

Summer 1984

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Recommended Citation

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TEACHER INCOMPETENCY DISMISSALS IN ILLINOIS: THE NEED FOR DEFINED STANDARDS

The problems and policies of public schools have become a source of great public debate and a major issue in the political arena.¹ The general public believes that the public school system is in need of reform.² One reform the public urges is the dismissal of ineffective teachers.³ The public wants teachers to be held accountable for a demonstrable level of teaching competency.⁴ Incompetency dismissals⁵ are made difficult, however,

1. See, e.g., Wallace, *The Assault on Public Education: A Deweyan Response*, 64 PHI DELTA KAPPAN 57 (1982) (discusses the political, social and economic attacks levelled at public education); *The Education Issue*, Wall St. J., June 30, 1983, at 28, col. 1 (discusses presidential candidates using education as a national political issue).

2. See Gallup, *The 14th Annual Gallup Poll of the Public's Attitudes Toward The Public Schools*, 64 PHI DELTA KAPPAN 37, 38 (1982) (notes the public's perception that the lack of good teachers is one of the main problems confronting schools); Kerr, *Teaching Competence and Teacher Education in the United States*, 81 TCHR. COLL. REC. 525, 543 (1983) (notes the public's demand that teachers be held accountable for teaching well); Weiler, *Education, Public Confidence and the Legitimacy of the Modern State: Do We Have a Crisis?*, 64 PHI DELTA KAPPAN 9 (1982) (notes decline of public confidence in public education); *Help! Teacher Can't Teach*, *Time*, June 16, 1980, at 54-55 (notes the public's concern with the reputed low level of teacher competency).

In accord with the general public's belief are the findings of the National Commission on Excellence in Education. The commission, created by the Department of Education, examined the quality of education in America. The commission found the poor condition of public education in the United States is endangering the nation. The commission found that the expectations of both students and teachers must be heightened as an essential element of reform. NATIONAL COMM'N ON EXCELLENCE IN EDUC., U.S. DEP'T OF EDUC., *A NATION AT RISK: THE IMPERATIVE FOR EDUCATIONAL REFORM* (1983).

3. *N.C. to Begin Statewide Evaluation of Teachers, Principals*, EDUCATION WEEK, August 15, 1982, at 4. Education officials in North Carolina believed that performance evaluations would help identify ineffective teachers and aid school officials in dismissing teachers who receive low evaluations. Public pressure on the legislature led to the statewide use of the evaluations. *Id.* See also, NATIONAL COMM'N ON EXCELLENCE IN EDUC., *supra* note 2, at 30. (commission recommends poor teachers be terminated if teachers receive a low score on evaluations).

4. Kerr, *supra* note 2, at 543 ("By the mid-1970's, at least thirty states had adopted some form of accountability . . . [by which] teachers can, thereby, be held accountable for teaching well"); Pugach and Raths, *Testing Teachers: Analysis and Recommendations*, J. TCHR. EDUC., March-April 1983, at 37 (discusses the national trend of using teacher competency tests as a means to hold teachers accountable).

by substantive and procedural due process provisions of the typical state tenure statute.⁶

Under the Illinois tenure statutes,⁷ school boards are em-

5. A dismissal is the termination of a teacher's employment during a contract period or when a teacher has tenure. E. GEE AND D. SPERRY, *EDUCATION LAW AND THE PUBLIC SCHOOLS: A COMPENDIUM* D-15 (1978). Incompetency indicates that an individual cannot perform well in a certain area of human behavior. M. THOMAS, *PERFORMANCE EVALUATION OF EDUCATIONAL PERSONNEL* 22 (Phi Delta Kappa Educational Foundation Monograph No. 135, 1979).

Seemingly, dismissal for incompetency would encompass dismissal for mediocrity, but this has seldom been the case. Most incompetency dismissals are for those instances when a teacher is grossly incompetent. Comment, *Teacher Tenure in Connecticut: Due Process Rights and "Do Process" Responsibilities*, 8 CONN. L. REV. 690, 702-3 (1976); Note, *State Teacher Tenure Statutes: An Appeal for Repeal*, 9 J. LEGIS. 144, 146 (1982). *Contra Briggs v. Board of Directors*, 282 N.W.2d 740, 743 (Iowa 1979) (court included mediocre performance in definition of "just cause" for dismissal).

6. The true tenure statutes have both substantive and procedural elements. The substantive elements are those which limit discharge to specifically enumerated causes. See, e.g., ILL. REV. STAT. ch. 122, § 10-22.4 (1983). The procedural elements are those which set out the detailed procedural requirements of giving notice and providing a hearing before dismissal is effective. See, e.g., ILL. REV. STAT. ch. 122, § 24-12 (1983). Twenty-nine states have statutes which could be classified as true tenure statutes. Note, *supra* note 5, at 145 n.10.

In contrast to the true tenure statutes are fair dismissal laws which are basically procedural. Fair dismissal laws typically do not limit discharge to specifically enumerated causes as do tenure statutes; basically any cause is permissible as long as it is not unconstitutional. Their procedural requirements, however, closely resemble those found in tenure statutes. See, e.g., ARK. STAT. ANN. § 80-1264-64.10 (1980).

7. ILL. REV. STAT. ch. 122, §§ 24-11, 24-12 (1983). These two sections are sometimes referred to as the tenure law. The sections set forth the process by which a teacher may achieve tenure which is formally called contractual continued service in Illinois. The statutes designate a tenured teacher as one who has been employed in any district as a full-time teacher for a probationary period of two consecutive school terms. These sections require a board of education to follow certain procedures in exercising its power to discharge teachers. *Id.* See generally ILLINOIS SCHOOL LAW §§ 13.3, 13.6 (Illinois Institute of Continuing Education, 1981) (further discussion of sections 24-11 and 24-12 of the School Code).

After a school board votes to dismiss a teacher, the board schedules a hearing before a disinterested hearing officer. The State Board of Education provides a list of impartial hearing officers to the school board and the teacher. The hearing officer must be accredited by a national arbitration organization and may not be a resident of the school district that is a party to the suit. The teacher and school board alternately eliminate hearing officers from the list until one remains.

The hearing officer conducts the hearing and must render a final written decision. The decision must include findings of fact and specific findings as to the reason for dismissal. The hearing officer provides the State Board of Education, the school board and the teacher with a written copy of his decision. A copy is maintained by the State Board of Education. ILL. REV. STAT. ch. 122, § 24-12 (1983). The State Board of Education maintains the copies of the hearing officer decisions in looseleaf notebooks chronologically ordered. These decisions are not maintained in official reporters, nor is there an official citation form. The decisions of the hearing officers, pur-

powered to dismiss any of the state's full-time tenured teachers for cause.⁸ The causes are specifically stated by statute and include: 1) incompetency, 2) cruelty, 3) negligence, 4) immorality, 5) other sufficient cause, 6) lack of qualifications, and 7) the best interest of the school.⁹ Of all the enumerated causes for dismissal, incompetency has been repeatedly applied in an imprecise and inconsistent manner.¹⁰ This inconsistency stems from the failure of hearing officers and courts to adopt a uniform standard of competency to measure teacher performance.¹¹

A defined standard of teaching, known to all in advance, is the most desirable basis upon which to make competency decisions.¹² Defined performance standards would not only provide guidance in adjudicatory hearings but would also improve instruction and would upgrade the educational profession in Illinois. The cases in Illinois have not relied upon any precise, pre-determined standard for determining incompetency. A defined standard which ties teacher performance to student progress is

suant to the Administrative Review Act, can be appealed to the Illinois circuit courts. ILL. REV. STAT. ch. 122, § 24-16 (1983) (citing ILL. REV. STAT. ch. 110, § 3-101 (1983) (the Administrative Review Act)).

8. ILL. REV. STAT. ch. 122, § 10-22.4 (1983). The word "cause" within the rule that a teacher cannot be dismissed except for cause means "some substantial shortcoming which renders continuance in his employment in some way detrimental to the discipline and efficiency of the service. . . ." *Jepsen v. Board of Educ.*, 19 Ill. App. 2d 204, 207, 153 N.E.2d 417, 418-19 (1958) (construing the old School Code's teacher dismissal provision now codified in ILL. REV. STAT. ch. 122, § 10-22.4).

This comment is limited to a discussion of incompetency as a cause for dismissal because the other causes involve less ambiguity or are infrequently named as a cause. See Thurston, *Tenured Teacher Dismissals in Illinois*, 1975-1979, 69 ILL. BAR J. 422, 425, 428 (1981).

This comment is also limited to the issue of dismissal of tenured teachers. Non-tenured teachers who are not reinstated or are not offered a new contract are not included in this discussion nor are teachers honorably dismissed because of financial exigencies. These problems involve issues not applicable to the discussion of incompetency dismissals. For the statute governing dismissal of non-tenured teachers, see ILL. REV. STAT. ch. 122, § 24-11 (1983).

9. ILL. REV. STAT. ch. 122, § 10-22.4 (1983). A dismissal under section 10-22.4 is subject to the provisions of section 24-12. ILL. REV. STAT. ch. 122, § 24-12 (1983).

10. See Thurston, *supra* note 8, at 425, 428, 431.

11. See Comment, *An Illinois Teacher's Right to Retention*, 48 CHI-KENT L. REV. 80, 91-92 (1971); Comment, *A Question of Remediability: Standards of Conduct for Illinois Public School Teachers*, 29 DEPAUL L. REV. 523, 537 (1980). For a discussion of this problem nationally, see Annot., 4 A.L.R. 3d 1090, 1095-97 (1965).

12. Holley and Feild, *The Law and Performance Evaluation in Education: A Review of the Court Cases and Implications for Use*, 6 J. L. & EDUC. 427, 432 (1977) (performance evaluations form the foundation for fair and equitable faculty dismissal policies and procedures).

clearly needed.¹³ Although measuring teacher competence as it relates to student progress has been perceived as problematic, the problems are more illusory than real.

Educators have been reluctant to create criteria with which to determine the success of a teacher. This reluctance is based on the notion that teaching is an art or an inherent skill.¹⁴ The teacher's product, the student, is also not easily weighed or tested in a manner that accurately reflects the teacher's ability.¹⁵ This argument is based on the assumption that educational researchers are far from reaching consensus on what characteristics are associated with teaching success.¹⁶ Critics also contend that it is difficult to distinguish a teacher's responsibility for student performance from among other variables outside a teacher's control.¹⁷ The courts, due to this lack of consensus, have also been reluctant to subscribe to a criteria measuring teacher success.¹⁸

13. In the legal environment within which educational institutions presently exist, formalized systems of evaluations are needed for effective personnel use. J. BECKHAM, LEGAL ASPECTS OF TEACHER EVALUATION 2-3 (1981). Educators have also stressed that a more specific and rigorous standard of professional competence will have to be met if teaching is to become a respected profession. Lakin and Reynolds, *Curricular Implications of Public Law 94-142 for Teacher Evaluation*, J. TCHR. EDUC., March-April 1983, at 14 (discusses Public Law 94-142 as a source for a standard of teacher competence).

14. Petrie, *Ideas that Hinder Evaluation: Debunking the Myths*, NASSP BULL., December, 1982, at 53 (author refutes "the conventional wisdom among educators . . . that teaching is an idiosyncratic process"); Gage, *The Yield of Research on Teaching*, 61 PHI DELTA KAPPAN 229, 235 (1978). The author noted that, for most of our history, teaching has been considered an art based on a combination "of logic, clinical insight, raw experience, common sense, and the writings of persuasive prose stylists." *Id.*

15. See Ornstein, *How Good Are Teachers In Effecting Student Outcomes?*, NASSP BULL., Dec. 1982, at 61, 67-68 (author concludes that researchers do not know what impact teachers have in producing desired student outcomes). See also *infra* note 104 and accompanying text (standardized tests of student achievement are poor measures of teacher effectiveness).

16. J. BECKHAM, LEGAL ASPECTS OF TEACHER EVALUATION 1-2 (National Organization on Legal Problems of Education, 1981). The author stated that, while there are generalized notions about good teaching, the researchers have not reached a consensus on the specific characteristics associated with good teaching. *Id.* In Elson, *A Common Law Remedy for the Educational Harms Caused By Incompetent or Careless Teaching*, 73 NW. U. L. REV. 641, 712 (1978), the author maintained the view that the courts cannot draw upon educational research and theory to establish minimum performance standards to which teachers can be held legally accountable because researchers have reached no common consensus. *Id.*

17. See Townsel, *Whaley v. Anoka-Hennepin: A New Standard of Tenured-Teacher Competency Assessment in Minnesota*, 11 EDUC. L. RPTR. 755, 758-59 (1983) (the commentator noted that the *Whaley* case may signal the acceptance of the allegation that an insufficient level of progress by students is an acceptable charge to support a teacher's dismissal).

18. Elson, *supra* note 16, at 712.

Recent studies of teacher effectiveness, however, have identified dependable correlations between teaching behavior and student achievement.¹⁹ These studies suggest that the possibility of articulating justiciable performance standards for teachers is greater than educators had previously thought.²⁰ This research contains the potential for bringing order into what, from a judicial point of view, has been the nonjusticiable chaos of teacher performance standards.²¹

This comment examines the issue of incompetency as a cause for dismissal under Illinois law as addressed in hearing officer and court decisions. Further, the comment identifies and discusses the factors which have given rise to dismissals. The comment concludes with a recommendation for the statewide adoption of a uniform standard for teacher competency and discusses implementation of this standard.

INCOMPETENCY DISMISSAL IN ILLINOIS

Courts have been reluctant to ascribe a specific meaning to the word "incompetence."²² Incompetence has been said to be a relative term without technical meaning.²³ One court noted that the term incompetency has a common meaning and usage.²⁴ This type of broad interpretation and definition gives rise to a

19. Clear, *Malpractice in Teacher Education: The Improbable Becomes Increasingly Possible*, J. TCHR. EDUC., March-April 1983, at 22. A review and summary of studies conducted to identify effective teaching showed that, though differences existed among the reports, their similarities were much more striking, at least insofar as they might contribute to formulating justiciable standards of teacher effectiveness. *Id.*

20. *Id.* See also Haertel, Walberg and Weinstein, *Psychological Models of Educational Performance: A Technical Synthesis of Constructs*, 53 REV. EDUC. RESEARCH 75, 90 (1983). A review of eight theories of conceptions of student learning revealed that progress has been made in formulating a consensus of an educational performance model. *Id.*

21. Clear, *supra* note 19, at 22 (article discusses educational malpractice and how research on teaching effectiveness may provide the basis of a performance standard for teachers which will sustain a cause of action for educational malpractice).

22. Rosenburger and Plimpton, *Teacher Incompetence and the Courts*, 4 J. L. & EDUC. 469, 471 (1975) (two educators examine how the nation's courts have defined incompetency). See also Annot., 4 A.L.R. 3d 1090, 1095-97 (1965) (provides a general overview of how courts have determined teacher incompetency).

23. See *Schulz v. Board of Educ.*, 210 Neb. 513, 315 N.W.2d 633, 637 (1982) (incompetency must be measured against what is required of others performing similar duties and each case must be evaluated on its own facts); *Board of Public Educ. v. Beilan*, 386 Pa. 82, 86, 125 A.2d 327, 330 (1956), *aff'd*, 357 U.S. 399 (1957) (incompetency should be given its broad meaning).

24. See *Perez v. Commission on Professional Competence*, 149 Cal. App. 3d 1167, 197 Cal. Rptr. 390, 396 (1983) (incompetence is a plain word and means not competent); *Horosko v. Mt. Pleasant Sch. Dist.*, 335 Pa. 369, 374-75, 6 A. 2d 866, 869, *cert. denied*, 308 U.S. 553 (1939) (court stated that the

"common sense approach" which is based on the premise that everyone knows what incompetence is and that they know it when they see it.²⁵ This approach, however, is too subjective and can easily result in the inconsistent use of teacher incompetency as a cause of dismissal. Unfortunately, a review of Illinois hearing officer and court decisions indicates that Illinois follows the "common sense approach."²⁶

In Illinois, three areas tend to present the greatest inconsistency in incompetency cases. First, it is not often clear who develops the applicable standard for incompetency cases. Next, there is great variation in the substantive grounds for determining incompetency. Finally, it is not often clear what evidence is required to support a finding of incompetency. These areas are interrelated because a standard necessarily defines the grounds designating incompetency. Furthermore, a standard designates, at least implicitly, the evidence necessary to indicate incompetent teaching. For the purposes of analysis, however, the categories are discussed separately.

The Process of Determining a Standard for Incompetency

An analysis of hearing officer decisions indicates that there is no uniformly applied standard for determining teacher incompetency. Instead, there is a conflict between whether the hearing officers or the local school boards should set the standard of teacher competency.²⁷ One Illinois appellate court has stated that the hearing officer may determine the type of conduct which constitutes incompetency.²⁸ The court, however, did not

common meaning was to be construed in regard to the context in which the legislature used it).

25. This approach encompasses the concept that the basis for upholding dismissals was the failure to meet standards which are based upon common knowledge rather than any precise pre-determined and announced standard when making the incompetence decision. Rosenburger and Plimpton, *supra* note 22, at 486.

26. See Comment, *An Illinois Teacher's Right To Retention*, 48 CHI-KENT L. REV. 80, 86-88 (1971) (article discusses rights of public school teachers under Illinois tenure act). Criticism of the "common sense approach" forms the basis of the recommendation that a more uniform, systematic approach is needed. See Rosenburger and Plimpton, *supra* note 22, at 486.

27. This standard is not necessarily predetermined and announced. It seems that whenever a court or hearing officer questions a teacher's performance, in the absence of a defined standard, an implicit standard of performance is involved. An implicit standard is one that is based on "common sense" and varies from school board to school board and hearing officer to hearing officer. See Rosenburger and Plimpton, *supra* note 22, at 486.

28. Board of Educ. of Niles Dist. No. 219 v. Epstein, 72 Ill. App. 3d 723, 724-5, 391 N.E.2d 114, 116 (1979). The board of education argued that the hearing officer only had the power to find facts. The board, therefore, maintained that the power to determine the cause of dismissal remained with

address the issue of who should set the standard for incompetency dismissals: the hearing officer or the local school board.²⁹

Hearing officers often substitute their standard of teaching competency for the school board's standard.³⁰ In one decision, for example, the hearing officer chose to support the teacher's position that the conflict was between his "old line method of teaching" and the "modern method" espoused by the school administrators.³¹ The school administration designated "the modern method" as the standard of teaching they desired in their district. The hearing officer held, however, that deviation from the "modern method" standard was insufficient to support a dismissal predicated on incompetency.³² In another decision, a hearing officer substituted his opinion as to what is indicative of good education and proper teaching methods for the opinion of the school administration.³³

While hearing officers often impose their own subjective standards of competency, others defer to the local school board's standard. In one decision, the hearing officer relied on an administrator's assessment that the teacher was deficient and the deficiencies were irremediable.³⁴ Another hearing officer relied heavily on a curriculum director's testimony and

the board. The court rejected this argument and held that the hearing officer determines whether the charges brought against a teacher by the board are cause for dismissal. *Id.* at 726, 391 N.E.2d at 116.

29. The court's decision suggests that the hearing officer has wide latitude in determining competency. Thurston, *supra* note 8, at 431. See Board of Educ. of Niles Dist. No. 219 v. Epstein, 72 Ill. App. 3d 723, 391 N.E.2d 114 (1979) (the court noted that the decision of the hearing officer must be supported by the evidence).

30. Cf. Board of Educ. of Niles Dist. No. 219 v. Epstein, 72 Ill. App. 3d 723, 391 N.E.2d 114 (1979) (determining type of conduct supporting an incompetency dismissal is, in effect, determining standard of teaching competency).

31. Board of Educ. of Niles Dist. No. 219 v. Agnos (Aug. 6, 1977) (Epstein, H.O.), *aff'd sub nom.* Board of Educ. of Niles Dist. No. 219 v. Epstein, 72 Ill. App. 3d 723, 391 N.E.2d 114 (1979). The hearing officer did not find the teacher's deviation from the district's method of teaching sufficient cause for dismissal nor did he indicate that the teacher should change his style of teaching to conform with the district's standard. Board of Educ. of Niles Dist. No. 219 v. Agnos (Aug. 6, 1977) (Epstein, H.O.), at 54-55.

32. *Id.*

33. Board of Educ. of Rich Township High Sch. Dist. No. 227 v. McGoldrick (April 27, 1983) (Dolnick, H.O.), at 21, 29 (hearing officer criticized administration's expectations and basis of evaluations of teacher), *rev'd sub nom. on other grounds*, Board of Educ. v. Dolnick, No. 83 L 51292, Cook Cty. Cir. Ct. (Feb. 29, 1984) (reversed because the hearing officer applied the incorrect burden of proof when deciding the case).

34. Board of Educ. of Danville Community Consol. Sch. Dist. No. 118 v. Moutray (Aug. 26, 1976) (Adelman, H.O.), at 4-6. The objectivity of the school administrator's evaluation and his efforts to help remediate the teacher's deficiencies were the most important factors used by the hearing officer in reaching his decision. *Id.* at 5.

evaluations in deciding whether a teacher's deficiencies were indicative of incompetency.³⁵ In still another case, the hearing officer referred to the Chicago Board of Education's guidelines to evaluate the sufficiency of a teacher's lesson plans. The hearing officer, however, drew conclusions regarding the teacher's lesson plans which differed from those of the school administrators.³⁶

These cases demonstrate the continuing conflict over the proper standard for deciding whether a teacher is incompetent. The conflict creates inconsistent results in that some hearing officers defer to a school administrator's opinions in deciding whether a teacher's performance is incompetent, while others interject their own subjective opinion as to what good teaching requires.³⁷ This conflict, moreover, creates confusion among school administrators because it is not clear under what standards they may designate a teacher as incompetent and have him dismissed. A uniform standard of teaching competency would both create uniformity in the expectations of teaching performance by Illinois teachers and would aid both administrators and hearing officers in making determinations of whether to dismiss or retain a teacher. The process of determining incompetency, however, is not the only area of uncertainty in teacher dismissal proceedings.

The Substantive Grounds Designating Incompetency

Many different behaviors have formed the basis of incompetency.³⁸ Under the present procedural requirements in Illinois, school boards must name not only the statutory cause³⁹ for dismissal but must give specific reasons or charges.⁴⁰ The charges

35. Board of Educ. of Peoria Dist. No. 150 v. Wagstaff (Jan. 8, 1982) (Peterson, H.O.), at 5. Although other findings of fact were considered, the hearing officer relied mostly upon the curriculum director's testimony. *Id.*

36. Board of Educ. of the City of Chicago v. Klinghoffer (Nov. 1982) (Longwell, H.O.), at 23-24. The hearing officer stated that she was not trained to evaluate lesson plans, but by comparing them to the guidelines issued by the Chicago Board of Education she found them to have the five necessary elements required by the board. *Id.* at 24.

37. See *supra* notes 30-34 and accompanying text (illustrates the conflict among various hearing officer decisions).

38. There are several examples of cases where a large number of charges for various behaviors has been brought against a teacher in a single case. See, e.g., Board of Educ. of Minooka Elementary Sch. Dist. No. 201 v. Ingels (Dec. 5, 1977) (Adelman, H.O.) (the school board stated 24 allegations).

39. See *supra* notes 8 and 9 and accompanying text (defines "cause" and lists statutorily enumerated causes for dismissal in Illinois).

40. The School Code provides that in order to dismiss a tenured teacher for cause under section 10-22.4 a school board must first approve a motion

are the specific acts or incidents which support the cause for dismissal.⁴¹ Competence is related to capability, adequacy for a given purpose, suitability and the ability to achieve objectives.⁴² Incompetency charges, therefore, must specifically relate to the teacher's work in educating children and conducting a class.⁴³

In Illinois, the means of determining incompetence is not specified by statute.⁴⁴ The hearing officer determines whether the charges support the dismissal.⁴⁵ The major problem, however, is the inconsistent approach taken by hearing officers when determining the adequacy of the charges brought against the teacher. The charges listed as supporting an incompetency dismissal, generally, fall into four categories: 1) inadequate knowledge of subject matter, 2) ineffective use of teaching methods, 3) detrimental effects on students, and 4) poor personal attitude toward school.⁴⁶ An analysis of the charges in their respective categories illustrates this problem.

(1) *Subject Matter*

School boards have successfully used a deficiency in knowledge of subject matter as a reason for dismissal. In one case, a teacher's poorly written plans supported one of the charges

containing specific charges by a majority vote of all the members of the school board. ILL. REV. STAT. ch. 122, § 24-12 (1983).

41. Charges are brought under the statutory causes for dismissal, but a charge supporting a dismissal which does nothing more than repeat verbatim one or more of the statutory causes is insufficient to sustain a dismissal. *Wells v. Board of Educ.*, 85 Ill. App. 2d 312, 318-19, 230 N.E.2d 6, 9-10 (1967).

42. *M. THOMAS, supra* note 5, at 20. *See also* *Perez v. Commission on Professional Competence*, 149 Cal. App. 3d 1167, 197 Cal. Rptr. 390, 396 (1983) (cites *AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE'S* definition of competency).

43. *See, e.g.*, *Board of Educ. v. Payne*, 102 Ill. App. 3d 741, 748, 430 N.E.2d 310, 315 (1981) (court held that there must be a logical nexus between actions alleged as cause for dismissal and teacher's fitness to teach); *Carter v. State Bd. of Educ.*, 90 Ill. App. 3d 1042, 1047, 414 N.E.2d 153, 157 (1980) (teacher dismissed for destroying a class year of education).

44. Statutes that require the evaluation of teachers and specifically require an evaluation before determining whether a teacher is to be dismissed for incompetency are a specific means of determining incompetence. *See, e.g.*, PA. STAT. ANN. tit. 24, § 11-1123 (*Purdon 1962 & Supp. 1983*).

Statutes which define teacher competence in relation to the achievement of specific objectives would also be a specified means of determining incompetence. *See, e.g.*, CAL. EDUC. CODE § 44662 (*West 1977*).

45. *See supra* note 28 and accompanying text (the court, in *Epstein*, held that the hearing officer determines whether the charges brought against a teacher by the board are cause for dismissal).

46. These categories become evident after surveying and analyzing the hearing officer decisions pertaining to teacher incompetency. *See Rosenburger and Plimpton, supra* note 22, at 473-77.

brought against him.⁴⁷ In another case, a school board charged that a teacher used poor grammar; however, in this case, the hearing officer reinstated the teacher and noted that good grammar usage is not necessarily a reflection of the ability to teach incompetently.⁴⁸

In several cases, teachers assigned to teach new subjects were later dismissed or their salaries reduced because they were unable to adequately teach the new subject matter.⁴⁹ One hearing officer stated that a teacher having difficulty teaching a new subject may be retained in the new position if he maintains classroom control and makes an effort to improve his instructional ability.⁵⁰ Another hearing officer disagreed and affirmed the dismissal of a school counselor who was assigned to teaching duties and had problems teaching the new subject matter.⁵¹

47. Board of Educ. of West Harvey-Dixmoor Sch. Dist. No. 147 v. Banks (April 5, 1983) (Berman, H.O.), at 30. The hearing officer quoted the teacher's outline on classroom management verbatim to show the teacher's illogical thinking and her poor grammar. *Id.* at 29.

48. Board of Educ. of Rich Township High Sch. Dist. No. 227 v. McGoldrick (April 27, 1983) (Dolnick, H.O.), at 10, 47-48, *rev'd sub nom. on other grounds*, Board of Educ. v. Dolnick, No. 83 L 51292, Cook Cty. Cir. Ct. (Feb. 29, 1984). The teacher was reinstated by the hearing officer because the evaluator used a different grading criteria than was used for the other teachers in the school. *Id.* at 36-37. The hearing officer noted that the other English teachers were not evaluated on their use of grammar. *Id.* at 37. The hearing officer also noted that the evaluator made grammatical errors in his evaluation report. *Id.* at 47.

49. *See, e.g.*, Chapas v. Board of Educ. Sch. Dist. No. 203 (Oct. 14, 1978) (Dunham, H.O.), at 3 (foreign language teacher assigned to teach math); Freeburg Community Sch. v. Graham (Aug. 3, 1976), at 3 (Forman, H.O.) (biology and general science teacher assigned to teach chemistry).

50. Freeburg Community Sch. v. Graham (Aug. 3, 1976) (Forman, H.O.), at 7.

51. Board of Educ. of Danville Community Consol. Sch. Dist. No. 118 v. Moutray (Aug. 26, 1976) (Adelman, H.O.), at 8. The hearing officer acknowledged that the school board made an error by requiring the counselor to teach a substantive course for which he was unqualified. *Id.* at 6. The hearing officer, however, asserted that efforts were made to assist the counselor in remediating his deficiencies. *Id.* at 4, 7-8. This assertion has not been uniformly applied. The hearing officer noted that the teacher had a long time to correct his deficiencies, but the time from the warning to the dismissal was less than a year. *Id.* at 8.

In *Graham*, however, the officer stated that the teacher should be given time to take outside additional courses to improve his personal understanding of the new subject matter. Freeburg Community Sch. v. Graham (Aug. 3, 1976) (Forman, H.O.), at 8. The teacher was assigned to the new class for over a year before the hearing officer allowed him more time to take courses to improve his mastery of his new classes. *Id.* at 5.

The hearing officer in *Moutray* could only distinguish the two cases by noting that in one case the teacher testified in his own behalf, while in the other the teacher did not. Board of Educ. of Danville Community Consol. Sch. Dist. No. 118 v. Moutray (Aug. 26, 1976) (Adelman, H.O.), at 7.

(2) *Deficiencies in Teaching Methods*

Deficiencies in teaching methods have been stated by school boards as a basis for dismissal with greater frequency than any other charge.⁵² These charges range from general statements such as incompetency in the conduct of classroom activities⁵³ or deficient teaching⁵⁴ to specific identifiable acts such as failing to respond to incorrect comments of students.⁵⁵ The most frequently stated deficiency charge may be generically labeled "failure to maintain classroom control."⁵⁶ A reason usually accompanying failure to maintain classroom control is "poor organization of learning."⁵⁷ Other incompetency dismissals were premised on the idea that a teacher could not adapt to newer methods of teaching,⁵⁸ that a teacher could not adapt to a new school or situation,⁵⁹ or that a teacher could not coordinate

52. A survey of the hearing officer decisions reveals that when a teacher is dismissed for incompetence, in almost all cases, the charges involve a deficiency in teaching methods. *See, e.g.*, Board of Educ. of Woodridge Sch. Dist. No. 68 v. Bowes (Nov. 8, 1982) (Donegan, H.O.); Board of Educ. of Danville Community Consol. Sch. Dist. No. 118 v. Moutray (Aug. 26, 1976) (Adelman, H.O.); Board of Educ. of Granite City Community Unit Sch. Dist. No. 9 v. Lakin (Aug. 25, 1976) (Adelman, H.O.).

53. Board of Educ. of Granite City Community Unit Sch. Dist. No. 9 v. Lakin (Aug. 25, 1976) (Adelman, H.O.), at 4.

54. Board of Educ. of Danville Community Consol. Sch. Dist. No. 118 v. Moutray (Aug. 26, 1976) (Adelman, H.O.), at 4.

55. Board of Educ. of Woodridge Sch. Dist. No. 68 v. Bowes (Nov. 8, 1982) (Donegan, H.O.), at 8.

56. This charge has been variously stated as "failure to provide [an] adequate instructional program because of a lack of discipline," Board of Educ. of the City of Chicago v. Southern (Nov. 8, 1982) (Schwartz, H.O.), at 25; "failure to maintain an effective control system," Roberson v. Community Sch. Dist. No. 218 (July 22, 1982) (Anderson, H.O.), at 8; "[an inability] to control groups of boys and girls," Board of Educ. of Cowden-Herrick Sch. Dist. v. Lawyer (June 21, 1982) (Halligan, H.O.), at 2; and failure to "maintain proper discipline," Board of Educ. of Peoria Sch. Dist. No. 150 v. Wagstaff (Jan. 8, 1982) (Peterson, H.O.), at 2.

57. This charge has been addressed by various generalizations such as, "[failure] to use a variety of teaching methods," Board of Educ. of Rich Township High Sch. Dist. No. 22 v. McGoldrick (April 27, 1983) (Dolnick, H.O.), at 10, *rev'd sub nom. on other grounds*, Board of Educ. v. Dolnick, No. 83 L 51292, Cook Cty. Cir. Ct. (Feb. 29, 1984); "failure to present an instructional program that meets students' needs," Board of Educ. of the City of Chicago v. Southern (Nov. 8, 1982) (Schwartz, H.O.), at 25; failure "to keep [the] . . . classroom an interesting and orderly place [in which] to learn," Board of Educ. of Peoria Sch. Dist. No. 150 v. Wagstaff (Jan. 8, 1983) (Peterson, H.O.), at 2; and "incompetence in the conduct of . . . classroom activities," Board of Educ. of Granite City Community Unit Dist. No. 9 v. Lakin (Aug. 25, 1976) (Adelman, H.O.), at 4.

58. *E.g.*, Board of Educ. of Niles Township High Sch. Dist. No. 219 v. Agnos (Aug. 6, 1977) (Epstein, H.O.) *aff'd sub nom.*, Board of Educ. v. Epstein, 72 Ill. App. 3d 723, 391 N.E.2d 114 (1979).

59. *E.g.*, Board of Educ. of the City of Chicago v. Klinghoffer (Nov. 1982) (Longwell, H.O.), at 22 (a white teacher transferred to all black school had trouble controlling her class).

her teaching with that of her colleagues.⁶⁰

(3) *Detrimental Effects*

A charge used in all dismissals in Illinois is detrimental effects on pupils. Whenever a school board dismisses a teacher, the board is required to show the detrimental effect of the teacher's performance on students, teachers, or the school.⁶¹ When supporting an incompetency dismissal, these charges have been stated as an inability to get along with students,⁶² the lack of self-control in the presence of students,⁶³ and the presence of fear and low morale in students.⁶⁴

Another detrimental effect noted in the decisions focuses on student learning rates.⁶⁵ This has been indicated by students' test scores which were comparatively lower than other similarly situated pupils within the same school district.⁶⁶ Additionally, the failure to teach students enough subject material to qualify them for the next grade level has been a charge brought against

60. *Morelli v. Board of Educ. of Pekin Community High Sch. Dist. No. 303*, 42 Ill. App. 3d 722, 729, 356 N.E.2d 438, 443 (1976) (lack of cooperation can be the basis of dismissal if it is in the best interests of the school); *McLain v. Board of Educ. of Sch. Dist. No. 52*, 36 Ill. App. 2d 143, 146, 183 N.E.2d 7, 9 (1962) (failure to cooperate with other teachers may be basis of dismissal); *Robinson v. Community Unit Sch. Dist. No. 7*, 35 Ill. App. 2d 325, 331, 182 N.E.2d 770, 773 (1962) (a course of non-cooperation with fellow teachers sustains a dismissal).

61. *Reinhardt v. Board of Educ. of Alton Community Unit Sch. Dist. No. 11*, 19 Ill. App. 3d 481, 485, 311 N.E.2d 710, 712, *vacated on other grounds*, 61 Ill. 2d 101, 329 N.E.2d 218 (1974) (evidence of injury to students, faculty or school is necessary before there is sufficient cause for dismissal).

62. *Board of Educ. of Crete-Monee Sch. Dist. No. 201-U v. Angelotti* (Nov. 9, 1976) (Elson, H.O.), at 47. The hearing officer stated that one of the tests to determine the competency of a teacher would include whether the teacher is able to create a warm and friendly atmosphere in the classroom. *Id.* at 46-47.

63. *Kallas v. Board of Educ. of Marshall Dist. No. C-2*, 15 Ill. App. 3d 450, 452, 304 N.E.2d 527, 528 (1973). The teacher's uncontrollable temper outbursts in class damaged his rapport with the students and necessitated his dismissal. *Id.*

64. *Allione v. Board of Educ. of South Fork Community High Sch. Dist. No. 310*, 29 Ill. App. 2d 261, 265, 173 N.E.2d 13, 16 (1961). The court reinstated the teacher because most of the evidence of the teacher's negative effect on her pupils was hearsay. *Id.* at 266, 173 N.E.2d at 16.

65. *See, e.g., Grissom v. Board of Educ.*, 75 Ill. 2d 314, 322, 388 N.E.2d 398, 401 (1979) (teacher may be dismissed if he cannot foster students' abilities to master course work).

66. *Board of Educ. of West Harvey-Dixmoor Sch. Dist. No. 147 v. Banks* (April 5, 1982) (Berman, H.O.), at 33-34. (lower test scores than other classes in district were introduced as evidence); *Board of Educ. of Peoria Sch. Dist. No. 150 v. Wagstaff* (Jan. 8, 1982) (Peterson, H.O.), at 9 (the board used the previous year's test scores and compared them with the same students in Wagstaff's class); *Board of Educ. of Harlem Sch. Dist. No. 122 v. Jeske* (Dec. 24, 1980) (Pestine, H.O.), at 8-9 (reading scores and results of Iowa Basic Skills Test compared with other classes).

a teacher.⁶⁷

(4) *Poor Attitude*

Poor attitude is generally defined as a refusal to accept supervision, a failure to respond to recommendations made at previous evaluations,⁶⁸ or a failure to cooperate with the faculty.⁶⁹ One hearing officer has stated that the duty of a teacher is to follow his principal's suggestions because a principal and teacher are in an employer-employee relationship.⁷⁰ Yet, another hearing officer did not criticize a teacher who disagreed with his principal's suggestion to adopt a more modern approach to teaching.⁷¹ Several courts have held that a failure to cooperate will support an incompetency dismissal.⁷² Other courts, however, found that the failure to cooperate with other faculty members is insufficient to support an incompetency dismissal.⁷³

The cases supporting each of these categories point to the need for the development of a clearly defined standard of incompetency and a uniform means to assess teacher performance. Hearing officers have not agreed upon the types of conduct supporting an incompetency dismissal. A pattern of charges emerges which, in a broad undefined sense, identifies the competencies expected from public school teachers. However, a standard of competency which relates to the achievement of

67. Board of Educ. of Waukegan Community Unit Sch. Dist. No. 60 v. Maclin (Aug. 26, 1980) (Heaston, H.O.), *aff'd*, 106 Ill. App. 3d 156, 163, 435 N.E.2d 845, 850 (1982) (class only completed one part of the basal reader while other fifth grade completed two parts).

68. *E.g.*, Roberson v. Community Sch. Dist. No. 218 (July 22, 1982) (Anderson, H.O.), at 4 (teacher failed to respond to suggestions provided by administrators).

The stated proposition is inseparably connected with the concept that uncorrected causes for dismissal, originally remediable in nature, can become irremediable if continued over a long time. Grissom v. Board of Educ. of Buckley-Loda Community Sch. Dist. No. 8, 75 Ill. 2d 314, 331, 388 N.E.2d 398, 405 (1979), *citing* Gilliland v. Board of Educ. of Pleasant View Dist. No. 622, 67 Ill. 2d 113, 153, 365 N.E. 2d 322, 326 (1977).

69. *See supra* note 61 (lists cases where lack of cooperation sustained dismissals).

70. Board of Educ. of West Harvey-Dixmoor Sch. Dist. No. 147 v. Banks (April 5, 1982) (Berman, H.O.), at 25.

71. Board of Educ. of Niles Sch. Dist. No. 219 v. Agnos (Aug. 6, 1977) (Epstein, H.O.), at 54-55, *aff'd sub nom.*, Board of Educ. of Niles Sch. Dist. No. 219 v. Epstein, 72 Ill. App. 3d 723, 391 N.E.2d 114 (1979).

72. *See cases cited supra* note 61 (cases all sustained dismissals based on teacher's lack of cooperation).

73. *E.g.*, Compton v. Board of Educ. Sch. Dist. No. 14, 8 Ill. App. 2d 243, 256, 131 N.E.2d 544, 549 (1955) (the inability to hold harmonious relations with professional peers is insufficient to support dismissal for incompetency).

specific objectives and a specified means of determining incompetency would provide the hearing officers with a set of guidelines with which to determine the adequacy of the charges brought against the teacher. A standard of competency and uniform means of assessing the standard would also bring some order into the evidence used to determine incompetency.

Types of Evidence Used to Determine Incompetency

A wide range of evidence has been presented in incompetency cases.⁷⁴ Generally, such evidence consists of comparisons with other teachers,⁷⁵ evaluations by school administrators,⁷⁶ testimony of parents and students,⁷⁷ and test scores of students.⁷⁸ Hearing officers have ascribed disparate weight to these various types of evidence.⁷⁹

Some hearing officers have taken the position that one teacher's competency need not be measured against that of other teachers.⁸⁰ These hearing officers do not require a comparative showing by the school district as a part of the *prima facie* case.⁸¹ Instead, they focus on the evidence which con-

74. Thurston, *supra* note 8, at 428.

75. *E.g.*, Board of Educ. of Harlem Sch. Dist. No. 122 v. Jeske (April 8, 1980) (Pestine, H.O.), at 11 (contrasted substitute teacher's performance while conducting Jeske's class with Jeske's performance).

76. *E.g.*, Board of Educ. of Rich Township High Sch. Dist. No. 227 v. McGoldrick (April 27, 1983) (Dolnick, H.O.), at 25 (administrative evaluation based on a series of observations of teaching methods); Roberson v. Community Sch. Dist. No. 218 (July 22, 1982) (Anderson, H.O.), at 7 (administrators used a personnel evaluation form).

77. *E.g.*, Board of Educ. of Chicago v. Southern (Nov. 8, 1982) (Schwartz, H.O.), at 13 (former students unsuccessfully testified on behalf of the teacher); Board of Educ. of Aurora Sch. Dist. No. 131 v. Slavin (Oct. 22, 1980) (Kossoff, H.O.), at 7 (evidence offered consisted mainly of parent and student testimony).

78. *See* cases cited *supra* note 68 (all the cases cited considered student test scores as evidence).

79. *See* Thurston, *supra* note 8, at 428 (author notes the various reactions of the hearing officers to the different types of evidence).

80. *See, e.g.*, Board of Educ. of Granite City Community Unit Sch. Dist. No. 9 v. Lakin (Aug. 25, 1976) (Adelman, H.O.), at 6 (the mere use of a unique teaching method does not constitute incompetency). *See also* Thurston, *supra* note 8, at 428.

81. *Id.* The *prima facie* case in a teacher dismissal proceeding includes naming the performance or behavior constituting one or more of the causes in chapter 122, § 10-22.4. ILL. REV. STAT. ch. 122, § 10-22.4 (1983). The causes must be supported by specific and substantial charges. ILL. REV. STAT. ch. 122, § 24-12 (1983); Wade v. Granite City Community Unit Sch. Dist. No. 9, 71 Ill. App. 2d 34, 36, 218 N.E.2d 19, 20 (1966). If the conduct of the teacher is remediable, the school board must state that the teacher was given reasonable and timely warning and that the teacher failed to remove or remedy the named causes and charges. Grissom v. Board of Educ. of Buckley-Loda Community Sch. Dist. No. 8, 75 Ill. 2d 314, 331, 388 N.E.2d 398, 405 (1979); Gilliland v. Board of Educ. of Pleasant View Consol. Sch. Dist. No. 622, 67 Ill.

cerns the individual teacher's conduct.⁸² The hearing officer examines the conduct and then measures it against some definition or notion of incompetency.⁸³ Recent cases, however, have included more comparisons of teachers' performances to determine incompetency than was the practice several years ago.⁸⁴ Such a change indicates that school boards are using comparisons between teachers to validate the reasonableness of their expectations or standards for teacher performance.

Another type of evidence that hearing officers use inconsistently is administrative evaluations.⁸⁵ When evaluations are submitted as evidence, they are carefully scrutinized to see if

2d 143, 154, 365 N.E.2d 322, 326 (1977); *Glover v. Board of Educ. of Macon Dist. No. 5*, 21 Ill. App. 3d 1053, 1057, 316 N.E.2d 543, 537 (1974), *aff'd on other grounds*, 62 Ill. 2d 122, 340 N.E.2d 4 (1976) (remediable causes become irremediable when "the teacher refuses to remedy them"). If the conduct of the teacher is deemed irremediable, the school board does not need to issue a notice to remediate and, consequently, the board does not need to state that the teacher was warned and was given timely notice. *Grissom v. Board of Educ. of Buckley-Loda Community Sch. Dist. No. 8*, 75 Ill. 2d 314, 332, 388 N.E.2d 398, 405 (1979).

For a detailed discussion of the tests for irremediability, see Comment, *A Question of Remediability: Standards of Conduct for Illinois Public School Teachers*, 29 DEPAUL L. REV. 523, 530-34 (1980).

82. *Thurston*, *supra* note 8, at 428. See also *Board of Educ. of Granite City Community Unit Sch. Dist. No. 9 v. Lakin* (Aug. 25, 1976) (Adelman, H.O.), at 6 (a teacher's methodology does not have to be evaluated in light of other teachers).

83. *Thurston*, *supra* note 8, at 428 (author notes that hearing officers generally focus on testimony concerning a particular teacher).

84. Compare *Thurston*, *supra* note 8, at 428 (commentator noted that cases between 1975 and 1979 did not use comparisons of teacher's performance as evidence of incompetency) with *Board of Educ. of the City of Chicago v. Southern* (Nov. 8, 1982) (Schwartz, H.O.); *Board of Educ. of West Harvey-Dixmoor Sch. Dist. No. 147 v. Banks* (April 5, 1982) (Berman, H.O.); *Board of Educ. of Peoria Sch. Dist. No. 150 v. Wagstaff* (Jan. 8, 1982) (Peterson, H.O.) (all these cases considered comparisons of teachers' performances in determining incompetency).

85. Teacher performance evaluations are defined as any means, either formal or informal, subjective or objective, through which information is obtained relative to the effective performance of a teacher. J. BECKHAM, LEGAL ASPECTS OF TEACHER EVALUATION 2 n.4 (National Organization of Legal Problems in Education, 1981).

Presently in Illinois, there are several systems of evaluation in use. One type has been labeled the "good traits" list. Educators are marked good or bad on the basis of these traits as observed by their superiors. In one Illinois school district, the personality traits included in evaluations are "solid thinking," "good listener" and "appropriate sense of humor." M. THOMAS, *supra* note 5, at 11. A second type of evaluation focuses on skills and competencies. This type of evaluation concentrates on the extent to which individual skills are demonstrated. The skills judged are ability to organize, to prepare adequately, to inspire, to develop self-direction in students, to present clear assignments, to listen effectively, and to personalize discipline, for example. *Id.* at 13. A third more recent type of evaluation method focuses on performance standards which relate to specific objectives to be achieved. These standards may relate to student achievement,

the evaluations contain specific factual examples supporting the charges.⁸⁶ An evaluation designed to measure specific teaching goals could be the best evidence available for measuring teacher competency.⁸⁷ A performance oriented evaluation would be the best evidence because it would be designed to measure whether a teacher successfully facilitates learning.⁸⁸ Ironically, evaluations are a source of evidence Illinois courts and hearing officers have not extensively relied upon in rendering their decisions.⁸⁹

One reason some hearing officers have not relied upon evaluations as evidence is that the officers mistrust the evaluator's skill or intentions.⁹⁰ The evaluations have been discredited by

to attendance, to curricula or whatever a board of education wishes to achieve. *Id.* at 14-16.

A generic name for the "good traits" list and the skills and competencies evaluation is the rating system. Olds, *Performance Evaluation Rates a Closer Look*, ILL. SCH. BD. J., Nov.-Dec. 1974, at 25. The rating system is characterized by a lack of objectives. An evaluator, using a rating system, gives judgments like "poor" or "superior" for each trait or skill. *Id.* Lawyers defending teachers in dismissal hearings appreciate the ratings system because ratings set the stage for an attack based on unsubstantiated charges, ineffective supervision, and unfair personnel practices. *Id.* at 29. Performance evaluations have been recognized as superior because they relate to objectives. See M. THOMAS, *supra* note 5, at 14-16; Olds, *Performance Evaluation Rates a Closer Look*, ILL. SCH. BD. J., Nov.-Dec. 1974, at 29. The classic article about modern concepts of performance evaluation is found in a 1957 *Harvard Business Review* article. McGregor, *An Uneasy Look at Performance Appraisal*, HARV. BUS. REV., May-June 1957, at 89 (the author suggested that rating type evaluations should be replaced by performance evaluations based on objectives because they develop employee motivation and effectiveness).

86. Board of Educ. of Woodridge Sch. Dist. No. 68 v. Bowes (Dec. 21, 1982) (Donegan, H.O.), at 10 (the evaluation process was unreliable because there was no substantial evidence showing that the teacher's class did not progress as expected); Board of Educ. of the City of Chicago v. Southern (Nov. 8, 1982) (Schwartz, H.O.), at 6 (the evaluations were consistent with all the testimony and were noted with many specific instances).

87. One commentator has noted that evaluations which gather evidence in a routine and objective manner are the best source of evidence in teacher dismissal proceedings. Comment, *supra* note 81, at 556-57.

88. M. THOMAS, *supra* note 5, at 14-16.

89. Neither section 24-11 nor section 24-12 of the School Code require an evaluation to help the board determine whether or not to extend a teacher's probation or to dismiss a teacher. ILL. REV. STAT. ch. 122, §§ 24-11 and 24-12 (1983). In *Jackson v. Bd. of Educ.*, the court found "no requirement . . . that a formal evaluation be performed" pursuant to a board's denial of tenure. 63 Ill. App. 3d 671, 675, 380 N.E.2d 41, 44 (1978).

One Illinois case, however, illustrates the court's reliance on teacher and principal classroom evaluations in supporting a teacher dismissal. Community Unit Sch. Dist. No. 60 v. Maclin, 106 Ill. App. 3d 156, 435 N.E.2d 845 (1982). See also THE YEARBOOK OF SCHOOL LAW 1983 at 53 (P. Piele ed. 1983).

90. *E.g.*, Board of Educ. of Woodridge Sch. Dist. No. 68 v. Bowes (Dec. 21, 1982) (Donegan, H.O.), at 5. The hearing officer, in his findings of facts, noted that the key evaluator had only 1/6 the classroom experience as the teacher and, therefore, could not be a reliable teacher evaluator. *Id.*; Board

hearing officers because they question the evaluator's level of expertise or the evaluator's interest in the outcome of the evaluation.⁹¹ Generally, evaluations have been successfully used in dismissal proceedings only where they were based on objective criteria established by an officially announced, uniformly applied school board policy.⁹²

Student and parent testimony has also been inconsistently received as evidence in incompetency proceedings. In some dismissal cases, hearing officers have assigned great weight to student and parent testimony. The testimony of former students may lead a court to conclude that the charges are not supported by the evidence.⁹³ Or, a hearing officer may consider the absence of criticism by parents and students as a factor in reaching his decision to reinstate the teacher.⁹⁴ Hearing officers, however, may give student and parent testimony little credence.⁹⁵ Several hearing officers have criticized school

of Educ. of Aurora Pub. Sch. Dist. No. 131 v. Murray (Meserow, H.O.) (Sept. 16, 1977), at 14, *rev'd sub nom.*, Board of Educ. of Sch. Dist. No. 131 v. Illinois State Board of Educ., 82 Ill. App. 3d 820, 403 N.E.2d 277 (1980) (teacher of students with learning disabilities was not evaluated by an evaluator familiar with objectives of special education).

91. Board of Educ. of Crete-Monee Sch. Dist. No. 201-U v. Angelotti (Nov. 9, 1976) (Elson, H.O.), at 53 (a principal who has "an interest in the outcome" of a case should not be the "only person directly involved in the [evaluation]").

92. *See, e.g.*, Roberson v. Community Sch. Dist. No. 218 (July 22, 1982) (Anderson, H.O.), at 11 (administrators used a "personal evaluation" pre-printed form that was uniformly used throughout the school district).

93. *E.g.*, Board of Educ. of Niles Township High Sch. Dist. No. 219 v. Agnos (Aug. 6, 1977) (Epstein, H.O.), at 56. The hearing officer considered the testimony of former students, who testified that they learned to appreciate the fact that the teacher's methods were for their ultimate benefit. *Id.* In Miller v. Board of Educ. of Dist. No. 132, 51 Ill. App. 2d 20, 31, 200 N.E.2d 838, 843 (1964), *later op.* 98 Ill. App. 2d 305, 240 N.E.2d 471 (1968), the court noted that the students "were unanimous in their testimony that the plaintiff did a good job as a teacher. . . ." Similarly, in Hutchison v. Board of Educ., 32 Ill. App. 2d 247, 254, 177 N.E.2d 420, 425 (1961), the court reversed a dismissal, noting that students testified that they "learned something" and were "satisfied with" the teacher. In Board of Educ. of Aurora Sch. Dist. No. 131 v. Slavin (Oct. 22, 1980) (Kossoff, H.O.), at 5-17, 20, the hearing officer relied primarily on student and parent testimony. And, in Board of Educ. Sch. Dist. No. 150 v. Dorethy (Aug. 23, 1976) (Adelman, H.O.), at 7, a hearing officer found it determinative that the teacher was highly regarded by his students.

94. Board of Educ. of Harlem Sch. Dist. No. 122 v. Jeske (Dec. 24, 1980) (Pestine, H.O.), at 10 (teacher reinstated by the hearing officer who noted that a deciding factor was the lack of parent and student criticism).

95. *E.g.*, Board of Educ. of Niles Township High Sch. Dist. No. 219 v. Agnos (Aug. 6, 1977) (Epstein, H.O.), at 54-56 (hearing officer stated that student testimony may be unreliable); Board of Educ. of Crete-Monee Sch. Dist. No. 201-U v. Angelotti (Nov. 9, 1976) (Elson, H.O.), at 47 (parental complaints are not necessarily an index of the competency of a teacher).

boards for relying upon student and parent testimony.⁹⁶ These hearing officers have found dissatisfied parents and students to be an unreliable index of a teacher's competency.⁹⁷

Hearing officers have also responded inconsistently to the use of student test scores as a measure of teacher competency. In several recent decisions school boards have used the results of scholastic achievement tests⁹⁸ as evidence establishing teacher incompetency.⁹⁹ One hearing officer stated that these scores were the most relevant factor in reaching his decision.¹⁰⁰ In other cases, test scores were conspicuously absent as evidence.¹⁰¹ Moreover, the probative value of standardized test results as evidence of teacher incompetency has been seriously questioned because standardized tests were not designed to measure teacher competency.¹⁰²

Based on the foregoing analysis, it is clear that teacher incompetency dismissals reveal an imprecision in the process of determining the standard of incompetency, the substantive grounds designating incompetency and the types of evidence establishing incompetency. Each decision appears to be based upon its own unique set of standards. The broad pattern of charges which support the incompetency cause of dismissal lack guidelines with which to determine whether the teacher is incompetent or not. Moreover, the various types of evidence relied on to prove incompetent teaching are not used

96. *Id.*

97. See cases cited *supra* note 95.

98. Scholastic achievement tests are comprehensive tests of basic skills which are used to measure a student's academic development. J. ENOCHS, *THE RESTORATION OF STANDARDS: THE MODESTO PLAN 27* (Phi Delta Kappa Educational Foundation Monograph No. 129, 1979).

99. See *supra* note 66 and accompanying text (cases cited all used test scores as evidence establishing incompetency).

100. Board of Educ. of Harlem Sch. Dist. No. 122 v. Jeske (Dec. 24, 1980) (Pestine, H.O.). "[T]he . . . test scores are the most relevant factor in this decision. [The test score] negates any assertion that Barbara Jeske's teaching was ineffective." *Id.* at 9.

101. The author finds it peculiar that scholastic achievement tests would be considered the *most relevant factor* in determining competency in one case, while not even presented or considered in another case. Furthermore, a school board's failure to present such tests as evidence in a competency hearing may indicate its belief that consideration of such tests would be detrimental to its case.

102. Henry Chauncey, former president of Educational Testing Service warned that "[s]tandardized tests of student achievement are such useful teaching tools that it is often a mistake to try to make them do double duty as measures of the teacher as well." M. THOMAS, *supra* note 5, at 14. See also Scheelhaase v. Woodbury Central Community Sch. Dist., 488 F.2d 237, 245 (8th Cir. 1973) (Bright, J. concurring) (concurring judge agreed with district court finding that standardized tests cannot be regarded as sole criterion in teacher evaluation).

systematically and are ascribed disparate weight. A consequence of this imprecision is that everyone involved in the school system is adversely affected.

Effects of Imprecision in Teacher Incompetency Dismissals

School boards and school administrators are adversely affected by the imprecise manner in which teachers may be dismissed for incompetency. School officials are adversely affected because they do not know what standard of competency the hearing officers will use in an incompetency dismissal.¹⁰³ Administrators, therefore, are often reluctant to initiate a dismissal unless the teacher is grossly incompetent.¹⁰⁴ This reluctance has resulted in the retention of mediocre teachers, whom the board may wish to dismiss. School boards, however, will generally not move to dismiss these teachers because of the belief that the dismissal will not withstand the teacher's legal challenge of the board's action.¹⁰⁵ Another consequence of this imprecision is that a dismissal proceeding may be initiated which is so unsubstantiated that it will result in reinstatement. These unwarranted proceedings cost the public, the school board and the teacher, time, money and embarrassment.¹⁰⁶

Teachers are adversely affected because they are not always adequately informed of the performance standards expected of them by the administration.¹⁰⁷ A uniform method of assessing the extent to which standards are being achieved would help

103. Interview with Alan Jones, Assistant Principal of Bremen High School, Midlothian, Illinois (June 24, 1983). Mr. Jones is currently researching teacher dismissals based on incompetency for his doctoral thesis. He is also responsible for evaluating teachers employed by Bremen High School Dist. No. 228.

104. Note, *supra* note 5, at 146. The commentator criticizes present tenure statutes on the premise that it is close to impossible to fire a tenured teacher unless he is grossly incompetent. *Id.*

105. *Id.* (The commentator notes that there is a reluctance to bring charges of incompetence due to the demanding burden of proof.)

106. If a decision of the hearing officer is adjudicated upon review in favor of the teacher, then the trial court will order reinstatement and will determine the amount for which the board is liable including loss of income and costs. ILL. REV. STAT. ch. 122, § 24-12 (1983); Board of Educ. of Berwyn Sch. Dist. No. 100 v. Metaskas, 106 Ill. App. 3d 943, 948, 436 N.E.2d 587, 591 (1982). The measure of damages, in a case involving an improperly dismissed tenured or non-tenured teacher, is the contract salary minus the amount which the teacher earned or by reasonable diligence could have earned through other employment after discharge. Metaskas, 106 Ill. App. 3d at 948, 436 N.E.2d at 591.

107. Under the present system of evaluation of teachers in Illinois, many school districts use such broad and generalized types of evaluation instruments that it fails to inform the teacher what they are expected to achieve. See *supra* note 85 (note discusses general types of evaluations presently in use).

both teachers and administrators identify and prevent teacher incompetency through early recognition of teaching deficiencies.¹⁰⁸ Such a method would aid in the employment and retention of highly qualified, capable teachers thus restoring and strengthening public confidence in the educational system.¹⁰⁹ The employment of highly qualified teachers would counteract the public's present perception that teachers are ill-prepared and ineffective.¹¹⁰

Students are adversely affected when incompetent teachers continue to teach because the student may receive an inadequate education.¹¹¹ If the standards for teacher performance are uniformly defined, teachers will either have to meet the performance standards or will be subject to dismissal.¹¹² Because the recipient of the teacher's performance is the student, students will improve as teacher performance improves.¹¹³

Proposed Uniform Standards for Teacher Competency and Mandatory Evaluations

The heart of the defined performance standards is a uniform

108. The results of a uniform performance review can be used in identifying teachers who need retraining or revitalization, as well as being used as evidence of incompetency for dismissal purposes. Olswang and Fantel, *Tenure and Periodic Performance Review: Compatible Legal and Administrative Principles*, 7 J. COLL. & U.L. 1, 27 (1980-81). Another benefit of using a uniform performance review would be to weed out weak or even average teachers, when better teachers can be employed. Using a uniform performance review is an effective way to weed out weak teachers before a teacher is granted tenure and lessens the difficulty of later ridding a school of incompetent teachers. Phay, *Seeking Excellence: Not Reappointing an "Average" Teacher in Order to Employ a Better Teacher*, SCH. L. BULL., October 1982, at 1, 15.

109. See *supra* notes 2-4 and accompanying text (text and notes discuss public's dissatisfaction with the public school system's teachers and the quality of their performance).

110. See *supra* notes 2-3 and accompanying text.

111. Madeline Hunter, a renown teacher of teachers, spent thousands of hours observing teachers teach and concluded that "we have enough knowledge to increase the probability of desirable outcomes in learning and to minimize or eliminate the undesirable outcomes." M. Hunter, *The Science of the Art of Teaching*, in *CONTROVERSY IN EDUCATION* 346 (W. Saunders ed. 1974). Incompetent teachers, who do not have the ability to increase these desirable outcomes, rob the student of the opportunity to learn from a teacher that can.

112. An important objective of a plan setting performance standards is the production of evidence demonstrating the achievement of those standards. M. THOMAS, *supra* note 5, at 17. This evidence would include validation of the standards by student achievement. *Id.*

113. See Petrie, *Ideas That Hinder Evaluation—Debunking the Myths*, NASSP BULL., Dec. 1982, at 53 (author states that research shows specific teaching skills contribute to student's learning and quality classrooms); M. THOMAS, *supra* note 5, at 7 (improved performance of teachers directly relates to excellence in schools).

system of evaluation.¹¹⁴ This evaluation should provide for assessment of teacher competence as it relates to student progress.¹¹⁵ Additionally, it should assess whether the teacher is maintaining proper classroom control, preserving a school environment conducive to learning and performing other normal duties.¹¹⁶ These evaluation criteria are purposeful because they relate to specific objectives and they concentrate on the sought after results.¹¹⁷

These standards should be mandated by statute or alternatively by the State Board of Education.¹¹⁸ The statute should require each local school board to adopt written guidelines that will be used in evaluating teacher competency. Further, the statute should provide that, if an evaluation is not implemented according to the statute, the school district will be unable to dismiss a teacher based upon incompetency. Therefore, without a

114. See, e.g., CAL. EDUC. CODE §§ 44660-44665 (West 1977). These sections are known as the Stull Act and pertain to teacher evaluations. The Stull Act was legislation that tied tenure to teacher performance and student progress by mandating standards to guide educators. The Stull Act required each school board to adopt written guidelines for use in evaluating competency. The adoption of these guidelines are "at the heart" of the Act. Stull, *Why Johnny Can't Read—His Own Diploma*, 10 PAC. L. J. 647, 649-50 (1979).

115. See, e.g., CAL. EDUC. CODE § 44662(b) (West 1977). The California Code mandates similar criteria. Many of the recommendations in this comment have been modeled after the pioneering California teacher evaluation statute. Since the passage of the Stull Act in 1971, other states have also taken the decision of whether to evaluate and how to evaluate out of the hands of the local school boards. EDUCATION U.S.A. SPECIAL REPORT, EVALUATING TEACHERS FOR PROFESSIONAL GROWTH: CURRENT TRENDS IN SCHOOL POLICIES & PROGRAMS 52 (National School Public Relations Association, 1974) [hereinafter cited as EDUCATION U.S.A. SPECIAL REPORTS]. See also J. BECKHAM, LEGAL ASPECTS OF TEACHER EVALUATION 50-70 (National Organization on Legal Problems of Education, 1981) (reviews, lists and reprints selected state statutes on teacher evaluations). The California Code provides that teacher competency is to be assessed and evaluated as it relates to student progress in meeting established standards. CAL. EDUC. CODE § 44662(b) (West 1977).

116. See, e.g., CAL. EDUC. CODE § 44662(b) (West 1977).

117. See M. THOMAS, *supra* note 5, at 20 (Stull Act relates competence to specific objectives).

118. The primary official supervisor of public schools and teachers in Illinois is the State Board of Education and its chief executive officer, the State Superintendent of Education. ILL. REV. STAT. ch. 122, §§ 1A-4(B)(C) (1983). The State Board of Education's responsibilities include setting educational policies for schools. *Id.* at § 1A-4(C). Concomitant with the duties of providing policies and guidelines, the State Board has the power to determine the adequate standards for the instruction and teaching in Illinois. *Id.* at § 2-3.25.

A problem when evaluation standards are established by administrative agency regulations is that the regulation cannot limit the broad discretion given to local school boards by statute. This makes the compulsory aspect of the evaluations unenforceable. See *Shatting v. Dillingham City School Dist.*, 617 P.2d 9, 12 (Alaska 1980).

legally valid system of evaluation, no legal basis would exist for an incompetency dismissal.¹¹⁹ This provision would serve as a deterrent for school districts which fail to comply with the state's educational policy. Moreover, a uniform system of evaluation which identifies and apportions responsibility for the learning process would prevent hearing officers from interjecting their own subjective standards as to what constitutes good teaching. With a defined standard incorporated within the evaluation system, the hearing officer would make findings of fact and conclusions of law in light of the mandated standard of teaching performance. Because the standard would provide for a uniform evaluation process, the evaluation would also serve as the basic evidence in incompetency dismissal proceedings. The evaluation should also specifically define the types of behavior which will support an incompetency dismissal.

A teacher evaluation statute should include minimum guidelines that every school must follow. These guidelines include: 1) the performance expectations of teachers, 2) the standard of expected student progress in each area of study, 3) the techniques for assessing student progress, and 4) the techniques for ascertaining whether a teacher is meeting his performance standard.¹²⁰ The guidelines should be clearly written, reasonable, and easily understood.¹²¹ The statute's criteria for assessment should be objective, normative, and free from personality-driven criteria.¹²² The statute should require regular periodic evaluations to provide a continuous record of teacher effectiveness or failure.¹²³

A teacher evaluation statute should also require that teachers have an integral role in the formation of the evaluation system.¹²⁴ Experience has shown that employee participation in

119. See Kraus, *The Effect of The Stull Bill on Teacher Dismissals*, 9 LINCOLN L. REV. 90, 105 (1974) (article discusses the California teacher evaluation statute's effect on teacher dismissals).

120. See, e.g., CAL. EDUC. CODE §§ 44662(a)(b) (West 1977). See also Townsel, *supra* note 17, at 762; Stull, *supra* note 114, at 650.

121. Kraus, *supra* note 119, at 103.

122. See Townsel, *supra* note 17, at 762 (author discusses factors considered when designing a precise pre-determined and announced standard to be used in making the incompetence dismissal decision).

123. EDUCATION U.S.A. SPECIAL REPORT at 54 (notes teachers' union observation that a continuous record provided by periodic evaluation is a source of long range job protection against unjustified criticism); Olswang and Fantel, *supra* note 108, at 27 (evaluation information gathered from periodic review serves as evidence at incompetency hearings).

124. See CAL. EDUC. CODE § 44661 (West 1977) (this provision requires that every district must avail itself of the advice of the teachers in the formation of guidelines and criteria for use in the evaluations). See also *Certified Employees Council of Monterey Peninsula Sch. Dist. v. Monterey Peninsula Unified Sch. Dist.*, 42 Cal. App. 3d 328, 116 Cal. Rptr. 819 (1974)

establishing performance objectives motivates employees to accomplish the objectives.¹²⁵ Furthermore, teacher involvement in the selection and development of the evaluation instrument ensures that the evaluation instrument and process will be used fairly.¹²⁶ Additionally, teacher involvement increases the communication between administrators and teachers because they must jointly agree on what is important to the educational program.¹²⁷

With a teacher evaluation statute, which includes professional standards of conduct and competence, teachers would have greater due process protections¹²⁸ under tenure statutes.¹²⁹ A teacher's dismissal will have some factual and rational relationship to a uniform, defined standard. This measure, based on objective statements of what is expected of teachers, would provide the teacher or the administrator with a definitive way to determine whether or not the objective was realized. A defined standard lessens the opportunity for administrators to rely on subjective judgments in recommending a dismissal. Furthermore, due process protections would assure that the evaluations are not used to dismiss a teacher arbitrarily and capriciously.¹³⁰ Due process protections further ensure that

(employer should meet with representatives of all employee organizations through a certified employee council).

125. *Wells v. Harris*, M.S.P.B. 199, 220 (1979) (quoting statement of Alan K. Campbell, former chairman of the Civil Service Commission). The Civil Service Reform Act of 1978, in mandating the establishment of performance appraisal systems, specifically included a provision which encouraged employee participation in establishing performance standards. 5 U.S.C.A. § 4302(a)(2) (Supp. VII, 1982). See also Pembroke and Goedert, *What Is the Key To Developing an Effective Teacher Evaluation System?*, NASSP BULL., Dec. 1982, at 29,330 (teacher involvement in evaluation process is key to their commitment to the evaluation system).

126. EDUCATION U.S.A. SPECIAL REPORT at 56 (quoting from the National Education Association's pamphlet *The Early Warning Kit on the Evaluation of Teachers*).

127. *Id.* at 7 (quoting an assistant superintendent who stated that one of the greatest benefits resulting from their teacher evaluation program is the increased communication between the faculty and the administrators).

128. See Comment, *Teacher Tenure in Connecticut: Due Process Rights and "Do Process" Responsibilities*, 8 CONN. L. REV. 690, 710 (1976) (professional standards are the key to procedural protections).

129. Tenure's purpose is to afford job security and to insure continuity and stability of instruction for students. *Arduini v. Board of Educ. of Pontiac Township High Sch. Dist. No. 90*, 92 Ill. 2d 197, 201-02, 441 N.E.2d 73, 76 (1982). Tenure is based on merit and it is granted to protect teachers against dismissal for reasons that are political, partisan, or capricious. *Pickering v. Board of Educ. of High Sch. Dist. No. 205*, 36 Ill. 2d 568, 577, 225 N.E.2d 1, 6, *rev'd on other grounds*, 391 U.S. 563 (1967). See *supra* notes 7-9 and accompanying text (notes discuss present due process procedures required under Illinois' School Code).

130. A reviewing court may overturn a hearing officer's decision if the hearing officer in reaching his decision has acted in an arbitrary or capri-

a dismissal was based on the mandated criteria, and not for any constitutionally impermissible reasons.¹³¹

CONCLUSION

The present "common sense" standards for determining teacher incompetency have proven to be ineffective and inconsistent. The incompetency dismissal of teachers will continue, with potentially greater frequency, as the public demands that teachers be held accountable for their performance. An educational reform that Illinois should implement is a uniformly applied teacher evaluation statute. Such a statute, which includes clearly articulated and defined standards for teacher conduct would minimize the present inconsistency in incompetency proceedings. A defined standard could be a progressive force by which school administrators improve their teaching staffs, teachers improve their teaching skills and students benefit from improved instruction. The standard would satisfy the public's expectations of their teachers and would serve as a guideline for the hearing officers and the courts.

James A. Roth

cious manner or the reasons formulated for such a dismissal were against the manifest weight of the evidence. *Gilliland v. Board of Educ. of Pleasant View Dist. No. 622*, 67 Ill. 2d 143, 153, 365 N.E.2d 322, 326 (1977); *Morris v. Board of Educ. of Chicago*, 96 Ill. App. 3d 405, 411, 421 N.E.2d 387, 392 (1981).

131. For a discussion of constitutional limitations on teacher dismissals, see Comment, *An Illinois Teacher's Right to Retention*, 48 CHI-KENT L. REV. 80, 88-89 (1971). See also Beezer, *How Extensive Is a Teacher's Authority to Determine Classroom Methodology?*, 63 PHI DELTA KAPPAN 615 (1982) (discusses the guidelines courts use in assessing whether a teacher's course content is protected by academic freedom protections).