudicated in federal courts throughout the land (Adams, 1988). This was the precursor to the current state of education reform in the United States. Between 1958 and

1987, the U.S. Supreme Court adjudicated a number of landmark cases that are still the guiding precedent for matters of teacher termination.

The following section contains a review of landmark case law that affects the decisions in state and federal courts of original and appellate jurisdiction with regard to the dismissal of tenured public school teachers. For the purposes of this study, the definition of landmark case laws refers to those matters that have been reviewed and decided by the U.S. Supreme Court. These cases present the guiding principles of law that are relied upon by courts in every state.

### *Dismissal for Incompetence*

#### *Belian Decision*

*Belian v. Board of Public Education* (1958) is the only landmark case decided by the U.S. Supreme Court that tackles the issue of incompetence directly. This creative and interesting case broadened the definition of incompetence to include “the deliberate and insubordinate refusal to answer the questions of his administrative superior in a vitally important matter pertaining to his fitness” (Belian, p. 414).

In the instant case, Belian, a 22-year teaching veteran had refused on multiple occasions to answer questions posed to him by the superintendent to determine his fitness to teach, based upon information about Belian’s prior activities in subversive organizations. Belian was given several opportunities to answer questions, but on advice of counsel, he repeatedly refused to do so.

On the recommendation of the superintendent, the school board instituted dismissal proceeding against Belian, citing incompetence as the basis for its decision. Upon the conclusion of a formal hearing, the school board voted to dismiss Belian, citing

that incompetence was sustained through his refusal to answer questions about his fitness by the superintendent. Belian (the petitioner) subsequently brought an action against the school board, seeking redress on the basis that his First Amendment rights and Fourteenth Amendment due process rights were violated by the dismissal, thus rendering the actions of the school board unconstitutional. The court of original jurisdiction upheld the findings of the school district.

In a 5/4 split decision, the Supreme Court found that the school board in *Belian* did not violate his constitutional rights guaranteed under either the First or the Fourteenth Amendment, finding that his action to refuse to answer questions posed by his superior was *prima facie* evidence of incompetence. The Court noted that the school board did not act inappropriately since it did not draw inferences about the subversive activities; therefore, Belian was not penalized for his associations. The Court further noted that Belian was afforded all procedural due process, including notice, a hearing, and an opportunity to rebut the evidence. The final holding of the matter was that the dismissal of Belian was in accordance with the Constitution, and that certain insubordinate actions may fall under the broad umbrella of incompetence.

Although the *Belian* decision continues to be good law, Alexander and Alexander (2005) noted that the decision is suspect “because the Court has ruled subsequently that disbarment of a lawyer for refusing to produce evidence in an ethical practices proceeding was unconstitutional” (p. 760). Although the case can be distinguished from *Belian* in that the attorney was disbarred and was deprived of future employment, rather than being dismissed, the decision creates a potential legal quagmire that may be ripe for future judicial review.

## *Dismissal for Speaking on Matters of Public Importance*

### *Pickering Decision*

*Pickering v. Board of Education* (1968) addresses the issue of First Amendment rights of teaching personnel who speak out on school district matters of public importance. Pickering, a school teacher, was dismissed from Township High School District No. 205 in Will County, Illinois, for writing a letter to a local newspaper that criticized the school board's allocation and spending of school district funding on academics and athletics. The letter was prompted by a school board initiative seeking additional tax dollars from the public.

Pickering was afforded the due process as required by law and was subsequently dismissed by the school board. The rationale for the dismissal noted that the publication of Pickering's letter in the local newspaper was "detrimental to the efficient operation and administration of the schools of the district" and that under relevant Illinois law, the "interests of the schools required his dismissal" (Pickering, p. 563).

Pickering petitioned the court for review on the basis that his First Amendment rights to free speech were violated, since he was dismissed for speaking out about the school district's financial practices, which were a matter of public importance. The school district countered Pickering's claims, stating that some of the information contained in Pickering's letter to the newspaper was blatantly false; thus, the dismissal was appropriate and in accordance with Illinois law, since the statements had a detrimental effect on the efficient operation and administration of the district. The court of original jurisdiction and subsequent appellate review upheld the school district's actions.

In a unanimous 9/0 decision, the U.S. Supreme Court reversed the lower court's decision. Although some of the allegations made by Pickering in his letter to the newspaper were found to be false, the Court found the statements to be absent of malice, a product of flawed research as opposed to a reckless disregard for the truth. Using a balancing test that juxtaposed Pickering's First Amendment right to freedom of expression against the state's interest in efficient public schools, the Court found that in matters where the teacher's comments deal with a matter of public importance and do not interfere with the day-to-day functions of the schools, the dismissal was unconstitutional. Teachers are entitled to the same First Amendment right protection as any other member of the general public and do not drop their constitutional rights at the school house door.

*Mt. Healthy Decision*

*Mt. Healthy City School District v. Doyle* (1977) presented a fascinating twist on the holding in *Pickering*. A brief synopsis of the facts of the case is as follows. Doyle, a non-tenured teacher in the Mt. Healthy City School District, had a dubious personnel record replete with a series of incidents involving colleagues, staff and students. In one case, he made obscene gestures toward students who ignored his directions. Moreover, during disciplinary proceedings, he referred to students using derogatory terms.

In another instance, Doyle conveyed the substance of a principal's memorandum regarding a new teacher dress code to a radio station which broadcast it as a news item. According to record, Doyle subsequently apologized to the principal and administration for his actions (Mt. Healthy p. 275).

Shortly after Doyle supplied the radio station with the memorandum and at a time when recommendations for non-renewals were due to the school board, Doyle received



notification that his contract would not be renewed for the following year. As he was not a tenured teacher, procedural due process safeguards were not required. Doyle demanded a statement from the school board that set forth the reasons for the decision. He received a response from the school board that included statements about “a notable lack in handling professional matters” (p. 275), in addition to references about making obscene gestures to students and the radio station incident.

Doyle petitioned the court for redress of his dismissal, citing a violation of his First Amendment right to free speech, as set forth in *Pickering* – claiming that the reason for his dismissal was based upon the radio station incident. While the school district acknowledged that the radio station incident was a consideration it claimed that the decision to non-renew Doyle was based upon the review of his entire performance record. The court of original jurisdiction found in favor of Doyle, citing *Pickering* as the guiding principle. The Court of Appeals affirmed the district court’s decision and the school district petitioned the Supreme Court for certiorari.

In a unanimous 9/0 decision, the Supreme Court reversed the Court of Appeals decision and remanded the issue back to the lower court for further proceedings. They distinguished the instant case from *Pickering*, finding that the Court of Appeals must determine whether Doyle’s exercise of his first amendment right was the motivating factor in the decision not to rehire. Although subtle, the intent of the Court was clear: School districts should not be precluded from making employment decisions based on the full performance record of a teacher that includes constitutionally protected conduct, provided that the same decision would have been made in the absence of such conduct.

*Connick Decision*

The final and most significant landmark case in the trilogy of constitutionally protected conduct is the case of *Connick v. Myers* (1983). This case makes a clear distinction between matters of public importance versus matters of personal interest in relation to constitutionally protected speech of all public sector employees, including teachers. Furthermore, it set forth a two-step process that requires balancing the public interest against the interest of the state in promoting the efficiency of the public services it performs through its employees (Alexander & Alexander, 2005). Therefore, not all speech relating to matters of public interest may be constitutionally protected. Although the parties involved in *Connick* were not teachers or school districts, the balancing test set forth in the decision has been the basis for judicial review of tenured teacher dismissal matters challenged on First Amendment rights.

The facts of the instant case were as follows. Myers was an “at-will” employee, working as an assistant district attorney. After several years, Myers was involuntarily transferred to another division of the district attorney’s office. She objected to the transfer to no avail. In response to the transfer, Myers developed and disseminated a questionnaire to her colleagues requesting their views on a number of issues, including the office transfer policy, morale, grievance process, supervisory effectiveness and other issues.

Immediately after distributing the questionnaire, Myers was dismissed because she refused the transfer and because the dissemination of the questionnaire was considered to be insubordination. She filed suit on the basis that her dismissal was in violation of her First Amendment right to free speech vis-à-vis dissemination of the

questionnaire. The District Court and Court of Appeals found in favor of Myers, and the matter was appealed to the U.S. Supreme Court for review.

In a 5/4 split decision, the Supreme Court reversed the Court of Appeals' decision, clarifying the differences between speech addressing matters of public importance versus matters of personal interest, as well as balancing the competing interests between matters of public importance and the state's responsibility to provide efficient and effective service to the public.

In *Connick*, the Court found that although the questionnaire addressed a multitude of issues other than the transfer policy, which was personal to Myers, it had a detrimental effect on the efficient and effective delivery of services. On balance, the Court found that the state's interest outweighed any First Amendment right asserted by Myers.

#### *Tenure Matters Matter*

The year 1972 was a pivotal year for the interpretation of tenure property interests by the U.S. Supreme Court. In the first decision, the Court held that "nontenured teachers are afforded no 'property' rights interest in the teaching position . . . so long as dismissal does not permanently impair their future employment opportunities" (Alexander & Alexander, 2005, p. 768). In the second decision, the Court found that tenure can be *de facto*, attained through operation of law or policy, when there is a legitimate expectation of continued employment. As such, any state action to extinguish that expectation requires full due process rights prior to state action. A thorough discussion of the two cases and the Court's holdings are presented below.

*Roth Decision*

The Supreme Court decision in the case of *Board of Regents v. Roth* (1972) operationalized the tenets of tenure, and clearly delineated the concept that, absent a vested property right created through operation of law or policy, non-tenured teachers have no expectation for continuing employment. Therefore, procedural due process is *not* required when a teacher is *not* being deprived of a constitutionally protected right.

Roth was hired at the University of Wisconsin-Oshkosh for a fixed academic term of one year. Upon completing his term of service, he was informed that he would not be rehired for the next academic year. The university did not provide Roth with the reasons for the non-renewal, nor did it provide him with an opportunity for hearing on the matter. Further, the language of the Wisconsin statute that governs the rehire or non-renewal of non-tenured university faculty provides the university with “unfettered discretion” (Roth, p. 564) for employment decisions. Roth was informed of the university’s decision in accordance with the statute and in conformance with rules promulgated by the University for notice of the intent to non-renew.

Roth challenged the constitutionality of the university’s action in dismissing him without proper notice of the reasons and without the benefit of a hearing to rebut the decision in violation of the Fourteenth Amendment, asserting that the university had deprived him of a property interest. As a corollary complaint, Roth alleged that the real reason for his non-renewal was based upon critical statements he made about the university administration. This argument, however, was not the paramount argument in his action.

The federal district court agreed with Roth on the issue of procedural due process rights only, and granted a partial summary disposition in his favor. The university appealed the partial summary judgment and the Court of Appeals affirmed the district court's decision. The university applied for and was granted certiorari by the Supreme Court on the matter of procedural due process only.

In a 5/3 decision, the Supreme Court reversed the decision of the Court of Appeals and remanded the case back to the lower court for further proceedings. In its opinion, the Supreme Court validated the basic tenets of tenure, and made a clear distinction between the due process safeguards created by law or policy for teachers holding tenure status and the lack thereof for non-tenured personnel.

Since Roth was granted a fixed-term contract for one academic year, he had no expectation of continued employment beyond the expiration of the contract term. The Supreme Court found no basis to strike down the Wisconsin statutes or university rules that govern tenure as unconstitutional. Therefore, Roth had no constitutionally protected property interest in continued employment with the university.

#### *Sindermann Decision*

Decided on the heels of *Roth*, the case of *Perry v. Sindermann* (1972) provides a different outcome on similar issues. Here, the Court recognized *de facto* tenure of a teacher even though the teacher was on a fixed-term contract and the foregoing right to procedural due process preceding dismissal action. The facts of the case follow.

Sindermann had been a teacher in the state college system in the state of Texas for 10 years. During that time, he was employed at various schools in the state college system, receiving one-year contracts only during the duration of his employ. After publicly

criticizing the policies of the college system's Board of Regents, Sindermann's contract was non-renewed at the end of its term. The Board of Regents issued a public statement that cited insubordination as the cause for Sindermann's non-renewal, but did not provide him with a statement of its reasons for the decision.

Like Roth, Sindermann filed suit in federal district court alleging a violation of his First Amendment right to free speech as the basis for his dismissal and a violation of his Fourteenth Amendment right to procedural due process of law – failure to provide him with notice and an opportunity to be heard. Sindermann claim that by operation of law, he had attained tenure status and was entitled to procedural due process safeguards, even though he held a fixed-term contract.

Sindermann's claim of *de facto* tenure was founded on the language in the college faculty guide and the guidelines promulgated by the state college and university system that conferred tenure on teachers with seven years of employment in the state college system. Sindermann had been employed for 10 years in the system.

The district court denied Sindermann's claim on the basis that he was not tenured and, therefore, not entitled to procedural due process safeguards. He appealed his claim to the Court of Appeals, who reversed the decision of the district court, finding that (a) the non-renewal would be unconstitutional if it were based upon Sindermann's exercise of free speech; and (b) despite his lack of tenure, failure to provide him with the opportunity for a hearing would violate the constitutional procedural due process rights, provided Sindermann could demonstrate he had an *expectancy* of reemployment.

The Board of Regents applied for and was granted certiorari by the Supreme Court. Although the Supreme Court affirmed the Court of Appeals' decision, it disagreed

with the rationale for the decision, thereby distinguishing the decision by way of facts and circumstances from *Roth*.

First, Roth relied on tenure and due process violations as the main arguments for reversing his dismissal and, as an afterthought, argued a violation of his First Amendment rights to free speech for criticizing the university administration. Roth was a first-year teacher in the Wisconsin university system. The Wisconsin statutes and university guidelines clearly demonstrated that Roth had no expectation, either express or implied, of continued employment, as first-year teachers are only employed by fixed-term contracts. Absent tenure, or laws and guidelines that create a tenure expectation, non-renewal of employment does not bear the entitlement of procedural due process rights. More important, since the only issue brought before the Supreme Court in *Roth* was that of tenure and procedural due process, the Court made no assertions about First Amendment violations.

Sindermann approached the litigation from the opposite perspective. Sindermann argued violation of his First Amendment rights to free speech as the primary issue as the law is well settled in that area. Then he focused on the issues of tenure and due process as a method of buttressing the claims. The decision in *Sindermann*, setting it apart from *Roth*, reaffirmed teachers' First Amendment rights to free speech and recognized de facto tenure for procedural due process rights.

While it is important to see the differences between *Roth* and *Sindermann*, the litigation strategy employed in *Roth* is called into question. Had Roth challenged the dismissal primarily on the basis of his First Amendment rights, the outcome may have

been very different – and may have estopped the Supreme Court from granting certiorari in the matter of *Sindermann*.

#### *Due Process Pre-termination Requirements*

Although the U.S. Supreme Court decisions in *Roth* and *Sindermann* clarified the issues of substantive interests vis-à-vis due process (Alexander & Alexander, 2005), the Court declined to speak to the issue of how much process is due to employees with vested property or liberty interests in dismissal proceedings. “Due process of law is not a concrete prescription; it is dependent on the circumstances” (Alexander & Alexander, 2005, p. 776). Assuming arguendo that this statement is correct, the U.S. Supreme Court prescribed minimal due process standards pre-termination for employees who may be discharged only for cause in the matter of *Cleveland Board of Education v. Loudermill* (1985).

#### *Loudermill Decision*

Loudermill was hired as a security guard in 1979 for the Cleveland Board of Education, and was a classified civil servant under Ohio law; thus, he could only be dismissed for cause. Loudermill allegedly falsified his employment application, stating that he had never been convicted of a felony offense. However, during a routine background investigation by the school district, it was discovered that Loudermill had been convicted of felony larceny in 1968. Upon discovery of the matter, the school board issued Loudermill a letter on November 3, 1980, advising that he was being dismissed for dishonesty with respect to his statements on the employment application. On November 13, the school board adopted a resolution officially approving the



dismissal. Loudermill was not afforded an opportunity to respond to the charges or challenge the dismissal by the school board.

Loudermill immediately filed an appeal with the Cleveland Civil Service Commission for denial of due process and redress of the decision. The Cleveland Civil Service Commission ultimately upheld the dismissal. Loudermill then filed suit in federal district court and the matter was litigated through the U.S. Court of Appeals, which found in favor of Loudermill, citing a violation of his constitutional due process rights to a pre-termination hearing prior to the dismissal. The Cleveland Board of Education appealed to the U.S. Supreme Court, who granted certiorari in the matter.

In a 7/2 decision, the U.S. Supreme Court affirmed the Court of Appeals' decision. Using a two-step balancing test, the Court looked at the following factors: a) Did the employee have a property interest created by state law? b) Do the employer's termination procedures offer the federal protection of due process? In answering the question posed in (a), the Court found that because Loudermill was a classified civil servant who could only be discharged for cause, he indeed had a property interest created by state law. Moreover, the Court found that the Cleveland Board of Education's termination procedures were inadequate and did not provide due process protections. Therefore, Loudermill was entitled to a modicum of due process pre-termination, in addition to post-termination administrative procedures as provided by Ohio law.

The Supreme Court's pronouncement in the matter was clear: All employees with a vested property or liberty interest in employment must be afforded minimal due process safeguards; that is, notice and an opportunity to respond *before* the employer can take action to extinguish those rights.

## Summary

... excellence costs. But in the long run, mediocrity costs far more.

(National Commission on Excellence, 1983, p. 11)

Contemporary reform efforts post-1983 has continued to focus on teacher accountability, quality of instruction and student achievement (DeSander, 2000; DuFour & Eaker, 1998; Elmore, 2002; Timar & Kirp, 1988; Tucker, 1997). Research has demonstrated the detrimental effect of one incompetent teacher on one student (Fuhr, 1993; McGrath, 1995a; Peterson, 2000; Sanders & Horn, 1998; Sanders & Rivers, 1996; Schalock & Schalock, 1993; Wright et al., 1997). Yet, despite over 20 years of research identifying the harmful effects of incompetent teachers, less than one half of one percent of teachers found to be incompetent are dismissed annually (Tucker, 1997).

Incompetence is an elusive term without a generally accepted specific or technical meaning (Lewis, 1998; Whitaker, 2002). Incompetence envelops a whole host of actions or omissions, ranging from inadequate preparation to teach to matters of personal behavior (Lewis, 1998; Shackelford, 1982). While education has focused on what good teaching is (Cawelti, 1999; Johnston, 1999; Schalock & Schalock, 1993; Stronge, 2002; Stronge & Tucker, 2000), it has been slow to articulate a precise, legally defensible definition of incompetence.

Tenure and due process of law requirements further confound the process of dismissing incompetent tenured teachers because of the legal obligations imposed by operation of law. As a result, tenure has become a double-edged sword: Protecting all teachers' job rights, regardless of competence, which deters some school districts from

dismissing. It takes a tremendous amount of time and evidence to make the case for incompetence (Alexander & Alexander, 2005; McCarthy & Cambron-McCabe, 2004; Whitaker, 2002) which can be costly to school districts. But the cost to students by failure to eradicate incompetent teachers is staggering, and cannot be measured.

## CHAPTER 3: THE METHODS

It is this belief in a power larger than myself and other than myself which allows me to venture into the unknown and even the unknowable.

--Maya Angelou

## Introduction

This research fits within the broad context of teacher rights and terms and conditions of public school employment. In the Supreme Court Case of *Adler v. Board of Education* (1952), the Court stated:

A teacher works in a sensitive area in the classroom. There he shapes the attitude of young minds towards the society in which they live. In this, the state has a vital concern. It must preserve the integrity of the schools.

That the school authorities have the right and the duty to screen the officials, teachers, and employees as to their fitness to maintain the integrity of the schools as a part of the ordered society, cannot be doubted.

(p. 493)

Therefore, it is well established that school boards have the absolute right to determine the fitness and ability of teachers and the obligation to society to make such determinations (Alexander & Alexander, 2005; LaMorte, 1995; McCarthy & Cambron-McCabe, 2004; Valente, 1998). The standards for evaluating fitness and ability are generally defined by state legislation or policy.

The legislative make-up of each state is unique. “[s]ince states differ in the ways they uniquely define and implement what best suits their needs . . . laws may differ broadly from state to state” (Arkin, 1999, p. 61). Thus, present laws on tenured teacher

dismissal differ from state to state and reflect the history, traditions, and values of each jurisdiction while fulfilling the constitutional requirements of the Fifth and Fourteenth Amendments.

Using a mixed-design approach, this study examined the legislation in all 50 states and the District of Columbia with regard to the defined grounds for incompetence that permit tenured teacher dismissal as well as case law predicated on tenured teacher dismissal for reasons of incompetence. Because laws and case law are written documents, it was most appropriate to use content analysis as the primary method for this study. Content analysis is a specialized qualitative research method used for the specific purpose of examining written documents (Gall, Borg, & Gall, 1996; Patton, 2002; Rossman & Rallis, 2003). It allows for the “systematic examination of forms of communication to objectively document patterns” (Rossman & Rallis, 2003, p. 198).

In addition to content analysis, quantitative methods -- analysis of variance and Chi-square -- were used to analyze the frequency of case law and case law outcomes between union and non-union states and to determine statistical significance between the identified groups.

Each research method is discussed vis-à-vis the appropriate phase of the research, followed by a chart showing the data analysis methods within each phase and research question of the study. Since content analysis was the principal method of inquiry used, the majority of the discussion centers on that method.

### Research Questions

By seeking to address the broad purposes as presented above, this study was designed around the following specific research questions:

### Phase 1: State Statutory Law

- 1.1 What are the major similarities and differences among the state laws and the District of Columbia regarding teacher dismissal?
- 1.2 What are the emergent features of teacher dismissal legislation from the states and the District of Columbia?

### Phase 2: Federal and State Case Law

- 2.1 What are major similarities and differences of law suit dispositions among the state and federal jurisdictions for the period of 1983-2003?
- 2.2 What are the significant characteristics of lawsuits among the state and federal jurisdictions for the period of 1983-2003?

### Phase 3: Statutory and Case Law Comparison between Union and Non-union States

- 3.1 What are the major similarities and differences of state laws regarding teacher dismissal between collective bargaining states and right-to-work states?
- 3.2 Is there a relationship between the disposition of law suits and a state's collective bargaining status?

### Content for Review

Two types of laws were examined as the foundation for this study: (a) the existing state laws for the 50 states and the District of Columbia; and, (b) federal and state case law arising as a result of tenured teacher dismissal for incompetence. As both types of laws are matters of public record, both are easily accessible in the public domain. Hence, it was not necessary to select a sample for the study nor to pursue the approval of the Human Subjects Review Board.

## Data Gathering

### *State Laws*

The data-gathering process was bifurcated, in that both state codified law (or statutory law) and state and federal case law were searched with regard to tenured teacher dismissal on the basis of incompetence. Specifically, each state's statutes were examined to glean the following information: (a) definition, grounds, and criteria for the dismissal of tenured public school teachers; (b) definitions and examples of behaviors that are legally recognized as incompetence; and, (c) legal safeguards, due process procedures, and other protections afforded to teachers.

During each legislative term, every state entertains changes to existing statutes for reasons that include (but are not limited to) response to federal laws, regulations or mandates, conflicts arising from the enactment or change of other state laws, or public demands on state government. For the purposes of this study, only laws which were in full force and effect during the period of July 1, 2003, through June 30, 2004, were reviewed. This research safeguard ensures accuracy, consistency and standardization for the study.

Conducting legal research is an arduous and time-consuming task that requires multiple cross-checks to ensure accuracy. Each state's legal code is captured on paper and bound in a collection of books. Each year, the codes are updated to reflect any changes that have occurred through the legislative process and are included in a dated supplement or pocket part for each volume of law. In addition, most, if not all, states place the legislative code on official state websites as well as in legal databases such as Westlaw and Lexis/Nexis. Although the websites and databases are convenient and easy

to access, each tool may not be updated in a timely manner, and hence, may not contain the most recent version of the law currently in effect. Moreover, the electronic version may contain an abbreviated or abridged version of the statute, as opposed to a full text version. In addition, as each website or database is maintained independently, some codes may be more difficult to find and access than others. Therefore, it was deemed important to access the printed volumes of law for each state which are readily available in any law library in addition to electronic media.

One advantage of accessing the bound, written volumes of law over electronic means is consistency and standardization. A major legal publishing company, such as West, publishes a version of every state code; therefore, a level of consistency and standardization exists in terms of indexing laws and updating of materials. Further, most law libraries are logically organized, with specific sections for state codes, federal codes, reference materials, case law, and so on. This allowed for easy identification and location of information. However, similar to electronic information, the bound written documents have its own set of limitations. For example, publication and dissemination of updated legal information may take months to occur.

Because each method of research presents unique limitations for the researcher, it was necessary to review both sources as means of cross-checking the legal viability of the laws to ensure accuracy in reporting and trustworthiness of the study. Prior to initiating the data gathering for this phase of the study it was determined that any conflicts or discrepancies between the two media would be resolved through a final check that included the following, ordered procedure:

- review of dates



- review of legislative up-date reports and, where appropriate
- direct contact with state legislatures, state Attorneys' General offices and/or the National School Boards Association

It should be noted that after accessing both the electronic and printed sources of state legislation regarding the grounds for tenured teacher dismissal, no conflicts or discrepancies were identified between the media. Thus, it was not necessary to employ the procedure outlined above.

For the purposes of consistency and standardization, protocols were developed to track the state laws in a uniform manner (Appendix A). For data collection, both electronic and hard-copy files were created for each state using the protocol as a checklist. Each hard-copy file contained multiple sections (legal case files) for storage of hard-copy written information as well as a printed copy of the corresponding electronic information. In addition, electronic data were stored on disks to ensure access at a later date, if needed.

It was determined in advance that it would most efficient to begin the search for state legislation electronically. Therefore, data collection began with a search of each state's legislation using the Lexis/Nexis academic database. The Lexis/Nexis academic database provides access to all state legislative codes. Statute searches began by using broad key words and phrases determined a priori: public education, public schools, termination, teachers, and tenured teachers. Once legislation matching the key words and phrases was identified for all states, narrowing descriptors were used in an effort to identify the appropriate codes. Narrowing descriptors included: dismissal, discharge,

separation of employment, nonprobationary teacher, permanent teacher, continuing contract teacher, and other related words.

Once the electronic laws were identified, bound volumes of laws were searched and copied at the Marshall-Wythe Law Library at the College of William & Mary. Each bound volume searched included a review of additional state code supplements and pocket parts in the bound volumes to obtain the most up-to-date information in hard-copy format.

A final step in the data-gathering process included a triangulation procedure, re-coding the 51 identified statute data as a method of establishing coder reliability. This step yielded verification that the data were properly coded for the purpose of the study.

#### *Case Law*

The second part of the data-gathering process focused on identifying relevant case law predicated on the termination of tenured public school teachers for incompetence. Case law is court decisions that have the binding effect of codified laws within the court's specific jurisdiction and can serve as guidance for other jurisdictions in the absence of precedent or codified law. Simply stated, this means that case law at the state level is binding on a state; case law at the federal district level is binding upon the particular district within a state; and federal circuit court decisions have a binding effect on the circuits that they serve (usually includes multiple states) unless the particular case involves a case and controversy regarding the constitutionality of a specific state law. Finally, decisions rendered by the United States Supreme Court set national precedents which are followed by state and federal courts alike.

Like codified state law, case law is readily accessible in both bound volumes and electronic databases such as Westlaw, Lexis/Nexis, and on websites that are state and federally sponsored. However, unlike statutes, Westlaw and Lexis/Nexis monitor the state and federal courts daily, and usually have available written decisions rendered by the courts within 24 hours of publication. Some state and federal websites do not disseminate court decisions quite so expeditiously; therefore, they are not as efficient as Westlaw or Lexis/Nexis.

Bound copies of case law are readily accessible at any law library. Depending upon the level of case review, court opinions may be found in one or more areas:

- state case law reporters
- regional case law reporters
- federal district court reporters
- federal appellate court reporters
- U.S. Supreme Court reporters

Like statutory law, case law reporters are updated regularly with cumulative supplements or pocket parts. However, the frequency of updates depends upon the level of the court, and may vary from state to state. Therefore, it was important to review both bound case law and electronic databases to access cases that are current and up-to-date. For the purposes of this study, only cases decided between January 1983 and December 2003 were reviewed. In limited instances, unpublished decisions were also reviewed electronically through the Lexis/Nexis database system. Although unpublished cases are not precedentially binding under the rules of stare decisis, the decisions can provide meaningful insight on matters of tenured teacher dismissal for incompetence.

Once again, for the purposes of consistency, organization and standardization, protocols were developed to track state and federal case law in a uniform manner (Appendix B). For data collection, both electronic and hard-copy files were created for each state using the protocol as a checklist. For data collection, state and federal case law utilized the files created for each state in the legislative data gathering process.

Again, it was determined prior to initiating the data gathering for case law that it would be most efficient to begin the search electronically. Specifically, data collection in this portion of the study began with a search of federal district court case law, federal court of appeals case law, U.S. Supreme Court case law, and finally, individual state court case law. The Lexis/Nexis Academic database was used, as it provides access to all levels of published and unpublished case decisions.

Federal and state case law searches began by using broad key words and phrases determined a priori: public education, public schools, termination, teachers, and tenured teachers. Once cases matching the key words and phrases were identified, narrowing descriptors were used in an effort to appropriately cull the vast number of cases found. Narrowing descriptors included: incompetence, unfit to teach, inadequate teaching methods, inadequate preparation for instruction, disability, personal behavior, and other related words to identify specific references within the cases. All courts were initially searched using the board key words and phrases and subsequently refined using the appropriate narrowing descriptors which yielded corresponding cases which match the search criteria. Once identified electronically, the cases were stored on disk for final review. Each case was subsequently reviewed and only included as part of the study if the basis for the dismissal met the criteria for incompetence, as specified by Lewis (1998).

Once the electronic cases were reviewed and determined to fit the study criteria, bound volumes of case law were searched and copied at the Marshall-Wythe Law Library at the College of William & Mary.

Finally, all cases were examined by an independent party, an experienced attorney in employment law, as an additional layer of confidence in the coding process and to establish inter-coder reliability. This additional check was employed prior to securing hard-copies of the cases from the Marshall-Wythe Law Library to ensure consistency and trustworthiness for the study.

## Methods

### *Content Analysis Method*

Statutes and case law are specific types of written communication that articulate “messages from one individual or group to another individual or group” (Catano, 2002, p. 45). Content analysis is a qualitative research method that utilizes a systematic approach to examine forms of the manifest content of communication to objectively document patterns and trends (Berelson, 1952, as cited in Gall et al., 1996; Patton, 2002; Rossman & Rallis, 2003). The data source for content analysis can come from a variety of media which include (but is not limited to) written documents and records; visual and audio mediums, or any combination thereof (Gall et al., 1996; Lincoln & Guba, 1985; Rossman & Rallis, 2003). Lincoln and Guba (1985) distinguished documents from records viewing the former as written communications prepared for personal purposes and the latter as written communication prepared of official purposes. Since statutes and case law are prepared by the judicial and legislative branches of the government, both are considered to be records.

The “analyses generally involve fairly simple classifications or tabulations of specific information” (Gall et al., 1996, p. 357). Arkin (1999), citing Holsti (1969) and Weber (1990), acknowledged that the primary purposes for employing content analysis included the identification of “trends and patterns of communication” (p. 66), in addition to drawing inferences from the various forms of communication. Since the present study focused on state laws and federal and state case law, which are forms of written records, it is well suited to a content analysis research approach and appropriate for the purposes of this study.

#### *Appropriateness of Content Analysis Method*

Patton (2002) stated that, “. . . different methods can produce different findings. The challenge is to figure out which design and which methods are most appropriate, productive and useful in a given situation” (p. 255). Content analysis methods can be used to decode and/or draw inferences from the “messages that people code in various forms” (Gall et al., 1996, p. 356), and may be applied to research many diverse forms of communications, including written materials, visual material, audio materials and multimedia communications (Gall et al., 1996).

Although several educational law studies were identified that used or appeared to use the content analysis method to investigate statutes and case law, almost all fell short of clearly defining the method, purpose and procedures used to analyze the data collected. Arkin (1999) set forth a clear and succinct explanation of the method, purpose and procedures in her study, as well as the organization and analysis of the data which served as the foundation for the design of this study. Additionally, Arkin (1999, citing

Krippendorf, 1980) provided a cogent rationale that articulated the appropriateness of content analysis for review of legal documents, which included the following:

‘within social organizations the right to use a particular channel of communications is regulated and whatever data one obtains in such contests, they reveal what an institution deems permissible’ (p. 47) . . .

[L]aws certainly fit the criteria of being documents that are regulated and whose primary purpose is political and social improvement. (p. 67)

### *Procedures*

In Phase 1 of the study, the key component of the legislative review was to determine if the states had acted, through implementation of legislation, to define the grounds for dismissal of public school teachers within these jurisdictions, specifically grounds that constitute incompetence. For those states that had enacted legislation, an analysis of the laws was conducted to identify the emergent features of the legislation, including provisions for due process guidelines that school districts must comply with to dismiss teaching personnel. Other features, such as the rights of tenured teachers were examined in the context of grounds for dismissal and due process regulations.

In Phase 2 of the study, the key component of the judicial review examined the number of law suits that were litigated at an appellate level during the period 1983-2003 on the basis of tenured teacher incompetence for each jurisdiction, regardless of legislative guidelines promulgated by the states. The law suits were reviewed to identify the party bringing suit, venue of the claim, administrative issues, and outcomes of the litigation. Specifically, this review considered the following questions:

- Was there a statutory basis that defined the actions/omissions of the teacher which are considered to be incompetent?
- What actions/omissions by the teachers were sustained by the courts as evidence of incompetence?
- What actions/omissions by the teachers were rejected by the courts as evidence of incompetence?
- Which party prevailed through litigation and why?

In Phase 3 of the study, the key component of the comparative analysis examined whether a relation existed between the outcomes of litigation based upon tenured teacher incompetence in each jurisdiction and the jurisdiction's collective bargaining status. The law suits were reviewed to identify the party bringing suit, venue of the claim, administrative issues and outcomes of the litigation, including the prevailing party. This review considered the following questions:

- Was there a statutory basis that defined the actions/omission of the teacher which is considered to be incompetent?
- What actions/omissions by the teacher were sustained by the courts as evidence of incompetence?
- What actions/omissions by the teacher were rejected by the courts as evidence of incompetence?
- Which party prevailed through litigation, and why?

The content analysis method offers a logical process for organizing, reviewing, analyzing and interpreting data. Once the data-collection process for the study was



completed, the content analysis method was utilized to commence the process. Gall et al., (1996) identified six procedural steps involved in content analyses:

- Identification of documents relevant to the research
- Specification of research questions, hypotheses, objectives
- Selection of sample
- Development of category-coding procedures
- Analysis of data
- Interpretation of results

Each step is addressed below.

#### *Identification of Documents Relevant to the Research*

The purpose of the study was to review state statutes and federal and state case law with regard to teacher dismissal on the basis of incompetence. Therefore, statutes from all 50 states and the District of Columbia were identified to determine if law existed that governed the dismissal of teachers for just and reasonable cause, including incompetence. Earlier studies by Shackleford (1982) and Lewis (1998) indicate that statutory law exists in all 50 states regarding grounds for teacher dismissal.

Additionally, case law was identified as relevant records for analysis. Case law supports statutory law and, in many instances, provides in-depth analyses and interpretations to statutory law. Only cases that were resolved with court-based dispositions were reviewed. Cases that were resolved prior to legal proceedings (i.e., settlements, withdrawal of complaint, etc.) were ruled out of the analysis, as they would serve no significant purpose for the study.

### *Specifications of Research Questions, Hypotheses, and Objectives*

Refining the research questions for this study was the critical step to shape the direction and narrow the focus in a meaningful way. The purposes of this study were (a) to compare, contrast, and analyze existing teacher dismissal-specific statutes all 50 states and the District of Columbia; (b) to review the characteristics of state and/or federal case law pertaining to the issues of teacher dismissal for incompetence in all 50 states and the District of Columbia; (c) to analyze the outcomes of the state and/or federal teacher dismissal litigation, including cases in courts of original jurisdiction or at the appellate level; and (d) to determine if a relationship exists between the comprehensive nature of teacher dismissal-specific legislation and the frequency of ensuing litigation. Once the purpose of the study was clarified, it allowed for the development of research questions that would inform the body of knowledge already in existence regarding tenured teacher dismissal for incompetence. Moreover, it allowed for inferences to be drawn between the development of statutory guidelines and its impact on litigation.

### *Selection of Sample*

The study examined state legislation and case law for all 50 states and the District of Columbia. Since the study examined the entire population of state statutes that provide a basis for tenured teacher dismissal as well as the entire body of case law predicated on the dismissal on tenured teacher incompetence, the selection of a sample population was not necessary.

### *Development of Category-coding Procedures*

Developing data-coding procedures is tantamount to developing the research questions for the study. Design of the research is a critical component because it directly

impacts the usefulness of the study (Berelson, 1952; Patton, 2002). Categorization of data “must reflect the purposes of the research, be exhaustive, mutually exclusive, and independent” (Arkin, 1999, p. 70). Simply stated, data coding is the essence of content analysis.

For the purposes of this study, categories were developed a priori using themes identified in earlier studies. In addition, because of the nature of qualitative research, some categories were emergent as part of the data analysis process. Words, phrases and sentences comprised the substance of the coding categories for this study. According to Schwandt (2001), the content analysis method involves five central steps to the procedural:

1. Creating a set of codes
2. Systematically apply the codes to a set of textual data
3. Establishing an interrater reliability of coders when more than one coder is employed
4. Creating a matrix from the texts and codes
5. Analyzing the matrix by means of some univariate, bivariate or multivariate statistical procedure

“Coding is a procedure that disaggregates the data, breaks it down into manageable segments, and identifies or names those segments” (Schwandt, 2001, p. 26). It provides a logical basis for analyzing the data in a uniform manner. Therefore, deciding what component of the written language to study was important. Weber (1990) identified six options for effectuating this task: word, word sense, sentence, theme, paragraph, and whole text. A set of categories was established a priori for the analysis of

both statutes and case law. Since the language on the same topic varies from state to state, it was determined that using *word sense* for coding purposes was the appropriate method for statutory data analysis, as it allows for examining single words or phrases with multiple meanings. Conversely, it was determined that *theme* was the appropriate coding method for examining case law. Each category of analysis is described in detail in Chapter 4.

### *Analysis of Data*

In simple terms, the process of analyzing data is the “activity of making sense of, interpreting, or theorizing data” (Schwandt, 2001, p. 6). The analysis of qualitative data, like the analysis of quantitative data, must rigorous, disciplined, methodological and well-documented.

To analyze means to break down a whole into its component or constituent parts. Through reassembly of the parts, one comes to understand the integrity of the whole. Thus, the qualitative analyst breaks down the whole corpus . . . by categorizing and coding segments and then tries to establish a pattern for the whole by relating the codes or categories to one another.

(Schwandt, 2001, p. 6)

Analysis of the coded data included frequencies, counts, descriptive statistics and percentages. Test coding was conducted by the researcher in a field research project using 10 states to ensure reliability of the coding procedures, as well as to determine if the codes accurately reflected the stated purposes of the study. Interpretations of the results are discussed in Chapter 4.

## *Interpretation of Results*

### *Reliability of Research Method*

The content analysis method relies on three mutually exclusive forms of reliability: stability, reproducibility, and accuracy (Krippendorff, 1980; Rossman & Rallis, 2003; Schwandt, 2001). Reliability is a way to establish the truth of data interpretation and is an extremely important step in content analysis; however, there is some argument among qualitative researchers that reliability is a fiction since no researcher can ever literally replicate another's work (Schwandt, 2001). Nonetheless, establishing reliability was a critical step in this study to ensure meaningful interpretation of the results.

Stability is the lowest level of reliability. It is a form of consistency and checks *within* individual coders over time. To ensure coder reliability, stability was verified by re-coding all statutes and 20 cases after initially coding approximately 50% of the cases. Re-coding was conducted periodically until all cases had been completed.

The most common type of reliability is reproducibility, which is the check-and-balance system for inter-coder accuracy. As noted in the *Case Law* section, reproducibility was checked by having a practicing employment law attorney code the cases using the protocol developed and used by the researcher. This check yielded a 98% confidence level between the researcher and attorney.

The final type of reliability is accuracy. Due to the unique nature of this study and the lack of identified methods from previous studies, it was not possible to attain accuracy. Therefore, this study used only stability and reproducibility to demonstrate reliability.

## Quantitative Methods

The analysis of case law data relied heavily on qualitative research methods and descriptive statistics; that is, frequencies, counts, and percentages to interpret the data. Additionally, Research Question 3.2 was designed to ascertain whether a relationship exists between each state's collective bargaining status and the number of cases litigated for the period of 1983-2003; and whether a state's collective bargaining status has a relationship vis-à-vis the prevailing party in the cases examined. For that specific purpose, quantitative statistical techniques were employed. A database was created (Appendix C) that maintained state data by year for the period of 1983-2003, which included the collective bargaining status, the number of teachers employed, the number of cases litigated, and the prevailing party. Wright and Gundersen (2004) identified 13 states that preclude teachers from collective bargaining by law. A verification check through each state code was completed to ensure the correct assignment of collective bargaining status for each state occurred. The numbers of teachers per state were identified through Tables 64 and 66, respectively, through the *Digest of Education Statistics*. The purposes of the correlation analysis were to: (a) determine if a positive relationship existed between the collective bargaining status of a state and the number of cases litigated between 1983-2003; and, (b) determine if a positive relationship existed between the collective bargaining status of a state and the prevailing party.

Since the quantitative technique, like the qualitative technique, examined the entire population as opposed to a sample, accuracy of the results was assured. Histograms comparing collective bargaining and non-collective bargaining states were produced to compare the trends of analysis. Initially, an analysis of the variance

(ANOVA) test was used to determine whether significant differences existed in teacher population between collective bargaining and non-collective bargaining states for the stated time frame. Chi-square test of independence was used to determine the relationship between collective bargaining status and number of cases as well as the collective bargaining status and prevailing party. The confidence level was set at 95%.

Table 2 provides a summary overview of each research question and how each question was approached for the study, including the method, procedure and analysis. A detailed description of each question, procedure and analysis follows.

*(continued on next page)*

Table 2  
*Synopsis of of Reseach Questions, Methods and Procedures Used for Analysis*

Questions	Method	Procedure	Analysis
1.1 What are the major similarities and difference among the states and the District of Columbia regarding teacher dismissal?	Content analysis	Examine each coding category to determine how the laws are alike and different	Analysis for each category, frequency and percentages for each; nominal and ordinal data
1.2 What are the emergent features of teacher dismissal legislation from the states and the District of Columbia?	Content analysis	Use <i>word sense</i> as a unit of analysis; Categories: recipient, status, action, grounds, qualifiers	Development of levels within each category to determine types or hierarchies; frequencies
2.1 What are the major similarities and differences of law suit dispositions among the state and federal jurisdictions for period of 1983-2003?	Content analysis	Examine each category to determine how the cases are alike and diverse	Analysis for each category, frequency and percentages for each; nominal and ordinal data
2.2 What are the significant characteristics of law suits for the period of 1983-2003?	Content analysis	Examine each category to identify common themes, patterns, trends	Development of levels within each category to determine types or hierarchies; frequencies
3.1 What are the major similarities and difference of state laws regarding teacher dismissal between collective bargaining states and right-to-work states?	Content analysis	Examine each category to identify common themes, patterns, trends	Analysis for each category, frequency and percentages for each; nominal and ordinal data
3.2 Is there a relationship between the disposition of law suits and a state's collective bargaining status?	Analysis of variance and frequency	Relationship between the collective bargaining status and number of cases litigated	Analysis for each category and frequency nominal and ordinal data; ANOVA and chi-square



*Research Question 1.1. What are the major similarities and difference among the states regarding teacher dismissal?* This question was answered by means of analysis of each type of response for each characteristic of law identified. This process created a unique analysis for each response. Frequencies, counts, and percentages of each characteristic were computed.

*Research Question 1.2. What are the emergent features of teacher dismissal legislation from the states?* This question was answered by means of content analysis using word sense as the division of analysis. While the laws of states are unique to the specific jurisdiction, key elements (categories) common among the laws were individually examined, and within each category, types of responses were recorded.

*Research Question 2.1. What are the major similarities and differences of law suit dispositions among the state and federal jurisdiction for period of 1983-2003?* This question was answered by means of analysis of each type of response for each characteristic of law identified within the context of each case studied. This process created a unique analysis for each response. Frequencies, counts, and percentages for each category were computed.

*Research Question 2.2. What are the significant characteristics of law suits for the period of 1983-2003?* This question was answered by means of content analysis that identified patterns, themes and trends for each characteristic of law identified within the context of each case studied. Frequencies, counts, and percentages for each category were computed.

*Research Question 3.1. What are the major similarities and differences of state laws regarding teacher dismissal between collective bargaining jurisdictions and right-to-work jurisdictions?* This question was answered by means of analysis of each type of response for each characteristic of law identified within the context of each case studied; thus creating a different analysis for each category. This process created a unique analysis for each response. Frequencies, counts, and percentages for each category were computed.

*Research Question 3.2. Is there a relationship between the disposition of law suits and a state's collective bargaining status?* This question was answered by correlating data produced by this study with U.S. Department of Education statistics on the numbers of teachers per state for the period of 1983-2003. This research question endeavored to discover a positive relationship between a state's union status and the number of cases litigated over time, as well as the state's union status and the prevailing party of litigation. Both sets of data were nominal; therefore, analysis of the variance and chi-square were used for statistical computations.

#### Ethical Safeguards and Considerations

This study did not require that the researcher employ any safeguards or protections, as state statutes and federal and state case law are public records that are easily accessible in the public domain. There are no constraints on dissemination of the material, as statutes and case law are intended to be widely disseminated and available for public consumption.

## CHAPTER 4: THE RESULTS

‘Think simple’ as my old master used to say – meaning reduce the whole of its parts into the simplest terms, getting back to first principles.

--Frank Lloyd Wright (1867-1959)

### Introduction

The primary purpose of this study was to examine state laws and federal and state case law that provides a legal basis for dismissal of tenured teachers for incompetence.

The following research questions guided the study:

#### Phase 1: State Statutory Law

- 1.1 What are the major similarities and differences among the state laws and the District of Columbia regarding teacher dismissal?
- 1.2 What are the emergent features of teacher dismissal legislation from the states and the District of Columbia?

#### Phase 2: Federal and State Case Law

- 2.1 What are major similarities and differences of law suit dispositions among the state and federal jurisdictions for the period of 1983-2003?
- 2.2 What are the significant characteristics of lawsuits among the state and federal jurisdictions for the period of 1983-2003?

#### Phase 3: Statutory and Case Law Comparison between Union and Non-union States

- 3.1 What are the major similarities and differences of state laws regarding teacher dismissal between collective bargaining states and right-to-work states?
- 3.2 Is there a relationship between the disposition of law suits and a state’s collective bargaining status?

Given the above questions, the content analysis research method was used to analyze the data consisting of state codified law and federal and state case law. The results of the study are presented below.

### Results of Data Collection

#### *Phase 1 -- State Statutory Law*

The organizational underpinnings of public sector enterprises differ dramatically from those found in the private sector. Typically, by comparison many more federal and state laws and regulations govern all aspects of public than private sector enterprises, including the personnel function. In that vein, it is well established that each state has promulgated standards via law for the hiring and dismissal processes of state employees. As expected, a search of state statutes identifying grounds for tenured teacher dismissal yielded 51 laws, or 100%. It should be noted that the search and verification measures applied only to the laws identified that fit within the broad definition of the study; therefore, ancillary laws pertaining to tenure, grievance procedures and the like were not reviewed or included in the study but may be referred to by reference. The rigorous data collection strategies and verification procedure described in Chapter 3 for Phase 1 of the study were used in a manner consistent with the research design scheme. After careful review of the identified laws and entry into the researcher's database, it was determined that all of the statutes were suitable for the study. The statutes were then examined within the context of five broad categories: tenure, specified grounds for dismissal, incompetence defined, due process, and remediation.

*Research Question 1.1 and 1.2*

*1.1 What are the major similarities and differences among the state laws and the District of Columbia regarding teacher dismissal?*

*1.2 What are the emergent features of teacher dismissal legislation from the states and the District of Columbia?*

There is a high degree of correlation between Research Question 1.1 and Research Question 1.2, given that the latter presents the information in a deconstructive manner whereas the former presents the information in a reconstructive manner.

Deconstruction is a process that reduces the text into its simplest parts, words, to discover word sense or meaning. According to Swandt (2001), “deconstructionism is a kind of internal critique that reveals that the meaning of words occurs in relations of sameness and difference” (p. 52) within the text being examined. Conversely, reconstruction refers to the process that re-assembles the words of the text back into its whole to examine the similarities and differences among the texts. For the purpose of efficiency and to avoid redundancy, both questions were examined concurrently.

The categories for review, vis-à-vis state dismissal-specific statutes are common elements and represent general technical aspects of the laws for appropriate comparisons. The following five categories emerged during the initial review of laws that guided this examination: tenure, legal grounds for dismissal, incompetence defined by statute, due process procedures, and remediation. The presence or absence of language within the text of each state’s statutes addressing each category was documented (Appendix C) and analyzed (Appendix D) to determine the frequency of occurrence of each category. Table

3 presents a summary of the extent (in percentage) to which each category was cited in the 51 statutes reviewed. A brief discussion of each category follows.

Table 3  
*Summary of Common Characteristics of State Statutes by Category*

	Common Characteristics				
	Tenure <sup>i</sup>	Specified Grounds for Dismissal	Incompetence defined	Due Process <sup>ii</sup>	Remediation <sup>iii</sup>
All States (and DC)	87%	79%	24%	71%	16%

*Notes:* <sup>i</sup> Every state recognizes some form of tenure which confers due process rights for disciplinary action, including dismissal; therefore the absence of a reference to tenure in the dismissal statute does not connote an absence of those rights.

<sup>ii</sup> Procedural due process is required by every state; however, 15 states provide for due process procedures in separate statutes.

<sup>iii</sup> Although remediation is considered to be an add-on requirement expanding a teacher's due process rights, the courts generally require remediation prior to affirming a dismissal based upon incompetence or poor performance.

### *Tenure*

Every state has legal provisions for teachers who attain a vested property right in his/her position, that vary among the states. In the 51 dismissal-specific statutes that were examined, 44 specifically stated in the language of the law or through the legislative notes that the statute was promulgated specifically for tenured teaching personnel. Seven state codes drew no distinction between tenured and non-tenured personnel: Colorado, Mississippi, Montana, New Hampshire, North Dakota, South Carolina, and West Virginia. For example, Colorado Revised Statute § 22-63-301 states that a *teacher* may be dismissed for specified grounds. This statute targets teachers only, regardless of the tenure status. Similarly, South Carolina Code Annotated § 59-25-430 states that *any teacher* may be dismissed for specified reasons; here again, the intent of the language does not differentiate between tenure and non-tenured personnel. Interestingly, Mississippi Code Annotated § 37-9-59 provides for *licensed employees* to be dismissed

for specified grounds. This statute appears to target any classification of personnel who is required to hold a license for his/her position, including, but not limited to: teachers, administrators, supervisors, psychologists, and nurses. West Virginia Code § 18A-2-8 contains the most sweeping language, providing for the dismissal of *any person* for specified statutory reasons. Thus, almost 90% of the state dismissal-specific statutes were promulgated specifically for tenured teachers.

### *Specified Grounds for Dismissal*

As shown in Table 3, 79% of the state statutes reviewed named two or more statutory grounds that provide a legal basis for tenured teacher dismissal. Appendix E provides a detailed tabulation of the specified grounds for dismissal by state. Once tabulated, the data within the category were sorted into four subcategories based upon the number of identified grounds for dismissal contained within the laws. The subcategories emerged as part of the data collection and analysis process. The results contained in Table 4 present the breakdown of the specified grounds for dismissal by sub-category within each state statute.

Table 4  
*Summary of Specified Grounds for Dismissal*

Number of Grounds per State	Frequency of Laws	Percentage of Laws
10 or more specified grounds	6	12%
2-9 specified grounds	33	64%
Just Cause	11	22%
No stated grounds for dismissal	1	2%
Total	51	100%

As illustrated, the majority of states, 33 (64%) identify between two and nine specific grounds for tenured teacher dismissal, by statute. The Nevada Revised Statutes

§ 391.312 and North Carolina General Statutes § 115C-325 cite the most grounds for dismissal by statute, 19 and 16 grounds, respectively. Both statutes include incompetency as a statutory ground for tenured teacher dismissal, in addition to providing statutory guidelines for defining incompetency (which is addressed in more detail in the *Incompetence Defined* section below). Eleven state statutes, including the District of Columbia Code § 1-608.01a, Iowa Code § 279.27, Michigan Compiled Laws Annotated § 38.101, New Mexico Statutes Annotated § 22-10A-24, and Washington Revised Code § 28A.400.300, provide for the dismissal of tenured teachers for good, just or sufficient cause – thus, allowing school districts and/or the courts to decide what actions or omissions constitute sufficient grounds for dismissal. Only one state statute, Wyoming Statutes § 21-7-106, does not list or reference any grounds for dismissal, including just or good cause. Moreover, the lack of specified grounds is specifically referenced in the historical notes following the text of the statute as the legislative intent of the Wyoming state government.

#### *Incompetence Defined*

The third category, incompetence defined, was analyzed to see what statutory definitions for tenured teacher incompetence were included within the language of the dismissal-specific laws. As illustrated in Table 3, 40 of the 51 state codes examined (79%) provide specified grounds for tenured teacher dismissal. Of these 40 states, 24 (60%) include *incompetency* as a stated legal ground for dismissal (Appendix C). And of 24, only 12 state codes (50%) included guidelines or standards for defining teacher incompetence within the language of the law or through the history of the law outlined in the legislative notes. Two-thirds of those state laws, Alaska Statutes § 14.20.175,



Connecticut General Statutes § 10-151, Missouri Revised Statutes § 168.114, Nevada Revised Statutes § 391-312, North Carolina General Statutes § 115C-325, Pennsylvania Statutes § 11-1122, Utah Code Annotated §53A-3-4111, and Virginia Code § 22.1-307, provide guidelines or standards for defining teacher incompetence that specifically require the use of performance evaluation data over time as part of the process to support the finding. Most of those laws shared similar phrasing or wording while several contained distinctive language.

Alaska Statutes § 14.20.175 require remediation of teacher performance in addition to documented performance evaluation for finding teacher incompetence. The language of the Massachusetts Annotated Laws Chapter 71, § 42, is somewhat more ambiguous on the use of performance evaluation data, defining incompetence as the “failure to satisfy teacher performance standards.”

The legislative notes of Colorado Revised Statutes § 22-63-301 expressly state that the determination of incompetence is left exclusively for each school district to define. Likewise, Michigan Compiled Laws Annotated § 38.101 also provides guidance for teacher incompetence through the legislative notes section of the law, requiring that allegations of teacher incompetence *must* be supported by evidence demonstrating that the teachers’ conduct, acts or omissions have an adverse effect on pupils.

The only state law that provides a detailed definition of incompetence in the legislative history section of the text is South Dakota Codified Laws § 13-43-6.1. According the statute, an incompetent teacher is “one who habitually fails to perform work with a degree of skill or accuracy usually displayed by other persons regularly employed in such work or one who usually performs less than others so regularly

employed.” Appendix E provides a summary of the 12 state statutes that address guidelines, standards and definitions for incompetence in more detail.

### *Due Process and Remediation*

As stated in the notes following Table 3, remediation is considered an element of due process in matters of teacher dismissal for incompetence, as courts generally require school districts to provide teachers with time to improve unsatisfactory performance, if appropriate. Because of the high degree of interrelatedness between due process and remediation, the two categories were examined simultaneously. According to the data in Table 3, although 71% of the state dismissal-specific statutes examined (36 states) explicitly outline a method of due process that includes notice of the intent to dismiss, the specific grounds for dismissal, a hearing, and an opportunity for the teacher to present a defense, only 16% of the state statutes examined (8 states) provide for remediation of incompetent performance within the context of the same statutes. Therefore, it is important to stress two caveats at the outset of the analyses of the two subcategories. First, due process of law is required and provided by *all* states through legislation. The absence of due process provisions within a particular dismissal-specific statute is indicative of an alternative method of organizing laws. Second, historically, courts have required school districts to provide remediation in matters of dismissal for incompetence, provided that the actions or omissions of the teacher are remediable. Therefore, the absence of remediation within any particular law(s) does not negate the mandate of the courts to provide teachers with time for improvement. The requirement for remediation, like that of due process, may be provided for in other ancillary laws within the state codes. Hence, 100% of the states provide by legislation minimal due process procedures

for tenured teachers prior to dismissal from employment; and, when appropriate, provide teachers with remediation time to improve performance.

The examination of due process and remediation yielded several interesting results. Eight state codes, Alaska Statutes 14.20.175, Arizona Revised Statutes § 15-539, Florida Statutes § 1012.33, Idaho Code § 33-513, Illinois Compiled Statutes Annotated § 105 ILCS 5/34-85, Kentucky Revised Statutes § 161.790, South Dakota Codified Laws § 13-43-6.1, and Utah Code Annotated § 53A-3-4111, specifically reference remediation of performance prior to dismissal proceedings if the charges are incompetent performance. Of particular interest are the provisions for remediation in Florida and Illinois.

Florida Statutes § 1012.33 requires that a teacher be provided *one full year* of remediation before a determination can be made with regard to dismissal. The code further provides for a collaborative process between the teacher, administrator and central office supervisory staff in the development of a plan for improvement. Finally, the teacher is provided an opportunity to request a transfer prior to implementation of the improvement/remediation plan – thus having a new administrator to supervise and assess growth and improvement. Periodic assessments and written feedback must be provided to the teacher during the remediation. Should the teacher fail to improve as provided through the remedial plan, he/she must be given notice of the intent to dismiss and provided full due process rights prior to school district action for dismissal based upon incompetent performance.

Illinois Compiled Statutes Annotated § 105 ILCS 5/34-85 also requires remediation; however, it is the only state law that provides a two-part test within its

language for determining whether the actions or omissions on the part of the teacher are, in fact, remediable. Performance is deemed to be remediable (a) if it did not cause psychological or physical harm to students; or, (b) if prior warning would have prevented the occurrence of same. If the actions or omissions meet the threshold for remediation, the teacher must be issued a warning and provided an opportunity to improve.

Another point of interest is that both the Florida and Illinois statutes contain the due process procedures for dismissal in addition to remediation. Finally, although remediation is considered to be an add-on element of due process, the requirement for remediation is listed as a separate issue apart from due process within all eight state dismissal-specific codes.

#### *Summary of Trends Phase 1 – State Statutory Law*

An analysis of the common characteristics of the states' dismissal-specific statutes in Phase 1 of this study yielded some interesting facts as discussed in more detail below.

#### *Tenure*

One hundred percent of the states and the District of Columbia have promulgated dismissal-specific statutes designed for all school district personnel. Eighty-seven percent of the statutes examined (44 states) have dismissal-specific statutes developed specifically to protect and provide guidance for the dismissal of tenured teachers. Seven of the state laws make no distinction between non-probationary and tenured teacher with regard to dismissal, and one statute of the seven provides for *any person* within the text of the law. Thus, the trend is clearly to provide for dismissal-specific standards exclusively for tenured teaching personnel.

### *Specified Grounds for Dismissal*

Almost 80% of the state statutes examined provide specified grounds that provide a legal basis for the dismissal of tenured teachers. As demonstrated in Appendix F, 39 specific grounds were identified for tenured teacher dismissal within the text of the laws. Six states provide 10 or more grounds for dismissal, while the vast majority of states, 33, provide between 2 and 9 specified grounds for dismissal as presented in Table 4. Eleven states require *cause*, *just cause*, or *sufficient cause* only to support tenured teacher dismissal. Only one state has no stated grounds for dismissal. The obvious trend identified from the examination of this category is to specify grounds for dismissal. Thus, states offer legal guidelines which provide for specified reasons for dismissal of tenured teaching personnel.

### *Incompetence Defined*

Despite the many and varied grounds for dismissal specified by state statute, including incompetence, only 12 state statutes (24%) provide guidelines, standards, or definitions that aid in determining incompetent performance. It is noteworthy that 8 of the 12 statutes explicitly rely upon performance evaluation data over time as an indicator of incompetent performance. It is also of interest to note that the majority of statutes that rely upon performance evaluation data use the same or similar phrasing in the text of the law. Only one statute provides a comprehensive definition of incompetence that views performance of teaching personnel against those similarly situated, thus, indicating that the evaluative process was not conducted in a vacuum or viewed by a standard of perfection, but rather, by realistic means. The trend is clearly to leave the definition of

incompetence to be determined on a case-by-case basis by the overwhelming majority of the states.

### *Due Process and Remediation*

The analysis of due process and remediation yielded far less remarkable results than that of the other categories because the absence of either element within the dismissal-specific statute does not indicate that neither is required by state law. Rather, the absence of one or both of the elements is merely indicative of an alternative organizational scheme for the state codes. An examination of each state's educational code positively revealed the presence of statutorily defined *due process* procedures that each school district must follow in matters of tenured teacher dismissal through dismissal-specific statutes (36 states). The other 15 states provide for specific and detailed due process procedures through ancillary legislation, such as *teacher tenure acts*.

Conversely, remediation is not specifically called for through statutory law by each state. In fact, only eight state codes require remediation in cases of tenured teacher dismissal for incompetence; and only one state code provides a definition of remediable behavior. Another noteworthy finding pertaining to remediation is that, although it is generally considered to be an add-on element of due process, remediation guidelines, standards or definitions are not included within the due process procedures text in the dismissal-specific statutes. It is a stand-alone requirement strictly pertaining to incompetence. Only slightly over 10% of the dismissal-specific statutes include requirements for remediation.

*Phase 2 – Federal and State Case Law*

Case law is a unique public record that serves two basic purposes: (a) to provide interpretation and meaning to statutory law; and (b) to provide a legal framework for issues that are not specifically addressed by statutory law. There are two primary bodies of case law in this country: federal case law, which is created in federal district courts, courts of appeal and the Supreme Court; and state case law, which is created through state judicial structures. Each state houses at least one federal district court, whose decisions have a binding, precedential effect in the district wherein the court is situated. A total of 11 federal circuit courts of appeal serve multiple state jurisdictions. In addition, there are two ancillary federal circuit courts of appeal (circuits 12 and 13) that serve the District of Columbia as its “state” and “federal” judiciary systems.

Only decisions rendered by the U.S. Supreme Court have binding, precedential effects nationally. Likewise, the binding effects of state court decisions are limited within the confines of the states, but may serve as advisory opinions to provide guidance for other states. Therefore, all state and federal courts must follow case law decisions that are rendered through U.S. Supreme Court opinion.

It is a well-settled axiom that the enterprise of public education is a state function. However, public education is subject to a considerable amount of federal influence, including the legal constitutional requirements of due process and freedom of speech and expression. Should a state educational agency violate constitutionally protected rights, the legal action falls within the purview of the federal courts. In matters of teacher dismissal, the courts are often the battlefield for interpreting legislative intent or ensuring that no individual has been deprived of his/her constitutionally protected rights. It is

within those broad parameters that Research Questions 2.1 and 2.2 were analyzed. A thorough discussion of the results follows.

*Research Question 2.1 and Research Question 2.2*

*2.1 What are major similarities and differences of law suit dispositions among the state and federal jurisdictions for the period of 1983-2003?*

*2.2 What are the significant characteristics of lawsuits among the state and federal jurisdictions for the period of 1983-2003?*

There is a high degree of correlation between Research Question 2.1 and Research Question 2.2, given that the latter presents the information in a deconstructive manner whereas the former presents it in a reconstructive manner. For the purpose of efficiency and to avoid redundancy, both questions were examined concurrently.

*General observations of case law data.* As expected, a search of federal and state cases regarding tenured teacher dismissal yielded an initial identification of more than 400 cases. The rigorous data collection strategies and verification procedures described in Chapter 3 for Phase 2 of the study were used in a manner consistent with the research design scheme. After careful review of the cases initially identified, narrowing descriptors were employed to eliminate cases that did not fit within the parameters of the study. This process reduced the number of potentially viable cases for review to 163 for the period of 1983-2003. An additional 57 cases were eliminated through a two-tiered review as outlined in Chapter 3, primarily because the text of the cases clearly demonstrated that they did not possess the requisite grounds for dismissal; that is, the dismissal was predicated on grounds not included under the broad umbrella of incompetence. A total of 106 federal and state cases in 38 states for the period of 1983-



2003, met the criteria for the study. Each case was entered into the researcher's database (Appendix B). It was not possible to identify federal or state case law in 14 states for the period of 1983-2003: Alabama, the District of Columbia, Hawaii, Idaho, Kentucky, Minnesota, Montana, Nevada, New Hampshire, New Jersey, North Dakota, Vermont, Virginia, and Wyoming (Appendix G). Seven cases were identified in the federal court system (Appendix H). No cases were identified based on dismissal for incompetence that were successfully appealed to the U.S. Supreme Court. Finally, 99 cases were identified in various appellate stages in state court systems (Appendix I).

When reviewed as a complete body of law, the case dispositions revealed several striking results. First, the downward trend identified in the number of cases over time is of particular interest. Table 5 provides an overview of the percentage of cases litigated at the federal and state appellate level by decade.

Table 5  
*Federal and State Cases Litigated by Decade*

Time Period	1983-1989 (7 years)	1990-1999 (10 years)	2000-2003 (4 years)
Number of Cases	44	55	7

As illustrated, a significant number of cases were litigated between the time period of 1983-1989. During that seven-year period, the average number of cases was slightly more than six per year. For the period of 1990-1995, the average number of cases fell to about 5.5 per year. Finally, for the four-year time period 2000-2003, the average number of cases per year declined even further to 1.75 cases per year. Therefore, since the beginning of the 1990s, appellate cases based on tenured teacher dismissal for incompetence have steadily declined. An obvious question in this regard would be, given

the emphasis on educational reform, particularly in the areas of teacher accountability and quality of instruction, why the number of cases in the federal and state courts has declined. Given the litigious nature of our society, it would be reasonable to expect that if reform efforts aimed at teacher accountability and quality of instruction have been effective, more teachers would be dismissed for incompetence. Subsequently, it would also be a logical assumption that more dismissals would be challenged and subject to judicial review. However, the inverse appears to be true, as evidenced by the downward trend of appellate litigation over the 21-year period reviewed.

Another interesting result of the demographic information examined pertains to the prevailing party of the litigation. Collectively, 70 cases (66%) were settled in favor of school districts compared to 36 cases (34%) that were settled in favor of teachers (see Table 7). Thus, the results tend to support the literature, which suggests that courts are generally reluctant to substitute their judgment for that of a school district where the teacher was afforded due process and the evidence provides more than a *scintilla* of evidence. However, the same analysis of the seven federal cases only presents a slightly different result. Teachers prevailed in the federal courts in four cases, whereas school districts only prevailed in three. Although the margin between the prevailing parties was quite close in the federal courts, the trend suggests that teachers are more likely to prevail on constitutional grounds, such as due process or freedom of speech, than on evidentiary or due process grounds in the state courts.

### *Analysis of the Five Categories of Incompetence*

After the review of demographic information, the cases were examined within the context of the five broad categories of incompetence as defined by Lewis (1998) and sorted based on their content:

- Inadequate preparation to teach
- Inadequate teaching methods
- Adverse effects on pupils
- Disability
- Personal behavior

These five categories provided the content for the study questions in this phase.

Appendix I includes a comprehensive tabulation of cases by state, primary category and subcategory of incompetence identified, ground(s) identified for appeal, and prevailing party. The information provided by the cases was analyzed in two stages. First, the cases were reviewed to tabulate the frequency of each category for the aggregate number of cases to establish patterns and trends for tenured teacher dismissal for incompetence for the period of 1983-2003 based upon the categories for incompetence. The results of each category were then examined to determine the percentage of dispositions favorable to teachers and the percentage of dispositions favorable to school districts to identify trends, patterns and themes within and between the categories of incompetence. This review also included an examination of the grounds for appeals; for example, evidence, procedural due process, or constitutional grounds.

Table 6 presents a summary of cases within each stated category examined presented as a percentage. It is typical for cases to have more than one stated ground for

dismissal; however, the courts tend to rely on one primary ground as the basis for decisions. Therefore, cases were sorted into the primary ground for dismissal for this analysis.

Table 6  
*Summary of Cases by Category of Incompetence*

Number of Cases, 1983 - 2003	Inadequate Preparation To Teach		Inadequate Teaching Methods		Adverse Effects on Pupils		Disability		Personal Behavior	
	Freq.	%	Freq.	%	Freq.	%	Freq.	%	Freq.	%
106	6	5.5%	43	41%	8	7.5%	5	4%	44	42%

*Note: Freq.=Frequency of cases    %=Percentage of cases*

The results of the data analysis illustrate that over 80% of the cases for tenured teacher dismissal for incompetence are predicated on the categories of *inadequate teaching methods* and *personal behavior*. Less than 20% of the cases litigated for the period of 1983-2003 were founded on the categories of inadequate preparation to teach, adverse effects on pupils, and disability combined. A review of Appendix G indicates that more than half of the cases in the category of inadequate teaching methods fall in the area of inadequate planning and coordination of instruction. This result suggests a pattern that may be indicative of a need for added or improved pre-service training in lesson planning and instructional delivery skills. Interestingly, 42% of all tenured teacher dismissal cases are based upon personal behavior. Appendix G illustrates that the 35 of the 44 cases litigated during 1983-2003 were coded into the inappropriate behavior subcategory. This finding suggests an alarming pattern of inappropriate conduct.

*Analysis of prevailing party.* In the previous section, analysis of the aggregate data for tenured teacher dismissal for incompetence indicated that 66% of the cases are disposed of in favor of the school districts. However, it is also necessary to view the

information from the perspective of prevailing party by category to determine if there are specific differences or variances within the data. Table 7 displays the compiled information sorted by category of incompetence and prevailing party.

Table 7  
*Judicial Decisions by Category and Prevailing Party*

Category of Incompetence	Prevailing Party				Totals
	District		Teacher		
	Freq.	%	Freq.	%	
Inadequate Preparation To Teach	3	50%	3	50%	100%
Inadequate Teaching Methods	30	71%	12	29%	100%
Adverse Effects on Pupils	6	75%	1	25%	100%
Disability	4	85%	1	15%	100%
Personal Behavior	27	61%	18	39%	100%
Total	70	66%	36	34%	100%

*Note: Freq. = Frequency of prevailing party % = Percentage of prevailing party*

This presentation of the results of the data analysis clearly shows variances among the categories for prevailing party in appellate litigation. It is interesting to note that only one category, inadequate preparation to teach, is the only category where both school districts and teachers have prevailed with the same frequency. The inadequate preparation to teach category presented several noteworthy findings. First, this category is the only category where school districts and teachers prevailed at the same frequency over time. Second, in all three cases wherein teachers prevailed, the school districts failed to comply with mandatory due process requirements except for notice. In all three cases the school districts' argued that since the teacher had allowed his/her license to expire, they were no longer tenured by law, and thus, due process was not required for

their dismissal. The courts' disagreed with the school districts' line of reasoning and found that the teachers' had been denied due process of law regardless of licensure status. The results suggest that once a teacher has attained tenure, they must be afforded procedural due process for disciplinary and dismissal matters, regardless of the technical requirements for licensure.

The category of inadequate teaching methods illustrates that school districts have prevailed almost two times more often than teachers in appellate litigation. This trend suggests that substantial evidence was present within the record and that all process due was afforded to the teachers. Thus, courts are reluctant to substitute their judgment for that of the school district unless the school district actions constitute ultra vires activity, demonstrating an arbitrary and capricious determination.

It is interesting to note that school districts prevailed three times more than teachers in the category of adverse effects on pupils. This category contains the subcategories of inappropriate subject matter, unreasonable disciplinary action and harmful psychological effects. Appendix G illustrates that the majority of cases in this category were coded as unreasonable disciplinary action and harmful psychological effects. In those cases, the facts established a record replete with documented, corroborated evidence of abuse -- either verbal or physical -- on the part of the teacher. Therefore, it is not surprising that the school districts prevailed at the frequency detailed above. Thus, the data suggest a trend that inappropriate treatment of students will not be tolerated, either by the school district or the court.

The category of disability also establishes a pattern consistent with the overall findings that school districts prevail more often than teachers. Five cases were analyzed

in this category, yielding a 4:1 ratio in favor of the school district. In only one instance did the teacher prevail – this was the only case in this category litigated in the federal courts on the basis of a § 1983 discrimination claim. Given earlier analysis indicating that teachers prevail more often in the federal courts, the outcome of the case is not surprising.

The final category of analysis for decisions rendered by category is personal behavior. This category presented the most cases for review. Although school districts prevailed in the litigation more often than teachers, the disparity in the outcomes is not as distinctive as it is in other categories. The trend that emerged shows that school districts prevailed in this area consistent with the average for all cases for the time period of 1983-2003.

*Analysis of categories by reason for challenge.* The analysis of information of this category examined the court cases to identify the reasons that the moving parties relied upon for appeal. Three themes emerged from the data: evidentiary grounds, due process, and constitutional grounds. Although due process and Constitution matters have been discussed in previous chapters, a brief overview of evidentiary standards is required to provide an understanding of the theme for analysis purposes.

There are two basic types of evidentiary challenges: sufficiency of the evidence and the standard for review of the evidence. Sufficiency refers to the amount or weight of the evidence found in the record to support a finding. In matters of teacher dismissal, courts typically uphold a decision to dismiss if there is more than a scintilla of evidence to support the action. The sufficiency standard for evidence is low because courts are

reluctant to substitute their judgment for that of the school district. Therefore, so long as there is evidence in the record to support the action, courts generally uphold the action.

The second type of evidentiary challenge, standard of review of the evidence, is somewhat different from the sufficiency of the evidence. There are three basic standards for review: (a) the reasonable person standard, which is evidence that must be so sufficient that no doubt would be reasonable after review of the evidence; (b) the clear and convincing standard, which is less than the reasonable person standard but more than a mere majority of the evidence; and (c) the lowest level for standard of review, preponderance of the evidence. A preponderance of the evidence is a majority standard – and it is the standard used by the courts in matters of teacher dismissal.

Table 8 presents an analysis of the case decisions by category and by reason of challenge. The frequencies presented in this table represent the prevailing party and the challenge presented to the court on appeal.

*(continued on next page)*



Table 8  
*Decisions by Category and Reasons for Challenge*

Category of Incompetence	Reasons for Challenge		
	Evidence	Due Process	Constitutional Issues
Inadequate preparation to teach	2/D --	1/D 3/T	-- --
Inadequate teaching methods	18/D 7/T	10/D 5/T	2/D 1/T
Adverse effect on on pupils	4/D 2/T	2/D --	-- --
Disability	3/D 1/T	-- --	1/D
Personal behavior	21/D 11/T	6/D 4/T	-- 2/T
Total by prevailing party	48/D 21/T	19/D 12/T	3/D 3/T
Combined total	69	31	6

*Note: D=District T=Teacher*

The analysis of information shows several interesting trends. First, 65% (69) of the total number of 106 cases were challenged primarily on evidentiary grounds, 30% (31) of the cases were challenged primarily on due process grounds, and only 5% (6) were challenged on constitutional grounds. Thus, the vast majority of cases were challenged primarily on evidentiary grounds. Given that courts are reluctant to substitute their judgment for that of the school district, it is not surprising that school districts prevailed in this category of evidence slightly more than two times over teachers. Challenges in the category of due process comprised 30% of the cases litigated at the appellate level. The decisions in this category fell out similar to that of evidence, with school districts prevailing on due process challenges almost two times over teachers. This trend suggests that when school districts provide all process that is due, the courts will affirm the decisions. Finally, only 5% of the challenges were predicated on

constitutional grounds. Although only a small number of cases (6) were litigated in this category, the trend here does not follow that of evidence and due process, with school districts and teachers prevailing in litigation the same amount of time.

It is interesting to observe that there are no noteworthy differences in the disaggregation of the information based pertaining to the legal challenges of appeal. Unlike the analysis of prevailing party by category, which presented remarkable differences between school districts and teachers – no remarkable difference was discovered among the three reasons for legal challenges, except for the category of constitutional issues. In the categories of evidence and due process, school districts prevailed twice as many times as teachers. In the category of constitutional issues, both school districts and teachers prevailed at the same frequency.

#### *Summary of Case Law Analysis*

In summary, the analysis of the case law by category of incompetence revealed some interesting results. Although hundreds of cases have been litigated in state and federal courts regarding the dismissal of tenured public teachers, only 25% of the dismissal law suits pertained to issues of incompetence (see p. 91 *General observations of case law data* for details). Findings clearly demonstrated that the frequency of cases has declined over time as evidenced by Table 5. Between 1983 and 1989, the average number of cases per litigated per year based upon incompetence was six. It does suggest that the cases for the 1980s could be higher; however, because this study was limited to the period of 1983-2003, data were not collected for the outstanding three years. The average number of cases for the 1990s demonstrated a slight decline as the decade averaged 5.5 cases per year. What is remarkable is that since 2000, only seven cases for

tenured teacher dismissal for incompetence have been reviewed through the courts. For the period of 2000-2003, the average number of cases per year is 1.75, suggesting a significant decline of cases for tenured teacher dismissal for incompetence over time.

#### *Analysis of Cases by Category*

Some interesting trends emerged through the analysis of cases by category of incompetence. For example, it is noteworthy almost 85% of the cases of incompetence for the period of 1983-2003 fell into two categories: inadequate teaching methods and personal behavior. Further, it is interesting that the category of personal behavior accounted for 42% of the cases of incompetence, and the category of inadequate teaching methods accounted for 41% of the cases for incompetence. This suggests that tenured teachers are dismissed for incompetence at virtually the same frequency for the two categories of incompetence.

Another remarkable trend pertains to the incidences of favorable court decisions for school districts versus teachers. School districts prevailed in cases litigated for incompetence 66% of the time whereas teachers prevailed 34% of the time. However, the data suggested that considerable variances existed in the percentage of favorable decisions for school districts and teachers when the data was analyzed by category. Table 7 demonstrates the varied difference between the prevailing parties by category through frequency and percentage. Only one category, inadequate preparation to teach, showed a virtual split in court decisions between school districts and teachers, otherwise, the pattern clearly illustrates the predominance of school districts in the judicial arena. Another interesting trend pertaining to the frequency of prevailing parties is that teachers are more likely to prevail in the federal courts over school districts. Thus, an analysis of

the seven federal cases identified for the study indicate that teachers prevailed in the federal courts 60% of the time whereas school districts prevailed only 40% of the time. This pattern is almost a reversal of the overall pattern established by the analysis of cases.

The analysis of cases by category of incompetence and category of legal challenge provided some unexpected results. The results indicated that challenges founded on evidentiary grounds occurred more often than any other category, and almost twice as often as due process challenges. Sixty-five percent of all legal challenges for teacher dismissal were based upon evidence, followed by due process at 30%. Constitutional challenges occurred relatively infrequently, comprising only 5% of all legal challenges over the period of 1983-2003.

What is interesting about the results from the analysis in this area is that there was virtually no difference between the prevailing party outcomes among the three categories of reasons for challenge. In two of the three categories of legal challenges; that is, school districts prevailed two times more often than teachers.

### *Phase 3 – Statutory and Case Law Comparison between Union and Non-union States*

Collective bargaining is a right that is generally provided through codified law. It is the process of labor negotiations for salaries, benefits, hours, working conditions and other work-related issues, between employers and representatives of organized employees. Although collective bargaining is allowed between public school teachers and school districts in a majority of states (38), 13 state codes prohibit public school teachers from engaging in the activity of collective negotiations: Alabama, Arizona, Arkansas, Georgia, Kentucky, Mississippi, Missouri, North Carolina, South Carolina, Texas, Virginia, West Virginia, and Wyoming. It is clear from the list that restrictions on

collective bargaining by public school teachers occur predominantly in the southern and southwestern regions of the country. Phase 3 of this study focused on the similarities and differences in dismissal-specific legislation and judicial decisions between collective bargaining, or *union states*, and right-to-work, or *non-union states*.

*Research Question 3.1*

*What are the major similarities and differences of state laws regarding teacher dismissal between collective bargaining states and right-to-work states?*

Research Question 3.1 basically sought to disaggregate the data found in Appendices C and D and reconstruct them into collective bargaining states and right-to-work states to examine similarities and differences among the states. The data categories used for Research Question 1.1 were employed again: tenure, specified grounds for dismissal, incompetence defined, due process, and remediation. The results of the analysis follow.

*Tenure.* The analysis of each state dismissal-specific code demonstrated that 87% of the laws were promulgated to particularly protect tenured teachers (Table 3). Table 9 displays the disaggregated information sorted between union and non-union states.

Table 9.  
*Tenure-Specific Dismissal Statutes by Union Status*

	Number of States	Tenure-Specific Statutes	
		Freq.	%
Union States	38	34	90%
Non-union States	13	10	77%

*Note: Freq.=Frequency cited in statute      %=Percentage of statutes*

With the exception of computing the percentage difference between union and non-union states, no further information was gleaned through this analysis.

*Specified grounds for dismissal.* Table 10 displays the aggregated information regarding specified grounds for dismissal between union and non-union states. This analysis presented more varied results. For example, non-union states showed a 5% advantage over union states with 10 or more specified grounds for dismissal and a 15% difference for statutes specifying two to nine grounds for dismissal. Of particular interest was the findings for states only specifying *cause*, *just cause*, or *sufficient cause*. Eleven state laws only cite *just cause* as a basis for dismissal. One hundred percent of state statutes that only state *just cause* as a basis for dismissal were union states.

Table 10  
*Summary of Specified Grounds for Dismissal by Union Status*

Number of Grounds per State	Union		Non-union	
	Freq.	%	Freq.	%
10 or more specified grounds	4	11%	2	16%
2-9 specified grounds	23	61%	10	77%
Just Cause	11	28%	0	--
No stated grounds for dismissal	0	--	1	7%
Total	38	100%	13	100%

*Note: Freq. = Frequency of states    % = Percentage of states*

The data clearly illustrate varied differences among the constructions of dismissal-specific statutes regarding specified grounds.

*Incompetence defined.* The results gleaned from the analysis of this category indicate that there is no difference between union states and non-union states regarding incompetence defined by state statute. Nine of the 38 union states (24%) and three of the 13 non-union states (23%) provide statutory guidelines, standards or definitions for incompetence in matters of tenured teacher dismissal. Virtually no difference exists between union and non-union states pertaining to statutorily defined incompetence. Table 11 presents the information regarding statutorily defined incompetence between all states,

union states and non-union states. Clearly, there is no difference here between union states, and non-union states.

Table 11

*Incompetence Defined by Statute by State Union Status as Compared to All States*

	Number of States	Incompetence Defined by Statute	
		Freq.	%
All States	51	12	24%
Union States	38	9	24%
Non-union States	13	3	23%

*Note: Freq.=Frequency of statutes %=Percentage of statutes*

A comprehensive discussion of the statutes was provided in Phase 1 of the analysis; however, it is worthy mentioning here that the only state statute that provides a definition for incompetence was a union state, South Dakota Codified Laws § 13-43-6.1.

*Due process and remediation.* Table 12 presents the information regarding due process and remediation between union and non-union state laws. The results are discussed below.

Table 12

*Due Process and Remediation Requirements in Union and Non-union States*

	Number of States	Due Process		Remediation	
		Freq.	%	Freq.	%
Union States	38	26	68%	5	13%
Non-union States	13	10	77%	3	23%

*Note: Freq.=Frequency of statutes %=Percentage of statutes*

The analysis of this category for union and non-union states revealed interesting results. Due process procedures are included in dismissal-specific laws in union states 68% of the time and in non-union dismissal specific statutes 77% of the time. Likewise, statutory

requirements for remediation appear in union codes 13% of the time and in non-union dismissal-specific statutes 23% of the time. Although the differences between the union statutes and non-union statutes may appear to be significant, it bears repeating that all states require due process either within the context of the dismissal-specific statutes or through ancillary laws. Moreover, whether included expressly within the respective state codes or not, remediation is generally required by the courts in matters of tenured teacher dismissal for incompetence if the actions or omissions of the teacher are matters that can be remediated.

### *Summary of Research Question 3.1*

The examination of the five categories showed some important trends. First, union states (38) have developed significantly more dismissal-specific statutes expressly for tenured teachers than non-union states (13). Thus, tenured teacher-specific dismissal statutes showed up approximately 12% more in union states than in non-union states, as shown in Table 9. This difference may be nothing more than coincidence due to each state's unique legislative system or it may be attributed to state's union status. No evidence to support either assertion was discovered through the data analysis.

Second, marked trends were identified in statutory specified grounds that merit discussion (Table 10). Although Nevada Revised Statutes § 391-312 (union) provides the most statutorily defined grounds for tenured teacher dismissal (19), North Carolina General Statutes § 115C-325 (non-union) provides for almost as many independent grounds for dismissal (16). Another issue of particular interest is that 11 union states merely require a showing of just cause, leaving the validity of grounds for dismissal to school districts or the courts through *stare decisis*. Conversely, not one non-union



dismissal-specific statute relies solely upon just cause for the dismissal of tenured personnel. The results of this category are most likely not coincidence but have a direct relationship to the union status of the various states. The marked difference in this subcategory is perhaps the most remarkable finding through the analysis of this research question. Clearly, the emergent trend in this subcategory is that non-union states provide specified grounds for dismissal more often than union states.

Third, another interesting similarity between union dismissal-specific statutes and their non-union counterparts is the mirror image between union states and non-union states regarding incompetence guidelines, standards, and definitions. Thus, 24% of both union and non-union state dismissal-specific statutes have attempted to provide guidance to school districts in matters of tenured teacher dismissal for incompetence. This finding compares with the information gleaned from all states. The vast majority of statutes require documented evidence through performance evaluation over time in order to prove incompetent performance. Michigan Compiled Laws Annotated § 38.101 (union) does not require documented evaluations, but rather requires that any dismissal based upon incompetence must include evidence that demonstrates an adverse effect on students. This requirement places a difficult burden of proof on the part of the school district.

Fourth, remediation requirements were found more often in non-union state dismissal-specific statutes than in their union counterparts. An obvious question would be, why require remediation by statute when courts typically require remediation in matters of incompetence? It may be required by state law to ensure that school districts follow a set procedure and afford remediation to thwart challenges to dismissal. It is of particular interest to note that, even though only five union states require remediation,

Florida Statutes § 1012.33 requires an intensive one-year remediation period before a school district can move for dismissal. Likewise, another union state code, Illinois Compiled Statutes Annotated § 105 ILCS 5/34-85, is the only state code that provides a test to determine if the actions or omissions of the tenured teacher are, in fact, remediable. While remediation may be included more often in non-union dismissal-specific statutes, clearly the union laws provide a more definitive process for remediation.

### *Research Question 3.2*

*Is there a relationship a between the disposition of law suits and a state's collective bargaining status?*

The relationship between the disposition of law suits and a state's collective bargaining status was determined through three separate analyses. The first analysis involved examining the number of teachers over time between union and non-union states to determine if there were significant variances in the populations (Appendix C) by using an ANOVA. Two-tailed tests were used to verify statistical significance at the .05 level. The second analysis entailed a review of the number of cases over time to learn whether significant variances exist in the number of cases between union and non-union states. This analysis was performed using a t-test of independent samples and chi-square. The final analysis employed a t-test of independent samples to establish statistical significance between the prevailing parties, that is, teachers and school districts, in union and non-union states from 1983-2001. In all cases, the correlations were not statistically significant, as reported in the following discussion.

*Analysis of the variance.* The information in the database (Appendix C) was reformatted to assign values to union and non-union states for proper sorting. It should be

noted that the teacher population data obtained from the *Digest of Educational Statistics* was only current through 2001, thus posing a potential threat for the initial analysis. A one-factor ANOVA was performed to compute the differences in teacher populations between union and non-union states for the period of 1983-2001 (19 years). The independent variable was the number of union and non-union states, and the dependent variable was the number of teachers per year. The results of ANOVA indicated there was no significant difference ( $p < .05$ ) in the number of teachers between union and non-union states for the time period of 1983-2001. Therefore, further analysis on this issue was neither necessary nor relevant to the remaining analyses. Table 13 presents the ANOVA results.

Table 13

*Analysis of Variance of Number of Teachers between Union and Non-Union States from 1983-2001*

ONE FACTOR Analysis of Variance					
Variable NUMBER OF TEACHERS BETWEEN 1983-2001					
By Variable NUMBER OF UNION AND NON-UNION STATES					
Source	D.F.	Sum of Squares	Mean Squares	F Ratio	F Probability
Between Groups	1	14306608043	14306608043	.291	.592
Within Groups	18	1371547986	76197110.333		
Column Total	19	15678156029			
Levene's Test for Equality of Variances					
F	df1	df2	2-tail Sig.		
1.222	1	18	.274		

*Analysis of Cases between Union and Non-union States.* The comparison of cases between union and non-union states required two statistical tests to determine whether significant variances existed between the two variables. First, the data in Appendix C was re-formatted to ensure that all data were assigned a value for computation, thus eliminating the potential for bias in instances where no data was present by state or by year. Next, a computation to determine the mean number of cases for each variable was carried out. The group statistics in Table 14 illustrate the mean number of cases for union and non-union states. It is interesting to note that the standard deviation for the mean number of cases for non-union states is higher than the mean and suggests significant variance within the variable. Both union and non-union states average two cases per year from 1983-2003.

Table 14

*Analysis of Mean Number of Cases over Time Between Union and Non-union States*

State Status	Number of States	Mean Number Of Cases	Standard Deviation	Standard Error Mean
Union	38	2.02	2.01	.32
Non-union	13	2.23	2.42	.67

A t-test of independent samples was then employed to examine whether there were significant variances between the variable means. The results in Table 15 indicate that there was no significant difference ( $p < .05$ ) for the mean number of cases for union and non-union states over time. This lack of significance may be due, in part, to the low incidence of cases (approximately two per year) over time.

Table 15  
*Analysis of Equality of Means between Union and Non-union States*

Cases	t-test for Equality of Means			
	t	df	Sig. (2-tailed)	Mean Difference
Equal variances assumed	-.299	49	.766	-.20
Equal variances not assumed	-.274	18.06	.787	-.20

A second analysis, using chi-square was performed to test the relationship between the differential number of cases over time between union and non-union states. Statistical significance was set at the .05 level. Table 16 shows  $p = .613$  which is more than .05 and means the union status of the state (independent variable) had no observable effect on the number of cases (dependent variable).

Table 16  
*Chi-square Analysis of Cases over Time Between Union and Non-union States*

Independent Variable: Union Status of the States	Union	Non-union	Totals
No cases reported between 1983-2003	9 23.7%	4 30.8%	13 25.5%
Some cases reported between 1983-2003	29 76.3%	9 69.2%	38 74.5%
Totals	38 100%	13 100%	51 100%

$N = 51$        $Chi-square = .256$        $df = 1$        $p = .613$

It should be noted that a total of 13 states examined reported no cases over the 21-year period studied, 9 union states and 4 non-union states. Therefore, to cure any bias created by the absence of cases in both union and non-union states, the data were conditioned to eliminate the states where no cases were reported and a chi-square was

again performed to identify significant differences. The results of the second chi-square indicated no significant differences in the percentage of states having no cases at all in both union and non-union states.

*Analysis of case outcomes.* The final analysis, a t-test of independent samples was conducted to establish statistical significance vis-à-vis the percentage of case outcomes favorable to teachers in litigation between union and non-union states. Table 17 shows the mean number of case outcomes favorable to teachers compared to the mean number of total cases for union and non-union states. This table shows that teachers prevail in both union and non-union states in 36% of the cases. The statistical findings also illustrate that there is no statistical difference in the percentage when the data are conditioned for no reported cases. When conditioned, teachers prevail 32% of the time. These results are consistent with the findings in Phase 2 (Table 7) where teachers prevailed 34% in all cases.

Table 17  
*Analysis of Mean for Outcomes Favorable to Teachers*

	Number of States	Minimum Number of Cases	Maximum Number of Cases	Mean	Standard Deviation
All Cases	51	0	7	2.07	2.10
Teacher as Prevailing Party	51	0	3	.66	.88

The results of the t-test follow. Statistical significance for this test was set at the .05 level. The results presented in Table 18 show no significant difference in the percentage of outcomes favorable to teachers ( $p < .05$ ) between union and non-union

states for the period of 1983-2003. Therefore, there is no significant difference in the percentage of outcomes favorable to school districts.

Table 18

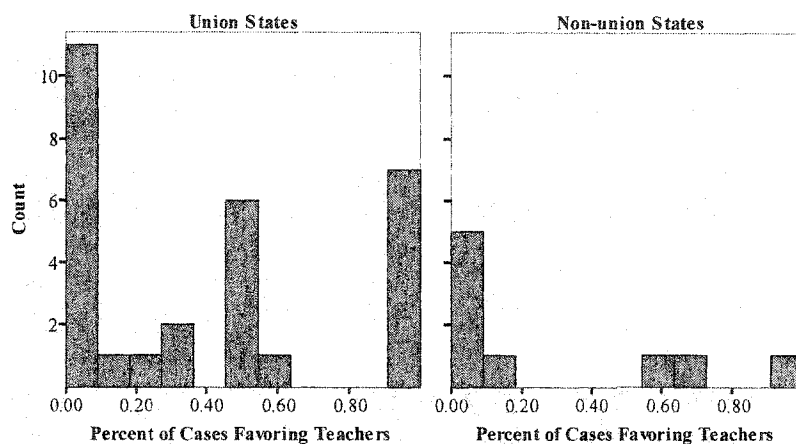
*Analysis of Case Outcomes Favorable to Teachers between Union and Non-union States*

	t-test for Equality of Means			
	t	df	Sig. (2-tailed)	Mean Difference
Equal variances assumed	.865	36	.393	.13
Equal variances not assumed	.885	13.866	.391	.13
Levene's Test for Equality of Variance				
	F	df	Sig.	
	.086	36	.772	

Figure 1 shows histograms which compare the trends for the prevailing party between union and non-union states over time. Clearly, there is a similar trend between union and non-union states over time. Although the histograms are not mirror images of one another, this data clearly supports the findings of the absence of a significant relationship between the differential number of cases and the differential outcomes over time between union and non-union states.

*(continued on next page)*

Figure 1 Histograms of Prevailing Party over Time between Union and Non-union States



### *Summary of Trends for Quantitative Analyses*

The quantitative analysis of the case law data yielded some interesting and surprising results. A relationship was expected between the number of cases and the prevailing party between union and non-union states. That is, union states would have a higher average number of cases per year and the outcomes of those cases would favor teachers more frequently. The reality, neither of these analyses showed a positive relationship. Moreover, the average total number of cases over time was 2.07 per year. Specifically, the average number of cases in union states over time was 2.06 per year compared to 2.23 cases per year for non-union states during the same period of time. No significant differences were discovered for the incidences of cases between union and non-union states.

Likewise, the analysis of the data failed to demonstrate a positive relationship between the prevailing party and states' union status. Teachers prevailed in an average of 36% of the total cases overall (32% when the data were conditioned to eliminate bias), school districts prevailed in an average of 64% of the cases (68% when the data were



conditioned to eliminate bias). The absence of a positive relationship indicates that there is no significant difference in the outcomes of law suits between union and non-union states.

## CHAPTER 5: CONCLUSIONS

I wanted a perfect ending . . . Now I've learned the hard way, that some poems don't rhyme, and some stories don't have a clear beginning, middle, and end. Life is about not knowing, having to change, taking the moment and making the best of it, without knowing what is going to happen next. Delicious ambiguity.

-- Gilda Radner, 1946-1989

## Conclusions

We *know* good teaching matters. We *know* that good teachers have “the ability to make a difference in students’ lives” (Stronge & Tucker, 2000, p. 1). We *know* we have empirical evidence to show that good teachers have a significant impact on student learning (Cawelti, 1999; Johnston, 1999; Sanders & Horn, 1998; Sanders & Rivers, 1996; Schalock & Schalock, 1993; Stronge & Tucker, 2000; Wright et al., 1997). And, we *know* that teachers who are “certified in the subjects they teach” have enjoyed greater levels of student performance than those teachers who are not certified (Stronge & Tucker, 2000, p. 2).

Teacher accountability and quality of instruction are issues that are bound to remain the focus of educational reform efforts in the future. Some states have responded to the calls for increased teacher competence by enacting legislation that either identifies or defines incompetence or provides standards and guidelines for assessing incompetent performance. Despite the emphasis of reform efforts on teaching accountability and quality of instruction, however, research shows that 5-15% of all classroom teachers are marginal or incompetent (Tucker, 1997; U.S. Department of Education, 1993). The disparity between the estimated numbers of incompetent classroom teachers and the

numbers of teachers dismissed annually for incompetence is both alarming and staggering in light of the detrimental effects incompetent teachers have on student achievement, and therefore lifelong student outcomes.

The concept of teacher *incompetence* is broad and envelopes preparation, teaching methods, pupil impact, disability as well as personal behavior. It is because this concept is so illusive that few states have attempted to define incompetence through legislation. And, for this reason, the courts will continue to serve as the battleground regarding what behaviors, acts, and omissions constitute teacher incompetence.

In 1964, the United States Supreme Court had been plagued with a series of obscenity cases for review. The Court had been reluctant to define obscenity, because it encompassed such a wide range of thoughts, concepts and ideas. Then Supreme Court Justice Potter Stewart offered the best definition: "I know it when I see it." Incompetence is a lot like obscenity, hard to define, but easy to see. Perhaps this is why most states forego defining incompetence and let the evidence speak for itself. The following sections address Phase 1 of the content analysis conducted as part of this study

#### Phase 1: State Statutory Law

*The powers not delegated to the U.S. Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.*

*--Amendment X, Constitution of the United States*

The Framers of the U.S. Constitution entrusted each state with the enterprise of public education. To that end, every state has promulgated laws that provide guidance for public schools, including laws that address the dismissal of tenured public school teachers. It is not surprising that the collection of 51 dismissal-specific state laws to

answer Research Question 1.1 and 1.2 revealed the unique history, values, and needs of the individual states. Yet, as diverse as the states and their laws are, the jurisdictions operate within frameworks that display striking similarities to one another.

### *Tenure*

Every state and the District of Columbia recognize some form of tenure and provide teachers with vested property rights in their job. Some states have limited tenure rights through legislation, but are still legally bound to provide minimal due process requirements in the event of disciplinary actions up to, and including dismissal. Almost 90% of the states provide dismissal laws specifically for teachers who have successfully completed a term of probation and demonstrated a level of competence specified by state and local standards. Whether it is called tenure, continuing contract, permanent teacher, professional teacher, or master teacher, for example, most states provide some level of permanent status for public school teachers.

A common misconception is that tenure precludes school districts from effectively dealing with teacher incompetence by protecting teachers through due process requirements. The literature suggests that some administrators believe due process safeguards shield all tenured teachers from dismissal or other disciplinary action. However, the case law demonstrates that when all process that is due is afforded to a teacher and there is some evidence to support the actions on the part of the school district, the courts tend to uphold the decision of the school districts by a 2:1 ratio. Therefore, tenure serves as a barrier for improper dismissal because it provides teachers with due process safeguards; however, tenure does not prevent a tenured teacher from being dismissed.

*Specified Grounds for Dismissal and Incompetence*

Almost 80% of all states have enacted legislation that defines specific legal grounds for the dismissal of tenured teaching personnel. The language of the laws range from a broad general statement of “just cause” to highly individualized grounds that require little interpretation. Only the state of Wyoming fails to provide statutory grounds for dismissal and leaves the decisions for what constitutes just cause to school districts and the courts.

Twenty-four states provide for the dismissal of tenured teachers for incompetence. This issue is particularly fascinating in light of educational reform efforts of the last 20 years that are focused on teacher accountability and quality of instruction. Contemporary reform initiatives have had some impact on state lawmakers, as the legislative notes of some state codes demonstrate that 12 states have attempted to define incompetence by law. The common denominator among the state laws is the reliance on evaluation data to support an action for tenured teacher dismissal based upon incompetence. The legally defined characterization of incompetency is short-sighted in most state codes in that the laws focus only on classroom or instructional deficiencies to demonstrate incompetent behavior. One only need look to the case law over the past 21 years to see that incompetence has been defined to include behaviors, actions and omissions unrelated to classroom performance. More than 40% of all cases litigated over the past 21 years were incompetence based on inappropriate personal behavior. Indeed, it is worthwhile and important for states to define incompetence through legislation; however, we must be mindful that incompetence is more than just a teacher’s

performance in the classroom. Inappropriate behaviors can and do impede a teacher's ability to be effective in the classroom, among their peers and within the community.

#### *Due Process and Remediation*

Due process and remediation are essential elements in the process for dismissal of incompetent tenured teachers. Due process is a procedure that is designed to guarantee fairness and equity in matters where school districts actions can impede or extinguish a vested property interest in one's position. Every state provides minimal due process requirements in the event of dismissal of tenured teaching personnel which include notice of the intent to dismiss, specified statement of the grounds for the action so that the teacher may prepare an adequate defense, a fair and impartial hearing, an opportunity to rebut evidence, and in actions for dismissal for incompetence, an opportunity for improvement, that is, remediation.

Due process is not a barrier that precludes the dismissal of teachers; rather it protects the teacher and the school district by ensuring that teaching personnel are treated fairly and equitably. In fact, courts will generally uphold dismissal actions with minimal evidence when appropriate due process has been provided. Most states have codified due process requirements within the text of the dismissal code or in ancillary law to make certain that both school districts and teachers have notice of the requirements. Due process is the most important procedural element to satisfy in any dismissal proceeding.

It is said that remediation is a due process add-on, required prior to dismissal for incompetence or inadequate performance to allow the individual an opportunity to improve. Virtually every court will require evidence of remediation in those instances regardless whether it is required by state law. However, not all incompetent behavior is

remediable. One state, Illinois has developed legal standards for determining whether incompetent or inadequate performance is remediable; however, most states leave the issue to school districts, and ultimately the courts.

### *Conclusion*

In conclusion, state laws regarding tenured teacher dismissal are driven by unique histories, values, and community standards. They are reflective of the goals of society and provide a basis for the fair and equitable treatment of all teachers, particularly those who have attained tenure rights. Although there are definite differences in the specificity of each state's laws, it is clear from the legislative analysis that most states actively seek to protect teachers from arbitrary and capricious dismissal actions by school districts. Conversely, it is also clear that the legislative intent in most states has been to provide school districts with standards and guidelines that can withstand the rigor of court scrutiny. Clearly, the laws in all states balance the competing interests of the school district to employ competent professionals as well as the teachers to be free from arbitrary employment decisions and abuse of discretion.

### Phase 2: Federal and State Case Law

*Laws are like sausages. It's better not to see them being made.*

*--Otto von Bismarck*

### *General Observations*

The incidences of appellate law suits (106) founded on teacher dismissal for incompetence comprised about 25% of the total body of case law for tenured teacher dismissal in general. This was not surprising, given U.S. Department of Education statistics indicating that less than one half of one percent of all incompetent teachers are

dismissed on an annual basis. Perhaps the lack of case law during the period of 1983-2003 is the most significant finding of this study. It tends to support the 1993 U.S. Department of Education report which found that less than one half of one percent of the incompetent tenured teachers in the classroom are dismissed on an annual basis.

In looking at the aggregate body of case law identified for this study, it was also surprising to find that the amount of litigation over time has diminished rather than remaining static or even increasing. It appears that the national emphasis on teacher accountability and quality of instruction has had little impact on how public education addresses teacher incompetence nationwide.

There are several possible explanations for this finding which merit discussion. First, the decrease in tenured teacher dismissal may be attributed to the fact that many administrators have the inaccurate perception that it is difficult, if not impossible, to dismiss tenured teachers. This is due, in part, to the tremendous amount of time, energy, and resources (personal and financial) that are required for building a case that can withstand the rigors of court scrutiny. Yet, the trend in case dispositions over the 21 year period studied clearly points to the fact that school districts prevail in tenured teacher dismissal for incompetence by a 2:1 ratio over teachers. The courts have consistently refused to substitute their judgment for that of school districts provided that due process requirements are met and that some evidence exists on the record to support the dismissal action. This finding strongly supports the literature.

Another possible explanation for this finding is the impact of a diminishing supply of teachers nationwide in an era where the demand for teachers has been steadily increasing. School-based administrators may be reluctant to terminate marginal or poor



performing teachers because of the difficulty in finding qualified, competent replacements. This issue is discussed in more detail in a subsequent section.

Finally, the layered due process procedures of union states (38) may have a significant impact on the actual number of appealed cases for tenured teacher dismissal for incompetence. Most union states provide multi-faceted appeals procedures at the local and state level before an appeal may be made to the courts for final resolution. Likewise, many collective bargaining agreements have provisions for arbitration on personnel matters prior to resorting to the courts; therefore, it is plausible that many cases on appeal in union states may have been resolved through arbitration and, thus, never filed in state or federal courts. Generally, a record of arbitration proceedings is not public information and, therefore, not readily available for research or analysis.

#### *Five Areas of Incompetence*

This study relied on earlier studies by Lewis (1998) and Shackleford (1982) that identified five overarching categories of incompetence. For the period of 1983-2003, more than 80% of the cases of tenured teacher dismissal for incompetence were categorized in two areas: inadequate teaching methods, and personal behavior. This is an interesting, but not surprising finding.

Inadequate teaching methods are easy to identify and document through regular evaluations and observations based upon articulated performance standards. The evaluation process provides a longitudinal summary of performance over time and generally is not predicated on isolated incidences. Moreover, the evaluation process provides the administrator with an opportunity to document deficiencies, and provide the teacher with notice of areas requiring improvement. If conducted appropriately,

evaluation methods can provide the requisite level of evidence necessary for withstanding the rigors of court scrutiny.

Conversely, the category of personal behavior is somewhat more difficult to identify. Personal behavior that rises to the level of incompetence can be founded on isolated incidents, but is generally determined by a pattern of behavior over time. One problem that was encountered in this area of the data analysis was the issue of overlap between personal behavior that constituted incompetence versus personal behavior that appeared to fall within the other grounds for dismissal, such as immorality or insubordination. Unless specifically stated in law, personal behavior can, and frequently does, fall into multiple grounds that provide a legal basis for dismissal, including incompetence.

#### *Prevailing Party*

The review of prevailing parties demonstrated that overall, school districts succeed in appellate litigation by a 2:1 ratio over teachers, a finding that is both interesting and significant. This finding is significant because it is contradictory to the commonly held belief by school administrators and others that it is difficult, if not impossible, to dismiss tenured teachers for incompetence. What is perhaps even more significant is that when data regarding prevailing parties in federal court cases (7) were extrapolated from all cases (106), the results were exactly opposite, with teachers prevailing by almost a 2:1 ratio over school districts. It is important to remember though, that over 21 years, only 7 cases were litigated as either original jurisdiction matters or appellate review matters through the federal courts. The lack of federal cases during the period of 1983-2003 is indicative of the tremendous costs involved with pursuing review

at the federal courts level as well as the vast amount of time involved in such actions. It can take many years to exhaust appeals in the federal system. This is due to vast number of cases filed in each circuit, as well as the fact that each circuit serves multiple states. Conversely, state court appeals tend to be resolved in a more timely fashion. Moreover, the small number of cases makes it perhaps more difficult to generalize the conclusion. Nevertheless, teachers appear to have the advantage when appealing dismissals for incompetence in the federal courts.

### *Conclusion*

In summary, there are three elements that are required to successfully dismiss a tenured teacher for incompetence and withstand the rigors of court scrutiny. First, school districts must provide teachers with actual notice of deficient or substandard performance or inappropriate personal behavior. This allows the teacher to be aware of problems that exist, and also provide an opportunity to improve. The next element in the process is for school districts to provide remediation, if in fact the actions or omissions are remediable. The final element is to provide all process that is due, according to state code and school district guidelines. If these three basic elements are met, courts will generally not substitute their judgment for that of the school district. Indeed, overall courts have ruled in favor of school divisions, upholding dismissals in two-thirds of the cases reviewed for the period of 1983-2003.

### Phase 3: Statutory and Case Law Comparison between Union and Non-union States

*In fact, a fundamental interdependence exists between the personal right to liberty and the personal right to property.*

*--Potter Stewart*

The comparison of statutory and case law between union and non-union states presented interesting and disappointing findings. Nevertheless, the findings serve to dispel the perception that tenured teachers enjoy greater protection from dismissal actions in union states than in non-union states.

#### *State Statutory Law*

As stated in the Phase 1 conclusion section, state statutory law is reflective of the unique history, values, and needs of the respective states. There were few notable trends discovered that distinguished union from non-union states in terms of the organization or specificity of state statutes. For example, Nevada, a union state provides 19 specific grounds for tenured teacher dismissal, while North Carolina, a non-union state provides 16 specific grounds for dismissal. Likewise, no difference in the frequency of statutorily defined incompetence between union and non-union state laws was identified. The most notable trend discovered was that the 11 state codes which cited “just cause” as the only ground for dismissal were all in union states. Hence, union states and non-union states do not follow any particular pattern or trend in the overall development and promulgation of dismissal-specific statutes.

*Federal and State Case Law*

Research Question 3.2 attempted to determine if a relationship exists between the union statuses of states with regard to the differential number of cases litigated during the period of 1983-2003, as well as the prevailing party. It was expected that more litigation would occur in union states versus non-union states and that teachers would prevail more often more often in union states. Yet, the results of the quantitative analyses indicate that there was no significant difference in either category. These results suggest several things. Most importantly, the lack of significant differences between union and non-union states suggest that courts are consistent in the disposition of dismissal-specific lawsuits nationwide. The results further support the assertions within the literature that courts are reluctant to substitute their judgment for that of a school district. Collective bargaining has no influence over the judicial review of tenured teacher dismissal for incompetence. Further, teachers protected through collective bargaining do not appear to enjoy greater success in prevailing in lawsuits or enjoy more protections via the courts than their non-union counterparts; however, union states generally provide for a layered approach to due process, providing multiple appeal levels before resorting to the courts for disposition. In some states, negotiated agreements provide for arbitration prior to seeking redress in the courts. These alternative dispute resolution processes may have a significant impact on the actual number of dismissals that were appealed in union states as well as the dispositions of those cases vis-à-vis the prevailing party.

*Conclusion*

In summary, the analysis of statutory and case law in union and non-union states did not discover any remarkable differences between the two jurisdictions. However, the

data analysis did suggest that there are variances within each jurisdiction that may be of interest for future review. State governments are unique, and while collective bargaining can influence the political process in terms of the development of state laws pertaining to tenured teacher dismissal, the study was not successful in linking the structure or specificity of statutes with the state's union status.

Moreover, the correlation analyses failed to demonstrate any significant differences in the number of cases litigated for the period of 1983-2003. Likewise, the analyses were unsuccessful in demonstrating a relationship between a state's union status and the percentage of favorable decisions for either teachers or school districts. State legislatures and courts will no doubt continue to draft legislation and interpret laws in a manner consistent with the history, values and needs of their individual state, irrespective of union status.

#### Limitations and Cautions

*If I had only known, I would have called a locksmith.*

*--Albert Einstein*

#### *Legal Research Issues*

Researching statutes and case law can be challenging for a number of reasons, making it a difficult endeavor even for an experienced attorney knowledgeable in legal research tools. These challenges present implications for future educational law research and are worthy of discussion.

*Statutory law.* The organization, structure and language of state laws are decidedly different, which presents a major stumbling block for identifying similar legislation among the states. Electronic databases such as Lexis/Nexis, help in this

regard as they provide a means to thoroughly search state statutes in a systematic manner, using a variety of descriptors. Therefore, the researcher must be familiar with multiple terms that have similar meaning. For example, although some form of tenure is typically provided for in each state code, some states have intentionally removed the term *tenure* from statutes and have substituted it with a number of different descriptors, including but not limited to, permanent teacher, career teacher, professional teacher, continuing contract teacher, and non-probationary teacher. Because of the tremendous variability in the specific language used by each state, multiple statute searches are required to identify similar laws on the same topic.

Another aspect of statutory review that is problematic is the presence or absence of legislative notes or histories within the statutes. Depending on the jurisdiction and the organization of the respective codes, legislative notes and histories are not always included within the laws. This is unfortunate because legislative notes are a valuable research tool in reviewing statutes, as they may provide information that assists with including or excluding laws for review. For example, Ohio Revised Code § 3319.16 does not expressly state within the text of the statute that the grounds for dismissal and procedures included in the law are exclusively for tenured or continuing contract teachers only. It was only through the review of the case notes and legislative history that it was discovered that the law pertains to tenured teachers only. Likewise, it was the legislative notes in Michigan Compiled Laws Annotated § 38.101 that acknowledged that any dismissal of a tenured teacher for incompetence must include evidence of adverse effects on students in order to be sustained. Additionally, it was the legislative history of Wyoming Statutes Annotated § 21-7-106 that specifically stated that the absence of

grounds for dismissal within the statute was specifically intended by the legislature to provide school districts with the flexibility for determining grounds for dismissal on a case-by-case basis. These examples represent the value of histories and legislative notes to aid in the research of state statutes.

*Case law.* The ability to identify case law presents another set of similar problems. Since dismissal is generally predicated on the language of state law, multiple searches using a variety of descriptors must be used to find cases with similar content. Using a database such as Lexis/Nexis aids the researcher to a certain extent; however, Lexis/Nexis has not yet established a “key system” similar to the Westlaw system that groups cases based on particular topics. Westlaw is generally not accessible to the public without a paid subscription; therefore, access is limited. Although problematic, these limitations are not insurmountable, but require diligence on the part of the researcher to ensure that a thorough and complete search is conducted. As technology advances in the future, the limitations as described herein should diminish, thus allowing for easily accessible legal information.

#### Implications

*Let us think of education as the means of developing our greatest abilities, because in each of us there is a private hope and dream which, fulfilled, can be translated into benefit for everyone and greater strength for our nation.*

*--John F. Kennedy*

#### *National Education Reform Efforts*

For over 20 years, teacher accountability and quality of instruction have dominated the national education reform agenda. Since 1983, the federal government has



enacted a string of legislation designed to enhance student outcomes and improve the quality of teaching professionals. Although noble in intent, this intervention is viewed by some, like Elmore (2002) as an interference with state rights. This interference has been viewed by some states, including Virginia, as a diminution of state power and authority over the enterprise of education. Federal and state governments must work toward finding common ground to promote policy and legislation that will serve to continually improve the quality of education nationally.

The decline of the number of appellate cases pertaining to tenured teacher incompetence suggests that recent reform efforts have not been an effective mechanism to improve the quality of teaching professional over time. If the number of cases litigated is indicative of a trend, reform efforts appear to have had a negative effect on the rate of dismissal for incompetence over time. The impact of the No Child Left Behind Act (2001) is yet to be determined, as the law has been in a state of continual flux since its promulgation.

State lawmakers must also do their part to ensure all children have access to competent and caring teachers. Developing laws that define incompetence and provide a legal basis for the dismissal of incompetence teachers is one method for meeting that objective. Currently, only 24 states provide statutory grounds for incompetency specifically and only twelve of those states have attempted to provide school districts with an operational definition that provides standards and guidelines. The lack of statutorily defined standards for determining incompetency will continue to serve as a barrier for dismissal of teachers who are marginal and/or poor performing in the

classroom. Despite the valiant efforts of education reform, the initiatives have realized little change in how school districts respond to teacher incompetence over time.

#### *Supply and Demand of Teaching Personnel*

Since 1983, the average number of appellate cases nationally of tenured teacher dismissal for incompetence has dropped dramatically from approximately 6 cases per year to 1.75 cases per year. This marked decline may be attributed in whole or in part to the shortage of teaching professionals nationwide, which began to affect public education by the mid-1990s. The steadily increasing number of tenured teachers eligible for retirement and normal attrition, combined with a decline in the enrollments in teacher preparation programs has significantly depleted the supply of qualified teachers, especially in the areas of math, science, world languages and special education. Some states, like Virginia, have endeavored to assuage the problem by providing retirement-eligible teachers with monetary incentives for staying three to five years beyond their retirement eligibility, thus reducing the impact of the graying workforce. Despite these efforts the supply of, and the demand for, qualified teachers remains a quandary that school districts must respond to now and plan for in the future.

School districts struggle to balance the needs of mandates like No Child Left Behind (2001) and its requirement for "highly qualified" teaching personnel against the harsh reality of dwindling pools of qualified candidates. Hence, many school districts are forced not only to retain marginal or poor performing tenured teachers, but also to grant tenure to probationary teachers who might otherwise be dismissed if the pool of qualified candidates were plentiful. The teacher shortage has created a quagmire for public

education that has the potential to actually increase the numbers of incompetent or poor performing tenured teachers in the classroom nationally for many years to come.

### *Settling for Incompetence*

Litigation is a costly endeavor, particularly for school districts. It is a lengthy process, and in some instances appeals can go on for years. Legal costs, including court and attorney fees, depositions, witnesses and such can mount into hundreds of thousands of dollars over time. For this reason, most, if not all districts acquire insurance to protect and defend their interests in litigation arising from personnel matters – specifically dismissal matters. Insurers play a prominent role in the disposition of cases, and will seek to minimize their financial exposure, regardless of the merits of the case. Simply stated, insurers can and will force school districts to settle in matters of tenured teacher dismissal for incompetence. This is true even if the case can withstand the rigors of court scrutiny and in all likelihood, the school district would prevail. Since the insurer is ultimately responsible for the costs incurred in litigation, settlement is perhaps the most effective means to diminish the costs and dispose of cases in a timely manner. Moreover, judges tend to encourage settlement as well, as it reduces the burden of their voluminous case dockets. While this practice indeed contributes to fiscal responsibility and judicial expediency, regrettably it does not always make certain that justice is served.

## Recommendations

*Perseverance is a great element of success. If you only knock long enough and loud enough at the gate, you are sure to wake somebody up.*

*--Henry Wadsworth Longfellow*

### *Teacher Preparation Programs*

A first recommendation that clearly emerges from this research is the need to address teacher incompetency in a proactive fashion, beginning with teacher preparation programs. Throughout the course of this study, the researcher was continually amazed at the total lack of basic instructional skills of experienced, tenured teachers evidenced in the cases. Inadequate teaching methods, specifically inadequate planning and coordination of instruction and classroom discipline comprised more than 40% of the total number of cases examined.

*Traditional teacher preparation programs.* Perhaps it is time to examine the breadth and depth of academic experiences and practical training provided to pre-service teachers to determine if the programs are deficient in the methods used to prepare them for the challenges presented in the classroom. If we are proactive and address these issues before pre-service teachers begin their careers, we have the ability to significantly reduce the numbers of teachers who are inadequate in their classroom performance. Indeed, it is the obligation of teacher preparation programs, like every other professional education program, to provide meaningful academic experiences enriched with practical opportunities that develop strong technical skills that enable them to perform at a level of competence demanded by the public and school districts.

*Career switcher programs.* In an effort to address the teacher shortage nationwide, most states have developed “career switcher” programs that depart from traditional teacher preparation methods. These programs train individuals who have earned baccalaureate degrees in other fields of study or disciplines, through a shortened curriculum. Although noble in intent, these programs provide considerably *less* academic and practical experiences than traditional teacher preparation programs. This has the potential to exacerbate the existing problems in the area of inadequate teaching methods as evidenced by a preponderance of the case law.

Moreover, traditional teacher preparation programs, as well as career switcher programs need to focus on matter of teacher disposition, that is, whether the pre-service teacher is personally suited to the profession of teachers. Over 40% of teachers terminated for incompetence in this study were dismissed on the basis of inappropriate personal behavior. An alarming number of those individuals had taken inappropriate physical liberties with students. Teacher preparation programs need to devote more time to discussions pertaining to the ethics of the profession and work with other disciplines to find tools that can assist with identifying personal characteristics that may not be well suited to the profession of education. Preparing competent, caring teaching professionals should be the goal of every teacher preparation program. We cannot continue to allow marginal performers to pass through our halls.

#### *Public School Administrators*

A second recommendation that emerges from this research is that public school administrators must not be afraid to pursue dismissal of tenured teachers based on incompetence because of inaccurate perceptions that due process makes it impossible to

prevail. However, it will not be easy to overcome these erroneous perceptions because most administrators lack an adequate understanding of what tenure really is. Many administrators view tenure as an insurmountable obstacle that bars dismissal of tenured teachers through due process requirements. Due process merely provides a framework to ensure that teachers are treated in a fair and equitable manner and are not subject to improper dismissal actions. The findings included in this study demonstrated that due process requirements do not preclude or impede a school district's ability to dismiss on the basis of incompetence. But, because incompetence is usually not founded on one incident but rather, develops over time, administrators must make the effort to document concerns and communicate with teachers. Principals are the instructional leaders in their schools, and are responsible for the continued opportunities for teacher growth and development that includes identifying deficiencies and providing opportunities to improve. It is imperative that principals do not allow marginal or poor performing teachers to slip under the radar. Yes, it takes an extraordinary amount of time and resources to document deficiencies and work with teachers to improve their skills. But isn't that what teaching is all about?

#### *Educational Leadership Programs*

One final recommendation that plainly emerges from the research addresses the role of educational leadership programs and disconnect between theory and practice in public school administration. Continuing legal mandates for teacher accountability and quality of instruction from federal, state, and local governments place tremendous burdens and responsibilities on school-based administrators. They are required to serve their schools as instructional leaders, human resource managers, financial planners,

facilities and maintenance experts, public relations managers and office administrators – in addition to participating in school, district and community activities. While educational administration programs provide curriculum that broadly address the required functions of the job, they do not provide the depth of knowledge in any area necessary for achieving even a minimal level of competency in any given non-instructional area. The problem is that most educational leadership programs focus on the minimal curricular prerequisites necessary to achieve or maintain the accreditation of the institution, in addition to meeting minimal state licensure/certification requirements. The result is that school-based administrators are ill-prepared for the non-curricular duties and responsibilities that are the everyday challenges in a school. Educational leadership programs are focused on developing school-based leaders *quickly*, rather than *competently*. The lack of training, particularly in the areas of personnel evaluation and personnel administration deprive school-based administrators of the essential skills that allow them to identify marginal or poor performing teachers, employ appropriate documenting procedures, develop meaningful improvement assistance plans, and if necessary, take appropriate action to dismiss an incompetent teacher. We need to develop competent school-based administrators who are prepared for the continual challenges of public education in a global society – no matter how long it takes. Educational leadership programs must strive to achieve the professional optimum, rather than the settling for accreditation and certification minimums.

In conclusion, the enterprise of public education must be willing to address the issues of teacher incompetence directly, in a proactive manner. The process begins by better pre-service training in teacher preparation programs. In addition, administrators

must be willing to address deficiencies and provide opportunities for growth and improvement, and when necessary take the appropriate action to dismiss the incompetent teaching professional. We cannot afford to ignore incompetent teaching. The future of our children is at stake.

#### Future Research

*Everything I did in my life that was worthwhile I caught Hell for.*

*--Earl Warren*

Teacher accountability and quality of instruction remain a central theme in the current agenda for public educational reform. Most state laws provide public schools with standards and guidelines that serve to protect tenured teaching personnel from arbitrary and capricious actions in the event of dismissal while still providing a legal foundation that can withstand the rigors of court scrutiny. The purpose of this study was to examine the law, codified and case precedent, that provide the legal underpinnings for dismissing tenured teachers who are incompetent. The results of the study demonstrate very clearly that school districts that work within the statutory framework for dismissal based upon incompetence prevailed in almost two-thirds of the cases litigated, regardless of a states' union status. Yet, according to a U.S. Department of Education report published in 1993, 5-15% of public school teachers are incompetent; and less than one-half of one percent of those teachers are terminated annually. Further research on the national profile of incompetent teachers would be tremendously helpful to determine if we have made progress in this area.

One important follow up study that would be useful could be to compare the instances of litigation and the specificity of state dismissal-specific statutes. The case law



data in this study was informally examined for trends in terms of regions, geography, size of the state, and federal circuits. No trends emerged from that examination; however, it would be interesting to discover if there are more dismissals in states where the statute is vague regarding incompetence as opposed to states where the law is specific. There are two potential road blocks in this research: (a) court records only provide information about cases that have been appealed; therefore, the actual number of dismissals based on incompetence could be much higher than currently reported; and (b) a number of union states provide for binding arbitration in lieu of court appeals for challenging dismissals. Arbitration decisions are typically not made public, so there is the potential for underreporting of the instances of tenured teacher dismissal for incompetence. However, comparing the state statutes with state case law could produce a very interesting analysis.

Another possible follow-up study could explore the instances of remediation plans for marginal or poor performing teachers based on the educational level of the teacher. Given that over 40% of the tenured teacher dismissals reviewed in this study were in the category of inadequate teaching methods, it would be interesting to discover whether the data would demonstrate a positive relationship between educational level and teaching competence. This information would be useful to school districts for a variety of reasons, including the development of induction programs for new teachers and professional development for more seasoned professionals.

Another follow-up study of interest would be to determine what differences exist in the frequency of dismissal actions among elementary, middle, and high school teachers in the cases examined for the period of 1983-2003. It would be a logical assumption that a greater number of middle and high school teachers were dismissed for incompetence

since 42% of the cases examined were based upon the inappropriate behavior of the teacher with students. This finding suggests behavior that would be initiated with older, adolescent students rather than younger children. The information would be helpful as we look at the deficiencies of all teacher preparation programs and provide a data-driven basis for training and attrition strategies

In conclusion, this study serves a very important purpose in the field of education. It provides a longitudinal review of case law founded on tenured teacher dismissal for incompetence that identifies trends and patterns that can serve as a basis for future research. Second, it dispels the inaccurate perceptions of the barriers for effectively dealing with dismissing incompetent tenured teachers. We know that school districts can prevail in legitimate cases of tenured teacher dismissal for incompetence. And, we know that a state's union status has virtually no effect on the number of cases litigated in the courts or the outcome of favorable dispositions for either teachers or school districts. Sadly, we also know that incompetent tenured teachers continue to slip under the radar and adversely affect the outcomes of student learning. Future research in this area should be periodically replicated to continually inform the field of education and identify changes related to teacher accountability and quality of instruction.

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**Appendix A: Research Protocols for State Statutes**

**Appendix A: Checklist of Completion of Research Tasks – State Statutes**

<b>STATE</b>	<b>Dismissal – specific Statutes (number)</b>	<b>Other Reference Statutes</b>	<b>Legislative Notes (# and page)</b>	<b>Pertinent Case Notes (# and page)</b>	<b>Paper Copy</b>	<b>Date Verified</b>
<b>Alabama</b>						
<b>Alaska</b>						
<b>Arizona</b>						
<b>Arkansas</b>						
<b>California</b>						
<b>Colorado</b>						
<b>Connecticut</b>						
<b>Delaware</b>						
<b>District of Columbia</b>						
<b>Florida</b>						
<b>Georgia</b>						
<b>Hawaii</b>						

## Appendix A: State Legislative Identification Record

Name of State: \_\_\_\_\_

### Reference Information

#### Hard-copy source (copied)

- Title page from statute volume including state, title, volume, date of publication
- Tenured teacher dismissal-specific law with date enacted and/or amended

#### Electronic source (on jump drive)

- Lexis/Nexis Academic Version
- Web source with address: \_\_\_\_\_

Date accessed: \_\_\_\_\_

Site updated: \_\_\_\_\_

### Legislative Information

#### Key Words Search

- Public Education

#### Variations

- Public Schools
- Elementary/Secondary Schools

- Termination

#### Variations

- Dismissal
- Separation of Employment

- Tenured Teachers

#### Variations

- Nonprobationary Teacher
- Permanent Teacher
- Continuing Contract Teacher
- Nonprobationary Employee
- Other \_\_\_\_\_

Statute #	Code	Electronic	Paper	Effective Date	Verification

## **Appendix B: Research Protocols for Case Law**



**Appendix B: Checklist of Completion of Research Tasks – Federal and State Cases**

<b>STATE</b>	<b>Case Name and Citation</b>	<b>Court (Federal or State)</b>	<b>Category of Incompetence</b>	<b>Grounds For Appeal</b>	<b>Paper Copy</b>	<b>Date Verified</b>
<b>Alabama</b>						
<b>Alaska</b>						
<b>Arizona</b>						
<b>Arkansas</b>						
<b>California</b>						
<b>Colorado</b>						
<b>Connecticut</b>						
<b>Delaware</b>						
<b>District of Columbia</b>						
<b>Florida</b>						
<b>Georgia</b>						
<b>Hawaii</b>						



### Appendix C: Statutory Elements for Dismissal by State and Category

State	Statutory Elements				
	Tenure	Specified Grounds	Incompetence Defined	Due Process	Remediation
AL	.	.			
AK	.	.	.		.
AZ	.	.		.	.
AR	.	.		.	
CA	.	.			
CO		.			
CT	.	.	.	.	
DE	.	.		.	
DC	.			.	
FL	.	.		.	.
GA	.	.		.	
HI	.	.			
ID	.	.		.	.
IL	.	.		.	.
IN	.	.			
IA	.			.	
KS	.	.		.	
KY	.	.		.	.
LA	.	.		.	
ME	.	.		.	
MD	.	.		.	
MA	.	.	.	.	
MI	.		.		
MN	.	.		.	
MS		.		.	
MO	.	.	.		
MT				.	
NE	.	.		.	
NV	.	.	.		
NH		.		.	
NJ	.	.		.	
NM	.			.	
NY	.			.	
NC	.	.	.	.	
ND		.			
OH	.	.		.	
OK	.	.			
OR	.	.		.	
PA	.	.	.		
RI	.			.	
SC		.		.	.
SD	.		.		
TN	.	.		.	
TX	.	.		.	
UT	.		.	.	.
VT	.			.	
VA	.	.	.		
WA	.				
WV		.		.	
WI	.	.		.	
WY	.			.	

**Appendix D: Case Law by Year and State**

STATE	UNION*	1983			
		Number of Teachers	Number of Cases	Number of Cases Teachers Prevailed	Number of Cases S/D Prevailed
Alabama	2				
Alaska	1				
Arizona	2				
Arkansas	2				
California	1		1		1
Colorado	1				
Connecticut	1				
Delaware	1				
District of Columbia	1				
Florida	1				
Georgia	2				
Hawaii	1				
Idaho	1				
Illinois	1				
Indiana	1		1		1
Iowa	1				
Kansas	1				
Kentucky	2				
Louisiana	1				
Maine	1				
Maryland	1				
Massachusetts	1		1		1
Michigan	1				
Minnesota	1				
Mississippi	2				
Missouri	2				
Montana	1				
Nebraska	1		1	1	
Nevada	1				
New Hampshire	1				
New Jersey	1				
New Mexico	1				
New York	1		1		1
North Carolina	2				
North Dakota	1				
Ohio	1				
Oklahoma	1				
Oregon	1				
Pennsylvania	1				
Rhode Island	1				
South Carolina	2				
South Dakota	1				
Tennessee	1				
Texas	2				
Utah	1				
Vermont	1				
Virginia	2				
Washington	1				
West Virginia	2				
Wisconsin	1				
Wyoming	2				

\* 1=Union 2=Non-union

STATE	UNION*	1984			
		Number of Teachers	Number of Cases	Number of Cases Teachers Prevailed	Number of Cases S/D Prevailed
Alabama	2	36,647			
Alaska	1	6,127			
Arizona	2	26,900			
Arkansas	2	23,985			
California	1	178,310			
Colorado	1	28,824	1	1	
Connecticut	1	32,618			
Delaware	1	5,577			
District of Columbia	1	5,889			
Florida	1	86,264	1	1	
Georgia	2	56,294			
Hawaii	1	7,078			
Idaho	1	10,147			
Illinois	1	102,013			
Indiana	1	51,308			
Iowa	1	31,882			
Kansas	1	26,331			
Kentucky	2	32,850			
Louisiana	1	42,180	2		2
Maine	1	13,261			
Maryland	1	38,030			
Massachusetts	1	56,504	1		1
Michigan	1	81,185			
Minnesota	1	40,108			
Mississippi	2	25,388			
Missouri	2	47,366			
Montana	1	9,597	1		1
Nebraska	1	17,656			
Nevada	1	7,496			
New Hampshire	1	10,065			
New Jersey	1	73,774			
New Mexico	1	14,538	1	1	
New York	1	163,044	1		1
North Carolina	2	56,084	2		2
North Dakota	1	7,794			
Ohio	1	98,061			
Oklahoma	1	34,894			
Oregon	1	24,444			
Pennsylvania	1	101,484	1		1
Rhode Island	1	8,752			
South Carolina	2	33,765			
South Dakota	1	8,579	1	1	
Tennessee	1	39,636			
Texas	2	172,865			
Utah	1	16,169			
Vermont	1	6,327			
Virginia	2	57,498			
Washington	1	35,706	1		1
West Virginia	2	22,732	1	1	
Wisconsin	1	47,082			
Wyoming	2	7,191			

\* 1=Union 2=Non-union

STATE	UNION*	1985			
		Number of Teachers	Number of Cases	Number of Cases Teachers Prevailed	Number of Cases S/D Prevailed
Alabama	2	36,138			
Alaska	1	6,814			
Arizona	2	27,935			
Arkansas	2	24,767			
California	1	184,151	2		2
Colorado	1	29,894	1		1
Connecticut	1	32,903			
Delaware	1	5,745			
District of Columbia	1	6,137			
Florida	1	88,973			
Georgia	2	57,374	1	1	
Hawaii	1	7,276			
Idaho	1	10,255			
Illinois	1	102,657			
Indiana	1	51,976			
Iowa	1	31,770			
Kansas	1	26,686			
Kentucky	2	33,506			
Louisiana	1	42,609			
Maine	1	14,226			
Maryland	1	38,433			
Massachusetts	1	56,845			
Michigan	1	82,193			
Minnesota	1	41,314			
Mississippi	2	26,102			
Missouri	2	48,170			
Montana	1	9,705			
Nebraska	1	17,687	1		1
Nevada	1	7,751			
New Hampshire	1	10,104			
New Jersey	1	74,236			
New Mexico	1	14,781			
New York	1	165,573			
North Carolina	2	57,638			
North Dakota	1	7,796			
Ohio	1	98,264			
Oklahoma	1	35,752			
Oregon	1	24,605			
Pennsylvania	1	101,665			
Rhode Island	1	8,844			
South Carolina	2	34,645			
South Dakota	1	8,340			
Tennessee	1	40,023			
Texas	2	181,051			
Utah	1	17,126			
Vermont	1	6,397			
Virginia	2	57,339			
Washington	1	36,202			
West Virginia	2	22,733			
Wisconsin	1	46,482			
Wyoming	2	7,296			

\* 1=Union 2=Non-union

STATE	UNION*	1986			
		Number of Teachers	Number of Cases	Number of Cases Teachers Prevailed	Number of Cases S/D Prevailed
Alabama	2	36,971			
Alaska	1	6,448			
Arizona	2	29,104			
Arkansas	2	24,944	2	2	
California	1	190,484			
Colorado	1	30,704			
Connecticut	1	34,252			
Delaware	1	5,883			
District of Columbia	1	5,984			
Florida	1	91,969			
Georgia	2	57,881	1	1	
Hawaii	1	7,291			
Idaho	1	10,234			
Illinois	1	104,609	1		1
Indiana	1	52,896			
Iowa	1	30,958			
Kansas	1	27,064			
Kentucky	2	34,507			
Louisiana	1	42,929			
Maine	1	13,685			
Maryland	1	39,491	1	1	
Massachusetts	1	58,066	1	1	
Michigan	1	83,130	1		1
Minnesota	1	40,957			
Mississippi	2	26,219			
Missouri	2	48,902			
Montana	1	9,818			
Nebraska	1	17,748			
Nevada	1	7,908			
New Hampshire	1	10,300			
New Jersey	1	75,558			
New Mexico	1	14,876			
New York	1	168,940			
North Carolina	2	58,103			
North Dakota	1	7,779			
Ohio	1	98,894			
Oklahoma	1	35,041			
Oregon	1	24,615	1	1	
Pennsylvania	1	102,993			
Rhode Island	1	8,916			
South Carolina	2	35,349			
South Dakota	1	8,031			
Tennessee	1	41,103			
Texas	2	185,310			
Utah	1	17,752			
Vermont	1				
Virginia	2	58,141			
Washington	1	37,065			
West Virginia	2	22,931			
Wisconsin	1	47,039			
Wyoming	2	7,201			

\* 1=Union 2=Non-union



STATE	UNION*	1987			
		Number of Teachers	Number of Cases	Number of Cases Teachers Prevailed	Number of Cases S/D Prevailed
Alabama	2	37,716			
Alaska	1	6,113			
Arizona	2	30,707			
Arkansas	2	25,572			
California	1	195,864			
Colorado	1	31,168			
Connecticut	1	35,050			
Delaware	1	5,951			
District of Columbia	1	6,232			
Florida	1	95,857			
Georgia	2	62,280			
Hawaii	1	7,684			
Idaho	1	10,258			
Illinois	1	105,217	2	1	1
Indiana	1	53,749			
Iowa	1	30,873			
Kansas	1	27,317			
Kentucky	2	35,239			
Louisiana	1	42,920			
Maine	1	14,204			
Maryland	1	40,093			
Massachusetts	1	59,517	1	1	
Michigan	1	79,972			
Minnesota	1	42,132			
Mississippi	2	26,930			
Missouri	2	49,632			
Montana	1	9,659			
Nebraska	1	17,713			
Nevada	1	8,348			
New Hampshire	1	10,363			
New Jersey	1	78,335			
New Mexico	1	15,175			
New York	1	170,236			
North Carolina	2	59,771			
North Dakota	1	7,632			
Ohio	1	99,708			
Oklahoma	1	34,515			
Oregon	1	24,911			
Pennsylvania	1	103,307	1		1
Rhode Island	1	8,934			
South Carolina	2	35,701			
South Dakota	1	8,172			
Tennessee	1	42,082			
Texas	2	187,159			
Utah	1	17,124			
Vermont	1	6,656			
Virginia	2	59,928			
Washington	1	38,344			
West Virginia	2	22,702			
Wisconsin	1	47,721	1		1
Wyoming	2	6,798			

\* 1=Union 2=Non-union

STATE	UNION*	1988			
		Number of Teachers	Number of Cases	Number of Cases Teachers Prevailed	Number of Cases S/D Prevailed
Alabama	2	38,845			
Alaska	1	6,272			
Arizona	2	31,617			
Arkansas	2	27,730	1		1
California	1	203,342			
Colorado	1	31,398	1		1
Connecticut	1	35,502			
Delaware	1	5,898			
District of Columbia	1	5,936			
Florida	1	100,370			
Georgia	2	59,916			
Hawaii	1	8,737			
Idaho	1	10,425			
Illinois	1	105,097			
Indiana	1	54,029			
Iowa	1	30,327			
Kansas	1	28,122			
Kentucky	2	35,788			
Louisiana	1	43,203			
Maine	1	14,593			
Maryland	1	40,899			
Massachusetts	1	60,068			
Michigan	1	79,847			
Minnesota	1	42,750			
Mississippi	2	27,283			
Missouri	2	50,693			
Montana	1	9,626			
Nebraska	1	18,003			
Nevada	1	8,699			
New Hampshire	1	10,442			
New Jersey	1	79,698			
New Mexico	1	15,770			
New York	1	172,807			
North Carolina	2	61,933			
North Dakota	1	7,731			
Ohio	1	101,021			
Oklahoma	1	35,116	1	1	
Oregon	1	25,147			
Pennsylvania	1	104,379	1		1
Rhode Island	1	9,216			
South Carolina	2	35,877			
South Dakota	1	8,260			
Tennessee	1	42,657			
Texas	2	196,616			
Utah	1	17,602			
Vermont	1	6,852			
Virginia	2	60,883			
Washington	1	38,780			
West Virginia	2	22,177			
Wisconsin	1	48,541			
Wyoming	2	6,693			

\* 1=Union 2=Non-union

STATE	UNION*	1989			
		Number of Teachers	Number of Cases	Number of Cases Teachers Prevailed	Number of Cases S/D Prevailed
Alabama	2	39,928			
Alaska	1	6,492			
Arizona	2	32,134			
Arkansas	2	25,585			
California	1	212,687			
Colorado	1	31,954			
Connecticut	1	34,618			
Delaware	1	5,982			
District of Columbia	1	6,055			
Florida	1	104,127			
Georgia	2	61,487			
Hawaii	1	8,866			
Idaho	1	10,715			
Illinois	1	106,183			
Indiana	1	54,370			
Iowa	1	30,423			
Kansas	1	28,727			
Kentucky	2	35,731			
Louisiana	1	44,608			
Maine	1	15,206			
Maryland	1	41,646			
Massachusetts	1	59,040			
Michigan	1	80,150	1		1
Minnesota	1	43,101			
Mississippi	2	27,591			
Missouri	2	51,362			
Montana	1	9,627			
Nebraska	1	19,464			
Nevada	1	9,175			
New Hampshire	1	10,572			
New Jersey	1	79,597			
New Mexico	1	16,150			
New York	1	174,610			
North Carolina	2	63,160			
North Dakota	1	7,809			
Ohio	1	101,417			
Oklahoma	1	35,631			
Oregon	1	25,630			
Pennsylvania	1	105,415			
Rhode Island	1	9,369			
South Carolina	2	36,337			
South Dakota	1	8,191			
Tennessee	1	42,824			
Texas	2	199,397	1		1
Utah	1	17,611			
Vermont	1	6,852			
Virginia	2	62,138			
Washington	1	40,279			
West Virginia	2	21,653	1		1
Wisconsin	1	49,329			
Wyoming	2	6,697			

\* 1=Union 2=Non-union

STATE	UNION*	1990			
		Number of Teachers	Number of Cases	Number of Cases Teachers Prevailed	Number of Cases S/D Prevailed
Alabama	2	36,266			
Alaska	1	6,710			
Arizona	2	32,987			
Arkansas	2	25,984			
California	1	217,228			
Colorado	1	32,342			
Connecticut	1	34,785	1		1
Delaware	1	5,961			
District of Columbia	1	5,950			
Florida	1	108,088			
Georgia	2	63,058			
Hawaii	1	9,083			
Idaho	1	11,254			
Illinois	1	108,775			
Indiana	1	54,806			
Iowa	1	31,045			
Kansas	1	29,140			
Kentucky	2	36,777			
Louisiana	1	45,401			
Maine	1	15,513			
Maryland	1	42,562			
Massachusetts	1	54,003			
Michigan	1	80,008	1		1
Minnesota	1	43,574			
Mississippi	2	28,062			
Missouri	2	52,359			
Montana	1	9,613			
Nebraska	1	18,764			
Nevada	1	10,373			
New Hampshire	1	10,637			
New Jersey	1	79,886			
New Mexico	1	16,703			
New York	1	176,390			
North Carolina	2	64,283			
North Dakota	1	7,591			
Ohio	1	103,088			
Oklahoma	1	37,221			
Oregon	1	26,174			
Pennsylvania	1	100,275			
Rhode Island	1	9,522			
South Carolina	2	36,963			
South Dakota	1	8,511			
Tennessee	1	43,051			
Texas	2	219,298	1		1
Utah	1	17,884			
Vermont	1	7,257			
Virginia	2	63,638			
Washington	1	41,764			
West Virginia	2	21,476	1	1	
Wisconsin	1	49,302			
Wyoming	2	6,784			

\* 1=Union 2=Non-union

STATE	UNION*	1991			
		Number of Teachers	Number of Cases	Number of Cases Teachers Prevailed	Number of Cases S/D Prevailed
Alabama	2	40,480			
Alaska	1	7,118			
Arizona	2	33,978			
Arkansas	2	25,785			
California	1	224,000			
Colorado	1	33,093	1		1
Connecticut	1	34,383			
Delaware	1	6,095			
District of Columbia	1	6,346			
Florida	1	109,939			
Georgia	2	63,816			
Hawaii	1	9,451			
Idaho	1	11,626			
Illinois	1	110,153			
Indiana	1	54,509			
Iowa	1	31,395			
Kansas	1	29,324			
Kentucky	2	37,571			
Louisiana	1	46,170			
Maine	1	15,416	1	1	
Maryland	1	43,616			
Massachusetts	1	55,963			
Michigan	1	82,967			
Minnesota	1	44,903			
Mississippi	2	28,111			
Missouri	2	52,643	1		1
Montana	1	9,883			
Nebraska	1	19,069			
Nevada	1	11,409			
New Hampshire	1	11,464			
New Jersey	1	80,515			
New Mexico	1	17,498			
New York	1	171,914			
North Carolina	2	65,326	1		1
North Dakota	1	7,733			
Ohio	1	103,372			
Oklahoma	1	37,650			
Oregon	1	26,745	1		1
Pennsylvania	1	100,475			
Rhode Island	1	9,709			
South Carolina	2	37,115			
South Dakota	1	8,868			
Tennessee	1	43,062			
Texas	2	219,192			
Utah	1	18,305			
Vermont	1	7,031			
Virginia	2	64,537			
Washington	1	42,931			
West Virginia	2	20,997	1	1	
Wisconsin	1	52,028			
Wyoming	2	6,564			

\* 1=Union 2=Non-union

STATE	UNION*	1992			
		Number of Teachers	Number of Cases	Number of Cases Teachers Prevailed	Number of Cases S/D Prevailed
Alabama	2	41,961			
Alaska	1	7,282			
Arizona	2	36,076			
Arkansas	2	26,017			
California	1	218,566	1		1
Colorado	1	33,419			
Connecticut	1	34,193			
Delaware	1	6,252			
District of Columbia	1	6,064			
Florida	1	107,590			
Georgia	2	66,942			
Hawaii	1	10,083			
Idaho	1	11,827			
Illinois	1	111,461			
Indiana	1	54,552			
Iowa	1	31,403			
Kansas	1	29,753			
Kentucky	2	37,868			
Louisiana	1	46,904			
Maine	1	15,375			
Maryland	1	44,495			
Massachusetts	1	57,225			
Michigan	1	82,301			
Minnesota	1	45,050			
Mississippi	2	27,829			
Missouri	2	52,984			
Montana	1	10,135			
Nebraska	1	19,323			
Nevada	1	11,953			
New Hampshire	1	11,654			
New Jersey	1	83,057			
New Mexico	1	17,912			
New York	1	176,375			
North Carolina	2	66,630			
North Dakota	1	7,794			
Ohio	1	106,233			
Oklahoma	1	38,433			
Oregon	1	23,634			
Pennsylvania	1	100,912			
Rhode Island	1	10,069			
South Carolina	2	37,295	1		1
South Dakota	1	8,767			
Tennessee	1	43,566			
Texas	2	219,385			
Utah	1	19,191			
Vermont	1	7,521			
Virginia	2	68,181			
Washington	1	44,295			
West Virginia	2	20,961			
Wisconsin	1	53,387			
Wyoming	2	5,821			

\* 1=Union 2=Non-union

STATE	UNION*	1993			
		Number of Teachers	Number of Cases	Number of Cases Teachers Prevailed	Number of Cases S/D Prevailed
Alabama	2	43,003			
Alaska	1	7,193			
Arizona	2	37,493			
Arkansas	2	26,014			
California	1	221,787			
Colorado	1	33,661			
Connecticut	1	34,526			
Delaware	1	6,380			
District of Columbia	1	6,056			
Florida	1	110,653			
Georgia	2	74,172			
Hawaii	1	10,111			
Idaho	1	12,007			
Illinois	1	110,874			
Indiana	1	55,107			
Iowa	1	31,616			
Kansas	1	30,324			
Kentucky	2	37,324			
Louisiana	1	46,913			
Maine	1	15,344			
Maryland	1	44,171	1		1
Massachusetts	1	58,766			
Michigan	1	80,267	1	1	
Minnesota	1	46,956			
Mississippi	2	28,376			
Missouri	2	54,860			
Montana	1	9,949			
Nebraska	1	19,616	1	1	
Nevada	1	12,579			
New Hampshire	1	11,972			
New Jersey	1	84,564			
New Mexico	1	18,404			
New York	1	179,413			
North Carolina	2	69,421	2		2
North Dakota	1	7,755			
Ohio	1	107,444	1	1	
Oklahoma	1	39,031			
Oregon	1	26,488			
Pennsylvania	1	101,302			
Rhode Island	1	9,823			
South Carolina	2	38,620			
South Dakota	1	9,557			
Tennessee	1	46,066	2	1	1
Texas	2	224,830			
Utah	1	19,053			
Vermont	1	7,330			
Virginia	2	70,859			
Washington	1	45,524			
West Virginia	2	21,029			
Wisconsin	1	52,822			
Wyoming	2	6,537			

\* 1=Union 2=Non-union

STATE	UNION*	1994			
		Number of Teachers	Number of Cases	Number of Cases Teachers Prevailed	Number of Cases S/D Prevailed
Alabama	2	42,791			
Alaska	1	7,205			
Arizona	2	38,132			
Arkansas	2	26,181			
California	1	225,016			
Colorado	1	34,894	1		1
Connecticut	1	35,316			
Delaware	1	6,416			
District of Columbia	1	6,110			
Florida	1	110,674			
Georgia	2	77,914			
Hawaii	1	10,240			
Idaho	1	12,582			
Illinois	1	110,830			
Indiana	1	55,496			
Iowa	1	31,726			
Kansas	1	30,579			
Kentucky	2	38,784			
Louisiana	1	47,599			
Maine	1	15,404			
Maryland	1	46,565			
Massachusetts	1	60,489			
Michigan	1	80,522			
Minnesota	1	46,958			
Mississippi	2	28,866	1		1
Missouri	2	56,606			
Montana	1	10,079			
Nebraska	1	19,774			
Nevada	1	13,414			
New Hampshire	1	12,109			
New Jersey	1	85,258			
New Mexico	1	19,025			
New York	1	182,273			
North Carolina	2	71,592			
North Dakota	1	7,796			
Ohio	1	109,085	1	1	
Oklahoma	1	39,406			
Oregon	1	26,208			
Pennsylvania	1	102,988			
Rhode Island	1	10,066			
South Carolina	2	39,437			
South Dakota	1	9,985			
Tennessee	1	47,406			
Texas	2	234,213			
Utah	1	19,524			
Vermont	1	7,566			
Virginia	2	72,505			
Washington	1	46,439			
West Virginia	2	21,024			
Wisconsin	1	54,054			
Wyoming	2	6,754			

\* 1=Union 2=Non-union



STATE	UNION*	1995			
		Number of Teachers	Number of Cases	Number of Cases Teachers Prevailed	Number of Cases S/D Prevailed
Alabama	2	44,056			
Alaska	1	7,379			
Arizona	2	38,017			
Arkansas	2	26,449			
California	1	230,849			
Colorado	1	25,388			
Connecticut	1	36,070			
Delaware	1	6,463	1	1	
District of Columbia	1	5,305			
Florida	1	114,938			
Georgia	2	79,480			
Hawaii	1	10,500			
Idaho	1	12,784			
Illinois	1	113,538			
Indiana	1	55,821			
Iowa	1	32,318	2		2
Kansas	1	30,729			
Kentucky	2	39,120			
Louisiana	1	46,980			
Maine	1	15,392			
Maryland	1	47,819			
Massachusetts	1	62,710			
Michigan	1	83,179			
Minnesota	1	46,971			
Mississippi	2	28,997			
Missouri	2	57,951			
Montana	1	10,076			
Nebraska	1	20,028			
Nevada	1	13,878			
New Hampshire	1	12,346			
New Jersey	1	86,706			
New Mexico	1	19,398			
New York	1	181,559			
North Carolina	2	73,201			
North Dakota	1	7,501			
Ohio	1	107,347			
Oklahoma	1	39,364			
Oregon	1	26,680			
Pennsylvania	1	104,921	1	1	
Rhode Island	1	10,482			
South Carolina	2	39,922			
South Dakota	1	9,641			
Tennessee	1	53,403	1	1	
Texas	2	240,371			
Utah	1	20,039			
Vermont	1	7,676			
Virginia	2	74,731			
Washington	1	46,907			
West Virginia	2	21,073			
Wisconsin	1	55,033			
Wyoming	2	6,734			

\* 1=Union 2=Non-union

STATE	UNION*	1996			
		Number of Teachers	Number of Cases	Number of Cases Teachers Prevailed	Number of Cases S/D Prevailed
Alabama	2	45,035			
Alaska	1	7,418			
Arizona	2	40,521			
Arkansas	2	26,681			
California	1	248,818			
Colorado	1	36,398			
Connecticut	1	36,551	2		2
Delaware	1	6,642			
District of Columbia	1	5,288			
Florida	1	120,471			
Georgia	2	81,795			
Hawaii	1	10,576			
Idaho	1	13,078			
Illinois	1	116,274	1	1	
Indiana	1	56,708	1		1
Iowa	1	32,593			
Kansas	1	30,875			
Kentucky	2	39,331			
Louisiana	1	47,334	1		1
Maine	1	15,551			
Maryland	1	47,943			
Massachusetts	1	64,574			
Michigan	1	88,051	1	1	
Minnesota	1	48,245			
Mississippi	2	29,293			
Missouri	2	59,428			
Montana	1	10,268			
Nebraska	1	20,174			
Nevada	1	14,805			
New Hampshire	1	12,692			
New Jersey	1	87,642			
New Mexico	1	19,971			
New York	1	185,104			
North Carolina	2	75,239			
North Dakota	1	7,892			
Ohio	1	108,515			
Oklahoma	1	39,568			
Oregon	1	26,757			
Pennsylvania	1	106,432			
Rhode Island	1	10,656			
South Carolina	2	41,463			
South Dakota	1	9,625			
Tennessee	1	54,790	2		2
Texas	2	247,650	2		2
Utah	1	19,734			
Vermont	1	7,751			
Virginia	2	74,526			
Washington	1	48,307			
West Virginia	2	20,888			
Wisconsin	1	54,769			
Wyoming	2	6,729			

\* 1=Union 2=Non-union

STATE	UNION*	1997			
		Number of Teachers	Number of Cases	Number of Cases Teachers Prevailed	Number of Cases S/D Prevailed
Alabama	2	45,967			
Alaska	1	7,625			
Arizona	2	41,129			
Arkansas	2	26,931			
California	1	268,535			
Colorado	1	37,840			
Connecticut	1	37,658	1		1
Delaware	1	6,850			
District of Columbia	1	4,388			
Florida	1	124,473			
Georgia	2	86,244			
Hawaii	1	10,653			
Idaho	1	13,207			
Illinois	1	118,734			
Indiana	1	57,371			
Iowa	1	32,700			
Kansas	1	31,527	1	1	
Kentucky	2	40,488			
Louisiana	1	48,599			
Maine	1	15,700			
Maryland	1	48,318			
Massachusetts	1	67,170			
Michigan	1	90,529	1		1
Minnesota	1	51,998			
Mississippi	2	29,441			
Missouri	2	60,889			
Montana	1	10,228			
Nebraska	1	20,065			
Nevada	1	16,053			
New Hampshire	1	12,931			
New Jersey	1	89,671			
New Mexico	1	19,647			
New York	1	190,874			
North Carolina	2	77,785			
North Dakota	1	8,070			
Ohio	1	110,761			
Oklahoma	1	40,215	1		1
Oregon	1	26,935			
Pennsylvania	1	108,014			
Rhode Island	1	10,598			
South Carolina	2	42,336			
South Dakota	1	9,282			
Tennessee	1	54,142			
Texas	2	254,557	1		1
Utah	1	21,115			
Vermont	1	7,909			
Virginia	2	77,575			
Washington	1	49,074			
West Virginia	2	20,947			
Wisconsin	1	55,732			
Wyoming	2	6,677			

\* 1=Union 2=Non-union

STATE	UNION*	1998			
		Number of Teachers	Number of Cases	Number of Cases Teachers Prevailed	Number of Cases S/D Prevailed
Alabama	2	47,766			
Alaska	1	8,118	1		1
Arizona	2	42,352			
Arkansas	2	27,953			
California	1	281,784			
Colorado	1	39,434	1		1
Connecticut	1	38,772			
Delaware	1	7,074			
District of Columbia	1	5,187			
Florida	1	126,796			
Georgia	2	88,658			
Hawaii	1	10,639			
Idaho	1	13,426			
Illinois	1	121,758			
Indiana	1	58,084			
Iowa	1	32,822			
Kansas	1	32,003			
Kentucky	2	40,803			
Louisiana	1	49,124			
Maine	1	15,890			
Maryland	1	49,840			
Massachusetts	1	69,752	1	1	
Michigan	1	93,220	1		1
Minnesota	1	54,449			
Mississippi	2	31,140			
Missouri	2	62,449			
Montana	1	10,221			
Nebraska	1	20,310	1		1
Nevada	1	16,415			
New Hampshire	1	13,290			
New Jersey	1	92,264			
New Mexico	1	19,981			
New York	1	197,253			
North Carolina	2	79,531			
North Dakota	1	7,974			
Ohio	1	113,984			
Oklahoma	1	40,876			
Oregon	1	27,152			
Pennsylvania	1	111,065			
Rhode Island	1	11,124	1		1
South Carolina	2	43,689	1		1
South Dakota	1	9,273	1	1	
Tennessee	1	59,258			
Texas	2	259,739	1	1	
Utah	1	21,501			
Vermont	1	8,221			
Virginia	2	79,323			
Washington	1	49,671			
West Virginia	2	20,989	1		1
Wisconsin	1	61,176			
Wyoming	2	6,713			

\* 1=Union 2=Non-union

STATE	UNION*	1999			
		Number of Teachers	Number of Cases	Number of Cases Teachers Prevailed	Number of Cases S/D Prevailed
Alabama	2	48,624			
Alaska	1	7,838			
Arizona	2	43,892	1		1
Arkansas	2	31,362			
California	1	287,433			
Colorado	1	40,772			
Connecticut	1	39,907			
Delaware	1	7,318			
District of Columbia	1	4,812			
Florida	1	130,336			
Georgia	2	90,638			
Hawaii	1	10,866			
Idaho	1	13,641			
Illinois	1	124,815			
Indiana	1	58,864			
Iowa	1	33,480			
Kansas	1	32,969			
Kentucky	2	41,954			
Louisiana	1	50,031			
Maine	1	16,349			
Maryland	1	50,995			
Massachusetts	1	77,596			
Michigan	1	96,094			
Minnesota	1	56,010			
Mississippi	2	30,772			
Missouri	2	63,890			
Montana	1	10,353			
Nebraska	1	20,766			
Nevada	1	17,380			
New Hampshire	1	14,037			
New Jersey	1	95,883			
New Mexico	1	19,797	1	1	
New York	1	202,078			
North Carolina	2	81,914			
North Dakota	1	8,150			
Ohio	1	116,200			
Oklahoma	1	41,498			
Oregon	1	27,803			
Pennsylvania	1	114,525			
Rhode Island	1	11,041			
South Carolina	2	45,468			
South Dakota	1	9,384			
Tennessee	1	60,702			
Texas	2	267,935			
Utah	1	21,832			
Vermont	1	8,474			
Virginia	2	85,037			
Washington	1	50,368			
West Virginia	2	21,082			
Wisconsin	1	60,778			
Wyoming	2	6,940			

\* 1=Union 2=Non-union

STATE	UNION*	2000			
		Number of Teachers	Number of Cases	Number of Cases Teachers Prevailed	Number of Cases S/D Prevailed
Alabama	2	48,199			
Alaska	1	7,880			
Arizona	2	44,438			
Arkansas	2	31,947			
California	1	298,064			
Colorado	1	41,983			
Connecticut	1	41,044			
Delaware	1	7,471			
District of Columbia	1	4,949			
Florida	1	132,030			
Georgia	2	91,044			
Hawaii	1	10,927			
Idaho	1	13,714			
Illinois	1	127,620			
Indiana	1	59,226			
Iowa	1	34,636			
Kansas	1	32,742			
Kentucky	2	39,589			
Louisiana	1	49,916			
Maine	1	16,559			
Maryland	1	52,433			
Massachusetts	1	67,432			
Michigan	1	97,031			
Minnesota	1	53,457			
Mississippi	2	31,006			
Missouri	2	64,739			
Montana	1	10,411			
Nebraska	1	20,983			
Nevada	1	18,294			
New Hampshire	1	14,341			
New Jersey	1	99,718			
New Mexico	1	21,043			
New York	1	206,961			
North Carolina	2	83,680			
North Dakota	1	8,141			
Ohio	1	118,361			
Oklahoma	1	41,318			
Oregon	1	28,094			
Pennsylvania	1	116,963			
Rhode Island	1	10,646			
South Carolina	2	45,380			
South Dakota	1	9,397			
Tennessee	1	61,233	1		1
Texas	2	274,826	1		1
Utah	1	22,008			
Vermont	1	8,414			
Virginia	2	91,560			
Washington	1	51,098			
West Virginia	2	20,930			
Wisconsin	1	62,332			
Wyoming	2	6,783			

\* 1=Union 2=Non-union

STATE	UNION*	2001			
		Number of Teachers	Number of Cases	Number of Cases Teachers Prevailed	Number of Cases S/D Prevailed
Alabama	2	47,201			
Alaska	1	8,025			
Arizona	2	45,959			
Arkansas	2	31,097			
California	1	304,598			
Colorado	1	43,282			
Connecticut	1	41,263			
Delaware	1	7,511			
District of Columbia	1	5,235			
Florida	1	135,866			
Georgia	2	97,563			
Hawaii	1	10,943			
Idaho	1	13,800			
Illinois	1	125,130			
Indiana	1	59,832			
Iowa	1	34,702			
Kansas	1	32,519			
Kentucky	2	40,374			
Louisiana	1	49,915			
Maine	1	17,040			
Maryland	1	54,360			
Massachusetts	1	69,000			
Michigan	1	96,900			
Minnesota	1	53,450			
Mississippi	2	32,757			
Missouri	2	64,000			
Montana	1	10,212			
Nebraska	1	21,004			
Nevada	1	19,255			
New Hampshire	1	13,990			
New Jersey	1	105,750			
New Mexico	1	20,000			
New York	1	215,500			
North Carolina	2	83,526			
North Dakota	1	8,503			
Ohio	1	118,000			
Oklahoma	1	41,452			
Oregon	1	30,895			
Pennsylvania	1	116,900			
Rhode Island	1	10,455			
South Carolina	2	46,000	1		1
South Dakota	1	9,089			
Tennessee	1	58,059			
Texas	2	281,427			
Utah	1	21,900			
Vermont	1	8,250			
Virginia	2	87,823			
Washington	1	51,584			
West Virginia	2	19,970			
Wisconsin	1	59,783			
Wyoming	2	6,730			

\* 1=Union 2=Non-union

STATE	UNION*	2002			
		Number of Teachers	Number of Cases	Number of Cases Teachers Prevailed	Number of Cases S/D Prevailed
Alabama	2				
Alaska	1				
Arizona	2				
Arkansas	2				
California	1				
Colorado	1		1		1
Connecticut	1				
Delaware	1				
District of Columbia	1				
Florida	1				
Georgia	2				
Hawaii	1				
Idaho	1				
Illinois	1				
Indiana	1				
Iowa	1				
Kansas	1				
Kentucky	2				
Louisiana	1				
Maine	1				
Maryland	1				
Massachusetts	1				
Michigan	1				
Minnesota	1				
Mississippi	2				
Missouri	2				
Montana	1				
Nebraska	1				
Nevada	1				
New Hampshire	1				
New Jersey	1				
New Mexico	1				
New York	1				
North Carolina	2		1		1
North Dakota	1				
Ohio	1				
Oklahoma	1				
Oregon	1				
Pennsylvania	1				
Rhode Island	1				
South Carolina	2				
South Dakota	1				
Tennessee	1		1		1
Texas	2				
Utah	1		1	1	
Vermont	1				
Virginia	2				
Washington	1				
West Virginia	2				
Wisconsin	1				
Wyoming	2				

\* 1=Union 2=Non-union



STATE	UNION*	2003			
		Number of Teachers	Number of Cases	Number of Cases Teachers Prevailed	Number of Cases S/D Prevailed
Alabama	2				
Alaska	1				
Arizona	2				
Arkansas	2				
California	1				
Colorado	1				
Connecticut	1				
Delaware	1				
District of Columbia	1				
Florida	1				
Georgia	2				
Hawaii	1				
Idaho	1				
Illinois	1				
Indiana	1				
Iowa	1				
Kansas	1				
Kentucky	2				
Louisiana	1				
Maine	1				
Maryland	1				
Massachusetts	1				
Michigan	1				
Minnesota	1				
Mississippi	2				
Missouri	2				
Montana	1				
Nebraska	1				
Nevada	1				
New Hampshire	1				
New Jersey	1				
New Mexico	1				
New York	1				
North Carolina	2				
North Dakota	1				
Ohio	1				
Oklahoma	1				
Oregon	1				
Pennsylvania	1				
Rhode Island	1				
South Carolina	2				
South Dakota	1				
Tennessee	1				
Texas	2				
Utah	1				
Vermont	1				
Virginia	2				
Washington	1				
West Virginia	2				
Wisconsin	1				
Wyoming	2				

\* 1=Union 2=Non-union

### Appendix E: Incompetence Defined by Statute

State	Code Section	Definition of Incompetence
Alaska	§ 14.20.175	Teacher's performance, after completion of a plan for improvement, failed to meet objectives set out in plan; and the evaluation of the teacher Established that the teacher did not meet district standards.
Colorado	§ 22-63-301	Case Notes: School boards must have case-by-case authority to define incompetence; Incompetence indicates the inability to perform.
Connecticut	§ 10-151	Termination under consideration due to incompetence must be based on the evaluation of the teacher using teacher evaluation guidelines established by Code.
Massachusetts	Chapter 71, § 42	Failure to satisfy teacher performance standards.
Michigan	§ 38.101	Case Notes: Allegations of incompetence must be supported with evidence that shows the teacher had an adverse effect on students.
Missouri	§ 168.114	Consideration should be given to regular and special evaluation reports prepared in accordance with the policy of the school district and performance standards adopted by the school board.
Nevada	§ 391-312	Consideration must be given to regular and special evaluation reports prepared in accordance with school district policy and performance standards adopted by the school board.
North Carolina	§ 115C-325	Consideration must be given to regular and special evaluation reports prepared in accordance with school district policy and performance standards adopted by the school board.
Pennsylvania	§ 11-1122	Two (2) consecutive ratings of unsatisfactory teaching performance that include classroom observations not less than 4 months apart.
South Dakota	§ 13-43-6.1	Case Notes: One who habitually fails to perform work with a degree of skill or accuracy usually displayed by other persons regularly employed in such work or one who usually performs less than others regularly so employed.
Utah	§ 53A-3-4111	Two (2) unsatisfactory performance evaluations within 3 years.
Virginia	§ 22.1-307	Incompetency may be construed to include, but not limited to, consistent failure to meet the endorsement requirements for the position or performance that is documented through evaluation to be consistently less than satisfactory.

## **Appendix F: Statutory Grounds for Dismissal**

**Appendix F: Frequency of Grounds for Dismissal from Statutes**

<b>Number</b>	<b>Grounds</b>	<b>Frequency</b>
1	Good/Just Cause	29
2	Inefficiency	14
3	Immorality	28
4	Unprofessional Conduct	12
5	Insubordination	17
6	Neglect of Duty	15
7	Physical or Mental Incapacity	11
8	Reduction in Force	9
9	Conviction of a Felony	13
10	Conviction of a Crime of Moral Turpitude	9
11	Inadequate Performance	12
12	Incompetence	24
13	Unfitness for Service	4
14	Failure to Comply with Board Requirements	19
15	Failure to Show Improvement/Professional Growth	2
16	Advocating Overthrow of Government	4
17	Any Cause that Constitutes License Revocation	4
18	Willful Neglect of Duty	7
19	Dishonesty	4
20	Breach of Security or Confidentiality	1
21	Inciting Students to Violate Law	2
22	Habitual Use of Alcohol or Non-medical Drugs	2
23	Failure to Fulfill Duties	1
24	Failure to Keep Certification Current	1
25	Failure to Repay Money Owed to State	2
26	Providing False Information	1
27	Failure to Satisfy Performance Standards	1
28	Negligence in the Performance of Duties	3
29	Mental/Physical Abuse of a Child	2
30	Drunkenness	3
31	Instructional Ineffectiveness	1
32	Conviction of Sexual Offense	1
33	Conviction of Criminal Sexual Activity	1
34	Intemperance	3
36	Cruelty	3
36	Illegal Sale or Use of Narcotics	2
37	Excessive/Unreasonable Absences	1
38	Membership in the Communist Party	1
39	Violation of Specified Code Sections	2



**Appendix G: Summary of Case Law  
by State and Category of Incompetence**

	AL	AK	AZ	AR	CA	CO	CT	DE	DC	FL	GA	HI	ID	IL	IN	IA	KS	KY	LA	ME	MD	MA	MI	MN	MS
<b>1. Inadequate preparation to teach</b>																									
a. Lack of Subject Matter Knowledge							1																		
b. Lack of proper certification						2		1											1						
<b>2. Inadequate teaching methods</b>																									
a. Inadequate Planning and Coordination of Instruction				2	1	1	2							2			1				2	3	2		1
b. Lack of Classroom Discipline		1		1	2	1								1	1										
<b>3. Adverse effect on pupils</b>																									
a. Inappropriate Subject Matter						1														1					
b. Unreasonable Disciplinary Action																1									
c. Harmful Psychological Effects						1																	1		
<b>4. Disability</b>																									
a. Physical														1											
b. Mental																									
<b>5. Unacceptable personal behavior</b>																									
a. Poor Relations with Staff																									
b. Inappropriate behavior			1		1	1	1			1	2				1	1			1				2	4	
c. Willful Neglect of Duty																				1					
d. Negligence																									

	MO	MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY
<b>1. Inadequate preparation to teach</b>																										
a. Lack of Subject Matter Knowledge																										
b. Lack of proper certification												1														
<b>2. Inadequate teaching methods</b>																										
a. Inadequate Planning and Coordination of Instruction	1		2						2		1	1		2		1		1	4	1				1		
b. Lack of Classroom Discipline																1		1								
<b>3. Adverse effect on pupils</b>																										
a. Inappropriate Subject Matter																	1									
b. Unreasonable Disciplinary Action	1																		1							
c. Harmful Psychological Effects																										
<b>4. Disability</b>																										
a. Physical									1						1											
b. Mental								1											1							
<b>5. Unacceptable personal behavior</b>																										
a. Poor Relations with Staff																										
b. Inappropriate behavior							2	1	3		1			1		1	1	4	1				1	2	1	
c. Willful Neglect of Duty			2											2				1						2		
d. Negligence														1												



**Appendix H: Summary of Federal Cases by State,  
Category of Incompetence, and Prevailing Party**

**Appendix H: Coding System Key for Matrix of Tenured Teacher Dismissal  
Federal Court Cases**

**AREA: Courts:**

**Federal Courts:**

FDC – Federal District Court

FCA – Federal Court of Appeals

USSC – U.S. Supreme Court

**AREA: Grounds:**

**Category 1: Inadequate Preparation to Teach**

1.a. Lack of Subject Matter Knowledge

1.b. Lack of Proper Certification

**Category 2: Inadequate Teaching Methods**

2.a. Inadequate Planning and Coordination of Instruction

2.b. Lack of Classroom Discipline

**Category 3: Adverse Effect on Pupils**

3.a. Inappropriate Subject Matter

3.b. Unreasonable Disciplinary Action

3.c. Harmful Psychological Effects

**Category 4: Disability**

4.a. Physical

4.b. Mental

**Category 5: Unacceptable Personal Behavior**

5.a. Poor Relations with Staff

5.b. Inappropriate Behavior

5.c. Willful Neglect of Duty

5.d. Negligence

**Category 6: Other**

**AREA: Challenge:**

SDP – Substantive Due Process

PDP – Procedural Due Process

EV – Evidence

CI – Constitutional Issue

**Appendix H: Summary of Federal Cases by State, Category of Incompetence, and Prevailing Party**

Case Title	State	Year	Court	Category of Incompetence	Reason for Challenge	Prevailing Party
Walker v. Stuttgart School District #22	AR	1986	FCA	2a	PDP	Teacher
Smith v. Denver Public School Board	CO	1994	FCA	2a	CI	School District
Meehan v. Town of East Lyme, et al	CT	1996	FDC	2a	PDP	School District
Holley v. Seminole County School District	GA	1985	FCA	5b	CI	Teacher
Gates v. Walker	MS	1994	FDC	2a	CI	School District
Hinkle v. Christenson, et al	SD	1984	FCA	5b	CI	Teacher
Whitney v. Board of Education Grand County	UT	2002	FCA	2a	CI	Teacher

**Appendix I: Summary of Cases by State,  
Category of Incompetence, and Prevailing Party**

**Appendix I: Coding System Key for Matrix of Tenured Teacher Dismissal  
Court Cases by State**

**AREA: Courts:**

**State Courts:**

SCC -- State Circuit Court  
SCA -- State Court of Appeals  
SCC -- State Supreme Court

**Federal Courts:**

FDC -- Federal District Court  
FCA -- Federal Court of Appeals  
USSC -- U.S. Supreme Court

**AREA: Grounds:**

**Category 1: Inadequate Preparation to Teach**

- 1.a. Lack of Subject Matter Knowledge
- 1.b. Lack of Proper Certification

**Category 2: Inadequate Teaching Methods**

- 2.a. Inadequate Planning and Coordination of Instruction
- 2.b. Lack of Classroom Discipline

**Category 3: Adverse Effect on Pupils**

- 3.a. Inappropriate Subject Matter
- 3.b. Unreasonable Disciplinary Action
- 3.c. Harmful Psychological Effects

**Category 4: Disability**

- 4.a. Physical
- 4.b. Mental

**Category 5: Unacceptable Personal Behavior**

- 5.a. Poor Relations with Staff
- 5.b. Inappropriate Behavior
- 5.c. Willful Neglect of Duty
- 5.d. Negligence

**Category 6: Other**

**AREA: Challenge:**

SDP -- Substantive Due Process  
PDP -- Procedural Due Process  
EV -- Evidence  
CI -- Constitutional Issue

**State: Alaska**

Case Title and Citation	Year	Court	Category of Incompetence	Reason for Challenge	Prevailing Party
Linstad v. Sitka School District	1998	SSC	2b	EV	School District

**State: Arizona**

Case Title and Citation	Year	Court	Category of Incompetence	Reason for Challenge	Prevailing Party
Pavlik v. Chinle Unified School District	1999	SCA	5b	PDP	School District

**State: Arkansas**

Case Title and Citation	Year	Court	Category of Incompetence	Reason for Challenge	Prevailing Party
Leola v. McMahon	1986	SCC	2a	EV	Teacher
Walker v. Stuttgart School District #22	1986	FCA	2a	DP	Teacher
Whitfield v. Little Rock Public Schools	1988	SCA	2b	EV	School District



**State: California**

Case Title and Citation	Year	Court	Category of Incompetence	Reason for Challenge	Prevailing Party
Perez v. Commission on Professional Competence	1983	SCA	2b	PDP	School District
Governing Board of the El Dorado Union High School District v. Commission on Professional Competence	1985	SCA	2a	PDP	School District
San Dieguito Union High School District v. Commission on Professional Competence	1985	SCA	5b	EV	School District
Woodland Joint Unified School District v. Commission on Professional Competence,	1992	SCA	2b	EV	School District

State: Colorado

Case Title and Citation	Year	Court	Category of Incompetence	Reason for Challenge	Prevailing Party
deKoevend v. Board of Education West End School District RE-2	1984	SSC	2b	PDP	Teacher
Rosenberg v. Board of Education of School District #1, Denver Public Schools	1985	SSC	3c	PDP	School District
Blaine v. Moffat	1988	SSC	5b	EV	School District
Frey v. Adams County School District #14	1991	SSC	1b	PDP	School District
Smith v. Denver Public School Board	1994	FCA	2a	CI	School District
Board of Education Jefferson County School District v. Wilder	1998	SSC	3a	EV	School District
School District #1, City and County of Denver v. Cornish	2002	SCA	1b	EV	School District

**State: Connecticut**

Case Title and Citation	Year	Court	Category of Incompetence	Reason for Challenge	Prevailing Party
Rado v. Board of Education Borough of Naugatuck	1990	SSC	5b	EV	School District
Halpern v. Board of Education City of Bristol	1996	SCA	2a	PDP	School District
Meehan v. Town of East Lyme, et al	1996	FDC	2a	PDP	School District
Sekor v. Board of Education Town of Ridgefield	1997	SCA	1a	EV	School District

**State: Delaware**

Case Title and Citation	Year	Court	Category of Incompetence	Reason for Challenge	Prevailing Party
Behrens and Kile v. Board of Education Colonial School District	1995	SCC	1b	PDP	Teacher

**State: Florida**

Case Title and Citation	Year	Court	Category of Incompetence	Reason for Challenge	Prevailing Party
Braddock v. School Board of Nassau County Florida	1984	SCA	5b	EV	Teacher

**State: Georgia**

Case Title and Citation	Year	Court	Category of Incompetence	Reason for Challenge	Prevailing Party
Holley v. Seminole County School District	1985	FCA	5b	CI	Teacher
Terry v. Houston County Board of Education	1986	SCA	5b	EV	Teacher

State: Illinois

Case Title and Citation	Year	Court	Category of Incompetence	Reason for Challenge	Prevailing Party
Stamper v. Board of Education School District #143, Cook City	1986	SCA	2b	EV	School District
Board of Education ID No. 151 v. Illinois State Board of Education	1987	SCA	4a	EV	Teacher
deOliveira v. Illinois State Board of Education	1987	SCA	2a	EV	School District
Chicago Board of Education v. Smith	1996	SCA	2a	PDP	Teacher

**State: Indiana**

Case Title and Citation	Year	Court	Category of Incompetence	Reason for Challenge	Prevailing Party
Harrison-Washington Community School Corp. v. Bales	1983	SCA	2b	EV	School District
Dickson v. Aaron	1996	SCA	5b	EV	School District



**State: Iowa**

Case Title and Citation	Year	Court	Category of Incompetence	Reason for Challenge	Prevailing Party
Randall v. Allison-Bristow Community School District	1995	SSC	3b	PDP	School District
Sheldon Community School District v. Lundblad	1995	SSC	5b	EV	School District

**State: Kansas**

Case Title and Citation	Year	Court	Category of Incompetence	Reason for Challenge	Prevailing Party
Unified School District #500, Kansas City v. Robinson	1997	SSC	2a	EV	Teacher

**State: Louisiana**

Case Title and Citation	Year	Court	Category of Incompetence	Reason for Challenge	Prevailing Party
Cunningham v. Franklin Parish School Board	1984	SCA	5c	PDP	School District
Lewis v. East Feliciana Parish School Board	1984	SCA	5b	EV	School District
Williams v. Concordia Parish School Board	1996	SCA	3a	EV	School District

**State: Maine**

Case Title and Citation	Year	Court	Category of Incompetence	Reason for Challenge	Prevailing Party
Urbanski v. Pelletier	1991	SCC	1b	PDP	Teacher

**State: Maryland**

Case Title and Citation	Year	Court	Category of Incompetence	Reason for Challenge	Prevailing Party
Board of Education City of Baltimore v. Ballard	1986	SCA	2a	PDP	Teacher
Board of School Commissioners of Baltimore City v. James	1993	SCA	2a	PDP	School District

**State: Massachusetts**

Case Title and Citation	Year	Court	Category of Incompetence	Reason for Challenge	Prevailing Party
Kurlander v. School Committee of Williamstown	1983	SCA	2a	PDP	School District
School Committee of Brockton v. Tenure Review Board	1984	SSC	2a	EV	School District
School Committee of Needham v. Needham Education Association	1986	SSC	2a	EV	Teacher
School Committee of Norton v. Norton Teachers Association	1987	SCA	5b	PDP	Teacher
City of Worcester v. Worcester Vocational Teachers Association	1999	SSC	5b	EV	Teacher

**State: Michigan**

Case Title and Citation	Year	Court	Category of Incompetence	Reason for Challenge	Prevailing Party
Ferrario v. Board of Education of Escanaba	1986	SSC	5b	PDP	School District
Hagerty v. State Tenure Commission	1989	SCA	2a	PDP	School District
Plymouth-Canton School District v. Kurtz	1990	SSC	5b	PDP	School District
Board of Education for Ann Arbor v. Abrahams	1993	SCA	5b	EV	Teacher
Widdoes v. Detroit Public Schools	1996	SCA	3c	EV	Teacher
Cousino v. Utica Community Schools Board of Education	1997	SCA	2a	EV	School District
Parker v. Board of Education Byron Center	1998	SCA	5b	EV	School District

**State: Mississippi**

Case Title and Citation	Year	Court	Category of Incompetence	Reason for Challenge	Prevailing Party
Gates v. Walker	1994	FDC	2a	CI	School District



**State: Missouri**

Case Title and Citation	Year	Court	Category of Incompetence	Reason for Challenge	Prevailing Party
Brown v. Weir	1984	SCA	3b	EV	School District
Nevels v. Board of Education School District of Maplewood-Richmond Heights	1991	SCA	2a	EV	School District

**State: Nebraska**

Case Title and Citation	Year	Court	Category of Incompetence	Reason for Challenge	Prevailing Party
Irwin v. Board of Education School District #25	1983	SSC	5c	PDP	Teacher
Eshom v. Board of Education School District #54	1985	SSC	2a	EV	School District
Drain v. Board of Education Frontier County School District	1993	SSC	5c	EV	Teacher
Schaffert v. Lancaster County School District #1	1998	SCA	2a	EV	School District

**State: New Mexico**

Case Title and Citation	Year	Court	Category of Incompetence	Reason for Challenge	Prevailing Party
Redman v. Board of Regents for the New Mexico School of the Visually Handicapped	1984	SCA	5b	PDP	Teacher
Kibbe v. Elida School District	1999	SSC	5b	EV	Teacher

**State: New York**

Case Title and Citation	Year	Court	Category of Incompetence	Reason for Challenge	Prevailing Party
Fitzpatrick v. Board of Education of Mamaroneck Union Free Schools	1983	SCA	4b	EV	School District
Katz v. Ambach	1984	SCA	5b	EV	School District

**State: North Carolina**

Case Title and Citation	Year	Court	Category of Incompetence	Reason for Challenge	Prevailing Party
Bennett v. Hertford County Board of Education	1984	SCA	4a	EV	School District
Faulkner v. New Bern-Craven County Board of Education	1984	SSC	5b	EV	School District
Evers v. Pender County School Board	1991	SCA	5b	PDP	School District
In the Matter of Freeman	1993	SCA	5b	EV	School District
Hope v. Charlotte-Mecklenburg Board of Education	1993	SCA	2a	EV	School District
Farris v. Burke County Board of Education	2002	SSC	2a	EV	School District

**State: Ohio**

Case Title and Citation	Year	Court	Category of Incompetence	Reason for Challenge	Prevailing Party
Katz v. Maple Heights City School District Board of Education	1993	SCA	5b	EV	Teacher
Buie v. Chippewa Local School District Board	1994	SCA	2a	EV	Teacher

**State: Oklahoma**

Case Title and Citation	Year	Court	Category of Incompetence	Reason for Challenge	Prevailing Party
Short v. Kiamichi Area Vo-Tech School District #7 Choctaw County	1988	SSC	1b	PDP	Teacher
House v. Independent School District I-29 of Muskogee County	1997	SSC	2a	EV	School District

State: Oregon

Case Title and Citation	Year	Court	Category of Incompetence	Reason for Challenge	Prevailing Party
Thomas v. Cascade Union High School District #5	1986	SCA	5c	PDP	Teacher
Jefferson County School District #509-J v. Fair Dismissal Appeals Board	1991	SSC	5c	EV	School District



**State: Pennsylvania**

Case Title and Citation	Year	Court	Category of Incompetence	Reason for Challenge	Prevailing Party
Harrison v. Capital Area Intermediate Unit	1984	SCC	2a	EV	School District
Board of Education of Philadelphia v. Kushner	1987	SCC	2a	EV	School District
Rhodes v. Laurel Highlands School District	1988	SCC	5b	EV	School District
Lauer v. Millville Area School District	1995	SCC	5d	EV	Teacher

**State: Rhode Island**

Case Title and Citation	Year	Court	Category of Incompetence	Reason for Challenge	Prevailing Party
Hobson v. Rhode Island Board of Regents, et al	1998	SCA	4a	CI	School District

**State: South Carolina**

Case Title and Citation	Year	Court	Category of Incompetence	Reason for Challenge	Prevailing Party
Hendrickson v. Spartanburg County School District	1992	SCA	2b	EV	School District
Adamson v. Richland County School District One	1998	SCA	2a	PDP	School District
Barrett v. Charleston County School District	2001	SCA	5b	EV	School District

**State: South Dakota**

Case Title and Citation	Year	Court	Category of Incompetence	Reason for Challenge	Prevailing Party
Hinkle v. Christenson, et al	1984	FCA	5b	CI	Teacher
Collins v. Faith School District #46-2	1998	SSC	3a	EV	Teacher

**State: Tennessee**

Case Title and Citation	Year	Court	Category of Incompetence	Reason for Challenge	Prevailing Party
Bundy v. Unicoi County Board of Education	1993	SSC	2a	EV	Teacher
Morris v. Clarksville-Montgomery County Consolidated Board of Education	1993	SCA	5b	EV	School District
Stanback v. Dale Summitt, et al	1995	SCA	5c	EV	Teacher
Childs v. Roane County Board of Education	1996	SCA	2b	PDP	School District
Enochs v. Nerren, et al	1996	SCA	5b	PDP	School District
Wallace v. Mitchell, et al	2000	SCA	5b	EV	School District
Sykes v. Richardson	2002	SCA	5b	EV	School District

State: Texas

Case Title and Citation	Year	Court	Category of Incompetence	Reason for Challenge	Prevailing Party
Burton v. Kirby, et al	1989	SCA	3b	EV	School District
Roberts v. Houston Independent School District	1990	SCA	2a	PDP	School District
Fetchin v. Meno, et al	1996	SCA	2a	EV	School District
Ysleta Independent School District v. Meno, et al	1996	SCA	5b	EV	School District
Eagle Pass Independent School District v. Woolworth, et al	1997	SCA	4b	EV	School District
Wallace v. Christoval Independent School District	1998	SCA	2a	EV	Teacher
Willingham v. Texas Education Agency	2000	SCA	2a	EV	School District

**State: Utah**

Case Title and Citation	Year	Court	Category of Incompetence	Reason for Challenge	Prevailing Party
Whitney v. Board of Education Grand County	2002	FCA	2a	CI	Teacher

**State: Washington**

Case Title and Citation	Year	Court	Category of Incompetence	Reason for Challenge	Prevailing Party
Coupeville School District #204 v. Vivian	1984	SCA	5b	EV	School District



**State: West Virginia**

Case Title and Citation	Year	Court	Category of Incompetence	Reason for Challenge	Prevailing Party
DeVito v. Board of Education, et al	1984	SCA	5c	EV	Teacher
Meckley v. Kanawha County Board of Education	1989	SCA	5b	EV	School District
Board of Education County of Gilmer v. Chaddock	1990	SCA	5c	EV	Teacher
Fayette County Board of Education v. Lilly, et al	1991	SCA	2a	PDP	Teacher
Harry v. Marion County Board of Education	1998	SCA	5b	EV	School District

**State: Wisconsin**

Case Title and Citation	Year	Court	Category of Incompetence	Reason for Challenge	Prevailing Party
School District of Spooner v. Northwest United Educators, et al	1987	SSC	5b	EV	School District