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School Law—Dismissal for Conduct Unbecoming A Teacher—Kroll v. Independent School District No. 593, 304 N.W.2d 338 (Minn. 1981)

School Law—DISMISSAL FOR CONDUCT UNBECOMING A TEACHER—*Kroll v. Independent School District No. 593*, 304 N.W.2d 338 (Minn. 1981).

At common law school teachers were considered employees of the local school board and not public officers.[1] The contract between a school teacher and the local board of education was terminable by either party upon substantial breach by the other party[2] and the school board had an implied power to dismiss a teacher for good and sufficient cause.[3] State legislatures, through teacher tenure laws, gradually limited the power of school boards to discharge teachers by designating specific grounds for dismissal.[4] In 1967 the Minnesota legislature established substantive

1. *See* State *ex rel.* Ging v. Board of Educ., 213 Minn. 550, 574, 7 N.W.2d 544, 557 (1942), *overruled in part on other grounds*, Foesch v. Independent School Dist. No. 646, 300 Minn. 478, 223 N.W.2d 377 (1974); N. EDWARDS, THE COURTS AND THE PUBLIC SCHOOLS 475 (1971).

2. W. VALENTE, LAW IN THE SCHOOLS 180 (1980).

3. *See* Freeman v. Inhabitants of Bourne, 170 Mass. 289, 294, 49 N.E. 435, 436 (1898); Wallace v. School Dist. No. 27, 50 Neb. 171, 175, 69 N.W. 772, 773 (1897); Tadlock v. School Dist. No. 29, 27 N.M. 250, 256, 199 P. 1007, 1009 (1921); Foreman v. School Dist. No. 25, 81 Or. 587, 594, 159 P. 1155, 1157 (1916); N. EDWARDS, *supra* note 1, at 475. *See generally* F. DELON, LEGAL CONTROLS ON TEACHER CONDUCT: TEACHER DISCIPLINE 7-64 (1977); E. GEE & D. SPERRY, EDUCATION LAW AND THE PUBLIC SCHOOLS: A COMPENDIUM D-14 to D-29 (1978); L. PETERSON, R. ROSSMILLER & M. VOLZ, THE LAW AND PUBLIC SCHOOL OPERATION §§ 18.12-.19 (2d ed. 1978); W. VALENTE, *supra* note 2, at 180; Jacobsen, Sperry & Jensen, *The Dismissal and Non-Reemployment of Teachers*, 1 J.L. & EDUC. 435 (1972); Note, *Developments in the Law—Academic Freedom*, 81 HARV. L. REV. 1045, 1094-105 (1968).

4. *See generally* Note, *An Illinois Teacher's Right to Retention, Part I: Substantive Rights of Teachers*, 48 CHI.-KENT L. REV. 80, *Part II: The Procedural Rights of Teachers Regarding Dismissals*, 48 CHI.-KENT L. REV. 260 (1971); 6 HARV. J. LEGIS. 112 (1968). For a brief overview of Minnesota's teacher tenure law as of 1936, see Jennings, *Removal from Public Office in Minnesota*, 20 MINN. L. REV. 721, 762-69 (1936).

In 1927 the Minnesota legislature enacted the first teacher tenure law, but it was applicable only to cities of the first class. *See* Act of Mar. 14, 1927, ch. 36, 1927 Minn. Laws 42, 42 (current version at MINN. STAT. § 125.17 (1980)). The 1927 teacher tenure law embodied five provisions for teacher discharge or demotion, including a provision for conduct unbecoming a teacher. *Id.* § 6, 1927 Minn. Laws at 43.

In 1941 the legislature repealed the entire 1927 Education Code and reenacted the pre-1927 version of the teacher tenure law for cities of the first class. *See* Act of Apr. 10, 1941, ch. 169, art. 10, § 25, 1941 Minn. Laws 227, 343. The 1941 hiring and termination provision did not include specific grounds for teacher discharge; rather it provided that a majority vote by the full membership of a school board could terminate a teacher's contract at the close of the school year. *Id.* § 18, 1941 Minn. Laws at 340-41. In the same Education Code, the legislature enacted a provision whereby a school board could discharge a teacher for cause. *See id.* § 25, 1941 Minn. Laws at 343.

Between 1941 and 1967, when the Minnesota legislature enacted the present two discharge provisions applicable to cities other than first class cities, *see* note 5 *infra*, the Minnesota Supreme Court focused on the procedural aspects of teacher termination and not on the substantive basis for dismissal. The court was concerned with procedural due process afforded the teacher, whether the teacher was given formal charges, notice, and a hearing, and not with the statutory grounds for discharge. *See, e.g.*, State *ex rel.* Ging v.

grounds for termination and immediate discharge of school teachers.[5] Despite these statutory guidelines in Minnesota, the decision to discharge under the immediate discharge or termination provisions remains entirely within the local school board's discretion.[6]

Board of Educ., 213 Minn. 550, 7 N.W.2d 544 (1942), *overruled in part on other grounds*, Foesch v. Independent School Dist. No. 646, 300 Minn. 478, 223 N.W.2d 377 (1974):

> The field of judicial inquiry is not enlarged in the case of discharge of teachers for cause, essentially an executive function, by the fact that a legislative act requires such court trappings as formal charges, notice, and a hearing. . . .
>
> . . . .
>
> So here, neither the district court on *certiorari* nor this court on appeal could interfere with the school board in its decision as to the existence of statutory grounds for discharge, provided the board acted in good faith and on a correct interpretation of the law.

Id. at 570-72, 7 N.W.2d at 555-56.

5. *See* Act of May 25, 1967, ch. 890, § 1, 1967 Minn. Laws 1885, 1887-89 (current version at MINN. STAT. § 125.12(6), (8) (1980)). The current contract termination provisions read:

> Subd. 6 *GROUNDS FOR TERMINATION.* A continuing contract may be terminated, effective at the close of the school year, upon any of the following grounds:
>
> (a) Inefficiency;
>
> (b) Neglect of Duty, or persistent violation of school laws, rules, regulations, or directives;
>
> (c) Conduct unbecoming a teacher which materially impairs his educational effectiveness;
>
> (d) Other good and sufficient grounds rendering the teacher unfit to perform his duties.
>
> A contract shall not be terminated upon one of the grounds specified in clauses (a), (b), (c), or (d), unless the teacher shall have failed to correct the deficiency after being given written notice of the specific items of complaint and reasonable time within which to remedy them.
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> Subd. 8 *IMMEDIATE DISCHARGE.* A school board may discharge a continuing-contract teacher, effective immediately, upon any of the following grounds:
>
> (a) Immoral conduct, insubordination, or conviction of a felony;
>
> (b) Conduct unbecoming a teacher which requires the immediate removal of the teacher from his classroom or other duties;
>
> (c) Failure without justifiable cause to teach without first securing the written release of the school board.
>
> (d) Gross inefficiency which the teacher has failed to correct after reasonable written notice;
>
> (e) Willful neglect of duty; or
>
> (f) Continuing physical or mental disability subsequent to a twelve months leave of absence and inability to qualify for reinstatement in accordance with subdivision 7.
>
> Prior to discharging a teacher the board shall notify the teacher in writing and state its grounds for the proposed discharge in reasonable detail. Within ten days after receipt of this notification the teacher may make a written request for a hearing before the board and it shall be granted before final action is taken. The board may, however, suspend a teacher with pay pending the conclusion of such hearing and determination of the issues raised therein after charges have been filed which constitute ground for discharge.

MINN. STAT. § 125.12(6), (8) (1980).

6. Kroll v. Independent School Dist. No. 593, 304 N.W.2d 338, 334 (Minn. 1981) ("the decision to discharge under one provision or another is totally within the discretion of local boards of education").

In *Kroll v. Independent School District No. 593*[7] the Minnesota Supreme Court recognized the unfairness of school board termination proceedings under the current Minnesota teacher tenure statute.[8] The court held that before a teacher could be dismissed for conduct unbecoming a teacher under either the immediate discharge or termination provision, the school board must find that the conduct was not remediable.[9]

The appellant in *Kroll*, a tenured teacher, was immediately dismissed after a hearing in which the school board concluded that she had engaged in "conduct unbecoming a teacher."[10] The appellant allegedly had ordered a student to extend his arms in an "airplane" fashion before the entire class as a disciplinary measure.[11] Notwithstanding conflicting testimony, the school board found that appellant held pins under the student's arms so that he could not lower them.[12] The board concluded that this was an unacceptable form of discipline that required the appellant's immediate removal from the classroom pursuant to Minnesota Statutes section 125.12, subdivision 8.[13]

The plaintiff petitioned the district court for a writ of certiorari[14] on the grounds that her termination was not proper under the teacher tenure statute. After hearing the matter on its merits, the district court va-

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7. *Id.*

8. *Id.* at 345. "[W]e have on several occasions questioned the fairness of school board termination proceedings under our current statute." *Id.*

9. *See id.* at 346. The *Kroll* court enumerated three factors which a school board must take into account in finding the teacher's conduct not remediable. The board must examine the teacher's record as a whole, the severity of the conduct in light of the teacher's record, and the actual impact of the conduct upon the students. *Id.* at 345-46.

The *Kroll* decision was further expanded in Ganyo v. Independent School Dist. No. 832, 311 N.W.2d 497 (Minn. 1981). In *Ganyo* the Minnesota Supreme Court stated that a teacher, according to statute, must be given a reasonable time in which to correct deficiencies in his teaching practice. *Id.* at 502. The *Ganyo* court held the minimum eight weeks from notice to deficiency to notice of termination required by MINN. STAT. § 125.12(6) was not a reasonable time for a teacher of 17 years to remedy teaching practices which were now labeled deficient for the first time. *Id.*

10. 304 N.W.2d at 341. The school board based its findings upon the testimony of three nine-year-old students, coupled with the expert opinion of a social worker who entered the room at the conclusion of the incident. *Id.* The school board did not consider the teacher's prior record of 23 years in reaching its decision. *Id.* The board based its decision to immediately dismiss the appellant on the premise that the punishment which the teacher allegedly implemented was "cruel, excessive, and contrary to the standard of professional conduct established for certified classroom teachers." *Id.* The *Kroll* court, however, noted that the local school board did not have a written disciplinary policy. *Id.* at 341.

11. *Id.* at 340.

12. The school Board found that this type of punishment constituted a threat of personal pain and harm, as well as an emotional threat to a third grade child and a psychological risk to all other students in the room at the time of the punishment. *Id.* at 341.

13. *Id.* at 340.

14. For a discussion on the use of a writ of certiorari for appellant review in teacher discharge cases, see note 16 *infra*.

cated the writ.[15] On appeal the questions were whether the school board's decision to immediately dismiss the appellant was supported by substantial evidence[16] and whether the school board's decision to dismiss pursuant to the immediate discharge provision, rather than the termination provision, was proper.[17] The Minnesota Supreme Court held that the testimony elicited at the hearing did not substantiate the factual findings[18] and that the "decision of the respondent school board to dismiss immediately under subdivision 8 was arbitrary, unreasonable, and contrary to law."[19] The court stressed that the school board's findings must be supported by probative evidence.[20] The probative value of the evi-

15. 304 N.W.2d at 340.

16. *Id.* at 341-42. The test for appellate review in matters of teacher termination was first established in Minnesota in State *ex rel.* Ging v. Board of Educ., 213 Minn. 550, 7 N.W.2d 544 (1942), *overruled in part on other grounds*, Foesch v. Independent School Dist. No. 646, 300 Minn. 478, 223 N.W.2d 377 (1974). The *Ging* court stated:

> [A] limited jurisdiction by way of *certiorari*, and in some cases by statutory appeal, is conferred upon the courts. This is necessarily confined to questions affecting the jurisdiction of the board, the regularity of its proceedings, and, as to merits of the controversy, whether the order or determination in a particular case was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it.

Id. at 570-71, 7 N .W.2d at 556. For more recent restatements of this test, see Whaley v. Anoka-Hennepin Indep. School Dist. No. 11, 325 N.W.2d 128 (Minn. 1982); Liffrig v. Independent School Dist. No. 442, 292 N.W.2d 726, 729 (Minn. 1980); State *ex rel.* Lucas v. Board of Educ., 277 N.W.2d 524, 526 (Minn. 1979); Foesch v. Independent School Dist. No. 646, 300 Minn. 478, 485, 223 N.W.2d 371, 375 (1974).

17. 304 N.W.2d at 342. The *Kroll* court reasserted that it has a limited role in reviewing the evidence upon which the school board based its findings. *Id.*

The court repeated the well-established rule that it is not at liberty to hear the case *de novo* and substitute its findings for those of the school board. *Id; cf.* Mahnerd v. Canfield, 297 Minn. 148, 152, 211 N.W.2d 177, 180 (1973) (reviewing civil service examinations); Sellin v. City of Duluth, 248 Minn. 333, 337-39, 80 N.W.2d 67, 70-72 (1956) (removal of municipal employee by administrative board); State *ex rel.* Hart v. Common Council, 53 Minn. 238, 242, 243, 55 N.W. 118, 119 (1893) (court had right to review dismissal of two members of Board of Fire Commissioners for cause).

In Ganyo v. Independent School Dist. No. 832, 311 N.W.2d 497 (Minn. 1981), the Minnesota Supreme Court required that the findings of the school board be written findings which not only set out the specific charge or charges upon which the school based its decision but also the basic facts developed in the evidence which, in the board's judgment, support the charge or charges. *Id.* at 500 n.3. Mere restatement of the alleged deficiencies as findings of fact is insufficient. *Id.*

18. *Id.* at 342. The court also found that the substantial evidence did not support the board's findings of harm sufficient to justify an immediate dismissal of the appellant. The court noted that there was no actual harm to any of the students and the only evidence presented at the hearing was of potential psychological harm. This potential psychological harm did not meet the threshold of actual harm. *Id.* at 346.

19. *Id.*

20. *Id.* at 342. The evidentiary rule that the *Kroll* court used in reviewing the school board's findings was first adopted by the United States Supreme Court in Universal Camera Corp. v. NLRB, 340 U.S. 474, 490 (1951) (record evidence of agency finding must appear substantial when viewed as a whole by court of appeals).

Even though a school board does not have to observe the rules of evidence in its

dence relied on by the school board was negated by the inconsistent testimony adduced at the hearing.[21]

The pivotal issue in *Kroll*, whether the school board had discretion to immediately dismiss a teacher for "conduct unbecoming a teacher," was one of first impression for the Minnesota Supreme Court.[22] The court recognized the need to balance the competing interests of local school board control of teacher discipline and job security for teachers who have proven their fitness.[23] The court acknowledged that a balance must be struck between the local school board's discretion in disciplining teachers and the teachers' interest in knowing that they will be immediately dismissed only if their conduct is not remediable.[24]

The court in *Kroll* noted that the statutory provisions for teacher termination lend themselves to two different constructions: a detrimental impact approach and a remediability approach.[25] The respondent argued that a school board's decision to dismiss a teacher under either provision should be made by a detrimental impact analysis. This analysis focuses on the teacher's conduct and the impact of the conduct on the student and the class.[26] The *Kroll* court rejected this approach because it

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quasi-judicial role, the *Kroll* court, noting that there must be limits to the type of evidence that the school board can hear, stated, "The board should not have to find support for its determination in hearsay or to make deductions from opinions and view relating to technical or theoretical principles." 304 N.W.2d at 342 (citing Morey v. Independent School Dist. No. 492, 271 Minn. 445, 449, 136 N.W.2d 105, 108 (1965)).

21. *Id.* The *Kroll* court found that the school board's reliance on the inconsistent testimony of the three children, the social worker, and the teacher effectively negated the probative value of the evidence. *Id.*

22. *Id.* at 344. *But see* Liffring v. Independent School Dist. No. 442, 292 N.W.2d 726 (Minn. 1980) (principal's employment terminated under MINN. STAT. § 125.12(8) for immoral conduct and conduct unbecoming a principal).

23. 304 N.W.2d at 344. *See generally* Keller v. Independent School Dist. No. 742, 302 Minn. 324, 327-29, 224 N.W.2d 749, 752 (1974); Foesch v. Independent School Dist. No. 646, 300 Minn. 478, 485, 223 N.W.2d 371, 375 (1974); McSherry v. City of St. Paul, 202 Minn. 102, 108, 277 N.W. 541, 544 (1938); Anderson v. Consolidated School Dist. No. 144, 196 Minn. 256, 257-58, 264 N.W. 784, 785 (1936).

24. 304 N.W.2d at 344. For a discussion of these "tensions," see Gee, *Teacher Dismissal: A View from Mount Healthy*, 60 B.Y.U. L. REV. 255 (1980).

25. 304 N.W.2d at 344-45. The court reasoned that because the teacher tenure statute was susceptible to both the detrimental impact approach and the remediability approach, the court was permitted to provide an interpretation of the statute that best corresponds to the intent of the legislation. *See* 304 N.W.2d at 345 (citing Beck v. City of St. Paul, 304 Minn. 438, 445, 231 N.W.2d 919, 923 (1975) (court interprets legislative intent of amendment to zoning ordinance)).

26. The school board argued for the detrimental impact analysis because "conduct unbecoming a teacher" is distinguished in the two provisions by language that emphasizes the urgency to immediately discharge the teacher based on the extreme nature of the teacher's conduct. *Id.* at 344; *see also* Respondent's Brief at 12, Kroll v. Independent School Dist. No. 593, 304 N.W.2d 338 (Minn. 1981). The more serious the teacher's improper conduct, the more appropriate the subdivision 8 termination. The statutory lan-

failed to consider a teacher's prior exemplary record.[27]

The *Kroll* court adopted the appellant's remediability interpretation of the discharge provisions.[28] Relying on the legislative purpose in creating two termination procedures,[29] the court concluded that the remediability approach achieved the requisite balance between the administrative discretion of local school boards and the prevention of arbitrary dismissals of competent teachers.[30] In reaching this conclusion, the court observed the parallel between the Minnesota teacher tenure laws and the two-step discharge procedure followed in Illinois.[31]

The *Kroll* court cited with approval the Illinois case of *Gilliland v. Board of Education of Pleasant Consolidated School District No. 622*,[32] which set forth a test for determining whether misconduct is remediable.[33] The *Gilliland* test for determining remediability is "whether damage has been done to

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guage qualifying the levels of severity lends itself easily to the detrimental impact interpretation. *See id.* at 14.

The detrimental impact approach calls for the school board to balance the "material impairment of educational effectiveness" of subdivision 6, with the need for "immediate removal from the classroom" of subdivision 8. If the teacher's conduct in a particular incident is extremely harmful to the student or the class, then the teacher should be dismissed immediately. *See* 304 N.W.2d at 344.

The plaintiff argued that the remediable/irremediable approach is most consistent with the Minnesota statutory scheme of two separate provisions for "conduct unbecoming a teacher." If the school board determines that a teacher's conduct is remediable, then the board would proceed under section 125.12(6) and give the teacher a remedial notice specifying the conduct to be remedied in a reasonable time. If the school board determined that the teacher's conduct was irremediable, then the teacher would be immediately dismissed under section 125.12(8). *See* Appellant's Brief at 25-26, Kroll v. Independent School Dist. No. 593, 304 N.W.2d 338 (Minn. 1981).

27. 304 N.W.2d at 345.

28. *Id.*

29. *Compare* MINN. STAT. § 125.12(6), (8) (1980) (two provisions for teacher termination applicable to cities outside of the first class) *with* MINN. STAT. § 125.17(4) (1980) (one provision for teacher termination applicable only to cities of the first class).

30. 304 N.W.2d at 345. Whether the existence of two different teacher termination provisions in Minnesota, one for teachers of first class cities and the other for teachers outside of first class cities, is a violation of the equal protection clause has never been raised.

31. *Id.*

32. 67 Ill. 2d 143, 365 N.E.2d 322 (1977).

33. *Id.* at 153, 365 N.W.2d at 326. In *Gilliland* the court embellished the remediable statutory approach by judicial ruling. The Illinois teacher tenure statute and the Minnesota teacher tenure statute are not identical. *See* note 35 *infra*. Without the *Gilliland* remediable test there would be little similarity between the Illinois teacher tenure statute and the Minnesota teacher tenure statute. *See id.*

A board of education has the authority to determine initially whether its grounds for dismissal of a tenured elementary teacher are remediable or irremediable. At the dismissal hearing, the board must make a finding of fact to determine whether the evidence established that the misconduct was remediable. Gilliland v. Board of Educ., 35 Ill. App. 3d 861, 866, 343 N.E.2d 704, 709 (1976), *rev'd on other grounds*, 67 Ill. 2d 143, 365 N.E.2d 322 (1977).

the students, faculty, or school, and whether the conduct resulting in that damage could have been corrected had the teacher's superiors warned her."[34] In Illinois, once a school board has determined that a teacher's conduct is remediable, the teacher tenure statute requires the board to give the teacher written notice of the conduct, which, if not remedied, may result in dismissal.[35]

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34. 67 Ill. 2d 143, 153, 365 N.E.2d 322, 326 (1977). This remediable test has been reaffirmed. *See* Grissom v. Board of Educ., 75 Ill. 2d 314, 331-32, 388 N.E.2d 398, 405 (1979); Aulwurm v. Board of Educ., 67 Ill. 2d 434, 442, 367 N.E.2d 1337, 1341 (1977).

35. *See* ILL. REV. STAT. ch. 122, § 24-12 (1980). The removal and dismissal provision of the Illinois teacher tenure statute provides:

> Before setting a hearing on charges stemming from causes that are considered remediable, a board must give the teacher a reasonable warning in writing, stating specifically the charges which, if not removed, may result in charges. The hearing officer shall, with reasonable dispatch, make a decision as to whether or not the teacher shall be dismissed and shall give a copy of the decision to both the teacher and the school board.

Id.

In the Illinois teacher tenure statute, there is only one provision which focuses on teacher dismissal and contract termination. *See id.* In the Minnesota teacher tenure statute for cities outside of the first class, there are two separate provisions on teacher dismissals. The first provision of the Minnesota statute, which focuses on the general grounds for termination, includes a remedial notice requirement. MINN. STAT. § 125.12(6) (1980). The second provision, which states the grounds for immediate discharge, does not require remedial notice. *See id.* § 125.12(8).

The *Kroll* court addressed the fact that the Minnesota teacher tenure statute does not delineate the procedure school boards are to follow in determining whether to dismiss a teacher under the general termination or immediate discharge provision, and held that a school must make an initial determination as to whether the teacher's conduct is remediable. If the board finds that the conduct was remediable, then the board must proceed along the remedial notice route. If the board's initial determination is that the conduct is irremediable, then the board would proceed under the immediate discharge provision and follow all the procedural safeguards detailed in the teacher tenure statute. *See* 304 N.W.2d at 345.

The major difference between the Illinois and Minnesota teacher tenure statutes is that the Illinois provision requires the school board's decision to be reviewed by an impartial hearing examiner. *See* ILL. REV. STAT. ch. 122, § 24-12 (1980). The Minnesota statute has no comparable safeguard. However, the *Kroll* court did recommend such a procedure. *See* 304 N.W.2d at 345 & n.3.

The Minnesota Supreme Court has questioned the fairness of termination proceedings under the current statute, which permits local school boards to exercise the three-part role of prosecutor, judge and jury. *See* Ganyo v. Independent School Dist. No. 832, 311 N.W.2d 497, 499 n.2 (Minn. 1981); Kroll v. Independent School Dist. No. 593, 304 N.W.2d 338, 345 & n.3 (Minn. 1980); Liffrig v. Independent School Dist. No. 442, 292 N.W.2d 726, 730 (Minn. 1980). To lessen this potential prejudicial impact upon termination proceedings the *Kroll* court emphasized that, in the absence of unusual or extenuating circumstances, a hearing examiner should be hired in all cases. 304 N.W.2d at 345 & n.3. The court in *Ganyo* further suggested that the hearing examiners not be limited to taking evidence but, by analogy to the Administrative Procedure Act, MINN. STAT. § 15.052(3) (1980), also make detailed findings and conclusions which would then be available to the school board in reaching its decision on termination. 311 N.W.2d 497, 499 n.2 (Minn. 1981). Still greater consistency would be realized, however, through legislative authoriza-

The *Kroll* court believed that the *Gilliland* test was too narrow in that it required examination of the teacher's conduct leading to the disciplinary action but not the teacher's prior record.[36] The court stated three factors that a school board must consider before determining the remediability of a teacher's conduct. First, the school board must review the teacher's entire record.[37] Consideration of the teacher's prior record avoids the discharge of teachers who have demonstrated their fitness.

Second, the severity of the teacher's conduct must be examined.[38] This factor focuses on the degree of harm that the teacher's conduct causes and whether it harms a student, the class, or the school system in general.[39] The school board has discretion to determine whether one incident is sufficient to discharge a teacher or whether repeated misconduct is necessary.[40] The *Kroll* court stressed that no matter how harmful the conduct of the teacher, immediate dismissal for a single incident must be justified in light of the teacher's entire record.[41]

Finally, the presence of actual or threatened harm in the teacher's conduct must be considered.[42] The nature of the harm, whether physical or psychological, is relevant.[43] The *Kroll* court was hesitant to expand on the harm factor, but noted that a school board might take prophylactic measures to prevent the harm from recurring.[44]

The three-factor remediable approach offered by the *Kroll* court provides guidelines for local school boards in the complex area of teacher dismissals. The method of analysis presented by the *Kroll* decision should work to protect teachers from arbitrary dismissals while allowing school

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tion of the use of hearing examiners in teacher dismissal proceedings and through the enactment of uniform termination procedures.

36. 304 N.W.2d at 345.

37. *Id.*

38. *Id.* at 345-46.

39. *Id.* at 346.

40. *Id.* In support of this statement, the *Kroll* court cited a Pennsylvania case in which a teacher shoved a student's head against a blackboard. Landi v. West Chester Area School Dist., 23 Pa. Commw. 586, 590, 353 A.2d 895, 897 (1976). The Minnesota court did not instruct school boards on how to analyze the more common teacher dismissal areas of insubordination, incompetency, or inefficiency under the remediable analysis. *See also* Thurston, *Tenured Teacher Dismissal in Illinois* 1975-79, 69 ILL. B.J. 422 (1981) (misconduct, insubordination, and incompetence are the most common areas of discharge and physical abuse of students is one of the least frequent reasons given for teacher termination).

41. 304 N.W.2d at 346.

42. *Id.* The court did not examine the relationship between threatened and psychological harm. *Id.* The respondent argued that the threatened harm in *Kroll* met the threshold of actual harm. *See* Respondent's Brief at 16, Kroll v. Independent School Dist. No. 593, 304 N.W.2d 338 (Minn. 1981).

43. 304 N.W.2d at 346.

44. The court noted that a school board does not have to wait for harm to come to the students before discharging a teacher. *Id.* The court's brevity in this area is a clear indication of the court's deference to the local school board's judgment as to the particulars of a given incident.

boards the power to swiftly discharge teachers who have demonstrated their unfitness[45] through incompetence, inefficiency, insubordination, or neglect of duty.[46]

Torts—ABROGATION OF PARENTAL IMMUNITY—*Anderson v. Stream*, 295 N.W.2d 595 (Minn. 1980).

Parental immunity is a judicially created rule that denies minor children a cause of action in tort against their parents.[1] In the last eighteen years the doctrine has been attacked in the courts,[2] resulting in a trend toward its judicial abrogation.[3] In the 1968 case of *Silesky v. Kelman*[4] the

45. The Minnesota Supreme Court has not ruled on a teacher dismissal case based on homosexuality or other possible immoral conduct charges. *But cf.* Gish v. Board of Educ., 145 N.J. Super. 96, 104-05, 366 A.2d 1337, 1342 (1976) (school board's interest in protecting students justified dismissal of homosexual teacher); Gaylord v. Tacoma School Dist. No. 10, 88 Wash. 2d 286, 559 P.2d 1340 (1977) (prior record of dismissed teacher irrelevant because of danger to students from teacher's present homosexuality); Fleming, *Teacher Dismissal for Cause: Public & Private Morality*, 7 J.L. & EDUC. 423 (1978).

46. The Minnesota teacher tenure statute already provides a two-step analysis for each of these provisions. *Compare* MINN. STAT. § 125.12(6) (1980) *with* MINN. STAT. § 125.12(8) (1980).

1. *See* Silesky v. Kelman, 281 Minn. 431, 432-33, 161 N.W.2d 631, 632 (1968); Briere v. Briere, 107 N.H. 432, 434, 224 A.2d 588, 590 (1966) Falco v. Pados, 444 Pa. 372, 376, 282 A.2d 351, 353 (1971); Merrick v. Sutterlin, 93 Wash. 2d 411, 412, 610 P.2d 891 (1980); *see also* 6 WM. MITCHELL L. REV. 219, 219 n.1 (1980) (history and rationale of parent-child tort immunity doctrine).

2. *See, e.g.*, Goller v. White, 20 Wis. 2d 402, 122 N.W.2d 193 (1963); *see also* 6 WM. MITCHELL L. REV. 219, 221 n.11 (listing 21 states that have abrogated parent-child tort immunity in whole or in part). Wisconsin was one of the first jurisdictions to substantially limit parental tort immunity.

3. Jurisdictions eliminating parent-child tort immunity have adopted four main approaches to abrogation: total abrogation, *see, e.g.*, Peterson v. City of Honolulu, 51 Hawaii 484, 486, 462 P.2d 1007, 1008 (1969); Rupert v. Stienne, 90 Nev. 397, 405, 528 P.2d 1013, 1017-18 (1974); the reasonable parent standard, *see, e.g.*, Gibson v. Gibson, 3 Cal. 3d 914, 921, 479 P.2d 648, 653, 92 Cal. Rptr. 288, 293 (1971) (the reasonable parent standard recognizes a parent's prerogative and duty to exercise authority over his minor child, but within reasonable limits); abrogation except for activities associated with family relationships or objectives, *see, e.g.*, Schenk v. Schenk, 100 Ill. App. 2d 199, 206, 241 N.E.2d 12, 15 (1968) (immunity is preserved "for conduct of either a parent or child arising out of the family relationship and directly connected with the family purposes and objectives"); and, abrogation with specific exceptions, *see, e.g.*, Goller v. White, 20 Wis. 2d 402, 413, 122 N.W.2d 193, 198 (1963) (abrogated immunity except "(1) where the alleged negligent act involves an exercise of parental authority over the child; and (2) where the alleged negligent act act involves an exercise or ordinary parental discretion with respect to the provision of food, clothing, housing, medical and dental services, and other care"); *see also* Streenz v. Streenz, 106 Ariz. 86, 89, 471 P.2d 282, 285 (1970) (discusses parental immunity generally indicating Wisconsin standard persuasive but not specifically adopted because it was unnecessary to decide instant case); Plumley v. Klein, 388 Mich. 1, 8, 199 N.W.2d 169, 172-73 (1972) (adopts hybrid of *Gibson* and *Goller*, adding reasonableness to modify parental authority in first *Goller* exception).