COURT CASES INVOLVING SCHOOL BOARD AUTHORITY
IN ISSUES WITH RESPECT TO PERSONNEL
1981-2008

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A DISSERTATION

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ABSTRACT

In the field of education, the public school board of education is charged with the authority to meet the requirements that are set forth according to the laws that govern education within each state. Public school boards receive the authority to establish and administer policy through delegation by state legislatures, pursuant to provisions in state constitutions.

It is the personnel employed by the school boards that must carry out the functions of education at the local levels. School boards entrust the personnel they employ with the responsibility of carrying out the functions in providing the necessary academic and social elements of public education. Public school boards and the personnel they employ forge an interesting role that is interdependent on the authority and rights that are extended to both. The policies of education for public school boards and personnel may not be enforced capriciously or arbitrarily and must be based upon legal authority as extended by federal and state constitutional statutory provisions.

The problem of this research study was the legal challenges of public school board authority with respect to personnel matters. There is a plethora of litigation on this topic that has occurred within the judicial system of the United States. Though the reasons for this vast litigation are varied, much of it exists due to the legislative nature of public school boards and the interpretation of the delegated authority that is bestowed upon school boards. It is significant for school board members and public school administrators to understand the legal parameters associated with public school board authority with respect to personnel. These individuals must
recognize school board authority, while also realizing that the limits of such authority are noted and addressed accordingly by the state and federal judicial systems.

The purpose of this study is to examine the body of litigation for public school boards of education and their authority with respect to personnel for the years of 1981-2008. The cases were briefed and analyzed for issues, outcomes, and trends. The information gained from the issues, outcomes, and trends was used to create guiding principles for local school administrators.
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CHAPTER I
INTRODUCTION TO THE STUDY

Introduction

The education of youth in the United States is a responsibility that rests with the fifty states. The authority to manage and operate school districts for the almost 47,000,000 public school students in America is grounded in state constitutional and statutory law and delegated as such to the local public school board of education. In turn, the school boards entrust the personnel that they employ with the responsibility of carrying out the functions in providing the necessary academic and social elements of public education. Public school boards and the personnel they employ forge an interesting role that is interdependent on the authority and rights that are extended to both (Cambron-McCabe et al., 2004).

The legal status of school personnel is grounded in legislative statute and court decisions. Many of these statutes and court decisions are established outside of education and subject to a constancy not found in other aspects of education (Peterson, 1967). Federal and state constitutional and statutory provisions provide the structure for the operation of public schools in America. These state and federal provisions are constantly challenged within the American judicial system. As these challenges occur, legal precedents are established and these precedents offer another level of authority for public school boards. Reutter (1985) provides that this occurs with the legislative and judicial branches of American government and that at the outset of any discussion of the law as it relates to public education, it must be understood that although there is much law which relates specifically to education, there
is an infinitely greater body which relates to the operation of government generally and affects education by the fact that the education system is a part of government. (p. 1)

A complex administrative and organizational educational environment exists in respect to the constitutional policy, statutory policy, and legal mandates that are apparent within the field of law and education. The policies of education for public school boards and personnel may not be enforced capriciously or arbitrarily and must be based upon legal authority as extended by federal and state constitutional statutory provisions. These can be directed by the state regulations of a state department of education or by the appropriate case law (LaMorte, 1999).

At the local level, the public school board of education is charged with the authority to meet the requirements that are set forth according to the laws that govern education within each state. School boards are creatures of state government and gain their authority as such. School personnel work for school boards which gain their authority from federal, state, and local county and municipal governments.

It is the personnel employed by the school boards that must carry out the functions of education for the local school boards. Public school boards could not operate schools without the services of the personnel for which they employ as they serve as the engine that drives the education profession. This dissertation is a research study that examines the body of litigation for public school boards of education and their authority with respect to personnel for the years of 1981-2008.

Statement of the Problem

The problem of this research study was the legal challenges of public school board authority with respect to personnel matters. There is a plethora of litigation on this topic that has occurred within the judicial system of the United States. Though the reasons for this vast
litigation are varied, much of it exists due to the legislative nature of public school boards and the interpretation of the delegated authority that is bestowed upon school boards.

The policies of public education in the United States are administered by local school boards. Public school boards receive the authority to establish and administer policy through delegation by state legislatures, pursuant to provisions in state constitutions. Through these statutes the legislatures of the respective states have delegated the necessary authority to school boards to administer and operate the local public schools.

In most aspects of the field of education, a school board has the primary function of making certain that it follows the statutory provisions that govern their ability to manage and supervise personnel. However, the management and supervision of personnel involves much more than following statutory authority established at the respective state levels. School boards must also have knowledge of rights extended to personnel on both a personal and professional basis as afforded by the U.S. Constitution.

The authority granted to public school boards was created with the ability to delegate mandates and responsibilities to personnel, in order to administer the educational policy placed upon them by each respective state legislature. Though public education is primarily a state function under state control, school boards must also adhere to federal legislation, and secure and protect the rights entitled to personnel as citizens of the United States. It is through the legislation by state statute, federal statute, and the constitutional rights of personnel as citizens where the judicial landscape is dotted with litigation between school boards and personnel. Given the governmental nature of school boards and their legal existence, a definitive legal relationship exists between school boards and personnel. That legal relationship between the two entities is derived from the following three sources of law: 1) the statutory provisions that govern
public schools, 2) the conditions of employment that are based upon a contract between boards and personnel, and 3) the constitutional rights that are extended to personnel as a citizen of the United States (Alexander & Alexander, 2005).

Significance of the Problem

Public school boards could not operate schools without the services of personnel. School personnel, with their varied roles in public education, are a very large part of the operation of government in the United States. Operating public schools is a huge undertaking when taking into account the dollars spent, personnel employed, and services rendered to a large segment of the population. Public education has been subjected to much litigation based on issues pertinent to school boards and school personnel. (Reese, 2005) It is significant for school board members and public school administrators to understand the legal parameters associated with public school board authority with respect to personnel. These individuals must recognize the authority that exists for school boards, while also realizing that the limits of such authority are noted and addressed accordingly by the state and federal judicial systems.

The people of a society generally follow what is expected of them as law-abiding citizens, as they are aware of the consequences and circumstances that await them if they do not. Much of the same exists in public education. That is, the stakeholders follow educational policies often without the full knowledge or appreciation of the intent or significance of the policy, law, statute, or court decision that guides them. It behooves all educators, especially those in positions of authority, to be knowledgeable and understand the body of law governing their profession.

The information gained from this study will prove to be a valuable source of information for school board members, superintendents, school administrators, educators, and educational
graduate school students who desire to know more about the authority of public school boards and the personnel they govern and manage. These individuals can use this research as a tool so they can better understand their positions within the education system. It is a necessity that these stakeholders be informed as to the laws, policies, and procedures surrounding school board-personnel relationships that guide them in the effective discharge of their duties.

Statement of Purpose

This purpose of this research was to examine the existing case law about challenges to school board authority in matters involving personnel. The research will focus on the litigated challenges to the authority granted to public school boards by federal statute, state statute, and the rights afforded to personnel by the U.S. Constitution. The legal cases analyzed within this study will identify the conflicts that have occurred between school boards and personnel for the years of 1981-2008.

Research Questions

The study sought the answers to the following research questions:

1. What are the issues in court cases involving the authority of public school boards with respect to the personnel they employ?

2. What are the outcomes in court cases involving the authority of public school boards with respect to the personnel they employ?

3. What are the trends in court cases involving the authority of public school boards with respect to the personnel they employ?
4. What are the legal principles for school administrators that can be discerned from court cases involving the authority of public school boards with respect to the personnel they employ?

Limitations

There were limitations that are relevant to this dissertation research. The research for the study was limited to the following:

1. The information with respect to case law, federal statutes, and state statutes were derived from resources gathered from the *West American Digest System* as gathered from the Mervyn H. Sterne Library at the University of Alabama-Birmingham.

2. The cases were limited to opinions from the United States Supreme Court, the United States Court of Appeal, the United State Federal District Court, the respective state supreme courts, and the state appellate courts.


4. The cases reviewed in the research were directly derived from what is provided in *West’s Education Law Digest*, descriptor 345, key number Schools #55.

5. The research does not include interviews of public school board members, public school administrators, or other public school educators.

6. The author of this study was a student in the Educational Leadership program at the University of Alabama. The scope of the study was limited due to the fact that this study was comprised of educational case law, federal and state statutes, and federal and state constitutional provisions, and the student is trained at an advanced level in educational administration but not in law.
Assumptions

1. The cases associated with this research project were reported in *West Education Law Digest* under the topic of schools.

2. The cases briefed and analyzed in this research study relate to school board authority and matters with respect to personnel as found in descriptor 345, key number 55, in the *West Education Law Digest System*.

3. The researcher was dependent upon the judgments of the editors of the *West Education Law Digest System*.

Definition of Terms

*Act*--An alternative name for statutory law. A bill that has been enacted by legislature into law (Nolan & Nolan-Haley, 1990).

*Agent*--A person authorized by another to act for or in place of him; one entrusted with another’s business (Nolan & Nolan-Haley, 1990).

*Affidavit*--A written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation. (Nolan and Nolan-Haley, 1990)

*Amenable*--Subject to answer to the law; accountable; responsible; liable to punishment (Nolan & Nolan-Haley, 1990).

*Appeal*--A complaint to a higher tribunal of an error or injustice committed by a lower tribunal, in which the error or injustice is sought to be corrected or reversed (Nolan & Nolan-Haley, 1990).
Appellate Court—Pertaining to or having cognizance of appeals and other proceedings for the judicial review of adjudications (Nolan & Nolan-Haley, 1990)

Arbitrary—In an unreasonable manner, as fixed or done capriciously or at pleasure. (Nolan & Nolan-Haley, 1990).

Authority—Right to exercise powers; to implement and enforce laws; to exact obedience; to command; to judge (Nolan & Nolan-Haley, 1990).


Bind—To obligate; to bring or place under definite duties or legal obligations, particularly by a bond or covenant (Nolan & Nolan-Haley, 1990).

Capricious—A willful and deliberate disregard of competent testimony and relevant evidence which one of ordinary intelligence could not possibly have avoided in reaching the result (Nolan & Nolan-Haley, 1990).

Case—A general term for an action, cause, suit, or controversy, at law or in equity; a question contested before a court of justice; an aggregate of facts which furnishes occasion for the exercise of the jurisdiction of a court of justice (Nolan & Nolan-Haley, 1990).

Certiorari—To be informed of. A writ of common law origin issued by a superior to an inferior court requiring the latter to produce a certified record of a particular case tried therein (Nolan & Nolan-Haley, 1990).

Citation—A text giving the researcher the history of cases, statutes, and other material subsequent to their effective date (Statsky, 1974).

Citators—A collection of the legislative and amendment history and cases that have cited or construed, constitutions, statutes, rules, regulations, etc. (Nolan & Nolan-Haley, 1990).
Cite--To read or refer to legal authorities in an argument to a court or elsewhere, in support of propositions of law sought to be established (Nolan & Nolan-Haley, 1990).


Collateral Estoppel Doctrine--When an issue of ultimate fact has been determined by a valid judgment, that issue cannot be again litigated between the same parties in future litigation (Nolan & Nolan-Haley, 1990).


Constitutional law--That branch of the public law of a nation or state which treats of the organization, powers and frame of government, the distribution of political and governmental authorities and functions, the fundamental principles which are to regulate the relations of government and citizen, and which prescribes generally the plan and method according to which the public affairs of the nation or state are to be administered (Nolan & Nolan-Haley, 1990).

Constitution--The written instrument agreed upon by the people of the Union or of a particular state, as the absolute rule of action and decision for all departments and officers of the government in respect to all the points covered by it, which must control until it shall be changed by the authority which established it, and in opposition to which any act or ordinance of any such department or officer is null and void (Nolan & Nolan-Haley, 1990).

Court of Appeals--Typically an intermediate court of appeals within the state and federal judicial system. In a few states, the Court of Appeals is the court of last resort. That is not the case for most of the states and the federal appellate system (Nolan & Nolan-Haley, 1990).

Declaratory Judgment--The judgment is binding as to present and future rights of the parties to the action (Nolan & Nolan-Haley, 1990).

Decree--The judgment of a court of equity or chancery, answering for most purposes to the judgment of a court of law (Nolan & Nolan-Haley, 1990).

Decree nisi--A provisional decree, which will be made absolute on motion unless cause be shown against it (Nolan & Nolan-Haley, 1990).

De Facto--To characterize an officer, a government, a past action, or a state of affairs which must be accepted for all practical purposes, but is illegal or illegitimate (Nolan & Nolan-Haley, 1990).

De Novo--Generally, a new hearing or a hearing for the second time, contemplating an entire trial in some manner in which matter was originally heard and a review of previous hearing (Nolan & Nolan-Haley, 1990).

Defendant--The person defending or denying; the party against whom relief or recovery is sought in an action or suit or the accused in a criminal case (Nolan & Nolan-Haley, 1990).

Depose--To make a deposition; to give evidence in the shape of a deposition; to make statements which are written down and sworn to; to give testimony which is reduced to writing by a duly-qualified officer and sworn to by the deponent (Nolan & Nolan-Haley, 1990).

Digest--A collection or compilation, embodying the chief matter of numerous books, articles, court decisions, etc. in one, disposed under proper heads or titles, and usually by an alphabetical arrangement, for facility in reference (Nolan & Nolan-Haley, 1990).

Disparate Treatment--Differential treatment of employees or applicants on the basis of their race, color, religion, sex, national origin, handicap, or veteran’s status (Nolan & Nolan-Haley, 1990).
Dissenting--The contrariety of opinion; refusal to agree with something already stated or adjudged or to an act previously performed. To denote the explicit disagreement of one or more judges of a court with the decision passed by the majority upon a case before them (Nolan & Nolan-Haley, 1990).

Due process--The right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, or property, in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved (Nolan & Nolan-Haley, 1990).

En Banc--Full bench. Refers to a session where the entire membership of the court will participate in the decision rather than the regular quorum (Nolan & Nolan-Haley, 1990).

Enjoin--To require; command; positively direct (Nolan & Nolan-Haley, 1990).

Enumerated--Term often used in law as equivalent to “mentioned specifically”, “designated”, or “expressly named or granted”; as in speaking of “enumerated” governmental powers, or items of property (Nolan & Nolan-Haley, 1990).

Equity--The state, ideal, or quality of being just, impartial, and fair (Webster’s, 1999).

Equal protection--That no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in like circumstances in their lives, liberty, property, and in their pursuit of happiness (Nolan & Nolan-Haley, 1990).

Estoppel--A principle that provides that an individual is barred from denying or alleging a certain fact or state facts because of that individual’s previous conduct, allegation, or denial (Nolan & Nolan-Haley, 1990).
Express--Clear; definite; explicit; plain; direct; unmistakable; not dubious or ambiguous (Nolan & Nolan-Haley, 1990).

Ex parte--On one side only; by or for one party; done for, in behalf of, or on the application of, one party only (Nolan & Nolan-Haley, 1990).

Ex relatione (Ex. rel.)--Upon relation or information. Legal proceedings which are instituted by the attorney general (or other proper person) in the name and behalf of the state, but on the information and at the instigation of an individual who has a private interest in the matter, are said to be taken “on the relation” of such person, who is called the “relator” (Nolan & Nolan-Haley, 1990).


Federal District Court--A federal trial court for cases that are appropriate for a federal jurisdiction (Nolan & Nolan-Haley, 1990).


Implied--Used in law in contrast to the word express, where the intention in regard to the subject-matter is not manifested by explicit and direct words, but is gathered by implication or necessary deduction, from the circumstances, the general language, or the conduct of the parties (Nolan & Nolan-Haley, 1990).

Imprimatur--A license or allowance, granted by the constituted authorities, giving permission to print and publish a book (Nolan & Nolan-Haley, 1990).

Infancy--The condition of the person merely with reference to his years, or his status with regard to other powers or relations (Nolan & Nolan-Haley, 1990).
Injunction--A court order prohibiting someone from doing some specified act or commanding someone to undo some wrong or injury (Nolan & Nolan-Haley, 1990).

Institute--To inaugurate; to commence; to nominate; to constitute; to appoint; to start; to introduce (Nolan & Nolan-Haley, 1990).

Intendment of law--The true meaning, the correct understanding or intention of the law. A presumption of interference made by the courts (Nolan & Nolan-Haley, 1990).


Law--That which is laid down, ordained, or established. A body of rules of action or conduct prescribed by controlling authority and having binding legal force (Nolan & Nolan-Haley, 1990).

Legislation--The act of giving or enacting laws; the power to make laws; the act of legislating; preparation and enactment of laws; the making of laws via legislation, in contrast to court-made laws (Nolan & Nolan-Haley, 1990).


Supreme Court Reporter, Federal Reporter, Federal Supplement Reporter, and Federal Rules
Decisions Reporter (Statsky, 1974).

**Opinion**--The statement by a judge or court of the decision reached in regard to a cause
tried or argued before them, expounding the law as applied to the case, and detailing the reasons
upon which the judgment is based (Nolan & Nolan-Haley, 1990).

**Paramount**--Above; upwards; higher; superior; preeminent; of the highest rank or nature

**Parens patriae**--The term that refers to the role of the state as sovereign and guardian of
persons under legal disability, such as juveniles or insane, when acting on behalf of the state to
protect the interests of the child or individual. The principle that the state must care for those
who cannot take care of themselves, such as minors who lack proper care and custody from their

**Plaintiff**--A person who brings an action; the party who complains or sues in a civil
action and is so named on the record (Nolan & Nolan-Haley, 1990).

**Peremptory**--Imperative; final; decisive; absolute; conclusive; positive; not admitting of

**Petition**--A formal written application to a court requesting judicial action on a certain


**Plenary power**--Authority and power as broad as is required in a given case (Nolan &
Prescribe--To lay down authoritatively as a guide, direction, or rule; to impose as a peremptory order; to dictate; to point; to direct; to give as a guide, direction, or rule of action; to give law (Nolan & Nolan-Haley, 1990).

Privacy--The right to be alone; the right of a person to be free from unwarranted publicity; and the right to live without unwarranted interference by the public matters with which the public is not necessarily concerned (Nolan & Nolan-Haley, 1990).

Privity--A mutual or successive relationships to the same right of property, or such an identification of interest of one person with another as to represent the same legal right (Nolan & Nolan-Haley, 1990).

Promissory Estoppel--That which arises when there is a promise which promisor should reasonably expect to induce action or forbearance of a definite and substantial character on part of promise, and which does induce such action or forbearance, and such promise is binding if injustice can be avoided only by enforcement or promise (Nolan & Nolan-Haley, 1990).

Quasi-judicial--A term applied to the action, discretion, etc., of public administrative officers or bodies, who are required to investigate facts, or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them, as a basis for their official action, and to exercise discretion of a judicial nature (Nolan & Nolan-Haley, 1990).


Relief--The public or private assistance or support, pecuniary or otherwise, granted to indigent persons (Nolan & Nolan-Haley, 1990).

Remand--To send back. The act of an appellate court when it sends a case back to the trial court and orders the trial court to conduct limited new hearings or an entirely new trial, or to take some other further action (Nolan & Nolan-Haley, 1990).
Reporter--The books containing the opinions of the courts (Statsky, 1974).

Res judicata--A matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment (Nolan & Nolan-Haley, 1990).

Shephardizing--The process of reviewing a court case to its fullest history while also cross-referencing the use of the same case in other cases. This technique involves what is called “reading cases in sequence” (Statsky & Wernet, 1984)

Stare Decisis--To abide by, or adhere to, decided cases (Nolan & Nolan-Haley, 1990).

State Courts--Those courts which constitute the state judicial system in contrast to federal courts. City and county courts may or may not be part of the state system of courts, depending upon the jurisdiction (Nolan & Nolan-Haley, 1990).

State Department--That department in the executive branch of the federal government, headed by the Secretary of State, which is principally responsible for foreign affairs and foreign trade (Nolan & Nolan-Haley, 1990).


Stay--A stay is a suspension of the case or some designated proceedings within it (Nolan & Nolan-Haley, 1990).

Sua Sponte--Of his or its own will or motion; voluntarily; without prompting or suggestion (Nolan & Nolan-Haley, 1990).

Summary Judgment--Procedural device available for prompt and expeditious disposition of controversy without trial when there is no dispute as to either material fact or inferences to be drawn from undisputed facts, or if only question of law is involved (Nolan & Nolan-Haley, 1990).
Supreme Court--An appellate court existing in most of the states. In the federal court system, and in most states, it is the highest appellate court or court of last resort. The U.S. Supreme Court is the court of last resort in the United States; it is the highest court in the land; also referred to in this research study as the Court (Nolan & Nolan-Haley, 1990).

Tort--A civil wrong independent of contract (Alexander and Alexander, 2005).


Writ of mandamus--A writ issued from a court of superior jurisdiction, and is directed to a private or municipal corporation, or any of its officers, or to an executive, administrative, or judicial officer, or to an inferior court, commanding the performance of a particular act therein specified, and belonging to his or their public, official, or ministerial duty, or directing the restoration of the complainant to rights or privileges of which he has been illegally deprived (Nolan & Nolan-Haley, 1990).

Organization of the Chapters

The first chapter of the research project served as an introduction to this dissertation. The introduction contained the purpose of the study, specific research questions, the statement of the problem, and the significance of this study. The second chapter includes a review of information gathered from selected literature. The third chapter demonstrates the methodology of how the research was gathered. The fourth chapter provides an analysis of the relevant case law that has been reviewed. This includes a review and analysis of the case law that is pertinent to the subject of this dissertation, and an analysis of the data derived from that review. The fifth, and final
chapter, provides a summary of the research conducted and recommendations for further research.
CHAPTER II

REVIEW OF LITERATURE

Introduction

The literature review will focus on issues pertaining to the authority of public school boards in the United States with respect to personnel matters. The first part of the literature reviewed the history of the establishment of public school boards and the general authority they gained through their early establishment. The second part of the literature reviewed the federal influence of the legislative and judicial branches on the authority of public school boards. The third part of the literature addressed the state influence of the legislative and judicial branches on the authority of public school boards. The fourth part of the literature addressed the significant issues pertaining to school board authority and personnel matters that have been addressed by the courts.

Historical Perspective: Establishment of Public School Boards

In its infancy, public education was subjected to local control with limited state control. Education was primarily at home, in churches, and at private educational institutions and was not a matter of great public interest. As the country developed, a series of public school districts were established that were designed to provide familiarity with the democratic form of government while supplying the work-force with qualified workers and technicians who were socially and economically self-sufficient (Tyack & Benavot, 1985).
The recognized earliest legislative requirement for education in America was in 1642, when the Commonwealth of Massachusetts ordered the parents of its colony to provide an education that included reading, religion, and lessons in the principal laws of the colony. There was an expectation of the colonial population for the children to receive a basic education. Most of the opportunities for an education were based on religion. Education in the colonial era was characterized by local and regional trends and beliefs, with little control exerted by the colonial government. There was a general belief that children should be taught values that would create a better citizen for the colony. As a colony grew in population, the responsibilities of local governance increased. Local selectmen, individuals who were chosen as a form of legislative representation for the citizens, chose to share the responsibilities by appointing committees in individual towns to govern education. It wasn’t until over a century later that there was a change in the course of how public education was managed and operated Rapp (1984).

Public school boards were created in the 19th Century. Their creation was based on the premise that citizens should control the policies that determine how the children in their communities are educated. As the majority of them operated in full fiscal independence, school boards were the major component of local school governance (The Twentieth Century Fund, 1992).

The movement toward providing for a public education for all children did not take place until the 1800’s. This came about due to a realization that for an infant democracy to grow, the education of the common people was a necessity. An educated citizenry was crucial to sustaining a new system of government by the people. The creation of the public school concept was at its infancy and the establishment of public
boards of education to manage these new educational systems was not far from being realized (Alexander & Alexander, 2005).

In 1837, the Commonwealth of Massachusetts established the first state Board of Education, in order to give state government a greater role in education. However, most governance stayed within the authority of local committees, as no state law had been established otherwise and there was a level of mistrust in the ability of a distant political body to manage the local schools. The state eventually enacted legislation in 1891 which vested each school district with financial and administrative authority pursuant to the authority delegated to them under law. The Massachusetts system of separate educational governance spawned similar thoughts among the other colonies and eventually among the states and was basically the initial beginning of today’s public school boards (Land, 2002).

In *Rhea v. Board of Education* (1919), the Court described education as one of the matters vital to the public welfare, as it was derived from the social and industrial revolution of the 19th & 20th centuries. The public school board as a governmental body is an administrative body that has been delegated discretionary authority to it in order to give effect to legislative will. School boards do not possess the authority to legislate, but they do possess the status of administrative authority to fulfill the legislative end, so that it may be properly enforced (Carrington, 1921).

The current centralized school board make-up with the Superintendent as the Chief Executive Officer was born out of the large cities in the United States. The citizens of the cities, which generally had a large group of their citizens who worked in the corporate setting, wished to have more control of the education of their children. They set
up their school boards (either elected or appointed) much like the corporate boards, which
focused less on the day-to-day management of the district and more on policy. The
success of these city boards of education eventually dispersed to other states and by the
first 2 decades of the 1900s, most states had a similar local board of education
organizational structure that was centralized in nature, focused on policy, and left the
management aspect to the superintendent. The local centralized school board has stayed
virtually intact through the last 100 years. For the first 50 years, the school boards
controlled all aspects of education, according to the wishes of their state government. In
1954, the decision of the U.S. Supreme Court in the desegregation case of Brown v.
Board of Education of Topeka changed the authority landscape tremendously for public
school boards, from one that was solely legislative in nature to one that included judicial
authority. Though the Court’s ruling in Brown had a significant impact on the civil rights
of American citizens it also was significant as it revealed an initiative on the part of the
American judicial system to address fundamental issues in the field of public education
(Land, 2002).

First and Walberg (1992) refer to the court case of Stuart v. School District #1 of the Village of Kalamazoo and others (1874) as a landmark court case in Michigan, where
the decision was rendered that public boards of education had the right to utilize taxpayer
dollars to support the establishment of a secondary school. In 1872, the citizens of
Kalamazoo, Michigan challenged the authority of the Kalamazoo School Board in their
desire to collect taxes to be used for the creation of a public high school. The Michigan
Supreme Court ruled that the Kalamazoo School Board had the right to levy taxes in
support for the purposes of public education. This case was one of the first involving
litigation which challenged the authority of public school boards of education as it
enunciated the rule that a local school board’s power is not limited to only those
functions expressly given by the legislature. The ruling in this case also clarified those
functions implied by the board’s overall mission of educating the citizenry.

Rapp (1984) points to the case of Baldwin v. BOE North Dakota (1948), in which
an education district was defined as the designated territory that had been organized as a
political or civil subdivision of a state for the purpose of the administration, support, and
maintenance of public educational institutions in such territory. The local educational
institutions within such districts were typically administered by a board of education. The
language in Baldwin specifically provides for the purpose, intent, and responsibility of
public school board members. The boards are provided with the authority to administer
the laws and policies required of them to operate the district. School boards are
authorized to adopt educational policy as long as it is consistent with and not in conflict
with the laws of the state and the federal government. In Williams v. Board of Education
(1967), the court provided that the creation of a school district is a function that is
legislative in character (Rapp).

Russo (1992) describes a school board as a quasi-municipal corporation or
political subdivision of a state, created for the purpose of administering the
responsibilities of a school board. He also adds that school boards are local boards acting
as agents of the state and are responsible for carrying out the mandate entrusted to them
by a state legislature, with no inherent authority other than what is vested to them by the
legislature. Russo points to McGilvra v. School District (1921), in defining the authority
of a local school board as the authority granted in express language. Such authority can
be implied or expressly granted, with the intent of the authority being essential to meet the declared objective and purposes of the school board. He added, when there is fair or reasonable doubt concerning the existence of authority, the courts are charged with resolving the matter.

Local school boards are creatures of government and subsequently subjected to federal and state constitutions, federal and state statutes, and other regulations where appropriate. School boards do not possess the discretion to act contrary to those constitutional mandates. A board has great discretion extended to them to give directives, make policy, delegate authority, and confer decisions as long as they act in accordance with the appropriate authority delegated to them in doing so (Kentucky School Board Association, 2004).

Robertson (1966) conducted a dissertation research that addressed the legal status of school boards in Oklahoma. Though much of his effort focused on the State of Oklahoma and the research was conducted some 40 years ago, the study has parallels to other states and current topics of interest. The study focused on five specific areas described as follows:

1. General authority and limitations of school boards.
2. School board procedures and records.
3. Contractual authority of school boards.
4. Tort liability of school districts and officers.
5. Authority of school boards to make rules governing pupils.

With the exception of the areas of school board procedures and records, the other four areas addressed the general authority of school board members in the State of Oklahoma.
The author devoted a chapter to each of these five areas. In each of the chapters, the author researched the pertinent case law and legislative statute that provides the authority for local school boards in the State of Oklahoma. Robertson’s findings illustrated several key points, including the following:

1. The legal status of boards of education are not only established by state law, but also circumscribed by judicial interpretation of the same laws.
2. Board of education members are officers of the state.
3. School boards are considered corporate bodies and must conduct meetings in a legal setting through a legal meeting.
4. School boards have contractual authority and are extended so by statute and such authority is not inherent.
5. Oklahoma courts cannot substitute their judgment for that of school boards.

LaMorte (1999) broke down educational governance into three distinct levels. The levels are federal, state, and local and he sorts the authority of three distinct entities and their subsequent delegation and delineation of authority as follows:

1. Federal Level:
   a. United States Constitutional Amendments
   b. Statutes
   c. Rules and Regulations of Administrative Agencies
   d. Case Law
   e. Presidential Executive Orders
   f. Opinion’s of the Federal Attorney General

2. State Level:
a. State Constitutions
b. State Statutes
c. Case Law
d. State Department of Education/State Boards of Education
e. Opinion’s of the State Attorney General

3. Local Level:
   a. School Board Policies
   b. Individual School Policies

Federal Influence

The writers of the U.S. Constitution did not include a provision for a national system of education. The U.S. Constitution created a federal government with limited authority. With such limited authority, the ability to set up a federal system of education simply did not exist. In the case of *National League of Cities v. Usery* (1976), the U.S. Supreme Court noted that the U.S. Constitution recognizes that one of the unique aspects of the American government is that states are recognized as sovereign entities in the federal system of government. The U.S. Constitution created a government of limited power. In the absence of an articulated power on the part of the government, the states are recognized as having plenary power. The plenary power gave states the ability to establish and operate schools. That is why many interpret the Tenth Amendment in a broad manner and the U.S. government in a narrow manner in acknowledging that the task of providing basic social services, such as education, are left to the discretion of the state governments. In the case of *Fry v. United States* (1974) the U.S. Supreme Court
opined that Congress cannot exert authority in a manner that deprives states with the ability to function effectively in national government. Such authority is granted to the respective 50 states (Alexander, 1986).

In their draft of the Constitution, the founding fathers clearly envisioned and defined a system of federal government with three discernible branches of government: executive, legislative, and judicial. When they identified the three branches, they also identified the roles, responsibilities, and powers, in articulating the inherent rights and freedoms common to all Americans. The federal government’s ability to affect education policy at the local school board level is based upon elements of the document that are referred to as structural provisions and rights provisions. The structural provisions delegate the function of government to the three branches. The rights provision refers to the Bill of Rights and other amendments pertaining to individual liberties and freedoms. Both the structural provisions and rights provisions of the U.S. Constitution have significant impact upon the authority of public school boards and the personnel they employ (Wilkinson, 2004).

The provisions covered in this section deal specifically with the federal government’s ability to govern the activities of school boards in general. Through the U.S. Constitution, the federal government’s authority to impact the personnel employed by public school boards through the structural provisions are centered upon five articles and six amendments. The following are the articles: Article, I §1, known as the Powers Delegated to Congress; Article I, §8.1, known as the General Welfare Clause; Article I, §8.3, known as the Commerce Clause; Article I, §10, known as the Contracts Clause; and Article VI, Clause 2.2, known as the Supremacy Clause. The following are the
amendments: First Amendment, Fourth Amendment, Fifth Amendment, Eighth Amendment, Ninth Amendment, Tenth Amendment, Eleventh Amendment, and Fourteenth Amendment, respectively. These articles and amendments serve as the basic structure of the federal government and are most responsible for the involvement of the federal government in education at the local levels of public school boards. (Alexander & Alexander, 2005)

Article I, §1 provides Congress with the legislative powers to operate a central government through the three branches of government. (U.S. CONST., art I, §1) The article provides that all legislative powers shall be vested in the Congress of the United States. Congress is not granted the authority or right to govern education. The states have sovereignty to govern education. The field of education is one of the greatest elements of which states have the power and authority to implement and establish as needed. Article I insures that the federal government cannot use unnecessary authority to govern education in some way (Alexander & Alexander, 2005).

Article I, §8, clause 1, is known as the General Welfare Clause, holds more language to have potential to benefit public school boards than any other provision (U.S. CONST., art. I, §8, cl.1). Through this clause Congress can impact education at the state level by defining education as general welfare with the ability to tax and appropriate funds as needed. This article allows Congress to create taxes, raise revenue, and promote other interests to provide for the common defense and general welfare of the country. The common defense and general welfare of the country includes the field of public education. The ability of Congress to tax education is not a guaranteed right. Congress can offer grants and other financial packages to the respective states merely as an option
on the part of the states to be a willing recipient. Congress cannot require the states to participate in such a program as it would be a controlling aspect of the federal government that they simply do not possess (Alexander & Alexander, 2005).

There are two court cases that have influenced the federal government’s ability to determine the right to provide for public education through the General Welfare Clause. *U.S. v. Butler* (1936) provided that Congress was not limited to the expenditures of public funds through its legislative power found in the U.S. Constitution (Rapp, 1984). A year later in *Helvering v. Davis* (1937), the U.S. Supreme Court ruled that Congress can tax and spend as needed under the General Welfare Clause (Rapp). The Court felt that the General Welfare Clause is not static but flexible as long as Congress does not exceed power beyond what is necessary (Butts & Cremin, 1953).

Though commerce is associated with trade, Article I, Section 8.3 of the U.S. Constitution states that, Congress shall have the power to regulate commerce with foreign nations and with the states (U.S. CONST., art. I, §8, cl.3). Congress can give education such a description of being involved in trade by specifying that the field of education holds the potential to conduct intrastate activities which include trade. Education can be considered a trade when considering that the citizens of a state are a potential resource for the nation as a whole. In *Gibbons v. Ogden* (1824), the Court found that education as a foundation of commerce is not new and is an advancement of society, labor, transportation, and intelligence among other things. Literacy is significant to these things. The court reversed this view in *National League of Cities v. Usery* (1976) where it found that requiring states to adhere to the wage and hour law was a violation of the Tenth Amendment. *Usery* was reversed with *Garcia v. San Antonio Metropolitan Transit*
Authority (1985) where it was determined that Congress and the President have the explicit powers to preserve limits of the Commerce Clause (Alexander & Alexander, 2005).

In *U.S. v. Lopez* (1995) the federal government tried to enter an area under state authority by charging a student with the violation of the federal *Gun Free School Zone Act of 1990*. A U.S. Federal District Court convicted Lopez as he violated the federal interstate commerce clause. Lopez brought a handgun to school with the intent of selling it to another classmate who intended to use the gun for gang related activity. The Eighth Circuit, U.S. Court of Appeals reversed the decision of the District Court as it ruled that the *Gun Free School Zone Act of 1990* was an unconstitutional use of power on the part of Congress as it attempted to regulate commerce in the states with power that it did not have. The U.S. Supreme Court agreed with the Eighth Circuit by stating that the federal government was exhibiting powers beyond what is granted in doing so. The Court determined that the *Gun Free School Zone Act of 1990* had vague language as to how the Act regulated interstate commerce. Congress and President Clinton responded with an amendment to the Act which focused on the violation of the movement of weapons in and around school zones rather than the actual possession of the weapons. The amendment had little to do with the regulation of commerce, with the focus of the amendment on controlling the use or possession of weapons inside of school zones (Palmer & Laverty, 1996).

Article I, §10, is known as the Contracts Clause. This provision was created to protect the federal government by specifying that a state cannot enter into contracts that contradict federal law or the U.S. Constitution (U.S. CONST., art. I, §10). Basically, the
clause negates any intent or desire on behalf of the states by entering into a contract with another nation, state, or by developing a confederation. Since school boards of education are elements of the state, the Contracts Clause also applies to such entities. Local school boards of education and state boards of education cannot pass a statute or policy that enters into a contract that is in direct violation to the Contracts Clause (Wilkinson, 2004).

Article VI, Clause 2 is known as the Supremacy Clause. It became a part of the U.S. Constitution in 1787 and provides that the Constitution, and the laws of the United States are the supreme law of the land and the Judges in every State shall be bound as such (U.S. CONST., art. VI, cl. 2.2). The Supremacy Clause was created so that the federal government could have the power and authority to deal with the strong sovereign powers of the states. This can occur when a federal statute comes into direct conflict with state statute. It is the responsibility of the federal court system to make certain that the federal policy and statute in conflict with the same of the states must be within the scope of appropriate constitutional authority. If this is verified, then the state law in conflict must yield to the federal statute and policy of the same (Alexander & Alexander, 2005).

The First Amendment prohibits the establishment of laws that infringe upon the individual freedoms of religion, speech, press, and assembly. Congress cannot establish law respecting the establishment of religion of any type nor can it prohibit the free exercise of religion. The First Amendment also applies to the suppression of freedom of speech, freedom of the press, the right of the people to peaceably assemble, and to petition the Government for a redress of grievances (U.S. CONST., amend. I). In Tinker v. Des Moines (1969), the Supreme Court sided with the language of the First Amendment in citing that that public school students and people as individuals are
protected under the U.S. Constitution. *Tinker* had far-reaching effects on school personnel as well as other cases that would follow. The First Amendment is absolute in its language in respect to the protection of the liberties and freedoms in the U.S. Constitution (Alexander & Alexander, 2005).

The Fourth Amendment prohibits unreasonable searches and seizures on the part of those with ties and/or affiliation to the government. The Fourth Amendment provides, that citizens have the right to be secure and protected from unreasonable searches and seizures by those with ties to the government. Searches and seizures cannot be conducted without probable cause. U.S. CONST., amend. IV). In determining what is appropriate in respect to searches and seizures the Supreme Court has categorized the right to search and seize based on what is reasonable and probable. *New Jersey v. TLO* (1985) is the court case that describes the authority of school officials in conducting searches and seizures. The Court has determined that reasonable suspicion is what is granted to school officials in determining what is permissible to warrant a search and/or seizure. With this authority, school boards have great latitude in addressing issues of concern in public schools. These issues would include but not limited to the following: weapons, drugs, explosives, and any other contraband deemed illegal in a public education setting. In stating their opinion in *TLO* the Court determined that the circumstances needed to warrant a search or seizure and the conditions which must be met to allow them (Ryan, 2000).

The Fifth Amendment corresponds with the Fourteenth Amendment in providing some elements that provide for due process requirements for citizens. The Fifth Amendment provides, that no person shall be compelled in any criminal case to be a
witness against himself, nor be deprived of life, liberty, or property without due process rights extended to the individual (U.S. CONST., amend. V). The language in the amendment can affect public school districts in many ways. The Supreme Court has ruled in *Beilan v. Board of Education* (1958) that a teacher can refuse to answer questions that are pertinent to a school investigation that focuses on a supposed wrongdoing by the teacher. Also, the Fifth Amendment allows school boards to make policy that provides for the right of school boards to take property that belongs to individual persons (Cambron-McCabe et al., 2004).

The Eighth Amendment U.S. CONST., amend. VIII) was created to protect individual citizens from excessive torture or negative treatment when facing punishment for crimes. In *Ingraham v. Wright* (1977), the Supreme Court ruled that even in the face of excessive corporal punishment, the Eighth Amendment does not apply to public school districts. *Ingraham* is the singular case that allows states to justify the continued use of corporal punishment by public school personnel (Alexander & Alexander, 2005).

The Tenth Amendment complements Article I and further impacts the ability of the involvement of the federal government in allowing that powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to its people (U.S. CONST., amend. X). Education is not addressed in the Constitution and is thus reserved to the states. The states can organize and create educational systems and govern and manage the individual school boards at the states discretion. The federal government can only intervene indirectly and ominously (Bolmeier, 1968).
The Eleventh Amendment limits the power of the judiciary to hold states liable in suits against the United States. To an extent, this provides immunity to the states from the federal government. This impacts education greatly as it prevents Congress from holding states liable for failing to adhere to federal legislation. The Eleventh Amendment allows states to preserve their sovereignty. That is, its citizens cannot file suit against the state (U.S. CONST., amend. XI). The Supreme Court has ruled that school board members as individual persons are not subject to the same sovereignty and immunity that is granted to states as a whole (Wilkinson, 2004).

Indirectly, the U.S. Constitution allows continued state control of education and state constitutions authorize establishment of school boards by the state legislatures. The federal government through the legislative and judicial branches interjects itself into the operation of the public schools. Thus, while it is clear that a state legislature has plenary power over public schools, the federal constitution or state constitutions may also impose limitations on both the legislative and judicial authority of educational institutions (Horton v. Meskill, 1974). However, limited federal control of education does not diminish the responsibility for education that is reserved to the states. Historically, legally, and practically, public education is largely controlled by state laws and locally governed by school boards (Reese, 2005).

The federal government has an even greater impact on the personnel employed with public school boards through the rights provisions within five of the Amendments. In 1965, the Supreme Court redefined the Ninth Amendment. This amendment provides a connection for school boards in reference to the unstated privacy that exists for students in public school settings (U.S. CONST., amend. IX). Basically, the potential exists for
issues to arise that involve the liberties and freedoms of states that have not been addressed by case law, statute, or legislation (Mendelson, 1995).

School board members are bound by the authority of the Fourteenth Amendment as they are considered agents or officers of the state (U.S. CONST., amend. XIV). School boards are compelled to provide fairness when conducting hearings for teachers and students. The Fourteenth Amendment applied the First Amendment to the states by providing that the government cannot restrict the free expression of its citizens. The Fourteenth Amendment contains what is known as the Due Process Clause. The principles of life, liberty, and property can only be removed by the due process of law. The Due Process Clause grants school boards with the authority to manage and direct the various elements of a school district. In Goss v. Lopez (1974), the Supreme Court ruled that a student could not be deprived of education without following the appropriate constitutional procedures, because once the student enrolled in school, the student acquired both liberty and property rights (Amar, 1992).

Title VI and Title VII of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972 are three pieces of legislative action that have impact on School Board authority and the rights of the personnel which they employ. These pieces of legislation afford civil rights protection for citizens that are examples of the extension of federal authority over public school boards. Title VI statute (42 U.S.C. §2000D-D-1) provides that school boards cannot prohibit or exclude individuals from participation in or deny benefits of specific programs, nor can they discriminate against individuals involved in federally assisted programs on the grounds of race, color, or national origin. Title VII pertains to school personnel as it covers the protection of employees in all work
settings in America from discrimination from their employers (42 U.S.C. §2000E-2). Title IX was designed specifically to protect the students of educational institutions from sexual harassment. School boards must adhere to the language provided in both statutes (20 U.S.C. §1681). The Office for Civil Rights (OCR) of the U.S. Department of Education and the Equal Employment Opportunity Commission (EEOC) are the two agencies that monitor civil rights issues in public education (Deitch, 1993).

The EEOC is the federal agency that governs employment discrimination in the U.S. In addition to the federal civil rights statutes previously mentioned, the agency also monitors the implementation of other federal legislation pertaining to school board personnel. The Fair Labor Standards Act of 1938 (FLSA) (29 U.S.C. §8) was established as a law that applies to employees engaged in interstate commerce, those employed by an enterprise engaged in commerce, or those involved in the production of goods for commerce. The FLSA established a national minimum wage, guaranteed time and a half for overtime in certain jobs, and prohibited most employment of minors (Seltzer, 1995).

The FLSA was amended in 1947 and then was amended again and subsequently renamed as the Equal Pay Act of 1963. The Equal Pay Act (29 U.S.C. §206) requires that men and women be given equal pay for equal work within the same working establishment. In order for pay to be equal, the same jobs for men and women must not be identical but substantially equal. This greatly affects school boards as the ratio for women versus men within the field is much greater than the majority of other professional working fields in the U.S. Most states have in place a state salary matrix that identifies the pay salary structure based upon years of experience, degree level, months of work involved, and by specific positions and job titles within the state school system. In
the case of *Stanley v. University of South Carolina* (1994), the Ninth Circuit ruled in favor of the university when the women’s basketball coach filed suit on the allegation of violation of the Equal Pay Act as she was not paid the same salary as the men’s basketball coach. In their ruling the Court offered that the men’s coach has much more responsibilities and duties and thus there is credible evidence that the university was within their right to pay the men’s coach a higher salary (Cambron-McCabe et al., 2004).

In 1967, the federal government established the *Age Discrimination in Employment Act* (ADEA) (29 U.S.C., §621). This piece of legislation governs the authority of public school boards by prohibiting employment discrimination against individuals who are 40 years of age or older. The elements of the legislation include a ban on discrimination in: hiring, promotions, wages, termination, lay-offs, requirement’s in job notices of age preference and limitations, and denial of benefits to older employees. The Act was amended in 1986 and in 1991. The two later amendments did not offer substantial changes. The U.S. Supreme Court ruled in *Hazen Paper Co. v. Biggins* (1993) that age clearly has to be the factor in allegations of age discrimination on the part of the school board in order for there to be a violation of federal statute (Cambron-McCabe et al., 2004).

The *Rehabilitation Act of 1973* (29 U.S.C. §794 (§504)) is a federal law that addresses the issue of individuals with disabilities who are denied employment or positions based on the handicap of the person. The failure of State Boards of Education or local boards of education to comply with this law would result in loss of federal funding. The law allows employees with a disability to seek equal education opportunities (Alexander & Alexander, 2005).
The Family Rights and Privacy Act of 1974 (FERPA) (20 U.S.C. §1232G) is a federal law that was established to provide standards for schools to follow in the handling and distribution of student information and records. The primary objective of the law is to allow parents and students to view their student records as needed. Educational institutions must first receive parental permission prior to distributing student records to any agency external to the field of education. Failure to follow the requirements of the law could subject the school board to a loss of federal funds. The Act specifies that certain information, known as directory information, may be released to the appropriate and approved organizations that would be in need of such information. The U.S. Supreme Court in the case of Owasso Independent School District v. Falvo (2002) referenced the fact that the grade books of teachers may not be subject to FERPA, but stopped short of making a ruling on the subject. To insure compliance, school boards must make certain that the appropriate policies and procedures are in place and that school system personnel follow the policies (Cambron-McCabe et al., 2004).

The Equal Access Act of 1984, directs school boards to provide access to non-school groups. If a school board allows its individual schools to provide access to non-school groups, then the school cannot prevent the use of the same school facilities to religious groups (20 U.S.C. §§4071-4072). The case of Widmar v. Vincent (1981) had much to do with the establishment of this Equal Access Act. In Widmar, the U.S. Supreme Court reversed the action of the lower court ruling in favor of a Missouri university which denied the use of campus facilities to a religious group. The denial for use of the facilities, while also allowing other groups the same privilege was a direct violation of the First and Fourteenth Amendments (Reutter, 1985). The Equal Access Act
was challenged in *Board of Education of Westside Community Schools v. Mergen* (1990), but the U.S. Supreme Court upheld its constitutionality. Any school board that allows its students to meet in a limited open forum must also allow other students to meet regardless of religious, political, or philosophical views that might be articulated when they meet (Cambron-McCabe et al., 2004).

The *Americans with Disabilities Act (ADA)* (U.S.C., Title 42, §12114) was passed in 1990 to protect and cover all employees within the public and private work sector in companies and organizations throughout America. A threshold for application of the law is that the organization must have at least fifteen employees. The requirements of ADA must be met and compliance is not based upon receipt of federal funds. ADA abrogates the Eleventh Amendment and thus states do not have relief from immunity for lawsuits brought in violation of the law. The law covers all aspects of American society and is not limited to the field of education alone. The term disability is used broadly and few exclusions are noted (Alexander & Alexander, 2005).

The *Rehabilitation Act of 1973* addressed issues of disability in the work place. This public identification carried over into the legislative bodies and thus, throughout the last four decades, public school boards and other governmental entities have faced a plethora of legislative action in amending and changing policy in order to better serve the handicapped citizens of the American society. This piece of legislation has created a litigious environment where there are repeated challenges to issues of discrimination, liability, accountability, and challenges to the current legislative framework of the federal and state governments (Cambron-McCabe et al., 2004).
The *Family and Medical Leave Act of 1993 (FMLA)* was a piece of legislation that was created to protect individuals in the workplace. This Act greatly impacts public school boards as it has strong language that protects personnel that are in need of medical leave for a variety of reasons. The most common of these is maternity leave taken by women for the impending birth of a child or after the birth of a child. The Act has a special section that specifically addresses the field of education. School personnel must work at least one year and complete 1250 hours of work in order to be eligible for a leave under the Act (Alexander & Alexander, 2005).

Directly, the federal government impacts education through the establishment of programs created through legislation that requires compliance to federal mandates. Typically, such programs are accompanied with federal funding which assists the states with the implementation of the program. Once a state accepts the funding, their role moves from one of voluntary participation to one of required participation due to a federal mandate (Land, 2002).

The initial federal role in education was to respond to the national intent of fostering academic excellence and equity in public education. This government support involves the intent of assisting states with establishing elements of education in various regions of the country that were unsettled. If it were not for such assistance from the federal government, many states, particularly those in the west, would have had difficulty in providing educational opportunities for their citizens (Shannon, 1995). The *Land Ordinance of 1785* was a piece of federal legislation that was designed to assist states with their efforts to establish education. The *Land Ordinance of 1785*, enacted by the Continental Congress prior to adoption of the Constitution, included a singular provision
which reserved the 16th section of every township for the maintenance of public schools within that township. The purpose of this provision was to make the purchase of land more attractive to persons with families who might venture west. It was determined that the proximity of land set aside for schools for adjacent properties would provide needed revenue for and within the respective states. The *Northwest Ordinance of 1787* included a similar provision to promote education by focusing on religion, issues of morality, and areas of knowledge that are necessary to good government. Such educational opportunities promote the happiness of mankind, and the establishment of schools. Thus, the *Land Ordinance of 1785* required states to oversee the 16th-section lands which were set aside for education and the *Northwest Ordinance of 1787* required that each state have a provision of education in its basic constitutional law. These two important pieces of legislation set the precedent for the federal government to assist and create opportunities for states in encouraging the development of systems of education (Duffey, 1995).

In 1802, a situation arose where a compromise was reached between the states and the federal government involving the sale of federal lands within state borders. An agreement was reached that allowed states to keep 5% of federal properties sold for the exchange of no taxation placed upon the federal government within the respective states. This provided additional federal revenue for the purposes of establishing education. Soon after, President Andrew Jackson helped the cause for education by creating the *Surplus Revenue Deposit Act of 1836*, which benefited state systems of education, including school boards, by distributing $28 million in federal funds back to state governments (Alexander & Alexander, 2005).
The federal government had additional influence upon education in the states through three pieces of legislation that were tied to agriculture. The *Morrill Act of 1862* and the *Smith-Lever Act of 1914* were designed to provide federal aid to institutions of higher learning within each of the states. The *Morrill Act of 1862* (20 U.S.C.A., §§81-1686) was designed to give federal lands to the states with the express purpose of the lands to be sold and then the funds gained were to be used for the establishment of at least one college within the respective state. The *Smith-Lever Act of 1914* (U.S.C., 7, §341) was amended in 2002 to include the following which definitively benefited school boards: Expanded Food and Nutrition Education Program, Farm Safety, Integrated Pest Management, and Children, Youth and Families at Risk programs (Pub. L 107–293, 2002). The *Smith-Hughes Act of 1917* (Pub.L. No. 347, 1917) was also based on agriculture, but it also had additional language that related to the field of vocational education. The Act specified that the vocational education programs offered in public schools should be isolated from other academic areas within public high school curriculums. In return, states would receive federal funding in order to cover the costs of establishing and operating vocational education programs. As with most federal legislation, the act outlined several specific components that states must adhere to in order to receive the federal funds (Rapp, 1984).

The next significant piece of legislation to impact education enacted in the 1960s was *The Elementary and Secondary Education Act of 1965 (ESEA)* (20 U.S.C. §6301). This piece of federal legislation extended tremendous support to public school boards for school children in low socioeconomic homes. The *ESEA of 1965* was created with the support of President Lyndon B. Johnson, with the intent of providing needed funds to low
poverty areas of the United States and helping with the removal of the barriers and learning gaps that existed for such children. Since poverty is something that affects all regions of the country, the legislation has had far-reaching affects on public school boards and education in general. The law is required to be re-authorized by Congress every three years and has been re-authorized without interruption over the last 40 plus years (Kantor, 1991). The latest re-authorization the ESEA of 1965 is the No Child Left Behind Act of 2001 (NCLB). This federal legislation has followed the same path of earlier re-authorizations with more accountability and standards of reform placed on public school boards (Coles, 2003).

The case of Bradley v. Pinellas County (1970) is an example of the impact of NCLB and the challenges facing public school boards and the judicial system. One of the main criteria of the NCLB legislation is that school boards implement a school choice plan for those schools that fail to meet AYP accountability standards for two consecutive years. School boards must simply provide students with a choice of better schools in the event that the district has a school that does not meet accountability standards. In Florida, the Pinellas County Board of Education challenged the authority of the NCLB legislation due to the fact that the system was underneath a federal desegregation court order. The Board’s requirement to submit to authority was two-fold in this instance as it was bound to federal authority from both the legislative and judicial branches. In reference to the judicial branch, the Board was required to follow the federal mandate that was set forth in Bradley. In Bradley, the School Board, like many other southern school boards, was required to follow a desegregation decree handed down as a federal mandate.
The mandate required that the School Board must adhere to the school choice provisions in NCLB. Those provisions require that districts failing to meet AYP offer a selection of school choice plans to send students to other schools that have met AYP requirements. The school board felt that this would only cause the district to fail to meet the desegregation mandate that had been in effect for 34 plus years. The school board chose to challenge the authority of the NCLB school choice provision. The Superintendent of the Pinellas County Board of Education, Dr. J. Howard Hinesley, sent a letter to the Governor and State Education Chancellor of the State of Florida requesting that the Board not be required to comply with the conflicting NCLB provision. A motion was filed in April of 2004 with the U.S. Department of Education by School Board attorney, John W. Bowen. Bowen challenged the fact that the Board could not comply with NCLB policy without negotiating the federal desegregation court order. Bowen’s filing demonstrates an assertion of local control on the part of the School Board in that they were bound to first follow the court ordered desegregation plan rather than the NCLB provision. The basis for the challenge is that the Equal Protection Clause of the 14th Amendment is more significant than the federal NCLB statute. The U.S. Department of Education never directly responded to the motion filed by Bowen (Coles, 2003).

In 1974, Congress approved the federal statute known as the Equal Educational Opportunities Act (EEOA). The design of this legislation was for school districts to develop acceptable programs for students of limited English speaking ability or English-proficiency students. The EEOA U.S.C.A., Title 20, Education, §§1703(f), provided strong language in order to protect students that must overcome a language barrier. It declared that no state shall deny educational opportunity to an individual according to
race, color, sex or national origin. The provision includes language that addresses language barriers in stating that the failure of an educational agency to take appropriate action to safeguard the discrimination of those with language barriers, is denying equal protection of students in their instructional programs (Santoro, 2002).

The *Education for all Handicapped Children Act of 1975* (EAHCA) (20 U.S.C. §§1400-1485) also known as Public Law 94-142, is a federal law that governs how states and public agencies address the needs and related services for children with disabilities. It greatly affects public education and though it is an extremely important law for the disabled youth of America, it also serves as another piece of federal legislation that does much to impede upon the authority of public school boards. The law was born out of the *Pennsylvania Association for Retarded Children v. Commonwealth* (1972) and *Mills v. Board of Education of District of Columbia* (1972) decisions. These two court cases allowed for the identification of the problems with educating children with disabilities but also in addressing the discrimination of the same individuals in the public work setting.

Public Law 94-142 addressed the issues of disability in the delivery of education and Public Law 94-142 has been amended several times since its inception. This occurred in 1978, 1983, and 1986. Some of these changes have been minor in scope while several have been major in scope and served to change the landscape for those that deal with issues of disability in education.

In 1990, the law received its first major change and was renamed the *Individuals with Disabilities Education Act* (IDEA). The *IDEA of 1990* (U.S.C., Title 20, §§1400-1485) was expanded to add specific definitions for identifying the various disabilities. This included a provision to keep states from using the Eleventh Amendment as an
immunity shield to prevent liability and litigation from those that have been harmed or discriminated against. Another new element to the law was a requirement to provide services and programs to develop and prepare adolescent disabled students with their transition into the adult workforce and lifestyle. All three of these amendments have had a tremendous impact on public school boards and public school personnel (McCabe-Cambron et al., 2004).

In 1997, the law was amended once again with several changes, additions, and policy demands that went further in the adaptability and accountability demands to which public school boards must adhere (U.S.C., Title 20, §§1400-1485). Most of the changes made were related to the management, care, and procedures of working with disabled children in public school districts. One major change was that the law allowed school districts more time to evaluate students. Prior to 1997, disabled children must have been identified as to a particular disability prior to age five. The amendment in 1997 allowed school boards with more discretion to evaluate a perceived disability. The range of age to evaluate disabilities now occurs from the ages of 5 to 9 (Alexander & Alexander, 2005).

The latest amendment to the IDEA occurred in 2004. This was done to bring policies in line with the No Child Left Behind Act of 2001. Two other major components included policies to address the discipline of students with disabilities and a temporary program that allowed 15 specific states with the opportunity to develop 3-year Individualized Education Programs (IEP) on a trial basis (Alexander & Alexander, 2005).
State Influence

The national government, which is operated by the U.S. Constitution, is limited to the delegated powers as assigned, with no authority over education extended to it. From the nation’s organized establishment, education was alone a creature of the state. School boards are creatures of state government and gain their authority from federal, state, and local county and municipal governments (Rapp, 1984).

The legislation enacted by state lawmakers grant authority to the appropriate lower governing bodies, such as school boards. Some of this authority is specific while some of it is general authority, with implied specific powers. The authority can bind school personnel with discretionary authority, ministerial authority, and some authority is specific and prescribed (Remmlein, 1955).

Remmlein (1955) identified four pieces of authority that are conferred the legislation: (1) rule-making authority, (2) contingent authority, (3) discretionary authority, and (4) prescriptive authority. Statutes under these categories are not exclusive, but must be constitutional and cannot infringe upon state or federal constitutions. Local implementation of state statutes must be constitutional, whether general or specific, and must be consistent with state legislation. Finally, the implementation can impose a duty or grant discretionary power to subordinate personnel.

The initial growth of the field of education was progressed by state control over both public and private education. The states created and adopted provisions in state constitutions for state legislatures to provide for a system of public education. In general, most aspects of public education are controlled by the states through their legislatures, state boards of education, and local boards of educations (Remmlein, 1955).
The U.S. Supreme Court has recognized that the Tenth Amendment of the Constitution was created with the intent to “allay fears” of the states in that the new national government would not seek to exercise powers beyond those granted (Cambron-McCabe et al., 2004, p. 1). Throughout the course of the history of the nation, the U.S. Supreme Court has repeatedly affirmed the comprehensive authority of the respective state school officials “to prescribe and control conduct in the schools” as long as actions are consistent with fundamental federal constitutional safeguards (Cambron-McCabe et al., 2004, p. 2).

Each state government has plenary power over public education and local school boards gain their authority from their state plenary power. The authority extended to local school boards varies greatly among the states (LaMorte, 1999). The power of the state to control education has been characterized as being in comparison to state police power. In *Board of Education of Louisville v. Society of Alumni of Louisville Male High School* (1951), the courts ruled that local school boards are state bodies and that the individual members are state, not local officers (Walker, 2000). School board members are considered to be state agents for the purpose of carrying out the responsibilities and duties that are assigned to them by the respective state legislatures for each state. Such an example is that it would be a direct violation of executive responsibility for a legislature to perform multiple duties of enacting legislation for the disbursement of funds, while appropriating the needed funds, and then to administer the same funds. That is why local boards of education are such important agents of service for state governments. Local boards of education carry out numerous responsibilities for the educational element of each state (First & Walberg, 1992).
State Boards of Education and local boards of education have the authority to approve policies that further education as long as the policies are consistent with the authority granted to these bodies. One of the designs of a state constitution is to prohibit governmental entities, including school boards, from acting in an arbitrary manner, which means that the actions of a school district must be for educational purposes and not unconstitutional or discriminatory (Kentucky School Board Association, 2004).

Rapp (1984), in referring to the case of Monaghan v. School District (1957), provided that although the federal government’s involvement in education has increased substantially, it is the state governments that are primarily obligated to provide education programs. The federal government merely supplements, and does not supplant, a state’s education activities and support (Friedman, 1971).

Each state is required to have a written constitution. Within each state constitution are provisions that direct the role of education in each respective state. State constitutions are designed to prohibit governmental entities, including school districts, from acting in an arbitrary manner, which means that all actions of a district must be for educational purposes and not unconstitutional or discriminatory (Kentucky School Board Association, 2004). The combination of constitutions, statutes, and case law form the primary legal foundation on which the public schools are based. The state legislature has essentially delegated broad powers to the board of education to operate public schools (Brodinsky, 1977).

An individual state’s control of education is often exercised through various state agencies, state and local boards of education, and public school officials. A recurring issue in education law is whether authority has been properly delegated to them by the
state legislature. No person or collection of persons charged with the exercise of powers properly belonging to each of the three branch’s of government may exercise any power properly belonging to either of the other branches. Since each branch is charged with the exercise of certain powers, it may not divest itself of these powers and delegate them to others. (Schwartz, 1979) Thus, while it is clear that a legislature cannot delegate its general legislative power to determine what the law will be, it may authorize others to do those things which it cannot in a practical matter do itself (Rapp, 1984).

Though courts adhere to the principle of separation of powers, they uniformly hold that a state legislature may delegate supervision and control of education to local school boards, provided that reasonable standards are defined (Bolmeier, 1968). According to Alexander & Alexander (2005) the court in Board of Education of Aberdeen-Huntington Local School District v. State Board of Education (1962) ruled that a legislature is clothed with almost unlimited power. The authority granted to an agency is retained by that agency so long as the legislature retains power to withdraw that authority.

Issues Pertaining to Public School Board Authority and Personnel

This section addresses some of the issues pertaining to school board authority and matters of school personnel. It has been established that state statute holds much authority over public school boards. The consequences for violations and failure to comply with state statutes are severe. The same holds true for the judicial element of the government. The judicial system allows for individuals, groups, and organizations to address grievances and the violation of laws. These legal challenges are litigated on the premise
that officers of state government have violated state law or the civil rights of school personnel (First & Walberg, 1992).

There are numerous conflicts and litigated issues pertaining to school personnel and the authority held by local school boards and local school administrators to manage, supervise, and care for them. These personnel issues offer unique challenges in respect to public school board authority. These issues have set legal precedent, caused the creation of state legislation, and caused the establishment of school board policy. The established precedents in these cases serve to establish authority for school boards and school personnel (Peterson, 1967).

School board litigation pertinent to personnel can be challenged and have potential to effect state statute, the ruling of a higher court in an appellate case by the same parties, or by the ruling of a higher court in a different case. The higher court can be a lower state court, a state supreme court, a federal district court, a federal appeals court, or the U.S. Supreme Court. The case may actually be precedent in a particular state or region, or throughout the United States as a whole (Bolmeier, 1954).

Dagley (1984) stated that,

By definition, therefore, local boards of education are exercising administrative authority, either explicitly or implicitly, when they make decisions to alter or expand educational programs. When a school board institutes a new practice, the new practice might be challenged in the courts on the grounds that the board has exceeded its authority, or it might go unchallenged and spread to other school districts. If it is challenged successfully, a line is drawn which establishes the limit of a school board’s authority in that state. If it is challenged unsuccessfully, it is as if the legislature has expressed given permission for the practice to occur at the local level. The practice then might spread to other states and go unchallenged in the adopting states if no new grounds to nullify it can be found. (p. 2)

School boards govern their school districts based on legislative functions and executive functions (Alexander & Alexander, 2005). The legislative function of a school
board is based on the express authority maintained by school boards to govern their district on a wide range of issues that concern their ability to manage their personnel. The authority of school boards can be created or removed. School boards can exercise only the authority that is delegated to them via state statute. In allegations of abuse of authority directed at school boards, the courts view school board authority on the premise that authority has been expressly granted or implied from an express authority (Edwards, 1929). Several cases throughout the early years of the 20th century represent the views of the courts as to the authority of school boards to follow the statutory authority delegated to them. In the case of McGilvra v. School District (1921), a Washington appeals court ruled that school boards are bound to follow the following: (1) the authority expressly granted by statute, (2) the authority implied within the authority that has been expressly granted, and (3) the authority established at the local levels of education that are created out of needs unique to that specific local level (Edwards).

The courts recognize that school boards carry out their administrative functions in an executive capacity. These functions are carried out utilizing discretionary authority and ministerial authority. Ministerial authority is recognized as those required duties of a school board for which no exercise of judgment is permitted. The discretionary authority is the administrative prerogative of a board to follow and delegate what has been handed down. Ministerial functions can be sub-delegated to others within the organization. Discretionary functions cannot be sub-delegated to others (Edwards, 1930). In the case of State ex. rel. School District v. Ellis (1956), the court stated that

As a creature of the legislature, the administrative authority of a school board is only that which is given or delegated to it by the state legislature. By virtue of its nature and under the rules of its creation, a school board is empowered to exercise
two types of administrative authority; ministerial authority and discretionary authority. (Dagley, 1984, p. 20)

The ability of school boards to utilize their delegated authority encompasses a wide variety of issues. These issues can be realized as the general authority of the board with respect to school personnel, the authority of the board to make employment decisions, and the authority of the board as it exists as a body of government. The following issues are examples of the board’s ability to utilize their authority with respect to school personnel.

**Collective Bargaining**

Peterson (1967) refers to a study conducted by Seitz (1966), who referred to the wording of the *National Labor Relations Act* (NLRA) as the best definition of the concept of good-faith bargaining between school boards and personnel. The NLRA imposes a duty on school boards and teachers unions to meet and confer in good faith with respect to specific employment conditions. Peterson observed that the requirement of full teacher membership in unions and the authorization of payment of required dues for unions was not fully supported in public education as it is in the private sector. Peterson referred to the Montana case of *Benson v. School District* (1959) where the court found that requiring teachers to submit to a required union membership is an improper practice. One other aspect of the study was that school boards could submit to a collective bargaining agreement but in doing so they cannot delegate away their authority to make decisions about their personnel. The courts disagree that school board participation in a collective bargaining contract with teachers constitutes an illegal definition of its authority (Dagley, 1984).
Moskow (1964) conducted a research study of 20 school boards and their participation in collective bargaining contracts. He found that it is essential for there to be a good structure of standards and rules in order to assure that teachers are not denied basic rights and equities. He recommended that teacher rights can be protected by the adoption of legislation with the following provisions:

1. Protection of the right to join a union or the right to refrain from joining.
2. Right to representation in negotiations with school boards.
3. Requirement that school boards must meet with representatives.
4. Submission of both parties to an impartial arbitration.
5. The existence of an opportunity to review facts and research or investigate other facts in the event that the parties cannot arrive at an agreement.

Rose (1965) found in similar research a union will often respect the interests of the union as a group, rather than a specific problem of an individual employee. When this occurs, the personal rights of the employee are often offended without proper representation.

In the absence of collective bargaining statutes, a school board has implied authority to discuss personnel working conditions with teacher union representatives (Radke, 1964). There are three primary judicial areas of interest that the courts regularly address: (1) the limits of school board authority to negotiate with teacher unions, (2) the pressures that teacher unions apply to school boards to empower them into collective bargaining measures, and (3) the role of an arbitrator in addressing collective bargaining issues (Alexander & Alexander, 2005).
On the first issue, school boards cannot enter into such a formal contract as a collective negotiating contract without exclusive authority to do so without approval from a state legislature. Also, personnel do not possess a constitutional right to have collective negotiations. On the second issue, the state has the authority to require that school boards enter into collective bargaining measures but cannot require personnel to participate. In such measures, personnel constitutional rights must be protected. In the third issue, collective negotiation contracts require a fact finding impartial hearing and such hearings require the fundamental concepts of our constitutional system of government (Reutter, 1985).

Contracts

The U.S. Constitution addresses the issue of contracts in Article 1, section 10, known as the Obligation of Contracts clause. This constitutional provision provides structure as it regulates the functions of the states and places restrictions on the type of things that are permissible for contracts. The clause also has a provision that protects the individual rights of citizens. A public school board as an agency of the state does not possess the authority to impair a contractual obligation with personnel, agencies, and other organizations (Alexander & Alexander, 2005).

In the case of Dartmouth College v. Woodward (1819), the Court determined that a grant from the crown was a contract and as such was a pre-established agreement that is binding upon the parties involved. In the case of Home Building and Loan Ass’n v. Blaisdell (1934), the Court elaborated on the case of the word “impair” in the obligation
of contract as the creation of a law which renders them invalid or releases them from contract, or extinguishes them from a contract (Alexander & Alexander, 2005, p. 78).

In 1938, the Supreme Court heard the case of Indiana ex. rel. Anderson v. Brand (1938), where it ruled that the Indiana legislature violated teacher tenure rights by passing legislation in 1933 that repealed a 1927 adopted piece of legislation which granted tenure to teachers. The state created a contract with the teacher and then decided to change that contract six years later. In a closely-related case, Dodge v. Board of Education, City of Chicago (58 S.Ct. 98) in 1937, the Court ruled that the Illinois legislature possessed the authority to change the amount of benefits package, essentially reducing the amount given to teachers. This essentially changed the terms of the contract, but the Supreme Court held that the legislature possessed the authority to do so. School boards as legal, corporate bodies have the authority to enter into contracts. This includes contracts essential to personnel. There are general expectations of contract law to which they are bound. However, given their created existence as a body of the government, they must also meet other federal and state statutory requirements in addition to a plethora of case law precedent that is apparent (Alexander & Alexander, 2005).

A contract can be defined as an agreement between two or more competent persons for a legal consideration on a legal subject matter in the form required by law. As a provider of a contract there are five basic elements inherent to contracts that a school board must adhere to in every standard contract offer: (1) offer and acceptance, (2) competent persons, (3) consideration, (4) legal subject matter, and (5) proper form. Aside from general standard contracts, the tenure contract in education is one of the unique aspects of the education profession. A tenure contract allows a teacher to occupy a
specific position in a school district provided that he/she meet the general requirements to attain tenure status. There is usually a probationary period, including academic and teaching requirements, that is required to gain tenure and the number of years required to gain tenure varies among the fifty states. Tenure status benefits a teacher by granting them continued employment. The removal of a teacher from a tenure contract cannot occur without a due process hearing and the presentation of adequate evidence for dismissal must be provided (Alexander & Alexander, 2005).

Employee rights for educators are narrowly controlled in respect to other professions in the United States. Given the governmental entity status that school boards possess it is understandable that the personnel they employ are subject to the same standard. State statutes and accompanying regulations in the varying codes of education are unique to each state, and cannot be viewed independently from provisions of the federal and state constitutions (Cambron-McCabe, 2004).

Curriculum and the Instructional Program

One of the primary responsibilities of school boards is to establish and enforce policy in reference to matters of school curriculum. School boards are often challenged as to their authority to control personnel issues in respect to curriculum and instruction. The curriculum and instruction offered by school personnel are subject to state statute and school board policy (Alexander and Alexander, 2005).

The states legislatures have the authority to regulate personnel and school curriculum. The ability of what teachers can and cannot teach is dependent upon the plenary power of state legislatures. In order to regulate what personnel can offer in the
way of curriculum, state government officials and local school board members need only to make certain that they do not violate a federally protected civil right and that they follow the provisions of state statute (Reutter, 1955).

Primarily, there are three categories of curriculum issues that involve school boards and school personnel that must be taken into consideration. First, state statutes will clarify what may be taught by school personnel. Second, state statute may clarify that a school board has the option of determining a particular matter of curriculum and school personnel. Third, state statute may clarify what may be appropriate or not in regard to the teaching curriculum of the personnel in a particular state. This last category can be based on subject content, materials, and distribution of information by teachers, among other issues (Reutter, 1955).

In the case of President’s Council District 25 v. Community School Board (1972), the school board removed a graphic novel from the main book shelves in the school library and placed them on a limited access shelf. This was done to appease a group of parents. The books could only be checked out with parental permission. A group of teachers challenged the complaint by the parents and asserted that their First Amendment rights had been violated. The Second Circuit ruled in favor of the school board as they determined that the entity empowered by statute to make the selection had the same authority to remove the books. Two years later, the Sixth Circuit rejected this same reasoning in Minarcini v. Strongville City School District (1976) as it determined that the school board could not allow the placement of books in a school and then remove them once board members expressed their displeasure. In a third case, Cary v. Board of Education (1979), the Tenth Circuit held that school board members had a right to
remove several books that they had placed in the middle school and high school libraries. The Court reasoned that even though teacher academic freedom must be taken into consideration, the school board members were acting within their authority, even though their reasons for doing so were of a political or personal nature. In President’s Council and Cary, the courts ruled in favor of the school boards because they made their decision to remove books based on content based regulations and school board policy. In Minarcini, the school board’s action was ruled unconstitutional because they were not focusing on content based regulations (Estreicher, 1980).

The U.S. Supreme Court ruled in Meyer v. Nebraska (1923) that the prohibition of teaching foreign language in school was in violation of the Due Process Clause. A state law forbidding the teaching in any private, denominational, parochial, or public school of any modern language, other than English, to any child who has not attained and successfully passed the eighth grade, invaded the liberty rights of parents to control the upbringing of their children, as guaranteed by the Fourteenth Amendment and exceeded the power of the State. Meyer set the precedent in which all cases thereafter were viewed with respect to similar violations of the First Amendment and Due Process Clause (Alexander & Alexander, 2005).

The First Amendment allows students to seek and gain knowledge while allowing teachers the opportunity and support and present a curriculum that initiates a desire to gain certain knowledge. In School District of Abington Township v. Schempp (1963), the Court interpreted the First Amendment by stating that even though religious references were evident in textbooks and related literature, the books do not violate the religious freedoms of students and parents. In Schempp, a federal appellate court admonished a
local school board for its customary practice of beginning each school day with the reading of biblical verses by teachers to students. The U.S. Supreme Court, in ruling in favor of the school board, ruled that the federal appellate court did not have the freedom to censor school personnel in matters of school curriculum, and curriculum determination is left to educational officials and not judges. The school boards have authority to determine what is permissible in school curriculum. The courts have heard many cases and have subsequently rendered numerous decisions on public school instruction even though responsibility is supposed to be that of the individual states and school boards. Though courts have tried many cases, few decisions have ruled against school boards. The courts generally support school boards when the schools have expanded the school program on the instruction of innovative curriculum. Furthermore, the courts have agreed that school boards have the power to regulate, establish, and develop instructional programs for the well-being of the students. Perhaps, fewer other educational disciplines are challenged as much. Most court precedents indicate the judicial belief is to defer to authorized and trained educational experts in matters of school policy (Collie, 1983).

**Due Process**

The due process of school personnel is a significant issue in matters of school personnel and school board authority. Due process is addressed in the Fifth Amendment and the Fourteenth Amendment. The purpose of due process is to extend justice and fairness to the individual in relationship to government. There are four elements of due process that the courts view closely in issues concerning due process. These four elements are: substantive due process, procedural due process, vagueness test, and
irrationality and presumption test (Alexander & Alexander, 2005). The first element with respect to substantive due process is the courts ability to weigh the stance and substance of the individual’s interest in a particular issue. In the second element of due process, procedural due process is the specific action that must be taken into account when determining the truth in particular situations. In the third element of due process, the courts look at issues of vagueness to determine if an individual’s interest has been protected against arbitrary and capricious government action. In the fourth element, the irrationality and presumption test involves the process in which the government expresses legal logic in denying individual rights or interest (Alexander & Alexander).

The two primary issues of due process that affect the courts are substantive due process and procedural due process. The question for the courts in substantive due process issues with respect to school personnel is whether a fundamental right given to an employee has been violated. Litigated issues that are based on the alleged misconduct on the part of school boards that infringe upon the fundamental right of one of its employees will most certainly be closely scrutinized by the courts at all levels of the judicial system. In the case of Poe v. Ullman (1961), the court viewed the action of government officials as a multi-method of equal protection where the strength of government action and the degree of need to take action is based upon the context of the situation. In issues of deprivation of the substantive rights of school personnel, the school board must be able to justify their actions against the employee. (Rubin, 2003)

Most issues of due process involving school personnel and school board authority involve matters of procedural due process. It is simple to identify that school boards must be specific in handling all matters pertinent to school personnel given their delegated
legislative authority, the prescriptive language of state statutes, and with respect to the provisions in local school board policy manuals. For school boards, their actions must be procedurally correct in following the provisions of either state law or board policy. An employee when facing judgment for an action or inaction must be provided with the opportunity to address the allegations of wrongdoing or inaction in the appropriate forum (Rubin, 2003).

In *Board of Regents v. Roth* (1972) the Supreme Court ruled that non-tenured teachers do not have a property interest as probationary teachers. Roth was an assistant professor at Wisconsin University-Oshkosh. He was initially hired for a period of 1 year. Roth successfully completed the 1 year, but the university failed to renew his contract for the next succeeding contract year. In choosing not to renew the contract, the University followed all procedures consistent with state policy and law. This included informing Roth by the prescribed date, and in not providing a reason for refusal to renew contract. The Federal District Court and Court of Appeals ruled in favor of Roth, citing that Roth was entitled to constitutional due process based on the university’s failure to follow procedure and in not providing him with a reason for his termination. The U.S. Supreme Court reversed the decisions of the lower courts, deciding that Roth was not entitled to a property interest right, thus the university was not required to provide him with procedural due process (Wilkinson, 2003).

*Perry v. Sindermann* (1972) is a landmark case that has merit with respect to public school board authority. The facts within *Perry* are much similar to those in *Roth*. Robert Sindermann was a teacher in the state college system of the State of Texas for a period of several years at three different colleges and universities. While at the last
college, Odessa Junior College, Sindermann was elected to the position of President of the Texas Junior College Teachers Association. During his term in office, Sindermann became divisive with the administrative staff of the Odessa Junior College. The college eventually terminated Sindermann on the basis of insubordination in a variety of specified ways. Sindermann was not afforded due process through a hearing and subsequently sued on the grounds that his rights under the Fourteenth Amendment were violated. In reviewing the Odessa Junior College faculty handbook, the court found issue with language provided in the form of a personnel policy. The policy stipulated that a staff member is to consider himself as re-employed as long as he or she maintains satisfactory work. The Court refers to this as de facto tenure. In doing so, the Board of Regents of the college was within their right to terminate Sindermann as long as he was afforded due process rights through a hearing. This was not provided for him and subsequently the Supreme Court ruled in favor of Sindermann and he was allowed to keep his position with the college.

In Cleveland Board of Education v. Loudermill (1985), the Supreme Court decided that efforts to terminate a government employee with a property interest must also include a process known as a pre-termination hearing. The case revolved around James Loudermill who applied for a position with the Cleveland Board of Education. On the application, Loudermill provided information that he had never been convicted of a felony. In a background check some 11 months later, the Cleveland Board of Education found that he had lied on his application and subsequently terminated Loudermill’s contract. Under Ohio law, Loudermill was classified as a civil servant. Civil servants were afforded the stance that termination can only be administered to a government
employee with proper cause. The fact that Loudermill was classified as a civil servant granted him a property interest in his job with the Cleveland Board of Education. Therefore, the court ruled that he must be afforded due process protection and the Supreme Court rightfully did so. The court cited that a pre-termination hearing must be given. In doing so, a school board or other governmental entity must do two things. In the first instance, the employee must be given notice of cause to terminate. In the second instance, the employee must be given an opportunity to respond, which would be in the form of a hearing.

Employment

Matters of employment are a significant issue in matters of school personnel and school board authority. Employment rights for education personnel are narrowly controlled in respect to other professions in the United States. Given the governmental entity status that school boards possess it is understandable that the personnel they employ are subject to the same standards. State statutes and accompanying regulations in varying state codes of education are unique to each state and cannot be viewed independently from provisions of federal and state constitutions (Peterson, 1967).

State level administrative agencies are responsible for the establishment of professional qualifications of teachers. Teachers must have a valid teaching certificate to teach in each state. The agency that issues the certificate may impose new requirements to gain or keep a certificate and they maintain the authority to suspend or revoke a certificate. The courts have little control over teaching certificates other the ruling authority to hear cases where certificates have been revoked, suspended, or to determine
if requirements for certificate obtainment are valid. In the case of *Hereford v. Huntsville Board of Education* (1978), the Fifth Circuit held that judicial involvement in school personnel decisions can only be for reasons that hold potential to be arbitrary or capricious in nature.

In the case of *Irizarry v. Anker* (1977) the 2nd Circuit Court of Appeals ruled in favor of a school board when it determined that the school board acted within its authority to terminate a teacher due to her inability to obtain a valid teaching certificate. The teacher was working for the board under a temporary certificate and eventually the board determined that she was not going to be able to complete the other needed requirements in order receive a certificate. The Court in reversing the decision of the lower district court ruled that the only federal issue in the case was if the teacher received her due process rights (Reutter, 1985).

In a similar case, the Supreme Court of Wisconsin in the case of *Grams v. Melrose-Mindoro Joint School District No. 1* (1977) ruled in favor of the school board in their termination of a teacher due to her failure to obtain a valid teaching certificate. The teacher was conditionally employed while working on a certificate and had received repeated assurances from the school district administration that her non-certification status was not an issue to be concerned about. The school board lacked the authority to change the criteria that was needed to gain certification and thus, they were obligated to the state policy in place. The teacher could not complete the requirements for a certificate in a timely manner and the board had no other choice than to terminate her (Reutter, 1985).
School boards have little control over accountability requirements. However, the courts recognize that school boards may require additional requirements for employment than what is required by state statute as long as the requirements are not statutorily prohibited (Board of Education for Montgomery County v. Messer, 1935). In Arnim v. Shoreline School District, No. 412 (1979), the court ruled that school boards can use subjective and objective criteria in determining employment qualifications. In doing so, school boards must have the appropriate delegated authority in their respective states in order to consider expanding upon a state certification program. School boards do not possess the authority to suspend or revoke a teaching certificate. A school board may initiate charges to have a certificate suspended or revoked but they may not ultimately carry out the disciplinary consequences. An employee facing charges of suspension or revocation of a certificate must be afforded procedural due process (Cambron-McCabe et al., 2004).

Immunity

To avoid liability for specific issues, school boards often claim immunity status based on the Eleventh Amendment. Eleventh Amendment immunity status can prevent personnel from filing suit against school boards due to the fact that states are prohibited from filing federal lawsuits against entities of state government. However, reliance on Eleventh Amendment immunity status is not absolute and guaranteed for school boards. For a school board to claim such status, they must be the main party in the lawsuit. The Third Circuit identified six factors that must be present for school board members to claim immunity status: (1) whether payment of a judgment in a case is from a state
treasury, (2) whether a governmental function was performed, (3) did the school board have autonomy over its operation, (4) did the board have status to be sued, (5) could the board enter into contracts, and (6) was the board’s property immune to state taxation. The U.S. Supreme Court ruled in the case of Mt. Healthy City School District Board of Education v. Doyle (1977) that a school board in Ohio was considered an arm of the state due to their ability to have taxing power and their autonomy to govern their respective school district. The case was based upon a decision by the school board to terminate Doyle, a teacher, due to his criticism of a memorandum issued by his principal on employee dress and appearance. Doyle took the memorandum to a local radio station and the station declared the memorandum as a news item and proceeded to release the details of the memorandum during one of its on-air news sessions. Doyle alleged that his termination was a violation of his rights under the First and Fourteenth Amendments. The lower courts ruled in favor of Doyle and ordered him reinstated. The Supreme Court determined that Doyle had the burden of proof that the board had violated his constitutional right and they ruled that Doyle failed to prove this claim and ruled in favor of the school board. Whether local school boards are state actors for purposes of the Eleventh Amendment and thus retain Eleventh Amendment immunity is an open question (Alexander & Alexander, 2005).

**Liability**

This section pertains to the liability and immunity of school board members and matters of personnel. There is significant liability incurred on the part of school boards with respect to the action or inaction on the part of personnel. Each state has statutes
covering the liability of school boards for their actions or for the actions of their personnel. In absence of liability statutes or in instances where liability is unfounded, state statutes for negligence are often very precise and detailed for failure to follow statutory provisions. There is little ambiguity in what school boards and their personnel are liable for and not. Even though liability statutes are a safeguard, school boards and personnel can still be held accountable for failure to meet common law precedents (Remmlein, 1955).

In the case of Monell v. Department of Social Services (1978), the U.S. Supreme Court ruled that local governments, including school boards, are liable for their actions that have violated a federally protected right when they taken action pursuant to official policy. School boards gain this liability status due to their designation as an entity of government with the final authority to take action on many matters, including personnel actions. However, school board officials are not considered to be liable solely for the actions of their personnel. They can be liable for failure to adequately train or instruct an employee in handling the responsibilities or duties of their position if such failure should lead to the injury of other individuals (Cambron-McCabe et al., 2004).

A school board can be responsible for a tort liability. Individuals are granted rights by law and the violation of those rights are subject to the payment of damages by the oppressor and the awarding of damages to the victim. Tort liability can be directed in three ways. First, an intentional tort is done with the intent to specifically cause a negative influence on another individual. This can occur in a mental or physical manner. Second, strict liability is a liability that occurs due to the fault of no one. A school board can be held liable for the harm or damages suffered by another person or group even
though the school board had no direct involvement in the action that caused injury or harm. Third, a negligent tort is when the liability incurred is not a result of an intentional act. Though the harm inflicted on another is not intentional, the school board can still be responsible as members can be liable for the failure to act by personnel who should have known otherwise (Cambron-McCabe et al., 2004).

A court case that provides an example of a tort liability is *Spears v. Jefferson Parrish School Board* (1994). The Louisiana Court of Appeals ruled that the Jefferson Parrish School board was liable for damages as a result of an intentional act of a teacher that caused harm to a student. The act involved the mental harm of a Kindergarten student by a PE teacher. The teacher with the assistance of two students proceeded to fake the death of a student and the incident caused the mental injury of a student. This case was identified as an intentional tort liability due to the nature of the incident in that the teacher and two students planned and acted out the event in a specific manner in order to inflict belief on the part of the plaintiff that the event was real and actual. The family of the student was awarded millions of dollars in damages payable by the Jefferson Parrish School Board (Alexander & Alexander, 2005).

An example of a strict tort liability is the case of *Fallon v. Indian Trail School* (1986). In *Fallon*, the plaintiff, Fallon, brought suit against the school for the use of a trampoline which caused significant spinal injuries to Fallon. Fallon sued on the basis of the fact that a trampoline is not an approved instrument by the Illinois governmental authority. The Illinois Court of Appeals affirmed the decision of the lower courts in ruling that the school district was not liable for strict liability in this instance (Alexander & Alexander, 2005).
In the case of *Brownell v. Los Angeles Unified School District* (1992), the California Court of Appeals, Second District, ruled that the school board was not negligent as it did not have a reason to foresee the shooting of a student. The shooting occurred as a result of mistaken identity when a gang shot a student, who was thought to be a member of a rival gang. The incident occurred in front of the school on a street that was not part of the school grounds. The court recognized that school board members and school officials were bound to supervise and insure the safety of school students, but in this case they were not negligent as they could not have foreseen that the incident was going to occur (Alexander & Alexander, 2005).

**Searches and Seizures**

The ability of public school boards to institute policy based on the acceptable conditions for searches and seizures by personnel in a school setting is based upon the language contained within the Fourth Amendment of the U.S. Constitution. The Fourth Amendment illustrates five elements for which governmental entities have the right to institute search and seizure procedures: (1) persons have a right to be secure with their possessions, (2) persons are afforded protection from unreasonable searches and seizures, (3) a reasonable search can be conducted with appropriate probable cause, (4) searches must be specific prior to being executed, and (5) individuals representing the government must justify the reason for a search or seizure (Alexander & Alexander, 2005). Three of these specifically apply to personnel and the ability of a public school board to govern them: (1) students have a right to their privacy and personnel are not allowed to intrude into their privacy, (2) a search conducted by school personnel must be specific in nature,
and (3) school personnel are not required to obtain a warrant prior to conducting a search or seizure (Alexander and Alexander, 2005).

In *New Jersey v. T.L.O.* (1985), the U.S. Supreme Court ruled that schools are subject to the provisions of the Fourth Amendment. School boards can conduct student searches in light of the special circumstances of schools in order to protect the school setting for the potential for school violence as long as personnel meet the requirements that are established in conducting a reasonable search. The Court stressed that the reasonableness used by school personnel must be consistent with the language expressed in the Constitution in order to warrant the appropriate search. The Court outlined two levels of searches that must be considered valid before conducting a search in a school setting. The first level is that the search must be initially justified prior to the conduction of the search. The second level is that a search must be reasonable in nature and the age and gender of the student must be taken into account. This case is paramount in its precedent in describing the legal standard for school personnel to conduct the searches and seizures in a school setting appropriately (Ryan, 2000).

**Conclusion**

This chapter was devoted to the literature that exists for local public school board authority with respect to school personnel. There is substantial literature with respect to the history and establishment of public school boards and with respect to the federal and state influence of the legislative and judicial branches of government upon the authority of local school boards. However, the literature is rather sparse concerning the nature and extent of authority held by local public school boards with respect to school personnel.
CHAPTER III

METHODOLOGY

Introduction

The focus of this study was a review of the case law involving issues of authority of public school boards in the United States with respect to personnel matters. Published court decisions were the primary source of documents used for this study. This qualitative analytical study depended upon the retrieval of case law from the time period between the years of 1981-2008.

Research Materials

The information collected for chapters I, II, and III was gathered from the United States Code, legal reviews, legal textbooks, history books, books of other significance to education, Internet sources, on-line educational law digests, other public forums for sources of education, and law digests in print. The primary source for the collection of the review of case law for chapter IV were those judicial decisions from state appellate courts, state supreme courts, United States federal district court, United States Court of Appeal, and the United States Supreme Court. The reviewed judicial decisions included a time period of 1981-2008. This specific time period was chosen with the purpose of establishing a historical context for the identification of patterns and themes.
Methodology

This study was conducted using a qualitative research method. Creswell (1999) defines qualitative research as follows:

An inquiry process of understanding based on distinct methodological traditions of inquiry that explore a social or human problem. The researcher builds a complex, holistic picture, analyzes words, utilizes reports, utilizes detailed views of informants, and conducts the study in a natural setting. (p. 15)

Yin (1989) provides a three-part mode of qualitative data analysis. Within these three modes is a method known as time series analysis. Time series analysis allowed me to study the changes in court cases pertinent to school board authority over a period of more than 29 years—-from 1981-2008.

I used the *West American Digest System* in reviewing the various potential topics for the case. The system is published by West Publishing and is used extensively by those with legal interests to locate court cases and related materials that are pertinent to researched legal matters. This includes legal issues involving education and public school boards of education.

The founder of West Publishing, John B. West, developed the system with two primary components that give the digest its strength. First, West Publishing publishes all law cases in a system of reporters that cover state and federal court cases in the various regions of the United States and this is called the National Reporter System. Second and external to the reporter system, West classifies all cases according to topic. These topics are considered major categories and underneath are numerous subcategories. This system of major categories and subcategories is structured and organized by assigning a key number for each topic and subcategories of the topic. Within these subcategories are listed the numerous cases assigned by the topic. The editors at West Publishing summarize each case and place a small abstract in a smaller specialty digest
published by West Publishing. This is known as the *West Education Law Reporter*. The abstract only offers the reader a small piece of information as to the main topic of the case law of choice.

The main category for this research study was the topic of The Establishment, School Lands and Funds, and Regulations in General under the topic of Schools #345. This can be found in *West Education Digest* within digest volume 20. Underneath this main category is the subcategory known as the Powers and Functions in General. This topic falls under key number Schools 55. There are 102 cases listed in key number 55 from 1981-2008 that are related to school board authority and personnel matters. The 102 cases within key number Schools 55 are the focus of this research study.

The *West American Digest System* can be used in two ways. The system is provided in hardbound format and in electronic format. The hardbound format is described in the preceding paragraphs in reference to the topic of the *West American Digest System*. Both were utilized in the collection of research data. Primarily, the hardbound source was used to view the case law pertinent to this case study. The *West American Digest System* is a source that has much of the needed information organized in a method that complimented this research study in an acceptable manner.

**Electronic Citators**

The *West American Digest System* does have limitations and these are noted accordingly. These limitations occurred for the following reasons. The first limitation was the incorrect information provided in the abstracts of case briefs. The second limitation was the outdated information provided in the case briefs. Such information provided for an inaccurate accounting of the law and lacked information that pertained to the potential modification, reversal, or status
of the appeal of the case. The Key Search feature provided in the on-line Westlaw Campus Research site was a valuable resource in addressing the limitations that come with the hardbound West Education Digest. The use of the Key Search feature was an invaluable tool in allowing me to review a court case to its fullest judicial history (Statsky & Wernet, 1984).

In collecting the needed information, one primary search engine was used. The Westlaw Campus Research search engine was the main source utilized in reviewing the case law. Within this search engine, there was a folder named Key Search that was devoted to the research of key numbers. This resource was invaluable to reviewing the applicable case law. The following is how the Key Search engine is used under the provisions of the Westlaw Campus Research online search engine.

1. The researcher can type in a word that is descriptive of the topic of choice. This provides five key numbers per word search.
2. The researcher can utilize the Key Numbers and Digest feature. This allows the researcher to browse the subject using an expandable tree.
3. A key number can be researched by using the Terms and Connectors template within the Westlaw Campus Research search engine.
4. Relevant case law can be found using keyword searches and the applicable key number hyperlinks within the document. (http://west.thomson.com/westlaw/)

Data Collection

The bulk of the research conducted took place on the campus of the University of Alabama at Birmingham, in the Mervyn H. Sterne Library. The collection of cases for the eventual reduction to data was derived primarily from the West American Digest System and the
many different resource options available within the system. This occurred via the hardbound edition and through electronic retrieval from the Key Search option within the *West American Digest System*. Off-site research using this research engine format occurred via the Internet database offered by the Mervyn H. Sterne Library at the University of Alabama at Birmingham, the Internet database at the Madison County Law Library in Huntsville, Alabama, and the Internet database offered thru the McClure Education Library on the campus of The University of Alabama.

**Research Questions**

This research was guided by the following research questions:

1. What are the issues in court cases involving the authority of public school boards with respect to the personnel they employ?

2. What are the outcomes in court cases involving the authority of public school boards with respect to the personnel they employ?

3. What are the trends in court cases involving the authority of public school boards with respect to the personnel they employ?

4. What are the legal principles for school administrators that can be discerned from court cases involving the authority of public school boards with respect to the personnel they employ?

**Data Production**

All cases were briefed according to Statsky and Wernet’s (1995) methods of briefing legal cases. The method consisted of the following:
1. Citation--The citation provided the location of a particular case or decision rendered within a document source.
2. Key Facts--The key facts of the specific case in question.
3. Issue--The issue provided the legal question that is being addressed.
4. Holding--The holding provided the decision rendered by the court in addressing the issue for the case that is in question.
5. Reasoning--The explanation for how a court reached the holding for a specific case.
6. Disposition--The decision rendered on the case.

After the case briefing process, the information in the case briefs was reduced to data for quantitative study.

Data Analysis

The analysis of data involved the identification of themes to construct hypotheses that were gained from the data in an attempt to demonstrate support for those themes and hypotheses. The research of the data is centered upon locating the appropriate case law and then determining the issues, outcomes, and trends that exist within such a body of law that suits the purpose of the research (Tesch, 1990).

Stake (1995) suggests that researchers have different purposes for studying cases. He classifies them into three different types of cases. These are known as: intrinsic case studies, instrumental case studies, and collective case studies. An intrinsic case study is used to understand a particular case. An instrumental case study is used to examine and provide some type of insight into a specific issue. A collective case study involves the extensive study of
several instrumental cases. The selection of these cases is intended to allow a better understanding or perhaps an enhanced ability to theorize about some larger collection of cases. (Berg, 1998) The collective case study format was used in this research study.

As the cases were reviewed, I categorized the data in an appropriate manner consistent with the view that the reviewed cases offered viable law in supporting the purpose and intent of this study. Berg (2004) also offered a qualitative content analysis model that provides eight steps that aided the researcher in analyzing the available data. The first step was the identification of the research question. The second step was the determination of the analytical categories. The third step was the analysis of the data and the establishment of grounded categories using open and axial coding. The fourth step was determining objective criteria for selecting and sorting data into analytic and grounded categories. The fifth step was to sort the data into the various categories. This was done by counting the number of entries in each category and reviewing textual materials as sorted into various categories seeking patterns. The sixth step is to consider the pattern in light of relevant literature and or theory while showing possible links to theory or other research. The seventh step was to offer an analysis for the findings. The eighth and final step was to relate the analysis to the extant literature of the subject. This included the organization of the matter by year and specific topic in accordance with meeting the ends of determining the issues, outcomes, and trends of the applicable case law for this study. This occurred diligently throughout the process of researching the 102 cases.

Conclusion

In a general sense, the information within this research study holds the potential to be utilized as a source of valuable information for the various stakeholders within public education.
Specifically, the stakeholders in respect to public school administration and public school board members will find that this study contains information pertinent to meeting the challenges facing them in education today and in the years to come. Both as a source of determining a legal historical perspective of the evolution of public school boards and as a legal guide in determining what is appropriate or not. This is a timeless document. Though obviously dated in respect to its limitation in regard to time of completion, the information within can easily be used as a basis for further research, review, and study at any time in the near or considerable length of the future.

This study utilized a qualitative research method. The cases located within the *West American Digest System* were used as a foundation of information for this legal based case study due to the correlation of the information within the cases in respect to the topic of this dissertation which is based upon the powers and functions of school boards in respect to personnel for the years of 1982-2006. The cases were briefed according to Statsky and Wernet’s (1995) case briefing method. Yin’s (1989) time series analysis was used to analyze the collected data. The end product of this study is the resulting information gained in providing answers to the research questions in determining the issues, outcomes, and trends of the reviewed case law. A full description of the conclusion of this study is documented in chapter V.
CHAPTER IV
DATA AND ANALYSIS

This chapter provides a review of 102 court cases concerned with challenges to the authority of local public school boards in the time frame of 1981-2008. The court cases have in common their location in the *West Education Law Digest*, under the key number “Schools 55.”

Case Briefs

The case briefs for this study are included and presented below in the chronological order of their appearance in the National Reporter System, and thus their appearance in *West’s Education Law Reporter*. The case briefs represent the researcher’s field notes for accomplishing this qualitative study.

1981


Key Facts: The plaintiff in this case was the Board of Education of the City of Chicago. The defendant in this case was the Chicago Teacher’s Union, Local 1, et.al. (Union) On October 13, 1976, plaintiff and defendant entered into a collective bargaining agreement (CBA). The effective dates of the CBA were September 1, 1976-August 31, 1977. In February of 1977, the Board, faced with an anticipated budget deficit, adopted a recommendation that gave authority to the Superintendent to lay-off employees for 3 days in June of 1977. Ultimately, the Board only
closed school for one of the 3 days. The Union sought arbitration upon the allegation that the Board violated the provisions of the CBA with the 1 day lay-off. The Union cited breach of contract as the proposed lay-offs by the Board for the proposed 1-day, 2-day, and 3-day lay-off period would have accounted for the following in potential loss of salaries: $2.8 million for a 1-day lay-off, $4.6 million for a 2-day lay-off, and $8.4 million in lost salaries for a 3-day lay-off. The Circuit Court of Cook County entered a declaratory judgment in favor of the Union. The appellate court affirmed the decision. The Board appealed the decision to the Superior Court of Illinois.

Issue: At issue in this case is whether the School Board violated statutory authority in not abiding by the provision of the CBA?

Holding: The Supreme Court of Illinois held that the Board maintained statutory authority to close schools one day early given the fact that the Board was faced with making decisions about budget cuts.

Reasoning: §34-18 of the Illinois School Code states that the Board in order to supervise and manage a public school system must employ teachers at a fixed compensation at not less than nine months of school for all grades in schools. The Court cited the case of Board of Trustees v. Cook County College Teachers (1976) and Illinois Education Association v. Board of Education (1975) in reasoning that §10-19 of the Illinois Code gives School Boards with the discretionary power to recommend an early closing of the school calendar year. The Board has the authority to set the school calendar and they have the authority to amend the school calendar as needed. Though there was vague language in the CBA the Court determined that the Board had met the two major requirements of their statutory authority by making certain that the
students attended school for 176 calendar days and that the days accounted for a 9-month school year.

Disposition: The Supreme Court of Illinois reversed the decision of the Illinois Court of Appeals in ruling in favor of the School Board.


Key Facts: The plaintiff in this case was John H. Koch, a terminated custodian from the Webster Central School District Board of Education. The defendant in this case was the Board of Education of the Webster Central School District. The Board terminated Koch from his employment as a custodian with the Board. The Board conducted the appropriate hearing afforded to Koch under New York statute, §74 of the Civil Service Law. Koch brought an Article 78 petition to the New York State Supreme Court. The Court subsequently reversed the decision of the Board and ordered that Koch be reinstated at a lesser penalty than termination. Koch was ordered to be reinstated within 10 days of the Court’s order. The Board refused to follow the directive of the Court. The Board filed a Notice of Appeal and sought a stay of enforcement of the judgment in accordance with New York statute CPLR 5519 (a) (1). CPLR 5519 (a) (1) states that a political subdivision of the state can seek a stay of enforcement of a ruling placed upon them while a judgment is being appealed. The Supreme Court, Monroe County, New York heard the Notice of Appeal.

Issue: At issue in this case is whether the School Board has standing as a political subdivision and is entitled to the automatic stay provisions of CPLR 5519 (a) (1).
Holding: The Court held that School Boards in the state of New York are considered political subdivisions of the state and have standing to seek and be granted a stay of provision enforcement while further legal proceedings are pending.

Reasoning: The Court cited the case of *The Board of Education Central School District No. 1 Town of Somers v. Stoddard* (1944) where it ruled that the maintenance of schools is considered a political function and schools are a primary concern for the state. The school boards gain their authority via legislative delegation from the state legislative body. This allows them to carry on their educational activities while serving as both a political body and a municipal corporation.

CPLR 5519 clearly defines a school board as a state political subdivision. However the law does not clearly define a political subdivision. The Court reviewed the legislative history of CPLR 5519 and noted that in the case of *Grant v. Metro Transportation Authority* (1978) the Court determined that CPLR 5519 is derived from §570 and §571 of the Civil Practice Act (CPA). These sections of the CPA list school boards as a domestic municipal corporation of the state. The CPA specifies that such governmental entities as a municipal corporation are entitled to an automatic stay of enforcement upon the appropriate filing of a Notice of Appeal. In this case, the Court reasoned that the School Board holds the appropriate standing to be awarded a stay of enforcement while further legal proceedings on the contested termination continued.

Disposition: The Supreme Court, Monroe County, New York awarded a stay of enforcement provision to the Webster Central School District Board of Education.

Citation: *Harley D. Reed v. Edgeley Public School District, No. 3*, 313 N.W.2d 775, 1 Ed. Law Rep. 1285 (1981).
Key Facts: The plaintiff in this case was Harley D. Reed. The defendant in this case was the Board of Education of the Edgeley Public School District, No.3. Reed had been a tenured teacher with School Board for 13 years. Facing financial difficulties, the Board notified Reed in March of 1980 that they were contemplating his non-renewal based on financial necessity. Reed was one of five teachers that received letters of intent not to renew their contracts. Reed worked in the math and science department for the District. He was one of three teachers from the same department that faced termination. All three individuals were afforded a hearing. At the conclusion of Reed’s hearing, the Board took a vote to terminate his contract. Reed followed this decision with an action in the District Court of LaMoure County seeking a writ of mandamus to require the Board to re-employ him and award him $125,000 in damages. The District Court ruled in favor of the School Board.

Issue: At issue in this case is whether the School Board violated statutory authority in terminating Reed.

Holding: The Supreme Court of North Dakota held that the Board did not commit statutory violation in terminating Reed.

Reasoning: In their support of the Board’s ability and authority to terminate Reed, the Court reasoned that in conducting the hearings in the manner in which they did, the Board gave maximum consideration to basic fairness in the reduction of its staff. The Court reviewed the transcript of the Board’s proceedings to terminate Reed. Prior to submitting to the Board the information and facts pertaining to the termination hearing for Reed, the Superintendent of the District admonished the Board to please consider the following prior to taking a vote for termination: 1) that the termination of an employee is a serious matter, 2) in placing their vote to terminate, the Board should consider the time spent in obtaining certification and training to
teach, 3) the Board should consider the potential damage to the individual’s professional and personal reputation, and 4) the Board should take into consideration the 13 years of service that he had given the District. The Court felt that in doing these things, the Board and Superintendent could not reasonably find that the Board arbitrarily or capriciously terminated Reed. The Court also concluded that the Board was not statutorily required to provide its reasoning for choosing specific teachers for retention while recommending the termination of others. §15-47-38 of the North Dakota Century Code (NDCC) only requires that the Board articulate its reason for consideration of termination within its letter of contemplated non-renewal prior to the termination action. Once the recommendation to terminate is made to the Board, the Board need then only rely upon its previous notice to terminate as sufficient reasoning to terminate (Rolland v. Grand Forks Public School District No. 1 (1979)).

Disposition: The Supreme Court of North Dakota affirmed the decision of the district court.

Citation: Rebecca Godbey, Harriet H. Phillips, Barbara A. Roblee and Patricia M. Wright, on behalf of themselves and all other persons similarly situated v. Roosevelt School District No. 66 of Maricopa County, Roosevelt Board of Trustees, Bernard Black, Donald Campbell, Robert Garcia, Frank Benites and Janine Saunders, 131 Ariz. 13, 638 P.2d 235, 25 Wage & Hour Cas. (BNA) 1011, 1 Ed. Law Rep. 1326 (1981).

Key Facts: The plaintiff’s in this case is a group of teachers that were employed by the Roosevelt Board of Trustees. These individuals represent the other teachers within their District and are known as Rebecca Godbey, Harriet H. Phillips, Barbara A. Roblee, and Patricia M. Wright. The defendant is the members of the Roosevelt Board of Trustees. In July of 1972, the Roosevelt Classroom Teachers Association (Association) and the Roosevelt Board of Trustees
entered into a collective bargaining agreement (CBA). The period of the CBA was from July 1, 1972 to June 30, 1975. On June 18, 1974, the Board adopted a sick leave policy that set forth provisions for the management of the sick leave provisions of the CBA. This policy governed the amount of sick leave earned and required that an absent teacher must submit a form known as the Cause of Absence form. This form was created with the intent of requiring that an absent teacher must complete and submit the form in order to receive paid leave for the amount of time missed due to illness.

In the spring of 1975, the Board and the Association entered into negotiations for the renewal of the CBA, which was set to expire on June 30, 1975. The two parties were not in agreement with all issues at hand. Therefore, during the week of May 13-19, 1975, a select group of teachers engaged in a work action known as the “sick-in” where they intentionally did not report to work under the guise that they were sick. In response to this action, on May 13, 1975, the Superintendent, Dr. Curtis O. Greenfield, issued an administrative order requiring that teacher’s must provide a doctor’s certificate clarifying that the teacher was ill. He further ordered that a teacher failing to provide such documentation would be docked a day of pay for each unexcused absence. Greenfield administered this order without Board approval. A week later, on May 20, 1975, the Board ratified a recommendation by the Superintendent to make his order effective under school board policy. On June 17, 1975, plaintiffs filed suit against defendants. On February 23, 1977 the action was certified as a class action suit under Arizona Rules of Civil Procedure. The trial court ruled in favor of the personnel. The Board appealed the decision to the Arizona Court of Appeals.

Issue: At issue in this case is whether the School Board can retroactively make changes in sick leave policy and the procedures that guide such policy.
Holding: The Arizona Court of Appeals held that the School Board could not retroactively apply school board changes. Nor did the Superintendent possess the authority to administer an administrative order about such policy.

Reasoning: Prior to the date of May 13, 1975, of the self-imposed sick-in, the Board policy governing sick leave pay was governed by the CBA. As well it was the norm for teacher’s to submit the Cause of Absence form and submit it through the appropriate chain of command in order to receive payment for sick leave. In doing so, there was no requirement that teacher’s submit individual excuses in order to receive sick leave pay. The Court reasoned that it is well established fact that the actions of parties involved in a contract are substantial when reviewing the causes of disputes such as the one at hand. Associated Students of University of Arizona v. Arizona Board of Regents (1978) Therefore, substantial evidence was provided that it was customary for the contractual rights of teachers to receive pay for sick leave in the absence of submitting independent medical verification.

Disposition: The Court of Appeals of Arizona, Division 1, Department A, affirmed the decision of the Superior Court, Maricopa County.

Citation: Daniel Campbell and Washington Elementary School District No. 6 of Maricopa County v. Richard L. Harris, Superintendent, Maricopa County Schools, 131 Ariz. 109, 638 P.2d 1355, 2 ELR 277 (1981).

Key Facts: The plaintiff in this case was Daniel Campbell, a member of the Board of Trustees for the Washington Elementary School District. The defendant in this case was Richard L. Harris, the Superintendent of the Maricopa County School District. Campbell was a twice-elected member of the Board. During his second term in office, he moved out of the school zone for which his appointed office served. Harris, upon learning of the move out of District,
determined that Campbell’s position on the Board was vacated and subsequently took steps to place an appointment pursuant to Arizona statute A.R.S. §38-291(5). Campbell and the members of the Board retained private counsel in order to contest the move by Harris. At the time that the Court received this action, Campbell had vacated his position on the Board. Thus, the Court chose not to address that issue. However, the Court did address the issue as to if the Board had the authority to employ private legal counsel in support of Campbell.

Issue: At issue in this case is whether the School Board violated statutory authority in employing legal counsel for Campbell.

Holding: The Arizona Court of Appeals ruled that the School Board violated Arizona statute in using public school funds to contest private legal action taken against Campbell.

Reasoning: In the case of School District No. 69 of Maricopa County v. Altherr (1969), the Court determined that school boards have only the authority granted to them via legislative statute. There is no language that exists in the Arizona Code that allows a School Board to employ legal counsel to represent a Board member in a personal lawsuit. In this case, the Court deemed that Campbell had indeed moved out of the School District zone and that he was in violation of Arizona law and that he either had to vacate his position or move back into the school zone. Harris had the authority to remove Campbell from his position. Since the move out of school zone involved a personal choice on the part of Campbell, his defense of the action against him was one of a personal nature. The Court reasoned that the Board could not obviously represent Campbell by employing private legal counsel for him as they enjoyed status and standing as a governmental entity. The Board was in violation of Arizona statute with the expenditure of public funds to employ private legal counsel and thus was subject to lawsuit to recover those funds.
Disposition: The Arizona Court of Appeals, Division 1, Department B, reversed the decision of the trial court.

1982


Key Facts: The plaintiff in this case was Robert M. Fortney, a teacher of the West Salem School District. The defendant in this case was the Board of Education of the School District of West Salem. The LaCrosse County Circuit Court ruled against a discharged teacher in favor of the West Salem School Board in vacating an arbitration award in favor of teacher, Robert Fortney. The Wisconsin Court of Appeals then overturned the ruling and ruled in favor of Fortney. The Supreme Court of Wisconsin heard the case on appeal.

Robert M. Fortney was a teacher in the West Salem School District for 8 years from 1971-1979. In 1979, the School Board received a complaint that Fortney was making inappropriate comments in class. After conducting an investigation, the Board subsequently informed Fortney that they intended to discharge him. The Board appointed an attorney, John Langer, to conduct a fact-finding hearing. Fortney agreed to be present for the hearing while also informing the board that he retained his rights under the district’s collective bargaining agreement that was in place at the time between the West Salem School Board and the West Salem Education Association.

Langer conducted hearings on two separate dates, May 30, 1979, and June 18, 1979, on the premise that 11 instances of improper conduct was alleged against Fortney. At a later date,
August 17, 1979, Langer reported that 9 of the 11 instances were deemed to be accurate and recommended that Fortney be discharged from his duties. Three days later on the date of August 20, 1979, the Board followed the recommendation of Langer and terminated Fortney. On the same day, Fortney filed a grievance. On the dates of October 22, 23, 24, and November 27 and 28 of the year 1979, the two parties utilized arbitration as part of the grievance procedure under the collective bargaining agreement. On April 2, 1980, the arbitration panel ruled in favor of Fortney and ordered him reinstated with back pay.

The Board took the matter to the Circuit Court where the judge vacated the award based on the fact that the arbitration panel conducted a de novo hearing rather than a certiorari hearing. Fortney then appealed to the Wisconsin Court of Appeals. The Court reversed the finding of the Circuit Court and held that the arbitration panel acted within the scope of their authority. The Board petitioned the Supreme Court for a review of the decision of the appellate court.

Issue: At issue in this case is whether the School Board exceeded statutory authority in terminating Fortney.

Holding: The Supreme Court held that the arbitration panel ruled favorable and correctly in re-instating Fortney’s teaching position while also awarding back pay.

Reasoning: The decision of the arbitration panel did not violate the collective bargaining agreement, nor did it violate any statutory provision under Wisconsin law or U.S. law. In citing *Hortonville v. Joint School District No. 1* (274 N.W.2d 697), the Court stated that the authority to terminate a teacher is not wholly unrestricted. The decision to terminate a teacher must be done while also providing the teacher with due process. As well, provisions within collective bargaining agreements can limit the authority of a school board. In the state of Wisconsin, the
Municipal Employment Relations Act (MERA) is binding on school boards when conducting the business of retention or termination of teachers.

Disposition: The Supreme Court of Wisconsin affirmed the decision of the Court of Appeals.


Key Facts: The plaintiff in this case was the members of the Board of Education of Carroll County. The defendant in this case was the individuals represented by the Carroll County Education Association. Plaintiffs appealed this case to the Maryland Court of Special Appeals.

The Circuit Court of Carroll County Maryland initially heard the case and ruled in favor of the defendant. The case dealt with the arbitration agreement that existed between the plaintiffs and the defendants. The agreement contains an arbitration clause in the collective bargaining agreement (CBA) that allowed an arbitrator to utilize authority to make decisions in regard to the reappointment of non-tenured teachers. According to provisions of the CBA between the plaintiff and defendant, an arbitrator can make decisions pertinent to the termination of non-tenured employees.

Lyndi Wilkless, a non-tenured teacher was notified of the intent not to renew her contract within the 2-year probationary period. The Board brought action against the arbitration agreement and the local education association with the contention that the agreement went beyond what Maryland state law allows. The judge in the trial court ruled that the arbitration agreement provided the arbitrator with the authority, which he deemed co-extensive to that of the Maryland State Board of Education. Specifically, the judge ruled that first an arbitrator has the authority under the CBA to issue a binding award requiring the reinstatement of non-tenured
teachers. Second, the Maryland State Board of Education does not have the exclusive authority to hear and decide disputes concerning the reinstatement of non-tenured teachers.

Issue: At issue in this case is whether the binding arbitration agreement between the Carroll County Education Association and the Carroll County Board of Education provided an unauthorized delegation of authority?

Holding: The Special Court of Appeals ruled that the Circuit Court violated Maryland state law in ruling in favor of the teacher, Lindi Wilkless. The Court found that the CBA did not provide an unlawful delegation of authority by the School Board.

Reasoning: The Court identified that within the Grievance Procedure of the arbitration agreement a limitation existed that denied the arbitrator the authority to maintain the state statute that extended authority to school boards. An arbitrator shall not have the authority to pass any award that would deprive the Board of its authority. The statutory chain of responsibility from the General Assembly delegates authority to the State Board of Education to the local Board provided that only a local board of education has express authority to determine tenure. Maryland law (section 6-202(b)) authorizes a board of education to extend a 2-year probationary period. Within the statute, there is language that provides for the qualification, tenure, and compensation that shall be determined by local boards of education. The Court stated that the decision of awarding tenure is at the discretion of the local board and not that of any other person or entity. Furthermore, the board of education cannot abrogate its responsibilities to any other person or entity. Education of A.A. Co. v. Barbaro (1980)

Disposition: The Special Court of Appeals of Maryland reversed the decision and remanded to the Circuit Court for Carroll County to obtain a declaration in accordance with the
Court’s opinion. Also the Court awarded that costs be awarded to the Carroll County School Board.


Key Facts: The plaintiff in this case was the members of the Board of Education of The School District of Philadelphia. The defendant was Harris Twer and others. On May 31, 1977, the School District of Philadelphia adopted a budget which required a deduction which called for the demotion of 240 employees. The plaintiffs chose to hold one hearing for all employees. Requests for individual hearings were denied by the plaintiff. As well, requests for a continuance of the hearings were denied. There were many other legal issues that were not granted or the correct procedures were not conducted by the defendant. A lower court known as the Commonwealth Court affirmed the order of the Pennsylvania Secretary of Education’s decision in reinstating 240 professional employees without loss of pay. The defendants contend that they were demoted without cause in violation of the Public School Code of 1949. The Pennsylvania Secretary of Education ruled that plaintiff failed to provide each professional employee with their own individual hearing which is mandated by Section 11-1127 of the Pennsylvania Public School Code. Due to the lack of hearings the requests for demotion did not meet the requests as set forth in Section 11-1151 of the Pennsylvania Public School Code.

Issue: At issue in this case is whether the School Board had the authority to reduce the salary of personnel which effectively demoted them?

Holding: The Court found that the method used by the Board to carry out the demotions of the employees was consistent and well within the authority vested to them by Pennsylvania statute.
Reasoning: The Court cited the case of Smith v. Darby (1957) in stating that school boards must be given broad discretionary powers to ensure a better education for the children of the Commonwealth. The rights of the employee would have been protected and the employees would have received the pay entitled to him/her if the board would have acted improperly. Again, in citing Smith, the Court stated that the Pennsylvania legislature did not create a law in protecting the security of its employees without creating restitution on the board to discharge its good faith responsibilities. The Court felt that the Secretary of Education erred in requiring the reinstatement of the employees. The Court also ruled that it would be impractical to reinstate positions or pay retroactively. It would be unjust to put such a burden on the School Board.

Disposition: The Pennsylvania Supreme Court reversed the decision of the Commonwealth Court and remanded that matter to the Board with leave for the Board to reinstate such a demotion procedure as financial conditions dictate.

Citation: Don Meloy v. Reorganized School District R-1 of Reynolds County, 631 S.W.2d 933, 4 Ed. Law Rep. 331(1982).

Key Facts: The plaintiff in this case was Don Meloy, the principal of an elementary school in the Reorganized School District R-1 of Reynolds County. The defendant was the members of the Board of Education of Reorganized School District R-1 of Reynolds County. The plaintiff was an elementary principal in the school system from 1974-1979. His initial year with the system as a principal was the 1974-1975 school year. He continued to be employed with the School District for the next succeeding 4 years. At the end of the 1978-1979 school year, the Board voted to non-renew Meloy’s contract. Meloy filed a petition against the School Board on two counts. The first count claimed that he enjoyed the status of a permanent teacher with the School District. Meloy sought a court order from the School Board to recognize him as a
permanent teacher and he also sought damages for loss of salary. The second count was an order requesting the reinstatement of the plaintiff as a principal.

Issue: At issue in this case is whether the trial court erred in denying relief for the plaintiff in his desire to recognize Meloy as a permanent tenured teacher.

Holding: The Missouri Court of Appeals held that the trial court properly denied relief to Meloy and that the School Board was not required to reinstate Meloy.

Reasoning: §168.104 (7) of the Missouri Code as referred to in Fuller v. North Kansas City (1981) defines a teacher with the following exclusions, “superintendents, assistant superintendents, and any other persons regularly performing supervisory functions as their primary duty.” This provision would include principals as not being defined as a teacher. The Court in referring to the same case and statute specifies that the employment and re-employment of a principal is not governed by the Missouri Teacher Tenure Act. The six members of the School Board made it clear in their vote that they did not wish to retain Meloy as a principal. However, Missouri law states that a dismissed principal must be notified in writing that he will not be retained. The School Board did not notify Meloy in writing that he would not be retained. However, Meloy failed to note this in his argument. Instead, his second count focused on the language in the minutes of the board meeting which called for his termination. The plaintiff contends that there should have been a motion made to re-employ him. The lack of a second motion would have essentially caused his termination. However, the School Board made a motion not to employ and this is a count that the plaintiff contends that he was wronged. The Court disagreed and determined that the language of the motion had nothing to do with his re-employment.
Disposition: The Missouri Court of Appeals, Southern District, Division Three affirmed the decision of the Circuit Court of Reynolds County.

Citation: Richland Parish Bus Drivers Association, et.al. v. Richland Parish School Board, et.al., 420 So.2d. 696, 7 Ed. Law Rep. 467 (1982).

Key Facts: The plaintiffs in this case were the Richland Parish Bus Drivers Association. The defendants were the members of the Richland Parish School Board. The plaintiffs appealed this case from the Fifth Judicial District Court which ruled in favor of the defendants.

In the year of 1968, an election was held in Richland Parish for the residents to vote on a one percent sales tax that would be utilized expressly for the salaries of personnel. The proposition successfully passed and subsequently there after the School Board passed an ordinance that allowed the one percent sales tax to be paid to the personnel of the school system. Within the ordinance was a formula that allocated the funds to two specific classes of employees based on years of experience with the system. The two classes of employees were certificated and non-certificated employees.

On October of 1978, the school board amended the tax allocation formula. The one change that was made was that in addition to the 12 monthly installments to personnel at the end of the year, any remaining balance would be paid to those personnel with 4 years of experience or more. It is the plaintiffs contention that the amounts of allocation distribution should remain the same as such a formula was designed in 1968.

Issue: At issue in this case was if the School Board abused its authority in amending the allocation distribution formula?

Holding: The Court found that the trial judge did not err in ruling that the proposition leaves the allocation of the proceeds to the discretion of the School Board.
Reasoning: In citing *Ouachita v. Ouachita* (1978), the Court stated that when a statute is clear and free from ambiguity, it should be given a meaning in accordance with its common understanding. The Court provides that it is justified in interfering with decisions of a school board when it is clear that the board abused its authority. The Court references two Louisiana cases, *State v. Jefferson* (1943) and *Celestine v. Lafayette Parish* (1973), in making their decision. Members of a school board are elected and must be responsible to the electorate. When an elected governing body is not restricted by law, the actions of that body are presumed to have been made in good faith. Even though the plaintiffs introduced allocation formulas from other parishes and such formula’s display that the Richland Parish formula provides somewhat less allocation to the non-certificated, the Court felt that it was not enough to warrant a change in the Richland formula.

Disposition: The Court of Appeal of Louisiana, Second Circuit, affirmed the decision of the lower court in ruling for the defendants and placed for the court costs to be paid by the plaintiffs.


Key Facts: The plaintiffs in this case were the 10 employees and other employees of the Board of Education, Community Unit School District 300. The defendants were the members of the Board of Education, Community Unit School District 300. The plaintiffs brought suit seeking declaratory judgment in the Kane County Circuit Court on the issue that they worked on a legal holiday without compensation. The defendant is responsible for setting the school calendar each year. For the 1980-81 school year, the defendant set the school calendar for the dates of August 29, 1980, thru June 16, 1981. The Board is required by Illinois law to provide 185 working days
per year, with 176 of those days devoted to required student attendance. The other 9 days are utilized as teacher institute days and teacher professional development days.

During the 1980-1981 school year, President Ronald Reagan ordered the date of January 29, 1981, to be honored as Hostage Day in honor of the hostages freed from the Iran Hostage Conflict. On the date of April 13, 1981, the Board amended the school calendar to reflect an end date of the school year as June 11, 1981. The initial end date was June 16, 1981. The Board cited the non-use of 4 snow days and a make-up day for the federal holiday as the reason for the change in date. The plaintiffs were required to work the date of June 11, 1981, without compensation. The Circuit Court granted summary judgment in favor of the defendants and the plaintiffs appealed.

Issue: At issue in this case was whether the School Board exceeded its authority in requiring its employees to work an additional day of the school year without pay in lieu of the federal holiday which required a missed day of school back during the school year.

Holding: The Appellate Court of Illinois, Second District ruled that the Board exceeded its authority by changing the end of school date from June 16, 1981, to June 11, 1981, while also requiring the teachers to work that last day without compensation. The Court reversed the decision of the lower court while also remanding the case back to the court so that the lower court can determine if the plaintiffs were certified class representatives while also determining if the plaintiffs are entitled to any recovery.

Reasoning: A public school board is granted with the authority to prepare an annual calendar to allot for the required 185 working days for employees with 175 days devoted to attendance for the students (Illinois Revised Statute 1979, chapter 122, paragraph 10-19). It is customary for school boards to build in days to allot for inclement weather and other issues of
safety that could cause the delay and/or cancellation of a school day. The Court cited the cases of *Board v. Chicago* (430 N.E.2d 1111) and *Perlin v. Board of Education* (407 N.E.2d 792), among other cases, in recognizing that the Board contained the authority to set the school calendar as
needed as long as the required number of days were met. Once it is determined that a school board will meet the required number of days, the authority rests with the school board to amend the schedule in the appropriate fashion. The Board was within its right to amend the school calendar to remove 4 days from the school calendar year due to the fact that the District did not have to use four snow days that were initially built into the school calendar. However, the Board did not have authority to add an additional day to make-up for the lost day in respect to the federal holiday. The Court declared that the Board exceeded its authority in requiring the additional day of school.

Disposition: The Appellate Court of Illinois, Second District, reversed and remanded the decision of the Circuit Court of Kane County.

1983


Key Facts: The plaintiff in this case was the school librarian, Meyer. The defendant in this case was the members of the Board of Education of the Chagrin Falls Exempted Village School District. Plaintiffs brought action against the School Board claiming they had wrongfully terminated her. The Board terminated plaintiff’s employment because she had reached mandatory retirement age, known as superannuation. The School Board had statutory authority to terminate plaintiff. The trial court of Cuyahoga County, Ohio ruled against the School Board
as it varied from statutory procedures in its attempt to retire her and subsequently granted her a year worth of salary. The trial court granted relief for the plaintiff’s complaint that defendant had violated her civil rights and dismissed additional actions seeking compensatory and punitive damages. Both parties appealed the ruling.

Issue: There are three legal issues to consider in this case: 1) The plaintiff’s termination did not provide her with an appointment to due process. 2) The plaintiff contends that School Board terminated her not due to mandatory age provisions but due to the fact that they were motivated by malice, prejudice, and discrimination. 3) The School Board’s utilization of the superannuation statute was an abuse of its discretion and a denial of equal protection.

Holding: The Ohio Court of Appeals ruled in favor of the School Board in plaintiff’s contention that the School Board violated Ohio statute and subsequently exceeded its authority. The Ohio Court of Appeals ruled in favor of the defendant on the plaintiff’s second count which was that the School Boards termination of plaintiff was motivated by malice, prejudice, and discrimination. The Ohio Court of Appeals ruled in favor of the defendant in the plaintiff’s contention that the defendant violated the Equal Protection Clause of the Fourteenth Amendment.

Reasoning: The defendant had full authority to terminate plaintiff’s contract. The plaintiff had a right to due process in addressing her termination. The defendant provided the plaintiff with a detailed notice 67 days out from the termination notice. The meeting to terminate plaintiff was an open meeting and plaintiff was given proper due notice for the date and time of meeting. Plaintiff chose not to attend the meeting. The Court ruled that the defendant had reached statutory authority in terminating plaintiff’s contract at the age of 70. As well, the Board followed correct procedures in terminating plaintiff.
Disposition: The Court of Appeals of Ohio, Eighth District, Cuyahoga County reversed in part and affirmed in part the decision of the Cuyahoga County trial court.


Key Facts: The plaintiffs in this case were two teacher education associations which represent themselves, several classroom teachers, and one registered voter. The defendants in this case were the members of the St. Tammany Parish School Board of Education. Two teacher associations in the State of Louisiana brought action against the St. Tammany Parish School Board based on their dispute of the distribution and allocation of sales tax proceeds designed to supplement employee salaries in the system. The plaintiffs sued in the Twenty-Second Judicial Court seeking declaratory and injunctive relief in requiring the School Board to allocate approximately 83.8% of the proceeds of a 1966 sales tax as a supplement to the salaries of the teachers and specialists. In addition the group wanted reimbursement for monies previously spent on items not pertaining to allocating teacher and specialist salaries and the group wished for there to be the future development of a salary schedule for the allocation of the sales tax monies.

In the year of 1966, an election was held for the voters of the parish to vote on a sales tax proposition with the proceeds of the tax to be divided equally among the Policy Jury and the local School Board. The 1966 election followed a 1965 election in which the residents of the St. Tammany Parish voted down the proposition. The 1966 election proved to have better results as the voters successfully passed the tax proposition. Of significance to this case is the pre-election campaign for both the failed election proposition vote in 1965 and the successfully passed
proposition vote in 1966. In those campaigns, the Superintendent of the School District, the School Board President, and other members of the Board disseminated information that suggested that the funds gained from the sales tax would be allocated to the teachers in an amount that suggested that 83.8% of the funds gained each year would be allocated to the teachers and other employees of the District. The actual proposition that was voted upon by the electorate never contained language that provided for the actual allocation to be provided for the employees in question based on the 83.8% figure that was often disseminated in the proposition campaign prior to the election.

Issue: At issue in this case was whether the St. Tammany School Board had failed to act in their authority in allocating the proceeds gained from the one percent sales tax as promised prior to the election.

Holding: The Court found that the trial court ruled correctly and favorably for the defendants in this case.

Reasoning: The Court’s ruling in favor of the School Board was based on the actual language of the proposition versus a pre-election campaign promise. It is the opinion of the Court that the proposition of June 25, 1966, should be construed simply that the allocation of the sales tax provision should be maintained according to the language of the provision which requires the Board to establish a specific salary schedule and that the salary schedule should be funded from the tax receipts gained from the implementation of the provision. This supplemental payment of tax receipts shall be paid first to the teachers based on the salary schedule and then to non-teaching personnel accordingly. Once done, any remaining funds can be spent on operating expenses. The desire of plaintiffs for the proposition to contain different language does not pertain to the provision as it was elected upon by the electorate and subsequently adopted and
acted upon by the Board. The Court cited *Ouachita v. Ouachita* (1978) and *Washington* (1973) in providing that when an administrative public body has maintained a consistent interpretation of legislative enactment, that interpretation carries and bears great weight on fulfilling the meaning and enactment of such legislation. Such a long-standing interpretation by a Board in addition to the actual language or in this case lack of, provides that the Board is at its full discretion as to what it deems as appropriate in addition to the allocation of the sales tax receipts.

Disposition: The Court of Appeals of Louisiana, First Circuit, affirmed the decision of the Twenty-Second Judicial Court in ruling for the School Board.


Key Facts: The plaintiff in this case was Verna Hugh Thomas, a tenured teacher in the Community Unit School District No. 1 of Pope County, Illinois. The defendants in this case were the members of the Board of Education of Community School District No. 1 of Pope County, Illinois and Phillip Reasor, Principal. The plaintiff brought suit against the defendants seeking declaratory judgment against them for actions that were capriciously and arbitrarily in nature. The defendant contends that the plaintiff was insubordinate in not submitting copies of final examinations in a timely manner. Subsequently, the School Board placed a letter of remediation in the plaintiff’s personnel file. The Pope County Circuit Court ruled in favor of the School Board and the plaintiff appealed.

Thomas was an 11-year veteran of the School District. In 1982, the principal required all teachers on staff to provide copies of their final examinations and even set a date of deadline in doing so. These copies of the final examinations were required to be typewritten. The deadline to
submit the examination was May 14, 1982. On May 13th, Thomas submitted handwritten copies rather than typewritten copies. On May 26th, the School Board placed a letter of remediation in his personnel file due to his insubordination. He was also informed that failure to do so could lead to dismissal proceedings. Thomas eventually submitted the required handwritten documents. Therefore, Thomas was not dismissed. His dispute was that the Board did not have authority to require the typewritten documents.

Issue: At issue in this case is whether the school board had the authority to require typed examinations.

Holding: The Court affirmed the decision of the Circuit Court in ruling that the School Board has statutory authority in requiring the typewritten documents.

Reasoning: The Board of Education is statutorily empowered to adopt and enforce rules as necessary for the management and government of their school district Rulison v. Post (1875). A broad spectrum of implied incidental powers is to be inferred from the general powers to adopt rules as necessary Beck v. Board (1975). The plaintiff contends that requiring the use of typing is onerous, time consuming, demeaning, and unrelated to teaching responsibilities. The Court found no merit in such assertions. The Court contends that typing is a skill so generally considered an adjunct to academic pursuit.

Disposition: The Appellate Court of Illinois, Fifth District, affirmed the decision of the Circuit Court of Pope County.


Key Facts: The plaintiff in this case was Monte Robinson. The defendant in this case was the members of the Board of Education for the Joint School District No. 331. On July 12, 1976,
plaintiff signed a written contract of employment with the Joint School District No. 331. At the time of his employment, Robinson was offered the opportunity to teach a six period school day, even though the regular school day consisted of only five periods.

Three years prior to Robinson’s employment, a group of teachers met with the Board of Education and asked to work an additional sixth period to the school day. The Board of Education agreed to the addition of the sixth-period day and subsequently passed a policy that stipulated a teacher working a six-period day would receive an additional pay of ten percent of their gross salary. This policy was in effect at the time that Robinson was hired and through the next two years of his employment.

At the end of the 1977-1978 school year, Robinson signed a contract for the 1978-1979 school year. There was no provision in the contract that specified that he would be teaching a six-period day for the upcoming school year. However, a few days afterward, Robinson was verbally informed by the principal that he would be expected to teach a six-period day. Robinson then brought the issue to the Superintendent and asked him to make certain that he received the additional pay as other teachers in the District were compensated for teaching six-period days. The Superintendent denied the request for additional compensation on three consecutive occasions. Robinson proceeded to teach the six periods for the entire 1978-1979 school year. Robinson requested a grievance hearing in September of 1978 and the hearing was denied by the Superintendent. The local magistrate court ruled in favor of the teacher. The District Court reversed the decision in favor of the School Board and Robinson appealed the decision to the Supreme Court of Idaho.
Issue: At issue in this case is whether there is substantial evidence to support the magistrate’s finding that the Board of Education established a policy to pay high school teachers who taught six periods a day a salary increment of 10% of their base salary.

Holding: The Supreme Court held that there was substantial and competent evidence to support the magistrate’s finding that the Board established a policy to pay an additional salary increment for those who taught six periods a day.

Reasoning: The Court reviewed the minutes of the meeting where five high school teachers approached the Board and asked for the opportunity to teach six periods a day with additional pay. Also, the Court reviewed the School Board’s policy manual. The members of the Court could find nothing that limited the additional pay for teachers other than the five that appeared in front of the Board of Education. Neither could the Board find where the magistrate court erred in their finding that the School Board’s adoption of policy that required additional pay for six periods was anything but a general policy that governs the working of a six-period day for all of those individuals that worked a six-period day.

Disposition: The Supreme Court of Idaho reversed the decision of the District Court and reinstated the judgment of the Magistrate Court.

Citation: Walker County Board of Education v. Walker County Education Association, 431 So.2d 948 (1983).

Key Facts: The plaintiff in this case was the Walker County Board of Education (Board). The defendant in this case was the Walker County Education Association (Association). The Association represented certificated employees and the Walker County Education Support Personnel Organization through their grievance procedure contained in the appropriate adopted policies in charging that the Board’s notice of reduction of personnel were in violation of
policies previously adopted by the Board. The Board brought an action for declaratory judgment that the adopted policies were illegal and non binding upon the Board. The Circuit Court, Walker County granted the cross-motioning for summary judgment in favor of the Association and the Board appealed the decision to the Alabama Supreme Court.

Issue: At issue in this case is whether the School Board policies adopted by the Board of Education concerning reduction of personnel were illegal under state statute and therefore not legally binding upon the Board.

Holding: The Supreme Court held that 1) the trial court properly decided the case on summary judgment, 2) policies promulgated by the board concerning reduction of personnel were valid and legally binding and did not constitute the result of improper collective bargaining, 3) the provisions for binding arbitration between the Board and Association were unenforceable unless voluntarily agreed upon by the parties, 4) statutory powers granted to the Board were broad enough to make the policies concerning support personnel organizations binding upon the Board, 5) the provision that changes in policies must be approved by both Board and Association were illegal, and 6) the Board’s commitment to submit unresolved grievances to advisory arbitration was binding when such grievances were voluntarily submitted by the Board.

Reasoning: The Board policies concerning reduction of personnel and other matters put into effect by the Board of Education pursuant to express statutory authority were unilaterally adopted by the Board after conferring with the employer representatives. The Board policy in question was filed with the State Superintendent of Education’s office and was valid and legally binding, and did not constitute improper collective bargaining. The provision for binding arbitration between the Board and the Association in the policies unilaterally adopted by the Board were unenforceable unless voluntarily agreed upon by the Board and the Association. The
School Board, incidental to duties provided to it by statute requires the Board to determine and establish written educational policy for the District. Such authority allows the Board to adopt policies after consultations with personnel. At its discretion, the Board has the authority to determine that the implementation of the policies will more effectively and efficiently accomplish its objectives and purposes.

Disposition: The Alabama Supreme Court affirmed the decision of the Circuit Court, Morgan County.

1984


Key Facts: The plaintiff in this case was M.S. Jawa, a psychologist employed with the McDowell County Board of Education. The defendants were the members of the Board of Education of McDowell County, West Virginia. The plaintiff is seeking a writ of mandamus to compel the Board of Education to execute specific actions related to his employment with the District.

Jawa was employed by the McDowell County Board of Education as a psychologist for the 1979-1980 school year. When he was employed, the plaintiff was informed that that he would report to the Coordinator of Special Education, the Director of Pupil Services, and to the Superintendent of the School District. In January of 1982, John Wren was employed as a psychologist with the District for basically the same type of responsibilities as Jawa, with the exception that he was assigned further responsibilities with the special education staff and subsequently he received more autonomy for scheduling within his new position.
In June of 1982, the Board of Education chose not to offer Jawa a contract of employment for the 1982-1983 school year. Jawa appealed the decision of the Board to the West Virginia State Superintendent on the grounds that he never received a true evaluation of his performance during his time of employment with the District. The State Superintendent agreed with Jawa’s assertion and subsequently reinstated him and awarded back pay. In his decision the State Superintendent contended that the Board did not have a formal management system that adequately evaluated school psychologists. The Board followed the recommendation and offered Jawa a contract, which granted him tenure for the upcoming school year. In accepting and signing his contract, Jawa wrote on the cover of the contract that the contract was binding as to the agreement provided for John Wren in January of 1982. Shortly afterward, the county superintendent cited Jawa’s contract as null and void and provided that he was instituting a new management system, which included who Jawa was to report to, his job descriptions, a requirement for him to complete periodic reports, and for him to be evaluated twice a year. Jawa found this new system unacceptable and subsequently outlined several procedures as to which he would agree to and filed a writ of mandamus against the School Board in the process.

Issue: At issue is whether the Superintendent of the McDowell County Board of Education has the authority through the McDowell County Board of Education to develop a management system, which contains job descriptions, duties, evaluations, and other procedures related to the management of personnel as required.

Holding: The Supreme Court of Appeals of West Virginia held the following: 1) the plaintiff was not reassigned or transferred which would cause a hearing as required in the West Virginia Code. 2) the Superintendent of the McDowell County School District had the authority
to reassign, transfer, and create a personnel management system through the powers vested in him by the McDowell County Board of Education.

Reasoning: Jawa’s reassignment of duties and responsibilities as assigned by the Superintendent of the School District were within the authority vested to the Superintendent by the Board of Education. In doing so, the Superintendent must adhere to the Board of Education policies that govern such activities as well as follow the state statutes that govern the Superintendent in the same manner. In order for plaintiff to be granted a writ of mandamus, three things must exist: 1) a clear, legal right on the part of the petitioner in seeking relief, 2) a legal requirement of duty on part of the respondent to meet the need being requested by petitioner, 3) the absence of an adequate remedy not already sought (Syllabus Point 1 v. W.Va. State Board of Education, 1982). The Circuit Court agreed that relief was not due to plaintiff based on his request for a writ of mandamus and the Court of Appeals agreed with the same.

Disposition: The Supreme Court of Appeals of West Virginia affirmed the decision of the McDowell County Circuit Court in ruling in favor of the defendant.


Key Facts: Joy Hoeflinger was the plaintiff in this case. The defendant was the West Clermont Local Board of Education. The plaintiff brought action against the defendant due to the fact that the Court of Common Pleas for Clermont County granted the School Board summary judgment in their denial of her application for sick leave. The plaintiff appealed the case to the Court of Appeals of Ohio.

The plaintiff has been a teacher with the District since 1974. During the 1980-1981 school year the plaintiff became pregnant. In February of 1981, the plaintiff sent a letter from her
physician to the Assistant Superintendent, Vincent Gilley, notifying him that plaintiff was seeking sick leave which would commence on the date of March 21, 1981. The letter did not state a specific reason other than plaintiff was pregnant and that she would stop employment on the aforementioned date. Later in a deposition, the plaintiff stated that the date of March 21, 1981, was picked by her as it was the beginning date of the next school year quarter and it was her thought that it would be easier for a substitute teacher to start at the beginning of a quarter rather than in the middle of a quarter. In a letter dated March 26, 1981, Gilley informed the plaintiff that she had not submitted the appropriate paperwork justifying her need for sick leave and gave the information that was needed for the School Board to entertain her request for sick leave commencing March 21, 1981. As a follow-up to Gilley’s letter, the Superintendent, Duane Tennant, informed the plaintiff via a letter dated April 7, 1981, that she had three options available to her: 1) Hoeflinger could take maternity leave without pay for the date of desired leave. 2) Hoeflinger could submit the appropriate paperwork stating the reasons for her absence of work and thus be granted sick leave for the date of desired leave. 3) Hoeflinger could combine sick leave and maternity leave for the date of desired leave. The plaintiff responded in a letter dated April 13, 1981, that according to Ohio statute (R.C. 3319.141) she was entitled to sick leave for pregnancy without further submission of additional paperwork that specifically provided more documentation on the part of the physician as to the appropriate documentation for her extended leave time from work.

Plaintiff was not paid for 19 days of work that she missed from the period of March 23, 1981, through April 26, 1981. In February of 1983, she initiated action against the School Board citing that the Board denied her right to sick leave under the aforementioned state statute. Both
parties filed for summary judgment in the case. In November of 1983, the trial court granted the defendant with summary judgment. The plaintiff appealed the case to the next level.

Issue: At issue in this case is the scope of a school board’s authority as specified in Ohio Statute R.C. 3319.141 to require a doctor’s statement as to the medical necessity of a pregnant teacher’s request for medical sick leave.

Holding: The Court of Appeals held that the trial court erred in ruling that a Board of Education has the discretion and authority under Ohio Statute R.C. 3319.141 to require proof of disability in order to grant sick leave to a pregnant teacher.

Reasoning: The Court disagreed with the defendant’s assertion that language in RC. 3319.141 which applies dually with the District’s administrative authority and the School Board’s broad general authority provides justification for a District to require a physician’s statement for a pregnant employee to utilize sick leave at their discretion. Ohio Statute R.C. 3313.47 vests Boards of Education with the management and control of the schools. Ohio Statute R.C. 3313.20 provides Boards of Education with the authority to make rules and regulations for the governance of its employees. There are several forms and affidavits that have been adopted and amended over the years through opinions of the State Attorney General and changes in Ohio law. The final and last amendment was in 1970 with R.C. 3319.141 in Amended H.B. No. 1008 along with the amendments to R.C. 143.29. The combination of these two amendments provide that for an employee to verify that sick leave is warranted a signed statement must be secured from a physician that only has the name and signature of the physician as well as their address and the dates that they were consulted. The Court states that the defendant has no such form for teachers to use and basically the teacher relies upon an unwritten practice which has never been
formally adopted as a rule or procedure, nor was it contained in the District’s collective bargaining agreement.

Disposition: The Court of Appeals of Ohio reversed and remanded the decision of the Court of Common Pleas for Clermont County.


Key Facts: The plaintiffs in this case were the members of the Board of Education of Bremen Community High School District No. 228. The defendant in this case was a group of teachers of the Bremen Community High School District No. 228 as represented by the Bremen District No. 228 Joint Faculty Association. The plaintiff entered a suit in the Circuit Court of Cook County. The Circuit Court awarded in favor of the dismissed teachers. The Appellate Court affirmed the decision of the Circuit Court. The Board of Education appealed to the Supreme Court of Illinois.

In March 1982, the superintendent of the plaintiff recommended that the Board of Education dismiss ten tenured teachers due to a projection that the district would experience a decrease enrollment in the near future. At the next regularly scheduled meeting during the same month, the board chose to terminate eight tenured teachers. The defendant filed grievances in Circuit Court on behalf of the dismissed teachers citing the need for injunctive relief based on a potential violation of the public hearing requirement in §24-12 of the Illinois School Code (Ill.Rev.Stat.1981, ch. 122, par. 24-12). It is noted that the plaintiff has a collective bargaining agreement with the defendant. In the agreement, there is a procedural agreement that requires that the two parties must submit to arbitration for any grievances that may exist. An additional
ruling of the circuit court was that the parties expedite the arbitration meeting in order to address plaintiff’s complaint.

Issue: The Court had two legal issues to address in this case. 1) Did the School Board violate any provision of the district’s collective bargaining agreement? 2) Did the School Board violate provisions of the Illinois School Code by failing to conduct a public hearing?

Holding: The Supreme Court of Illinois held the following in reversing in part and affirming in part the previous decisions handed down by the Circuit Court and the Appellate Court. 1) The power to dismiss teachers based on economic necessity was sole authority of school board, yet the arbitration required by the collective bargaining agreement to determine if the reason for the dismissal was valid and was effective per the procedures set forth within the collective bargaining agreement. 2) The dismissal of the eight tenured teachers without proper public hearings was void. 3) The dismissed tenured teachers have standing to challenge their dismissal based on the absence of public hearings. 4) The arbitrator exceeded his authority in requiring the reinstatement of the teachers. 5) Under Illinois statute the teachers could not be rehired, but essentially reemployed.

Reasoning: The plaintiff’s contention that the arbitrator’s ruling on the validity of economic necessity was unfounded. The arbitrator ruled with proper evidence that the dismissal of the teachers was due to economic necessity. The arbitrator was merely charged with determining if the board acted on economic necessity not if there was in fact an economic hardship which caused the dismissal. §24-12 of the Illinois School Code (Ill.Rev.Stat.1981, ch. 122, par. 24-12) requires that a Board of Education conduct open hearings when five or more tenured teachers are terminated. The Board of Education failed to adhere to state statute when terminating the teachers.
The Court cited *Goodman* (360 N.E.2d 51) in determining that a Board’s failure to conduct the proper hearings is in violation of state statute and thus the terminations are void. The Court agreed with the finding of the Appellate Court in that the arbitrator committed error in assigning reinstatement of the wrongfully terminated teachers. The arbitrator was only assigned to determine if error was made in terminating the teachers. The arbitrator does not possess the authority to recommend such a reinstatement, nor does the Board of Education contain the authority to delegate such authority to an arbitrator. The Court determined that due to the fact that the Board erred in terminating the teachers and such a recommendation for termination was void, the teachers could not be reemployed as they were automatically reinstated for the next succeeding school year.

Disposition: The Supreme Court of Illinois affirmed all previous decisions ordered by the Cook County Circuit Court and the Appellate Court, with the exception of the reinstatement of the teachers. The two lower courts erred in awarding the reinstatement of the teachers, when in fact the teachers were merely reemployed due to the fact that their termination was void for statutory and procedural violations.


Key Facts: The plaintiff’s in this case were William Jurva and Ruth McDonald and others represented by the Rochester Education Association. The defendant was the Board of Education of the Rochester Community Schools. The Attorney General of the State of Michigan also entered the suit against the Board of Education.
In the year of 1974, one of the plaintiffs, the Rochester Education Association entered into a new policy in their collective bargaining agreement with the Board. Beginning with the 1974-1975 school year, lump sum payments ranging from $1000.00 to $5000.00 were available to retired teachers between the ages of 60-65. In the succeeding year, the age range was broadened and so were the lump sum payments. The retirement age and lump sum payments varied among those eligible as long as each had 10 years of experience or more. These early retirement benefits were provided from 1974-1975 school year through the 1977-1978 school year.

On June 15, 1978, the Attorney General for the State of Michigan issued an opinion, OAG (1977-78, No. 5314, p. 480) in which he ruled the Board of Education may not constitutionally provide supplements to retiree’s in addition to those provided by the public education system. In response to the decision, the Board entered into an agreement with the education association which clarified that the association would hold the Board harmless if it was determined that the early retirement benefits were a statutory violation. Jurva and McDonald filed an action seeking declaratory judgment in addition to doing the same with Attorney Generals complaint.

Issue: At issue in this case is whether the Board of Education possessed the authority to create and offer an early retirement incentive program for its personnel external to the retirement system for the public school system.

Holding: The Supreme Court of Michigan held that early retirement incentives are pertinent for School Boards to offer as they possess the authority under §1255 of the Michigan School Code.
Reasoning: In 1969, §617 of the Michigan School Code was amended to provide statutory language that allowed School Boards with the flexibility to provide additional benefits for their employees. One piece of language within the statute states that School Boards can provide benefits that are known as “other related benefits of an economic nature.” It is the Court’s opinion that the legislature clearly intended to confer broad authority upon a board of education to provide fringe benefits for school employees.

The defendant argued that §1255 authorizes the distribution of salary and other benefits as permissible use of public funds due to the rendition of services received. The Court agreed that early retirement benefits are not compensation for services rendered, but the Court feels that the system gains an economic advantage by offering and participating in early retirement benefits packages. Thus, the Court reasons that §1255 offers broad authority to Boards of Education to provide the early retirement benefit.

Disposition: The Supreme Court of Michigan affirmed the decision of the Michigan Court of Appeals in determining that a board of education maintains the authority to offer early retirement incentive packages.

Citation: Freier v. Independent School District No. 147, 356 N.W. 724 (Court of Appeals of Minnesota, 1984).

Key Facts: The plaintiff in this case is Duane M. Freier. The defendant is the Independent School District No. 147. Freier, a physical education teacher at Pilot Knob Elementary School in the Independent School District No. 147, was dismissed by the District for the improper touching of students and for insubordination. Prior to Freier’s dismissal, the Superintendent of the School District sent a letter to Freier acknowledging a complaint against him. The letter warned him against future instances of the same violations while also providing steps in how to adequately
discipline children. However, the School Board believed and had evidence to the contrary that Freier’s inappropriate actions continued. Therefore, the School Board took steps to dismiss Freier for repeated violations of School Board policy, deeming those violations as insubordination. After finalizing its investigation of Freier, the School Board published the findings of its investigation in accordance with Minnesota State law. Plaintiff brought suit for wrongful termination and that the School Board members were guilty of defamation of character and intentional infliction of emotional distress.

A hearing examiner ruled against the School Board in favor of Freier on both charges of termination. The School Board dismissed the recommendation of the hearing examiner and proceeded with its intent to dismiss Freier for the aforementioned reasons. In October of 1981, the School Board’s termination of Freier was overturned in the Dakota County District Court. That same Court reinstated Freier with back pay. A year later, the Minnesota Supreme Court affirmed the lower court’s decision on both of the charges of wrongful termination and defamation of character.

Issue: At issue in this case is whether a School Board has an obligation to publish a decision on personnel as required by Minnesota statute 125.12.

Holding: The Minnesota Supreme Court found that the School Board was protected by an absolute privilege to publish the written decisions to dismiss the teacher. The Board has an obligation to state law to publish all matters pertinent to a teacher dismissal. The written decisions are a matter of public record. The same Court found that the School Board followed all established policies in providing and conducting a hearing for Freier.

Reasoning: The school board members were guided by Minnesota Statute 125.12 in publishing the decision made to discharge Freier. Minnesota Statute 125.12 renders cases under
the law as quasi-judicial in nature. Therefore, quasi-judicial cases grant immunity to those that
are granted the authority to discharge a teacher. Regardless, of the fact that the communication is
thought to be defamatory or contain false information. School board members have immunity
from such legal matters. This also pertains to statements and any other testimony or written
material that pertains to a teacher dismissal.

Disposition: The Minnesota Supreme Court reversed the decision of the lower court in
respect to the charges of defamation of character.

Citation: Shirley Roberts v. Lincoln County School District Number One, 676 A.d.2d 577,

Key Facts: The plaintiff in this case was Shirley Roberts. The defendant was the member
of the Board of Education of Lincoln County School District Number One. Plaintiff was
employed with the defendant in 1977 as a physical education teacher and the high school girls’
basketball and volleyball coach. During the second and third year of employment, the plaintiff
had difficulties with his coaching responsibilities. The plaintiff also had issues within his
physical education classes. At the end of the third year, the Superintendent and principal made
the decision to non-renew the plaintiff’s contract. The plaintiff was informed that he was an
initial contract teacher and that he had no right to a hearing to challenge the non-renewal but that
he did have the right to a hearing to challenge his constitutional right to a due process hearing.
The plaintiff asked for a hearing, which was held in front of an independent hearing examiner.
The examiner heard the facts of the case and passed the information along to the School Board.
The School Board voted not to renew the plaintiff’s contract. The plaintiff appealed the Board’s
decision to a local District Court on the basis that the defendant breached their contract and in
the process violated the plaintiff’s federal civil rights.
Issue: There are three legal issues in this case. 1) Was the School Board decision to non-renew contract arbitrary or capricious? 2) Did the School Board violate its policies, which constituted a breach of contract? 3) Is the non-renewal of an initial contract a violation of constitutionally protected rights?

Holding: The Supreme Court of Wyoming held the following: 1) The initial contract teacher had no statutory right to reasons for termination, to a hearing, or a chain entitlement or reasonable right under state law. 2) Even if evaluation procedures would have been conducted according to policy the plaintiff could not have been protected against arbitrary or capricious discharge. 3) Good policy evaluations did not entitle teachers to continued employment. 4) Policy of evaluation did not function to provide teacher with a contractual right of employment. 5) The teacher did not meet burden of proof that termination was caused by impermissible reasons nor was her constitutionally protected rights violated.

Reasoning: Defendants non-renewal of plaintiff’s contract was not a violation of District manual or policy evaluation as plaintiff was an initial contract teacher and such a status is not entitled to a reason for non-renewal of contract. The only statutory requirement that the School Board must follow was that the teacher was entitled to be informed by of the decision to non-renew contract by March 15th. This was done according to policy.

It was established in District Court by the plaintiff that the defendant did not follow evaluation procedures according to policy. She was entitled to four evaluations instead of one. Regardless, the plaintiff is an initial contract teacher and thus non-renewal of contract was not entitled to sufficient reasoning. There was no evidence discovered that revealed that defendants non-renewal of contract was tied to a constitutionally protected right. The Court reasoned that
the burden of proof on proving a violation of a constitutional right is placed upon the person that feels violated. *Schmidt v. Fremont County* (406 F.Supp. 781, Wyoming, 1976)

Disposition: The Supreme Court of Wyoming affirmed the decision of the lower court.

1985


Key Facts: Plaintiff in this case was Joan M. Braught. Defendant in this case was the Board of Education of Mount Prospect School District No. 57, and Earl L. Sutten, Superintendent and the Illinois Corporation of Employee Benefits Claims, Inc. Plaintiff filed action in Circuit Court of Cook County, Illinois on the basis that defendant breached an employment contract between the two parties. In her action, plaintiff filed eight different claims against the defendant. In July of 1982, plaintiff received her teaching assignment for the 1982-1983 school year. Plaintiff began teaching with the District in 1964. In August of 1982, plaintiff offered her resignation to the District. Three weeks later on September 17, 1982, she withdrew her resignation and advised defendant that she was ready to return to work. Subsequently, defendant chose not to assign teaching duties for the 1982-1983 school year. Count one of plaintiffs action sought an order requiring defendant to return plaintiff to her full-time petition as a classroom teacher.

In April of 1983, defendant sought to strike the action and claims against them. Defendant claims that the 1982-1983 school year began on August 27, 1982, and that plaintiff’s
resignation required the Superintendent to immediately replace her with a replacement teacher under a full year contract. On September 20, 1982, defendant acted upon and approved plaintiff’s resignation. It is noted that plaintiff informed defendant on September 17, 1982 of her desire to withdraw resignation. This was 3 days before defendant’s board action on the date of September 20, 1983. On August 4, 1983, the trial court granted defendants motion to strike and dismiss as their finding that plaintiff’s letter of resignation was effective on the date that it was written. Plaintiff appealed the lower court’s ruling to the Appellate Court of Illinois, First District, Third Division.

Issue: At issue in this case is whether the Board of Education properly accepted plaintiff’s resignation in hiring a replacement teacher.

Holding: The Appellate Court held that the Board of Education’s acceptance of Superintendent’s hiring of replacement teacher constituted Board’s implied acceptance of teacher’s resignation.

Reasoning: Board addressed plaintiff’s complaint that her termination was not valid due to the provisions set forth in the Illinois School Code, §24-14. The language in that statute provides that a teacher can only terminate their service with a School District once inside of 60 days of a school year unless the Board votes to accept it. However, the Court found language in 78 C.J.S. School and School Districts, §206 (1952), which states that acceptance of a teacher’s resignation may be implied as an acceptance through the appointment of another person. The Board concluded in its reasoning in referencing Tyska v. Board (453 N.E.2d 1344, 1982) which states that the legislature has empowered a School Board to exercise certain functions and the courts will not interfere unless the Board abuses its discretion due to reasons that are arbitrary, unreasonable, or capricious. The Court found none in this case.
Disposition: The Appellate Court of Illinois, First District, Third Division, affirms the decision of the Cook County, Circuit Court.


Key Facts: The plaintiff in this case was the Tax Deferred Annuities Corporation (TDA). The defendant in this case was the Cleveland Board of Education of Ohio. Plaintiff provided a tax-sheltered annuity program to the employees of the Cleveland School District. The Board imposed two processing fees and a 60-day waiting period on the allowance of employees to change insurance companies. Initially, TDA made claims concerning an alleged civil rights violation and an inappropriate agreement for salary modification. However, TDA later dismissed these claims. TDA entered suit seeking declaratory relief and a refund of $4500.00 for the processing fee for which it paid the Board. The processing fee is what the Board charged for operating a computer service program which was required to operate the program. Plaintiff and defendant sought summary judgment and the Court of Common Pleas ruled in favor of the Board of Education.

Issue: At issue in this case is whether the Board had the authority to levy administrative costs and to establish a waiting period.

Holding: The Court held that the Board acted within their statutory authority to establish a processing fee and a 60-day waiting period.

Reasoning: In referring to the Internal Revenue Code of 1954, Revised Code 9.90, the Board deemed that processing claims and the performance of other administrative services is an essential element to providing insurance coverage for personnel. Therefore, the Court ordered that the School Board maintained the authority to administer a processing fee as part of their
right to enforce administrative services. Additionally, the request of a 60-day waiting period was found to be permissible as it was termed by the Court as the “administrative ease” of the Board.

Disposition: The Court of Appeals of Ohio, Eighth District, Cuyahoga County, affirmed the decision of the Court of Appeals of Cuyahoga County.


Key Facts: The plaintiff in this case was Don Vilelle, a certified permanent teacher of the Reorganized School District, No. R-1 of Benton County, Missouri. The defendant in this case was the Reorganized School District No. R-1 of Benton County, Missouri.

Plaintiff began employment with the School District in 1972. He successfully gained tenure and worked with the same school district thru the 1981-1982 school year. Prior to the start of the 1981-1982 school year, the District offered to reemploy plaintiff but without a contract and at the same rate of pay as he was paid for the 1980-1981 school year. Plaintiff had not signed a contract since the beginning of the 1979-1980 school year. During the time that plaintiff’s pay was frozen, all others received pay increases applicable to the District’s salary schedule. Plaintiff contends that his salary was frozen, that he never agreed to accept lower pay than what the salary schedule called for, and that, in essence, he was demoted and subsequently denied rights that should be extended to one under the Missouri Teacher Tenure Act, §168.112 to 168.118. Plaintiff brought suit against defendant in the Thirteenth Judicial Circuit Court of Benton County, and the Court ruled in favor of the School Board.

Issue: At issue in this case is whether the School Board abused its discretionary authority in demoting plaintiff with loss of pay.
Holding: The Court found that the Circuit Court erred in its ruling, finding that plaintiff is a permanent teacher as specified under the Missouri Teacher Tenure Act and that the defendant essentially demoted plaintiff for three consecutive years and in doing so failed to comply with its statutory obligation.

Reasoning: A School Board in Missouri is bound by statute to pay all teachers the same per the classification that they fall under within their local School Board policy. If a Board gives the members of a class an upward or lower change in pay then all other members of the same class must be offered the same privilege. The Court felt that the Board could not terminate plaintiff due to the fact that he enjoyed teacher status. Therefore, it was their belief that freezing plaintiff’s pay would cause him to quit and move on. In freezing plaintiff’s pay, the Board effectively demoted him. The Court referred to the Michigan case of *Le Galley v. Bronson* (1983), where a similar situation occurred when the School Board chose to freeze a teacher’s salary in hopes that he would step down. The Michigan Court of Appeals ruled against the Board in that they abused their authority in doing so. The Court reasoned that in Missouri a teacher gains status after 5 years of continued employment. The Board should have terminated a teacher prior to gaining tenure if they were not satisfied with his teaching performance.

Disposition: The Missouri Court of Appeals, Western District, remanded the decision to the trial court with instructions to pay plaintiff salary lost for the 1981-1982, 1982-1983, and 1983-1984 school year, plus interest.


Key Facts: The plaintiff in this case was Anthony Pavadore a school custodian for the School Committee of Canton. The defendant in this case was the Board of Education for the
School Committee of Canton. Plaintiff brought suit in the Superior Court, Norfolk County, Massachusetts on grounds that the School Committee failed to provide him with the appropriate hearing appeal process in challenging his termination. The lower Court ruled in favor of defendant in dismissing summary judgment requested by plaintiff.

Plaintiff was terminated by defendant for insubordination that was related to his repeated action of leaving work early. Once informed of his termination, plaintiff repeatedly requested an opportunity to utilize an appeal process to challenge the termination. The School Committee denied his request in determining that plaintiff was an “at will” employee.

Issue: At issue in this case is whether plaintiff is entitled to invoke the appeal process as provided in the policies of the School Committee of Canton known as “Rules and Regulations of the School Committee of Canton.”

Holding: The Supreme Court held that the School Committee failed to allow plaintiff the opportunity to invoke the appeal process as outlined in their policy.

Reasoning: The Appeals Court reasoned several things in making their decision. A School Committee may adopt reasonable rules and regulations for the matters under its charge (Leonard v. School Committee of Springfield (135 N.E. 259, 1922)). Plaintiff contends that he was not aware of these regulations at time of employment with District.

The policies of the School Committee set forth substantive grounds for termination. The policy states that an employee has the right to appeal in four specific steps. 1) The employee must discuss the matter with their immediate supervisor. 2) Employee must meet with the Superintendent of the District. 3) Presentation of a letter to School Committee indentifying their grievance. 4) A request for a meeting with the School Committee. Plaintiff’s request for the
implementation of this process was denied. It is the belief of the appellate court that the appeals process outlined in the School Committee’s policy manual cannot be circumvented.

In addressing defendant’s contention that plaintiff was not entitled to the appeals process due to his ignorance or lack of knowledge, the Appeals Court referenced several previous cases. In *Nawn* (1976) the Appeals Court held that civil service employees are bound by all relevant provisions when employed regardless of their knowledge of such. The Supreme Judicial Court in a similar case ruled that a utility company’s regulations are binding on their customers regardless of the fact that they may or may not have actual notice of them. Finally, in *Niles* (1978), the Court of Appeals held that a legislative grant of power is binding on an agency for which the power has been conferred upon.

Disposition: The Appeals Court of Massachusetts, Norfolk reversed the judgment of the lower court and remanded the case back to them for further proceedings pertinent to their findings.


Key Facts: The plaintiff in this case was Constance Evans, a tenured teacher with the Benjamin School District, No. 25. The defendant in this case was the members of the Board of Education of the Benjamin School District, No. 25. Plaintiff brought action against School Board seeking mandamus action for wrongful termination. The 18th Circuit Court, DuPage County entered a summary judgment in favor of plaintiff. The School Board appealed the case to the Appellate Court of Illinois Second Division. The Circuit Court directed that plaintiff be reinstated and awarded back pay with interest.
Plaintiff was a certified teacher for elementary grades in the State of Illinois. Plaintiff worked for defendant and remained employed with them through the year of 1982. In the span of 3 years, plaintiff was only employed full time for the 1974-1975 and the 1981-1982 school years. In all other years, plaintiff was employed at five-tenths of a full salary. On March 18, 1975, the defendant voted to give tenure status to plaintiff. Several years later in 1982, the same Board voted to rescind its earlier action by rescinding their previous action based on their contention that the earlier action was a violation of §24-12 of the Illinois School Code. Their contention was based on their belief that the previous Board had made such decisions without authority to do so. On March 1, 1982, the Board terminated plaintiff, noting that she was considered a first-year teacher, that she had no tenure rights and that the previous year’s work with the Board did not grant her any rights as such. The lower court ruled in favor of the teacher citing that her termination was invalid and that she be reinstated. The Board appealed on their contention that the authority extended to grant tenure was erroneous based on their understanding of §24-12 of the Illinois School Code.

Issue: At issue in this case is whether a School Board is authorized to grant tenure status to a part-time teacher who has not met the service requirement of §24-12 of the Illinois School Code.

Holding: The Appellate Court held that the lower court erred in their ruling that plaintiff was entitled to summary judgment and subsequently awarded summary judgment to the School Board.

Reasoning: The Court concluded that the Illinois legislature determines the basis for which tenure may be granted. Neither the Courts nor School Boards possess the authority to do such. The Illinois School Code only authorizes a School Board to appoint or terminate teachers
and nothing else. §24-11 of the Illinois School Code lays the provisions for which tenure status can be gained. The Court reasons that plaintiff did not meet the conditions of §24-11 as she did not meet the mandatory requirement of being sufficiently employed for two probationary periods in succession while also being re-employed for a third consecutive year. The Court did not concur with plaintiff in her contention that she received tenure status due to her longstanding number of hours devoted to the School District. The present School Board was within their right to resolve the decision to award tenure status to plaintiff due to the fact that the previous Board did not have the authority to do so.

Disposition: The Appellate Court of Illinois, Second District, reversed and remanded with directions the decision of the lower court.


Key Facts: The plaintiff in this case was Eileen Cahill a tenured teacher with the Stanford City Board of Education. The defendant in this case was the Board of Education for the City of Stanford. The plaintiff was a former tenured teacher with the Stanford Board of Education. The plaintiff requested and received approval for a sabbatical for the 1969-1970 school year. Plaintiff has had problems with classroom discipline, inability to offer appropriate classroom teaching and techniques, and she had a strained relationship with the school administration. The intent of the sabbatical was for her to attend professional development courses that are geared toward strengthening her weakness in the aforementioned areas. Plaintiff’s teaching area is science and she pursued professional development in the area of library media. Defendant cites this as immoral and unethical conduct and perhaps even fraud and defines this activity as a form of insubordination, which they deemed as grounds for termination.
Upon plaintiffs return from sabbatical, she and the School Board were unable to find a suitable teaching position for the 1970-1971 school year. During that entire year, plaintiff and defendant had non-constructive negotiations. Subsequently, plaintiff filed suit in March of 1971. The case went to trial in 1980. The Court only ruled on plaintiffs counts of one, two, and four. The Court did not rule on a third but important count of plaintiff’s contention of wrongdoing on the part of the Board. The Court in the earlier case ruled in favor of the plaintiff and awarded her $24,000.00 in damages, which was approximately half of her salary, plus interest.

The Board terminated plaintiffs teaching contract on August 3, 1971. After her 1971 action to dispute termination was non-suited, she again filed another action in 1975 to specifically challenge the denial of count three. It took years for the case to move through the Court System. In April of 1984, defendant moved for summary judgment on count three.

Plaintiff filed suit in March of 1971 in order to receive a decision which ordered the School Board to place her back into a teaching position. In plaintiff’s initial suit, the action was devoid of count three. By way of an amendment to the suit in 1972, the third count was added. Again, in 1974, plaintiff’s action was non-suited again. Plaintiff brought action again in 1975. The action contained all four counts. The case did not go to trial until 1980. At that time, the trial judge dismissed the third count. The trial court awarded decision to teacher which effectively gave her reinstatement, back pay, and damages. As of April 1984, count three was still on the trial list. The defendants moved for summary judgment to have the action dismissed. The motion was denied. Plaintiff’s contention in count three is that defendant libeled and slandered her by not providing and honoring the requirement of the State Tenure Act in Connecticut General Statute.

Issue: At issue in this case was did the school board wrongfully terminate Cahill?
Holding: The Connecticut Supreme Court held that the School Board did not wrongfully terminate Cahill.

Reasoning: The Court reasoned that plaintiff’s assertion on count three was not sufficient on two accounts. First, the court found that plaintiff did not follow statutory requirement which demands that plaintiff must request a hearing to challenge termination. Plaintiff did not request a hearing in order to challenge the claims that led to her termination within the prescribed time period. Second, the Court felt that plaintiff’s challenge that she had been libeled and slandered was weak. It is the burden of the pleader to submit the appropriate material when making such a claim against the defendant. Plaintiff failed to submit an adequate charge against defendant in this case.

Disposition: The Supreme Court of Connecticut found no error in the decision of the Superior Court Judicial District of Fairfield to award defendant’s motion for dismissal.

1986

Citation: Maurice Bell v. Board of Education of the City of St. Louis, 711 S.W.2d 950, 33 Ed. Law Rep. 910 (1986).

Key Facts: The plaintiff in this case was Maurice Bell. The defendant in this case were the members of the Board of Education for the City of St. Louis. During the 1983-1984 school year during which plaintiff was principal, he approved for the sixth grade class to take a field trip to a local destination known as Meramec Caverns. In preparation for the trip, the plaintiff met with a sixth grade teacher to discuss specifics for the trip. The teacher showed the plaintiff a brochure of the location and the brochure displayed water activity at the desired field trip location. At this time, plaintiff informed teacher that no water activities would be allowed on the
trip. During the trip, a sixth grade student drowned. Upon completion of the incident the Board suspended plaintiff for 6 months. The plaintiff brought action in the local Circuit Court of St. Louis that Board’s punishment was excessive. The trial court awarded judgment to the Board and plaintiff appealed.

Issue: At issue in this case is whether the School Board’s punishment was excessive.

Holding: The Court of Appeals held that 1) substantial evidence revealed that principal violated “reasonable precautionary measures” to prevent accidents, 2) evidence from investigation revealed that plaintiff did not follow Board policy in requiring parental written consent prior to taking field trip, and 3) board was within its authority to punish principal from more than fifteen months to the final decision of 6 months.

Reasoning: The Court addressed the fact that the defendant broke Board policy. The Court agreed with the Board’s decision that the plaintiff should have taken preventive cautionary measures to prevent accidents from happening. It was customary for the plaintiff to conduct several meetings prior to the class departure for the field trip. It was also customary for the principal to observe and monitor the loading of students prior to the field trip. As well, it was customary for the principal to administer and secure a Student Consent Form which requires parental completion of the form. At the beginning of each school year, the principal did execute the implementation of a general student consent form that all students in the school completed. However, it was customary for the principal to secure additional consent forms for specific events and activities that occur during the school year. The Court found that on the trip in question, the principal did know of these things. Therefore, the Court agreed with the School Board’s contention that the principal did not take reasonable precautionary measure.
Plaintiff contends that Board failed to follow the procedures provided within Missouri Law §168.221 RSMO 1978. In this law, the Superintendent of a School District is required to notify a principal at least one semester before formal charges are presented and assessed. The Court disagreed, citing that plaintiff’s suspension was permissible due to a failure to follow board policy and non-inefficiency in the line of duty.

Disposition: The Missouri Court of Appeals, Eastern District Division Four affirmed the decision of the Circuit Court, County of St. Louis.

Citation: Greater Clark County School Corporation v. Robert F. Myers, 493 N.E.2d 1267, 32 Ed. Law Rep. 1297 (1986).

Key Facts: The plaintiff in this case was the Greater Clark County School Corporation. The defendant in this case was Robert F. Myers. Plaintiff was a permanent teacher employed by the Clark County School Corporation as an Assistant Superintendent for Auxiliary Services. Plaintiff contends that he was wrongfully terminated by Board, which caused breach of contract. The contention of wrongful termination was based on the fact that the Board terminated him without first obtaining the recommendation of the Superintendent as required by Indiana Code 20-6.1-4-11. The First District Court of Appeals determined that the School Board wrongfully terminated Myers without the appropriate recommendation from the Superintendent. The First District reversed the decision and remanded the case to the trial court for determination of damages suffered. The trial court after receiving the remanded case admitted new evidence by Myers, which included evidence provided on perceived damages and subsequently awarded damages to Myers totaling $104,694.19, plus interest and costs. The School Board appealed the decision to the Fourth District.
Issue: At issue in this case is whether the School Board committed a breach of contract with the termination of Myers.

Holding: The Court of Appeals held that the Board’s termination of Myers was an illegal act and breach of contract and thus damages were appropriate.

Reasoning: The Court reasoned that the School Board did not follow Indiana statute which required that the Superintendent must make the recommendation for termination. In failing to do so, the School Board lacked the authority to terminate Myers and thus they were in error for breach of contract. The Court also reasoned that damages for Myers were appropriate based on the following: damages awarded for the salary that Myers would have earned until the end of contract, loss of retirement income, loss of health and life insurance premium, severance pay, and other costs.

Disposition: The Court of Appeals of Indiana, Fourth District, affirmed the trial court’s ruling that the appropriate evidence was presented to award damages and such damages were not excessive.

Citation: Lewis Bishop and Ronald Thompson v. Iowa State Board of Public Instruction, Iowa State Department of Public Instruction, and Valley Community School District, 395 N.W.2d 888, 35 Ed. Law Rep. 784 (1986).

Key Facts: The plaintiff in this case was Lewis Bishop and Ronald Thompson. The defendant in this case was the Iowa State Board of Public Instruction (BPI), the State Department of Instructional Education, and the Board of Education of the Valley Community School District. Plaintiff initially petitioned for a judicial review by BPI in their decision that the Valley Community School District Board of Education abused its authority in paying the legal expenses for Superintendent, Richard Burmeister. Acting on behalf of the Board, Burmeister, temporarily
suspended five teachers for an alleged drinking incident. On March 31, 1983, the Valley Educational Association filed a complaint on Burmeister with the Iowa Teaching Practices Commission alleging that he had conducted unprofessional teaching practices in handling the situation with the five teachers that he suspended. The School Board paid $6374.10 in legal expenses on behalf of Burmeister. On March 6, 1984, Bishop and Thompson filed a joint affidavit of appeal to the BPI challenging the Board’s expenditure on behalf of Burmeister. BPI conducted a hearing and ruled that the School Board did not abuse its authority. Bishop petitioned BPI’s decision for judicial review in District Court, asserting that BPI’s decision was in error of Iowa law, Iowa Code, §17A.19(8)(e). The District Court agreed with BPI’s decision that the School Board had authority to pay legal fees on Burmeister’s behalf but remanded the case back to BPI due to the fact that their record of such a belief was inadequate. Bishop appealed the decision and BPI appealed the remand decision of the District Court on the grounds that Bishop lacked standing. The Supreme Court determined that Bishop had standing and took Bishop’s contention on appeal.

Issue: At issue in this case is whether the Valley Community School District Board of Education had the authority to pay the legal expenses for the Superintendent, Richard Burmeister.

Holding: The Supreme Court of Iowa held that School Boards had authority to employ counsel for Superintendent in his defense against allegations that he used unprofessional practices which resulted from his actions in disciplining five teachers on behalf of School Board.

Reasoning: Iowa Code, §279.3 (1983) provides that a “school corporation may employ an attorney to represent the school corporation as necessary for the proper conduct of the legal affairs of the school corporation”. Plaintiff contends that the Iowa statute only employs an
attorney to be employed for the School Board interests and not its administration. Though Iowa statute does not expressly mention school administration, the Court construes evidence that reveals otherwise. §279.37 states that “where actions may be institutional by or against school officials to enforce a provision of law, the School Board may employ counsel for which the school corporation shall be liable”. The Iowa Courts have continued to allow the payment of legal expenses based on that assertion. Furthermore, a general rule which ties case law and statute together is that legal representation should be provided by the School Board to further a proper school purpose.

Disposition: The Supreme Court of Iowa affirmed the decision of the District Court, Polk County.


Key Facts: The plaintiff in this case was Burtram Johnson, the parent of a minor child (student) that attended Santa Monica High School. The defendant in this case was the Board of Education of Santa Monica-Malibu Unified School District. In the spring semester of 1984, the student was in jeopardy of failing a French class with a grade of “D.” The student approached the teacher of the course and asked to be dropped from the course and reassigned to another course. The teacher discouraged student from dropping course and implied that she would do things to better prepare the student for lessons and she would allow him to make-up examinations that he had previously failed. The student completed the course through the remainder of the semester and ultimately received a “D” in the course. When the plaintiff learned of the grade earned, he called the teacher and asked her to change the grade to a withdrawal (“W”). The teacher refused to change the grade. Plaintiff then asked for a meeting with the teacher, principal, and vice-
principal. Plaintiff’s request to have the grade changed was denied once again. The plaintiff then wrote to the Superintendent and asked that he reconsider his decision and review the California statute known as California Education Code 49070. The Superintendent then appointed a local individual, Dr. Leo Martucci, to investigate the circumstances surrounding the incident. After examining the provision of the Education Code, Dr. Martucci sought advice from a local legal counsel and subsequently recommended to the Superintendent that his interpretation of the Education Code dictated that the grade be changed from a “D” to a “W.”

When the teacher learned of the decision to change the grade, she was upset and requested the assistance of the Santa Monica-Malibu Teachers Association (Association) in representing her challenge to the Superintendent’s decision. A hearing was scheduled with the Board. In preparation for the hearing, the Association gathered 200 signatures on a petition that were secured from fellow staff members of the teacher at the school and a similar amount of signatures from fellow classmates of the student in question. At the conclusion of the hearing, the Board ruled that the changing of the grade was erroneously altered and determined that student’s grade would stand as a “D.” Plaintiff filed a motion for a peremptory writ in the Los Angeles Superior Court and the Court affirmed the Board’s decision. Plaintiff appealed the decision.

Issue: At issue in this case is whether the School Board maintained the authority to rescind or revoke the directive of the Superintendent to alter the grade.

Holding: The California Court of Appeals held that the Board possessed the authority to review, reconsider, reaffirm, rescind, or revoke any order made by the Superintendent that contradicted California law.
Reasoning: In referencing *Lacy v. Richmond* (530 P.2d 1377) and *Brill v. County of Los Angeles* (108 P.2d 443) the Court determined that the rule of statutory construction applies in this case where a special statute dealing expressly with a particular subject controls and has priority over one of general statute. In this case, the California Education Code had two different statutes which could have been applicable to the desire of plaintiff to have the grade changed. California Education Code 49070 allows school officials to change records of a non-grade nature. California Education Code 49066 has language that pertains to the changing of grades. §49066 is very restrictive in nature and severely limits the manner in which a grade may be changed and also identifies the procedure for changing grades, which requires that the teacher in question be involved in the process. The Court also found that §35160 of the California Education Code states that a school board has the authority to act in any manner to make decisions on actions taken by their personnel that are not consistent with state law. In this case, the Superintendent violated California law by incorrectly allowing the grade change for the student.

Disposition: The California Court of Appeals, Second District, Division 1, affirmed the decision of the Superior Court of Los Angeles County.

1987

Citation: *Joyce Jacobs v. Fremont RE-1 School District*, 737 P. 2d 816 (Colo. Sup. Ct., 1987).

Key Facts: The plaintiff in this case if Joyce Jacobs. The defendant in this case is the Board of Education of the Fremont RE-1 School District. School bus driver Joyce Jacobs brought an action for wrongful discharge against the School Board and Norman R. Lemons, Director of Business Affairs for the School District, as a result of the dismissal from her position
as school bus driver stemming from disciplinary actions Jacobs had taken on the bus. Undisputed facts in the record show that prior to the firing of Jacobs the Fremont Board of Education had adopted a policy for the discharge of classified personnel which included bus drivers like Jacobs and also secretaries, office clerks, bookkeepers, and maintenance employees. The policy, which was published in the employee handbook states that the school board has the authority to delegate authority to the superintendent of schools in order to terminate classified personnel. Further, the superintendent of schools may delegate this authority to the director of business affairs and/or director of personnel. Classified employees shall be employed for such time as the school district is in need, or desirous of the services of such employees. The duration of employment is unspecified and solely rests at the discretion of the school board.

Jacobs alleged that her firing was unlawful because the School Board could not delegate authority to the Director of Business Affairs to discharge her. The trial court disagreed and granted summary judgment for the School Board and Lemons appealed. The Colorado Court of Appeals reversed and concluded that the School Board could lawfully delegate the authority to dismiss bus drivers because the function was administrative or ministerial in nature and not legislative or judicial. However, it found that the delegation would be valid if it were accompanied by specific standards which left little or nothing to discretion for judgment of the school administrators. Since the question of adequate standards had not been resolved by the trial court, the Court found that summary judgment was inappropriate. The School Board and Lemons appealed to the Colorado Supreme Court.

Issue: At issue in this case is whether it is acceptable under state law for the School Board to delegate discharge of employment authority of a bus driver, a classified employee, to the Director of Business Affairs.
Holding: The discharge of a bus driver was an administrative function subject to delegation by the School Board and the standards that had been adopted by the School Board for discharge of classified employees were sufficient as a matter of law to allow delegation of authority to discharge.

Reasoning: The standards for discharge of classified employees that had been adopted by the school board stated that classified employees serve at the will of the School Board. One exception is that they could not be dismissed on account of their religious beliefs, marital status, ethnic background, gender, or their participation in community affairs which were sufficient to allow the School Board to delegate power to discharge to the Superintendent and other subordinate officers. None of these issues were apparent in the Board’s decision to terminate Jacobs.

Disposition: The Supreme Court of Colorado, en banc, affirmed in part, reversed in part, and remanded.


Key Facts: The plaintiff in this case was Carol Spinelli, a teacher for the Immanuel Evangelical Congregation, Inc. The defendant was the Immanuel Lutheran Evangelical Congregation, Inc. The defendant operated a Christian School in Crystal Lake, Illinois. Plaintiff was a teacher at the school. Plaintiff worked for the defendant for the years of 1980-84. Prior to the 1984-85 school year, the defendant terminated plaintiff’s contract due to the fact that they had received negative letters from parents and students. These letters were in her personnel file as allowed in §2 of the Illinois Code (Ill.Rev.State, 1984, Supp., ch. 48, par. 20p2). Defendant
allowed plaintiff to view her file but withheld the letters in question, citing the confidentiality of her accusers. Plaintiff filed a motion asking for a motion that would compel the defendant to release the letters. The Circuit Court, McHenry County entered a summary judgment in favor of plaintiff. The School Board appealed. The appellate court ruled that the statute requiring disclosure was unconstitutional and the Attorney General was allowed to intervene and appeal.

Issue: There are four issues in this case. 1) Is the Illinois statute governing employee rights to view their personnel file constitutionally vague? 2) Does a School Board have the authority to suspend personnel for disciplinary reasons? 3) Does the Illinois statute governing dismissal of personnel also apply to suspension of personnel? 4) Did the suspended teacher’s receive their due process rights?

Holding: The Supreme Court of Illinois held that 1) statute authorizing employees to view matters in documents pertaining to their personnel file is unconstitutionally vague, 2) the School Board has the power to terminate personnel, and 3) the terminated teacher received her due process rights.

Reasoning: “Every employer shall permit the employee to inspect any personnel documents which are, have been, or are intended to be used in determining that employee’s qualifications for employment, promotion, transfer, additional compensation, discharge or other disciplinary action” (Ill.Rev.Stat., 1984 Supp., ch. 48, par. 2002). It is that language in that Illinois statute that allows school personnel in Illinois the right to view their file. There is no vagueness in this statute and the appellate court ruled incorrectly in deeming it so.

Disposition: The Supreme Court of Illinois affirmed in part, reversed in part, and remanded in part.

Key Facts: The plaintiff in this case was Lawerence E. Kamrath, an employee of the Board of Education of School District No. 150, Peoria County, Illinois. The defendant in this case was the Board of Education of School District No. 150, Peoria County, Illinois. Plaintiff had been an employee of the defendant for the years of 1967-1985. In February of 1985, the school administration for Kamrath’s school of employment met with him to address complaints that he used profanity in the classroom setting. In the meeting, Kamrath was shown copies of letters from students that accused him. The letters were devoid of student names or signatures. Kamrath subsequently admitted to the use of profanity. The Board suspended Kamrath without pay for five days and warned him that such future incidents would lead to his dismissal. Kamrath requested a hearing in front of an independent hearing officer and not the Board. The Board denied the request and scheduled a hearing. In preparation for the hearing, plaintiff’s attorney asked for the missing information of student signatures and names and his request was denied by the Board. After receiving the denial, plaintiff’s attorney asked for the written statements to be excluded. Three students testified at the hearing and authenticated their previously written statements. The Board ruled that Kamrath was to be suspended without pay for five days. Kamrath filed an action against the Board in Circuit Court. The Circuit Court, Peoria County, entered a judgment in favor of the School Board on issue of constitutionality of statute but in favor of teacher on issue of validity of suspension. The Attorney General was allowed to intervene and appeal on this order as well and subsequently appealed to the Illinois Supreme Court and consolidated the actions of both cases into one.
Issue: There were four issues in this case. 1) Is the Illinois statute governing employee rights to view their personnel file constitutionally vague? 2) Does a School Board have the authority to suspend personnel for disciplinary reasons? 3) Does the Illinois statute governing dismissal of personnel also apply to suspension of personnel? 4) Did the suspended teacher receive his due process rights?

Holding: The Supreme Court of Illinois held that 1) statute authorizing employees to view matters in documents pertaining to their personnel file is unconstitutionally vague, 2) the School Board has the power to suspend personnel for disciplinary reasons, 3) statute language that pertains to dismissal does not apply to suspension of personnel, and 4) the suspended teacher received his due process rights.

Reasoning: “Every employer shall permit the employee to inspect any personnel documents which are, have been, or are intended to be used in determining that employee’s qualifications for employment, promotion, transfer, additional compensation, discharge or other disciplinary action” (Ill.Rev.Stat., 1984 Supp., ch. 48, par. 2002). It is that language in that Illinois statute that allows school personnel in Illinois the right to view their file. There is no vagueness in this statute and the appellate court ruled incorrectly in deeming it so.

In determining if a School Board has authority to suspend personnel, the Court reasoned that in previous cases sent to the Illinois Supreme Court, the Court refused to address the authority of whether School Board’s indeed had statutory authority and assumed that they do have authority. However, two other appellate courts in Illinois have addressed this matter. In Craddock (391 N.E.2d 1059), the appellate court held that the term “dismissal” as used in §24-12 of the Illinois School Code, states that procedures set forth for the removal or dismissal of a tenured teacher, also includes suspensions. In the same year in Kearns (392 N.E.2d 148), the
appellate court determined that the power to suspend does exist according to §10-20.5 of the Illinois School Code, and that such language exists for the management and government of the public schools.

Disposition: The Supreme Court of Illinois affirmed in part, reversed in part, and remanded in part.


Key Facts: The plaintiff in this case was County of Winnebago Board of Education. The defendant in this case was Norma Davis, Food Service Director for Lincoln Middle School. Davis was found to be in violation of various health code violations for the inappropriate management of the Lincoln Middle School cafeteria. The violations include the following: 1) failure to keep food stored at the required temperature, 2) failure to protect against backflow and back-siphonage due to improperly installed equipment, and 3) failure to provide a dishwasher capable of maintaining the correct temperature. The School Board filed a complaint against Davis for the aforementioned violations in a local trial court. Davis contends that the local School Board and local health boards do not have the authority to regulate the sanitation of school facilities. Davis points to the Illinois School Code (Ill.Rev.Stat. 1985, ch. 122, par. 2-3.(12) that specifies that building regulations are entrusted to the State Board of Education and not the local Board of Education. The trial court disagreed and ruled in favor of the School Board. Davis appealed the decision.

Issue: At issue in this case is whether a local Board of Education in Illinois has the authority to govern health sanitary services for school cafeterias in the State of Illinois.
Holding: The Appellate Court of Illinois, Second District, held that the local county health departments had the authority to manage health sanitation services for cafeteria’s not the State Board of Education or the local board of education.

Reasoning: The Court reasoned that under accepted and established rules of statutory construction, the more specific provisions of state statutes prevail over the more general ones in cases where there is conflict (Board of Education v. Carter, 1983). In respect to public school boards, the Court reasoned that the authority to regulate sanitation is specifically tied to the construction of building sanitation services and not to the condition of the sanitation services as provided for the staff and students. In examining the various sections of the Illinois School Code, the Court could not locate any provision that specifically addresses food services and authority extended to public school boards. Most of the language that is provided is broad and general and deals mainly with the school plant and school construction. Meaning that school boards have the authority to make certain that facilities must be constructed adequately and in a specific manner in order to meet building code requirements. However, once the facilities are constructed, the management of the day to day operation of the facilities is left to the county health departments who have expertise in such areas.

Disposition: The Appellate Court, Illinois, Second Division, affirmed the decision of the Winnebago Circuit Court.


Key Facts: The plaintiffs in this case were the members of the Board of Education of Lake Washington School District No. 414. The defendant in this case was the Lake Washington
Education Association and the State of Washington Education Association. As defendants, they represent Sandra LaBelle and Gail Novito, who were part-time employees for the School Board. The plaintiff entered suit in the Superior Court, King County seeking a review of an arbitration decision that awarded a judgment for the Board.

The School Board and the Lake Washington Education Association entered into a collective bargaining agreement beginning in the year of 1983. Within the agreement are provisions that specify procedures for the transfer of personnel within the system. There are several steps in the transfer provision that address specific areas for Board personnel.

In the year of 1984, Sandra LaBelle and Gail Novito worked as part-time teachers for the Board. Both individuals requested and made application for full-time positions for the 1984-1985 school year. The Board did not grant these requests and filled available full-time positions with other personnel. Subsequently, LaBelle and Novito filed grievances which resulted in arbitration. The grievances and arbitration were consolidated and a hearing was held soon after. At the hearing, the Board stated that the collective bargaining agreement contained no provision that required part-time personnel to transfer into full-time positions. The arbitrator did not agree and specified that since there were no provisions that denied a transfer from part-time to full-time, LaBelle and Novito had the right to transfer from part-time to full-time and they had seniority over the personnel who were employed for the full-time positions. The arbitrator ordered the Board to appoint the two individuals to full-time positions for the 1985-1986 school year and also awarded the personnel to be awarded reimbursement for salary loss and benefits.

The Board followed up the arbitration ruling with an action filed in the local King County Circuit Court. In their action, they asked for the Court to vacate the arbitration award and to void the provisions of the collective bargaining agreement. The Court ultimately ruled that the
arbitration ruling was reasonable but that it lacked jurisdiction over the matter and that the matter should not have been presented to arbitration. The Court reasoned that the Board had sole discretion as to the placement of the two personnel and that following the language of the arbitration was an issue where the Board was delegating authority that it did not possess. LaBelle and Novito and the local education association appealed the decision.

Issue: At issue in this case is whether the transfer provisions of the collective bargaining agreement were an unlawful delegation of School Board authority.

Holding: The Supreme Court of Washington held that the provisions of the collective bargaining agreement were not an unlawful delegation of the collective bargaining agreement.

Reasoning: The Court cited the Washington case of Noe v. Edmonds School District (1973) where the Court ruled that a statute confers only those functions as expressly authorized to be delegated by the statute. There is no statute that gives provisions that allows part-time personnel to be placed in full-time positions. A School Board enjoys the privilege of doing so as part of non-delegable authority under Washington state statutes RCW 28A.58.099 and RCW 28A.67.070. Those two statutes explicitly confer the authority upon School Boards to employ teachers. The Court deems the language in these statutes to be a non-delegable prerogative of a School Board. The Court also reasoned that part-time employees enjoy the same rights when transferred from part-time to full-time status and that their contracts should reveal the same. Finally, the Court acknowledges that a School Board has an obligation to its constituency to do what is in the best interest of its students and that a collective bargaining agreement should not and cannot interfere with such an obligation. However, in this situation the collective bargaining agreement was not in error and the Board had the authority to agree to the provisions of the agreement as established.
Disposition: The Supreme Court of Washington reversed the decision of the Superior Court, King County and reinstated the arbitration award on behalf of Sandra LaBelle and Gail Novito.


Key Facts: The plaintiff in this case was the Proviso Council of West Suburban Teachers Union as they represent John Spaulding, a union member. The defendant in this case was the Board of Education for the Proviso Township High Schools, District 209, Cook County, Illinois. Plaintiff contends that the Board breached a collective bargaining agreement by dismissing a tenured teacher rather than another tenured teacher who had equal seniority. The Board claims that the decision was part of a plan for reduction in staff due to the fact that the School District was experiencing declining enrollment. Plaintiffs contend that the procedure utilized by the Board did not meet the requirements of their collective bargaining agreement.

Spaulding and Robert Kruse were employed by the Board for the 1972-1973 school year. Kruse was initially employed and assigned as a physical education teacher, where he remained for four years. For the 1976-1977 school year, he was assigned to the social studies department. Spaulding was assigned to the social studies department from the outset of his employment with the Board. The record shows that Kruse had a good record of attendance and taught a full load of courses each year. For the 1979-1980 school year, Spaulding was granted disability leave and when he returned, his teaching load was modified as he was given, as requested, five study halls and only one teaching assignment in the social studies department. Prior to the 1981-1982 school
year, the Superintendent recommended a reduction in staff and in that plan, Kruse was retained with the note that he possessed “crossover” capabilities as a physical education teacher. The Board advised Spaulding of its decision to terminate and he filed a grievance. The Superintendent denied him the opportunity to present his grievance and instead sent a letter supporting his decision to retain Kruse due to his versatility while also praising Spaulding and his abilities and service to the Board. The trial court upheld the School Board’s decision and plaintiff appealed the decision.

Issue: There are two issues for review in this case. 1) Was the School Board’s termination subject to arbitration under the collective bargaining agreement and Illinois law? 2) Did the Board breach the collective bargaining agreement in reaffirming its decision from an earlier decision after receiving an arbitration ruling that awarded judgment to the plaintiff in this case?

Holding: The appellate court held that the Board’s decision was not subject to binding arbitration under the collective bargaining agreement due to the fact that the Board followed all other procedures as outlined in the collective bargaining agreement.

Reasoning: The Court reasoned that the Illinois Code is very precise in determining the procedure for how a School Board must choose between two tenured teachers, when the decision has been made to terminate one of the two. The Illinois Code specifies that the teacher with the shorter time of continuing service shall be dismissed first unless the District’s collective bargaining agreement specifies an alternative method of determining the sequence of dismissal. The collective bargaining agreement for the School District did provide an alternative method of sequence of dismissal. The agreement provides that in the event of reduction in staff of teachers, the rule of district seniority shall prevail with the employee who has the most seniority within the defined subject area. Should the two teachers still share the same level of seniority, the
Superintendent shall pick the teacher with the best qualifications. The Board, in a similar case of *Board of Trustees of Junior College District No. 508 v. Cook County College Teachers Union, Local 1600* (1976), held that local school boards retain the complete power and authority to transfer a teacher to any position which the teacher is qualified to fill and to reduce teaching staff through lay-offs whenever it is economically necessary in the Board’s judgment. Also, in the same case, it was determined that School Board’s are exempt from arbitration in matters of determining seniority due to the fact that School Board members retain a level of educational expertise that cannot be challenged. Finally, the Court reasoned that even though the Board agrees to follow certain procedural limitations in making its decision, the act of determining qualification cannot be subjected to binding arbitration due to the fact that the Board retains the right of ultimate discretion in determining the qualifications of its teachers.

Disposition: The Appellate Court of Illinois, First District, First Division affirmed the decision of the Circuit Court, Cook County.

Citation: *Sioux City Community School District v. Iowa State Board of Public Instruction*, 402 N.W.2d 739, 38 Ed. Law Rep. 754 (1987).

Key Facts: The plaintiffs in this case were the members of the Board of Education for the Sioux City Community School District. The defendant in this case was the Iowa State Board of Public Instruction. In 1983, a committee comprised of representatives of the Sioux City Community School District, including personnel and members of the collective bargaining team, convened to discuss things pertinent to the District’s group insurance plan, especially the rising costs associated with their current plan. The committee met and discussed potential health benefit plans and companies that provide such services. The committee also advertised and accepted bids. The eventual low bidder was the Wisconsin Education Association Insurance
Trust (WEAIT). On November 8, 1983, the School Board voted to award an 18-month contract with WEAIT. The School District’s former insurance carrier and one of the low bidders also rejected appealed the decision of the School Board to the Iowa State Board of Public Instruction (BPI). The carrier’s contention is that WEAIT is not a viable health insurance benefit company under Iowa Code statute section 509A.6 (1983). Approximately 5 months after the disputing insurance carrier filed an appeal, the Iowa State Education Association (ISEA) attempted to intervene on behalf of the School Board. The BPI would not allow ISEA intervener status but did allow them to file a brief on the Board’s behalf.

A hearing was held by the BPI in which it stated that the issue was one of law and not fact and that WEAIT lacked qualification to be a viable health benefit insurance company for the School Board. The School Board petitioned for judicial review and the District Court affirmed the decision of the BPI. The School Board appealed the decision to the Supreme Court of Iowa.

Issue: At issue in this case is whether there is limitation of authority upon the School Board to contract with WEAIT.

Holding: The Supreme Court of Iowa held that the School Board had no authority to contract with WEAIT due to the fact that WEAIT was not an insurance company that is covered under the scope of acceptable insurance organization as required by Iowa statute. Reasoning: The Court followed a similar ruling in *Casteel v. Iowa Department of Transportation* (1986), where it declared that the State of Iowa’s listing of specific entities that are approved for a public body to contract with must be enforced and that WEAIT does not meet the requirements of such an exclusive group. The Court surmised that during the appeal process with this current case, the United States Court of Appeals for the Eighth Circuit ruled that WEAIT is not an employee welfare benefit plan under Iowa statute. The Court further stated that an agency action will not
be reversed unless a party has been damaged in some way (*City of Des Moines v. Public Employment Relations Board*, 1979).

Disposition: The Supreme Court of Iowa affirmed the decision of the District Court, Woodbury County, in finding no assignment of error.


Key Facts: The plaintiff in this case was Jack Rouse. The defendant in this case was the members of the Board of Education of the Scottsdale Unified School District. Rouse, a special education teacher in the Scottsdale School District, was terminated by the School Board for unprofessional conduct for refusing to attend required meetings and failure to complete paperwork as required by the School District. Rouse requested a hearing before the School Board in accordance with state law. At the hearing, he was represented by counsel as was the School Board. The Board provided the services of a special attorney to act as mediator and advisor with regard to evidential and procedural matters. Following the hearing, the School Board voted to terminate Rouse’s employment and he appealed to the Superior Court of Maricopa County. The Court affirmed the action of the School Board and Rouse appealed the case to the Arizona Court of Appeals.

Issue: The appeal raises the constitutional issue of whether a School Board which initially issues a termination notice to a continuing service teacher may, consistent with due process, determine whether good cause exists for that termination. Rouse asserted that he was deprived by the Board of his due process rights and a fair hearing guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution. He cited that the Board was statutorily responsible for the original decision to terminate and later acted as the adjudicator to review that decision.
Holding: There are certain fundamental procedural requisites which a person is entitled to receive at an administrative hearing which is quasi-judicial in nature. The Arizona Court of Appeals ruled that it is permissible for a school board to serve in an investigative or prosecutorial capacity and to adjudicate functions as a partial decision maker.

Reasoning: The Court in its reasoning cited substantial state and federal precedent that an agency, such as a board of education, could act as both “jury and judge” without depriving an employee of their due process rights. Members of an administrative agency are not precluded from investigating the facts, initiating proceedings, and making the necessary adjudications. The functions of all officers are to be conducted in an impartial manner. Any such officer may withdraw if he deems himself unqualified and may submit written notice to that effect in good faith in a timely manner. In this case there was no contention that the actual bias of the board members individually existed to Rouse. Rather, the challenge is to the statutory process whereby the Board, as an entity, reviews decisions it previously approved. The fact that a Board is elected is significant and that its members are accountable to the voters who depend on them to make impartial and responsible decisions which benefit the public.

Disposition: The Arizona Appeals Court affirmed the decision of the lower court.

1988

Citation: State of Nebraska, ex rel., Connie Thompson v. Walter Alderman, Secretary of the Board of Education of School District No. 1 of Howard County, Nebraska, et.al., 230 Neb. 335, 431 N.W.2d 25, 50 Ed. Law Rep. 176 (1988).

Key Facts: The plaintiff in this case was Connie Thompson, a resident, taxpayer, and editor of the Phonograph-Herald, a legal newspaper published in Howard County, Nebraska. The
defendant in this case was the members of the Board of Education of School District No. 1, of Howard County, Nebraska. Plaintiff commenced an action in local court to seek a writ of mandamus to compel the local Board of Education to publish the salary schedule of the District personnel. Plaintiff sought the action due to Nebraska statute (Neb.Rev.Stat. §79-805), which calls for Class III School Districts to publish a list of claims arising from contract or tort within ten days after each School Board meeting. Plaintiff attempts to paraphrase the statute with language that a salary schedule is the same as a contract or a tort. The local trial court ruled in favor of the School Board claiming that they could not agree with plaintiff’s assertion that a contract or tort has anything to do with the Board’s salary schedule.

Issue: At issue in this case is whether a School Board is obligated by statutory authority to publish a list of the salaries of the employees of the School District.

Holding: The Supreme Court of Nebraska held that School Board employees do not present claims for which they demand payment in order to receive their pay.

Reasoning: §79-805 of the Nebraska Code specifies that only a list of claims must be published. The Court does not agree with plaintiff that each employee has to submit a claim against the School Board in order to be paid each month. The salary schedule for teachers is negotiated as part of a collective bargaining agreement with the St. Paul Education Association. As part of the agreement, teachers are paid according to their years of experience and their type of degree and certificate. A teacher is then placed on the District salary schedule as part of administrative procedure in the superintendent’s office. The School Board is required to publish in the local media any tort or claim made against them but the Court determined that salaries are not defined as a tort or claim.
Disposition: The Supreme Court of Nebraska affirmed the decision of the District Court for Howard County, Nebraska.


Key Facts: The plaintiffs in this case were Timothy Abell and Don A. Reams, two probationary high school teachers for the Nash County Board of Education. The defendants in this case were the members of The Nash County Board of Education. Plaintiffs were employed as probationary high school teachers with various coaching duties. Both of these individuals were certified in health and physical education but both were also required to teach remedial math courses that were federally funded. Abell was informed that he had 3 years to obtain math certification and Reams was informed that he must take a certain number of hours within the math subject area. On April 28, 1982, the School Board voted to non-renew the contracts for the individuals. Prior to the meeting in which they were non-renewed the head football coach at the school was terminated and a new one was employed. Plaintiffs were informed that if they wished to keep their position at the school, they would need to “sell themselves to the new coach.” Subsequently, the new coach chose to employ his own staff. Both individuals chose to seek new jobs at other schools. The two individuals brought suit against the Board for failure to renew their contracts based on the new coaching changes.

Issue: At issue in this case was whether the School Board acted in an arbitrary or capricious manner due to the coaching changes that took place at the school.

Holding: The Court of Appeals of North Carolina held that teachers had the burden of proof and that the Board did not act arbitrarily or capriciously in refusing the new teacher’s contract based on the head coaching change.
Reasoning: All public schools in North Carolina are governed by N.C.G.S. Sec.115 C-325 (m)(2)(1987), which provides that a school board, upon the appropriate recommendation of the superintendent, may refuse to renew a contract of a probationary teacher as long as the reason for non-renewal is for a cause that may not be arbitrary, capricious, discriminatory, or for political reasons. Plaintiff failed to show that any of these reasons were cause for their non-renewal. N.C.G.S. Sec. 115C-44(b) provides that all legal actions brought against a School Board shall be proven by the one making the charge against and that the orders and actions of a school board shall be presumed to be correct unless the burden of proof suggests otherwise.

Disposition: The Court of Appeals of North Carolina affirmed the decision of the Superior Court, Nash County.


Key Facts: The plaintiff in this case was the members of the Board of Education of the DeKalb Community School District 428. The defendant was the DeKalb Classroom Teachers Association Local 4328, IFT-AFT, AFL-CIO. At the beginning of February 1985, the School District posted a District Seniority List for the purposes of creating a seniority plan in the event that the District would need to institute such a reduction in force based on the seniority of its staff members. The plan was part of the collective bargaining agreement between the local teacher’s union and the Board of Education. One stipulation of the agreement was that several administrators in the District were excluded from the collective bargaining agreement but were still listed on the established seniority list. Shortly after the establishment of the list the teachers
association filed a grievance against the Board for several violations of the collective bargaining agreement, even though the collective bargaining agreement calls for a grievance procedure which calls for arbitration within the process. The Board refused to submit to arbitration as it stated that the District had no right to arbitration as no violations were committed. The Association’s attorney wrote to the American Arbitration Association (AAA) and requested a panel of arbitrators to hear the case. The Board then filed a complaint in the DeKalb County Circuit Court asking for a stay of arbitration. The Court dismissed the stay of arbitration, but the Board continued to refuse to submit to arbitration. The Association then filed a charge of unfair labor practice against the School Board with the Illinois Educational Labor Relations Board. The Labor Regulations Board ruled that the School Board was in violation of the local collective bargaining agreement. The Labor Board ordered the School Board to submit to grievance No. 1984-4, which requires binding arbitration. Subsequently, the School Board filed a petition of review of the Labor Board’s order in July of 1987.

Issue: At issue in this case was whether the School Board had the authority to determine if conditions are appropriate to submit to arbitration in order to hear employee grievances.

Holding: The Court determined that School Boards do not have the sole authority to either submit or deny the opportunity for arbitration.

Reasoning: The remedy in issues pertaining to the potential for arbitration for labor disputes is that the courts are the appropriate forum for settling such issues dealing with the matter of arbitration. The federal courts have especially come to this same conclusion after being involved in federal cases that involve questions pertaining to federal legislation in respect to labor relation issues. Prior to the establishment of the Illinois Educational Labor Relations Act, the Illinois courts routinely made decisions about cases of arbitration issues and labor disputes in
the education labor sector (*Board of Trustees of Junior College District No. 508 v. Cook County College Teachers Union Local 1600*, 1976). However, once the Illinois Educational Labor Relations Act was created the Court in *Compton* (526 N.E.2d 149) ruled that “all future disputes which arise from the filing of grievances allegedly relating to violations of collective bargaining agreement must be contended through the Labor Relations Board. Likewise, a Circuit Court has no jurisdiction to determine whether a particular matter is subject to arbitration.”

Disposition: The Appellate Court of Illinois, Fourth District affirmed the decision of the Circuit Court in all matters with the exception that they reversed the decision of the Circuit Court in respect to the charge of the School Board committing unfair labor practice in not submitting to a grievance. The Court did not agree with the assertion that the School Board committed an unfair labor practice.

Citation: *Tuscon Unified School District No. 1 of Pima County v. Tuscon Education Association*, 747 P.2d 602 (1988).

Key Facts: The plaintiff in this case was the Board of Education of the Tuscon Unified School District No. 1 of Pima County (Board). The defendant was the Teacher Education Association (Association). The School Board brought a declaratory judgment action against the Association to establish that it could not delegate authority to a third-party arbitrator to make decisions concerning operation of the School District. The Superior Court, Pima County, entered summary judgment in favor of the School Board. The Association appealed the decision to the Arizona Court of Appeals.

The Board and the Association signed a document known as the “Consensus Agreement Between Tucson Unified School District and Tucson Education Association” (Agreement). The Agreement contained a procedure for handling grievances which it defined as “a complaint based
upon an event or condition under which a teacher works allegedly caused by misinterpretation or inequitable application of this agreement, policy, rule, or regulation of the Board.” The grievance procedure consisted of four levels. The last level states that the superintendent or his designee and the members of the Association shall agree on an arbitrator and if they are unable to agree, a request shall be submitted by any or all of the parties to the American Arbitrator’s Association for the selection of an arbitrator in accordance with AAA rules. The Agreement further provided that the findings and recommendations of the arbitrator would be binding on all parties and the grievance would be considered permanently resolved with no judicial review.

Mary Ann Brewer-Civiak, a social worker employed in the School District applied for a sabbatical leave. She was informed by the acting Superintendent that such leave could not be granted. Brewer-Civiak then requested and was granted unique leave. She subsequently filed a grievance which was submitted to arbitrator. The arbitrator ordered the Board to pay Brewer-Civiak sabbatical benefits in the amount of $4040.61.

Issue: At issue in this case is whether a School Board could, consistent with state law through written consensus agreement with an education association, lawfully delegate power to a third-party arbitrator.

Holding: The Agreement between the Board and the Association unlawfully delegated authority to a third-party arbitrator to enforce rules for schools.

Reasoning: The Agreement between the Board and the Association, which made findings and recommendations of an arbitrator binding on all parties, unlawfully delegated authority to the School Boards to enforce rules and unlawfully permitted an arbitrator to exercise discretionary and quasi-judicial powers.
School Boards are legislative creations having such authority as are granted to them by the legislature. State statute sets forth the authority and duties of a School Board. Nowhere do they expressly empower the School Board to enter into an arbitration agreement which would allow a third-party arbitrator to bind the School Board in a decision involving a labor grievance as defined in the Agreement.

Disposition: The Arizona Court of Appeals affirmed the ruling of the lower court in favor of the School Board.

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Key Facts: The plaintiff in this case was Kenneth Powell a tenured teacher of 22 years with the Peoria School District 150. The defendant in this case is the Board of Education of the City of Peoria District 150. At the end of the 1986-1987 school year, James McCormack, a school administrator met with Powell and gave him unsatisfactory evaluations for his performance during the previous school year. In January of 1987, the School Board adopted a remediation plan aimed at improving the teaching skills of the teachers in the District that were deficient in specific teaching areas. The Board adopted the plan with the assistance of the Peoria Federation of Teachers, the local teachers association, and the plan was approved by the Illinois State Board of Education.

McCormack notified Powell in writing that he would be required to satisfactorily complete the remedial program. Powell went through the program in the 1986-87 school year but
failed to improve. At the end of the 1987-1988 school year the School Board terminated Powell without a hearing. Powell demanded a hearing as required by Illinois Rev. Statute of 1987, ch. 122, par. 24/12. Powell was given a hearing in front of the hearing officer and the officer affirmed the decision of the School Board. Powell then filed suit under Illinois Administrative Review Act in the Circuit Court of Peoria County against the School Board and the State Board of Education. The Circuit Court reversed the decision of the hearing officer, finding that the School Board violated its statutory authority. The School Board and the State Board of Education appealed the decision to the Appellate Court of Illinois.

Issue: At issue in this case is whether the School Board has authority to develop and implement a remedial program for its School District.

Holding: The Appellate Court held that the administration of School District was permitted to develop teacher remedial plans under the overall supervision of School Board.

Reasoning: Article 24a of the Illinois School Code provides that the statutory power for School Boards exists and that School Boards are to supervise the implementation of the program. The school administration is to do the bulk of the work, including the following: evaluation, monitoring, remediating, retention, and termination if it’s determined that such actions are warranted. The Board must first notify the employee in question that the need for remediation is necessary and that at the end of remediation, if improvement is not made, the employee can be terminated. The Court found that the School Board and its administration, met all statutory criteria in remediating and terminating Powell.

Disposition: The Appellate Court of Illinois, Third District, reversed the decision of the Circuit Court and remanded the case back to the hearing officer to determine if the record demonstrates that there is sufficient ground for termination.

Key Facts: The plaintiff in this case was Alice Richardson, an African American female who was an employee of the Lamar County Board of Education. The defendant in the case was the Lamar County Board of Education. Plaintiff brought suit against the defendant on the grounds that they violated her civil rights as provided by *Title VII of the Civil Rights Act of 1964*. Plaintiff believes that the School Board gave her disparate treatment by non-renewing her teacher contract because of her race. Second, Richardson claims that she suffered disparate impact based on the fact that she failed to pass the Alabama Initial Teacher Test (AITT) in order to gain her Alabama Teaching Certificate. It is plaintiff’s assertion that the test is discriminatory toward African American teachers.

Plaintiff taught in the School District for 3 years from 1983-1986. During these three years, she worked on an emergency and provisional certificate due to the fact that she could not pass the AITT. She took the early childhood and elementary education test three different times each. At the end of the 1986 school year, a decision was made to close the school in which plaintiff worked and consolidate with other schools in the District. Plaintiff was subsequently terminated in the reorganization of the District. Plaintiff ultimately received her certificate a year later due to a federal court order that gave certificates to a large number of African Americans who did not pass the AITT due to a judge’s ruling in *Allen v. Alabama State Board of Education* (816 F.2d 575).

Issue: At issue in this case is whether the Board made injury to plaintiff due to disparate treatment.
Holding: The United States District Court held that the teacher failed to show burden of proof that the School Board wrongfully non-renewed her rather than most White teachers.

Reasoning: The Court reasoned that plaintiff bear the burden of proving that she had been discriminated in some way by the School Board. The Burdine Analysis was born out of the case of *Burdine* (101 S.Ct. at 1093-95) where the U.S. Supreme Court determined that once the proposed victim establishes the appropriate burden of proof, the employer then must be persuasive in their defense that the charge of discrimination is not appropriate. In this case, plaintiff did not prove that discrimination had been an issue in her non-renewal. The School Board chose not to reemploy her for a fourth year, which would have given her tenure due to the fact that she was not able to obtain a teaching certificate and they did not wish to give tenure to persons who could not obtain a certificate. The Court reasoned that they agreed with the fact that all other teachers that were retained were White and that had nothing to do with plaintiff’s non-renewal.

The Court did not agree with defendant’s claim of collateral estoppels and res judicata. The School Board could not claim collateral estoppels due to the fact that they were a potential litigated party. The Board felt that the consent decree that gave the affected parties their certification prevented them from being named in claims by the plaintiff. The Court ruled that the School Board was not protected and thus a collateral estoppel claim was not appropriate. The Court reasoned that the res judicata claim was not appropriate due to the fact the Board did not enjoy privity due to the fact that they were a partner in the initial *Allen* suit with the State Board of Education.

Disposition: The United States District Court ruled that a judgment be ordered in favor of plaintiff on her disparate impact claim but not on her disparate treatment claim. The Court
ordered that plaintiff be reinstated with back pay and benefits as she would have assumed if she would have never stopped employment.


Key Facts: The plaintiff in this case was the Pleasant Valley Education Association, which represented the physical education teachers of the Pleasant Valley Community School District. The defendant in this case was the Board of Education of the Pleasant Valley Community School District. The Pleasant Valley Community School District added a swimming pool to its physical plant so that the District could begin offering swimming lessons to its students. In order to provide the appropriate supervision, the District informed the four physical education teachers employed with the District that they were required to obtain cardiac pulmonary resuscitation (CPR) certification and a series of courses on water safety. Two of the teachers agreed to obtain the training but two did not. The Pleasant Valley Education Association filed an action seeking declaratory judgment on behalf of the two teachers that chose to challenge the requirement that they must submit to training. The local District Court found that the assignment of training in order to supervise student swimmers was not excessive and that it was not so extreme that it was beyond the Board’s authority. The Court ultimately determined that it was appropriate to require CPR and lifesaving training but the expectation of meeting the requirement of Red Cross certification might be beyond what the teachers are physically capable of. The Court determined that the teacher must at least make an attempt to obtain the Red Cross certification, even though they may not be able to complete the certification process. The two teachers did not make an attempt to participate in the Red Cross certification process.
The local District Court held that the assignment of the appropriate training required to teach swimming was not beyond the scope of School Board authority. The Court further stated that the duties and responsibilities involved in teaching a swimming course was not beyond which is contemplated in such a teaching contract.

Issue: At issue in this case is whether the local Board of Education possesses the authority needed to require that the physical education teachers in the District be properly trained in order to teach and supervise a swimming course taught in the District.

Holding: The Court of Appeals held that the School Board did not abuse its discretion in mandating that physical education teachers within the District be required to receive training in CPR and water safety.

Reasoning: The Court agreed with the teacher’s association in their assertion that the requirement of teaching swimming courses was an expectation of the physical education teachers due to the fact that the District had never offered such a course as the appropriate facilities were not available to do such. As well, they contend that the teacher’s contract did not stipulate such a teaching assignment. The School Board believes that the issue is not one of contract but one of such authority held by the Board to perform assignments as designated by the Board through its designated agents as required in order to offer the course within the School District curriculum as established by the Board. In Gere v. Council Bluffs Community School District (1983), the Court ruled that School Boards are “public employers and as such are given broad powers in dealing with their staffs in order to achieve efficient governmental operations.” The Court found no abuse of a School Board’s discretion when it requires teachers to be trained during school hours and at School Board expense to be trained for such a course that is designed to train teachers to
teach a specific curriculum in addition to receiving added training and certification in order to respond to emergency situations associated with the teaching of a swimming curriculum.

Disposition: The Court of Appeals of Iowa affirmed the decision of the District Court of Scott County.


Key Facts: The plaintiff in this case was Jo Ann Fisher, a teacher with the West Washington County Community Unit District No. 10 who took a leave of absence and upon her return, the Board of Education of the West Washington County Community Unit District refused to reinstate her. The defendant was the Board of Education of West Washington County Community Unit District No. 10.

Fisher was a full-time, tenured teacher with the School District from the years of 1972-1984. In August of 1984, less than 2 weeks prior to the beginning of the impending school year, Fisher asked for a leave of absence for the 1984-1985 school year. Her reason for the request was for medical reasons. In June of 1984, Fisher’s doctor informed her that it was possible that job-related stresses might be responsible for the infertility issues that she was having. At their next meeting, the School Board took the matter into consideration and then passed a resolution granting Fisher’s request for a leave of absence but in doing so stated several stipulations upon her return. First, the leave of absence was not mutually agreeable in that the Board did not deem Fisher’s request for a leave as applicable to conditions granted for a leave of absence. Second, there would be no guarantee to employment in the School District after the 1-year leave of absence. Three, should Fisher be granted reemployment, she would not be given tenure status
nor credit for years of experience. Fourth, in respect to Fisher’s benefits for the 1984-1985 school year, the Board allowed for the year to count toward the teacher’s years of experience with the Teachers Retirement System and that the insurance coverage for Fisher would cease on September 1, 1984. The day after the Board meeting, Fisher was verbally informed of the Board’s decision by the principal of her school and the Superintendent of the District. The Superintendent followed the verbal discussion with formal written notice of the Board’s decision. A few days later, Fisher informed the Superintendent that she would take the leave of absence and questioned her right to insurance coverage during her leave of absence. Prior to the beginning of the school year, Fisher reported to the school and removed her personal belongings but had no further discussions with the District administration.

In February of 1985, Fisher sent the Superintendent notice that she planned to be back to teach in her regular position in the fall of 1985 and that she would not relinquish her right to tenure and the credit for her years of experience with the School District. After the receipt of Fisher’s notice, the School Board addressed her notice at its next meeting. The Board passed a resolution that Fisher’s leave of absence was not mutually agreeable and that they were not obligated to re-employ Fisher and they would not reinstate her.

Fisher filed an action seeking a writ of mandamus ordering the School Board to reinstate her. The Circuit Court of Washington County denied the request for a writ of mandamus and granted judgment to the School Board. Fisher appealed the decision of the Board.

Issue: At issue in this case is whether the School Board had the appropriate authority to deny Fisher’s request for reinstatement in the School District.

Holding: The appellate court held that the School Board had the right to deny reinstatement on the grounds that Plaintiff’s request for leave of absence was not mutually
agreeable between the two parties. Also the Court ruled that the School Board had no implied authority to reinstate plaintiff into her teaching position.

Reasoning: In the case of *In re Claudia K.* (91 Ill.2d 469), the Court ruled that a mandamus can be issued if it is determined that the injured party is due relief due to damages received from the party that inflicted the damage. In this case the Court found that no damage had been done to plaintiff. §24-13 of the Illinois Code entitles injured parties to receive relief, but only if such damage has been done in order to receive the relief that is requested.

§24-13 of the Illinois Code further illustrates that a teacher may take a leave of absence as long as the leave is mutually agreed upon by the two parties. In this case, the Board did not submit its agreement as required by statute in order for plaintiff to take leave based on their rationale that the desire for leave was not consistent or applicable to reasons agreed upon by the Board. Though the Court did not entirely agree with the Board’s position as to what they deem favorable conditions in order to grant leave, the Board none the less had the authority to grant the leave with the stipulations that they placed on plaintiff. Plaintiff was notified of the Board’s non-consent as a mutually agreeable party but granted plaintiff leave anyway. Plaintiff had the right to refuse to submit to the Board’s conditions but failed to do so. The School Board possessed implied power to take statutory provisions and impose their own conditions as they deem fit in order to maintain efficient operation of the School District for which they govern.

Disposition: The Appellate Court of Illinois affirmed the decision of the Circuit Court of Washington County.
Citation: *Decatur City Board of Education v. Aycock and Morgan County Department of Human Resources*, 562 So.2d 1331 (Alabama Ct. of Appeals, 1990).

Key Facts: The Department of Human Resources (DHR) filed this action seeking declaration by the Court of its right to privately interview children at school who are alleged victims of child abuse. The Circuit Court, Morgan County granted declaratory judgment in favor of the DHR. Defendant, Decatur Board of Education filed an appeal of the decision with the Alabama Court of Civil Appeals.

The facts reveal that in 1986 the Decatur City Board of Education, the Hartselle City Board of Education, and the Morgan County Board of Education (the county in which the cities of Decatur and Hartselle are located), began denying DHR the right to interview reported victims of abuse in privacy at schools, based on policies developed by the Boards of Education. As prescribed in state law, DHR was required to go to Court to seek ex parte orders in order to interview each child privately at school with no school official present. As of the time of the trial court’s hearing in 1988, DHR representatives had been to Court 170 times to obtain such an order. There had been no denials of the requests for such order.

The Superintendents of the Boards of Education testified as to the reason for enforcing the disputed policies. They stressed the need for a school official to be present at interviews to protect the child’s welfare, to limit the potential liability of the Boards, and to fulfill the objective to the parents and the children. The Boards contended that the trial court erred in declaring arbitrary and therefore unlawful, School Board policies which require the presence of school officials at interviews of students who are alleged child abuse victims. The Boards denied that their actions could be termed arbitrary and argued that point with the Court. It was settled law.
under state statute and case law that the general administration and supervision of the public schools is vested in the local Boards of Education. The courts will not seek to control the exercise of the broad discretion given by the legislature to the Boards of Education. All legal intendments are indulged in favor of the orders of such Boards and the orders are due to be upheld unless the invalidity is clearly show by those challenging the order.

Issue: At issue in this case is whether the general authority provided by Boards of Education by state statute give them the authority to forbid employers of DHR through Board policy, to interview students privately at school with no school official present if they are suspected of being a victim of child abuse.

Holding: The policies of the Boards of Education denying private, on campus interviews with suspected child abuse victims with no school official in the presence of DHR personnel transcends statutory authority granted to Boards of Education to control activities occurring at school and were therefore unlawful.

Reasoning: Under the state law the rule for construction of a statute is to ascertain the legislative intent, which is to be determined by examining the statute as a whole in light of its general purpose. Another rule of statutory construction is that specific provisions relating to specific subjects are understood as exceptions to general provision relating to general subjects. The authority claimed by the Boards of Education under the provisions in general statute do not control since there are specific statutes regarding cases of suspected child abuse that prevail.

Disposition: The Alabama Civil Court of Appeals affirmed the ruling of the Circuit Court, Morgan County.

Key Facts: The plaintiff in this case was Suzannah M. Wolf, a teacher at Cuyahoga Falls High School. The defendant in this case was the Cuyahoga Falls City School District Board of Education. In the spring of 1983, Wolf was approached by two of her high school administrators and asked if she would be interested in teaching journalism while also serving as the advisor of the school newspaper. Wolf accepted the position. When Wolf accepted the position, her principal informed her that she would not receive a supplement for her extra duties but that she would receive an extra duty-free period. Wolf received the extra duty-free period within her teaching assignment for the 1983-1984 school year. However, in the years to follow, she did not receive the extra period. At the beginning of the 1986-1987 school year, Wolf approached her principal and asked for the extra duty-free period and he declined to give her the period. Wolf then submitted her resignation from the advisor position of the newspaper and the principal refused to accept her resignation. Subsequently, Wolf filed an action seeking a declaratory judgment action against the principal, superintendent, and the School Board. The action asserted two causes for her complaint. One, that the District administration and School Board breached a contract with her and two, the same individuals failed to award her a supplemental duty contract pursuant to Ohio statute R.C. 3319.08. The trial court dismissed the action and the Ohio Court of Appeals for Summit County affirmed the decision. Plaintiff appealed to the Ohio Supreme Court.

Issue: At issue in this case is whether the School Board abused its authority in denying plaintiff a supplemental contract while allowing other teachers in the District to receive a supplemental contract with similar duties.

Holding: The Supreme Court held that 1) a School Board must compensate for duties assigned that are extra for a teacher’s workload and that such an assignment must be approved by the Board, and 2) the School Board abused its authority when it awarded some contracts to
teachers who performed additional duties while not awarding a contract to a teacher who served as the school newspaper advisor.

Reasoning: In the Ohio case of *Walker v. Lockland* (429 N.E. 2d. 1179), the School Board was found not to be bound to an oral contract that existed between a superintendent and a teacher for a proposed supplemental contract. The Court ruled the same in this case where they could not find evidence in the record that supported the contention that the School Board officially adopted a supplemental contract between plaintiff and the District. A District administrator does not maintain a delegated authority to enter into supplemental contracts without the formal approval of the School Board.

The Court further reasoned that a School Board is justified to pay a teacher for work conducted in addition to their regular teaching workload either before the school term, after the school term, before the school day, after the school day, or with other duties assigned during the school day. In this case, the School Board authorized compensation for extra duties by personnel in the District. The School Board recognizes that there are different levels of pay based on the extent and responsibilities of the other duties, in the District, but failed to take into account that a school newspaper adviser does not fit the description of extra supplemental duties. The Court disagreed and determined that the Board could not deny plaintiff compensation without harming her in a capricious manner.

Disposition: The Supreme Court of Ohio reversed the decision of the Ohio Court of Appeals for Summit County.

Key Facts: The plaintiff in this case was Perry Bacon, Superintendent of Bryan County School Systems. The defendant in this case was Dr. Sallie Brewer, former Superintendent of the Bryan County School Systems. Bacon and Brewer were opponents in an election for the Superintendent’s position of the Bryan County School Systems. Brewer lost her bid for re-election to the position. Prior to her departure from the position, Brewer nominated herself to a principal’s position with the District for the remainder of the 1988-1989 school year and for the entire 1989-1990 school year. The School Board approved her nomination. Bacon brought suit in the local Superior Court against Brewer on the grounds that her appointment should be declared null and void and to recapture salary payments made to Brewer during her time of appointment as principal. The Superior Court dismissed Bacon’s suit on the grounds that the case is one of a local controversy and that Bacon must exhaust local administrative remedies. Bacon appealed to the Court of Appeals of Georgia.

Issue: At issue in this case is whether the Bryan County School Systems School Board is required under Georgia law to provide a hearing in order to exhaust local administrative remedies to resolve the dispute between Bacon and Brewer.

Holding: The Court of Appeals held that this case of alleged abuse of power by the former Superintendent is not a case for the judicial system, but a case for the local School Board in order to exhaust local administrative remedies.

Reasoning: Georgia statute OGCA §20-2-1160 provides that public school boards of education in Georgia must conduct hearings to resolve matters of local controversy. The statute requires that school boards have the authority to depose witnesses, and sets forth the procedure, type of hearing that can be held, and also provides for an appeal process. In this case, an appeal process is not appropriate because Bacon did not exhaust the requirements set forth in OGCA
§20-2-1160. In *Patterson v. Boyd* (87 S.E.2d 861), the Court determined that matters of controversy are unique to each individual school board within the state. The Court also noted in *Patterson* that the judicial system is not the initial step in challenging abuse of power charges in public schools. In *Bedingfield* (94 S.E.2d 714), the Court provided that the equity that is desired and maintained in the judicial system cannot and will not interfere until all administrative remedies have been exhausted.

Disposition: The Court of Appeals of Georgia affirmed the decision of the Superior Court, Bryan County.

1991


Key Facts: The plaintiff in this case was Diane Murray, a teacher with the Pittsburgh Board of Education. The defendant in this case was the Pittsburgh Board of Education. In November of 1990, an incident occurred with Murray and another teacher at one of the school’s in the District. The incident was a verbal encounter and there were no other witnesses that were present at the time of the encounter. The incident was not the first involving Murray and other personnel within the School District. Mrs. Spolar, the Associate Director of Employee Relations with the District was charged with investigating the incident by Dr. Henry Falson, Deputy Superintendent for the School District. When Falson informed Spolar of the incident and the desire for an inquiry into Murray’s behavior, he directed Spolar to contact Vernon Phillips who is the principal of the Letsche Alternative School, the place of work for Murray and the place of the latest incident involving the dispute between Murray and a co-worker. Phillips informed
Spolar that he was concerned about Murray’s failure for positive interaction with other members of the staff and that she had a history of lengthy absences from work. Phillips raised the question with Spolar as to Murray’s fitness to continue teaching. After her consultation with Phillips, Spolar chose to obtain a medical evaluation of Murray.

Spolar broached the topic of requiring a medical evaluation of Murray with Falson, Bruce Campbell, the Board’s Special Labor Counsel, and Lee Nicklos, the Personnel Director for the District. All agreed with the course of action recommended by Spolar. In late December of 1990, plans were made for Murray to go through a physical and psychiatric evaluation at the Sewickley Valley Hospital. Dr. David Spence, a psychiatrist with the District, would be in charge of the two medical evaluations. On the evening prior to the examinations in early January of 1991, Murray obtained a motion for a preliminary injunction seeking a restraining order which blocked the scheduled medical examinations. Murray’s request for a preliminary injunction was based on her belief that her rights were violated under the search and seizure clause of the Fourth and Fourteenth Amendment of the U.S. Constitution. Murray further asserts that the requests for psychiatric and physical examinations were based upon retaliatory substance from those with the Pittsburgh School Board and those within the central office due to the fact that she had filed a civil rights lawsuit on those respective individuals on a prior occasion. Murray filed three different motions for a preliminary injunction with three lower courts and all of them dismissed her motion and she appealed her denial for relief to the United States District Court.

Issue: At issue in this case is whether plaintiff had the right to receive relief from a preliminary injunction based on her assertion that her civil rights would be violated if she is required to submit to a psychiatric and physical examination from the administrative personnel and the members of the Pittsburgh Board of Education.
Holding: The United States District Court held that 1) plaintiff was not entitled to an injunction based on the potential for harm from nonconsensual disclosure, 2) School District administrative personnel is not required to hold a probable cause hearing in order to conduct an examination, and 3) the decision by District administration to seek an evaluation was not of an arbitrary nature.

Reasoning: The Court cited the two previous cases of *U.S. v. Westinghouse* (1980) and *F.O.P., Lodge 5 v. City of Philadelphia* (1987) where the Judge determined that an individual can accurately support a claim of invasion of privacy based upon the type of record requested, the specific type of information contained within, the potential harm to the individual if such information should be released, the accuracy of safeguards to prevent unauthorized disclosure, and the statutory provisions in place that allow for a School Board to enforce the requirement of the submission of an employee to a medical examination of any type. In noting these two cases, the Court also looked to recent Supreme Court decisions in *National v. Von Raab* (1989) and *Skinner v. Railway* (1989) where the Court made it explicit that the School Board’s collection of medical information from a teacher must be analyzed by balancing the need to respect the privacy of the individual against the interests of the Government. Primarily, the Supreme Court asserted the same belief as did the U.S. District Court of Appeals in Westinghouse in two main ways. One, that a School Board must show a need for access and two, there must be an express statutory mandate that allows such a request for such information. The type of information that the School Board needs in this case is of the type that can be most intrusive to an individual’s privacy. However, plaintiff defends her right not to be subjected to the medical exams requested by the Board but also acknowledges that she will be glad to provide information pertaining to her physical and mental well-being provided by her personal internist, psychologist, and therapist.
The Pennsylvania School Code Subsection 14-1418 (c) provides that an employee of a public school board can be subjected to an evaluation at anytime. That same subsection does not direct a School Board to allow the individual in question to chose a medical examiner of his/her choice. The Board possesses the authority to make such a determination.

Disposition: The United States District Court affirmed the decisions of the lower courts in denying the motion for a preliminary injunction for the purposes of obtaining a restraining order to prevent a medical examination requested by the Pittsburgh Board of Education.


Key Facts: The plaintiff in this case was the organization, which is a parents association known as the Parents Against Abuse In Schools, and its assisted representation of a number of parents of fourth grade students at a school in the Williamsport Area School District, namely, Valrie C. Novinger, parent and guardian of John Novinger, Jr., a minor. The defendant in this case is the members of the Board of Education of the Williamsport Area School District, the Superintendent and a School District Psychologist, Simon Samuel. A large number of the parents of a fourth grade student complained that during the 1987-1988 school year, a number of the students suffered from abuse by its teacher, which was an employee of the School District. A decision was made by the administrative personnel of the District to discover the nature of the abuse and asked the parents if they would allow their son/daughter to enter into a counseling session with a School Psychologist that is employed by the District. The parents agreed with the one condition that the psychologist would reveal any information gained from his sessions with
the students so that the information could be used for additional therapy sessions with counseling sources outside of the School District. The administration for the District chose not to reveal the information to the parents, citing required provisions of FERPA and the Pennsylvania Department of Education. The parents filed a civil action-mandamus and sought a peremptory judgment against the defendants. The parents asked the Common Pleas Court, Lycoming County to order the defendants to release the notes and other information that were gained from the interviews with the students. The Court ordered the defendants to release the requested information to the parents.

**Issue:** At issue in this case is whether the School Board is required by law to release the confidential information to the parents as requested.

**Holding:** The Commonwealth Court held that neither the rights provided to school personnel by FERPA or the Pennsylvania Department of Education defeated the rights of parents to view the notes taken by the School District Psychologist.

**Reasoning:** Under FERPA, the records of educational personnel are in the sole possession of the maker and thus not subject to accessibility excluding the rights of parents who have the right to view such records. Pennsylvania law is much different than FERPA and allows the release of information based on four different levels of allowance to release information. Pennsylvania law is more flexible and liberal than FERPA. Therefore, Samuel’s contention is that FERPA is the guiding mandate that protects his interest in making certain that his information is not released to other individuals. The Court disagreed. Even with FERPA, the parents have the right to view the records that are gained from information provided by their children, regardless if there is a pre-agreement to the terms of the release of such information. The parents basically entered into an agreement for which they did not have to.
The Court disagreed with Samuel’s contention that parents had no right to view the information in several regards. They disagreed with his contention that he kept his records at home and thus the records were not a matter of school records anyway and were in fact a matter of private records. It was customary for Samuel to keep all of his records at his private residence. The Court disagreed with this assertion in that the records were developed at school. The nature of the origin of the document is the key to that issue, not where the documents are stored.

Samuel asserted that the District had no right to speak on his behalf in making an agreement with the parents that they could view his records without his consent. Samuel alleges that the Board entered into an impermissible contract and that Pennsylvania Code 1949,FN6 24 P.S. §5-508 specifies that a Board must take formal action when entering into a contract. The trial court found adequate proof that the Board did submit to a formal contract. The Court contends that this statute basically applies to expenditure of funds and regardless the parents have a clear and legal right to the notes taken by Samuel.

Disposition: The Commonwealth Court of Pennsylvania affirmed the decision of the Common Pleas Court, Lycoming County.


Key Facts: The plaintiff in this case was Rosalie Carlyle, a tenured teacher with the Independent School District No. 1-71, McCurtain County, Oklahoma. The defendant in this case was the members of the Board of Education of the Independent School District No. 1-71 of McCurtain County, Oklahoma. At the time that the School Board initially employed Carlyle for the 1981-1982 school year, Carlyle was 65 years of age. At the time of her employment, the
School Board actually had a policy that the mandatory retirement age for the District was 65 years of age. However, the Board felt that their own policy was inadequate and unenforceable due to a 1978 amendment to the Federal Age Discrimination in Employment Act (FADEA) (29 U.S.C. §§621), which increased the upper limits of the Act’s protection from 65 to 70 years of age. On August 12, 1985, the School Board complied with the language of the amendment of the FADEA and raised the mandatory age limit in their statute to the age of 70. The School Board notified Carlyle in March of 1986 that her contract would not be renewed. In her non-renewal the School Board informed Carlyle that their reasoning for her non-renewal had only to do with the new mandatory age requirement policy and that she was otherwise a competent teacher. Carlyle immediately requested an administrative hearing required under Oklahoma statute 70 O.S. 1981 §6-103-4. The hearing was held and the judge ruled that the hearing panel had no authority to hear the case based on the fact that the School Board’s policy was a case of non-reemployment and thus was not found to be something they could enforce under Oklahoma statute 70 O.S. 1981 §6-103-4. Carlyle than filed suit in the District Court, McCurtain County seeking a stay of nonrenewal and reinstatement and an order remanding the case back to the hearing panel so that the case could be heard on its merits. The District Court affirmed the decision of the School Board, stating that the School Board did possess the authority under federal statute and Oklahoma statute to adopt and enforce such a policy and that their decision to non-renew Carlyle did not appear to be discriminatory in nature. Carlyle appealed the decision to the Court of Appeals.

Issue: At issue in this case is whether the School Board had the authority to adopt a mandatory age requirement policy.
Holding: The Oklahoma Court of Appeals held that the School Board lacked the authority to adopt and establish a mandatory retirement age policy due to the fact that Oklahoma statute does not support such a policy. The authority needed to adopt such a policy does not meet the intended objects and purposes of a School Board.

Reasoning: The plaintiff in this case directs the Court to consider the Oklahoma statute §5-117 in that the School Board did not adopt the mandatory age retirement policy on their belief that they have express authority mandated by Oklahoma statute to do so. Nor does the School Board in their appellate briefing provide the same information in their defense. The School Board directs the Court to a different language in the Oklahoma statute §5-117, which states: “The Board of Education of each school district shall adopt and maintain on file in the office of the superintendent of schools an appropriate personnel policy and sick leave guide. The guide shall be made available to the public.” The Court does not consider that the School Board is under an implied or express authority from Oklahoma statute to adopt a mandatory age retirement policy and that it would be incorrect for the School Board to perceive that such a policy should be perceived as a catch-all policy and that they are required to adopt a mandatory age retirement policy based on such a belief. The School Board provided no other basis for their purported reasons to adopt such a policy. The School Board did direct the Court to view an Oklahoma Teachers’ Retirement System policy (70 O.S.1981 §§17-701) that refers to the age of 70, but it has nothing to do with the merits of the present case as the language simply refers to those beyond the age of 70 and specific financial benefits that they may or may not be entitled to an individual over the age of 70. The Oklahoma Legislature does not address the issue of a mandatory age requirement for state employees and goes as far as to mention that it contemplates that teachers remain active beyond the age of 70. The Court closed its argument in defense of its
assertion that the School Board has erred in its decision to adopt such a policy by referring to the case of Board of Education of Oklahoma City v. Cloudman (92 P.2d 837) where it was determined that the Court in that case found that a mandatory age retirement policy is unessential to the declared objects and purposes of the corporation.

Disposition: The Court of Appeals of Oklahoma, Division 3, reversed the decision of the District Court of McCurtain County and remanded the decision back to the District Court with a directive to enter a finding consistent with its opinion.


Key Facts: The plaintiff in this case was the Board of Education of the Ashland Independent School District and its Superintendent, Curt Foutch. The defendants in this case were Elizabeth Jayne and Virginia Jayne, both sisters and tenured teachers with the Ashland Independent School District. Plaintiffs in this case were employees of the School Board for over 30 years each and most of their time was spent together as teachers at the Paul Blazer High School. In the 1983-1984 school year, Superintendent Foutch began reviewing test data for the teachers in the respective grades of the School District. The failure data for the plaintiffs in this case were noticeably higher and he met with them during the school year and suggested ways for them to improve upon their teaching abilities, which, in hopes, would raise the test scores in question. The failure rate for the students of the plaintiff’s continued to increase over the period of the next two school years. At the end of the 1985-1986 school year, Foutch recommended to the School Board that the two teachers be transferred to other schools in the School District. The transfers did not include a change of pay or loss of benefits. Plaintiffs responded to the transfer
with an action in the Boyd County Circuit Court alleging that the transfers were arbitrary and in violation of Section 2 of the Kentucky Constitution. The plaintiffs contend that the transfers were done in retaliation due to the fact that the son of their principal had received failing grades in their classes. Foutch denied this assertion and stated that their grading procedures had not improved and that they were being assigned to schools where the grading procedure was insignificant.

Issue: At issue in this case is whether the Board of Education of the Ashland Independent School District and its Superintendent, Curt Foutch, violated the constitutional rights of Elizabeth and Virginia Jayne.

Holding: The Supreme Court of Kentucky held that 1) constitutional prohibition against arbitrary conduct does apply to the School Board and its officers, and 2) no constitutional violation was committed with the transfers of the teachers in question.

Reasoning: §4 of the Kentucky statute KRS 161.760 defines a School Board’s duties to assign teachers as follows: “Employment of a teacher, under either a limited or a continuing contract, is employment in the School District only and not in a particular position or school.” The General Assembly of Kentucky has clearly established that a teacher under contract to teach does not maintain an absolute right to a particular teaching job in a particular school. School Boards have the discretion to transfer teachers within their District. The plaintiffs and defendants in this case both cited the case of Bowlin v. Thomas (548 S.W.2d 515) where a School Board non-renewed the teaching contract of Bowlin. Though Bowlin was not tenured and thus teaching on a limited contract, the issue of a violation of §2 of the Kentucky Constitution was broached in the case as a reason for wrongful termination on the grounds that such a termination was for a constitutionally impermissible reason. Though the School Board in Bowlin was found not to be
in error, the plaintiffs in this case cite that they were transferred for constitutionally impermissible reasons. They cite their claim that the principal was upset with the failing grades of his son as their reason for being transferred and that provides an unconstitutional reason for their transfer. The Court disagreed with their assertion and determined that the reason was permissible and they suffered no loss of pay or status with the transfer.

Disposition: The Supreme Court of Kentucky reversed the decision of the Kentucky Court of Appeals and the lower trial court and remanded the decision back to the trial court with directions to enter a judgment consistent with the opinion.

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Key Facts: The plaintiff in this case was the Board of Education of Community School District No. 29 of the City School District of the City of New York. The defendant in this case was Joseph A. Fernandez, the Chancellor of the City School District of the City of New York. In January of 1990, the Chancellor developed a new system of employing and retaining Superintendents for the Community Schools within his District known as the Special Circular 37. The main components of the procedures of the Circular are that community screening committees were to be established with the mandate to recommend candidates to the community school boards and each candidate must be evaluated whether a new applicant or an incumbent applicant. Once these two things were done, the Chancellor would evaluate the screening and
evaluation process and then make his own recommendation to the School Boards as to the worthiness of a candidate to be employed or re-employed.

In March of 1990, the defendant in this case filed for an action seeking a judgment declaring Special Circular Number 37 to be invalid as it violated New York statute Education Law §2590-e(1) (a). It was the defendant’s contention that the Circular usurped their authority in choosing a Superintendent for their School District. Several other School Boards intervened in the suit against Fernandez. The local Supreme Court granted the plaintiff’s application for judgment and deemed Special Circular Number 37 to be invalid and thus, unenforceable. The Chancellor appealed the decision of the local court.

Issue: At issue in this case is whether the Chancellor of the City School District of the City of New York exceeded the authority extended to him via New York statute by establishing Special Circular Number 37.

Holding: The New York Supreme Court held that the Chancellor did not exceed his authority in promulgating new procedures in the employment criteria of Superintendents.

Reasoning: In 1969, the New York Legislature added Education Law 52-A, known as the Decentralization Law for the public schools of New York City alone in order to address a variety of problems with the administration aspect of the School District. A key point of the law is that the policy-making and supervision of all city schools would be under the authority of the Chancellor of the City School District of New York, who is also referred to in the law as the Chief Executive Officer. The law also provided that the local schools in the community would be under the authority of local community school boards. However, the supervision of these school boards would be under one central administration, the New York City School Board, which is under the direct authority of the Chancellor of the New York City School Board. The defendants
in this case feel that they are extended the authority to hire their own superintendents according to provisions set forth in Education Law 52-A. The Chancellor states that the creation of the Circular is to only make certain that qualified personnel are employed by the School Districts under his authority. He also asserts that his intent with the creation of the Circular was not to usurp their authority but provide them with guidelines as to choose the best applicant available. The Court agreed with his assertion and cited the case of *Matter of New York City School Boards Assn. v. Board of Education of City School District of City of New York* (347 N.E.2d 568). In *Matter* the Court determined that in the instance of overlapping authority with the Chancellor and the School Boards of the City of New York, the Chancellor has the supreme authority in making the final decisions in matters of conflict.

Disposition: The Supreme Court, Appellate Division, Second Department, New York, reversed the decision of the Supreme Court, Queens County.


Key Facts: The plaintiff in this case was Parmely Hall, a custodian at Cortland Elementary School, which is a school within the Lakeview Local School District Board of Education. The defendant in this case was the Board of Education of the Lakeview Local School District. In 1978, Hall was employed with the School Board as a custodian under a one year contract. At the end of the 1978-1979 school year, Hall was given a two year contract from the Board. Over the course of the next five years, Hall received raises commensurate with his years of experience and his job performance. During this time, Hall received a notice from the Board that he was being promoted to the Head Custodian’s position at Cortland Elementary School and that he would receive an additional pay in addition to his regular pay as Custodian. This extra
pay was a result of a supplementary contract issued by the Board for his new role as Head Custodian. At the end of the 1984-1985 school year, Hall received a notice from the Board that his supplemental contract for the Head Custodian’s position was not being renewed for the 1985-1986 school year, but that he would retain his position as Custodian. The non-renewal of contract meant a loss of pay commensurate to the additional pay that he was receiving as Head Custodian.

In March of 1987, Hall filed a declaratory judgment action against the Board in the Court of Common Pleas, Trumbill County, alleging that the Board had illegally demoted him and requested reinstatement to the position of Head Custodian with back pay and benefits for the time he was demoted and not recognized as the Head Custodian at Cortland Elementary School. The Court of Common Please ruled that the Board had no authority to award supplemental contracts and thus Hall had no right to a position that receives a supplemental contract. Hall appealed the decision to the Court of Appeals and the Court affirmed the ruling of the lower court. Hall appealed to the Ohio Supreme Court.

Issue: At issue in this case is whether the School Board erred in its removal of Hall as Head Custodian which resulted in a loss of pay and a loss of status.

Holding: The Supreme Court held that the Court of Common Pleas and the Court of Appeals erred in their ruling against Hall and that the School Board exceeded its authority in awarding a supplemental contract to Hall and that the Board in effect demoted Hall which resulted in a loss of status for him.

Reasoning: Ohio statute, R.C. 3319.081(A) provides that an initial contract of an employee must be for a minimum of 1 year. After successful completion of that 1 year, the employee is to receive a contract for a minimum of 2 years. If the employee receives an additional contract beyond this third year of employment, then he/she is assumed to be working
under a continuing contract with the school board. The salary for the employee from that point on can never reduce but can be raised according to the salary schedule for the school board. A uniform plan is in place for the school district according to R.C. 3319.081(B) which states that non-teaching employees can be demoted or terminated according to a specific cause. As well in choosing to demote or terminate an employee, the Board must follow the provisions set forth in R.C. 3319.081(C).

The Board maintains that it illegally provided Hall with a supplementary contract and thus, Hall is not entitled to reinstatement to a position that was illegally founded. The Court agreed that the contract was illegal, but the collective bargaining agreement that the Board maintains does in fact classify a position of Head Custodian for the respective schools within the District. The collective bargaining agreement also distinguishes different job titles for Head Custodian and Custodian. The collective bargaining agreement does not maintain whether a position such as a Head Custodian is either a temporary or permanent position. However, Hall asserts and the Board agrees that it sent him several letters over his time spent as Head Custodian that specified that he was identified as the Head Custodian and that his level of pay reflects that job title. The Court determined that a school board in Ohio definitely possesses the authority to promote a non-teaching employee and that such employees can also be granted a continuing status in the promoted classification.

Disposition: The Ohio Supreme Court reversed the decision of the two lower courts and ordered that Hall be returned to his position as a Head Custodian under a continuing contract with all rights, benefits, and wages due him in respect to what he would have received had he not been unlawfully demoted.
Kekey Facts: The plaintiff in this case was Phyllis Greenhalgh, a paraprofessional employee with The Cranston School Committee. The defendant in this case was the City Council of the City of Cranston. In July of 1990 the Rhode Island General Assembly passed legislation that provided early retirement incentives to eligible employees with the Rhode Island Employee Retirement System. Greenhalgh met the age and service requirements to receive benefits under the legislation and therefore sought retirement. The law is entitled Article 80 of the 1990 Budget Act, P.L. 1990, ch. 65, art. 80. Under the terms of Article 80, §4 allows the school committees, municipal councils, and other designated bodies with the option to prohibit employees from these benefits through a timely passage and transmission of a resolution to the Director of Administration of the retirement system. In July of 1990, the Cranston City Council adopted a resolution that essentially excluded municipal employees from the early retirement incentive. The Cranston School Committee did not enact a similar resolution. Sometime later, the Retirement Board of the Rhode Island Employee Retirement System refused Greenhalgh’s application for an early retirement package. Greenhalgh sought injunctive relief and filed an action in the Superior Court of Rhode Island. She maintained that the School Committee, not the City Council should be the governmental authority responsible for determining whether school employees should be allowed to participate in the early retirement incentive package. The Superior Court of Providence County determined that the City Council is an appropriate governmental body to determine if teachers should be applicable to an early retirement incentive package. Greenhalgh appealed to the Supreme Court.
Issue: At issue in this case is whether the City Council is the appropriate governmental entity to determine if public school employees are applicable to receiving an early retirement incentive package as provided in Article 80.

Holding: The Supreme Court of Rhode Island held that paraprofessionals are considered a municipal employee not a teacher and thus the appropriate governing body to determine their availability to the early retirement incentive package was the City Council not the School Committee.

Reasoning: Section 3 of Article 80 directs School Committee’s with the authority to determine if teachers should be excluded from the early incentive retirement package. Section 4 of Article 80 directs City Councils to make the decision for municipal employees, including all other employees of the school system. Greenhalgh admits that she is not a teacher and thus a municipal employee. The Court cited Ellis v. Rhode Island Public Transit Authority (586 A.2d 1055) and O’Neil v. Code Commission for Occupational Safety and Health (534 A.2d 606) in stating that the language of the statute is unambiguous and expresses a clear and sensible meaning. The General Assembly would have constructed the language of their statute to include all education employees to fall under §3 if that was their wish and since they did not only teachers can be addressed in §3 of Article 80.

Disposition: The Supreme Court of Rhode Island determined that the Cranston City Council was the appropriate governmental authority pursuant to §4 of Article 80 to have determined whether the plaintiff would be excluded from the early-retirement incentive provisions offered in the Rhode Island 1990 Budget Act.
Key Facts: The plaintiff in this case was Michelle Snyder, a teacher with the Jefferson County Board of Education for the years of 1969-1983. The defendant in this case was the Jefferson County Board of Education. During the years of employment, plaintiff was classified as a male teacher. During the 1982-1983 school year, plaintiff underwent therapy with a psychotherapist in order to determine and ultimately prepare plaintiff to have a sex change operation. In June of 1983, defendant sent a plaintiff a letter to inform that plaintiff’s teaching certificate would expire in December of 1983 and that a renewal certificate must be obtained prior to its expiration. In August of 1983, plaintiff sent defendant a letter clarifying that plaintiff would not be able to teacher for the upcoming school year due to health reasons. Plaintiff was granted leave with pay. In December of 1983, defendant sent plaintiff a letter stating that once the teaching certificate expired, they would no longer continue with her paid leave status but would continue leave status without pay. Plaintiff responded with a letter acknowledging that she was sick and unable to re-certify that plaintiff could not return to her job without completing re-certification process. Defendant responded with a letter that clarified that she would continue to be paid until her sick leave had been exhausted and that plaintiff will be placed on unpaid sick leave for the remainder of the year.

At the beginning of the 1984-1985 school year, Snyder sent the District a letter that stated that she would not be able to return to work and that her name had been changed from Gerald Max Snyder to Michelle Marie Snyder. In her letter, Snyder asked for continued leave without pay and that she would like to return in January of 1985. The District responded with a letter that
stated that they were holding a spot for her but that she needed to be able to report no later than the month of October and that she needed to respond that she would accept by the end of September. The District never heard from Snyder and proceeded to employ someone else to fill the position. In November, the Assistant Superintendent of Personnel Services, Charles Riefer sent a letter to Snyder seeking information on her teaching certificate which had not been renewed. In the letter, Riefer invited Snyder to meet with him in his office. Snyder could not provide a copy of a renewed certificate and was subsequently terminated October 9, 1984. However, the Board did not take official action on the termination until December 20, 1984. At that point, Snyder had completed the required paperwork for re-certification. The Board terminated her anyway.

Snyder was unsuccessful in gaining a judicial review of her case and subsequently filed a civil action in the Jefferson County District Court on the grounds that her due process rights had been violated. An Administrative Law Judge (ALJ) made a ruling in favor of Snyder and ordered her reinstated and ordered her to receive back pay. The Board did not follow the ALJ’s ruling and adopted a resolution that they had justification for terminating Snyder on the grounds of incompetency, insubordination, and other good and just cause. Snyder appealed the ruling to the Colorado Court of Appeals and they affirmed the decision of the School Board. The case went before the Supreme Court of Colorado.

Issue: At issue in this case is whether the School Board wrongfully terminated Snyder.

Holding: The Supreme Court of Colorado held that the School Board correctly terminated Snyder in employment due to the fact that her teaching certificate expired.

Reasoning: A School Board maintains the authority to define the grounds for the dismissal of teachers. The Colorado Teachers Employment, Dismissal, and Tenure Act of 1967
provides a two stage process for consideration of charges of dismissal. The first stage involves a hearing before an ALJ to determine if there are grounds for dismissal. The second stage is for the School Board to review the decision of the ALJ. Once received, the Board can retain, dismiss, or place the teacher on one year probation. In this case, the Board accepted the evidence presented by the ALJ and interpreted it as sufficient evidence for the termination. However, the Board chose not to accept the ruling of the ALJ to re-instate Snyder. The Supreme Court accepted these findings and determined that the School Board worked within its authority to terminate Snyder.

Disposition: The Supreme Court of Colorado affirmed the decision of the Colorado Court of Appeals.


Key Facts: The plaintiff in this case was Bruce A. Kleven. The defendant was the Board of Education of the Yukon-Koyukuk School District. Kleven worked as a tenured educator for the defendant from the years of 1976-1990. In March of 1990, the Superintendent, Fred Lau, informed Kleven that he was contemplating removing him from his Director’s position to one of lesser responsibility. Kleven filed action against Board in challenging the Board’s authority to reassign him to a position of less responsibility and lower pay. Kleven cited procedural violations on the part of the Board in taking steps to transfer him to a lesser position. The Superior Court, Fourth Judicial District of Fairbanks, dismissed action against Kleven due to the fact that he failed to exhaust administrative remedies. Kleven then filed a second action asking the Board to give him a hearing. The same court dismissed the action on the lack of standing on the part of Kleven. Kleven appealed to the Supreme Court of Alaska.
Issue: At issue in this case is whether the Yukon-Koyukuk Board of Education committed statutory violations in reassigning Kleven to a position of lesser pay and responsibility.

Holding: The Supreme Court of Alaska held that the trial court erred in dismissing action on the belief that Kleven failed to exhaust administrative remedies. Also, the Court ruled that the trial court properly dismissed actions on behalf of Kleven on the grounds that he lacked standing.

Reasoning: In determining cases where there is a challenge to exhaust administrative remedies, the Court asserts three questions. 1) Is exhaustion of remedies required? 2) Did the complainant exhaust those remedies? 3) Is the failure to exhaust remedies excused? The answer to the first question is yes. Plaintiff conveyed sufficient interest in maintaining his current position and the Board obviously had merit in stating their right to take the personnel action. The answer to the second question is no, plaintiff did not exhaust those administrative remedies available to him as there was a collective bargaining agreement in place. The answer to the third question is yes, the Court excused plaintiff for failure to exhaust administrative remedies due to the fact that the procedural process followed to date had been handled in an inappropriate manner. Due to the fact that Kleven is challenging the administrative procedure in moving him to a lesser position, the point is moot in respect to the practicality of following the correct grievance procedure as outlined in the collective bargaining agreement.

Disposition: The Supreme Court of Alaska affirmed the decision of the lower trial court in the fact that Kleven lacked standing.

Key Facts: The plaintiff in this case was Llewellyn J. Rice, an employee of one of the School Districts involved with the Cayuga-Onondaga Healthcare Plan and North American Administration, Inc. The defendants were those School Districts that are participants of the Cayuga-Onondaga Healthcare Plan and North American Administration, Inc. In 1981, several School Districts in the Cayuga-Onondaga BOCES region entered into a cooperative agreement forming an entity known as, Cayuga-Onondaga Schools Employees’ Health Care Plan (Plan). The purpose of the Plan is to jointly provide basic hospital, surgical, dental health, and major medical benefits to all employees of the School District in question of not being able to pay for their insurance through a self-funding program or the purchase of independent health contracts. The program also called for a governing Board of Directors to govern the Plan. The major portion of the scope of coverage to be provided by the Plan was negotiated with the collective bargaining units for the respective School Districts that were involved.

In September of 1986, Rice was diagnosed with terminal heart disease and declared totally disabled. Later in the same month, Rice underwent a heart transplant operation at Columbia Presbyterian Medical center in New York City. He effectively resigned in November of 1986. Shortly after his retirement he filed claims with the Plan as a retired employee. The claims were for the costs of the transplant operation and the necessary follow-up prescriptions. The claims were denied and Rice commenced action for a judgment declaring his entitlement to coverage under the Plan. The Plan moved for summary judgment as well and asserted that the Plan is not a proper party to the action. The Supreme Court, Onondaga County denied the Plan’s motions for summary judgment and they appealed.

Issue: At issue in this case is whether a cooperative self-insurance plan, such as the Plan, is an independent legal entity amenable to suit.
Holding: The Supreme Court, Appellate Division, held that the Plan was not a separate and distinct entity which could be sued and that the School District was the appropriate party to raise action against, not the Plan.

Reasoning: According to New York statute, General Municipal §92a, municipal corporations, including School Districts, have the authority to purchase health care insurance benefits for its employees. Also, under the statute a municipal corporation has the authority to undertake such a benefit plan with other municipal corporations. According to New York statute (1979 Op.St.Comp. NO. 29-471, at 89), a group such as the one that operates under the Plan is limited and does not possess the same authority or standing as a quasi-judicial governmental entity. In the case of Hartfort Insurance Group v. Town of North Hempstead (485 N.Y.S.2d 436), the Court found that even though a School District is a participant and has the authority to be involved in the Plan, the ultimate decision regarding payments from the funds of the Plan still remain with the individual School Districts. In the same case, the Court also stated that a School District may not authorize a private firm to settle claims. It is for these matters that the Court reasoned that the Plan cannot be a party that is sued to enforce an action such as a claim dispute.

Disposition: The Supreme Court, Appellate Division, Fourth Department of New York reversed the decision of the Supreme Court, Onondaga County.


Key Facts: The plaintiff in this case was the School Board of Holland Public School Board, West Ottawa Public School Board, and Saugatuck Public School Board who enter
together in this case as a consortium. The defendant in this case was the teacher education unions, known as the following: Holland Education Association, Saugatuck Education Association, and the West Ottawa Education Association. In 1977, the three School Districts entered into a cooperative agreement, creating a consortium so that they could jointly offer a wide range of programs. One of these programs was the adult education program. Beginning in the same year, the consortium must annually sought and received approval for the consortium from the Michigan State Department of Education to continue to operate under the State School Aid Act §96 of M.C.L. §388.1696/M.S.A. §15.1919 (996). Prior to reporting to the State Department, the consortium conducts a variety of procedures. The administrator of the consortium reports to a council which is devised of the superintendent’s from each of the three School Districts. The consortium must also be responsible for its own budget, financial affairs, rental and maintenance agreements for the facilities and buildings for which it uses, and the contracts that it makes with the educational employees required to operate their programs. On March 25, 1988, the Board of Education of each of the three School Districts filed a petition with the Michigan Employment Relations Commission (MERC) seeking clarification of the bargaining of teaching employees represented by the three different teacher unions. The MERC ruled in favor of the consortium and the teacher unions appealed.

Issue: At issue in this case is what entity is responsible for determining who serves as the employer in a collective bargaining agreement involving the use of a consortium to meet the educational needs of a School District.

Holding: The Court of Appeals held that when School Districts enter into a consortium, to provide state-funded adult education programs while also employing qualified teachers, it is the function of the MERC to determine employer for purpose of collective bargaining agreement.
Reasoning: The Court in the previous case of In re Grand Haven Public Schools (454 N.W.2d 116) held that MERC’s long standing decisions that employees working for a consortium are employees of the consortium and not the individual School Districts. M.C.L. §388.1708(2); M.S.A. §15.1919(1008)(2) allows two or more School Districts to join in a consortium for the purposes of providing an adult education program. The plaintiffs contend that the MERC’s decision is a violation of the State School Aid Act. The Court disagreed. The State School Aid Act and the Michigan School Code were established to help meet the educational needs of the students of the state. The Urban Cooperation Act was established to allow School Districts to enjoin in a consortium for the purposes of jointly offering an adult education program. It does not matter that the word consortium does not appear in the title of these acts. Each of the acts meet the purpose for which they were designed. It is the Court’s assertion that the lack of the word consortia in their title is irrelevant to the fact.

Disposition: The Court of Appeals of Michigan affirmed the decision of the Michigan Employment Relations Commission.


Key Facts: The plaintiff in this case was Roger V. Landry, a school teacher employed with the Hamilton Heights School Corporation. The defendant in this case was the members of the Board of Trustees for the Hamilton Heights School Corporation. In February of 1987, Landry removed the glossary from the back of 146 science textbooks owned by the School District. Two weeks later the Superintendent met with Landry and subsequently recommended to the Board
that Landry be suspended without pay for 2 days and ordered to repay $1.00 each for a total of $146.00 payable to the School District for the damage to the textbooks. Landry then requested a hearing with the Board. After the hearing with Landry, the Board followed the Superintendent’s recommendation and suspended Landry and directed him to re-pay $146.00 to the School District. Landry’s next paycheck was reduced by $220.00.

Landry then filed a five-count complaint and moved for summary judgment on counts II, III, and IV of the Claims. The School Board also moved for summary judgment. The Boone County Circuit Court granted summary judgment for Landry. The School Board appealed and the Court of Appeals reversed and remanded back to the Circuit Court with the directive that Landry make restitution for the damages to school property. The School Board appealed a second time for the denial of its motion for summary judgment on counts I and V.

Issue: At issue in this case is whether the School Board is amenable to suit under 42 U.S.C. §1983.

Holding: The Court of Appeals held that the School Board members in this official capacity were persons amenable to suit under §1983.

Reasoning: 42 U.S.C. §1983 does not provide a substantive right but provides for a cause of action and remedy for the deprivation of federally protected civil rights. Prior to this case, no Indiana School Corporation had ever been under a Section 1983 suit. The Court does point to Indiana statute, IND CODE §20-1-1-1 and 21-1-1-1, that provides in theory and fact that an Indiana School Corporation is an arm of the state. The case of Will v. Michigan Department State of Police (109 S.Ct. 2304) provides that “neither a state nor its official acting in their official capacities are “persons” under Section 1983”. Local governments such as School Corporations are amenable due to immunity provided to them as officers under the Eleventh Amendment. In
State ex rel. Clark v. Haworth (23 N.E. 946), the Indiana Supreme Court ruled that schools are matters of State and not local jurisdiction. The Court also ruled that authority over schools is a central power residing in the legislature of the State. The same thoughts in Clark were expressed by the same Court in State ex. rel. Osborn v. Eddington (195 N.E. 92). The Court asserted that “the business of education is a governmental function and makes public education a function of state government as distinguished from local government.”

Disposition: The Court of Appeals of Indiana, First District, reversed the Circuit Court’s denial of School Board’s motion for summary judgment and remanded to the same court the instructions to enter summary judgment on Landry’s federal law claims in favor of the School Board and its members both as individuals and in their official capacity.

Citation: Thomas Webb, etc. et.al. v. Hal Reisel, et. al., 858 S.W.2d 767, 84 Ed. Law Rep. 1201 (1993).

Key Facts: The plaintiff in this case was Thomas Webb, as represented by his mother, Cathy Robinson. The defendant in this case was Hal Reisel, the Director of Pupil Transportation for St. Louis Public Schools. Plaintiff in this case was struck by an automobile after exiting a school bus. Plaintiff alleges that injuries were caused by the defendant’s failure to do four things: 1) the designation of a safe de-busing location, 2) adequately supervising the de-busing of its passengers, 3) establishing guidelines for the supervision of the de-busing, and 4) having students de-bus on a sidewalk. Plaintiff brought suit in Circuit Court of the City of St. Louis, seeking a summary judgment. Defendant filed a motion for summary judgment based on official immunity and the public duty doctrine pursuant to Rule 74.01 (b) of Missouri statute. The Circuit Court of the City of St. Louise entered summary judgment for Director to his entitlement to official immunity.
Issue: At issue in this case is whether the defendant in this case is immune to action brought against him on part of the plaintiff.

Holding: The Court of Appeals held that the Director was public official and that his duties were safe, efficient, and discretionary and that Director was entitled to immunity.

Reasoning: In *Lynn v. TIME-D.C., Inc.* (710 S.W.2d 359), the Court found that the application of the doctrine to official immunity must be done so by the public official. A public official may invoke the sovereign function of the government so long as the official is serving in a capacity that is being exercised by the individual in order to benefit the public. The Director is responsible for the safe and efficient transport of over 14,000 students in the School District. Within this responsibility, the Director is responsible for designating bus routes and for locating various de-busing points for the students. A School District has the power to establish bus routes and de-busing points and can delegate that authority to its officers. The Director’s supervisor was the Associate Superintendent. It is permissible that the Director gains his responsibility to function and authorize his duties and responsibilities from the existing chain of command. Due to the fact that the Director was following those administrative responsibilities assigned to him, he is entitled to the same immunity afforded to them as he was acting on their behalf. *Sherrill v. Wilson* (653 S.W.2d 661)

Disposition: The Missouri Court of Appeals affirmed the decision of the Circuit Court of the City of St. Louis.

*1994*

Key Facts: The plaintiff in this case was Ray Swinney, Superintendent of the Deming Board of Education. The defendant in this case was the members of the Deming Board of Education. Plaintiff served as Superintendent of Schools for Deming, New Mexico. Plaintiff worked under a contract with the Board. Plaintiff contends that the Board breached the terms of the contract when it chose to dismiss him. Plaintiff filed an action seeking relief from the Board’s decision and seeking reinstatement and back pay for the time missed as Superintendent from the time he was terminated. The Board filed a motion to dismiss and the District Court, Suna County granted the motion on the grounds that plaintiff was terminated, not discharged, and such a termination was based on an implied contract not a written contract as plaintiff contends. Plaintiff asserted that he was tenured under the Deming Public School Officials Manual and State Board of Education Regulation 89-1.

In January of 1991, the School Board voted not to renew Swinney’s contract for the 1991-1992 school year, due to unsatisfactory work performance. Swinney was placed on administrative leave at the time of his termination notice pending a hearing. Swinney cited three reasons as to why his termination should be voided. 1) Swinney’s contract contains contractual rights that allow him to correct the alleged unsatisfactory work, 2) he did not receive notice of written reasons for termination, and 3) participation in a hearing in order to defend his right not to be terminated.

Issue: At issue in this case is whether the Deming Board of Education wrongfully terminated the contract of Ray Swinney.

Holding: The Supreme Court held that provisions in the School Board Manual that allow employee’s contract deficiencies contradicts the State School Personnel Act and thus Superintendent has no right or expectation to continued employment.
Reasoning: Under NMSA 1978 §22-10-1(B)(4), school administrators have employment contracts of one or two years but have no expectation for continued employment. Furthermore, the Court construed the language of the contract as one which does not provide an implied promise of an expectation for continual employment. The statute clarifies that only certified school instructors have tenure rights not administrators. Certified school instructors with tenure are entitled to procedural due process rights, but not the case for administrators. However, In Gragg v. Unified School District No. 287 (627 P.2d 335), the Court stated, “Any attempt by a local School Board to enter into a contract or formulate a policy that violates the specific statutory provision government is ultra vires and void.” School Board policy does not supercede New Mexico state law when there is a direct conflict between the two.

Disposition: The Supreme Court of New Mexico affirmed the decision of the District Court, Suna County.

Citation: Board of Kentucky of Boone County v. Joan Bushee, et al., 889 S.W.2d 809, 96 Ed. Law Rep. 839 (1994).

Key Facts: The plaintiff in this case was the Board of Education of Boone County, Kentucky. The defendant in this case was the officers of the Boone County Education Association and a teacher, Joan Bushee of the Boone County School System. The defendants filed an action seeking a declaratory judgment against the Board challenging a provision of the Board’s policy that addresses the Board’s policy for implementing school based decision making. Kentucky statute KRS 160.345 requires that each school form a council for implementing a policy for school based decision making. Further, the statute specifies that the role of the council is to set policy that is consistent with Board policy.
The provision of the Board’s policy that the defendant disagreed with was three elements that consist of 1) measureable goals and objectives for the school year, 2) development of a plan for implementing and achieving the goals and objectives, and 3) development of a method for evaluating the effectiveness of the plan. The Council contends that these three elements were a violation of the Board’s statutory authority and the legislature did not prescribe the legislation so that the Board has such an evaluative prerogative over the policy making and decision making ability of the Council. The Boone County Circuit Court ruled that the Board’s policy did not overstep their authority. The Court of Appeals reversed the decision of the Circuit Court.

Issue: At issue in this case is whether the School Board possessed the authority to adopt policy that restricts the abilities of the Council.

Holding: The Supreme Court held that the Kentucky Educational Reform Act (KERA) did not delegate such authority to require Board approval of Council actions.

Reasoning: The Court reasoned that the objectives of KERA is for there to be decentralization of authority by School Boards and that the focus of the legislation is for School Councils to be the decision making authority in the individual schools. The School Council is to be comprised solely with representation of staff members from the respective individual schools. KRS 160.341 contains this framework of decentralized authority. In the KERA and the KRS 160.345 the Kentucky General Assembly made it clear as to their interest of the constitution of the legislation. Given that the decentralization is the optimum objective, the School Board does have the ultimate authority over the actions and decisions of the Council.

KRS 160.345 specifies that a School Board will grant authority to a School Council that grants authority based on any other authority granted by law. The KERA was clearly established
that a School Council has been delegated the authority to make policy gained from it’s over independent authority which is not specifically governed by School Board policy.

Disposition: The Supreme Court of Kentucky affirmed the decision of the Court of Appeals.

1995


Key Facts: The plaintiff in this case was the Scotch Plains-Fanwood Board of Education. The defendant in this case was the Scotch Plains-Fanwood Education Association. Mae Delle Horton was a tenured special education teacher with the Scotch Plains-Fanwood Board of Education since 1977. From the time that she began her employment, Horton’s annual absence from work each year had been excessive. In 1985, Horton’s principal cautioned her that her absence from work was a serious concern. The principal made the same assessment in 1988. From 1977 to the end of the 1988-1989 school year, Horton was absent 244.5 days.

The Scotch Plains-Fanwood Board of Education and the Scotch Plains-Fanwood Education Association have a collective bargaining agreement. From the dates of July 1, 1988 to June 30, 1991, the agreement contained a provision that specifies that increases in salary are additional to the Board’s Salary Guide which states that salary raises are only approved with the recommendation of the Superintendent and the approval by the School Board.

In September of 1989, Horton was injured in a train accident, which accounted for another significant loss of work time. In February of 1989, Horton missed 55 days of work due
to major surgery. In November of 1989, Horton received an evaluation from her principal that her attendance record had helped to create a failure in providing good instruction for her students. Horton responded that her absence from work was justified in reference to her surgery and accidents. Her principal reprimanded her again in March of 1990 and noted again her lengthy and extended absence from work. In April of 1990, the School Board informed Horton that her salary for the 1990-1991 school would remain at the 1989-1990 level rather than be raised to a higher level. Horton then filed a grievance in opposition to the withholding of her increment. The Board denied the grievance on the reasoning that the withholding of increment was for predominantly educated reasons. Soon after, the Teacher’s Association filed for binding arbitration on her behalf. The Board then filed a petition with the New Jersey Public Employment Relations Commission (PERC) questioning whether they were required to submit to binding arbitration. New Jersey statute N.J.S.A. 34:13A-26-29 states that such a grievance on withholding an increment must be subjected to binding arbitration.

The arbitrator found that the Board had valid interest in the expectation of Horton’s good attendance at school. However, the arbitrator determined that PERC was correct in determining that the Board’s failure to increase Horton’s pay increment was for disciplinary reasons and that such a discipline was excessive and arbitrary. The case went to the Supreme Court Chancery Division and that Court affirmed the decision of the arbitrator. The case went to the Superior Court, Appellate Division and the Court reversed the ruling of the Chancery Court. The case was appealed to the Supreme Court of New Jersey.

Issue: At issue in this case is whether the School Board possessed the authority to withhold an employee’s pay increment for disciplinary reasons.
Holding: The Supreme Court held that Board’s decision to reduce increment was arbitrary even though it was permissibly disciplinary in nature and arbitrator’s ruling was appropriate and in-line of PERC’s determination.

Reasoning: New Jersey statute N.J.S.A. 34:12A-22a confers authority to PERC to resolve disputes as to whether the withholding of increment raises can be withheld for disciplinary reasons. The arbitrator has the authority to make a determination of Board’s cause for withholding from New Jersey statute N.J.S.A. 189:L9-14. The Court reasoned that the arbitrator had trouble determining the appropriate standard of review. The Board argued that the arbitrary and capricious standard of review should apply. The Association believed that a just cause standard of review was appropriate. The arbitrator determined that the views of both parties were irrelevant because “it is commonly understood that the absence of a just cause for disciplinary action means that the Board acted in an arbitrary, capricious, or discriminatory fashion.” The Court reasoned that the collective bargaining agreement does not provide a standard for evaluating the Board’s decision to withhold an increment for disciplinary reasons. In Local No. 153 supra 522 A.2d 992, the Court determined that an arbitrator, “cannot contradict the terms of a collective bargaining agreement but in the absence of language to address a specific situation, the arbitrator’s ruling is binding”. The Court believes that the arbitrator applied the appropriate just cause for review in this case.

Disposition: The Supreme Court of New Jersey reversed the decision of the Supreme Court, Appellate Division.

Key Facts: The plaintiff in this case was Charie Wallace. The defendant is the Board of Education of the Casa Grande Union High School District No. 82. The Plaintiff, Charie Wallace, whose administrative contract was not renewed and who was offered a teaching contract instead, brought action against the School Board and the Superintendent. The complaint alleged that the Superintendent had made a comment in a staff meeting to one of the principals in the School District about Ms. Wallace, the Plaintiff, having an affair with the Superintendent’s predecessor. Further, the Plaintiff, in her action, claimed that she had been denied wages owed to her in violation of state law by a reduction in pay through her assignment to a position as a teacher from that of an administrator. She requested treble damages on her claim of failure to pay wages and infliction of mental distress.

Issue: At issue was whether the Plaintiff, Charie Wallace, was defamed through a statement made by the Superintendent to a school principal alleging a sexual affair with a former Superintendent, and whether the Plaintiff is due money damages for reduction of wages in violation of state law by her transfer from an administrator to a teacher.

Holding: The Plaintiff’s defamation action was denied as was the claim for monetary damages for lost wages and infliction of mental distress.

Reasoning: The Plaintiff did not establish a defamation claim against the Superintendent who allegedly told a principal about a rumored affair between her and the Superintendent’s predecessor since the only evidence of the Superintendent’s defamatory statement was based on inadmissible hearsay. Under state law, only certificated teachers who have been employed by the School District for more than the major portion of three consecutive school years are entitled to continuing teacher status. The statutory prohibition against reduction in salary applies only to
those who have been certificated teachers. Since the Plaintiff had been an administrator for the previous six years, the School District was not statutorily prohibited from reducing her salary.

Disposition: The Arizona Court of Appeals affirmed the ruling of the Superior Court, Pinal County in favor of the Superintendent and School Board on all charges.

1996


Key Facts: The plaintiff in this case was Susan Castle, president of the Colonial Education Association. The defendant in this case was the Board of Education of the Colonial School District. In November of 1993, a private citizen wrote to the Board of School Directors (Board) of the Colonial School District to express concerns over the use of School District equipment by School District personnel to select votes and conduct political activities to assist certain candidates for the upcoming Board elections. Plaintiff confirmed this oversight and promised that such incidents would not happen again in the future.

After this incident in January of 1994, the Board adopted a policy which established, “Prohibited Political Activities for Employees.” The policy restricts the use of school equipment by school personnel during school hours to engage in political activity as well as to specify that school personnel cannot conduct any other political activity during regular work hours. The Board revised the policy in April of 1994 and removed the provision that allowed Board personnel to work at polling places located on school property. In September of 1995, plaintiff asked for clarification on the policy, specifically on the issue of employees working at polling places on school campuses. The Board affirmed its position on the entire policy. In October of
1995, plaintiff filed action and moved for a preliminary injunction against enforcement of the policy with an impending election on November 7, 1995. The defendant waived enforcement for the election dated November 7, 1995. Plaintiff’s action sought declaration that defendants had violated teachers’ First Amendment rights by not allowing them to work at polling places on school property outside of school work hours.

Issue: At issue in this case is whether the School Board violated plaintiff’s First Amendment rights.

Holding: The U.S. District Court held that 1) views of School District personnel on matters of election candidates involved matters of public concern, and 2) the Board’s interests in prohibiting political speech does not outweigh the interests of teacher to express their speech.

Reasoning: In *Pickering v. Board* (1968), a balancing test was used that determined the weight of the government’s interests versus that of the citizens. *Pickering* is also used to determine in cases where disciplinary action has occurred against employees for engaging in disruptive or controversial communication. It is used to also judge the banishment of bans on employee speech. The Court reasoned that it is the government’s burden to justify prohibition of speech. It is the government’s responsibility to show the interests of the potential benefits in respect to their employees and then to determine if such interests are outweighed by the necessary impact of such expression on the actual operation of the government. In this case, the Board clearly had no greater authority to prevent employees from working off hours in the local political process than it did to allow them to do so.

Disposition: The United States District Court granted the teacher’s motion to declare School Board policy as a violation of teachers First Amendment rights.
Citation: C.F.S. v. David J. Mahan, Superintendent of Schools of the City of St. Louis, and the Board of Education of the City of St. Louis, 934 S.W.2d 615, 114 Ed. Law Rep. 973 (1996).

Key Facts: The plaintiff in this case was C.F.S. The defendant in this case was the Board of Education of the City of St. Louis and its Superintendent, David J. Mahan. In September of 1994, plaintiff entered into an employment contract with the defendant. Prior to his employment, plaintiff met with the principal of Vashion High School and interviewed for a position. In his interview, plaintiff informed the principal that he had an incident in July of 1993 where he was charged with indecent exposure and subsequently entered a guilty plea. Eventually, plaintiff’s charge was entered as a misdemeanor with disturbing the peace. Plaintiff pled guilty and paid a monetary fine. In December of 1994, plaintiff received a letter from the School District that he was suspended without pay, pending a hearing due to the fact that he had violated School Board policy, R4840, Code & Ethics Conduct due to his previous guilty plea on a misdemeanor charge. A hearing was held in February of 1995. At the hearing, the Director of Security Services for the School District submitted and received a background check which identified the previous misdemeanor plea. Following the submission of testimony and character witnesses, the Board voted to terminate plaintiff in March of 1995. Plaintiff then filed a two count petition seeking a review of the Board’s action and an action at law due to his belief that his contract had been breached. The motion for action was denied and plaintiff sought an appeal by the Missouri Court of Appeals.

Issue: At issue in this case is whether the School Board exceeded its authority in conducting a hearing of plaintiff’s previous misdemeanor plea.
Holding: The Missouri Court of Appeals held that the School Board did not violate Missouri statute by conducting a contested hearing on termination of C.F.S.

Reasoning: The Court did not agree with plaintiff’s assertion that the Board should not be allowed to conduct a termination hearing on him due to the fact that he was a tenured teacher. The Court further reasoned that in Valter v. Orchard Farms School District (1976) they ruled that a teacher need not be tenured to be subjected to a termination hearing due to the fact that the employee has a property right to the 1-year probationary contract and some due process is therefore required.

On plaintiff’s assertion that R4840 does not apply to a contract that occurred prior to his employment, the Court provided that the Board was upfront with the knowledge that the previous count had preceded his employment with the Board. The Court felt that such an assertion is moot as the applicability of the regulation was inherent in the charges. In Birdwell v. Hazelwood School District (1974) the Court held that Missouri statute RSMO §168.126 does not allow possible reasons for termination of personnel, but notes that authority to terminate employees for cause is inherent upon the Board.

Disposition: The Missouri Court of Appeals, Eastern District, Division Five, affirmed the decision of the Circuit Court of the City of St. Louis.


Key Facts: The plaintiff in this case was Paul Widdoes, an employee of the Detroit Public School Board of Education. The defendant in this case was the Detroit Public Schools Board of Education. In February of 1990, an incident occurred where plaintiff was alleged to have used excessive force in the reprimand and discipline of a student in the school setting. Plaintiff had a
similar incident occur previously in the School District where he was accused of using excessive force. In January of 1990, plaintiff received written notice of the charges made against him and additional notice that he would be suspended without pay for three weeks. The hearing was not held until December of 1990. Two weeks after the hearing, on the advice of the Board’s counsel, the Board terminated plaintiff’s contract.

Plaintiff appealed the case to the State Tenure Commission. The Commission denied plaintiff’s appeal. Plaintiff then appealed to the Circuit Court of Wayne County and the decision was reversed. The Court ruled that the decision of the Commission did not contain nor was it supported by competent material, or the appropriate measure of evidence of the use of excessive force by plaintiff. The Court also awarded attorney fees to the plaintiff.

Issue: At issue in this case is whether the plaintiff’s termination of employment was warranted by the School Board.

Holding: The Court of Appeals held that 1) ruling that teacher’s termination was for excessive use of force was not supported by the appropriate evidence, 2) issue of excessive use of force was remanded back to the Commission for further deliberation with direction, and 3) teacher was not entitled to attorney fees.

Reasoning: Michigan School Code, M.C.L. §380.1312 defines corporal punishment as the “deliberate infliction of physical pain by any means upon the whole or any part of pupil’s body as a penalty or punishment upon any pupil.” The same statute provides that school personnel shall not use corporal punishment unless such force is deemed necessary to: protect the employee, obtain possession of a weapon by student, and protect property damage. In the deposition, the student that was purported to be harmed testified that the plaintiff, “did not hurt
him in anyway”. Thus the Court agreed with the Circuit Court in their assertion that the Board lacked the appropriate evidence to terminate plaintiff.

Disposition: The Court of Appeals of Michigan affirmed the lower court’s ruling on lack of evidence for termination, but remanded to State Tenure Commission for future review of specific questions raised in case and reversed the ruling of the lower court to award damages of attorney fees.


Key Facts: The plaintiff in this case was the Board of Education of the Granite City Community Unit School District #9. The defendant in this case was the Illinois Educational Labor Relations Board (IELRB) and the Granite City Federation of Teachers Union, Local 743, IFT/AFT (Union). On the date of January 12, 1994, Wanda Carroll, a teacher of the School District had an encounter in one of the schools where a student physically shoved her twice after an altercation. Carroll reported the matter to her principal, James Jeffries. A meeting was held with the parents of the students, with Carroll, and the principal. During the meeting, Carroll informed them that she would be filing a report with the local law enforcement. On the next school day, Carroll observed the student back in school and went to the principal and inquired as to why the student had not been suspended. Jeffries explained his rationale for not suspending the student and Carroll called Jeffries a “wimp” while walking away. Jeffries then asked Carroll to go home for the remainder of the school day and Carroll refused. A meeting was then held with a supervisor from the School District and President of the Union. After the meeting, Carroll left the school day without pay.
On January 31st, the School District notified Carroll by letter than an administrative hearing would be held on the matter on February 22nd. At the hearing, the District gave Carroll a 1-day suspension without pay and determined that she already served the 1 day for the date that she was sent home. On March 15th, the Union filed a demand for arbitration with the American Arbitration Association (Association). The School District informed the Union that it did not consider the matter to be subject to arbitration and that it would not abide by any award handed down. The Association found the matter to be subject to arbitration and set a hearing date of August 7th. On March 18th, the Union filed an unfair labor practice action against the School Board with the IERLB alleging that the School Board had violated section 14 (a) 1 of the Illinois Educational Labor Relations Act (Act). An Administrative Law Judge (ALJ) found that the Board had violated section 14 (a) 1 of the Act. The IERLB then affirmed the decision of the ALJ and the School Board appealed to the Appellate Court of Illinois, Fourth District.

Issue: At issue in this case is whether the School Board violated the Illinois Educational Labor Relations Act.

Holding: The appellate court held that the School Board temporarily suspended teacher without first following the statutory grievance procedure as affirmed by Illinois law.

Reasoning: Illinois School Code 115 ILCS 5/10 (b) specifies that parties to a collective bargaining agent cannot effect or implement a provision in a collective bargaining agreement if it is determined that in doing so would violate the statutes that are bound by Illinois law with the General Assembly of Illinois. The Court does not agree with the two assertions provided by the School Board that the matter is not subject to arbitration under the collective bargaining agreement and two, even if the matter is deemed to be sufficient for arbitration, a arbitration ruling would be in violation of Illinois statute, 115 ILCS 5/10(b). In Stacton Community Unit
School District No. 6 v. Illinois Educational Labor Relations Board (588 N.E.2d 751, 757), the Court found that local school collective bargaining agreements have very broad grievance procedures and the matters in that case encompasses the matters in this case. Therefore, the Board’s first contention is not a violation of the Act.

In their second contention, the School Board contends that permitting arbitration would in effect give the arbitrator “veto power” over School Board decisions. Section 10-20-5 of the Illinois School Code provides that a School Board’s duty is to “adopt and enforce all necessary rules for the management and government of public schools.” The Court disagreed. In Spinelli (515 N.E.2d 1229), the Court ruled that a School Board has the powers expressly conferred to it by the Illinois General Assembly. In doing so the legislature did not design the legislation so that the School Board possesses unlimited power that goes unchecked such as a decision by an arbitrator. The Court reasoned that in essence an arbitrator does possess “veto power.” As long as the decision rendered does not conflict state statute, an arbitrator’s decision-making ability can be objectionable.

Disposition: The Appellate Court of Illinois affirmed the decision of the Illinois Educational Labor Relations Board in ruling that the School Board had violated the grievance procedures of the collective bargaining agreement.

Citation: Jane Doe and Janet Doe, Individually v. Claiborne County, Tennessee, by and through the Claiborne County Board of Education, and Dennis L. Peters, Roy L. Norris, Charles Randall Burchette, Bobby Williams, Dr. Roy Ellis, Jr., Lynn S. Barnard, in their individual and official capacities, and Sam Widener, Don Dobbs and James Leonard Bundren, in their official capacities only, 103 F.3d 495, 115 Ed. Law Rep. 265, 46 Fed.R.Evid.Serv. 201, 1996 Fed.App. 0396P (1996).
Key Facts: The plaintiff in this case was Jane Doe, a former student enrolled in the Claiborne County Board of Education. Jane is also represented by her mother, Janet Doe. The defendant in this case was the administration and members of the Claiborne County Board of Education as well as Jeffrey Davis, a teacher. In the spring of 1991, Doe, while a 14-year-old freshman and student at Claiborne County High School (CCHS) became involved in an emotional and physical relationship with Jeffrey Davis, a teacher at Soldier Memorial Middle School (SMMS) and a coach at CCHS. Doe sued the defendants in their official and individual capacities due to the sexual harassment, sexual abuse, and statutory rape that she received from Davis while he was an employee with the School District. As well, Doe sued the principal from Davis’ former school in her belief in his failure to report Davis’ supposed sexual abuse of students from another school at which Davis previously worked. Doe also felt strongly that Davis’ current principal at SMMS should have prevented his employment with the District and subsequently named Lynn Barnard in the suit. Doe claims that her rights were violated under the Fourteenth Amendment, Title VII, and Title IX of the U.S. Constitution. The U.S. District Court for the Eastern District of Tennessee dismissed the action on their belief that defendants were deliberately indifferent to her constitutional right to bodily integrity. Doe then appealed to the U.S. Court of Appeals, Sixth Circuit.

Issue: At issue in this case is whether Jane Doe’s civil rights were violated by the Claiborne County Board of Education and others named as defendants.

Holding: The United States Court of Appeals held that all defendants with the exception of Davis were not liable under their individual capacities and that plaintiff had not proven their guilt through a custom or pattern on their part in failing to protect her rights. The Court further cancelled that Davis had violated plaintiff’s due process right to bodily integrity.
Reasoning: Claims against state actors under the Fourteenth Amendment through a municipal liability claim must be examined by a two-prong inquiry: 1) whether the plaintiff has asserted the deprivation of a constitutional right, and 2) whether the county and/or School Board is responsible for that violation. The Court cited several cases in determining that students have the right to be protected from sexual abuse by state actors. Most notably, in StoneKing v. Bradford Area School District (1989) the Third Circuit determined that it was ludicrous to even consider if it is impermissible for a school employee to sexually molest a student. The Court was absolute in their thinking that public school students have the due process right to be free from sexual abuse by school teachers. In U.S. v. Lanier (1996) the Court of Appeals and the U.S. Supreme Court held that the right to be free from rape and sexual assault and harassment was a component of an enforceable right to bodily integrity. Also in Lanier, the Court was concerned with the constitutional implantation of a vaguely worded federal criminal statute which criminalized “the willful deprivation of any rights . . . protected by the Constitution committed by any person under any color of any law.” In Lanier, the Court determined that the substantive component of the Due Process Clause did not apply. However, in this case they felt that it did and subsequently held that Davis violated Doe’s right to bodily integrity.

In the matter of alleging that the Board and others are responsible for the alleged sexual misconduct of an employee, the Court did not agree. In Monell v. Department of Social Services (1978), the Court determined that a School Board could not be held responsible solely for an employee’s conduct. Neither can Doe in this case. Doe must prove that the School Board and others acted in consent to assist Davis with this deprivation of bodily integrity. Doe’s assertion is not that the School Board and others acted in a way that abused a policy which therefore abused her right. It is her assertion that the defendants, minus Davis, failed to prevent the sexual abuse.
The Court reasoned that to state a municipal liability claim under a ‘inaction’ theory, Doe must establish the following: 1) a clear and consistent pattern of sexual abuse by board personnel, 2) prior notice on the part of the Board, 3) the School Board’s tacit approval of such misconduct as exhausted by Davis, and 4) the School Board’s lack of action was the moving force or direct casual link to the constitutional deprivation. The Court reasoned that Doe failed to show that the Board reflected a deliberate indifference to the sexual abuse of its students.

Disposition: The U.S. District Court of Appeals affirmed the dismissal of civil rights claims against all defendants with the exception of Davis, reversed the decision dismissing plaintiff’s Title IX claims, reversed the decision to exclude plaintiff’s complaint, and remanded instructions back to the District Court in a manner not inconsistent with this opinion.


Key Facts: The plaintiff in this case was Franklin P. Favero, Sr. who was employed by the Huntsville Texas Independent School District as a substitute bus driver. The defendant in this case was the Board of Education of the Huntsville Independent School District. His son, Franklin P. Favero, Jr. worked for the School District as a full-time bus driver. Both Plaintiffs were members of the Worldwide Church of God. Their religious beliefs required them to abstain from work to observe the weekly Sabbath, from sunset on Friday to sunset on Saturday, and to observe certain annual feasts, including the Feast of Atonement and the Feast of Tabernacles. The Feast of Tabernacles occurs in the fall of each year and requires participants to meet in a designated city with other church members for approximately ten days. To attend the Feast of Tabernacles, the Plaintiffs needed a leave of absence from work for 5 to 8 consecutive days. The number of consecutive work days missed depended on which day of the week the Feast of Tabernacles
begins and on the travel time required. When the Plaintiffs applied for jobs with the School District as bus drivers, they told the Coordinator of Transportation that their religion required them to observe certain holy days. The Plaintiff’s assert that the Coordinator of Transportation guaranteed them that they would be allowed leave from work to attend the Feasts and observe religious holidays if they gave a week or two of advanced notice. When the School District denied their leave as requested, the Plaintiffs filed suit in United States District Court under the provisions of the Civil Rights Act of 1964, §703 (a) (1), 42 U.S.C.A. §2000e-2 (a) (1) alleging religious discrimination and also brought claims under Texas law for breach of contract, promissory estoppel, and violation of the Texas constitutional provision governing freedom of religion. The Court granted the School Boards motion for summary judgment.

Issue: At issue in this case is whether the School District’s refusal to grant the plaintiffs’ request for days of leave violated their religious rights guaranteed by the First Amendment under Title VII of the Civil Rights Act of 1964 and rights under Texas constitutional and statutory law regarding breach of contract, promissory estoppel, and freedom of religion.

Holding: The United States District Court for the Southern District of Texas held that the school district did not commit religious discrimination under Title VII. Further, the Court ruled that the Plaintiffs did not have a guaranteed right to the requested leave, promissory estoppel did not apply, and there was no violation of the Texas Constitution in denial of the requested leave.

Reasoning: Although the School Board did not make a reasonable accommodation for the school bus drivers when it failed to give them all of the unpaid leave time they requested for a religious observance, requiring the School District to hire more drivers and pay drivers more so that all routes would be covered during the bus drivers’ absence and requiring supervisors or mechanics to drive busses would have constituted an undue hardship for the School Board. The
Transportation Coordinator for the School Board did not have the appropriate authority to guarantee the school bus drivers that they would be permitted to take religious leave whenever necessary. The doctrine of promissory estoppel did not apply to a School Board. There was no implied private right of action for damages existing for violation of the Texas constitutional provision governing freedom of religion.

Disposition: The United States District Court for the Southern District of Texas granted summary judgment to the School Board.

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Key Facts: The plaintiff in this case was Ramon Munguia. The defendant in this case was the Board of Education of the Unified School District No. 328 (Lorraine District). Plaintiff worked for three different school districts simultaneously for the years between 1983 and 1994. The three school districts are known as: Unified School District No. 328 (Lorraine District), Unified School District No. 327 (Ellsworth District), and Unified School District No. 401 (Chase District). During the span of eleven school years, plaintiff held teaching contracts with the Ellsworth and Chase Districts for the entire span of eleven years. He held a one year contract for the 1993-1994 school year with the Lorraine District.

July of 1993, plaintiff resigned from the Ellsworth District and applied for retirement benefits from the state of Kansas based on his years of service with the two School Districts. In accordance with Kansas law, a retired employee of the state may work for another state employer at a much smaller and specific salary. As a retired teacher, plaintiff entered into the one year
contract with the Lorraine District for the 1993-1994 school year. At the end of the 1993-1994 school year, the Lorraine District informed plaintiff that they would not employ him for the 1994-1995 school year. Plaintiff then requested a hearing under Kan.Stat.Ann §72-5438 (b). The Lorraine District denied plaintiff with his request for a hearing on the grounds that such a hearing is entitled to only those that have tenure and plaintiff had never attained tenure status with the School District. Plaintiff brought suit in the Tenth Circuit, U.S. Court of Appeals under the grounds that the School Board violated his due process rights and rights to equal protection which are afforded to him under the Fifth and Fourteenth Amendments of the U.S. Constitution. The defendant asserts that plaintiff is not entitled to a hearing due to the fact that he did not possess tenure status. The U.S. District Court for Kansas ruled that plaintiff did not have a protected property as a tenured teacher and his due process and equal protection rights were not violated.

Issue: At issue in this case is whether the plaintiff, Ramon Munguia, enjoyed tenure status as a teacher with the Lorraine School District.

Holding: The Court of Appeal held that School Board did not have an implied contract with Munguia, which would have granted him tenure status.

Reasoning: The Court agreed with plaintiff in his assertion that not all contracts in public education in the state of Kansas are written contracts. However, the Court did not agree implied contracts are valid in the absence of a written express contract. Kansas law does not allow implied contracts. Kansas law, Kan.Stat.Ann. §72-5410, identifies an express contract, written or verbal, as a contract between two parties that is also binding upon both parties. Plaintiff contends that one example of a binding implied contract is the fact that the District conducted evaluations of his teaching over a period of eight years. The Court referenced its ruling in a previous case,

As for the matter of defendant’s denial of plaintiff’s due process and equal protection rights, the Court determined that plaintiff held only a 1-year contract and as such, he should be recognized as a non-tenured employee. Under Kansas law, a school district is required to do two things in electing not to renew the contract of a tenured teacher. Those two things are 1) provide the employee with a timely notice, and 2) provide employee with an opportunity for a hearing. For a non-tenured teacher to be non-renewed, the Board must only notify the intent to terminate. A Board is not required to provide a due process hearing for the non-tenured employee. Therefore, plaintiff’s due process and equal protection rights were not violated by the School Board.

Disposition: The Tenth Circuit, United States Court of Appeals affirmed the decision of the U.S. District Court for Kansas.


Key Facts: The plaintiff in this case was Pamela Nickell, a permanent teacher for the Saline, County School District No. 163. The defendant in this case was the Board of Education of the Saline County School District No. 163. Nickell was a certificated permanent teacher for the Board for the 1993-1994 school year. In March of 1994, Nickell received notice that her employment contract would be terminated at the end of the year due to a reduction in force (RIF). The Board cited that a decline in enrollment and the expense of complying with the American Disabilities Act (ADA) has necessitated such an action as the utilization of RIF. The School Board has a very detailed policy in place that prescribes how the RIF is to be handled.
The selection of personnel to be terminated under RIF is based on the eight following criteria: 1) programs to be offered, 2) areas of certification, 3) state and federal mandates for specific employment practices, 4) special qualities that require special training and expertise, 5) contribution to extra-curricular programs, 6) qualifications based on employee evaluation procedures, 7) the impact created by multiple part-time certified employees, and 8) any other reasons which can be normally related to the instruction of administration of the school. Finally, the policy specifies that in the event that the implementation of all eight criteria does not separate personnel, the employee with the longest continuous service with the Board shall be retained.

Nickell received a hearing on April 26, 1994. At the hearing, the Board indentified six permanently certificated personnel who were considered to be candidates for RIF. A member of the Board went through the qualifications of each according to the eight aforementioned criteria. After identifying the qualifications it references to the six personnel. Nickell and another one of the six personnel, Ringler, had the same standing. The Board chose Ringler, as she had more years of continuous experience service with the District. Nickell appealed the Board’s decision to the Saline County District Court on the contention that the Board violated its RIF policy by choosing someone who held probationary status. The District Court affirmed the decision of the School Board and Nickell appealed to the Nebraska Court of Appeals. The docket for Court of Appeals was full and the case was forwarded sua sponte to the Supreme Court of Nebraska.

Issue: At issue in this case is whether the School Board violated its RIF policy with the termination of Nickell.

Holding: The Supreme Court held that: 1) board did not impermissibly retain probationary certificated teacher while terminating a permanently certificated teacher, 2) teacher
received appropriate notice of her impending termination, and 3) board termination was supported by sufficient evidence.

Reasoning: In Van Fossen v. Board of Governors (1988), the Court determined that a Board may terminate a teacher’s contract via the following proof at a hearing: 1) change in circumstance necessitating a RIF, 2) that the change in circumstances specifically relates to the teacher in question, and 3) that there are no available vacancies on the staff for which teacher is qualified. The Board sufficiently substantiated that all three of these criteria were met.

Nickell bases her claim of wrongful termination on the fact that a probationary teacher, Bos, was retained rather than her. In 1991 the Nebraska legislature amended §79,108 (1) (b) which allowed part time employees to accumulate full time experience with a School Board provided that they worked at least half time in a school year. Bos had 11 years of experience with the District prior to 1991 and Nickell alleges that those years should not be counted. The Court disagreed. The Court viewed the language of the statute and determined that no language existed that allowed the use of such experience but they voted that there was no language that prevented it either. The Courted cited the previous case of Wang (260 N.W.2d 478-79) where they determined that the statute does not state that the amended regulation can be used retroactively, the statute still allowed for the use of effective late service. Finally, in Dyhreman v. Board of Education (316 N.W.2d 69), the same Court held that a School Board has broad discretion in determining what factors to include in its RIF.

Disposition: The Supreme Court of Nebraska affirmed the decision of the Saline County District Court.

Citation: Barbara Plumeau, Personally; Amanda Barton-Plumeau, by her mother and guardian ad litem, Barbara Plumeau v. School District #40 County of Yamhill; and Adrian

Key Facts: The plaintiff in this case was Amanda Barton-Plumeau as represented by her mother Barbara Plumeau. The defendant in this case was the Board of Education of School District #40 County of Yamhill. Amanda Baron-Plumeau was a student at Memorial Grade School in McMinnville, Oregon for the years of 1983-1987. It was also during this time, that Plumeau was sexually abused by Adrian Moore, a janitor at the school.

During the time that he was a custodian, Moore had several negative incidents with the school’s administrative staff over his consistent inappropriate behavior around young girls at the school. Several of the staff members had reported to the principal of several instances where Moore was sighted in close proximity to the playground and at other times watching the playground as well as other incidents when he watched physical education classes and other times of recess. In one instance, Moore was specifically caught in full public view, holding hands and hugging Plumeau. Moore was reprimanded several times for his behavior both in verbal and written form.

In February of 1987, Moore was transferred to another school in the District, the Adams Elementary School. Moore’s behavior continued at this school. While on the job less than three months at Adams Elementary School, the father of a female student complained to the school’s administration as to Moore’s inappropriate behavior around his daughter. The School District Child Development Specialist interviewed the girl and several others who had previously reported inappropriate behavior. On the next school day after the incident, the School Board terminated Moore. Subsequently an arrest was made and Moore admitted to sexual contact with at least 17 girls over a 3-month period. Moore pled guilty to three counts of sexual abuse in the
first degree of ten girls and was sentenced to five years of imprisonment on each count. Eventually the court placed Moore on a suspended sentence and placed him on probationary status. Shortly thereafter, an investigation was conducted at Moore’s original place of employment at Memorial Elementary School. The school administration found that one girl had been sexually abused but the incidents involving Plumeau had not been learned of at that time.

Five years later, Plumeau attempted suicide and upon her hospitalization, she revealed as to the sexual abuse that she suffered from Moore. The Plumeaus’ brought a civil rights action in United States District Court for the District of Oregon against the Board of Education, the principal of the school, and Moore. The charge was negligence, battery, and sexual abuse under the Oregon Tort Claims Act (OTCA) and the violation of her civil rights under 42 U.S.C. §1983. The United States Magistrate Judge entered summary judgment on behalf of the School Board. The Plumeaus’ appealed to the United States Court of Appeals.

Issue: At issue in this case is whether the School Board and its administrative personnel are responsible for the sexual abuse of Amanda Barton-Plumeau.

Holding: The United States Court of Appeals held that 1) the Plumeaus did not submit their claim in a timely manner according to OTCA, 2) Plumeau had a constitutional right to be free from sexual abuse from school employees, 3) School Board was not liable for abuse under §1983, and 4) District Court’s denial of plaintiff’s purported motion for leave to amend complaint was not an abuse of their discretion.

Reasoning: The OTCA requires that an injured party in pursuit of a tort claim against a public body must do so within 270 days from the time of the alleged injury. In Gaston v. Parsons (864 P.2d 1319, 1322), the Court determined that the 270 notice period begins when the plaintiff knows or in the exercise of reasonable care should have known the facts that would make a
reasonable person aware of the fact that a substantial possibility of a tort claim exists. Oregon statute, Or.Rev.Stat. §30.275(7), states that the plaintiff must bear the burden of proof in noting that a tort claim was filed in a timely manner. The Plumeaus argued that the appropriate agencies were notified within the 270-day time period. However, the Court determined that all of these agencies were involved in a criminal investigation and not one of an investigation of a tort nature. Therefore, the 270-day time period of notification required by OTCA was not met by the Plumeaus’.

In determining if the Yamhill Board of Education or its administrative staff were liable for the sexual abuse of Plumeau, the Court looked to the language of the Fifth and Fourteenth Amendments of the U.S. Constitution and to several previous cases argued in federal court to determine if “municipal liability” existed. To impose municipal liability under §1983, the plaintiff must bear the burden of proof on the following: 1) that plaintiff possessed a constitutional right of which she was deprived, 2) that the School Board had such a policy to address sexual misconduct of its personnel, 3) that the policy reveals language that addresses deliberate indifference to the injured party’s constitutional right, and 4) that the policy alone is the moving force behind the constitutional violation. Amanda Plumeau did have a constitutional right to be free and protected from sexual misconduct from Moore. However, the Court determined that the School Board did not participate in engaging a policy or failed to engage in following policy which would have prevented the sexual misconduct on the part of Moore. Furthermore, the Court determined that the Plumeaus’ failed to raise sufficient evidence as to the municipal liability in so far as the claims were based upon 1) the practice of ignoring complaints, 2) unconstitutional actions taken by those with policy-making authority, and 3) failure to provide a duty to protect. Finally, the Court determined that the Plumeaus’, in citing Miller v. Fairchild
(1986), did not appropriately argue the point that the School Board had failed to train its staff to correctly identify the signs of child abuse. The Court could not grant summary judgment to plaintiff’s when they failed to provide sufficient evidence, to raise significant issues, or prove that the Board violated its own policy.

Disposition: The United States Court of Appeals affirmed all decision of the federal District Court in determining that the Plumeaus’ OCTA claim was untimely and the Court of Appeals also affirmed the decision to grant summary judgment to the School Board in the Plumeaus’ assertion that their federal civil rights had been violated.


Key Facts: The plaintiff in this case was a group of teacher education associations, known as: Atlantic City Educational Association, Atlantic City Head Custodians’ Association, and the Keyport Teachers’ Association (Associations). The defendant in this case was the Board of Education for two different School Districts known as: Board of Education of the City of Atlantic and Board of Education of the Borough of Keyport (School Boards). The School Boards developed health benefit plans for their respective employees. The School Boards claim that the development of their own health benefit plans saved costs and also provide better benefits for their personnel. The Associations disagreed and filed a grievance. The State Commissioner of Education (Commissioner) thru the guidance of the New Jersey State Board of Education concurred that the plans established by the School Boards constitute self-insurance plans which is contrary to New Jersey state statute N.J.S.A. 18A:16-13 and thus the Boards have committed
statutory violations. After the decision of the Commissioner, the Atlantic City School Board dropped their action and entered into a contract with an insurance company and the Keyport School Board (Keyport) appealed the case to the Superior Court of New Jersey. Keyport determined that New Jersey state statute N.J.S.A. 52:14B-1, known as the Administrative Procedure Act is the ruling authority and that the State Board’s decision constitutes illegal rule making.

Issue: At issue in this case is whether the Keyport School Board is in violation of New Jersey statute in developing a self-insurance health benefits plan.

Holding: The Superior Court, Appellate Division held that Keyport’s health benefit insurance plan was basically a self-insurance plan and thus in violation of New Jersey statute.

Reasoning: In Irvington Education Association v. Board of Education (A-4805-82T5, the Commissioner of Education concluded that New Jersey School Boards could not establish a self-funded health benefits plan as it lacks the appropriate statutory authority to do so. The State Board of Education affirmed that decision and so did the Superior Court of New Jersey. The Court found that School Boards lack express authority for the use of self-insurance funds and that there is no legislative history that allows them to do so. The Court declined to infer the power needed for School Boards to direct payment of health benefits as not allowed in the General Power Clause, N.J.S.A. 18A:11-1(d). The School Board in Irvington, and the School Board in this case, looked to the case of Teamsters Local 331 v. Atlantic City (467 A.2d 264) where the same Court noted that the city of Atlantic City could contribute to a union’s health and welfare fund. In Irvington, the Court in their ruling against the School Board allowed their decision to be stayed through the end of the existing contract year and then allowed the School Board to appeal to the New Jersey Legislature to enact legislation that would provide authority
for School Boards to create their own self-insurance plans. The New Jersey Legislature never acted on such a call for legislation and none existed at the time that Keyport brought their appeal to the Court. Thus, the Court ruled that self-insurance plans created by the Keyport School Board were in violation of New Jersey statute.

Disposition: The Superior Court of New Jersey, Appellate Division affirmed the decision of the New Jersey State Commissioner of Education and the New Jersey State Board of Education.


Key Facts: The plaintiff in this case was the Board of Education of the Seattle School District No. 1. The defendant in this case was the International Union of Operating Engineers (Union), in their representation of the non-certified personnel of the Seattle School District No. 1. The personnel that the Union represents, includes the following: custodians, gardeners, food service workers, security monitors, alarm monitors, and security alarm specialists. The group of individuals comprises 12% of the School District personnel. The School Board and the Union have had collective bargaining agreements since the 1970’s. During the years of 1994-1997 the two have had an ongoing dispute about specific provisions of the collective bargaining agreement. While this case was pending, both parties decided to put their disputes aside in order to deter a strike on the part of the personnel.

The dispute between the two parties arose out of supplemental compensation benefits that are extended to personnel in the District in addition to the benefits that the personnel receive, known as Sick Leave & Emergency Leave. The state of Washington’s Industrial Insurance Act, Title 51 RCW, states that employees that have been temporarily disabled due to on the job
injuries are entitled to disability compensation payments. Generally these disability payments can amount to no more than 60% to 70% of an employee’s lost wages. In addition to the required statutory payments, employees can earn 12 days of sick leave per year. The sick leave can be cashed in at 1 day’s pay for 4 days of accrued leave, provided that the employee has at least 60 days of sick leave accumulated. For those employees who do not have enough days, they are allotted supplemental compensation benefits which basically assign the amount of pay needed to cover the lack of leave and benefits available for personnel through sick leave compensation. These supplemental contracts are not a part of the collective bargaining agreement and basically are an extension of the School Board’s ability to assist personnel with lost wages due to an accident on the job. The Union wished to make the supplemental benefits a part of the collective bargaining agreement and the School Board balked at the idea of making such benefits as a provision in the agreement. The School Board cited the supplemental benefits were offered in violation of RCW 28A.1.400.300(2)(c). The statute only allows educational employees to accrue 12 days of annual sick leave. The Board sought a declaratory judgment in stating that such provisions are contrary to law, unenforceable, and should be voided. The local King County Superior Court denied the School Board’s motion and they appealed.

Issue: At issue in this case is whether the School Board is in violation of Washington statute in offering supplemental salary benefits to its employees.

Holding: The Court of Appeals held that: 1) provision at issue did not come within statutory limit of 12 days annual accrual of sick leave, and 2) the School Board was under authority of Washington statute to comply with such a provision.

Reasoning: The Court rejects the Board’s contention that supplemental pay for injury leave is subject to the 12 day maximum cap that is placed on sick leave that is accrued annually.
RCW 28A.400.300(2) grants School Board’s with the authority in a broad manner to grant leave to their employees. In *State ex. rel. Graham v. Northshore* (666 P.2d 38), the Court determined that the Washington legislature granted School Board’s with the authority to contract with its employees as its discretion various types of leave and their discretion in doing so is not limited. In *State v. Wright* (529 P.2d 452), the Court construed this discretion as being strictly limited. However, the Court followed up that up with *Graham* in determining that extending leave benefits for injuries on the job is permissible. The Court determined that such supplemental leave does not hold the same statutory language as the annual leave accumulated in RCW 28A.400.300(2). The Court further determined that supplemental leave cannot be accrued as sick leave and thus it cannot be cashed in as personnel are allowed to do in reference to annual sick leave. Therefore the Court does not agree with the School Board in their assertion that such leave as supplemental leave is encompassed by annual sick leave.

Disposition: The Court of Appeals of Washington, Division 1, affirmed the decision of the King County Superior Court.


Key Facts: The plaintiff in this case was the East St. Louis Federation of Teachers, Local 1220, the American Federation of Teachers, and the AFL-CIO. The defendant in this case was the East St. Louis School District No. 189 Financial Oversight Panel. The Illinois State Board of Education appointed a Financial Oversight Panel known as the East St. Louis School District No. 189 Financial Oversight Panel. The State Board used its authority under the School District
Financial Oversight Panel and Emergency Financial Assistance Law to assign a panel to study the School Board policy that District operated under.

The Panel made a decision not to renew the contract of the Superintendent of the District due to the fact that he lacked sufficient financial expertise. Some of the members of the School Board balked at the idea of the panel’s recommendation that Superintendent’s contract not be renewed and refused to enforce the decision of the Panel to remove the Superintendent. The Panel then made the decision to remove the Board member that refused to enforce their decision. The Panel was within their statutory authority to remove the School Board members in question.

The School Board and the Superintendent filed separate complaints seeking declaratory judgment and injunctive relief to stop action of oversight panel. The two also sought declaratory judgment that a section of the School District Financial Oversight Panel and Emergency Financial Association Law violated due process and equal protection guarantees of State and Federal Constitutions. The Circuit Court of St. Clair County granted relief and the State Board of Education appealed.

Issue: At issue in this case is whether the Oversight Panel violated statutory authority in refusing to renew Superintendent’s contract and in their desire to remove School Board members who refused to follow their directive. Also, does the School District Financial Oversight Panel and Emergency Financial Assistance Law violate due process and equal protection rights of School Board members and the Superintendent?

Holding: The Supreme Court held that 1) Oversight panel was within statutory authority to renew Superintendent’s contract, 2) Oversight panel was within its authority to remove School Board members who fail to meet a directive, 3) Enabling statute did not unconstitutionally infringe upon School District voters right to vote for a Board member of their choice, 4) School
Board members had constitutionally protected right in their officer and enjoyed procedural due process protection, 5) Board members due process rights require that School Board members must be notified of the intent to remove them, 6) Enabling statute was not unconstitutional, 7) Enabling statute violated due process as applied, 8) Enabling statute did not violate equal protection claims, 9) Enabling statute was not improper delegation of legislative authority, and 10) Enabling statute was not unconstitutionally vague.

Reasoning: The Court reasoned that statutory language did not limit Panel’s authority over contracts and that purpose of statute was to maintain financial well being of School District. Illinois statute, 105 ILCS 5/1B-20, did not specifically grant regulatory authority but in the absence of such authority the Panel was not authorized to the same form of disciplinary action.

In reference to the issue of constitutionality of statutes the Court will construe statute as constitutional where it can and when such a statute is challenged as unconstitutional, the statute is deemed to be presumptive as constitutional. Also, parties who wish to challenge a statute as being unconstitutional must bear the burden of proof in doing so.

In the matter of the State Department’s authority to charge Oversight Panel with authority to remove Superintendent and School Board, the Illinois legislature has discretion to formulate character functions and duties of School Board. The non-renewal of contract and the removal of School Board members was a valiant exercise of Panel’s authority. The School Board members cannot assert due process claims against the state, its officers, or those which it delegates authority to such as an Oversight Panel.

Disposition: The Supreme Court of Illinois reversed the decision of the Circuit Court of St. Clair County and remanded with directions.

Key Facts: The plaintiff in this case was David Chalifoux. The defendant was the Board of Education of the New Caney Independent School District. David Chalifoux and Jerry Robertson, students enrolled at New Caney High School in Montgomery County, Texas, wore white plastic rosaries as necklaces to school for several weeks without comment from school administrators. Two police officers working in the school approached the two students at school and advised them they could not continue wearing the rosaries outside their clothing. Officer Troy Wooten told the two students that the school had identified rosaries as “gang-related apparel”. Officer Wooten acknowledged that he knew they were not gang members, but that in prohibiting them from displaying their rosaries he was acting out of concern for their safety.

Students Chalifoux and Robertson, through their parents, filed suit in United States District Court pursuant to 42 U.S.C. §1983 alleging the School Board violated their First Amendment rights under the United States Constitution. In their complaint they asked for injunctive relief and damages.

Issue: At issue in this case is whether the action of the security guards of the School Board in prohibiting the wearing of rosaries by students as necklaces violated their First Amendment rights to free exercise of religion and free speech.

Holding: The United States District Court for the Southern District of Texas held that wearing rosaries as necklaces was a form of religious expression protected under the First Amendment. Further, the policy forbidding students to wear rosaries as necklaces was a restriction on pure speech rather than a restriction of conduct incidental to speech. The Court also held that the school system policy dealing with gang-related apparel was void for vagueness.

Reasoning: The Court noted that the school system student handbook lacked a sufficient definition for gang-related apparel and rosaries were not included on any list of gang related
apparel. Also, the school system provided excessive discretion to law enforcement officials in defining the parameters of its ban on gang-related apparel. Therefore, the prohibition on gang-related apparel is void for vagueness.

On the free exercise of religion claim, the Court reasoned that the facts clearly showed, and Defendants did not dispute, that the Plaintiffs wore their rosaries for religious reasons. The rosary is deeply rooted in Orthodox Catholic beliefs. Plaintiffs’ decision to wear the rosary as a means of emphasizing their Catholic faith should not be viewed, said the Court, from a legal perspective as non-religious or abnormal. The Court stated that this is not a situation where a person adopts a random object as a religious talisman and now seeks First Amendment protection for it. In the Court’s view, to provide First Amendment protection to Plaintiffs when they have a rosary in their hands, but deny protection when they wear it around their necks, would constitute an overly narrow reading of the free exercise clause. Therefore, Plaintiffs have a sincere religious belief subject to First Amendment protection.

Disposition: The United States District Court, in finding that the school district’s prohibition on gang-related apparel and its ban on rosaries in particular violated Plaintiff’s rights to free speech and free exercise of religion, enjoined the school district from enforcing its prohibition on rosaries against plaintiffs. The Court ruled that the plaintiffs were not entitled to monetary damages since no evidence was presented at trial by plaintiffs to support an award of monetary damages.

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Key Facts: The plaintiffs in this case were Carol and Carla Floyd, fourteen-year-old twin sisters. The defendant case was Floyd Waiters, and the members of the Board of Education for Bibb County, Georgia and others. The plaintiffs were students under the authority of the Board of Public Education and Orphanage for Bibb County, Georgia. In their complaint, the plaintiffs claimed that William Booker, a security guard for the School Board, sexually harassed them. As a result, plaintiff sued the School Board and a number of school officials under 42 U.S.C. §1983, 20 U.S.C. §1681 (a) (1988), Title IX of the Education Amendments of 1972 and provisions of state law.

The undisputed fact was that Carla Floyd was forced by Booker into his car and taken to an abandoned house where Booker ordered her to remove her clothes. She refused to comply and he acquiesced and did not push her further. A week later, Booker, who was supposed to be driving Carol Floyd, Carla’s sister, to the Youth Development Center from school, took Carol Floyd to the same abandoned house and raped her. Booker was fired from his job based on the charges made against him by the plaintiffs. Booker entered a guilty but mentally ill plea and served 3 years of a 10-year prison sentence for false imprisonment and sexual assault of one in custody. Iris Waiters, Booker’s supervisor, was charged with obstruction of justice regarding the crimes involving the plaintiffs. Booker was terminated by the Board, acquitted of the criminal charge but was stripped of his police officer’s certification.

The United States District Court for the Middle District of Georgia granted summary judgment for the defendant. The students appealed and the defendants cross-appealed the denial of their motion to strike certain evidence. The United States Court of Appeals for the Eleventh Circuit accepted the appeal.
Issue: There were four issues before the United States Court of Appeals: 1) Was the School Board liable for sexual harassment under Title IX? 2) Were the Supervisors and Director of Operations final policymakers for the purpose of imposing §1983 liability? 3) Was the alleged practice of security guards taking female students to an abandoned house for illicit sex a “custom” suggesting §1983 liability? 4) Could §1983 be premised on the School Board’s alleged failure to train or supervise employees?

Holding: The summary judgment ruling for the Defendants by the trial court was affirmed on appeal to the Eleventh Circuit Court of Appeals. The Court of Appeals ruled that: (1) absent evidence that either the Superintendent of Schools or members of the school board had knowledge of the misconduct and failed to act, the School Board was not liable for sexual harassment under Title IX. (2) Since the Supervisors and Directors in the school system were not final policymakers, any alleged failure on their part to take action did not impose liability on the School Board. (3) It was not a “custom” of the school district that a security guard had a practice of taking female students to an abandoned house for sex and therefore would not support charges of §1983 liability. (4) The alleged failure of the school board to provide appropriate training or supervision of employees did not provide a premise on which §1983 liability could be based.

Reasoning: A Title IX claim can only be brought directly against the contracting party. The local School Board must have actual notice of pertinent sexual harassment and then fail to act if the School Board is to incur liability under Title IX. Under Georgia law, the local school superintendent is the executive officer of the local board of education and it shall be the local school superintendent’s duty to enforce all regulations and rules. When a School Board accepts federal funds per Title IX, the provisions of Title IX become part of their own regulations.
Georgia statute designates the local school superintendent as the party solely responsible for ensuring the school district’s compliance with its statutory and regulatory obligations of Title IX.

The supervisor of school security guards or present or former director of operations for the school district had final policymaking authority over the school’s security force. Therefore, a supervisor or director could not establish a “policy” of sexual harassment that would support §1983 liability for the security guard’s sexual harassment of students. The School Board did not act with deliberate indifference in failing to train and to supervise the security department personnel regarding prohibition against sexual harassment of students. The guard’s conduct was clearly against basic norms of human conduct, and the school district was entitled to rely on the common sense of its employees to avoid such conduct.

Disposition: The Court of Appeals, Eleventh Circuit, noted on the record that at the time it was rendering its decision in this case, the United States Supreme Court had recently granted certiorari in a Fifth Circuit case to consider the standard-for-liability issue in Gebser v. Lago Vista Independent School District (1998). The United States Supreme Court vacated the judgment in this case and remanded it to the United States Court of Appeals for the Eleventh Circuit for further consideration in light of Gebser. The standard established under Gebser is that in order to hold a School Board liable in damages under Title IX for sexual harassment of a student by an employee there must be actual notice to an appropriate person in the school district with authority to take corrective action who acts with deliberate indifference to the notice.


Key Facts: The plaintiff’s in this case were Karon Matthews and Donna McCarble, former elementary school teachers with the High Island Independent School District. The
defendant in this case was the Board of Education of the High Island Independent School District and John Charavalloti, plaintiff’s former principal. Plaintiffs allege that Charavalloti made sexual innuendos toward them and about them to other individuals and students within the school. As well, they state that their claims against Charavalloti are made in representation of other former and current female teachers at the school who were exposed to the same behavior from Charavalloti. Plaintiff’s filed a grievance with the School Board in January of 1996. In April of 1996, the Board notified both members of the plaintiff party that their teaching contracts were not being renewed for the next school year and subsequently terminated from their positions. Plaintiffs filed suit in United States District Court, Southern District, Texas.

Issue: At issue in this case is whether the High Island Independent School District Board of Education and principal, John Chiara-valloti, violated plaintiffs rights according to Title VII and First Amendment rights of the U.S. Constitution and rights afforded them according to the Texas Commission on Human Rights (TCHRA).

Holding: The United States District Court held that 1) plaintiff’s adequately exhausted administrative remedies, 2) alleged statements of principal may have committed hostile work environment of sexual harassment actionable under Title VII, 3) allegation that specific acts by principal constituted quid pro quo sexual harassment was insufficient for purposes of Title VII, 4) single unconstitutional action by School Board was indeed a furtherance of Board’s goals which provided sufficient evidence to submit Board to issues of liability under §1983, 5) plaintiff’s reporting of principals proposed conduct was a matter of concern subject to First Amendment protection, 6) two month interval between teachers’ filing grievances and their being informed of nonrenewal of their contracts was sufficient as matter of law to imply cause and effect relationship, and 7) principal was not entitled to qualified immunity.
Reasoning: The Board alleged that plaintiff failed to plead that they have exhausted their administrative remedies. The Court determined that plaintiff’s did indeed plead that they exhausted the appropriate administrative remedies when they notified written notification of right to pursue legal action from the Equal Employment Opportunities Commission and the TCHR. Due to these written notices, the Court denied defendants motion to dismiss.

On the issue of sexual harassment in a hostile work environment, the Court believed plaintiff’s allegation that inappropriate comments of a sexual nature were made by the principal. Plaintiff bore the burden of proof in proving their assertions against principal and in doing so, rightfully proved those allegations. The conduct was clearly wrong and hostile to plaintiffs and defendant’s motion to dismiss was denied.

In the allegation of violation of plaintiff’s §1983 rights, the Court determined that the ruling in Pembeau v. City of Cincinnat (1986) has merit in this same case in that the principals actions were comparable to the Court’s assertion that “a single decision by such a body unquestionably constitutes an act of government policy.” The illegal or unconstitutional actions of the final policymaker such as the Board, in setting and achieving the goals of the municipality may create liability for the policymaker. The principal was an employee of the Board and he was bound by their policy not to discriminate against the employers of the Board. In the matter of defendants final motion to dismiss on the fact that defendant has immunity the Court determined that the School Board members enjoy immunity, but the principal did not. Plaintiff’s proved that the principals harassed them and even retaliated against them after they pursued action and claims of violations of their First Amendment rights.
Disposition: The United States District Court, Southern District, Texas, denied defendants motions to dismiss all claims in favor of plaintiff with the exception of plaintiff’s allegation of quid pro quo harassment against the principal.


Key Facts: The plaintiff in this case was the Bangor Area Education Association (Association). The defendant in this case was Ronald Angle, and other members of the Board of Education of the Bangor Area School District. Sometime in the year of 1996, the Association became aware of the fact that a member of the local School Board was reviewing the personnel files of the employees of the School District. The Board member in question was Ronald Angle. Angle perceived that his authority as a School Board member allows him to view personnel files, and in doing so, he is performing an extension of his responsibilities as a School Board member to stay abreast of the personnel for which he is responsible. The Association filed a complaint with the Superintendent of the District, claiming that Angle does not possess the authority to view personnel files and that he should immediately stop the practice. Angle refused to stop the practice stating that his viewing of the files serves two purposes. The first is to determine those staff members who are doing excellent work and to subsequently commend and encourage their good work. The second is to determine those personnel that are not doing good work and to subsequently provide a response in order to improve the performance and production of the personnel in question. In September of 1996, a representative of the Pennsylvania State Education Association advised the Superintendent that the actions of Angle were illegal. Angle
continued the practice and as of the month of the complaint, Angle had reviewed approximately 30 of 180 personnel files. The Association warned the Superintendent and Angle in the month of October that the activities were illegal and needed to stop and Angle refused to stop. In November of 1996, the Association filed a complaint in equity, an action in mandamus, and an action in declaratory judgment. The Court of Common Pleas of Northampton County issued a decree in nisi stating that School Board members lacked the authority to view personnel files.

Issue: At issue in this case is whether Bangor School District Board of Education member, Robert Angle, had the authority to review the personnel files of the employees of the School District.

Holding: The Commonwealth Court held that 1) members of a School Board in the State of Pennsylvania lack the statutory authority to view the personnel files of the employee’s of School Boards of Education, 2) the files of education personnel in the state are not a matter for public record, and 3) the Pennsylvania Personnel Files Act prohibits School Board members from viewing such files.

Reasoning: Legislation does not exist in the Pennsylvania Education Code nor is there any case law precedent in Pennsylvania case law that gives authority for a School Board member to view the personnel files of education employees (24 P.S. §§1-101-27-2702). The Board does have the authority to direct the superintendent to review matters concerning personnel issues, but it would be the superintendent’s responsibility to handle the assessment of those files and then report back to the Board. The Board cannot view the files nor appoint a member(s) of the Board to do the same. The authority does not exist for School Boards to view personnel files.

The Board contends that if they do not possess the authority to view files, then the open records legislation under Pennsylvania law will allow them to view personnel files. The Court in
West Shore School District v. Michael Homick and West Shore Education Association (353 A.2d 93) ruled that teachers’ personnel files are not a matter of public record and thus cannot be treated as such. Only specific administrative personnel by virtue of the authority granted them in obtaining their administration certificate may view the personnel files of School District personnel. External of School District administrative personnel, the only other individuals that are allowed to view personnel files pursuant to the Pennsylvania Personnel File Act are the employee.

Disposition: The Commonwealth Court of Pennsylvania affirmed the decision of the Court of Common Pleas of Northampton County, Pennsylvania.


Key Facts: The plaintiff in this case was Robert L. Lockhart, a terminated employee of the Cedar Rapids Community School District. The defendant in this case was the Board of Education of the Cedar Rapids Community School District. The Supreme Court of Iowa received this case from the United States District Court for the Northern District of Iowa on remand to certify the question as to the effect of a provision in the Public Employment Relations Act (Act) on the presumption of at-will employment for public employees of the State of Iowa. Lockhart states that he held a property interest in his employment with the School District and therefore he can only be terminated for just cause. Lockhart maintains that in Bishop v. Wood (96 S.Ct. 2074), the Court asserted that legislation in a state statute provides that an employee can only be terminated for just cause reasons which provides an employee with a property interest in their continued employment with the School District. The U.S. District Court for the Northern Division of Iowa is seeking clarification from the Iowa Supreme Court as to the Iowa legislation
that points to the issue of whether Lockhart maintains a property interest in his continued employment which would therefore require his termination to be permissible only thru just cause.

Issue: At issue in this case is whether the Iowa Code (§20.7(3)) negates the presumption of at-will employment for public school employees that are covered under the Iowa Public Employment Relations Act?

Holding: The Supreme Court of Iowa held that the statutory provisions in the Public Employment Relations Act did not establish a just cause limitation on the authority and/or capability of a public school board to suspend or discharge an employee.

Reasoning: The Court references the case of Van Baale v. City of Des Moines (550 N.W.2d 153), in noting that public school employees in Iowa are by the presumption of common law to be employed at will. Meaning, either party can terminate a contract without consequence. In Lee v. Halford (540 N.W.2d 426), the Court determined that the contractual rights of public school employees are created by legislative statute. A state employer provides employment on the premise that an employer may discharge an employee for any reason or no reason at all. These were earlier Iowa cases that established the at-will definition of a public employee in the state of Iowa. However, since these cases were decided, the Court determined in Springer v. Weeks & Leo Co. (429 N.W.2d 558, 559-560) that some reasons for discharge are simply not permissible in an at-will employment situation. The key aspect in the Court’s change of direction on this issue is that if an employee is terminated for reasons contrary to public policy, then the employee is subject to remedy for damages to be awarded. It is not absolute that Iowa public employers can terminate an employee without valid cause.
The language within the statute in question allows that a public employee can be terminated for proper cause. Lockhart maintains that proper cause holds the same meaning as just cause. The Court determined that just cause holds much more precise meaning than proper cause and that Iowa legislation did not create the legislation with a just cause limitation. In a just cause situation, the employee maintains a more precise right to employment than what is granted by statute. The legislative intent of §20.7(3) was to establish a public employer’s right to terminate an employee at will for any lawful reason.

Disposition: The Supreme Court of Iowa answers the certified question from the United States District Court, Northern Division of Iowa as giving the answer of “no” in asserting that the common law presumption is that public employees are employed at will.


Key Facts: The plaintiff in this case is Connie Mirelez, mother of Michaela Mirelez, who was sexually abused by a substitute teacher, Frank Garcia. The defendant in this case is the Board of Education of the Bay City Independent School District. In May of 1984, a student at Bay City Junior High School informed her principal, Rick Bowles, that Frank Garcia had sexually molested her off campus. Once Bowles received the information, he contacted Child Protection Services (CPS). Following an investigation, CPS reported its findings to Bowles and issued a law enforcement warning to the Bay City Police Department, who then registered Garcia as a sex offender. Bowles did not report the incident to the Superintendent. The Board conceded that it did not check Garcia’s criminal record prior to employing him.

In November of 1996, Mirelez alleged that her daughter was sexually molested on school premises, which caused significant physical, psychological, and emotional injury. Garcia later
pleaded no contest to state criminal charges for indecency with a child. Mirelez brought action in a U.S. District Court alleging School Board failed to protect her the civil rights of her daughter under 42 U.S.C. §1983. The School Board moved for a summary judgment seeking that the charges be dismissed.

Issue: At issue in this case is whether the School Board failed to protect Mirelez and in failing to do so violated her rights under 42 U.S.C. §1983.

Holding: The United States District Court for the Southern Division of Texas held that the Board’s delegation of final decision-making authority did not relieve the Board of their ability to protect Mirelez.

Reasoning: In Ingraham v. Wright (1977), the U.S. Supreme Court established that sexual assault of a student is unconstitutional and no doubt a form of corporal punishment. In Doe v. Taylor Independent School District (1994), the Fifth Circuit ruled that if a school board is determined to be liable and unconstitutional for excessive corporal punishment, then a Board is also liable for the lack of protection of a student that is sexually abused from school personnel. The Third Circuit, in Stoneking v. Bradford (1989), issued that a teacher’s sexual molestation of a student is clearly deemed an unacceptable practice.

The Fifth Circuit in Eugene v. Alief Independent School District (1995) held that the actions of school district officials with final policymaking authority can subject a school district to be liable under §1983 claims. Under Texas law, the final policy-making authority of an Independent School District generally rests with a School Board. With that noted, the Court turned to the plaintiff’s contention that the Board acted with due deliberate indifference. The Court noted that such a contention is a burden of proof that is hard to prove. However, in this case, the Court felt that plaintiff did bear the proof in determining that the Board was liable for
its lack of protection of Mirelez. If Principal Bowles would have informed the Superintendent of the prior incident, then it is noted that the Board would undoubtedly have chosen not to employ Garcia. The Court referenced in Board v. Brown (1977) that the Board as a municipal actor disregarded a known or obvious consequence of his action. The omission of failing to act is not only negligence, but also blameworthy. In this case, even though the Board lacked knowledge of Garcia’s prior actions, the failure of their officers to act caused irreparable harm.

Disposition: The United States District Court, Southern Division of Texas denied the School Board’s motion for summary judgment.

1999


Key Facts: The plaintiff in this case was Manuel Gonzalez, Assistant Superintendent of the Elizabeth School District. The defendant in this case was the Board of Education of the Elizabeth School District. Plaintiff was employed with defendant as an Assistant Superintendent. On June 29, 1994 the Board of Education informed the Superintendent, Thomas Dunn, that they would not renew his contract at the end of his current contract which would expire on June 30, 1996 and that he was officially relieved of his duties. The State Commissioner of Education ruled that the Board could relieve Dunn from his duties but that he was statutorily under contract and thus the position of Superintendent must remain vacant until the end of his contract term. The Board left the position vacant and appointed plaintiff Gonzalez as acting Superintendent. Also, at the same meeting, the Board gave Gonzalez a 3-year contract commencing on July 1, 1996.
In May of 1996, a Board election was held and the present Board was not re-elected. At the first meeting, the replacement Board informed Gonzalez that he was no longer the acting Superintendent and that Dunn would be returned to his position as Superintendent and that Dunn would receive a new 5-year contract commencing on July 1, 1996. Gonzalez filed a petition with the State Commissioner of Education stating that the new Board had breached his contract. The petition was turned over to an Administrative Law Judge (ALJ) who ruled in favor of the Board. The State Commissioner of Education agreed with the ALJ’s decision. Gonzalez appealed the decision.

Issue: At issue in this case is whether the succeeding School Board was bound by statutory authority to employ the Superintendent who was appointed to take office by the former Board.

Holding: The Superior Court, Appellate Division of New Jersey held that the succeeding Board had the authority to return Gonzalez to his previous position as Assistant Superintendent and deny him the opportunity to fill the spot of Superintendent.

Reasoning: The Court ruled that common law rule denies the opportunity of a public employer to bind the rights and obligation of its successor in making an appointment to an employment position. Such a prospective appointment by the Board undermines the authority of a future board with the opportunity to make their own decisions in regards to who they wished to employ as Superintendent. The Court further ruled that a board of education is a non-continuous body whose authority is limited to its own official life and whose actions can only bind its successors to those things that are allowed under statute.

Disposition: The Superior Court of New Jersey, Appellate Division affirmed the decision of the New Jersey State Commissioner of Education.
Citation: *Chicago School Reform Board of Trustees v. Illinois Educational Labor Relations Board, and Chicago Teachers Union Local 1, American Federation of Teachers, AFL-CIO*, 242 Ill.Dec. 397, 721 N.E.2d 626, 309 Ill.App. 3081, 143 ELR 314 (1999).

Key Facts: The plaintiff in this case was the members of the Chicago School Reform Board of Trustees. The defendant was the Illinois Educational Labor Relations Board (IELRB), the Chicago Teachers Union Local 1 (Union), and the American Federation of Teachers in their representation of James Brown, a special education teacher. Brown was employed by the Board of Education as a substitute teacher on a full-time basis (FTB). Even though Brown was employed as a FTB substitute, he was not eligible for tenure status. In June of 1995, Brown’s principal, Craig Williams, evaluated Brown on a form that is designed for a regularly appointed teacher. Williams gave Brown a satisfactory rating on several of the issues on the form. Two weeks later, after consulting with the Board’s personnel department, Williams re-evaluated Brown with an temporary teacher efficiency form and Brown received an overall rating of unsatisfactory. In August of 1995, the Director of Labor Relations for the Board, pursuant to a provision within the Board’s collective bargaining agreement, met with Brown to discuss the unsatisfactory rating on the evaluation form. Not long after the conference, the Board elected to terminate Brown’s contract with the District. The local Union filed a grievance on Brown’s behalf and requested that the Board conduct several steps that were not followed in accordance with the collective bargaining agreement prior to discharging Brown. The Union also asked the Board to reconsider the termination of Brown. After a series of meetings and conferences, the Board denied Brown’s request for a grievance hearing. The Union filed a demand for arbitration alleging the School Board failed to comply with the provisions of the collective bargaining agreement. An arbitration hearing was held and the arbitrator determined that the Board did not
meet the requirements of the collective bargaining agreement and ordered the Board to reinstate Brown and transfer him to another position within the District, while also awarding back pay and benefits to Brown. The Board refused to follow the instructions of the arbitrator.

In August of 1997, the Union filed a petition of unfair labor charge against the Board with the IELRB. The IELRB filed a complaint and submitted the case to an Administrative Law Judge (ALJ). The ALJ found that the decision of the arbitrator was binding and ordered the Board to comply with his ruling. The Board appealed the decision to the Appellate Court of Illinois, First District, Second Division.

Issue: At issue in this case is whether the School Board abused its authority in not following the ruling of the arbitrator to reinstate Brown.

Holding: The Appellate Court held that the School Board was not statutorily required to abide by the ruling made by the arbitrator.

Reasoning: The Court agreed with the School Board’s assertion that the Illinois Labor Relations Act has a provision that specifies that a School Board is not required to abide by an award or ruling that conflicts with a statute that has been enacted by the Illinois General Assembly. One of the items enacted by the General Assembly is the Illinois School Code. The Labor Relations Act section 10(b), provides that it is an acceptable defense against an unfair labor charge to disagree with provisions of a collective bargaining agreement when it is determined that such provisions are in violation of Illinois statute. In a previous ruling in Granite City Community School District No. 9 v. Illinois Educational Labor Relations Board (1996), the Court ruled that if compliance with an award requires a violation of state statute, that award cannot be binding upon the Board. Illinois statute §34-8.1 clearly delineates authority to a school board to employ or discharge personnel for their respective school districts.
Disposition: The Appellate Court of Illinois, First District, Second Division reversed the decision of the arbitrator, the ALJ, and the IELRB.


Key Facts: The plaintiff in this case was Jo Ann Roberts, a former Superintendent for the Hazel Crest School District No. 152 ½. The defendant in this case was the Board of Education, Hazel Crest School District No. 152 ½. Plaintiff was a Superintendent for the defendant for the dates of July 1, 1996 thru January 12, 1998. Her contract was to be valid thru June 30, 1998. In October of 1997, the Board brought charges against Superintendent alleging several things including fraudulent use of District funds and subsequently placed on her full paid leave with benefits. Plaintiff was provided with a hearing. The hearing was conducted over a 2-day period and plaintiff had the right to question witnesses and provide information pertinent to her case. The hearing officer responsible for overseeing the hearing compiled a report of the evidence presented at the hearing. In the report to the Board the hearing officer found that insufficient evidence had been presented against plaintiff. The Board took the report and other findings into consideration and subsequently voted to terminate plaintiff. Plaintiff brought suit in U.S. District Court against the Board alleging breach of contract, deprivation of due process, and defamation.

Issue: At issue in this case is whether the School Board violated the terms of plaintiff’s contract, violated her right to due process, and defamed her character thru the termination of her contract.

Holding: The U.S. District Court held that 1) report of hearing officer did not have a collateral estoppel effect, 2) Superintendent’s due process rights had not been violated, 3)
substantive due process rights had not been violated, 4) procedural due process rights had not been violated, and 5) Superintendent failed to prove that School Board defamed her.

Reasoning: The Court determined that the Board held the authority to terminate the Superintendent, not the hearing officer. The hearing officer had the authority to report if substantial evidence to terminate existed. The report of the hearing officer had no binding effect on the Board.

In addressing plaintiff’s claim that her substantive due process rights were violated, the Court referenced the case of *Strasburger v. Board of Education, Harding County Commission Unit School District No. 1* (143 F.3d 351). In *Strasburger*, the plaintiff bore the burden of proof and that in doing so plaintiff must demonstrate the following: 1) Board’s decision was arbitrary, and 2) Board committed a substantive constitutional violation. Plaintiff did not meet the burden of proof in this case.

In addressing plaintiff’s allegation of due process violations, the Board noted that she lacked sufficient reasoning to back her claim. Plaintiff was given notice of hearing, notice of intent to terminate, the opportunity to detain and depose witnesses, and the right to have legal counsel present. Plaintiff contends that two Board members were biased against her due to the fact that one was a witness against her and one was on a committee in which many of the allegations on plaintiff emanated from. The Court did not agree with this assertion.

On plaintiff’s final claim that defendant defamed her character, the Court held that no proof existed that Board member’s made libel statements outside of the scope of their duties as Board members. Board members are immune from defamation claims as long as their statements are made while in their official capacity as School Board members. Plaintiff could not prove otherwise.
Disposition: The U.S. District Court, N.D. of Illinois, Easter Division, granted summary judgment to the Board of Education of Hazel Crest School District No. 152 ½.


Key Facts: The plaintiff in this case was Laurie McCormick, a terminated teacher, formerly with the Lake Washington School District. The defendant in this case was the Board of Education of the Lake Washington School District. Plaintiff was employed with defendant for 1 month as a halftime special education teacher. This was not a contracted position with the School Board. Plaintiff never was fully employed with the Board, which is required by the creation of a written contract and approval of her employment by the Board. Neither of these two things occurred. Plaintiff was temporarily employed as a substitute teacher with the School Board while her paperwork was pending. The checking of her references is part of the paperwork that the local Board must process prior to employing personnel. Plaintiff received a negative reference and the decision was made not to employ her as a full time, certificated employ.

Plaintiff filed a lawsuit in October of 1997 based on the following allegations: 1) wrongful termination, 2) employment contract violation, 3) violation of rights to procedural due process, and 4) negligent conduct on the part of the Board. Defendant asked for summary judgment in denying plaintiff’s motion. The Superior Court, King County, granted summary judgment to the defendant School Board. Plaintiff appealed the decision.

Issue: At issue in this case is whether the School Board wrongfully terminated plaintiff.

Holding: The Court of Appeal held that the 1) teacher’s testimony contradicted the facts presented in the case, 2) School Board representative did not have authority to make offer of employment, 3) plaintiff was an at will employee and therefore could not make a wrongful
termination allegation, 4) teacher had no due process rights with respect to termination, and 5) alleged comments by school representative could not be relied upon to establish permanent employment and create theory of promissory estoppel.

Reasoning: The Court determined that plaintiff’s statement in two different depositions were contradictive of each other. Plaintiff’s response to the questions presented to her were different than what she had previously provided. Also, plaintiff’s recollection of events was entirely different than what she previously offered. Washington law provides that for a School Board to create employment for a teacher, the following must occur: 1) the Board must approve the employment of an individual by a majority vote of the Board, and 2) a written contract must exist between the two parties. Neither of these two actions occurred.

As of the action of the agent of School Board that verbally informed plaintiff that she would be successfully employed, the Court disagreed with this assertion. Such an authorization by someone other than a school principal is a violation of Washington statute. In Smith v. Hansen (818 P.2d 1127) the Court determined that unilateral action by an agent of a School District is not binding upon the principal. In State v. French, the Court ruled that a principal must have prior knowledge of an act committed by an agent. Plaintiff was not entitled to remedies from a due process violation due to the fact that she was not a permanent employee with the Board. Plaintiff did not have a substantive claim as she did not have an inherent right to the position. Her procedural due process rights were not violated due to the fact that she was not a permanent member of the teaching staff and therefore she was not entitled to the procedure that one is entitled to when a Board terminates an employee. Plaintiff could not be terminated from a position in which she was never rightfully employed.
Disposition: The Court of Appeals of Washington affirmed the decision of the Supreme Court, King County.

2000


Key Facts: The plaintiff in this case was Lori Lazuk, a teacher with the School District No. 1 of Denver, Colorado. The defendant was the members of the Board of Education of the City and County of Denver and the Denver Classroom Teachers Association. The teachers sued the School District, the School Board, its members as individuals, and the Denver Classroom Teachers Association, seeking relief in mandamus injunctive relief and declaratory relief in conjunction with her transfer to another high school in the District. The District Court of City and County of Denver entered final judgment in favor of defendants.

Issue: At issue in this case is whether the School Board violated statutory authority in delegating its authority in the transfer of personnel.

Holding: The Court of Appeals held that a School Board action on teacher transfers was not statutorily required due to the fact that it had properly transferred the powers to transfer teachers when it adopted a collective bargaining agreement.

Reasoning: Plaintiff is entitled to mandamus when there is a definitive right to the relief sought. In this case, the School Board through its collective bargaining agreement maintained the authority to transfer the teacher to another high school in the District at its discretion. Colorado
Statutory Section 22-63-206 (1) grants not only the authority for the School Board to make a transfer effective but they can delegate such authority to its chief administrators or through the guise of a collective bargaining agreement. The School Board had the authority to delegate power to transfer teachers as such a delegation was administrative in nature not a policy-making duty. In order to satisfy the statutory authority to transfer teachers the Board need only make certain of the following: 1) Teachers must be transferred into another position for which it is qualified. 2) Teacher could not be transferred which resulted in a loss of pay. 3) The transfer cannot be an act of discrimination.

Disposition: The Colorado Court of Appeals, Division III, affirmed the decision of the District Court.

Citation: Laidlaw Transit, Inc. v. Alabama Education Association et al., Tuscaloosa City Board of Education and its Superintendent, Robert A. Winter v. Alabama Education Association et al. 769 So.2d 872, 148 Ed. Law Rep. 1097 (2000).

Key Facts: The plaintiff in this case is Laidlaw Transit, Inc. The co-defendants in this case are the Alabama Education Association and the Tuscaloosa City Board of Education and its Superintendent, Robert A. Winter. Various employees of the School Board brought declaratory-judgment action against the Board for its contract with Laidlaw to transport students that reside within the School District. The Alabama Education Association is the lead plaintiff in this case as it brought suit against the Tuscaloosa City Board of Education and the Laidlaw Transit, Inc. as it represents the Professional Educators of Tuscaloosa Association and Israel Prewitt and Robert Willis, both school bus drivers employed with the Tuscaloosa City Board of Education. In March of 1995, the Laidlaw Company submitted a proposal to the School Board in seeking its approval of a contract between the company and the School Board to provide school bus transportation
services for the students of the Tuscaloosa City School District. Within the contract were several stipulations as to the controlling party of the personnel that work under the guise of the Laidlaw Contract. The School Board under the recommendation of the Superintendent agreed to and entered into a contract with the company. In the contract, those personnel that would work under the direct supervision of the Laidlaw management staff had the choice to seek employment with the Laidlaw Company or remain employed with the Tuscaloosa City Board of Education. Regardless of the option they chose, the Company would have direct control and supervision of those individuals that worked under the supervision of the Laidlaw management staff. The Montgomery Circuit Court entered summary judgment in favor of the employees. The Board and Laidlaw appealed.

Issue: At issue in this case is whether the Tuscaloosa City Board of Education had the statutory authority to enter into a contract with the Laidlaw Transit, Inc. for the purpose of transporting students within the Tuscaloosa City School System.

Holding: The Alabama Supreme Court held that the contract did not impermissibly require payment of salaries of personnel not employed by the School Board. However, the contract did impermissibly place School Board personnel under the direct supervision of a private company, the Laidlaw Transit Company

Reasoning: The Court reasoned that School Boards in Alabama have the authority to enter into contracts with private companies to perform work that is typically designed to be performed by School Board employees. In respect to School Board employees and contracts with private companies, the School Board has the authority to determine the language in the contract in reference to the following: the School Board can choose to require the company to employ its own personnel, the School Board can choose to employ all the personnel and require them to
work under the company, or the Board employees can work for the company and work alongside
the personnel employed by the private company. Those employees of the School Board must
follow all procedures and policies of the private company as long as the policies do not
contradict School Board policy. Those employees that do work under the supervision of the
private company do not relinquish their statutory due process rights that are guaranteed under
Alabama law. The Court reasoned that even though the contract with Laidlaw was a good
investment on monies saved and brought an increase in quality and performance with the
transportation of the students of the School District, the Board violated the Code of Alabama
1998-1999. The Court’s reasoning for this opinion was that the salaries paid of those employed
with the School Board while under contract with a private company was a violation of Alabama
statute. The Court also provided that the agreement to a contract with a private company was
written in such way as to relinquish authority which also relinquished the rights of employees
under the Teachers Retirement System and the Alabama Fair Dismissal Act.

Disposition: The Supreme Court of Alabama affirmed the decision of the Montgomery
Circuit Court in entering a summary judgment on behalf of the employees.

Citation: Loretta Colantoni v. Board of Education of the Township of Long Hill Morris

Key Facts: The plaintiff in this case was Loretta Colantoni, an employee of the Board of
Education of the Township of Long Hilll Morris County. The defendant in this case was the
Board of Education of the Township of Long Hill, Morris County, New Jersey. Plaintiff was a
tenured teacher and a guidance counselor. She served the School District as a tenured counselor
for the years of 1990-1994. In 1994, the defendant eliminated the counselor’s position and
returned plaintiff back to classroom teacher status. A year later, defendant decided to offer
counseling opportunities once again and chose to contract the counseling services to the Morris
Union Jointure Commission Board of Education in order to obtain guidance counseling services
for 16 hours a week to both handicapped and non-handicapped students. Plaintiff filed a petition
with the New Jersey Commission of Education. She alleged that the Board violated her tenure
and seniority rights. The issue was taken before the Offices of Administrative Law and the judge
found that plaintiff was not entitled to relief. The judge found that the Board maintained the
authority to cancel the guidance counseling position and employ an outside counseling service.
Plaintiff also maintained that the Commission could only provide services to handicapped
students and that the agreement should be found to be illegal.

The Long Hill Education Association filed an unfair practice charge against the Long Hill
Board with the Public Employment Relations Commission (PERC). The State Commissioner of
Education heard the complaint. He concurred that plaintiff had no term of seniority right to the
guidance counseling position. The Commission disagreed with the assertion of the judge of the
Administrative Law Office that the Commission must only provide services to non-handicapped
students. Plaintiff appealed to the Supreme Court, Appellate Division.

Issue: At issue in this case is whether the Board violated plaintiff’s tenure rights when
terminating her counseling position.

Holding: The Supreme Court, Appellate Division of New Jersey held that the Board had
statutory authority to terminate plaintiff’s counseling position and move her into her previously
established teaching position.

Reasoning: The Court determined that plaintiff New Jersey statute 189.46-25 states that a
Jointure Commission can only provide education and training to handicapped pupils. The New
Jersey legislature provides numerous agencies to meet the needs of students that are both handicapped and non-handicapped. A Jointure Commission established pursuant to N.J.S.A. 189.46-25 is narrowly circumscribed and may be exercised only to meet the special needs of pupils.

Disposition: The Superior Court of New Jersey, Appellate Division affirmed the decision of the State Commissioner of Education.

2001


Key Facts: The plaintiff in this case was Christina Napier. The defendant was the members of the Lincoln County Board of Education. In 1998, the School Board applied for and obtained a $334,197 grant to operate a 21st Century Learning Grant. Part of the funds obtained from the grant were used to fund an after-school and summer program designed to primarily provide tutoring, counseling, and recreational activities. Once the Board learned of its grant award, they posted a large number of positions in expectation to fulfill the needs of the grant. The positions were posted and advertised in the local newspapers. Napier applied for one of the positions known as the “site coordinator” position. The Management Team, which was responsible for filling the positions, failed to recommend Napier for the position she desired or any of the other positions. Shortly after the employment of other individuals, Napier filed a grievance alleging that the site coordinator positions had been filled in violation of West Virginia statute §18A-4-7a (1993). This statute governs the employment of professional employees in the state of West Virginia. Napier filed a first grievance and it was denied. She filed a second
grievance and it was denied for lack of jurisdiction under West Virginia Code §18-29-1 to 11 due to the fact that the site coordinator position was not a position that is an employee of the Board. Both parties waved the right to a third hearing, and Napier filed an appeal with the Education and State Grievance Board in March of 1999. The Grievance Board granted the School Board’s motion to dismiss and agreed with the their assertion that the employee of the federally funded grant program is not an employee of the Board and thus not subject to West Virginia statute guidelines in selecting a candidate for the site coordinator position. The Circuit Court of Lincoln County affirmed the decision of the Grievance Board. Plaintiff appealed to the Supreme Court of Appeals.

Issue: At issue in this case is whether the Lincoln County Board of Education wrongfully denied Napier a position within the 21st Century program on the grounds that the School Board felt that the program was federally funded and thus employees of such a program are not considered employees of the Board.

Holding: The Supreme Court of Appeals of West Virginia held that Napier’s claim that she was wrongfully denied a position involving a federally funded after-school program was indeed subject to the statutory grievance position.

Reasoning: The Court does not concur with the School Board’s assertion that the West Virginia Dreams Management Team is an entity independent of the Board of Education. The only way that a grant can be obtained for purposes such as a federally funded 21st Century Grant is for public school boards of education to submit the necessary grant applications in order to receive the funding that is sought. Though the language of the application makes reference to the fact that the 21st Century program and School Boards have obligations to operate independently of one another, the School Board is still the authoritative figure according to West Virginia
statute. The Court further noted that it does not recognize any authority that the Board possesses in delegating authority to another body. Thus, even though the source of the funding to operate the program originated at the federal level, the Board is the supervisory and directory entity that must engage the responsibilities and obligations of the grant at the local level.

Disposition: The Supreme Court of Appeals of West Virginia reversed and remanded the decision of the Circuit Court of Lincoln County.

2003


Key Facts: The plaintiff in this case was the parent of the deceased, Anthony Wayne Williams and Mitchell Williams, Administrator of the Estate of Anthony Wayne Williams (Administrator). The defendant was the Kentucky Department of Education, Board of Claims, and Commonwealth of Kentucky. Anthony Wayne Williams was a high school student who was killed in an accident that was caused by students who consumed alcohol during a prom decorating session at a local elementary school. The prom decorating session occurred during school hours. The Administrator brought action against the Kentucky Department of Education, seeking separate actions that alleged wrongful death negligence and loss of consortium due to the lack of supervision of the high school faculty that were required to be monitoring the prom decoration activity. The Board of Claims, the Circuit Court of Floyd County, and the Court of Appeals ruled against the parents and they appealed to the Supreme Court.
Issue: At issue in this case is whether the Kentucky Department of Education, Board of Claims, and Commonwealth of Kentucky are liable for the death of Anthony Wayne Williams.

Holding: The Supreme Court held that 1) the death of a student due to alcohol-related factors was neither extraordinary nor unforeseeable as a negligent cause on the part of defendants, 2) the Commonwealth of Kentucky and all of those underneath it do not possess immunity in matters of vicarious liability for negligent performance of ministerial acts of employees of local boards of education, and 3) damages sought by plaintiff for loss of consortium were not recoverable.

Reasoning: The Supreme Court stated that in matters between two parties, the determination of sufficient evidence in reference to negligence and causation as to the accuracy of facts is presumed to be correct unless they find otherwise. The Court reasoned that the relationship between a School District and its students is special and that employees of a District can be held liable and that school employees must always take reasonable steps to prevent foreseeable harm to its students. The County Board of Education maintains a compliance with code of contact which charges teachers with responsibilities that were ministerial in nature, not discretionary or regulatory.

Disposition: The Supreme Court of Kentucky affirmed the decisions of the two lower courts and the Board of Claims.


Key Facts: The plaintiff in this case was Anthony E. Burger, a superintendent with the McGuffey School District. The defendant in this case was the members of the Board of School
Directors of the McGuffey School District. Burger began employment with the School District in 1998. Not long after his employment with the District, the District hired an Administrative Assistant, Sheryl Fleck, who worked under and directly reported to Burger. In May of 2000, Fleck submitted a formal complaint to the Board of Directors alleging sexual harassment on the part of Burger. Fleck claimed that such harassment commenced shortly after her employment with the District and persisted throughout her employment with the District. Fleck claims that Burger inappropriately touched her, made sexual overtures, and that after she informed Burger that she was no longer interested in pursuing a personal relationship, Burger conducted himself in a retaliatory nature. Fleck claimed that such retaliatory conduct included a demotion, unreasonable relocation of her office and position, treatment that was different than what other male employees received, the setting of unreasonable deadlines for the completion of work, and other conduct that was an interference to her professional responsibilities. In October of 2000, Fleck also filed a complaint with the Equal Employment Opportunity Commission. In her complaint, she contended that in addition to her complaint in May of 2000, she had also made complaints to the Board in January of 1999 and in March of 2000.

After receiving the complaint, the Board retained an attorney and subsequently began an investigation. An informal hearing was held in October of 2000, where several witnesses and other evidence crucial to the investigation were revealed. The Board Attorney reported to the Board that there was substantial evidence to proceed with a termination process and in November of 2000, the Board suspended Burger without pay and benefits. A termination hearing was set for December 6, 2000. Upon his suspension and prior to his hearing, Burger filed an action seeking a writ of mandamus, requesting that he be reinstated to his position and to restore his full salary and benefits. In the request for a writ, Burger’s attorney stated that the Board of
Directors violated Pennsylvania School Code statute as it did not conduct the proper hearing in order to suspend Burger, nor did the Board have the authority to remove his salary and benefits. The Court of Common Pleas of Washington County granted a peremptory writ, which rescinded Burger’s suspension and restored his compensation and benefits. The Board of Directors appealed the decision to the Commonwealth Court and the Court reversed the decision of the lower Court and the Superintendent appealed to the Supreme Court of Pennsylvania.

Issue: At issue in this case is whether the McGuffey School District Board of Directors violated the provisions of the School Code in the suspension of its Superintendent, Anthony E. Burger.

Holding: The Supreme Court held that the Pennsylvania School Code’s provision to allow the removal of a Superintendent does not divest the School Board’s ability to use their implied authority to suspend its Superintendent for accused serious misconduct.

Reasoning: The Court reasoned that the plaintiff bears the burden of proof in determining what the appropriate remedy for his alleged actions must be. The Court acknowledged that 24 P.S. §10-1080 is silent in regard to the temporary suspension of an employee pending a termination hearing. However, in determining mandamus relief, the Court applied the circumstances for such cause in a very narrow manner. In the ability of a Board of Directors to evaluate the performance of action in regard to a ministerial or mandatory duty, the Board possessed the authority to construe the language of 24 P.S. §10-1080 to be permissible for termination on the grounds that Burger had exhibited behavior of “neglect of duty, incompetence, intemperance, or immorality.” Though the statutory language is vague in regard to the suspension and removal of a Superintendent, the statute does allow the Board a measure of
implied authority based on the evidence that it received as to the inappropriate conduct of its Superintendent.

Disposition: The Supreme Court of Pennsylvania affirmed the decision of the Commonwealth Court.

2004


Key Facts: The plaintiff in this case was Verata Lee, a tenured teacher who was terminated for willful neglect of duty. The defendant was the members of the Board of Education of the East Baton Rouge School Board. After the appropriate notice and hearing, the School Board suspended Lee for 5 years and banned her from teaching in any other school in the East Baton Rouge Parish. Lee had 18 years of experience at the time of her suspension. Lee sought judicial review of the Board’s decision and filed an action with the local District Court. The School Board moved for a protective order on their belief that the District Court served its role in this case in an appellate capacity due to the fact that the School served in a quasi-judicial capacity and thus they were entitled to immunity. Lee stated that the hearing in front of the School Board was basically a deposition and that the members of the Board were un-attentive and that they did not take the matter seriously. The District Court denied the School Board’s request for a protective order. The School Board appealed to the Supreme Court and asked for a supervisory or remedial writ to the Supreme Court. The Supreme Court granted the writ and remanded the case to the Court of Appeals, First Circuit.
Issue: The issue in this case is whether the East Baton Rouge Parish School Board possesses the authority to serve in a quasi-judicial capacity thus allowing them immunity, which would prevent them from being deposed in legal proceedings from Lee in her attempt to be reinstated in her teaching position.

Holding: The Court of Appeals held that Lee was allowed to depose the School Board members regarding relevant matters of fact that did not probe into or comprise the mental processes of the School Board members.

Reasoning: The Court recognized that the School Board does hold a quasi-judicial capacity, which also allows them to some immunity. However, such immunity cannot be a blanket immunity. To allow an exemption from compulsory testimony is authorized to governmental officials in certain capacities in order to protect the integrity and individual responsibility of governmental officials. However, the Court recognized that previous instances of determining between protected and unprotected testimony must be done on a case by case basis. The case of *Standard Packaging Corp. v. Curiwood, Inc.* (365 F.Supp. 134) was reorganized by the Court as the controlling test for compelling testimony from the Court in *U.S. v. Edwards* (1999). In this case, governmental officials can be compelled to testify on matters relevant to the facts that do not probe into or comprise the mental processes employed in formulating the judgment in question. *Standard* was also cited in the case of *Gary* (861 F.2d 1369), where the Court refused to allow the defendant to depose a government official concerning the substance of her report which was prior to the basis of her formal recommendation to the Court. Therefore, the Standard test can be construed in two different ways.
The Court agreed with plaintiff’s reasoning that the School Board was predisposed by the release of prehearing information to them. They agreed with her perception that the School Board members appeared predisposed during her hearing. The Court reasoned that allowing the members of the School Board to be deposed could reveal whether they were privy to prehearing factual information about plaintiff.

Disposition: The Court of Appeals of Louisiana, First Circuit, denied the request for a writ of the members of the East Baton Rouge Parish School Board.

2005


Key Facts: The plaintiff in this case was the Sherwood National Education Association in their representation of the teachers of the Sherwood-Cass-R-VIII School District. The defendant in this case was the members of the Board of Education of the Sherwood-Cass-R-VIII School District. On June 20, 2001, the School Board adopted a salary schedule for the 2001-2002 school year. In the schedule, an extra-duty schedule was added that provided compensation for seven teachers. Six of the seven were new teachers to the system, while the other teacher had been with the system for 10-plus years. A select group of teachers, who were not a part of the group of seven to be awarded additional compensation, filed a declaratory judgment action against the School Board due to the fact that the Board paid stipends, known as commitment fees, to those teachers who returned their signed contracts within 10 days with the stipulation that they would complete 2 years of service within the School District. The group of teachers bringing suit were represented by the National Education Association. The teachers bringing the suit were tenured
teachers with the school system for 17-plus years. The Circuit Court of Cass County heard the case and ruled that the commitment fees were unlawful, yet denied monetary relief to the teachers filing suit. The School Board appealed to the Missouri Court of Appeals challenging the lower court ruling that the stipends were unlawful and the group of teachers appealed to the same court seeking monetary relief.

Issue: There were two primary legal issues in this case. 1) Did the Board of Education violate the Missouri Teacher Tenure Act by awarding the ‘commitment fee’ to the group of seven teachers in excess of their authority under Missouri law? 2) Were the plaintiff’s due monetary relief if in fact the Board of Education violated the Missouri Teacher Tenure Act?

Holding: The Court of Appeals concluded that the trial court did not commit error in finding the commitment fee contracts to be invalid. The Court of Appeals concluded that the trial court did not err in not awarding monetary relief to the teachers that brought the suit.

Reasoning: In providing reasoning for their holding, the Court referred to a previous Missouri case, *Vilelle v. Reorganizing School District, No. 1*, (1985), in which it reversed the findings of the trial court in ruling against the School District in providing that the change in salary schedule affected not just a few teachers but all teachers as a whole. The Missouri Teacher Tenure Act provides that a teacher salary schedule can be adjusted with the authority of the local Board of Education as long as all teachers are affected and paid the same. The Court ruled that refusing to pay all teachers the same pay commiserate with their years of experience was in fact a demotion for those not being paid the same. The Court also referred to its ruling in another case known as *Long v. School District of University City* (777 S.W.2d 944). In *Long*, as in *Vilelle*, the Court reversed the ruling of the trial court due to the fact that the Board of Education withheld the pay step raise of an employee without cause and thus created a demotion. The Court’s point
in using these two cases is to demonstrate that all teachers must be paid the same in accordance with the local salary schedule as specified in the Missouri Teacher Tenure Act. In determining if monetary relief is entitled to the plaintiffs, the Court reviewed the School District’s argument that the plaintiffs lacked standing. In *Querry v. State Highway and Transportation Committee* (60 S.W.3d 630), the Court made a ruling that a party must have standing. “Standing is a threshold requirement. Without it, a Court had no power to grant the ruling requested.” In *Kinder v. Holder* (93 S.W.3d 793), the Court stated, “Lack of standing cannot be waived. Appellate review of whether a litigant has standing is de novo.” The plaintiffs were represented by a teacher’s association, the NEA, not by an individual. Furthermore, in order for the teacher to file suit as an individual and win monetary relief, the Board of Education must have liability for such matters. The trial court nor the Court of Appeals found any such liability.

Disposition: The Missouri Court of Appeals affirmed the ruling of the trial court.

2006


Key Facts: The plaintiff in this case was Bruce W. Barbour, a teacher with the Hanover School District No. 28. The defendant was the Board of Education of the Hanover School District No. 28. Plaintiff was employed as a probationary teacher for the succeeding year of 2002-2003 and 2003-2004. In April of 2004, the Board held a special meeting in which they went into executive session. In the executive session the Board discussed several potential non-renewals, including the plaintiff, and subsequently directed the Superintendent to non-renew the plaintiff and not any other teachers. The action took place in the executive session and not in a
regularly scheduled board meeting. On the next day after the meeting, the Superintendent sent notice to the plaintiff that his contract would not be renewed for the next school year. In May, at the next Board meeting, the Board took formal action and voted to non-renew the plaintiff’s contract. In August of 2004, the plaintiff filed an action against the School Board alleging that the Board violated the statutory requirement for the Teacher Employment Compensation, and Dismissal Act (TECDA), which authorizes School Boards to notify teachers of the intent to dismiss.

Issue: At issue in this case is whether the School Board abused its authority in not following the statutory requirement of TEDCA in providing notice to plaintiff of their intent to terminate.

Holding: The Court of Appeals held that the School Board failed to comply with statutory notice requirements in the non-renewal of Barbour’s contract.

Reasoning: §22-63-703(3) of the TECDA specifies that a probationary teacher shall be automatically reemployed for the next succeeding school year unless given written notice by June 1st of any given calendar year. If the Board fails to comply with the language in the statute, then the teacher in question is automatically renewed for the succeeding school year. In School District RE-11J v. Norwood, the Court ruled in a similar case that the probationary teacher be reinstated for an additional year due to the fact that the notice of non-renewal was insufficient due to the fact that the teacher received the notice one day after the statutory deadline. The Court also felt that the TECDA is written in a way that favors school board’s but the statute is also written in a way that requires that the school board bear the burden of proof in that adequate notice must be given as well as the fact that the notice must be written in a manner that is
consistent with the requirements of the statute. In this case, the School Board did not notify plaintiff in a timely manner.

Disposition: The Colorado Court of Appeals affirmed the decision of the District Court, El Paso County.

Citation: Scobey School District v. Mike Radakovich, 135 P.2d 778, 332 Mont. 9, 209 ELR 478 (2006).

Key Facts: The plaintiff in this case was the members of the Board of Education for the Scobey School District. The defendant was Mike Radakovich, a terminated employee of the District. Plaintiff was employed as a social studies teacher from 1987-994. In the spring of 1994, the Superintendent of the District, Dustin Hill, assessed the District’s financial condition and determined that between $98,000 and $114,000 had to be cut from the District’s budget. In order to do this, Hill determined that the Board would need to utilize the District’s Reduction In Force (RIF) policy in order to cut personnel to make budget for the succeeding school year. Hill then met with George Rider, Principal of Rider High School, and requested a meeting with the faculty. At the meeting, Hill informed the faculty that the District was utilizing the RIF policy to lower anticipated budget costs for the succeeding school year. Hill determined that the District would implement the RIF policy under the following criteria: 1) seniority and previous evaluations would be considered and 2) teacher certification in the various programs that the District offered. For this second item, the District would consider multiple areas of certification and also take into consideration the number of students that have been served by faculty in the District. Once this was done, Hill recommended to the Board that the District restructure the teaching schedules for staff in the District. As a result, the plaintiff was chosen as one of the staff to be terminated. The Board followed Hill’s recommendation and terminated the plaintiff.
The plaintiff challenged the termination on the grounds that the Board retained two other social studies teachers, one being tenured and the other not. The plaintiff felt that the other two were less qualified than he. The plaintiff alleged that the Board violated the collective bargaining agreement that was in place and committed statutory violations in terminating his contract. Plaintiff sought relief from the County Superintendent and the State Superintendent and both denied his request for a hearing. Upon judicial review, the District Court reversed the findings of the two Superintendents on the grounds that the Board violated the plaintiff’s rights under §20-4-203 (MCA) and that the Board violated the collective bargaining agreement with the local education association. The Montana Supreme Court then reversed the decision of the District Court and remanded back with instructions to re-visit their ruling on the violation of state statute and the collective bargaining agreement. The District Court affirmed its previous decision, primarily on the Board’s contention that they possessed the right to require that multiple teaching endorsements could be used as a determining factor in the retention or termination of a teacher.

The School Board appealed again to the Montana Supreme Court.

Issue: At issue in this case is whether the School Board abused its authority in terminating the contract of plaintiff.

Holding: The Supreme Court of Montana held that the School Board did not violate its statutory authority in terminating the contract of plaintiff while utilizing the District’s RIF policy.

Reasoning: In *Massey v. Argenbright* (1984) the Court ruled that the right of an employee to retain tenure status in the face of termination by a school board must be balanced against the Board’s authority to manage the needs of the school district. Also in *Massey* the Court also reasoned that reduction in funding is a valid and good cause in order to utilize a Reduction In
Force policy to terminate tenured personnel. However in doing so, the District must follow the procedures that are outlined in §§20-4-203 and 20-4-204 in doing so. In addition to the ruling in Massey, the Court looked to its reasoning in Harris v. Bailey (1990) where it determined that utilizing the RIF policy as outlined in the collective bargaining agreement could be done to get rid of an employee that has been targeted or has acted in bad faith. The Court referred to this as a hypertechnical disfunction, which means utilizing the RIF policy for non-valid reasons. The Court felt that the Board had properly used its statutory authority in terminating plaintiff.

Disposition: The Supreme Court of Montana reversed the decision of the District Court.

2007

Citation: Tabitha J. Naugle and Sandra M. Cain v. Beech Grove City Schools, 864 N.E.2d 1058, 218 ELR 968 (2007).

Key Facts: The plaintiffs in this case were Tabitha J. Naugle and Sandra M. Cain, employees of the Beech Grove City Schools. The defendant in this case was the Beech Grove City Schools. Plaintiffs were employed as custodians by the Board during 2003. Prior to that year, the Board paid the salaries of its employees every 2 weeks for a total of 26 times during each calendar year. The salaries were paid approximately 7 calendar days after a pay period ends. Every 7 years, the Board pays 27 times a year. During 2003, the Board wished to change two things within their payroll system. They wished to change the system so that they would not have an additional pay period every 7 years and they wished to attempt to accommodate employee requests to receive their paychecks prior to some of the school holidays that occur during the calendar year. The Board successfully implemented the new system for a period of a year and then changed back to the old system.
Naugle resigned from her position in October of 2003 and Cain was terminated from her position in February of 2004. In February of 2004, both individuals filed a class action lawsuit against the Board for an alleged violation of the Wage Payment Statute by failing to pay their wages within the time that the statute required.

Issue: At issue in this case is whether the School Board abused its authority in not following the Wage Payment Statute.

Holding: The Indiana Supreme Court held that the School Board did not violate the Wage and Payment Statute.

Reasoning: The Court concluded that the Wage Payment Statute is applicable to school corporations. Additionally, the Court did not entirely agree with the reasons that the Board gave in its defense as to its lack of liability for failing to adhere to the Wage and Payment Statute. However, it did contend that the Board did not violate the statute. The Court did agree with the Board in their assertion that they should not have to pay for liquidated damages. Basically, this is also the only area for which plaintiff’s sought relief. In *Brownsburg Community School Corporation v. Nature Corporation* (2005), the Court of appeals concluded that it was unreasonable to subject public schools to pay damages for wages that are paid late. The Court concluded with the ruling of the Indiana Court of Appeals in that regard as well.

Disposition: The Supreme Court of Indiana affirmed the decisions made by the trial court and the Indiana Court of Appeals.

Citation: *Loyalsock Township Area School District v. Loyalsock Custodial Maintenance*, 931 A.2d 75, 224 ELR 299 (2007).

Key Facts: The plaintiff in this case was the Board of Education of the Loyalsock Township Area School District. The defendant was the Loyalsock Custodial Maintenance,
Secretarial and Aide Association, a/k/a Loyalsock Township Education Support Professionals, in their representation of Connie Hamilton. A custodian for the District, Hamilton was employed with the Board for 28 years. On the date of January 14, 2005, Hamilton was struck in the face by a piece of equipment while working. The following day, Hamilton sought medical attention at a local hospital. While receiving medical attention, Hamilton was instructed by the hospital staff that she would have to submit to a drug test due to issues pertaining to the potential filing of worker’s compensation benefits. Hamilton declined to take the test and declined additional medical attention. Shortly thereafter, the hospital contacted the Business Manager (Manager) for the District. The Manager directed Hamilton to submit to blood and alcohol screening and told her that she would not be allowed to return to work until she did. Hamilton finally submitted to blood and alcohol screening on January 31, 2005, and subsequently tested positive for marijuana. Hamilton admitted to smoking a marijuana cigarette on the date after her accident at work. She offered to go into an alcohol and drug rehabilitation treatment facility if it would help her retain her job. The Manager informed her that termination proceedings would be conducted and that she had a right to a hearing. A hearing was held on February 15, 2005, and at the same meeting the Board terminated her contract. Hamilton filed a grievance upon the allegation that her due process rights had been violated. A grievance hearing was held and the arbitrator ruled that the employee did not commit any wrongdoing in the workplace and that over her 28 years of service with the District she had a clear record. The arbitrator determined that Hamilton did engage in inappropriate behavior outside of the workplace but that this was not cause for the Board to terminate her contract. The arbitrator ruled that the time that she was absent from work would count as a suspension without pay for time served out of the work setting. The Board appealed to
the local District Court and they ruled in favor of the Board and subsequently reinstated the termination decision.

Issue: At issue in this case is whether the School Board wrongfully terminated Hamilton.

Holding: The Commonwealth Court of Pennsylvania held that the School Board wrongfully terminated Hamilton from her custodial position and ordered her reinstated.

Reasoning: The Court referenced the case of *Greene County v. Dist 2, United Mine Workers of America* (2004) where the court ruled that an arbitration award should not be awarded to an employee who has committed egregious conduct and thus limits the organization from discharging its essential function. It would not be rational to reinstate someone who conducts himself inappropriately in the workplace. However, in this instance the conduct of the employee in question did not take place in the work setting.

In reference to the CBA, the Court noted a key point that the arbitrator clarified in his ruling. The CBA does not address the off-duty conduct of its personnel. The arbitrator also asserted that no evidence was provided that Hamilton had displayed inappropriate conduct of any type over the course of her 28 years of employment with the District. Therefore, there is no evidence that Hamilton’s conduct affected any function of the District. This case is different than most other cases where the core function of the School Board has been proven to be affected. In *Office of the Attorney General v. Council 13, American Federation of State, County & Municipal Employees* (2004), an arbitration award was upheld in favor of reinstating an employee who committed off-duty misconduct for which he was reinstated.

Disposition: The Commonwealth Court of Pennsylvania reversed the decision of the District Court in favor of the employee.
Analysis of Cases

The purpose of this research study was to examine the litigation that exists for the authority of public school board members with respect to public school personnel. This research focused on the years of 1981-2008, with the cases derived from *West’s Education Law Digest* found in Key Number Schools 55 under the heading of Power and Functions in General. There were 102 cases that pertained to the authority of public school boards in respect to personnel (see Table 1).

Table 1

*Court Cases: School Board Authority and Personnel*

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<th>Case</th>
<th>Year</th>
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Using Statsky and Wernet’s (1995) case briefing model, the briefing process involved the gathering of the key facts of the case, the issues pertaining to the case, the holding of the court, the court’s reasoning behind the holding, and the disposition of the court in relation to the previous ruling of the courts in which the respective case was litigated. In compiling a thorough
review of the case analysis, all cases were briefed and categorized according to title of case, year of case, case citation, the issue of the case, the party receiving the ruling in its favor, the highest ruling court, and the final disposition of the court. This latter information was placed in an excel document so that the researcher could sort the data. Once the cases were briefed and analyzed, this researcher submitted the information to the four research questions that guided this research study. The following is an analysis of the data gathered while focusing on the apparent issues, trends, and outcomes. Within the 102 cases that have been briefed and analyzed, 19 different issues were revealed. These issues have similar fact patterns, with similar complaints about the authority of school boards with respect to school personnel.

Authority to Assign Duties

The issues within the following cases represent the legal challenges of personnel and the authority of school boards to assign duties. These cases represent 4 of the 102 cases present in this research study. The courts ruled favorably for school boards in 3 of the 4 cases. Why did school boards win 75% of these cases? School boards maintain authority to manage the schools for which they govern provided that the assignment of duties is reasonable in meeting the educational needs of the students of the school district. Personnel often rely upon their written contracts in defending their right not to be assigned or to be reassigned specific duties and responsibilities. Though courts do consider the status of personnel in regard to the existing language in their contracts, they generally hold that the school board has the prevailing authority in determining what is needed of personnel in the way of duties and responsibilities.

In the first case, the court ruled in favor of the board as it found that the board had statutory authority to require typewritten examinations from its personnel. In the second case, the
court found that the board had the authority to create and assign a new personnel management system for their district. In the third case, the court found that the board maintained the authority to require that physical education teachers must submit to specific training for a swimming class that was added to the curriculum. In the lone case where the school board lost, the court ruled in favor of the personnel due to the fact that the board assigned supplemental duties to an employee without compensation.

In the case of *V. Hugh Thomas v. Board of Education of Community School District No. 1 of Pope County Illinois and Phillip Reasor, Principal* (1983), the principal of a high school required that all teachers on staff must provide typewritten copies of their final examinations. The principal also set a deadline of when theses copies of the exams must be submitted. Thomas disregarded the directive and submitted handwritten copies rather than typewritten copies. Shortly thereafter, the School Board placed a letter of remediation in his personnel file due to his insubordination and he was informed that failure to submit the appropriate documents could lead to dismissal proceedings. Thomas disputed that the Board did not have the authority to require the typewritten documents. The Appellate Court of Illinois, Fifth District, determined that the School Board has statutory authority to implement Board policy that requires teachers to submit copies of examinations in typewritten form. A Board of Education is statutorily empowered to adopt and enforce rules as necessary for the management and government of their school district (*Rulison v. Post*, 1875). A broad spectrum of implied incidental powers is to be inferred from the general powers of school boards to adopt rules as necessary (*Beck v. Board*, 1975).

In the case of *M.S. Jawa, Ph.D. v. Board of Education McDowell County, et.al.* (1984), the Supreme Court of Appeals of West Virginia held that the McDowell County Board of Education had the authority to create a personnel management system. Jawa, a school
psychologist, disputed that the board could create new responsibilities and duties for him. In June of 1982, the School Board chose not to offer Jawa a contract of employment for the 1982-1983 school year. Jawa appealed the decision of the Board to the West Virginia State Superintendent on the grounds that he never received a true evaluation of his performance during his time of employment with the Board. The State Superintendent agreed with Jawa’s assertion and subsequently reinstated him and awarded back pay. In his decision, the State Superintendent contended that the Board did not have a formal management system that adequately evaluated school psychologists. The Board followed the recommendation and offered Jawa a contract, which granted him tenure for the upcoming school year. Not long after Jawa’s reemployment, the Superintendent instituted a new management system, which included who Jawa was to report to, his job description, a requirement for him to complete periodic reports, and for him to be evaluated twice a year. Jawa found this new system unacceptable and subsequently outlined several procedures as to which he would agree to. In the process, he filed a writ of mandamus against the School Board. Jawa’s reassignment of duties and responsibilities as assigned by the Superintendent of the School District were within the authority vested to the Superintendent and the Board of Education. In doing so, the Superintendent must adhere to the Board of Education policies that govern such activities as well as follow the state statutes that govern the Superintendent in the same manner.

In Pleasant Valley Education Association v. Pleasant Valley Community School District (1989), the school board added a swimming pool to its physical plant so that the district could begin offering swimming lessons to its students. In order to provide the appropriate supervision, the district informed the four physical education teachers employed with the district that they must obtain cardiac pulmonary resuscitation (CPR) certification and complete a series of courses.
on water safety. Two of the teachers disagreed with the requirement for the new training. The Iowa Court of Appeals held that the school board did not abuse its discretion in mandating that physical education teachers within the district be required to receive training in CPR and water safety. The Court cited the case of *Gere v. Council Bluffs Community School District* (1983), where the court ruled that school boards are public employers and as such are given broad powers in dealing with their staffs in order to achieve efficient governmental operations.

In the case of *Wolf v. Cuyahoga Falls City School District Board of Education, et al.* (1990), the issue was one where Wolf accepted the position of advisor for the school newspaper without pay. Wolf accepted the invitation to take on the added responsibility as the school administration promised that she would receive an extra duty-free period. Wolf received the extra duty-free period for 1 year. After the one-year period, she no longer received the extra duty-free period but continued to remain as the advisor. At the beginning of the 1986-1987 school year, Wolf asked to receive the additional duty-free period once again in her daily school schedule. The school administration denied the request and she subsequently resigned. The school principal refused to accept the resignation. Wolf then filed action in a local district court. The action asserted two causes for her complaint. The first cause was, that the district administration and school board breached a contract with her, and the second cause was that, the same individuals failed to award her a supplemental duty contract pursuant to Ohio statute R.C. 3319.08. The trial court dismissed the action and the Ohio Court of Appeals for Summit County affirmed the decision. The plaintiff appealed to the Ohio Supreme Court. The Ohio Supreme Court reversed the decisions of the two lower courts and held that a school board must compensate for duties assigned that are extra for a teacher’s workload and the school board abused its authority when it awarded some contracts to teachers who performed additional duties.
while not awarding a contract to a teacher who served as the school newspaper advisor. The Court further reasoned that a school board is justified to pay a teacher for work conducted in addition to their regular teaching workload either before the school term, after the school term, before the school day, after the school day, or with other duties assigned during the school day. In this case, the school board authorized compensation for extra duties by personnel in the district and recognized that there are different levels of pay based on the extent and responsibilities of the other duties in the district. However, they failed to take into account that a school newspaper adviser does not fit the description of extra supplemental duties. The Court disagreed and determined that the Board could not deny plaintiff compensation without harming her in a capricious manner.

School boards maintain the authority to assign duties to school personnel as long as the assignments are not contrary to state law or local school board policy. The first three cases in this issue were examples of a school board using their authority to assign duties in an appropriate manner. The courts will not rule favorably for school boards in instances where they violate the authority extended to them. Thus, the reason the school board lost the fourth and final case in this issue.

**Authority to Publish Information About Personnel**

The issues within the following cases represent the legal challenges of personnel to the authority of school boards to publish information about personnel. These cases represent 2 of the 102 cases present in this research study. In both cases, the courts ruled favorably for the school boards. Why did school boards win in both of these cases? School boards are creatures of legislative statute. Much of their ability to manage and govern their school districts is derived
from their respective state statute. The following 2 cases reveal that there are many duties and responsibilities that are thrust upon school boards. The courts found in these 2 cases that the requirement to publish facts and information about matters pertinent to personnel is statutorily binding upon school boards.

In the first case, the court ruled in favor of the board as it found that the board was required under statute to publish their findings in a termination action against an employee. In the second case, the court ruled the school boards are not required under state statute to publish the salary schedule of the personnel in the district.

In the Minnesota case of Freier v. Independent School District No. 147 (1984), the Minnesota Supreme Court ruled that the school board possessed the authority to publish the facts and information pertaining to a termination case involving Freier. This specific case pertained to the authority of the school board to publish the facts of the case in the local newspaper. Freier was terminated but challenged the decision and won and was subsequently reinstated to his position. The termination of Freier was not the issue in the case. The issue in Freier was the board’s ability to publish the proceedings of the termination. Freier claimed that the board defamed his character in releasing the details of the termination investigation and hearing. The members of the school board were guided by Minnesota Statute 125.12 in publishing the decision made to terminate Freier. The Minnesota Statute 125.12 renders cases under the law as quasi-judicial in nature. Therefore, quasi-judicial cases grant immunity to those that are granted the authority to discharge a teacher, regardless of the fact that the communication is thought to be defamatory or contain false information. This also pertains to statements and any other testimony or written material that pertains to teacher dismissal.
The case of *State of Nebraska, ex rel., Connie Thompson v. Walter Alderman, Secretary of the Board of Education of School District No. 1 of Howard County, Nebraska, et.al.*, (1988) pertained to an action by a local newspaper to compel the Board to publish the salary schedule of the Board personnel. The Supreme Court of Nebraska held that school board employees do not need to present torts for which they demand payment in order to receive their pay. §79-805 of the Nebraska Code specifies that only a list of torts of school personnel must be published. The Court did not agree with the plaintiff that each employee has to submit a claim against the school board in order to be paid each month. The salary schedule for teachers is negotiated as part of a collective bargaining agreement with the St. Paul Education Association. As part of the agreement, a teacher is placed on the board salary schedule as part of administrative procedure in the superintendent’s office. The school board is required to publish in the local media any tort or claim made against them. The Court determined that salaries are not defined as a tort or claim.

The courts will support the use of authority by school boards to publish information or decisions pertinent to matters with respect to school personnel. In doing so, school boards must adhere to state law or the provisions within local school board policy.

*Authority to Collectively Bargain*

The issues within the following cases represent legal challenges of personnel to the authority of school boards with respect to collective bargaining agreements (CBA). These cases represent 6 of the 102 cases present in this research study. The school board won 3 of the 6 cases where their authority to collectively bargain was challenged. Why did school boards lose 50% of these cases? The school boards won 50% of the cases due to the fact that they followed the language of the CBA’s. The courts will rule favorably for school boards in challenges against
their authority as long as they create sound CBA’s that do not contradict state statute and that they follow the provisions of the CBA. The school boards lost 50% of the cases due to the fact that they did not follow the language of the provisions of the CBA or they committed procedural violations according to the CBA. All of these cases involved the management of personnel. The management of personnel includes the following: termination, transfer, leave of absence, and salaries and benefits.

In the first case, the court ruled in favor of the board as it found that the board was not statutorily required to submit to binding arbitration. In the second case, the court found that the board had the authority enter into a consortium with other school boards in order to offer health benefits to the personnel of the districts that were in need of such. In the third case, the court found that the board maintained the authority to close school 1 day early in anticipation of upcoming budget deficits. In the fourth case, the school board lost due to the fact that the board did not follow the provisions of their CBA in transferring part-time personnel into full-time positions. In the fifth case, the school board lost the case due to the fact that the board withheld pay from an employee due to the fact that the employee had extensive absences from work. In the sixth case, the board lost due to the fact that it refused to submit to arbitration.

The following cases represent the cases where the courts ruled in favor of the school board in personnel challenges to the board’s authority to collectively bargain.

In the case of Tucson Unified School District No. 1 of Pima County v. Tucson Education Association (1988), the issue was the authority of the board to delegate authority to a third-party arbitrator to make decisions concerning operation of the school district. The board and the local teacher’s association signed a document known as the “Consensus Agreement Between Tucson Unified School District and Tucson Education Association” (Agreement). The Agreement
contained a procedure for handling grievances, which it defined as “a complaint based upon an event or condition under which a teacher works allegedly caused by misinterpretation or inequitable application of this agreement, policy, rule, and regulation of the Board.” The grievance procedure consisted of four levels. The last level provided that the superintendent or designee and the Association shall agree on an arbitrator and if they are unable to agree, a request shall be submitted by any or all of the parties to the American Arbitrator’s Association for the selection of an arbitrator in accordance with AAA rules. The Agreement further provided that the findings and recommendations of the arbitrator would be binding on all parties and the grievance would be considered permanently resolved with no judicial review. The issue was that Mary Ann Brewer-Civiak, a social worker employed in the district, applied for a sabbatical leave. The superintendent denied the request for leave. She subsequently filed a grievance, which was submitted to arbitration. The arbitrator ordered the school district to pay Brewer-Civiak sabbatical benefits in the amount of $4040.61. The Arizona Court of Appeals ruled that school boards are legislative creatures having such authority as granted to them by the legislature. Nowhere does the legislature expressly empower the school board to enter into an arbitration agreement that would allow a third-party arbitrator to bind the school board into a decision involving a labor grievance as defined in the Agreement. The Court held that the Agreement between the board and the association unlawfully delegated authority to a third-party arbitrator to enforce rules for schools.

In Holland-West Ottawa-Saugatuck Consortium, Holland Public Schools Saugatuck Public Schools, and West Ottawa Education Association v. Holland Education Association (1993), the local teacher’s union (Union) of the Holland School District challenged the ability of the three Boards of Education to exist in a consortium while also supporting various other
programs operated within the consortium. In 1977, the three School Districts entered into a cooperative agreement, creating a consortium so that they could jointly offer a wide range of programs. The consortium must annually seek and receive approval from the Michigan State Department of Education to continue to operate under the State School Aid Act §96 of M.C.L. §388.1696/M.S.A. §15.1919 (996). The union wished for only their school board to negotiate and handle provisions of the CBA. On March 25, 1988, the board of education of each of the three School Districts filed a petition with the Michigan Employment Relations Commission (MERC) seeking clarification of the bargaining of teaching employees represented by the three different teacher unions. The MERC ruled in favor of the consortium and the teachers unions appealed. The Michigan Court of Appeals held that when school boards enter into a consortium, to provide state-funded adult education programs while also employing qualified teachers, it is the function of the MERC to determine the employer for purposes of the CBA. The Union contended that the MERC’s decision is a violation of the State School Aid Act. The Court disagreed and ruled in favor of the School Boards.

In the case of *The Board of Education of the City of Chicago v. Chicago Teachers Union I, et. al.* (1981), the issue revolved around the financial need for the board to lay-off personnel for 1 day earlier than what the school calendar had approved. The local teacher’s union cited that this was a cut in pay for personnel and the CBA does not allow for such a move by the board. In February of 1977, the board, faced with an anticipated budget deficit, adopted a recommendation that gave authority to the superintendent to lay-off employees for 3 days in June of 1977. Ultimately though, the board only closed school for 1 of the 3 days. The union sought arbitration upon the allegation that the board violated the provision of the CBA with the 1-day lay-off. The union cited breach of contract as the proposed lay-offs by the board for the 3-day period
accounted for $2.8 million, $4.6 million, and $8.4 million in lost salaries. The Supreme Court of Illinois held that the board, despite the language of the CBA, maintained statutory authority to close schools one day early given the fact that the board was faced with making decisions about budget cuts.

The following cases represent the cases where the courts ruled in favor of the personnel in their challenges to the board’s authority to collectively bargain. In the case of Lake Washington School District No. 414 v. Lake Washington Education Association/Washington Education Association (1987), the defendants represent Sandra LaBelle and Gail Novito, part-time employees for the school board. The school board and the Lake Washington Education Association entered into a CBA beginning in the year of 1983. The CBA had provisions that specified procedures for the transfer of personnel within the system. There are several steps in the transfer provision that address specific areas for board personnel. In the year of 1984, Sandra LaBelle and Gail Novito worked as part-time teachers for the board. Both individuals requested and made application for full-time positions for the 1984-1985 school year. The board did not grant these requests and filled available full-time positions with other personnel. Subsequently, LaBelle and Novito filed grievances that resulted in arbitration. The grievances and arbitration were consolidated and a hearing was held soon after. At the hearing, the board stated that the CBA contained no provision that required part-time personnel to transfer into full-time positions. The arbitrator did not agree and specified that since there were no provisions that denied a transfer from part-time to full-time, LaBelle and Novito had the right to transfer from part-time to full-time and, as well, they had seniority over the personnel who were employed for the full-time positions. The arbitrator ordered the Board to appoint the two individuals to full-time positions for the 1985-1986 school year and also awarded the personnel to be awarded
reimbursement for salary loss and benefits. The court ultimately ruled that the arbitration ruling was reasonable but that it lacked jurisdiction over the matter and that the matter should not have been presented to arbitration. The court reasoned that the board had sole discretion as to the placement of the two personnel and that following the language of the arbitration was an issue where the board was delegating authority that it did not possess. The board lost this case because it wrongfully submitted the personnel issue to arbitration. However, since it did submit the issue to arbitration, the board was bound to the ruling of the arbitrator.

In the case of *Scotch Plains-Fanwood Board of Education v. Scotch Plains-Fanwood Education Association* (1995), the case stemmed from the absence from work for Mae Delle Horton, a tenured special education teacher with the Scotch Plains-Fanwood Board of Education since 1977. From the time that she began her employment, Horton’s absence from work was excessive. In 1985, Horton’s principal cautioned her that her absence from work was a serious concern. The principal made the same assessment in 1988. From 1977 to the end of the 1988-1989 school year, Horton was absent 244.5 days. The Scotch Plains-Fanwood Board of Education and the Scotch Plains-Fanwood Education Association have a CBA. From the dates of July 1, 1988, to June 30, 1991, the agreement contained a provision that specifies that increases in salary are additional to the Board’s Salary Guide, which states that salary raises are only approved with the recommendation of the superintendent and the approval by the school board. In September of 1989, Horton was injured in a train accident, which accounted for another significant loss of work time. In February of 1989, Horton missed 55 days of work due to major surgery. In November of 1989, Horton received an evaluation from her principal that her attendance record had helped to create a failure in providing good instruction for her students. Horton responded that her absence was justified in reference to her surgery and accidents. Her
principal reprimanded her again in March of 1990 and noted again her lengthy and extended absence from work. In April of 1990, the School Board informed Horton that her salary for the 1990-1991 school would remain at the 1989-1990 level rather than be raised to a higher level. Horton then filed a grievance in opposition to the withholding of her increment. The Board denied the grievance on the reasoning that the withholding of increment was for predominantly educated reasons. Soon after, the teacher’s association filed for binding arbitration on her behalf. The Board then filed a petition with the New Jersey Public Employment Relations Commission (PERC) questioning whether they were required to submit to binding arbitration. New Jersey statute N.J.S.A. 34:13A-26-29 states that such a grievance on withholding an increment must be subjected to binding arbitration. The arbitrator found that the Board had valid interest in the expectation of Horton’s good attendance at school. The New Jersey Supreme Court held that the board’s decision to reduce the increment was arbitrary even though it was permissibly disciplinary in nature and that the arbitrator’s ruling was appropriate and in-line with PERC’s determination. New Jersey statute N.J.S.A. 34:12A-22a confers authority to PERC to resolve disputes as to whether the withholding of increment raises can be withheld for disciplinary reasons. The arbitrator has the authority to make a determination of the board’s cause for withholding from New Jersey statute N.J.S.A. 189:L9-14. The Court reasoned that the collective bargaining agreement does not provide a standard for evaluating the Board’s decision to withhold an increment for disciplinary reasons. The court believed that the arbitrator applied the appropriate just cause for review in this case. The New Jersey Supreme Court ruled in favor of Horton.

In the case of DeKalb Community Unit School District 428 v. DeKalb Classroom Teachers Association, Local 4328, IFT-AFT, AFL-CIO and Illinois Educational Labor Relations 295
Board (1988), the school board posted a District Seniority List for the purposes of creating a seniority plan in the event that the district would need to institute such a reduction in force based on the seniority of its staff members. The plan was part of the CBA between the local teacher’s union and the board of education. One stipulation of the agreement was that several administrators in the district were excluded from the CBA but were still listed on the established seniority list. Shortly after the establishment of the list, the teacher’s association filed a grievance against the board for several violations of the CBA. The board refused to submit to arbitration as it stated that the association had no right to arbitration as no violations were committed. The Association’s attorney wrote to the American Arbitration Association (AAA) and requested a panel of arbitrators to hear the case. The board then filed a complaint in the DeKalb County Circuit Court asking for a stay of arbitration. The court dismissed the stay of arbitration, but the board continued to refuse to submit to arbitration. The Association then filed a charge of unfair labor practice against the school board with the Illinois Educational Labor Relations Board (ILERB). The Labor Regulations Board ruled that the school board was in violation of the local CBA. The Appellate Court of Illinois, Fourth District determined that school boards do not have the sole authority to either submit or deny the opportunity for arbitration and therefore agreed with the IELRB.

Collective bargaining agreements are prescriptive in nature. In litigation where collective bargaining issues are questioned, the courts will closely view what the state law, school board policy, and the local collective bargaining agreement specify in their provisions in order to determine if a school board has neglected its authority in such issues.
Authority to Make Contracts

The issues within the following cases represent the legal challenges of personnel to the authority of school boards to make contracts. These cases represented 2 of the 102 cases present in this research study. In both of these cases, the courts ruled against the school boards. Why did school boards lose in these 2 cases? In one of the reasons, the Court ruled against the Board due to the fact that the contract partner was not a qualified entity under legislative statute in which to enter into a contract. In the second instance where the school board lost, the Board improperly delegated authority to a private company. School boards maintain the authority to make contracts, but most do so in a manner that is consistent with legislative statute. School boards do have implied authority in many respects, but the issue of contracts is not one of them. Contracts are very specific in nature and thus subject to the legislative authority delegated to them. The courts do not hesitate to rule negatively against school boards when there is an obvious question of the lack of authority to enter into contracts or for their failure to adhere to the specific language contained within contracts.

In the case of Llewellyn J. Rice v. Cayuga-Onondaga Healthcare Plan and North American Administrators, Inc. (1993), the case involved a consortium of school boards who entered into a contract for the purpose of providing a group health insurance plan for the personnel within their respective districts. All of the school boards in the Cayuga-Onondaga BOCES region entered into a cooperative agreement forming an entity known as, Cayuga-Onondaga Schools Employees’ Health Care Plan (Plan). The purpose of the Plan is to jointly provide basic hospital, surgical, dental health, and major medical benefits to all employees of those school districts in question of not being able to pay for their insurance through a self-funding program or the purchase of independent health contracts. The legal action involved a
retired employee from one of the school districts who participated in the Plan. In September of 1986, Llewellyn J. Rice was diagnosed with terminal heart disease and declared totally disabled. Later in the same month, Rice underwent a heart transplant operation at Columbia Presbyterian Medical center in New York City. He effectively resigned in November of 1986. Shortly after his retirement he filed claims with the Plan as a retired employee. The claims were for the costs of the transplant operation and the necessary follow-up prescriptions. The claims were denied and Rice commenced action for a judgment declaring his entitlement to coverage under the Plan. The Plan moved for summary judgment as well and asserted that the Plan is not a proper party to the action. The Supreme Court, Onondaga County, denied the Plan’s motions for summary judgment and they appealed. The New York Supreme Court, Appellate Division, held that the Plan was not a separate and distinct entity which could be sued and that the School District was the appropriate party to raise action against, not the Plan.

The Alabama Supreme Court, in Laidlaw Transit, Inc. v. Alabama Education Association et al., Tuscaloosa City Board of Education and its Superintendent, Robert A. Winter v. Alabama Education Association et al. (2000), held that a contract with a private company did not impermissibly require payment of salaries of personnel not employed by the School Board. However, the contract in violation of state statute did impermissibly place school board personnel under the direct supervision of a private company, the Laidlaw Transit Company. The Court reasoned that even though the contract with Laidlaw was a good investment on monies saved and brought an increase in quality and performance with the transportation of the students of the School District, the Board violated the Code of Alabama Section 16-11-9-1, and the Public Education Budget Acts of 1995-1996, 1996-1997, 1997-1998, and 1998-1999. Additionally, the Court reasoned that the salaries paid of those employed with the School Board while under
contract with a private company was a violation of Alabama statute and that the agreement to a contract with a private company was written in such way that it relinquished authority and the rights of the employees under the Teachers Retirement System and the Alabama Fair Dismissal Act.

Contracts are very specific in nature and thus subject to the legislative authority delegated to their creation and implementation. School boards maintain the authority to make contracts, but most do so in a manner that is consistent with legislative statute and school board policy. The courts will not rule favorably for school boards when there is an obvious question of the lack of authority to enter into contracts or for their failure to adhere to the specific language contained within contracts.

Authority in Matters of Curriculum

This issue reflects 1 of the 102 cases in this research study. The school board won this lone challenge of personnel to the authority of school boards in matters pertinent to issues of curriculum. The school board won the following case because they followed the policy for which they created and the policy did not contradict state statute. Matters pertaining to curriculum and personnel are created generally in only two ways. This is done through state legislative enactment and through local school board policy. Though it is rare for state legislative statute on matters pertinent to curriculum to be challenged in some way, it is common for school board policy to be challenged. This occurs because school boards have the ability to create policies about curriculum and personnel that are unique to their own specific geographic region and for the needs of their students. It is noted that one other challenge to issues of curriculum does exist. Matters of curriculum can be challenged on the grounds that the use of specific materials, the
language, the content, or the instructional strategies by a teacher can be offensive to the rights of an individual which are provided to an individual through the U.S. Constitution. The courts are very interested in litigation where there is a suspicion of a violation of an individual’s civil rights.

In *Burtram Johnson v. Board of Education of Santa Monica-Malibu Unified School District* (1986), the California Court of Appeals held that the Board possessed the authority that provided administrative jurisdiction to review, reconsider, reaffirm, rescind, or revoke any order made by the superintendent that contradicted California law. The superintendent made the decision to change the grade of a student against the wishes of the teacher. The superintendent lacked the authority in doing so and the Board overturned his decision. In the spring semester of 1984, the student was in jeopardy of failing a French class with a grade of “D.” The student approached the teacher of the course and asked to be dropped from the course and reassigned to another course. The teacher discouraged the student from dropping the course and implied that she would do things to better prepare the student for future lessons and she would allow him to makeup examinations that he had previously failed. The student completed the course through the remainder of the semester and ultimately received a “D” in the course. When the plaintiff learned of the grade earned, he asked the teacher to change the grade to a withdrawal (“W”). The teacher refused to change the grade. The superintendent then appointed a local individual, Dr. Leo Martucci, to investigate the circumstances surrounding the incident. After examining the California Education Code, Dr. Martucci sought advice from local legal counsel and subsequently recommended to the superintendent that his interpretation of the Education Code dictate that the grade be changed from a “D” to a “W.” The board overturned the decision and changed the grade back to a “D.” The court backed the decision of the board to overturn the
decision of the superintendent as it determined that matters of curriculum decisions are inherent upon the board.

School boards maintain the authority to govern and manage matters of curriculum in their district as long as such authority is extended to them via legislative statute. The use of such authority must not violate their local school board policy. Failure to follow state law and local board policy will cause such misuse of authority prone to challenges from personnel and other stakeholders.

Authority to Demote Personnel

Personnel can be demoted either by the real intent on the part of a school board or a court can make a decision in a case that identifies that an employee has been demoted by the intentional or unintentional action of a school board. In this research study, there were 4 cases dealing with the authority of school boards and the demotion of personnel. All of these cases, as do most cases involving an allegation of a demotion, involved the reduction in salary of personnel. The courts generally rule in favor of personnel when it determines that personnel of the same qualifications or standing in the district are not entitled to the same pay. In 3 of the 4 cases, the school board lost its case to the personnel that brought action against them due to the fact that there was a discrepancy in pay between similar personnel in the district. In the one demotion case where the school board won, the court ruled in favor of the school board due to the fact that the cut in pay affected all personnel within the same pay category and the reduction in pay was valid due to a financial hardship that the district experienced. In the second case, the school board lost because it froze the pay of an employee, which essentially caused his demotion. In the third case, the school board lost because it removed supplemental contract pay
from an employee who never should have been extended such a contract due to the fact that it was a statutory violation. In the fourth case, the school board lost due to the fact that the board paid certain personnel a commitment fee while denying others the same opportunity.

The following case is the lone case where a school board won in a challenge to their authority to demote an employee. In the case of *The School District of Philadelphia v. Harris Twer, et.al.* (1982), the Board of Education of the School District of Philadelphia adopted a budget that required a deduction in payroll expenses for the succeeding school year. This deduction in pay unintentionally caused the demotion of 240 employees. The Board chose to hold one hearing for all employees rather than individual hearings, which was requested by the personnel. The defendants contend that they were demoted without cause in violation of the Public School Code of 1949. The Pennsylvania Secretary of Education ruled that the school board must reinstate the 240 employees due to the fact that the board did not follow statutory procedures in reducing the pay of the personnel. The Pennsylvania Secretary of Education ruled that the plaintiff failed to provide each professional employee with their own individual hearing, which is mandated by Section 11-1127 of the Pennsylvania Public School Code. Due to the lack of hearings, the requests for demotion did not meet the requests as set forth in Section 11-1151 of the Pennsylvania Public School Code. The Commonwealth Court affirmed the order of the Pennsylvania Secretary of Education’s decision in reinstating 240 professional employees without loss of pay. The Pennsylvania Supreme Court reversed the decision of the Commonwealth Court and remanded the matter to the board with leave for the board to reinstate such a demotion procedure as financial conditions dictate. The court found that the method used by the board to carry out the demotions of the employees was consistent with what was provided by Pennsylvania statute and well within the authority vested to them by Pennsylvania statute.
The court cited the case of *Smith v. Darby* (1957), in stating that school boards must be given broad discretionary powers to ensure a better education for the children of the Commonwealth. In citing *Smith*, the court stated that the Pennsylvania legislature did not create a law in protecting the security of its employees without creating restitution on the board to discharge its good faith responsibilities.

The school board lost the following 3 cases where personnel challenged the authority of school boards to demote personnel. In the case of *Don Vilelle v. Reorganized School District No. R-1, Benton County* (1985), the case involved the demotion of Vilelle, an employee. Vilelle began employment with the district in 1972. He successfully gained tenure and worked with the same school district through the 1981-1982 school year. Prior to the start of the 1981-1982 school year, the district offered to reemploy Vilelle but without a contract and at the same rate of pay as he was paid for the 1980-1981 school year. During the time that Vilelle’s pay was frozen, all others received pay increases applicable to the district’s salary schedule. Vilelle contended that his salary was frozen, that he never agreed to accept lower pay than what the salary schedule called for, and that, in essence, he was demoted and subsequently denied rights that should be extended to one under the Missouri Teacher Tenure Act, §168.112 to 168.118. The Missouri Court of Appeals, Western District found that the Circuit Court erred in its ruling in favor of the school board and found that Vilelle was a permanent teacher as specified under the Missouri Teacher Tenure Act and that the defendant essentially demoted plaintiff for 3 consecutive years and in doing so failed to comply with its statutory obligation.

In the case of *Hall v. Lakeview Local School District Board of Education* (1992), the employee won his case against the school board as the board essentially demoted him when it chose to non-renew a supplemental contract that Hall had been receiving. In 1978, Hall was
employed with the school board as a custodian under a 1-year contract. At the end of the 1978-1979 school year, Hall was given a 2-year contract from the board. Over the course of the next 5 years, Hall received raises commensurate with his years of experience and his job performance. During this time, Hall received a notice from the board that his pay was being increased as he was being promoted to the Head Custodian’s position at Cortland Elementary School and that he would receive additional pay in addition to his regular pay as Custodian. This extra pay was a result of a supplementary contract issued by the Board for his new role as Head Custodian. At the end of the 1984-1985 school year, Hall received a notice from the board that his supplemental contract for the Head Custodian’s position was not being renewed for the 1985-1986 school year, but that he would retain his position as Custodian. The non-renewal of contract meant a loss of pay commensurate to the additional pay that he was receiving as Head Custodian. The Ohio Supreme Court held that the Court of Common Pleas and the Court of Appeals erred in their ruling against Hall and that the School Board exceeded its authority in awarding a supplemental contract to Hall and that the board in effect demoted Hall, which resulted in a loss of status for him.

In the case of Sherwood National Education Association v. Sherwood – Cass – R – VIII School District (2005), the case involved the payment of a supplemental fee paid to specific personnel within the district. The fee, known as a commitment fee, was paid to seven teachers in the district. However, the fee was not offered or paid to other teachers in the district. Essentially, the fee served no other purpose than to make certain that the teachers would continue to work with the district and thus their acceptance of the fee established a commitment on their part to remain employed with the district. Six of the seven were new teachers to the system, while the other teacher had been with the system for 10-plus years. A select group of teachers who were
not a part of the group of seven to be awarded additional compensation filed a declaratory judgment action against the school board. Their allegation against the board was the fact that the board paid stipends, known as commitment fees, to those teachers who returned their signed contracts within 10 days, with the stipulation that they would complete 2 years of service within the school district. The Missouri Court of Appeals ruled in favor of the personnel. In providing reasoning for their holding, the Court referred to a previous Missouri case, *Vilelle v. Reorganizing School District* (1985), in which it reversed the findings of the trial court in ruling against the school district and in providing that the change in salary schedule affected not just a few teachers but all teachers as a whole. The Missouri Teacher Tenure Act provides that a teacher salary schedule can be adjusted with the authority of the local board of education as long as all teachers are affected and paid the same. The court ruled that refusing to pay all teachers the same pay commiserate with their years of experience was in fact a demotion for those not being paid the same.

The courts rule in favor of school boards in their authority to demote personnel if there is valid cause. School boards maintain such authority by state law. The procedures to demote are outlined in local school board policy. In instances of demotion where loss of pay is the issue, the courts will generally rule in favor of school boards. The courts rule in favor of school boards in cases of demotion when it determines that personnel of the same qualifications or standing in the district are not entitled to the same pay. If it is determined that specific personnel are entitled to the same pay and one or more is demoted, the courts will not hesitate to intervene and rule against the school board in such matters.
Authority to Make Employment Decisions

The issues within the following cases represent the cases within this research study that pertain to the challenges of personnel to the authority of school boards to make employment decisions. These cases represent 6 of the 102 cases present in this research study. In 3 of the 6 cases, the courts ruled in favor of the school boards.

Why did the school boards win three of these employment cases? The courts are supportive of school board rights to their delegated authority to employ personnel, as long as the methods of employment are supported by legislative statute. The courts will not support the actions of a school board if it determines that the board has violated state law or a federally protected right of a citizen. In the first case, the court found that the school board had the right to employ legal counsel for a superintendent who disciplined personnel. In the second case, the court ruled for the school board as it found that they maintained authority to replace the superintendent who had been appointed by the previous board. In the third case, the board won because the employee did not exhaust administrative remedies.

Why did the school boards lose in their employment cases? In the first case, the Court ruled against the Board due to the fact that New York statute allowed the Chancellor of the New York City School Boards to have the authority to employ superintendents without the approval of the school boards. In the second case, a school board in Arizona lost its case due to the fact that it did not possess the authority to employ legal counsel on behalf of a board member when it was determined that the board member must vacate his position on the board due to his place of residence. In the third case, the school board lost its case due to the fact that it wrongfully delegated authority to a federally funded program to employ personnel within the district.
The following cases represent where the school board won against the challenge by personnel to their ability to make employment decisions. In the case of Lewis Bishop and Ronald Thompson v. Iowa State Board of Public Instruction, Iowa State Department of Public Instruction, and Valley Community School District (1986), the Iowa State Board of Public Instruction (BPI), the State Department of Instructional Education, and the Board of Education of the Valley Community School District were defendants in an action on behalf of the Valley Educational Association in which it was alleged that the defendants had committed statutory violations, by paying for the legal expenses of the Superintendent of the Valley School District. The superintendent temporarily suspended five teachers for an alleged drinking incident. The teachers filed an action against the superintendent. The Valley School Board paid the legal expenses of the superintendent in his defense of the case. The Iowa Supreme Court held that school boards in Iowa had authority to employ counsel for a superintendent in his defense against allegations that he used unprofessional practices, which resulted from his actions in disciplining five teachers on behalf of the school board. Iowa Code, §279.3 (1983) provides that a school corporation may employ an attorney to represent the school corporation as necessary for the proper conduct of the legal affairs of the school corporation. The school board won this case.

The case of Manuel Gonzalez v. Board of Education of the Elizabeth School District, Union County (1999) presented an interesting case of school board authority between two elected boards that represented their school district in succession. Gonzalez, the plaintiff in this case, was employed with the school board as an Assistant Superintendent. On June 29, 1994, the Board of Education informed the superintendent, Thomas Dunn, that they would not renew his contract at the end of his current contract, which would expire on June 30, 1996, and that he was relieved of his duties. The State Commissioner of Education ruled that the board possessed the
authority to relieve Dunn from his duties but that he was statutorily under contract and thus the position of superintendent must remain vacant until the end of his contract term. The board left the position vacant and appointed plaintiff Gonzalez as acting superintendent and gave him a 3-year contract commencing on July 1, 1996. In May of 1996, a board election was held and the majority of the current board at that time was not reelected. At the first meeting of the newly elected board, the board informed acting Superintendent Gonzalez that he was no longer the acting superintendent and that the former superintendent Dunn would be returned to his position as superintendent. Dunn also received a new 5-year contract commencing on July 1, 1996.

Gonzalez filed a petition with the State Commissioner of Education stating that the new board had breached his contract. The petition was turned over to an Administrative Law Judge (ALJ) who ruled in favor of the board. The State Commissioner of Education agreed with the ALJ’s decision. Gonzalez appealed the decision. The Superior Court, Appellate Division of New Jersey held that the succeeding board had the authority to return Gonzalez to his previous position as assistant superintendent and deny him the opportunity to fill the spot of superintendent.

In the case of Bacon v. Brewer (1990), the case stemmed from the fact that Brewer recommended the appointment of herself to a principal’s position within the District after she was defeated in a recent Superintendent’s election. The school board approved her employment to a principal’s position within the district. Once he took office, Bacon brought suit in the local Superior Court against Brewer on the grounds that her appointment should be declared null and void and to recapture salary payments made to her during her time of appointment as principal. The Superior Court dismissed Bacon’s suit on the grounds that the case is one of a local controversy and that Bacon must exhaust local administrative remedies. Bacon appealed to the Court of Appeals of Georgia. The Georgia Court of Appeals held that this case of alleged abuse
of power by the former superintendent is not a case for the judicial system, but a case for the local school board in order to exhaust local administrative remedies. Georgia statute OGCA §20-2-1160 provides that public school boards of education in Georgia must conduct hearings to resolve matters of local controversy. The statute requires that school boards have the authority to depose witnesses, and sets forth the procedure, type of hearing that can be held, and also provide for an appeal process. In this case, an appeal process is not appropriate because Bacon did not exhaust the requirements set forth in OGCA §20-2-1160. In Patterson v. Boyd (87 S.E.2d 861), the Court determined that matters of controversy are unique to each individual school board within the state. The Court also noted in Patterson that the judicial system is not the initial step in challenging abuse of power charges in public schools. In Bedingfield (94 S.E.2d 714), the Court provided that the equity that is desired and maintained in the judicial system cannot and will not interfere until all administrative remedies have been exhausted.

The following 3 cases represent where the personnel won in their challenge on the ability school boards to make employment decisions. In the case of Board of Education of Community School District No. 29 of the City School District of the City of New York, et al. v. Joseph A. Fernandez, etc. (1992), the Board of Education of Community School District No. 29 of the City School District of the City of New York challenged Joseph A. Fernandez, Chancellor of the City School District of the City of New York, in his development of a new system of employing and retaining Superintendents for the community schools within his district known as the Special Circular 37 (Circular). The main components of the procedures of the Circular are that community screening committees were to be established with the mandate to recommend candidates to the community school boards and each candidate must be evaluated whether he or she is a new applicant or an incumbent applicant. Once these two things were done, the
Chancellor would evaluate the screening and evaluation process and then make his own recommendation to the school boards as to the worthiness of a candidate to be employed or reemployed. It was the board’s contention that the Circular violates New York statute Education Law §2590-e(1)(a) due to the fact that the policy violates statutory law in stripping the school boards with the ability to employ. The New York Supreme Court held that the Chancellor did not exceed his authority in promulgating new procedures in the hiring criteria of Superintendents. The Court’s reasoning in this ruling is that in 1969, the New York Legislature added Education Law 52-A, known as the Decentralization Law for the public schools of New York City, in order to address a variety of problems with the administration of the school district. A key point of the law is that the policymaking and supervision of all city schools would be under the authority of the Chancellor of the City School District of New York, who is also referred to in the law as the Chief Executive Officer. The law also provided that the local schools in the community would be under the authority of local community school boards. However, the supervision of these school boards would be under one central administration, the New York City School Board, which is under the direct authority of the Chancellor of the New York City School Board. The court agreed with his assertion and cited the case of Matter of New York City School Boards Assn. v. Board of Education of City School District of City of New York (347 N.E.2d 568). In Matter the Court determined that in the instance of overlapping authority with the Chancellor and the School Boards of the City of New York, the Chancellor has the supreme authority in making the final decisions in matters of conflict, which includes the employment of personnel.

In the case of Daniel Campbell and Washington Elementary School District No. 6 of Maricopa County v. Richard L. Harris, Superintendent, Maricopa County Schools (1981), the Arizona Court of Appeals ruled that the school board violated Arizona statute in using public
school funds to contest a private legal action taken against Campbell, one of their fellow board members. Campbell was a twice-elected member of the board. During his second term in office, he moved out of the school zone for which his office served. Richard Harris, the superintendent, upon learning of the move out of district, determined that Campbell’s position on the board was vacated and subsequently took steps to initiate an appointment pursuant to Arizona statute A.R.S. section 38-291(5). Campbell and the members of the board retained counsel in order to contest the move by Harris. At the time that the court received this action, Campbell had vacated his position on the board. Thus, the court chose not to address that issue. However, the court did address the issue as to whether the board had authority to employ legal counsel in support of Campbell. The court determined that Campbell’s move out of district was a personal choice and thus his challenge to the decision to remove him was one of a personal nature. That being the case, the legal counsel that represents him in such an action must be employed by him personally. In the case of School District No. 69 of Maricopa County v. Altherr (1969) the court determined that school boards have only the authority granted to them via legislative statute. There is no language that exists in the Arizona Code that allows a school board to employ legal counsel to represent a board member in a personal lawsuit.

In the case of Christina Napier v. Lincoln County Board of Education (2001), the board denied employment of an after-school position to an existing employee of their district. In 1998, the school board applied for and obtained a $334,197 grant to operate a 21st Century Learning Grant. Part of the funds obtained from the grant were used to fund an after-school and summer program designed to primarily provide tutoring, counseling, and recreational activities. Once the board learned of its grant award, they advertised job postings in expectation of the need to employ a large number of positions in expectation to fulfill the needs of the grant. The positions
were posted and advertised in the local newspapers. Napier applied for one of the positions known as the “site coordinator” position. The Management Team, which was responsible for filling the positions, failed to recommend Napier for the position she desired or any of the other positions. Shortly after the employment of other individuals, Napier filed a grievance, alleging that the site coordinator positions had been filled in violation of West Virginia statute §18A-4-7a (1993). This statute governs the employment of professional employees in the State of West Virginia. The board denied two requests for a grievance by Napier. The West Virginia Supreme Court of Appeals held that Napier’s claim that she was wrongfully denied a position involving a federally funded after-school program was indeed subject to the statutory grievance requirement. The Court did not concur with the school board’s assertion that the West Virginia Dreams Management Team is an entity independent of the board of education. The only way that a grant can be obtained for purposes such as a federally-funded 21st Century Grant is for public school boards of education to submit the necessary grant applications for receiving the funding that is sought. Though the language of the application makes reference to the fact that the 21st Century program and school boards have obligations to operate independently of one another, the school board is still the authoritarian figure according to West Virginia statute. The court further noted that it does not recognize any authority that the board possesses when it delegates authority to another body. Thus, even though the source of the funding to operate the program originated at the federal level, the board is the supervisory and directory entity that must engage the responsibilities and obligations of the grant at the local level. The school board lost this case.

The courts recognize that school boards have extensive authority in making employment decisions in reference to school personnel. School boards gain this authority in many ways. In making employment decisions, school boards must first follow statutory authority delegated to
them and they must also follow the provisions of their local school board policy. School boards must also make certain that the constitutional rights of school personnel, including their due process rights, are protected and secured when making employment decisions.

Authority Over Financial Matters

The issues within the following cases represent the challenges of personnel to the authority of school boards with respect to issues pertaining to finance. These cases represent 9 of the 102 cases present in this research study. This particular issue is somewhat different than other issues due to the fact that the school boards in these cases lost the majority of the cases. The school board won 4 of the 9 cases. What were the reasons as to why the school board won 44% of the cases pertaining to the financial authority of school boards? In the first 2 cases, the courts ruled in favor of the school board due to the authority they possessed to distribute tax allocations. In the third case, the school board won due to the authority maintained by the board to impose a processing fee for a health benefits package. In the fourth case, the school board won due to the fact that the board maintained the authority to extend fringe benefits to its personnel.

The personnel won 5 of the 9 cases. In the first 2 cases, the school board lost due to the fact that they extended an additional work day onto the school calendar for one group and for the other, the board added an extra period onto the school day without compensation for the personnel in questions. In the final 3 cases, the school boards lost due to the fact that they lacked authority to extend health benefit and retirement benefit packages to the personnel of their respective districts.

In the case of Richland Parish Bus Drivers Association, et.al. v. Richland Parish School Board, et.al. (1982), the Louisiana Court of Appeals, Second Circuit, ruled in favor of the school
board in their decision to change the tax allocation formula. The voters of Richland Parish passed a proposition that allocated one percent of sales taxes to school personnel. The proposition allocated funds proportionately to two different classes of personnel: certificated and non-certificated. The board changed the allocation formula to include that after all monies had been paid to the specified personnel, any remaining funds would be paid to certificated personnel with more than four years of experience. This meant that non-certificated personnel would receive less money. The Richland Parish Bus Drivers Association brought action against the board as it contended that the board lacked the authority to change the tax allocation formula. The court cited two cases in reaching their decision in favor of the school board. In the Louisiana cases of *State v. Jefferson* (1943) and *Celestine v. Lafayette Parish* (1973), the court stated that members of a school board are elected and must be responsible to the electorate. When an elected governing body is not restricted by law, the actions of that body are presumed to have been made in good faith. Even though the plaintiffs introduced an allocation formula from other parishes and such formula’s display that the Richland Parish formula provides somewhat less allocation to the non-certificated, the court felt that it was not enough to warrant a change in the Richland formula and that the school board maintained the financial authority to govern their district.

In another Louisiana case only 1 year later, the Court of Appeal of Louisiana, First Circuit, in the case of *Louisiana Association of Educators, et.al., St. Tammany Federation of Teachers, et.al., v. St. Tammany Parish School Board* (1983), ruled in favor of the School Board in a similar ruling. In the case, the court referenced the cases of *Ouachita* (1978) and *Washington* (1974) in providing that when an administrative public body has maintained a consistent interpretation of legislative enactment, that interpretation carries and bears great weight on fulfilling the meaning and enactment of such legislation. The board at its fullest discretion has
the financial authority to deem what is appropriate in respect to the allocation of the sales tax receipts.

The case of *Tax Deferred Annuities Corporation v. Cleveland Board of Education* (1985) pertained to the ability of the Cleveland School Board to impose a processing fee on the Tax Deferred Annuities Corporation (TADC). TADC provided a tax-sheltered annuity program to the employees of the Cleveland School District. Initially, TDAC made claims concerning an alleged civil rights violation and an inappropriate agreement for salary modification. However, TDA later dismissed these claims. Ultimately, TDAC entered suit seeking declaratory relief and a refund of $4500.00 for the processing fee for which it paid the board. The processing fee is what the board charged for operating a computer service program, which was required to operate the annuity program. The Ohio Supreme Court held that the board acted within its statutory authority to establish a processing fee. In referring to the Internal Revenue Code of 1954, Revised Code 9.90, the board deemed that processing claims and the performance of other administrative services is an essential element to providing insurance coverage for personnel. Therefore, the Court ordered that the school board maintained the authority to administer a processing fee as part of their right to enforce administrative services.

In the case of *William Jurva, Ruth McDonald, and Rochester Education Association. v. Attorney General of the State of Michigan v. Board of Education of the Rochester Community Schools* (1984), the case revolved around the fact that the Rochester Education Association entered into a new policy in their collective bargaining agreement with the board. Beginning with the 1974-1975 school year, lump sum payments ranging from $1000.00 to $5000.00 were available to retired teachers between the ages of 60-65. In the succeeding year, the age range was broadened and so were the lump sum payments. The retirement age and lump sum payments
varied among those eligible, as long as each had 10 years of experience or more. These early retirement benefits were provided from 1974-1975 school year through the 1977-1978 school year. On June 15, 1978, the Attorney General for the State of Michigan issued an opinion, OAG (1977-78, No. 5314, p. 480) in which he ruled the board of education may not constitutionally provide supplements to retirees in addition to those provided by the public education system. In response to the decision, the board entered into an agreement with the education association in that the association would hold the board harmless if it was determined that the early retirement benefits were a statutory violation. Jurva and McDonald filed an action seeking declaratory judgment. The Supreme Court of Michigan held that early retirement incentives are pertinent for school boards to offer as they possess the financial authority under §1255 of the Michigan School Code. In 1969, §617 of the Michigan School Code was amended to provide statutory language that allowed school boards with the flexibility to provide additional benefits for their employees. One piece of language within the statute states that school boards can provide benefits that are known as other related benefits of an economic nature. It was the Court’s opinion that the legislature clearly intended to confer broad financial authority upon a school board to provide fringe benefits for school employees. The Michigan Supreme Court ruled therefore that a school board maintains the authority to offer early retirement incentive packages.

The personnel won the following cases. In the case of Donald Purn v. Board of Education, Community Unit School District 300 (1982), the Appellate Court of Illinois, Second District, ruled that the board exceeded its authority by changing the end of school date from June 16, 1981, to June 11, 1981, while also requiring the teachers to work that last day without compensation. During the 1980-1981 school year, President Ronald Reagan ordered the date of January 29, 1981, to be honored as Hostage Day in honor of the hostages freed from the Iran
Hostage Conflict. On the date of April 13, 1981, the board amended the school calendar to reflect an end date of the school year as June 11, 1981. The initial end date was June 16, 1981. The board cited the non-use of 4 snow days and a make-up day for the federal holiday as the reason for the change in date. The plaintiffs were required to work the date of June 11, 1981, without compensation. While the board maintained the authority to change the school calendar, which reflected an earlier ending date, the board did not possess the authority to add a fifth day onto the end of school to make up for the required federal holiday. A school board only has the financial authority to pay personnel according to the number of work days that are required by state statute.

In a similar case that deals with the assignment of additional work to teachers, the Supreme Court of Idaho ruled in the case of *W. Monte Robinson v. Joint School District No. 331, Minidoka, Cassia, Jerome, and Lincoln Counties* (1983) that the board violated its authority when it required Robinson to work an extra period within the school day without pay. The board had a right to require him to work the additional day. However, they could not do so without compensating him, especially when other employees with similar teaching responsibilities were compensated for the same additional teaching assignment. The court reviewed the minutes of a previous meeting where five teachers approached the board and asked for the opportunity to teach six periods a day with additional pay. The board approved the request of the teachers. Also, the court reviewed the school board’s policy manual and found nothing that limited the additional pay for teaching an extra period to the five teachers who previously appeared in front of the board. The board possessed the financial authority to compensate personnel for additional teaching responsibilities but could not be arbitrary in doing so. Compensation of personnel must be equitable in cases where job responsibilities and requirements are virtually the same.
In the case of *Atlantic City Education Association and Atlantic City Head Custodians’ Association v. Board of Education of the City of Atlantic City, Keyport Teachers’ Association v. Board of Education of the Borough of Keyport* (1997), a group of teacher education associations, known as: Atlantic City Educational Association, Atlantic City Head Custodians’ Association, and the Keyport Teachers’ Association (Associations), brought action against the Atlantic City School Board and the Borough Keyport School Board due to the fact that they developed their own health benefit plans in order to save costs and also provide better benefits for their personnel. The State Commissioner of Education (Commissioner), through the guidance of the New Jersey State Board of Education, concurred that the plans established by the school boards constituted self-insurance plans, which is contrary to New Jersey state statute N.J.S.A. 18A:16-13. Thus, the boards have committed statutory violations as they do not possess the financial authority to make such decisions. The Superior Court, Appellate Division, held that the health benefit insurance plan in question was basically a self-insurance plan and thus in violation of New Jersey statute.

In the case of *Phyllis Greenhalgh v. The City Council of the City of Cranston* (1992), Greenhalgh challenged the board’s authority to deny her the opportunity to receive early retirement benefits. In July of 1990, the Rhode Island General Assembly passed legislation that provided early retirement incentives to eligible employees with the Rhode Island Employee Retirement System. The law is entitled the Article 80 of the 1990 Budget Act, P.L. 1990, ch. 65, art. 80. Greenhalgh met the age and service requirements to receive benefits under the legislation and therefore sought retirement. The terms of Article 80, Section 4, allow the school committees, municipal councils, and other designated bodies with the option of prohibiting these employee benefits through a timely passage and transmission of a resolution to the Director of
Administration of the retirement system. In July of 1990, the Cranston City Council adopted a resolution that essentially excluded municipal employees from the early retirement incentive. The Cranston School Committee did not enact a similar resolution. Sometime later, the Retirement Board of the Rhode Island Employee Retirement System refused Greenhalgh’s application for an early retirement package. Greenhalgh sought injunctive relief and filed an action in the Superior Court of Rhode Island. She maintained that the School Committee, not the City Council, was the governmental authority responsible for determining whether school employees should be allowed to participate in the early retirement incentive package. The Superior Court of Providence County determined that the City Council was an appropriate governmental body to determine if teachers should be able to participate in an early retirement incentive package. Greenhalgh appealed to the Supreme Court. The Rhode Island Supreme Court held that a paraprofessional is considered a municipal employee and not a public school teacher and thus the appropriate governing body to determine his or her participation in the early retirement incentive package was the city council, not the school committee. In matters pertaining to non-certificated personnel, the school committee does not maintain the appropriate financial authority to make decisions pertinent to early retirement benefits.

In the case of Sioux City Community School District v. Iowa State Board of Public Instruction (1987), the Supreme Court of Iowa held that the school board committed a statutory violation by entering into a contract for personnel health insurance benefits with the Wisconsin Education Association Insurance Trust (WEAIT). WEAIT is a company that is not covered under the scope of acceptable insurance providers that are required under Iowa statute. On November 8, 1983, the school board voted to award an 18-month contract with WEAIT. The school board’s former insurance company appealed the decision of the school board to the Iowa
State Board of Public Instruction (BPI). The carrier’s contention was that WEAIT is not a viable health insurance benefit company under Iowa Code statute section 509A.6 (1983). The court followed a similar ruling in Casteel v. Iowa Department of Transportation (1986), where it declared that the State of Iowa’s listing of specific companies that are approved for public contract must be enforced and that WEAIT does not meet the requirements of such an exclusive group.

The courts recognize that school boards have extensive authority to financially govern and manage their school districts. Within that authority a school board has great discretion to meet the needs of their respective districts. Such authority is gained from state law and school boards follow that authority through the provisions in their policy manual. The courts recognize that state funding and financial laws are very prescriptive in nature and school boards must make certain that such laws are closely followed and that their local policy manuals are in compliance with such laws.

Authority to Claim Immunity Status

This issue reflects 10 of the 102 cases in this research study, where the courts ruled on the immunity of public school boards in respect to personnel and their authority to be liable for the actions of their personnel. In 7 of the 10 cases, the courts ruled in favor of the school board. The courts generally find that school board members are immune from action against them by school personnel. Public school boards are creatures of state legislation adopted by state government and thus enjoy immunity in many respects. As always in cases where there are questions of immunity, the courts look for evidence that a school board has committed a violation against an individually-protected right in some way.
Why did the school boards lose in 2 of the following 10 cases? In the first case, the school board was found to be liable for the actions of an employee in a sexual harassment case. In the second case, the school board lost in its attempt to use immunity status to avoid being deposed in an action against them by a terminated employee. In one case, where neither the school board nor the personnel won, the court remanded the case back to a federal appellate court for further instructions in determining precedents from other court cases.

In Board of Trustees of Hamilton Heights School Corporation, Ronald E. McGill, Sylvia Kay Hartley, Marcia G. House, Keith Schullenberg, and Lawerence C. Beck, Individually and in their capacity as members of the Board of Education of Trustees of Hamilton Heights School Corporation v. Roger V. Landry (1993), the Indiana Court of Appeals held that the school board members in their official capacity were persons immune to suit under §1983. Landry removed the glossary from the back of 146 science textbooks owned by the school district. The Superintendent met with Landry and recommended to the Board that Landry be suspended without pay for 2 days and ordered to repay $1.00 each for a total of $146.00 payable to the school district for the damage to the textbooks. Landry received a hearing with the Board, after the hearing, the board followed the superintendent’s recommendation and suspended Landry and directed him to re-pay $146.00 to the school district. Prior to this case, no Indiana School Corporation had ever been under a Section 1983 suit. The court pointed to Indiana statute IND CODE §20-1-1-1 and 21-1-1-1, which provides in theory and fact that an Indiana School Corporation is an arm of the state. The case of Will v. Michigan Department State of Police (1989) provides that neither a state nor its official acting in their official capacities are “persons” under §1983. Local governments such as school corporations are not amenable to suit § 1983 claims in due to immunity provided to them as state actors under the Eleventh Amendment.
In the case of *Mitchell Williams, Individually, Mary E. Williams, Individually, and Mitchell Williams, Administrator of the Estate of Anthony Wayne Williams v. Kentucky Department of Education, Board of Claims, and Commonwealth of Kentucky* (2003), the plaintiffs were the parents of the deceased, Anthony Wayne Williams. Anthony Wayne Williams was a high school student who was killed in an accident that was caused by students who consumed alcohol during school hours and while participating in a prom decorating session at a local elementary school. The administrator of the estate brought action against the Kentucky Department of Education, seeking separate actions that alleged wrongful death, negligence, and loss of consortium due to the lack of supervision of the high school faculty, who were required to be monitoring the prom decoration activity. The Board of Claims, the Circuit Court of Floyd County, and the Court of Appeals ruled against the parents and they appealed to the Kentucky Supreme Court. The Kentucky Supreme Court held that the death of a student due to alcohol-related factors was neither extraordinary nor unforeseeable as a negligent cause on the part of defendants and the Commonwealth of Kentucky and all of those agencies underneath, including school board members, do not possess immunity in matters of vicarious liability for negligent performance of ministerial acts of employees of local boards of education. The Supreme Court stated that in matters between two parties, the court assumes that the appellant is correct unless they find otherwise.

The United States District Court ruled in the case of *Jane Doe and Janet Doe, Individually v. Claiborne County, Tennessee, by and through the Claiborne County Board of Education, and Dennis L. Peters, Roy L. Norris, Charles Randall Burchette, Bobby Williams, Dr. Roy Ellis, Jr., Lynn S. Barnard, in their individual and official capacities, and Sam Widener, Don Dobbs and James Leonard Bundren, in their official capacities only* (1996) that the school
board was not liable in their individual or professional capacities due to the fact that plaintiff had not proven their guilt through a custom or pattern on their part in failing to protect her rights.

Plaintiff Doe, while a 14-year-old freshman and student at Claiborne County High School (CCHS) became involved in an emotional and physical relationship with Jeffrey Davis, a teacher at Soldier Memorial Middle School (SMMS) and a coach at CCHS. Doe sued the defendants in their official and individual capacities due to the sexual harassment, sexual abuse, and statutory rape that she received from David while he was an employee with the school board. Doe claimed that her rights were violated under the Fourteenth Amendment of the U.S. Constitution, Title VII of the Civil Rights Act, and Title IX of the Education Amendments. The court ruled that claims against state actors under the Fourteenth Amendment through a municipal liability claim must be examined by a two-prong inquiry: 1) whether the plaintiff has asserted the deprivation of a constitutional right, and 2) whether the county or school board is responsible for that violation.

The court cited the case of StoneKing v. Bradford Area School District (1989) where the Third Circuit determined that it was ludicrous to even consider if it is impermissible for a school employee to sexually molest a student. In U.S. v. Lanier (1996), the Court of Appeals and the U.S. Supreme Court held that the right to be free from rape and sexual assault and harassment was a component of an enforceable right to bodily integrity. In the matter of alleging that the board and others are responsible for the alleged sexual misconduct of an employee, the court did not agree. In Monell v. Department of Social Services (1978), the court determined that a school board could not be held responsible solely for an employee’s conduct under the doctrine of respondent superior.

The United States Court of Appeals ruled in the case of Barbara Plumeau, Personally; Amanda Barton-Plumeau, by her mother and guardian ad litem, Barbara Plumeau v. School
District #40 County of Yamhill; and Adrian Moore (1997), that the school board was not liable for abuse under §1983. Plumeau was sexually abused by Adrian Moore, a janitor employed by the school board. During the time that he was a custodian, Moore had several negative incidents with the school’s administrative staff over his consistently inappropriate behavior around young girls at the school. In determining if the Yamhill Board of Education or its administrative staff were liable for the sexual abuse of Plumeau, the court looked to the language of the Fifth and Fourteenth Amendments of the U.S. Constitution and to several previous cases argued in federal court to determine if “municipal liability” existed. To impose municipal liability under §1983, the plaintiff must bear the burden of proof on the following: 1) that plaintiff possessed a constitutional right of which she was deprived, 2) that the school board had such a policy to address sexual misconduct of its personnel, 3) that the policy reveals language that addresses deliberate indifference to the injured party’s constitutional right, and 4) that the policy alone is the moving force behind the constitutional violation. Amanda Plumeau did have a constitutional right to be free and protected from sexual misconduct from Moore. However, the court determined that the school board did not participate in engaging a policy or failed to engage in following policy which would have prevented the sexual misconduct on the part of Moore. The court also determined that the Plumeaus, in citing Miller v. Fairchild (1986), did not appropriately argue the point that the school board had failed to train its staff to correctly identify the signs of child abuse. The court could not grant summary judgment to plaintiffs when they failed to provide sufficient evidence, to raise significant issues, or prove that the board violated its own policy.

In the case of Karon O. Matthews and Donna R. McCarble v. High Island Independent School District and John Charavalloti (1998), the board notified both members of the plaintiff
party that their teaching contracts were not being renewed for the next school year and they were subsequently terminated from their positions. Plaintiffs filed suit in United States District Court, Southern District, Texas. The United States District Court held that the board members enjoyed immunity, but the principal did not. The plaintiffs successfully proved that the principal harassed them and even retaliated against them after they pursued action and claims of violations of their First Amendment rights. The court determined that the ruling in *Pembaur v. City of Cincinnati* (1986) had merit in this same case in that the actions of the principal were comparable to the Court’s assertion that a single decision by such a body unquestionably constitutes an act of government policy. The illegal or unconstitutional actions of the final policymaker such as the board, in setting and achieving the goals of the municipality, may create liability for the policymaker. The principal was an employee of the board and he was bound by their policy not to discriminate against the employees of the board. The court ruled that the school board was not liable for the actions of the principal.

In a similar Georgia case in *Floyd v. Waiters, et al.* (1998), the plaintiffs, Carol and Carla Floyd, were sexually harassed by William Booker, a security guard for the board of education. The Floyds sued the school board under the provisions of 42 U.S.C. §1983, 20 U.S.C. §1681 (a) (1988), Title IX of the Education Amendments of 1972, and provisions of state law. Booker entered a guilty but mentally ill plea and served 3 years of a 10-year prison sentence for false imprisonment and sexual assault of one in custody. Iris Waiters, Booker’s supervisor, was charged with obstruction of justice regarding the crimes involving the plaintiffs. He was terminated by the school district and acquitted of the criminal charge but was stripped of his police officer’s certification. The plaintiffs claimed that the board was liable because they knew Booker was abusing his position as a security guard at the school and they did nothing to stop
him. Except for Waiters, who was not a party to this appeal, no evidence showed that the defendants had knowledge of Booker’s misconduct. The United States District Court for the Middle District of Georgia granted summary judgment for the defendants. The summary judgment ruling for the defendants by the trial court was affirmed on appeal to the Eleventh Circuit Court of Appeals. The Georgia Court of Appeals ruled that due to the absence of evidence that either the superintendent of schools or members of the school board had knowledge of the misconduct and failed to act, the board was not liable for sexual harassment under Title IX. The Court of Appeals, Eleventh Circuit, noted on the record that at the time it was rendering its decision in the case, the United States Supreme Court had recently granted certiorari in a Fifth Circuit case to consider the standard-for-liability issue in Gebser v. Lago Vista Independent School District (1998). The United States Supreme Court vacated the judgment in this case and remanded it to the United States Court of Appeals for the Eleventh Circuit for further consideration in light of Gebser. The standard established under Gebser is that in order to hold a school board liable for damages under Title IX for sexual harassment of a student by an employee there must be actual notice to an appropriate person in the school district with authority to take corrective action who acts with deliberate indifference to the notice. Because there was no such notice to inform the school board or the top administration of the school district of the alleged sexual harassment, the court ruled that the school board was not liable for the actions of its personnel. A school board cannot prevent or address a situation when they have no idea of the alleged wrongdoing.

The case of Tabitha J. Naugle and Sandra M. Cain v. Beech Grove City Schools (2007) pertained to the ability of two former employees to sue upon their allegation that the board violated the Wage Payment Statute for state of Indiana. Plaintiffs were employed as custodians
by the board during 2003. Prior to that year, the board paid the salaries of its employees every 2 weeks for a total of 26 times during each calendar year. The salaries were paid approximately 7 calendar days after a pay period ends. Every 7 years, the Board pays 27 times a year. During 2003, the board wished to change two things within their payroll system. They wished to change the system so that they would not have an additional pay period every 7 years and they wished to attempt to accommodate employee requests to receive their paychecks prior to some of the school holidays that occur during the calendar year. The board successfully implemented the new system for a period of 1 year and then changed back to the old system. Naugle resigned from her position in October of 2003 and Cain was terminated from her position in February of 2004. In February of 2004, both individuals filed a class action lawsuit against the Board for an alleged violation of the Wage Payment Statute by failing to pay their wages within the time that the statute required. The Indiana Supreme Court held that the school board did not violate the Wage and Payment Statute. The Court concluded that the Wage Payment Statute is applicable to school corporations. Additionally, the Court did not entirely agree with the reasons that the board gave in its defense as to its lack of liability for failing to adhere to the Wage and Payment Statute. However, it did contend that the board did not violate the statute. The Court did agree with the board in their assertion that they should not have to pay for liquidated damages. This is the only area for which plaintiffs sought relief. In *Brownsburg Community School Corporation v. Nature Corporation* (2005), the Indiana Court of Appeals concluded that it was unreasonable to subject public schools to pay damages for wages that are paid late. The court concurred with the ruling in *Brownsburg* and determined that the school board was not subject to pay damages to plaintiffs for wages that were paid late.
In the case of *Thomas Webb, etc. et.al. v. Hal Reisel, et. al.* (1993), the Missouri Court of Appeals ruled in favor of Hal Reisel, the Director of Pupil Transportation, in granting him immunity from action brought against him for an accident that occurred at a school bus stop. Webb filed a motion for summary judgment based on official immunity and the public duty doctrine pursuant to Rule 74.01(b) of Missouri statute. The Court of Appeals held that the director was a public official in representing the board of education and that his duties were safe, efficient, and discretionary and that in his position as director, he was entitled to immunity. In *Lynn v. TIME-D.C., Inc.* (1986), the court found that the application of the doctrine for official immunity must be done so by the public official. A public official may invoke the sovereign function of the government, such as the governing board of education, so long as the official is serving in a capacity that is being exercised by the individual who is benefiting the public. Personnel employed by a board of education gain this responsibility and authority to function from the existing chain of command. Due to the fact that the director was following those administrative responsibilities assigned to him, he was entitled to the same immunity afforded to them as if he were acting on their behalf (*Sherrill v. Wilson*, 1983).

The other 2 cases where the school board lost were cases involving the parent of a student who was abused by a substitute teacher employed by the board and by 2 personnel members. The parent won against the school board since their claims of immunity failed with the U.S. District Court that ruled on the matter. In the case of *Connie Mirelez, Next Friend of Michaela Mirelez v. Bay City Independent School District* (1998), the school board lost its action to seek summary judgment against the parent and student who brought action against them, due to the fact that the student was sexually molested by a substitute teacher, Garcia, who was employed by the school board. Garcia had a prior accusation of abuse against him off-campus and another principal of a
school in the district had prior knowledge of this alleged prior abuse but failed to report it to the superintendent. The board conceded that in this case it did not check Garcia’s criminal record prior to employing him. In November of 1996, Mirelez alleged that her daughter was sexually molested on school premises, which caused significant physical, psychological, and emotional injury. Garcia later pleaded no contest to state criminal charges for indecency with a child. Mirelez brought action in Federal District Court alleging the school board failed to protect her daughter’s civil rights under 42 U.S.C. §1983. The United States District Court for the Southern Division of Texas held that the board’s delegation of final decision-making authority did not relieve the board of their ability to protect Mirelez. The Court cited the case of Ingraham v. Wright (1977) where the U.S. Supreme Court established that sexual assault of a student is unconstitutional and no doubt a form of corporal punishment. In Doe v. Taylor Independent School District (1994), the Fifth Circuit reasoned that if a school board is determined to be liable for excessive corporal punishment, then a board is also liable for the lack of protection of a student who is sexually abused from school personnel. Similarly, the Third Circuit, in Stoneking v. Bradford (1989), ruled that a teacher’s sexual molestation of a student is clearly deemed an unacceptable practice. The Fifth Circuit in Eugene v. Alief Independent School District (1995) held that the actions of school district officials with final policymaking authority can subject a School District to be liable under §1983 claims. Under Texas law, the final policy-making authority of an Independent School District generally rests with a School board. With the facts of these cases noted, the Court turned to the plaintiff’s contention that the board acted with deliberate indifference. If Principal Bowles had informed the superintendent of the prior incident, then it is noted that the board would undoubtedly not have chosen to employ Garcia. The court referenced the case of Board v. Brown (1977) in that the board, as a municipal actor, disregarded
a known or obvious consequence of its action. The omission of failing to act is not only negligence but also blameworthy. In this case, even though the board lacked knowledge of Garcia’s prior actions, the failure of their officers to act caused irreparable harm.

In *Verata Lee v. East Baton Rouge Parish School Board* (2004), Lee was a tenured teacher who was terminated for willful neglect of duty. Lee challenged the termination and sought the opportunity to depose the members of the board. The school board moved for a protective order on their belief that the district court served its role in this case in an appellate capacity due to the fact that they enjoy quasi-judicial capacity and thus were entitled to immunity. Lee stated that the hearing in front of the school board was basically a deposition and that the members of the board were unattentive and that they did not take the matter seriously.

The Court of Appeals held that Lee was allowed to depose the school board members regarding relevant matters of fact that did not probe into or comprise the mental processes of the school board members. The court recognized that the school board does hold a quasi-judicial capacity that also allows them some immunity. However, such immunity cannot be a blanket immunity. The allowance of an exemption from compulsory testimony is authorized to governmental officials in certain capacities in order to protect the integrity and individual responsibility of governmental officials.

The courts generally find that school board members are immune from most actions against them. In determining if school boards are immune from action, the courts look for evidence that a school board has committed a violation against an individually-protected right in some way.
Authority to Grant a Leave of Absence

This issue reflects 1 of the 102 cases in this research study. The school board was victorious in this case. In the case of *Favero v. Huntsville Independent School District* (1996), the United States District Court for the Southern District of Texas held that the school board did not commit religious discrimination under Title VII. Favero had requested a leave of absence for a specific time period during each school year in order to observe and participate in a religious custom. The court ruled that Favero did not have a guaranteed right to the requested leave of absence as this was an unreasonable accommodation for the school bus driver. The court asserted that in granting such a request of leave for religious observance, the school board would have had to hire more drivers and pay drivers more so that all routes would be covered during the leave of absence, thus also requiring supervisors or mechanics to drive buses.

School boards are required by state and federal statute to protect the interests of their personnel. The courts will generally rule in favor of school boards if it is determined that the school board did not violate a constitutional right of an employee or group of employees.

Authority to Require Medical Excuses

The following cases reflect 2 of the 102 cases in this research study. The courts recognize that school boards have the authority to adopt many policies in order to manage and care for the personnel of their school districts. However, the authority of boards to adopt such policy hinges greatly upon their recognition of the legislative statute that govern them and extends to them the necessary authority to conduct the management of their respective school district. In the following 2 cases, the school boards lost because they did not possess the statutory authority to require medical excuses from their personnel.
In the case of *Hoeflinger v. West Clermont Local Board of Education* (1984), the Ohio Court of Appeals ruled in favor of Hoeflinger as it held that a board of education does not have the discretion and authority under Ohio Statute R.C. 3319.141 to require proof of disability in order to grant sick leave to a pregnant teacher. The plaintiff was a teacher with the district beginning in 1974. During the 1980-1981 school year, the plaintiff became pregnant. In February of 1981, the plaintiff sent a letter from her physician to the Assistant Superintendent, Vincent Gilley, notifying him that she was seeking sick leave, which would commence March 21, 1981. The letter did not state a specific reason other than that the plaintiff was pregnant and that she would stop employment on the aforementioned date. In a letter dated March 26, 1981, Gilley informed the plaintiff that she had not submitted the appropriate paperwork to justify her need for sick leave nor had she given the information that was needed for the school board to entertain her request for sick leave commencing March 21, 1981. As a follow-up to Gilley’s letter, Superintendent Duane Tennant, informed the plaintiff by letter dated April 7, 1981, that she had three options available to her, including the following: 1) Hoeflinger could take maternity leave without pay for the days of desired leave, 2) Hoeflinger could submit the appropriate paperwork stating the reasons for her absence of work and thus be granted sick leave for the date of desired leave, and 3) Hoeflinger could combine sick leave and maternity leave for the date of desired leave. The plaintiff responded in a letter dated April 13, 1981, that according to Ohio statute (R.C. 3319.141) she was entitled to sick leave for pregnancy without further submission of additional paperwork. Plaintiff was not paid for 19 days of work that she missed from the period of March 23, 1981 through April 26, 1981. In February of 1983, she initiated action against the school board citing that the board denied her right to sick leave under the aforementioned state statute. The appeals court overruled the trial court’s holding and specified that a board of
education has the discretion and authority under Ohio Statute R.C. 3319.141 to require proof of
disability in order to grant sick leave to a pregnant teacher.

In Rebecca Godbey, Harriet H. Phillips, Barbara A. Robblee and Patricia M. Wright, on
behalf of themselves and all other persons similarly situated v. Roosevelt School District No. 66
of Maricopa County, Roosevelt Board of Trustees, Bernard Black, Donald Campbell, Robert
Garcia, Frank Benites and Janine Saunders (1981), the case centered upon a requirement by the
board for personnel to submit disclosures of doctors’ excuses when they are absent from work
due to illness. The board passed this amendment retroactively to its initial CBA with the
personnel of the district. In the spring of 1975, the board and the Association entered into
negotiations for the renewal of the CBA, which was set to expire on June 30, 1975. The two
parties were not in agreement with all issues at hand. Therefore, during the week of May 13-19,
1975, a select group of teachers engaged in a work action known as a “sick-in” where they
intentionally did not report to work under the guise that they were sick. In response to this action,
on May 13, 1975, the Superintendent, Dr. Curtis O. Greenfield, issued an administrative order
requiring that teachers must provide a doctor’s certificate clarifying that the teacher was ill. He
further ordered that a teacher failing to provide such documentation would be docked a day of
pay for each unexcused absence. Greenfield administered this order without board approval. A
week later, on May 20, 1975, the Board ratified a recommendation by the superintendent to make
the order effective under school board policy. The Arizona Court of Appeals held that the school
board could not retroactively apply school board policy changes.

The courts hold that school boards have the authority to require medical excuses from
school personnel. In requiring such documentation, a school board must have local school policy
that specifies the procedures that must be followed in requiring medical excuses. The lack of
sound policy can subject a school board to challenges as to their authority to require such medical leave documentation. Also, the courts view the constitutional rights of personnel to determine if there have been violations with the requirement of medical leave documentation. A school board’s ability to require medical leave documentation is only as good as their local school board policy.

Authority to Require Medical Evaluation

This issue reflects 1 of the 102 cases in this research study. The school board was victorious in this case. In the case of Diane Murray v. Pittsburgh Board of Education (1991), the school board utilized its authority to request a psychiatric examination of one of its personnel who had exhibited questionable behavior. In November of 1990, an incident occurred with Murray and another teacher at one of the schools in the district. The incident was not the first involving Murray and other personnel within the school district. Mrs. Spolar, the Associate Director of Employee Relations with the district, was charged with investigating the incident by Dr. Henry Falson, Deputy Superintendent for the School District. When Falson informed Spolar of the incident and the desire for an inquiry into Murray’s behavior, he directed Spolar to contact Vernon Phillips, who was the principal of the Letsche Alternative School, the place of work for Murray and the place of the latest incident involving the dispute between Murray and a co-worker. Phillips informed Spolar that he was concerned about Murray’s failure to have positive interaction with other members of the staff and that she had a history of lengthy absences from work. Phillips raised the question with Spolar as to Murray’s fitness to continue teaching. After her consultation with Phillips, Spolar chose to obtain a medical evaluation of Murray. The United States District Court, Western Division, Pennsylvania, held that the school district
administrative personnel through authority delegated to them was not required to hold a probable cause hearing in order to conduct an examination of Murray. The court ruled in favor of the school board. The court cited the two previous cases of *U.S. v. Westinghouse* (1980) and *F.O.P., Lodge 5 v. City of Philadelphia* (1987), where it was determined that an individual can accurately support a claim of invasion of privacy based upon the type of record requested, the specific type of information contained within, the potential harm to the individual if such information should be released, the accuracy of safeguards to prevent unauthorized disclosure, and the statutory provisions in place that allow for a School Board to enforce the requirement of the submission of an employee to a medical examination of any type.

In noting these two cases, the court also looked to recent Supreme Court decisions in *National v. Von Raab* (1989) and *Skinner v. Railway* (1989), where the court made it explicit that the school board’s collection of medical information from a teacher must be analyzed by balancing the need to respect the privacy of the individual against the interests of the Government. The type of information that the school board needs in such cases is of the type that can be most intrusive to an individual’s privacy. Also, the court noted that Murray acknowledged that she would be glad to provide information pertaining to her physical and mental wellbeing provided by her personal internist, psychologist, and therapist. The Pennsylvania School Code Subsection 14-1418(c) provides that an employee of a public school board can be subjected to an evaluation at anytime. That same subsection does not direct a school board to allow the individual in question to choose a medical examiner of their choice.

The courts recognize that a school board possesses the authority to require a medical evaluation of an employee. In doing so, a school board must be able to provide the rationale
behind such a requirement and their local board policy must reinforce their desire to require such action.

Authority to View Personnel Records

The following case reflects 4 of the 102 cases in this research study. The courts recognize that school boards have the authority to take action in many regards in order to manage and care for the personnel of their school districts. However, the authority of the board to view or use personnel records in actions against personnel is generally a vague area with respect to state statutes. The courts are usually left to sort out what is considered appropriate in respect to viewing the personnel files for employees. In the following 4 cases, the school board lost the challenge to their authority to allow or disallow as needed the use of personnel records to take action against an employee.

In Bangor Area Education Association v. Ronald Angle, Lisa Sandt, Robert Wilson, Richard Ott, Joseph Boyle, Charles Cole, Joseph Diorio, Mary T. Ensslin, J. Peter Turtzo, Dr. Wilford Ottey, Dr. John Barilla, and the Bangor Area School District (1998), the Commonwealth Court of Pennsylvania held that school Board members in the Commonwealth of Pennsylvania lack the statutory authority to view the personnel files of their employees as the Pennsylvania Personnel Files Act prohibits school board members from viewing such files. The board contends that if they do not possess the authority to view files, then the open records legislation under Pennsylvania law will allow them to view personnel files. The court, in West Shore School District v. Michael Homick and West Shore Education Association (1976), ruled that the personnel records of teachers are not a matter of public record and thus cannot be treated
as such. The board failed on its contention that files of education personnel in the state are a matter for public record.

In the case of *Carol Spinelli v. Immanuel Lutheran Evangelical Congregation, Inc.* (1987), the case entered upon Spinelli’s right to view her personnel file in preparation to challenge the board’s ability to terminate her. Spinelli worked for the board for 5 years, from 1980-1984. Prior to the 1984-1985 school year, the defendant terminated the plaintiff’s contract due to the fact that they had received negative letters from parents and students, and that these letters were in her personnel file as allowed in §2 of the Illinois Code (Ill.Rev.State, 1984, Supp., ch. 48, par. 20p2). The board allowed Spinelli to view her file but withheld the letters in question, citing the confidentiality of her accusers. Spinelli filed a motion asking for a motion that would compel the board to release the letters. The Illinois Supreme Court ruled in favor of Spinelli. State law stipulates that every employer shall permit the employee to inspect any personnel documents which are, have been, or are intended to be used in determining that employee’s qualifications for employment, promotion, transfer, additional compensation, discharge, or other disciplinary action (Ill.Rev.Stat., 1984 Supp., ch. 48, par. 2002). It is language in Illinois statutes that allows school personnel in Illinois the right to view their file. The court ruled that there is no vagueness in this statute.

In a companion case to the previous case, *Lawerence E. Kamrath v. The Board of Education of School District No. 150, Peoria County* (1987) centered around similar circumstances where the board wished to suspend Kamrath based on evidence contained within his personnel file. Kamrath was an employee of the board for the years of 1967-1985. In February of 1985, the school administration for Kamrath’s school of employment met with him to address complaints that he used profanity in the classroom setting. In the meeting, Kamrath
was shown copies of letters from students that accused him. The letters were devoid of student names or signatures. Kamrath subsequently admitted to the use of profanity. The board suspended Kamrath without pay for 5 days and warned him that such future incidents would lead to his dismissal. Kamrath requested a hearing in front of an independent hearing officer and not the board. The board denied the request and scheduled a hearing. In preparation for the hearing, Kamrath’s attorney asked for the missing information of student signatures and names and his request was denied by the board. Three students testified at the hearing and authenticated their previously written statements. The board ruled that Kamrath was to be suspended without pay for 5 days. The Illinois Supreme Court ruled in favor of Kamrath. Again, state law requires that every employer shall permit the employee to inspect any personnel documents which are, have been, or are intended to be used in determining that employee’s qualifications for employment, promotion, transfer, additional compensation, discharge, or other disciplinary action (Ill.Rev.Stat., 1984 Supp., ch. 48, par. 2002). The board was successful in their termination of Kamrath, but they lost in the matter pertaining to the ability of Kamrath to view material contained within his personnel file.

In Parents Against Abuse In Schools, Valrie C. Novinger, parent and guardian of John Novinger, Jr., a minor, et.al. v. The Williamsport Area School District, Oscar W. Knade, Jr., Superintendent of Schools, and Simon Samuel, Williamsport Area School District Psychologist (1991), the school board cited FERPA requirements in denying the right of parents to view information gained from the interview of their children. During the 1987-1988 school year, a large number of the parents of fourth grade students complained that during the school year, a number of the students suffered from abuse by their classroom teacher, who was an employee of the school district. A decision was made by the administrative personnel of the district to
discover the nature of the abuse and asked the parents if they would allow their children to enter into a counseling session with a school psychologist who is employed by the district. The parents agreed to allow the interviews with one condition: that the psychologist would reveal any information gained from his sessions with the students so that the information could be used for additional therapy sessions with counseling sources outside of the school district. Once the information was gained, the administration of the district chose not to reveal the information to the parents, citing required provisions of FERPA, and the Pennsylvania Department of Education. The Commonwealth Court held that neither the rights provided to school personnel by FERPA nor the Pennsylvania Department of Education defeated the rights of parents to view the notes taken by the school district psychologist. Under FERPA, records of educational personnel are in the sole possession of the maker and thus not subject to withholding from parents, excluding the rights of parents who have the right to view such records. Pennsylvania law is more flexible and liberal than FERPA and allows the release of information based on four different levels of allowance to release information. Even with FERPA, the parents have the right to view the records that are gained from information provided by their children, regardless if there is a pre-agreement to the terms of the release of such information. The parents basically entered into an agreement for which they were not required. The Commonwealth Court of Pennsylvania ruled that the rights afforded under FERPA allowed the parents in question to view the protected information given by students to a school psychologist. The board did not possess the authority under state law to protect the information or the personnel.

The courts recognize that personnel have the right to view information in their personnel records. A school board does not have the right to suppress the right of an employee to view their personnel files. Also, school board members must have delegated authority to view the personnel
files of their personnel. School boards have an obligation to their delegated state authority to follow the provisions of their state law.

Authority to Make Policy

The issues within the following cases represent the cases within this research study that pertain to the challenges of personnel to the authority of school boards to make policy. These cases represent 7 of the 102 cases present in this research study. The courts ruled against the school boards in all 7 of these cases. Why did the school boards lose 100% of these cases? The school boards lost in these cases due to the fact that they created policy that was in violation of state statute or they did not follow the provisions of the policy for which they were created. The courts are rigid in their interpretation of the legislative authority delegated to governmental entities. The creation of school board policy is one of those policymaking entities that are examined closely.

In Decatur City Board of Education v. Aycock and Morgan County Department of Human Resources (1990), the case centered upon the authority of the School Board to deny the Morgan County Department of Human Resources (DHR) the opportunity to interview students without the presence of school personnel. DHR filed action in the local district court with the intent to gain declaration by the court of its right to privately interview children at school who are alleged victims of child abuse. The Circuit Court of Morgan County granted declaratory judgment in favor of DHR. The school board filed an appeal of the decision with the Alabama Court of Civil Appeals. In 1986 the Decatur City Board of Education, the Hartselle City Board of Education, and the Morgan County Board of Education (the county in which the cities of Decatur and Hartselle are located) began denying DHR the right to privately interview reported victims
of abuse in schools, based upon policies developed by each of the boards of education. As prescribed in state law, DHR was required to go to court to seek *ex parte* orders in order to interview each child privately at school with no school personnel present. The superintendents of each of the school boards testified as to the reason for enforcing the disputed policies. They stressed the need for a school official to be present at interviews to protect the child’s welfare, to limit the potential liability of the boards, and to fulfill the objective to the parents and the children. The policies of the three boards of education denying private, on-campus interviews with suspected child abuse victims with no school official in the presence of DHR personnel were deemed a violation of their statutory authority. Under Alabama law the rule for construction of a statute is to ascertain the legislative intent, which is to be determined by examining the statute as a whole in light of its general purpose. The authority claimed by the boards of education under the provisions in a general statute do not control in this case, since there were specific statutes regarding cases of suspected child abuse that prevail.

In the case of *Chalifoux v. New Caney Independent School District* (1997), the case revolved around a school board policy and the ability of Board personnel to prohibit students from wearing attire that they viewed to be gang related. Two security guards employed by the School Board approached the students in question and advised them they could not continue wearing rosary necklaces on the school campus. Officer Troy Wooten told the two students that the school had identified the necklaces as gang-related apparel. Officer Wooten acknowledged that he knew they were not gang members, but that in prohibiting them from displaying their necklaces he was acting out of concern for their safety. The United States District Court for the Southern District of Texas held that wearing such necklaces was a form of religious expression protected under the First Amendment. Further, the School Board policy forbidding students to
wear the necklaces was a restriction on pure speech rather than a restriction of conduct incidental to speech. The Court also held that the School Board policy dealing with gang-related apparel was vague and thus lacked the substance to regulate such apparel worn by students. The School Board delegated unauthorized authority and extended excessive discretion to the security guards in allowing them to define the parameters of its ban on gang-related apparel.

The Court ruled against the School Board in this lone case where an employee challenged the authority of the School Board to censure her right to political free speech. *Susan Castle, et. al. v. Colonial School District, et.al.*, (1996), a private citizen wrote to the Board of School Directors (Board) of the Colonial School District to express concerns over the use of School District equipment by School District personnel to select votes and conduct political activities to assist certain candidates for the upcoming Board elections. The Board confirmed this oversight and promised that such incidents would not happen again in the future. After this incident in January of 1994, the Board adopted a policy that established the policy known as *Prohibited Political Activities for Employees*. The policy restricts the use of school equipment by school personnel during school hours to engage in political activity as well as to specify that school personnel cannot conduct any other political activity during regular work hours. The Board revised the policy in April of 1994 and removed the provision that disallowed Board personnel to work at polling places located on school property. Plaintiff sought action on this policy that the Board had violated teachers’ First Amendment rights by not allowing them to work at polling places on school property outside of school work hours. The U.S. District Court held that the Board’s interests in prohibiting political speech did not outweigh the interests of allowing the teacher to express their speech. In *Pickering v. Board* (1968), a balancing test was used that determined the weight of the government’s interests versus that of the citizens. *Pickering* is also
used in cases where disciplinary action has occurred against employees for engaging in disruptive or controversial communication. It is used also to judge bans on employee speech. The Court reasoned that it is the government’s burden to justify prohibition of speech. It is the government’s responsibility to show the interests of the potential benefits in respect to their employees and then to determine if such interests are outweighed by the necessary impact of such expression on the actual operation of the government. In this case, the Board clearly had no greater authority to prevent employees from working off hours in the local political process than it did to allow them to do so.

The following five cases represent the cases where the personnel successfully challenged the authority of school boards to make policy. In the case of Board of Kentucky of Boone County v. Joan Bushee, et.al. (1994), the case centered around an employee’s challenge to a local school board policy that was designed to oversee a school council within the District. The officers of the Boone County Board of Education and a teacher of the District, Joan Bushee, challenged a provision of the local Board policy that was implemented to comply with Kentucky statute KRS 160.345, which requires that each school form a council for implementing a policy for school-based decision making. Another provision of the statute is that the role of the school council is to set policy that is consistent with Board policy. There were three provisions of the Board’s policy that the defendant disagreed with: 1) the establishment of measureable goals and objectives for the school year, 2) the development of a plan for implementing and achieving the goals and objectives, and 3) the development of a method for evaluating the effectiveness of the plan. The Council contended that these three elements were a violation of the Board’s statutory authority and the legislature did not prescribe the legislation in a way to give the board an evaluative prerogative over the policymaking and decision-making ability of the Council. The Boone
County Circuit Court ruled that the Board’s policy did not overstep their authority. The Kentucky Court of Appeals reversed the decision of the Circuit Court. The Kentucky Supreme Court affirmed the ruling of the appellate court and held that the Kentucky Educational Reform Act (KERA) did not delegate authority in a way to require Board approval of Council actions. The court reasoned that the objective of KERA was for there to be decentralization of authority by school boards and that the focus of the legislation was for school councils to be the decision-making authority in the individual schools. The School Council was to be comprised solely with representation of staff members from the respective individual schools. In the KERA and the KRS 160.345, the Kentucky General Assembly made it clear as to their interest in the legislation. Given that the decentralization of schools is the optimum objective, allowing the School Board to have the ultimate authority over the actions and decisions of the Council is contrary to the reason for the delegation.

The case of *Rosalie Carlyle v. Independent School District No. 1-71 of McCurtain County, Oklahoma, and the Oklahoma State Board of Education* (1991) pertained to the ability of the board to create an early retirement incentive policy. At the time that the school board initially employed Carlyle for the 1981-1982 school year, Carlyle was 65 years of age. At the time of her employment the school board actually had a policy that the mandatory retirement age for the district was 65 years of age. However, the board felt that their own policy was inadequate and unenforceable due to a 1978 amendment to the Federal Age Discrimination in Employment Act (FADEA) (29 U.S.C. §§621), which increased the upper limits of the Act’s protection from 65 to 70 years of age. On August 12, 1985, the school board complied with the language of the amendment of the FADEA and raised the mandatory age limit in their policy to the age of 70. Therefore, the school board notified Carlyle in March of 1986 that her contract would not be
renewed. In her non-renewal, the school board informed Carlyle that their reasoning for her non-renewal had only to do with the new mandatory age requirement policy and that she was otherwise a competent teacher. Carlyle immediately requested an administrative hearing required under Oklahoma statute 70 O.S. 1981 §6-103-4. The hearing was held and the judge ruled that the hearing panel had no authority to hear the case based on the fact that the school board’s policy was a case of non-reemployment and thus was not found to be something they could enforce under Oklahoma statute 70 O.S. 1981 §6-103-4. Carlyle then filed suit in the District Court, McCurtain County, seeking a stay of nonrenewal and reinstatement and an order remanding the case back to the hearing panel so that they could hear the case on its merits. The district court affirmed the decision of the school board, stating that the school board did possess the authority under federal statute and Oklahoma statute to adopt and enforce such a policy and that their decision to non-renew Carlyle did not appear to be discriminatory in nature. Carlyle appealed the decision to the court of appeals. The Oklahoma Court of Appeals held that the school board lacked the authority to adopt and establish a mandatory retirement age policy due to the fact that Oklahoma statute does not support such a policy and the authority to adopt such a policy does not meet the intended objects and purposes of a school board. The Court did not consider that the school board was under an implied or express authority from Oklahoma statute to adopt a mandatory age retirement policy. It would be incorrect for the school board to perceive that such a policy should be viewed as a catch-all policy and that they are required to adopt a mandatory age retirement policy based on such a belief.

The issue in Walker County Board of Education v. Walker County Education Association (1983) was that the Board’s policy for reduction in personnel was in violation of state statute. The Walker County Education Association (Association) represented the personnel in
challenging the adopted policies. After studying the policy in question, the Board brought an action for declaratory judgment in that their adopted policies were in violation of state statute and thus should be non-binding upon the Board. The Alabama Supreme Court determined that the policies promulgated by the board concerning reduction of personnel were valid and legally binding and did not constitute the result of improper collective bargaining. In their reasoning the Court offered that the Board policy in question was filed with the State Superintendent of Education’s office and therefore it was valid and legally binding.

In Seattle School District No. 1 v. International Union of Operating Engineers (1997), the case centered around a sick leave policy that the board created that was external to the local collective bargaining agreement (CBA). The school board and the union had maintained a CBA since the 1970s. During the years of 1994-1997 the two had an ongoing dispute about specific provisions of the collective bargaining agreement. While the CBA issue was pending, both parties decided to put their disputes aside in order to deter a strike on the part of personnel. The dispute about the policy arose out of supplemental compensation benefits that are extended to personnel in the district in addition to other benefits that the personnel receive, known as Sick/Emergency Leave. The state of Washington’s Industrial Insurance Act, Title 51 RCW, states that employees who have been temporarily disabled due to on-the-job injuries are entitled to disability compensation payments. Generally these disability payments can amount to no more than 60% to 70% of an employee’s lost wages. In addition to the required statutory payments, employees can earn 12 days of sick leave per year. The sick leave can be cashed in at 1 day’s pay for 4 days of accrued leave, provided that the employee has at least 60 days of sick leave accumulated. For those employees who do not have enough days, they are allotted supplemental compensation benefits, which basically assign the amount of pay needed to cover the lack of
leave and benefits available for personnel through sick leave compensation. These supplemental contracts were not a part of the collective bargaining agreement and basically were an extension of the school board’s ability to create policy in order to assist personnel with lost wages due to an accident on the job. The Union wished to make the supplemental benefits a part of the collective bargaining agreement and the school board balked at the idea of making such benefits a provision in the agreement. The school board cited that the supplemental benefits were offered in violation of RCW 28A.400.300 (2) (c) and that they were only providing such benefits in good faith to the personnel in need of such assistance. The Washington Court of Appeals ruled in favor of the Union. The Court rejected the board’s contention that supplemental pay for injury leave is subject to the 12-day maximum cap that is placed on sick leave that is accrued annually. RCW 28A.400.300 (2) grants school boards the authority in a broad manner to grant leave to their employees. In State ex. rel. Graham v. Northshore (1983), the Court determined that the Washington legislature granted school boards that the authority to contract with its employees at its discretion the various types of leave and that such discretion is not limited in doing so.

School board policy can only be constructed by school boards through the respective authority granted to it by state statute. The courts are rigid in their interpretation of the legislative authority delegated to governmental entities such as school boards. The creation of school board policy is one of those policymaking entities that is examined closely.

Authority to Claim Status as a Political Subdivision

This issue reflects 1 of the 102 cases in this research study. The school board gained the ruling favor of the court in this case. In this lone case, the authority of a school board sought to be granted stay of enforcement status in an action where a termination was being challenged by
an employee. In the case of *John H. Koch v. Webster Central School District Board of Education* (1981), the case pertained to the board’s authority to claim status as a political subdivision under New York state statute. The board terminated Koch from his employment as a custodian with the board. The board afforded Koch the appropriate hearing under New York statute, §74 of the Civil Service Law. Koch brought an Article 78 petition to the New York State Supreme Court and asked for reinstatement. The court subsequently reversed the decision of the Board and ordered that Koch be reinstated at a lesser penalty than termination. Koch was ordered to be reinstated within 10 days of the court’s order. The board refused to follow the directive of the court. The board filed a Notice of Appeal and sought a stay of enforcement of the judgment in accordance with New York statute CPLR 5519 (a) (1). CPLR 5519 (a) (1) provides that a political subdivision of the state can seek a stay of enforcement of a ruling placed upon them while a judgment is being appealed. The Supreme Court, Monroe County, New York held that school boards in the state of New York are considered political subdivisions of the state and have standing to seek and be granted a stay of provision enforcement while further legal proceedings are pending. The court cited the case of *The Board of Education Central School District No. 1 Town of Somers v. Stoddard* (1944), where it ruled that the maintenance of schools is considered a political function and schools are a primary concern for the state. The school boards gain their authority via legislative delegation from the state legislative body. This allows them to carry on their educational activities while serving as both a political body and a municipal corporation. CPLR 5519 clearly defines a school board as a state political subdivision. The Court reviewed the legislative history of CPLR 5519 and noted that in the case of *Grant v. Metro Transportation Authority* (1978), the court determined that CPLR 5519 is derived from §570 and §571 of the Civil Practice Act (CPA). These sections of the CPA list school boards as a domestic municipal
corporation of the state. The CPA specifies that such governmental entities as a municipal corporation are entitled to an automatic stay of enforcement upon the appropriate filing of a Notice of Appeal. In this case, the court reasoned that the school board holds the appropriate standing to be awarded a stay of enforcement while further legal proceedings on the contested termination continued.

The states throughout the country have various legislation that addresses the status of school boards as entities of governments. The courts recognize that school boards have governmental status and are referred to in various ways. In this case, the New York state legislature recognizes that school boards in their state are political subdivisions of the state. School boards must recognize their legal status and govern their district accordingly.

Authority to Reprimand

This issue also reflects only 1 of the 102 cases in this research study. The school board lost this case. The courts identified that school boards possess broad delegation of authority to manage and operate the staff and students under their care and supervision. School boards can adopt methods and policies that are in the best interests of their constituents as long as such methods and polices are not contradictory of other policies, or arbitrary or capricious in nature. The ability to reprimand an employee falls within the authority vested with school boards. However, the school board lacked the authority to reprimand in this case.

The school board lost its action in the case of County of Winnebago v. Norma Davis, Food Service Director, Lincoln Middle School (1987), where they tried to reprimand Davis for several violations that were cited by the local health department. Davis contended, and the Court agreed, that the school board did not have the authority to reprimand her for the supposed
violations due to the fact that the local health department controlled sanitation violations and the Board exceeded its authority in trying to manage issues pertaining to sanitation in a school setting.

The courts recognize that school boards maintain the authority to reprimand. The courts look closely in challenges to school board authority to reprimand personnel based on the language in the provisions of their local board policy. However, in choosing to reprimand personnel, school boards must have the authority to reprimand the specific personnel of their district.

*Authority to Suspend*

The issues within the following cases represent the challenges of personnel to the authority of school boards to suspend them. These cases represent 3 of the 102 cases present in this research study. The courts ruled in favor of the school board in 2 of the 3 cases. Why did school boards win in the majority of these cases? The school boards won in these cases because they followed the statutory authority granted to them, which allowed them to suspend teachers. The majority of cases dealing with suspension are contested in two ways. The first way is that the board lacked sufficient cause. The second way is by procedural violations committed by a board or its administrative staff in handling the suspension. The school board won the following two cases upon challenges that they lacked sufficient grounds to suspend. The school board lost the one case in this issue due to the fact that they committed procedural violations in attempting to suspend the employee.

In *Anthony E. Burger v. The Board of School Directors of the McGuffey School District and the School District of McGuffey* (2003), the Pennsylvania Supreme Court held that the
Pennsylvania School Code’s provision to allow the termination of a superintendent does not divest the school board’s ability to use their implied authority to suspend its Superintendent for accused serious misconduct. Burger was alleged to have committed sexual harassment on an employee in his office. After receiving the complaint, the board retained an attorney and subsequently began an investigation. The board attorney reported to the board that there was substantial evidence to proceed with a termination process and the board moved to terminate Burger, but prior to doing so, the board chose to suspend him without pay and benefits. Upon his suspension and prior to his hearing, Burger filed an action seeking a writ of mandamus, requesting that he be reinstated to his position and to restore his full salary and benefits. Though the Pennsylvania statutory language is vague in regard to the suspension and removal of a superintendent, the statute does allow the board a measure of implied authority based on the evidence that it received as to the inappropriate conduct of its Superintendent.

In Maurice Bell v. Board of Education of the City of St. Louis (1986), the board chose to suspend principal Bell due to the fact that he did not follow board procedures and policy in sending students on a field trip. While on a sixth grade field trip, one of the students drowned. The board felt that if Bell had taken all reasonable precautions, the incident never would have happened. The Missouri Court of Appeals held that the board had substantial evidence and reasoning to accuse the principal of not taking reasonable precautions which could have prevented the accident, that Bell did not follow board policy in requiring parental written consent prior to taking the field trip, and the board was within its authority to suspend the principal for an amount of time of 6 months to 15 months.

In Granite City Community Unit School. District #9 v. The Illinois Educational Labor Relations Board and Granite City Federation of Teachers, Local 743, IFT/AFT (1996), the case
revolved around a teacher, Wanda Carroll, who was deemed to be insubordinate by the school board due to the fact that she made disrespectful comments to the principal in reaction to the manner in which he handled a disciplinary incident. When the incident occurred, the principal asked Carroll to go home for the remainder of the school day and she refused. A meeting was then held with a supervisor from the school district and president of the union. After the meeting, Carroll left the school day without pay. Later, a hearing was held and the board gave Carroll a 1-day suspension without pay and determined that she had already served the 1-day suspension for the date that she was sent home. On her behalf, the local teacher’s union filed a demand for arbitration with the American Arbitration Association (Association). The school district informed the union that it did not consider the matter to be subject to arbitration and that it would not abide by any award submitted to them. The Association found the matter to be pertinent to arbitration. The board refused arbitration. The Illinois Appellate Court held that the school board temporarily suspended the teacher without first following the statutory grievance procedure as required by Illinois law.

The courts recognize that school boards maintain the authority to discipline their personnel, such as suspension, in order to govern and manage their respective school district. In doing so, school boards must follow the statutory authority granted to them in doing so, and they must follow the provisions of their own board policy.

Authority to Terminate

The issues within the following cases represent the challenges of personnel to the authority of school boards to execute termination proceedings against them. These cases represent 34 of the 102 cases present in this research study. In these 34 cases, the school board
received the ruling favor from the courts 25 times. Why did school boards win 74% of the time? The courts recognize two primary challenges by personnel to the authority of personnel to utilize termination proceedings. The first reason is that the appropriate termination proceedings must be conducted by the board in respect to the legislative authority for them to do so. The second, a board must be able to prove that they have a valid cause for bringing termination proceedings against personnel. In the following 25 cases, 12 of the cases were challenges by personnel as to the procedures conducted by the board in terminating them. The remaining 13 cases were challenged by personnel on the authority of school boards to terminate for valid cause. The statutory authority maintained by school boards to employ and non-employ personnel is extensive within the individual states throughout the country. A school board can effectively follow statutory authority and the procedures outlined in that authority to terminate personnel. Failure to follow due process procedures can diminish that authority and the courts will not hesitate to intervene when Boards fail to follow statutory mandates.

The following 25 cases represent the cases where the school boards gained the ruling favor by the courts in cases litigated by the personnel which they employed. In the case of Proviso Council of West Suburban Teachers Union, Local 571 and John Spaulding v. Board of Education, Proviso Township High Schools, District 209, Cook County, Illinois (1987), the School Board terminated John Spaulding, a tenured teacher with equal seniority to another teacher who was not terminated under the provisions of the local CBA. The board claimed that the decision to terminate was part of a plan involving the district’s Reduction In Force (RIF) policy that was utilized to address the district’s declining student enrollment. Spaulding contended that the procedure utilized by the board did not meet the requirements of their CBA. The Appellate Court of Illinois, First District, First Division affirmed the decision of the Circuit
Court, Cook County, holding that the board’s decision was not subject to binding arbitration under the CBA due to the fact that the board followed all other procedures as outlined within the CBA. The CBA did not contain a provision that allowed non-tenured personnel to enjoy the same status as tenured personnel.

In the Maryland case of Board of Education Carroll County v. Carroll Education Association, Inc. (1982), the Circuit Court of Carroll County Maryland ruled in favor of the school board due to the fact that the board followed the provisions of their collective bargaining agreement in terminating Lyndi Wilkless, a non-tenured teacher. The board’s collective bargaining agreement allows an arbitrator to utilize authority delegated from the board to make recommendations, not decisions, in regard to the reappointment of non-tenured teachers. The board followed the only provision required in terminating a non-tenured teacher in Maryland, which was to notify Wilkless of the intent not to renew her contract within the 2-year probationary period. Subsequently, Wilkless filed a grievance and the issue went before an arbitration panel. The panel ruled in favor of Wilkless. The board brought action against the arbitration ruling and the local education association with the contention that the agreement went beyond what Maryland state law allows. The judge in the trial court ruled that the arbitration agreement provided the arbitrator with the authority, which he deemed co-extensive to that of the Maryland State Board of Education. Specifically, the judge ruled that first an arbitrator has the authority under the Maryland Master Agreement to issue a binding award requiring the reinstatement of non-tenured teachers. The Maryland Special Court of Appeals ruled that the Circuit Court violated Maryland state law in ruling in favor of Wilkless. The court identified that within the grievance procedure of the arbitration agreement a limitation existed that denied the
arbitrator the same authority that is extended to school boards. An arbitrator cannot have the authority to pass any award that would deprive the board of its authority.

In the case of Pamela Nickell v. Saline County School District, No. 163 (1997), Nickell received notice that her employment contract would be terminated at the end of the year due to a reduction in force (RIF). The board cited that a decline in enrollment and the expense of complying with the American Disabilities Act (ADA) necessitated such an action as the utilization of RIF. The school district had a very detailed policy in place that prescribed how the RIF was to be enforced. Nickell was one of six tenured employees who were considered candidates for the implementation of the RIF policy. After reviewing the district’s policy and identifying the qualifications and factors involved in implementing the RIF policy, the board was faced with the decision of terminating Nickell or one other employee, who both had the same qualification standing in reference to the RIF policy. The board ultimately chose to continue the employment of the other employee as she had more years of continuous service with the district. The Nebraska Supreme Court held that the board was following its own board policy in the appropriate manner, in determining which employee should be kept and which should be terminated. In Van Fossen v. Board of Governors (1988), the Court determined that a Board may terminate a teacher’s contract via the following proof at a hearing: (1) change in circumstance necessitating a RIF; (2) that the change in circumstances specifically relates to the teacher in question; and (3) that there are no available vacancies on the staff for which the teacher is qualified. The Board sufficiently substantiated that all three of these criteria were met in Nickell. The Courts generally rule in favor of the school board when their authority is challenged by personnel who feel that they have gained tenure status through inappropriate means.
In the Missouri case of *Don Meloy v. Reorganized School District R-1 of Reynolds County* (1982), Meloy, a principal, challenged the authority of the school board in terminating him by stating that he enjoyed tenure status as do the teachers of the district. The Missouri Court of Appeals did not agree and affirmed the decision of the Circuit Court of Reynolds County in favor of the school board. Missouri statute, §168.104 (7) as referred to in *Fuller v. North Kansas City* (1981), defines a teacher with the following exclusions, “superintendents, assistant superintendents, and any other persons regularly performing supervisory functions as their primary duty.” This provision would exclude principals from being defined as a teacher. The court in referring to the same case and statute specified that the employment and reemployment of a principal is not governed by the Missouri Teacher Tenure Act. The six members of the school board made it clear in their vote that they did not wish to retain Meloy as a principal. However, Missouri law states that a dismissed principal must be notified in writing that he will not be retained. The school board did not notify Meloy in writing that he would not be retained. However, Meloy failed to note this in his argument. Instead, his second count focused on the language in the minutes of the board meeting that called for his termination. The plaintiff contends that there should have been a motion made to reemploy him. The lack of a second motion would have essentially caused his termination. However, the school board made a motion not to employ and this is a count for which the plaintiff contends that he was wronged. The court disagreed and determined that the language of the motion had nothing to do with his reemployment.

In the case of *Ramon Munguia v. Unified School District, No. 328, Ellsworth County, Kansas* (1997), the employee, Munguia held a teaching contract with three school districts at once. With one of the school districts, he was employed full time, while his employment with the
other two was considered part-time. Eventually he retired from his primary school district, resigned from one of the others, and chose to work full time with the Ellsworth County School District, for which he was previously employed half-time. After being employed with the District for 1 year, the board voted to terminate Munguía’s contract. Munguía contested the termination by stating that his previous part-time employment had granted him tenure status and that the board violated his due process rights by not granting him tenure prior to his termination. The U.S. District Court for Kansas ruled that the plaintiff did not have a protected property as a tenured teacher and his due process and equal protection rights were not violated. Under Kansas law, a school district is required to do two things in electing not to renew the contract of a tenured teacher. Those two things are providing the personnel with a timely notice and providing the personnel with an opportunity for a hearing. For a non-tenured teacher to be non-renewed, the board must only notify the intent to terminate. A board is not required to provide a due process hearing for the non-tenured employee. Therefore, the plaintiff’s due process and equal protection rights were not violated by the Ellsworth County School Board.

Some states have mandatory retirement statutes for their public employees. In *Meyer v. Chagrin Falls Board of Education* (1983), the School Board terminated a teacher upon her reaching the age of 70. The Board followed Ohio state law in terminating Meyer at the age of 70, while also affording her due process rights in doing so. Meyer contended that her Equal Protection rights had been violated by the School Board, but the Ohio Court of Appeals did not agree. The plaintiff had a right to due process in addressing her termination. The defendant provided the plaintiff with a detailed notice 67 days out from the termination notice. The meeting to terminate the plaintiff was an open meeting and the plaintiff was given proper due notice for the date and time of meeting. Plaintiff chose not to attend the meeting. The Court ruled that the
defendant had relied on statutory authority in terminating plaintiff’s contract at the age of 70. Consequently, the Board followed procedures correctly in terminating plaintiff.

In the case of *C.F.S. v. David J. Mahan, Superintendent of Schools of the City of St. Louis, and the Board of Education of the City of St. Louis* (1996), the Board of Education of the City of St. Louis terminated the contract of an employee, C.F.S., after it learned that he had previously pled guilty to a misdemeanor charge of indecent exposure and disturbing the peace prior to his employment with the Board. The Court of Appeals held that the School Board did not violate Missouri statute by conducting a contested hearing on termination of C.F.S. The Court did not agree with the plaintiff’s assertion that the Board should be allowed to conduct a termination hearing on him due to the fact that he was a non-tenured teacher and the action for termination was based on an incident prior to his employment with the Board. The Court further reasoned that in *Valter v. Orchard Farms School District* (1976), they ruled that a teacher need not be tenured to be subjected to a termination hearing due to the fact that the employee has a property right to the 1-year probationary contract and some due process is therefore required.

In *Shirley Roberts v. Lincoln County School District Number One* (1984), the employee challenged the authority to terminate him due to the fact that the principal of the school in which he was employed failed to conduct the required number of evaluations for the last school year in which he was employed. The Supreme Court of Wyoming held that Roberts was an initial contract teacher and thus had no statutory right to reasons for termination, to a hearing, to a chain of entitlement, or any other reasonable right under state law. Roberts alleged that she should have been granted tenure status due to the fact that she had not been given the appropriate number of evaluations. Even if evaluation procedures had been conducted according to policy, the plaintiff could not have been protected against arbitrary or capricious discharge. Good policy
evaluations did not entitle teachers to continued employment and have no merit in termination proceedings. In cases where personnel challenge that they have gained tenure status, the language specified in statute are what determines the attainment of tenure. Neither the courts nor the school boards are capable of granting tenure.

In the case of Constance Evans v. Benjamin School District, No. 25 (1985), Evans tried to maintain that tenure was granted by a previous school board due to a long-standing part-time continued employment with the board. In the span of 8 years, from 1974 thru 1982, Evans was only employed at five-tenths of a full salary. In 1975, the school board voted to give tenure status to the plaintiff. Several years later in 1982, the same board, but with different membership, voted to rescind its earlier action based on their contention that the earlier action was a violation of §24-12 of the Illinois School Code. Their contention was based on their belief that the previous board had made such decisions without authority to do so. On March 1, 1982, the board terminated plaintiff, noting that she was considered a first-year teacher, that she had no tenure rights, and that the previous year’s work with the district did not grant her any rights as such. The lower court ruled in favor of the teacher, citing that her termination was invalid and that she be reinstated. The Appellate Court of Illinois held that the lower court erred in their ruling that plaintiff was entitled to summary judgment and subsequently awarded summary judgment to the school board. Section 24-11 of the Illinois School Code describes the provisions for which tenure status can be gained. The court reasoned that the plaintiff did not meet the conditions of §24-11 as she did not meet the mandatory requirement of being sufficiently employed for two probationary periods in succession while also being re-employed for a third consecutive year. The court did not concur with plaintiff in her contention that she received tenure status due to her long-standing number of hours devoted to the school district. The present school board was
within their right to change the decision to not award tenure status to the plaintiff due to the fact that the previous board did not have the authority to grant tenure.

In *Laurie McCormick v. Lake Washington School District* (1999), McCormick was employed with the School Board for 1 month as a half-time special education teacher. The position was not a contract position and McCormack was never employed with the board on a full-time status. The board employed her in such a temporary way while they awaited the remainder of her paperwork that was required for consideration for full-time employment with the district. McCormack was temporarily employed as a substitute teacher with the school board, with pay commiserate to the position while her paperwork was pending. Weeks later, the board received a negative reference on McCormick and the decision was made not to employ her as a full-time, certificated employ. McCormick challenged the decision on the grounds that she had been employed on a full-time basis. Washington law provides that for a school board to create employment for a teacher, the following must occur: (1) the board must approve the employment of an individual by a majority vote of the board; and (2) a written contract must exist between the two parties. Neither of these two actions occurred. The Court of Appeals of Washington affirmed the decision of the Supreme Court, King County, in ruling in favor of the school board.

In the Alabama case of *Alice Richardson v. Lamar County Board of Education, et. al.*, (1989), the school board terminated Richardson’s contract due to the fact that she could not obtain an Alabama teaching certificate. At that time, the state required that those obtaining a teaching certificate must first pass the Alabama Initial Teacher Test (AITT). Due to economic necessity the school board chose to consolidate some elementary schools within the district. In doing so, the board made the decision to terminate teachers to save costs. The board went through a process of determining which teachers to retain and which to terminate. Due to the fact
that Richardson could not achieve certification status, the board voted to terminate her. Richardson brought suit in the Eleventh Circuit due to her belief that she suffered disparate treatment due to the AITT. The Court ruled that the board was not biased against Richardson and that they were within their authority to terminate her as Alabama law provides that a teacher must hold a valid teaching certificate in order to teach. A year later, Richardson was reinstated when she and other African American teachers were reinstated as the same court found that the AITT was discriminatory in nature. Nonetheless, in this case the board was within its right to terminate Richardson.

In *Robert L. Lockhart v. Cedar Rapids Community School District* (1998), Lockhart challenged his termination by the School Board on the issue that he had a property interest to his position with the school district and thus the board could only terminate him with just cause. The Supreme Court of Iowa received the case on remand from the U.S. District Court, Northern Division of Iowa and was charged with answering the question of whether public school employees were considered employees at will. The court answered with the decision that public school employees in Iowa are not employees at will. The court determined that just cause holds much more precise meaning than proper cause and that Iowa legislation did not create the legislation with a just cause limitation. In a just cause situation, the employee maintains a more precise right to employment than what is granted by statute. The legislative intent of Iowa statute, §20.7(3), was to establish a public employer’s right to terminate an employee at will for any lawful reason.

In the case of *Ray Swinney v. Deming* (1994), the Board terminated the contract of its Superintendent, Ray Swinney, for unsatisfactory work performance. Swinney challenged the dismissal on the main contention that his contract with the board had language in it that allowed
him the opportunity to correct any deficiency that caused unsatisfactory work performance. The New Mexico Supreme Court found that Swinney’s contract with the board did contain such language but that the language contradicts the New Mexico State School Personnel Act and thus the superintendent has no right or expectation to continued employment. Under NMSA 1978 §22-10-1(B) (4), school administrators have employment contracts of 1 or 2 years but have no expectation for continued employment. Furthermore, the Court construed the language of the contract as one which does not provide an implied promise of an expectation for continual employment. The statute clarifies that only certified school instructors have tenure rights, not administrators. In Gragg v. Unified School District No. 287 (1981), the Court stated that any attempt by a local school board to enter into a contract or formulate a policy that violates the specific statutory provision government is ultra vires and void. School board policy does not supersede New Mexico state law when there is a direct conflict between the two.

In the case of Timothy Abell and Don A. Reams v. The Nash County Board of Education (1988), Abell and Reams, two non-tenured high school teachers for the Nash County Board of Education challenged their termination on the grounds that they were being dismissed due to reasons associated with their coaching and not their academic teaching abilities. The court of Appeals of North Carolina held that teachers had the burden of proof and that the board did not act arbitrarily or capriciously in refusing to renew the teachers’ contract based on the head coaching change. All public schools in North Carolina are governed by N.C.G.S. Sec.115 C-325 (m) (2) (1987), which provides that a school board upon the appropriate recommendation of the superintendent may refuse to renew a contract of a probationary teacher as long as the reason for non-renewal is for a cause that may not be arbitrary, capricious, discriminatory, or for political reasons. The plaintiffs failed to show that any of these reasons were cause for their non-renewal.
N.C.G.S. Sec. 115C-44 (b) provides that all legal actions brought against a school board shall be proven by the one making the charge against and that the orders and actions of a school board shall be presumed to be correct unless the burden of proof suggests otherwise.

There are instances where the termination of a teaching contract occurs with the initiation of a specific employment action caused by the employee. One instance that is intentional is the submission of a resignation by an employee who later wishes to rescind the action. In the case of *Joan M. Braught v. Board of Education of Mount Prospect Public School District No. (1985)*, the plaintiff, Braught, submitted a letter of resignation to the board prior to the beginning of the school year due to the fact that the state of her health would not allow her to continue working through the upcoming school year. The board accepted her resignation and subsequently replaced her with someone else. Three weeks later, Braught wished to rescind her resignation. The board refused to allow this action. Braught brought suit against the Board for breach of contract. The Appellate Court held that the board of education’s acceptance of the superintendent’s hiring of a replacement teacher constituted the board’s implied acceptance of the teacher’s resignation. The language in §24-14 of the Illinois School Code provides that a teacher can only terminate service with a school board once inside of 60 days of a school year unless the board votes to accept it. The court also found language in the legal encyclopedia known as, 78 C.J.S. School and School Districts, §206 (1952), which states that acceptance of a teacher’s resignation may be implied as an acceptance through the appointment of another person.

Another instance of where an employee initiates termination action on the part of a school board is with the submission of a request for a leave of absence. In *Eileen Cahill v. Board of Education of the City of Stanford, et.al. (1985)*, the employee, Cahill, sought a year’s leave of
absence so that she could take advantage of professional development opportunities to improve her teaching abilities. Cahill had problems with classroom discipline, an inability to offer appropriate classroom teaching and techniques, and she had a strained relationship with the school administration. The intent of the sabbatical was for her to attend professional development courses that were geared toward strengthening her weakness in the aforementioned areas. Cahill’s teaching certificate was in the area of science. However, Cahill used the sabbatical leave to pursue a degree in the area of Library Media Science. The board cited this as immoral and unethical conduct and terminated her. The Supreme Court of Connecticut ruled in favor of the school board and determined that Cahill had failed to exhaust her administrative remedies. She did not request a hearing in the appropriate time period and thus she had no recourse to request a challenge to the board’s authority to terminate her.

In the case of *Jo Ann Fisher v. Board of Education of West Washington County Community Unit District No. 10* (1989), Fisher, a teacher with the West Washington County Community Unit District No. 10, took a leave of absence and upon her return the board refused to reinstate her. Fisher was a full-time, tenured teacher with the school district from the years of 1972-1984. In August of 1984, less than two weeks prior to the beginning of the impending school year, Fisher asked for a leave of absence for the 1984-1985 school year. Her reason for the request was that she and her husband were having difficulty in having children and 2 months prior, in June of 1984, her doctor informed her that it was possible that job-related stresses might be responsible for the fertility issues that she was having. At their next meeting, the school board took the matter into consideration and then passed a resolution granting Fisher’s request for a leave of absence, but in doing so stated several stipulations upon her return. The conditions were as follows: the leave of absence was not mutually agreeable in that the board did not deem
Fisher’s request for a leave as applicable to conditions granted for a leave of absence; there would be no guarantee of employment in the school district after the 1-year leave of absence should Fisher be granted reemployment; Fisher would not be given tenure status nor credit for years of experience; and the insurance coverage for Fisher would cease on September 1, 1984. Fisher agreed to the conditions and prior to the beginning of the school year, she reported to the school and removed her personal belongings but had no further discussions with district administration. In February of 1985, Fisher sent the Superintendent notice that she planned to be back to teaching in her regular position in the fall of 1985 and that she would not relinquish her right to tenure and the credit for her years of experience with the school district. After the receipt of Fisher’s notice, the school board addressed her notice at its next meeting during the same month of February. The board passed a resolution that Fisher’s leave of absence was not mutually agreeable and that they were not obligated to re-employ Fisher and thus they would not reinstate her. The appellate court held that the school board had the right to deny reinstatement on the grounds that the plaintiff’s request for leave of absence was not mutually agreeable between the two parties. Also the court ruled that the school board had no implied power to reinstate the plaintiff into her teaching position. Section 24-13 of the Illinois Code further illustrates that a teacher may take a leave of absence that was mutually agreed upon by the two parties. Though the court did not entirely agree with the board’s position as to what they deem favorable conditions in order to grant leave, the board nonetheless had the authority to grant the leave with the stipulations that they placed on the plaintiff. The school board possessed implied power to take statutory provisions and impose their own conditions as they deem fit in order to maintain efficient operation of the school district for which they govern.
In the case of *Jo Ann Roberts v. Board of Education, Hazel Crest School District No. 152 1/2, Cook County, Illinois, et.al.*, (1999), the plaintiff was a superintendent who was terminated by the board due to allegations of misuse of district funds. Roberts was provided with a hearing in which an independent hearing officer conducted the investigation and the hearing proceedings. Roberts challenged the authority of the board to receive a recommendation of a hearing officer and in effect it was her belief that the hearing officer effectively terminated her and not the board. The U.S. District Court, N.D. of Illinois, Eastern Division, granted summary judgment to the Board of Education of Hazel Crest School District No. 152 ½ as it determined that they maintained the authority to terminate Roberts upon the recommendation from the hearing officer.

The U.S. District Court held that the report of the hearing officer did not have a collateral estoppel effect, the superintendent’s due process rights had not been violated, her substantive due process rights had not been violated, her procedural due process rights had not been violated, and the superintendent failed to prove that the school board defamed her. In addressing the plaintiff’s claim that her substantive due process rights were violated, the Court referenced the case of *Strasburger v. Board of Education, Harding County Commission Unit School District No. 1* (1998). In *Strasburger*, the plaintiff bore the burden of proof and in doing so the plaintiff must demonstrate that the board’s decision was arbitrary and that the board committed a substantive constitutional violation. Roberts was not able to prove either.

In the case of *Michelle Snyder v. Jefferson County School District R-1 and the Board of Education of Jefferson County School District R-1* (1993), the Supreme Court of Colorado held that the school board correctly terminated Snyder’s employment due to the fact that her teaching certificate expired. A school board maintains the authority to define the grounds for the dismissal of teachers. The Colorado Teachers Employment, Dismissal, and Tenure Act of 1967 provided a
two-stage process for consideration of charges of dismissal. The first stage involves a hearing before an ALJ to determine whether there are grounds for dismissal. The second stage is for the school board to review the decision of the ALJ. Once received, the board can retain, dismiss, or place the teacher on 1-year probation. In this case, the board accepted the evidence presented by the ALJ and interpreted it as sufficient evidence for the termination. However, the board chose not to accept the ruling of the ALJ to reinstate Snyder. The Supreme Court accepted these findings and determined that the school board worked within its authority to terminate Snyder.

In the case of *Loretta Colantoni v. Board of Education of the Township of Long Hill Morris County* (2000), the school board eliminated the counselor’s position maintained by Colantoni and returned her back to classroom teacher status where she had tenure. A year later, the board decided to offer counseling opportunities once again but chose to contract the counseling services to the Morris Union Jointure Commission Board of Education in order to obtain guidance counseling services for 16 hours a week to both handicapped and non-handicapped students. Colantoni challenged the board’s authority to do so and filed a petition with the New Jersey Commission of Education. She alleged that the board violated her tenure and seniority rights. The issue was taken before the Offices of Administrative Law and the judge found that Colantoni was not entitled to relief. The judge found that the board maintained the authority to cancel the guidance counseling position and employ an outside counseling service. The State Commissioner of Education also heard the complaint and concurred that Colantoni had no term of seniority right to the guidance counseling position. The Superior Court of New Jersey, Appellate Division affirmed the decision of the State Commissioner of Education and determined that school boards in New Jersey possess the authority to create and remove personnel positions as needed as long as they follow New Jersey state statute.
In the case of *Kenneth E. Powell v. Board of Education of the City of Peoria District 150 and State Board of Education* (1989), the School Board adopted a remediation plan aimed at improving the teaching skills of teacher Kenneth E. Powell, an employee in the district, due to the fact that he was deficient in specific teaching areas. The board adopted the plan with the assistance of the Peoria Federation of Teachers, the local teachers association, and the plan was also approved by the Illinois State Board of Education. Powell went thru the program in the 1986-1987 school year but failed to improve. At the end of the 1987-1988 school year, the School Board terminated Powell without a hearing. Powell demanded a hearing as required by Illinois Rev. Statute of 1987, ch. 122, par. 24/12. Powell was given a hearing in front of the hearing officer and the officer affirmed the decision of the school board. Powell then filed suit under the Illinois Administrative Review Act in the Circuit Court of Peoria County against the school board and the State Board of Education. The Circuit Court reversed the decision of the hearing officer, finding that the school board violated its statutory authority. The school board and the State Board of Education appealed the decision to the Appellate Court of Illinois. The appellate court held that the administration of the school district was permitted to develop teacher remedial plans under the overall supervision of the school board. Article 24a of the Illinois School Code provides that statutory power for school boards exists and that School boards are to supervise the implementation of the program. The Court found that the school board and its administration, met all statutory criteria in remediating and terminating Powell.

In the case of *Rouse v. Scottsdale Unified School District*, (1987) Jack Rouse, a special education teacher in the Scottsdale School District, was terminated by the school Board for unprofessional conduct for refusing to attend required meetings and failure to complete paperwork as required by the school district. Rouse requested a hearing before the school board
in accordance with state law. At the hearing, he was represented by counsel as was the school board. Also, the board provided the services of a special attorney to act as mediator and advisor with regard to evidential and procedural matters. Following the hearing, the school board voted to terminate Rouse’s employment and he appealed to the Superior Court of Maricopa County. The appeal raises the constitutional issue of whether a school board, which initially issues a termination notice to a continuing service teacher may, consistent with due process, determine whether good cause exists for that termination. Rouse asserted that he was deprived by the Board of his due process rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and a fair hearing because the board, which was statutorily responsible for the original decision to terminate, also acted as the adjudicator to review that decision. There are certain fundamental procedural requisites which a person is entitled to receive at an administrative hearing that is quasi-judicial in nature. The Court in its reasoning cited substantial state and federal precedent that an administrative agency, such as a board of education, could act as both “jury and judge” without depriving an employee of his or her due process rights. Members of an administrative agency are not precluded from investigating the facts, initiating proceedings, and making the necessary adjudications. The functions of all officers are to be conducted in an impartial manner. Any such officer may withdraw if he deems himself disqualified and may submit written notice to that effect in good faith in a timely manner. In this case there was no contention that the actual bias of the board members individually existed to Rouse. Rather, the challenge is to the statutory process whereby the board, as an entity, reviews decisions it previously approved. The fact that a board is elected is significant and thus obvious that its members are accountable to voters, which increases the likelihood of impartial and responsible decisions which benefit the public.
In the case of *Joyce Jacobs v. Fremont RE-1 School District* (1987), the school board voted to terminate bus driver Joyce Jacobs on the recommendation of the Director of Business Affairs for the School District. The court held that the discharge of a bus driver was an administrative function subject to delegation by the school board and the standards that had been adopted by the school board for the discharge of classified employees were sufficient as a matter of law to allow delegation of authority to discharge. The standards for discharge of classified employees that had been adopted by the school board provided that classified employees serve at the will of the school district. One exception is that they could not be dismissed on account of their religious beliefs, marital status, ethnic background, gender, or their participation in community affairs, which were sufficient to allow the school board to delegate power to discharge to the superintendent and other subordinate officers. The Supreme Court of Colorado ruled in favor of the school board and determined that the Board had sufficient cause to terminate upon the recommendation of one of its administrators.

In the case of *Harley D. Reed v. Edgeley Public School District, No. 3* (1981), the board chose to terminate Reed along with other teachers due to financial necessity. Reed had been a tenured teacher with the school board for 13 years. Facing financial difficulties, the board notified Reed in March of 1980 that they were contemplating his non-renewal based on financial necessity. He was one of three teachers, from the same department, who faced termination. All three individuals were afforded a hearing. At the conclusion of Reed’s hearing, the board took a vote of three to two to terminate his contract. Reed followed this decision with an action in the District Court of LaMoure County seeking a writ of mandamus to require the board to reemploy him and award him $125,000 in damages. The district court ruled in favor of the school board. The Supreme Court of North Dakota held that the board did not commit any statutory violation.
in terminating Reed. In their support of the board’s ability and authority to terminate Reed, the Court reasoned that in conducting the hearings in the manner in which they did, the board gave maximum consideration to basic fairness in the reduction of its staff. The court reviewed the transcript of the Board’s proceedings to terminate Reed. Prior to submitting to the board the information and facts pertaining to the termination hearing for Reed, the superintendent of the district admonished the board to please consider the following prior to taking a vote for termination: that the termination of an employee is a serious matter and, in placing their vote to terminate, the board should consider the time spent in obtaining certification and training to teach, the board should consider the potential damage to the individual’s professional and personal reputation, and the board should take into consideration the 13 years of service that he had given the district. The court felt that in doing these things, the board and superintendent could not reasonably be charged with terminating Reed for arbitrary or capricious reasoning and both entities had given full consideration to the rights of Reed.

The case of *Scobey School District v. Mike Radakovich*, (2006) involved the termination of Mike Radakovich, a tenured employee with the Board. In the spring of 1994, the superintendent of the district, Dustin Hill, assessed the district’s financial condition and determined that between $98,000 and $114,000 must be cut from the district’s budget. In order to do this, Hill determined that the board would need to utilize the district’s Reduction In Force policy in order to cut personnel to make a budget for the succeeding school year. Hill determined that the district would implement the RIF policy under the following criteria: seniority and previous evaluations would be considered and the certification of the teacher in the various programs that the district offered. For this second item, the district would consider multiple areas of certification and also take into consideration the number of students that have previously been
served by the faculty in question. Radakovich was one of the personnel who was terminated. He challenged the termination on the grounds that the board retained two other social studies teachers, one being tenured and the other not. He felt that the other two were less qualified than he and alleged that the board violated the CBA that was in place, and statutory violations were committed in terminating his contract. The Supreme Court of Montana held that the school board did not violate the CBA in terminating the contract of the plaintiff while utilizing the district’s RIF policy. In a previous ruling in *Massey v. Argenbright* (1984) the same Court ruled that the right of an employee to retain tenure status in the face of termination by a school board must be balanced against the board’s authority to manage the needs of the school district. Also in *Massey*, the Court also reasoned that reduction in funding is a valid and good cause in order to utilize a Reduction In Force policy to terminate tenured personnel, regardless of the fact that a CBA may be in place.

In the case of *Chicago School Reform Board of Trustees v. Illinois Educational Labor Relations Board, and Chicago Teachers Union Local 1, American Federation of Teachers, AFL-CIO* (1999), the school board challenged the ruling of the Illinois Educational Labor Relations Board (IELRB), the collective bargaining arbitrator, and an Administrative Law Judge (ALJ) and won. The Appellate Court of Illinois, First District, Second Division, ruled that the board did commit wrongdoing in terminating James Brown, a full substitute teacher. Brown and the local teachers union claimed that the board did not follow the provisions of the CBA, which called for a grievance hearing and other procedural steps. The court held that the school board was not statutorily required to abide by the ruling made by the arbitrator. The court agreed with the school board’s assertion that the Illinois Labor Relations Act has a provision that specifies that a school board is not required to abide by an award or ruling that conflicts with a statute that has
been enacted by the Illinois General Assembly. The Labor Relations Act § 10(b), provides that it is an acceptable defense against an unfair labor charge to disagree with provisions of a collective bargaining agreement when it is determined that such provisions are in violation of Illinois statute. A school board can successfully terminate personnel as long as the appropriate procedures are followed in doing so. This includes terminating an employee for appropriate cause.

The specific procedures for termination of an employee will vary among the states. However, all states have language to some degree in their statutes that provides that an employee has a right to due process when facing the prospect of termination from a position. The courts will not hesitate to rule in favor of personnel in cases dealing with termination when the school board does not follow statutory procedure in terminating an employee; regardless of the cause or need for the termination.

The school board lost approximately 8 of the 34 cases where their authority to terminate the employee was challenged. The reasons for the court’s ruling in favor of the personnel are pertinent to the following: 1) the personnel won because the employing school board did not follow statutory procedure in carrying out termination proceedings; and 2) the personnel won their case due to insufficient cause on the part of the school board to terminate. There were four cases where the school board lost due to lack of sufficient cause. There were three cases where the school board lost due to lack of following the appropriate procedures for termination. In the last remaining case, which was a case unique to this study, the school board lost its case while trying to save the job of its superintendent.

In the case of Robert M. Fortney and the West Salem Education Association v. School District of West Salem (1982), the Wisconsin Supreme Court affirmed the ruling of the appellate
court which reversed the ruling of the lower court in determining that Fortney did not receive his full due process rights. The board, through its collective bargaining administrator, gave Fortney a de novo hearing rather than a certiorari hearing. Even though the board had sufficient reasoning to terminate Fortney, they failed to use the appropriate procedures in attempting to terminate him.

In the case of The Board of Education of Bremen Community High School District No. 228 v. Bremen District No. 228 Joint Faculty Association, et al., (1984) the Supreme Court of Illinois reversed the decisions of the lower circuit court and the appellate court due to the fact that the board did not follow the provisions of the collective bargaining agreement in terminating eight teachers. The teachers were non-tenured and the reasoning of the board was based on economic necessity to cut the payroll for the succeeding school year. However, the board through its collective bargaining agreement was required to provide a hearing for the personnel even though they were all non-tenured. In failing to provide a hearing, the board failed to follow Illinois statute which requires the use of arbitration at any time that a termination is recommended. Subsequently, the court ordered that the teachers be reinstated as they could not be terminated and thus should simply be reemployed for the succeeding school year.

In the case of Greater Clark County School Corporation v. Robert F. Myers (1986), the Indiana Court of Appeals reversed the findings of the two lower courts in determining that the school board erred in following statutory procedures in terminating Superintendent Myers as required by Indiana Code 20-6.1-4-11. The board conducted the appropriate fact finding investigation and subsequent hearing process. However, under Indiana law, the superintendent must make a recommendation for termination to the school board, which must then vote on the recommendation while in session. In this case, the board determined in executive session that
they intended to terminate Myers. Once out of the executive session, the board voted to terminate Myers. However, the superintendent never made the recommendation for them to take a vote. Myers was subsequently reinstated. The Court reasoned that the school board did not follow procedures for termination as set forth in Indiana statute. In failing to do so, the school board lacked the authority to terminate Myers and thus they were in error for breach of contract.

In the case of *Anthony Pavadore v. School Committee of Canton* (1985), the School Board sought to terminate Pavadore due to the fact that he continued to leave work early. The Appeals Court of Massachusetts, Norfolk, reversed the judgment of the lower court in determining that the school committee violated its own policy by refusing to provide Pavadore with a hearing. The personnel policy manual of the school committee set forth substantive grounds for termination. The policy states that an employee has the right to appeal in four specific steps. These steps are (1) the employee must discuss the matter with their immediate supervisor; (2) the employee must meet with the superintendent of the district; (3) there must be a presentation of a letter to the school committee identifying the grievance; and (4) there must be a request for a meeting with the school committee. Pavadore’s request for the implementation of this process was denied. It was the belief of the appeals court that the appeals process outlined in the school committee’s policy manual cannot be circumvented according to Massachusetts statute. The appeals court referenced the case of *Nawn* (1976) where the appeals court held that utility companies are bound by its own company regulations and such regulations are binding on their personnel regardless of their knowledge. In *Niles* (1978), the same court held that a legislative grant of power is binding on an agency for which the power has been conferred. Meaning, the school committee has an obligation to follow its own policy and does not maintain the discretion to apply policy where it chooses.
In the Colorado case of *Bruce W. Barbour v. Hanover School District No. 28* (2006), the Colorado Court of Appeals held that the school board failed to comply with statutory notice requirements in the non-renewal of Barbour’s contract. In April of 2004, the board held a special meeting in which they went into executive session. In the executive session the board discussed several potential non-renewals, including Barbour and subsequently directed the superintendent to non-renew the plaintiff and not any other teachers. This action took place in the executive session and not in a regularly-scheduled board meeting. On the next day after the meeting, the Superintendent sent notice to Barbour that his contract would not be renewed for the next school year. In May, at the next board meeting, the board took formal action and voted to non-renew Barbour’s contract. However, Barbour did not receive official notice as to the board’s action to non-renew his contract until after June 1st. Colorado statute, §22-63-703(3) of the TECDA specifies that a probationary teacher shall be automatically reemployed for the next succeeding school year unless given written notice by June 1st of any given calendar year. If the board fails to comply with the language in the statute, then the teacher in question is automatically renewed for the succeeding school year. In this case, the school board did not notify Barbour in a timely manner.

In the case of *Paul Widdoes v. Detroit Public Schools* (1996), the Michigan Court of Appeals held that the Detroit Public School Board wrongfully terminated Widdoes when it determined that he had used excessive use of force in disciplining a student. The Court felt that the termination was not supported by the appropriate evidence, as in the deposition the student in question testified that Widdoes “did not hurt him in any way.” Michigan School Code, M.C.L. §380.1312 defines corporal punishment as the “deliberate infliction of physical pain by any means upon the whole or any part of pupil’s body as a penalty or punishment upon any pupil.”
The same statute provides that school personnel shall not use corporal punishment unless such force is deemed necessary to: protect the employee, obtain possession of a weapon by student, and protect property damage. None of these conditions were present when Widdoes disciplined the student. Thus, the Court agreed with the Circuit Court in their assertion that the Board lacked the appropriate evidence to terminate the plaintiff.

In the case of *Loyalsock Township Area School District v. Loyalsock Custodial Maintenance* (2007), the school board chose to terminate Connie Hamilton, a custodian for the district, due to the fact that she failed an alcohol and drug screening test. Hamilton was employed with the district for 28 years. On the date of January 14, 2005, Hamilton was struck in the face by a piece of equipment while working. The following day, Hamilton sought medical attention at a local hospital. While receiving medical attention, Hamilton was instructed by the hospital staff that she would have to submit to a drug test due to issues pertaining to the potential filing of work compensation benefits. Hamilton declined to take the test and declined additional medical attention. Shortly thereafter, the hospital contacted the business manager (Manager) for the district. The Manager directed Hamilton to submit to a blood and alcohol screening and told her she would not be allowed to return to work until she did. Hamilton finally submitted to blood and alcohol screening on January 31, 2005, and subsequently tested positive for marijuana. Hamilton admitted to smoking a marijuana cigarette on the date after her accident at work. She offered to go into an alcohol and drug rehabilitation treatment facility if it would help her retain her job.

The Manager informed her that termination proceedings would be conducted and that she had a right to a hearing. A hearing was held on February 15, 2005, and at the same meeting the Board terminated her contract. A grievance hearing was held and the arbitrator ruled that the employee did not commit any wrongdoing in the workplace and that over her 28 years of service
with the district she had a clear record. The arbitrator determined that Hamilton did engage in inappropriate behavior outside of the workplace but that this was not cause for the board to terminate her contract. On appeal the case went before the Commonwealth Court of Pennsylvania and the court held that the school board wrongfully terminated Hamilton from her custodial position and ordered her reinstated. The court referenced the case of *Greene County v. Dist 2, United Mine Workers of America* (2004), where the court ruled that an arbitration award should not be awarded to an employee who has committed egregious conduct and thus limits the organization from discharging its essential function. It would not be rational to reinstate someone who conducts himself inappropriately in the workplace. However, in this instance the conduct of the employee in question did not take place in the work setting. In its reasoning, the court also relied upon the case of *Office of the Attorney General v. Council 13, American Federation of State, County & Municipal Employees* (2004) where an arbitration award was upheld in favor of reinstating an employee who committed off-duty misconduct for which he was reinstated.

There was one case where neither the school board nor the personnel won. In the case of *East St. Louis Federation of Teachers, Local 1220, American Federation of Teachers, AFL-CIO v. East St. Louis School District No. 189 Financial Overnight Panel* (1997), the school board wished to keep its superintendent despite the recommendation of a State Board of Education agency which acted on its behalf in reviewing the financial practices of the school district. The Illinois State Board of Education appointed a financial oversight panel, known as the East St. Louis School District No. 189 Financial Oversight Panel, to look into the qualifications of the Superintendent of the East St. Louise School District No. 189. The State Board used its authority under the School District Financial Oversight Panel and Emergency Financial Assistance Law to assign a panel to study the school board policy that the district operated under. In reviewing the
policy, the Panel made a decision not to renew the contract of the superintendent of the district due to the fact that he lacked sufficient financial expertise. Some of the members of the school board balked at the idea of the Panel’s recommendation that the superintendent’s contract not be renewed and refused to enforce the decision of the Panel to remove the superintendent. The Panel made the decision not only to remove the superintendent but the board members as well, due to their refusal to enforce their decision. The Illinois Supreme Court ruled that the Panel was within their statutory authority to remove the superintendent and the school board members in question and the school board lacked the authority to challenge the ruling of the Panel.

The courts recognize that school boards maintain the authority to terminate personnel. In doing so, school boards must follow state statute and their own board policy. School boards must be able to prove that they have a valid cause for bringing termination proceedings against personnel. Also, in termination cases, school boards must determine if the employee in question is afforded due process.

Authority to Transfer

The issues within the following cases represent the challenges of personnel to the authority of school boards to make transfers. These cases represent 4 of the 102 cases present in this research study. The courts ruled in favor of the school board in all 4 of these cases. Why did school boards win in each of these cases? The school boards won in each of these cases, because they followed the procedures set forth in their respective board policy, which allowed them to transfer the personnel in their district for reasons that were permissible under state statute. The first case pertained to the ability of the board to delegate authority via a collective bargaining agreement to transfer an employee. The second case pertained to the authority of the board to
force a transfer of a teacher to another school in the district at their discretion. The board won the third case against the allegation from an employee that the board did not follow procedure in issuing the action for a transfer. The fourth and final case pertained to the authority of the board to terminate the contract of an administrator and transfer her back to a previously held tenured teaching position.

In the case of *Lori Lazuk v. School District No. 1, City and County of Denver and its members Susan Edwards, Laura Lefkowits, Bennie Milliner, Rita Montero, Elaine Gantz Berman, Sharon McDonald, Lester Woodward, and the Denver Classroom Teachers Association* (2000), the Colorado Court of Appeals held that a school board action on teacher transfers was not statutorily required due to the fact that it had properly transferred the powers to transfer teachers when it adopted a collective bargaining agreement. Lazuk brought action against the board due to an involuntary transfer to another school in the district. In this case, the school board, through its collective bargaining agreement, maintained the authority at its discretion to transfer the teacher to another high school in the district. Colorado Statutory §22-63-206 (1) grants not only the authority for the school board to make a transfer effective but they can delegate such authority to its chief administrators or through the guise of a collective bargaining agreement. The school board had the authority to delegate power to transfer teachers as such a delegation was administrative in nature, not a policy-making duty. In order to satisfy the statutory authority to transfer teachers, the board needed to only make certain of the following: (1) a teacher must be transferred into another position for which he or she is qualified; (2) a teacher could not be transferred resulting in a loss of pay; and (3) the transfer cannot be an act of discrimination.
In Board of Education of Ashland, Kentucky, and Curt Foutch, Individually and in his Official Capacity as Superintendent of the Ashland Independent School District v. Elizabeth Jayne and Virginia Jayne (1991), the case revolved around the involuntary transfer of two employees, both being sisters. In the 1983-1984 school year, the superintendent began reviewing test data for the teachers in the respective grades of the school district. The failure data for the plaintiffs’ in this case were noticeably higher and he met with them during the school year and suggested ways for them to improve upon their teaching abilities in hopes it would raise the test scores in question. The failure rate for the students of the plaintiffs continued to increase over the period of the next two school years. At the end of the 1985-1986 school year, Foutch recommended to the school board that the two teachers be transferred to other schools in the school district. The transfers did not include a change of pay or loss of benefits. Plaintiffs responded to the transfer with an action in the Boyd County Circuit Court alleging that the transfers were arbitrary and in violation of Section 2 of the Kentucky Constitution. The plaintiffs contended that the transfers were done in retaliation for the fact that the son of their principal had received failing grades in their classes. The Supreme Court of Kentucky held that no statutory violations were committed with the transfers of the teachers in question. The General Assembly of Kentucky has clearly established that a teacher under contract to teach does not maintain an absolute right to a particular teaching job in a particular school. The school boards have the discretion to transfer teachers within their district at their discretion.

The case of Bruce A. Kleven v. Yukon-Koyukuk School District (1993) pertained to the transfer of a director of the school district back to a tenured teaching position. Kleven worked as a tenured teacher and a director for the school Board for the years of 1976-1990. In March of 1990, the Superintendent, Fred Lau, informed Kleven that he was contemplating removing him
from his director’s position to a position of lesser responsibility. Kleven filed action against the board, challenging the board’s authority to reassign him to a position of less responsibility and lower pay. Kleven cited procedural violations on the part of the board in taking steps to transfer him to a lesser position. The Supreme Court of Alaska held that the trial court erred in dismissing action, on the belief that Kleven failed to exhaust administrative remedies. Also, the Court ruled that the trial court properly dismissed actions on behalf of Kleven on the grounds that he lacked standing. The court felt that the board handled the transfer process appropriately, but remanded the case back to the court of appeals as the lower courts had erred in ruling against Kleven for failure to exhaust administrative remedies.

In *Wallace v. Casa Grande Union High School District No. 82 Board of Governors, et al.* (1995), the Arizona Court of Appeals ruled in favor of the school board. Wallace claimed that the superintendent had defamed her in the presence of school board members, which caused her termination as an administrator and subsequent transfer back to a previously held tenured teaching position. The alleged comments by the superintendent were unfounded and under Arizona law, only certificated teachers who have been employed by the school board for more than three consecutive school years are entitled to continuing teacher status. The statutory prohibition against reduction in salary applies only to those who have been certificated teachers. Since the plaintiff had been an administrator for the previous six years, the school district was not statutorily prohibited from transferring her and reducing her salary.

The courts recognize that school boards maintain the authority to transfer personnel as long as they follow the delegated statutory authority and school board policy in doing so. Though school boards have broad discretion to assign a transfer placement of personnel, they cannot do so in an arbitrary or capricious manner. School boards must make certain that an employee’s due
process rights are not violated and that they have valid cause to approve of the transfer of an employee.

**Conclusion**

The school boards featured in the 102 cases briefed in this research study won the majority of the cases due to the fact that they followed the statutory authority delegated to them to govern and manage the personnel within their respective school districts. They did so by following their own board policy while also making sound decisions based on the provisions of their local board policies. School boards have great discretion with respect to the authority extended to them through state statute. Though they have great discretion in the implementation and utilization of board policy, they still must govern and manage in a manner that is consistent with their policy. Also, they must make certain that the constitutional rights of personnel are protected.

In the instances where school boards lost in the cases that were revealed in this research study, the school board failed in three ways. The first way is that they violated statutory authority extended to them. The second failure was that they failed to follow their local board policy. The third way is that they violated a constitutional right of an employee in some way. The courts recognize the authority delegated to school boards. In litigation where school board authority was challenged, the courts looked to determine the nature of the violations. The courts were supportive of school boards when they determined that the boards acted within the scope of their authority.
CHAPTER V

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

Summary

The purpose of this research study was to examine the litigation that exists for the authority of public school board members and public school personnel. This research focused on the years of 1981-2008, with the cases derived from West’s Education Law Digest found in Key Number Schools 55 under the heading of Power and Functions in General. There were 102 cases in Key Number Schools 55. The focus of this chapter is to provide a thorough summary of the answers to the research questions, provide recommendations for the need for further research study, and to provide a conclusion to this research study. The following questions and subsequent answers provided the focus of this research study and were the foundation of the analysis and collection of data:

1. What are the issues in court cases involving the authority of public school boards with respect to the personnel they employ?

There were 19 different issues revealed within the 102 cases of this research study (see Table 2). These 19 different issues are grouped into three major categories (1) The General Authority of School Boards in Issues Pertaining to Personnel, (2) The Employment Authority of School Boards in Issues Pertaining to Personnel, and (3) The Authority of School Boards as an Entity of Government in Issues Pertaining to Personnel.

In the category of The General Authority of School Boards in Issues Pertaining to Personnel, the issues were the following: authority to assign duties, authority to publish
information about personnel, authority to collectively bargain, authority to make contracts, authority in matters of curriculum, authority to demote personnel, authority to make employment decisions, authority over financial matters, authority to claim immunity status, authority to grant a leave of absence, authority to require medical excuses, authority to require a medical evaluation, authority to view personnel records, authority to make policy, authority to claim status as a political subdivision, authority to reprimand, authority to suspend, authority to terminate, and authority to transfer.

The category of General Authority had 40 (39%) of the 102 cases that pertained to a variety of issues relating to the general authority of school boards and their ability to manage and govern the personnel of their respective district.

In the category of The Employment Authority of School Boards in Issues Pertaining to Personnel, the issues are: authority to demote, authority to make employment decisions, authority to suspend, authority to terminate, and authority to transfer. This category had the most cases with 51 (50%) of the 102 cases pertaining to the authority of school boards to make employment decisions in reference to the personnel they employ.

In the category of The Authority of School Boards as an Entity of Government in Issues Pertaining to Personnel, the issues are immunity and political subdivision. These final 11 (11%) cases pertained to the challenges of the authority of school boards to apply authority as a governmental entity in respect to personnel, as well as the authority of school boards to utilize status as a governmental entity in order to provide for the benefit or advantage of the school board in respect to personnel (see Table 2).

2. What are the outcomes in court cases involving the authority of public school boards with respect to the personnel they employ?
In the 19 different issues that were revealed in this research study, the courts ruled in favor of the school boards 59 (58%) times. The courts ruled in favor of the school boards in 14 (74%) of the 19 issues. These 14 issues are authority to assign duties, authority to publish, authority to collectively bargain, authority in matters of curriculum, authority to demote, authority to make employment decisions, authority over financial matters, authority to claim immunity status, authority to grant a leave of absence, authority to require a medical evaluation, authority to reprimand, authority to suspend, authority to terminate, and authority to transfer. The issues where the school board did not win a case were authority to make contracts, authority to require a medical excuse, authority to view personnel records, authority to make policy, and authority to claim status as a political subdivision. The courts ruled in favor of the personnel in 37 (36%) of the 102 cases. The courts ruled in favor of the personnel in 12 (63%) of the 19 issues. These issues are authority to assign duties, authority to collectively bargain, authority to make contract, authority to demote, authority to make employment decisions, authority over financial matters, authority to claim immunity status, authority to require a medical excuse, authority to view personnel records, authority to make policy, authority to suspend, and authority to terminate. The issues where the personnel did not win a case were authority to publish, authority in matters of curriculum, authority to grant a leave of absence, authority to require a medical evaluation, authority to claim status as a political subdivision, authority to reprimand, and authority to transfer. In 6 (6%) of the cases the courts did not rule in favor for either the school board or the personnel. The issues in these cases were authority to claim immunity status and authority to claim status as a political subdivision (see Table 3).
Table 2

Court Decisions: Issues--School Board Authority and Personnel

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Table 3

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The prevailing theme in the holdings of the courts to rule in favor of the school boards in the majority of the cases was the fact that the school board adhered to the statutory authority extended to them via the legislative statutes of their respective state. It is noted that in the majority of the cases where school boards lost, the courts ruled that the school boards lacked or abused the authority they possessed. School boards are creatures of state legislative enactment. Their existence in operating from such creation provides that they operate in a manner that is consistent with the authority that is delegated to them. The ability of school boards to efficiently utilize and delegate the authority extended to them has much to do with their efforts to successfully respond to the challenges against their authority by personnel and other similar stakeholders in the field of public education.

General Authority of School Boards in Issues Pertaining to Personnel

In the category of the General Authority of School Boards in Issues Pertaining to Personnel, the courts ruled in favor of the school boards in 20 (49%) of the 41 cases. School boards lost the majority of these cases because the courts asserted that the school boards did not effectively follow the statutory authority delegated to them or they did not follow their own board policy. The following is a summary of the ruling favor of the courts in these issues. At the end of each summary, the cases pertaining to each issue are identified.

Authority to assign duties. In this issue, there were 4 (10%) of the 41 cases that pertained to the authority of school boards to assign duties to personnel. The courts ruled in favor of the school boards in 3 (67%) of these 4 cases. School boards possess the statutory authority to assign duties to personnel in order to meet the desired goals and outcomes of the board as a whole. Such
assignments must be reasonable as the courts will not hesitate to intervene in instances where the board has assigned duties that are determined to be discriminatory, arbitrary, or capricious (Hugh Thomas v. Board of Education of Community School District No. 1 of Pope County Illinois and Phillip Reasor, Principal, 1983; M.S. Jawa, Ph.D. v. Board of Education McDowell County, et.al., 1984; Pleasant Valley Education Association v. Pleasant Valley Community School District, 1989; Wolf v. Cuyahoga Falls City School District Board of Education, et al., 1990).

Authority to publish information about personnel. In this issue, there were 2 (5%) of the 41 cases that pertained to the authority of school boards to assign duties to personnel. The school board won both of these cases. In both of these cases the courts ruled in favor of the school board because the board possessed express statutory authority to publish information pertaining to school personnel (Freier v. Independent School District No. 147, 1984; State of Nebraska, ex rel., Connie Thompson v. Walter Alderman, Secretary of the Board of Education of School District No. 1 of Howard County, Nebraska, et.al., 1988).

Authority to collectively bargain. In this issue, there were 6 (15%) of the 41 cases that pertained to the authority of school boards in matters of personnel and collective bargaining. The courts ruled in favor of the school boards in 3 (50%) of these 6 cases. The ruling of the courts in these cases was based on the ability of the school boards in question to follow the language contained within the respective collective bargaining agreements. Collective bargaining agreements are written for the purpose of declaring provisions for the management and care of school personnel. These agreements are very definitive in nature and the courts recognize that school boards are bound to these agreements as long as the agreements do not contradict

Authority to make contracts. In this issue, there were 2 (5%) of the 41 cases that pertained to the authority of school boards in respect to contracts and personnel. The school board lost both of these cases. The school boards lost these cases as they failed to meet the conditions of the contracts (Llewellyn J. Rice v. Cayuga-Onondaga Healthcare Plan and North American Administrators, Inc., 1993; Laidlaw Transit, Inc. v. Alabama Education Association et al., Tuscaloosa City Board of Education and its Superintendent, Robert A. Winter v. Alabama Education Association et al., 2000).

Authority in matters of curriculum. In this issue, there was 1 (1%) of the 41 cases that pertained to the authority of school boards and matters of curriculum and personnel. The court ruled in favor of the school board in this case. School boards have the authority to manage matters of curriculum in their district as long as they do so in a manner that is consistent with the
statutory authority that is extended to them (Burtram Johnson v. Board of Education of Santa Monica-Malibu Unified School District, 1986).

Authority over financial matters. In this issue, there were 9 (22%) of the 41 cases that pertained to the authority of school boards in matters of personnel and finance. School boards impact personnel in issues of finance in two ways. One instance is through the authority delegated to them via state statute. The second instance is through the adoption and implementation of their local school board policy. The courts ruled in favor of the school boards in 6 (69%) of the 9 cases. The issue of school board financial authority was the most litigated issue of this category (Richland Parish Bus Drivers Association, et.al. v. Richland Parish School Board, et.al., 1982; Tax Deferred Annuities Corporation v. Cleveland Board of Education, 1985; Louisiana Association of Educators, et.al., St. Tammany Federation of Teachers, et.al., v. St. Tammany Parish School Board, 1983; William Jurva, Ruth McDonald, and Rochester Education Association. v. Attorney General of the State of Michigan v. Board of Education of the Rochester Community Schools, 1984; Donald Purn v. Board of Education, Community Unit School District 300, 1982; W. Monte Robinson v. Joint School District No. 331, Minidoka, Cassia, Jerome, and Lincoln Counties, 1983; Atlantic City Education Association and Atlantic City Head Custodians’ Association v. Board of Education of the City of Atlantic City, Keyport Teachers’ Association v. Board of Education of the Borough of Keyport, 1997; Phyllis Greenhalgh v. The City Council of the City of Cranston, 1992; Sioux City Community School District v. Iowa State Board of Public Instruction, 1987).
Authority to grant leave of absence. In this issue, there was 1(1%) of the 41 cases that pertained to the authority of school boards to grant a leave of absence to an employee. The school board won this case. The courts recognize that issues of leave of absence have much to do with the language contained within local school board policy. School boards maintain broad general authority to manage and operate their school districts. The local school board policy is the definitive document that governs many of the issues regarding the management of personnel (Favero v. Huntsville Independent School District, 1996).

Authority to require medical evaluation. In this issue, there was 1 (1%) of the 41 cases that pertained to the authority of school boards to assign duties to personnel. The school board won in this single case. Courts carefully scrutinize the ability of school boards to request a medical evaluation of personnel. The civil rights and rights to privacy of individuals must be acknowledged by school boards when requesting a medical evaluation from an employee (Diane Murray v. Pittsburgh Board of Education, 1991).

Authority to require a medical excuse. In this issue, there were 2(2%) of the 41 cases that pertained to the authority of school boards to assign duties to personnel. The school board lost both of these cases. They lost these cases due to the fact that the school board violated statutory authority and local school board policy in requesting a medical excuse from an employee (Hoeflinger v. West Clermont Local Board of Education, 1984; Rebecca Godbey, Harriet H. Phillips, Barbara A. Robblee and Patricia M. Wright, on behalf of themselves and all other persons similarly situated v. Roosevelt School District No. 66 of Maricopa County, Roosevelt
Authority to view personnel records. In this issue, there were 4 (10%) of the 41 cases that pertained to the authority of school boards to review personnel records. The courts ruled in favor of the personnel in all of these cases. The school boards lost these cases as they did not follow statutory authority in handling these records or their local board policies were in violation of statutory authority (Bangor Area Education Association v. Ronald Angle, Lisa Sandt, Robert Wilson, Richard Ott, Joseph Boyle, Charles Cole, Joseph Diorio, Mary T. Ensslin, J. Peter Turtzo, Dr. Wilford Ottey, Dr. John Barilla, and the Bangor Area School District, 1998; Carol Spinelli v. Immanuel Lutheran Evangelical Congregation, Inc., 1987; Lawerence E. Kamrath v. The Board of Education of School District No. 150, Peoria County, 1987; Parents Against Abuse In Schools, Valrie C. Novinger, parent and guardian of John Novinger, Jr., a minor, et.al. v. The Williamsport Area School District, Oscar W. Knade, Jr., Superintendent of Schools, and Simon Samuel, Williamsport Area School District Psychologist, 1991).

Authority to make policy. In this issue, there were 7 (17%) of the 41 cases that pertained to the authority of school boards to make policy. The courts ruled in favor of the personnel in all of these cases as the courts found that their local board policies were in violation of statutory authority (Decatur City Board of Education v. Aycock and Morgan County Department of Human Resources, 1990; Chalifoux v. New Caney Independent School District, 1997; Susan Castle, et. al. v. Colonial School District, et.al., 1996; Board of Kentucky of Boone County v. Joan Bushee, et.al., 1994; Rosalie Carlyle v. Independent School District No. 1-71 of McCurtain
Authority to reprimand. In this issue, there was 1 (1%) of the 41 cases that pertained to the authority of school boards to assign duties to personnel. The school board lost this lone case as it did not have authority to reprimand an employee who worked in a department of the school district for which the school board did not possess statutory authority to monitor (County of Winnebago v. Norma Davis, Food Service Director, Lincoln Middle School, 1987).

The Employment Authority of School Boards in Issues Pertaining to Personnel

In the category of The Employment Authority of School Boards in Issues Pertaining to Personnel, the courts ruled in favor of the school board in 41 (80%) of the 51 cases. The following is a summary of these issues. At the end of each summary, the cases pertaining to each issue are identified.

Authority to demote. In this issue, there were 4 (8%) of the 51 cases that pertained to the authority of school boards and the demotion of personnel. The school board won only 1 (25%) of these 4 cases. Personnel can be demoted either by the real intent on the part of a school board or a court can make a decision in a case that identifies that an employee has been demoted by the intentional or unintentional action of a school board. The courts generally do not rule favorably for school boards when they demote personnel through loss of status due to reduction in pay (The School District of Philadelphia v. Harris Twer, et.al., 1982; Don Vilelle v. Reorganized School
Authority to make employment decisions. In this issue, there were 6 (12%) of the 51 cases that pertained to the authority of school boards to employ personnel. The courts ruled in favor of the school boards in only 2 (33%) of the 6 cases. The courts are supportive of school board rights to their delegated authority to employ personnel as long as the methods of employment are supported by legislative statute. The courts will not support the actions of a school board if it determines that the board has violated state law or a federally protected right of a citizen (Lewis Bishop and Ronald Thompson v. Iowa State Board of Public Instruction, Iowa State Department of Public Instruction, and Valley Community School District, 1986; Manuel Gonzalez v. Board of Education of the Elizabeth School District, Union County, 1999; Bacon v. Brewer, 1990; Board of Education of Community School District No. 29 of the City School District of the City of New York, et al. v. Joseph A. Fernandez, etc., 1992; Daniel Campbell and Washington Elementary School District No. 6 of Maricopa County v. Richard L. Harris, Superintendent, Maricopa County Schools, 1981; Christina Napier v. Lincoln County Board of Education, 2001).

Authority to suspend. In this issue, there were 3 (6%) of the 51 cases that pertained to the authority of school boards to employ personnel. The courts ruled in favor of the school boards in 2 (67%) of the 3 cases. The courts are supportive of school board rights to their delegated authority to suspend personnel as long as the methods of suspension are supported by board policy and legislative statute. The courts will not support the actions of a school board if it
determines that the board has violated state law or a federally protected right of a citizen. Primarily, the courts look at two instances of suspension of school personnel. In the first instance, the courts look to see if the suspension was for valid causes. In the second instance, the court looks to identify procedural violations committed by a board or its administrative staff in handling the suspension (Anthony E. Burger v. The Board of School Directors of the McGuffey School District and the School District of McGuffey, 2003; Maurice Bell v. Board of Education of the City of St. Louis, 1986; Granite City Community Unit School District #9 v. The Illinois Educational Labor Relations Board and Granite City Federation of Teachers, Local 743, IFT/AFT, 1996).

Authority to terminate. The issue of termination was the most litigated issue of this category. There were 34 (67%) of 51 cases that pertained to this issue. The courts ruled in favor of the school boards in 25 (74%) of these 34 cases. The courts recognize two primary challenges by personnel to the authority of personnel to utilize termination proceedings. The first reason is that the appropriate termination proceedings must be conducted by the board in respect to the legislative authority for them to do so. The second reason is that a board must be able to prove that they have a valid cause for bringing termination proceedings against personnel. The statutory authority maintained by school boards to employ and non-employ personnel is extensive within the individual states throughout the country. A school board can effectively follow statutory authority and the procedures outlined in that authority to terminate personnel. Failure to follow due process procedures can diminish that authority and the courts will not hesitate to intervene when boards fail to follow statutory mandates (Proviso Council of West Suburban Teachers Union, Local 571 and John Spaulding v. Board of Education, Proviso

Authority to transfer. There were 4 (8%) of 51 cases that pertained to this issue. The courts ruled in favor of the school boards in all 4 of these cases. The school boards successfully defended the challenge to their authority in all of the cases because they followed the legislative authority delegated to them or they followed their own board policy in implementing the transfers. Even in following their own policy, the school boards first make certain that their policies are substantiated by the legislative authority that is extended to them (Lori Lazuk v. School District No. 1, City and County of Denver and its members Susan Edwards, Laura Lefkowits, Bennie Milliner, Rita Montero, Elaine Gantz Berman, Sharon McDonald, Lester Woodward, and the Denver Classroom Teachers Association, 2000; Board of Education of Ashland, Kentucky, and Curt Foutch, Individually and in his Official Capacity as Superintendent of the Ashland Independent School District v. Elizabeth Jayne and Virginia Jayne, 1991; Bruce A Kleven v. Yukon-Koyukuk School District, 1993; Wallace v. Casa Grande Union High School District No. 82 Board of Governors, et al., 1995.
The Authority of School Boards as an Entity of Government in Issues Pertaining to Personnel

In the category of The Authority of School Boards as an Entity of Government, the courts ruled in favor of the school boards in 7 (64%) of the 11 cases. The following is a summary of these issues. At the end of each summary, the cases pertaining to each issue are identified.

Authority to claim immunity status. The issue of immunity was the most litigated issue of this category. There were 10 (91%) of 11 cases that pertained to school board authority and issues of immunity. The courts ruled in favor of the school boards in 7 (70%) of these 10 cases. The courts generally find that school board members are immune from action against them by school personnel. Public school boards are creatures of state legislation adopted by state government and thus enjoy immunity in many respects. As always in cases where there are questions of immunity, the courts look for evidence that a school board has committed a violation against an individually protected right in some way (Board of Trustees of Hamilton Heights School Corporation, Ronald E. McGill, Sylvia Kay Hartley, Marcia G. House, Keith Schullenberg, and Lawerence C. Beck, Individually and in their capacity as members of the Board of Education of Trustees of Hamilton Heights School Corporation v. Roger V. Landry, 1993; Mitchell Williams, Individually, Mary E. Williams, Individually, and Mitchell Williams, Administrator of the Estate of Anthony Wayne Williams v. Kentucky Department of Education, Board of Claims, and Commonwealth of Kentucky, 2003; Jane Doe and Janet Doe, Individually v. Claiborne County, Tennessee, by and through the Claiborne County Board of Education, and Dennis L. Peters, Roy L. Norris, Charles Randall Burchette, Bobby Williams, Dr. Roy Ellis, Jr., Lynn S. Barnard, in their individual and official capacities, and Sam Widener, Don Dobbs and James Leonard Bundren, in their official capacities only, 1996; Barbara Plumeau, Personally;

Authority to claim status as a political subdivision. There was 1 (9%) of the 11 cases where school boards utilized their authority as a political subdivision of the state. The school board won this case. In certain cases, school boards seek to use their status as a governmental entity in hopes that the courts will grant them governmental status to gain benefit in a litigated case (John H. Koch v. Webster Central School District Board of Education, 1981).

3. What are the trends in court cases involving the authority of public school boards with respect to the personnel they employ?

The data revealed from this research reveals that there are trends that are apparent over the 29-year period of this study. The data is useful in examining how the courts have ruled differently over a period of 3 decades, for the years of 1981-2008. Dagley (1984) conducted a study for the years of 1965-1982 on the topic of school board authority with respect to issues of collective bargaining, and the number of cases for that topic alone was 159 cases. The total number of cases in Key Number Schools 55 for the time period for this study was 102 cases pertaining to school board authority with respect to personnel matters.
In the 9-year span for the time period of 1981-1989, there were 48 cases pertaining to personnel and school board authority. In this time span, the school board won 31 (65%) of the 48 cases. From 1981-1989, 27 (56%) of the 48 cases were issues of school board authority and the employment of personnel, 20 (42%) of the 48 cases were issues of school board authority and the general authority they maintain to manage and govern the personnel of their district, and 1 (2%) of the 48 cases were issues of school boards and the authority they enjoy as an entity of government.

In the 10-year span for the time period of 1990-1999 there were 42 cases pertaining to personnel and school board authority. From 1990-1999, 16 (38%) of the 42 cases were issues of school board authority and the employment of personnel, 17 (41%) of the 42 cases were issues of school board authority and the general authority they maintain to manage and govern the personnel of their district, and 9 (21%) of the 42 cases were issues of school board and the authority they enjoy as an entity of government.

In the 9-year span for the time period of 2000-2008, there were 12 cases pertaining to personnel and school board authority. From 2000-2008, 7 (58%) of the 12 cases were issues of school board authority and the employment of personnel, 4 (33%) of the 12 cases were issues of school boards and the general authority they maintain to manage and govern the personnel of their district, and 1 (8%) of the 12 cases were issues of school boards and the authority they enjoy as an entity of government.

There was an obvious trend of cases for the first 9 years of the study in comparison to the following 19 years. The study revealed that 47% of the caseload occurred in the 1980s, 39% in the 1990s, and 11% in the 2000s.
In respect to the three major categories of cases in this study, the data in the category of the General Authority of School Boards in Issues Pertaining to Personnel, revealed that 23% of the cases occurred in the 1980s, 15% of the cases occurred in the 1990s, and 1% of the cases occurred in the 2000s. In the category of the Employment Authority of School Boards in Issues Pertaining to Personnel, the data revealed that 24% of the cases occurred in the 1980s, 10% of the cases occurred in the 1990s, and 8% of the cases occurred in the 2000s. In the category of the Authority of School Boards as an Entity of Government in Issues Pertaining to Personnel, the data revealed that 1% of the cases occurred in the 1980s, 7% of the cases occurred in the 1990s, and 3% of the cases occurred in the 2000s.

With the exception of the immunity cases in the 2000s, the majority of the 18 of the 19 major issues occurred within the 9-year time period of 1981-1989. The 1980s was the most litigated time period of the three time periods revealed in this research study. As the time period progressed in years from 1981-2008, the number of cases in respect to school board authority and personnel has declined significantly.

There are two possible reasons as to why litigated cases for issues pertaining to school board authority and personnel have declined over the last 3 decades. One of the reasons could be that public school boards and public school administrators are more knowledgeable about the potential litigation that exists in issues pertaining to school personnel. A second possible reason is that school boards have learned from the litigated precedents that have developed over this same time period and they have amended and adopted school board policies as needed to negate the potential for legal issues to occur with regard to school personnel matters.

A trend of relevance to this study was the final decisions of the courts. The courts affirmed the decision of the lower courts in 62 (62%) of the 102 cases in this research study. The
courts reversed the decision of the lower courts in 26 (27%) of the 102 cases in this research study. There were 13 (11%) of the 102 cases where the courts did not rule in favor of the school board or the personnel. In the cases with no ruling for either school boards or personnel, the issue in front of the respective court was one of the following: (1) to determine if a school board had standing in a particular issue; (2) one of the parties in the case was not an employee or a school board; and (3) the ruling court simply remanded the case back to a lower court without ruling in favor for either the school board or the employee (see Table 4).

A trend of relevance to this study was the cases that were litigated by the respective courts that had cases in this research study. There were four levels of courts that had a ruling disposition in this research study. The courts with a ruling disposition were state court of appeals, state supreme courts, U.S. District Court, and U.S. Court of Appeals. The state court of appeals had a ruling disposition in 47% of the cases, the state supreme courts had a ruling disposition in 43% of the cases, the U.S. District Courts had a ruling disposition in 8% of the cases, and the U.S. Court of Appeals had a ruling disposition in 2% of the cases. Ninety percent of the cases in this research study were handled in the state court system. Only 10% of the cases were handled in a federal court. Of the cases that were litigated at the federal level, the majority of the cases were civil rights cases; therefore, such cases were first tried at the federal level (see Table 5).
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Table 5

Court Decision: Highest Ruling Court--School Board Authority and Personnel

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A trend of relevance to this study was the cases that were litigated by the respective states. The cases were analyzed according to the Regional Reporter System, which divides the cases into the various regions of the United States (http://lib.law.washington.edu/ref/repdig.html). The states were analyzed as follows: the Atlantic Region had 15 (15%) of the 102 cases within the 7 states and District of Columbia in its region, the Southern Region had 7 (7%) of the 102 cases within the 4 states in its region, the Southeastern Region had 15 (15%) of the 102 cases within the 6 states in its region, the Northwestern Region had 12 (12%) of the 102 cases within the 7 states in its region, the Northeastern Region had 30 (30%) of the 102 cases within the 6 states in its region, and the Pacific Region had 19 (19%) of the 102 cases within the 14 states in its region. The Northeastern Region had the largest number of litigated states. This was the case, as the state of Illinois had by far the largest number of cases litigated with 17 (17%) of the 102 cases derived from that state alone (see Table 6).

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4. What are the legal principles for school administrators that can be discerned from court cases involving the authority of public school boards with respect to the personnel they employ?

It is essential for school administrators to realize and have knowledge of guidelines that will support their work with school personnel. The potential for litigation in respect to school personnel is ever-present for school administrators and it is vital for them to have knowledge of the latest issues and trends that carry weight and precedent in the field. The following principles were developed from the analysis of the case briefs. There were 19 issues realized from the collection of data from the 102 cases. There is an example of each issue in the following 19 principles. The principles will supply school administrators with the ability to realize examples of personnel challenges to school board authority.

1. Authority to Assign Duties: The courts’ view that it is acceptable for teachers to be required to be trained at school board expense in order to be trained for such a course that is designed to train teachers to teach a specific curriculum (Pleasant Valley Education Association v. Pleasant Valley Community School District, 1989).

2. Authority to Publish Information About Personnel: A legislative requirement to publish the facts and disposition of a personnel action is an absolute privileged communication. When school boards possess express authority to publish matters pertinent to school personnel, they have a duty to the public to publish the written decisions that are required or delegated by law (Freier v. Independent School District No. 147, 1984).

3. Authority to Collectively Bargain: Collective bargaining agreements are specific in nature and have definitive provisions that cannot be comprised by school boards, school administrators, and school personnel. Once a school board and its members have submitted to a collective bargaining agreement, they have a non-delegable prerogative to adhere to the
provisions of the agreement (Proviso Council of West Suburban Teachers Union, Local 571 and John Spaulding v. Board of Education, Proviso Township High Schools, District 209, Cook County, Illinois, 1987).

4. Authority to Make Contracts: The courts concur that school boards maintain the authority to enter into personnel contracts with a private company. When school boards do exercise their right to enter into a personnel contract agreement, the personnel must perform work that is typically designed to be performed by school board personnel. School board members and school administrators cannot agree to conditions that relieve personnel of their due process rights and other statutory rights (Laidlaw Transit, Inc. v. Alabama Education Association et al., Tuscaloosa City Board of Education and its Superintendent, Robert A. Winter v. Alabama Education Association et al., 2000).

5. Authority in Matters of Curriculum: A school board is empowered with administrative jurisdiction to review, reconsider, reaffirm, rescind, or revoke any order made by one of its administrators. A school board has the inherent right to create investigative boards or bodies, hold hearings, address grievances and issues, and enforce its holdings in so far as they are not in conflict with or inconsistent with any law that is not in conflict with the purposes for which a school district was established (Burtram Johnson v. Board of Education of Santa Monica-Malibu Unified School District, 1986).

6. Authority to Demote: There are instances where school boards possess the statutory authority to demote personnel through a reduction in pay. Such a reduction in pay cannot be administered in an arbitrary or capricious manner and must be handled in a way that is equitable to all personnel (The School District of Philadelphia v. Harris Twer, et.al., 1982).
7. Authority to Make Employment Decisions: Employment of school personnel is at the sole discretion of public school boards. The courts do not recognize that school boards possess the authority to delegate employment responsibilities to superintendents, supervisors, and school administrators (Christina Napier v. Lincoln County Board of Education, 2003).

8. Authority Over Financial Matters. A principal does not maintain the financial authority to enter into a supplemental contract with a teacher for the purpose of working additional periods or assignments during the school day. Only the school board has the authority to make contracts for additional work which requires additional compensation (W. Monte Robinson v. Joint School District No. 331, Minidoka, Cassia, Jerome, and Lincoln Counties, 1983).

9. Authority to Claim Immunity Status: A public official may invoke the sovereign function of the government, such as the governing board of education, so long as the official is serving in a capacity that is being exercised by the individual that is benefiting the public. Personnel employed by a board of education gains their responsibility to function and authorize his duties and responsibilities from the existing chain of command (Thomas Webb, etc. et.al. v. Hal Reisel, et. al., 1993).

10. Authority to Grant Leave of Absence: The courts have ruled that school boards have the express and implied authority to determine the qualifications for personnel requests for extended leaves of absence. An employee’s request for leave is not a constitutionally protected right. Furthermore, school administrators do not possess the authority to give approval for the requests for leave of absence on the part of personnel (Favero v. Huntsville Independent School District, 1996).

11. Authority to Require Medical Evaluation: The courts have ruled that in certain instances a school board maintains the authority to request a medical evaluation of the physical
and mental well-being of their personnel. Should a school board determine that a medical examination of an employee is feasible, the members should take into consideration the following: the type of record requested, the specific type of information contained within, the potential harm to the individual if such information should be released, the accuracy of safeguards to prevent unauthorized disclosure, and the statutory provisions in place that allow for a school board to enforce the requirement of the submission of an employee to a medical examination of any type (Diane Murray v. Pittsburgh Board of Education, 1991).

12. Authority to Require Medical Excuse: The courts acknowledge that school boards and school officials possess the broad and general authority to require justification for a teacher’s absence from work due to illness by requiring a physician’s statement. However, such a requirement for sick leave justification cannot be arbitrary or capricious in nature and must also be supported by local school board policy (Hoeflinger v. West Clermont Local Board of Education, 1984).

13. Authority to View Personnel Records: Under the provisions of FERPA the parents of students have the right to view the records of school psychologists. School boards did not possess the authority under state law to protect the information or the personnel (Parents Against Abuse In Schools, Valrie C. Novinger, parent and guardian of John Novinger, Jr., a minor, et.al. v. The Williamsport Area School District, Oscar W. Knade, Jr., Superintendent of Schools, and Simon Samuel, Williamsport Area School District Psychologist, 1991).

14. Authority to Make Policy: A school board, upon the recommendation of the superintendent, shall prescribe rules and regulations for the conduct and management of the schools. Such written policies, rules, and regulations so established and adopted shall be made
available to all personnel of the board (*Walker County Board of Education v. Walker County Education Association*, 1983).

15. Authority to Claim Status as a Political Subdivision: The maintenance of schools is considered a political function and schools are a primary concern for the state. School boards gain their authority via legislative delegation from the state legislative body. This allows them to carry on their educational activities while serving as both a political body and a municipal corporation (*John H. Koch v. Webster Central School District Board of Education*, 1981).

16. Authority to Reprimand: The courts acknowledge that school officials maintain the statutory authority to reprimand an employee for actions that are unbecoming of personnel within the education profession. In choosing to reprimand an employee, the school official cannot act in an arbitrary or capricious manner and the authority to administer a reprimand must be within the scope of authority delegated to them (*County of Winnebago v. Norma Davis, Food Service Director, Lincoln Middle School*, 1987).

17. Authority to Suspend: A school principal can be suspended for the failure to meet the obligations and responsibilities of the position. A superintendent may recommend a disciplinary action to the board for consideration. However, a school board has the broad discretion to deviate from a recommended punishment and impose a punishment consistent with its view as to what would be appropriate in any given case (*Maurice Bell v. Board of Education of the City of St. Louis*, 1986).

18. Authority to Terminate: School boards have the authority to implement Reduction In Force policies in order to terminate personnel due to financial necessity. A school board need only follow the provisions in their board policy to implement such a policy (*Harley D. Reed v. Edgeley Public School District, No. 3*, 1981).
19. Authority to Transfer: The courts have established that a teacher under contract to teach does not maintain an absolute right to a particular teaching job in a particular school. The school boards have the discretion to transfer teachers within their district at their discretion \((\text{Board of Education of Ashland, Kentucky, and Curt Foutch, Individually and in his Official Capacity as Superintendent of the Ashland Independent School District v. Elizabeth Jayne and Virginia Jayne, 1991})\).

Recommendations for Further Study

As a result of the information gathered from this research study, the following recommendations are prepared regarding the potential for further research with respect to public school board authority and school personnel.

1. Additional research can be conducted in a time study analysis to determine if the number of litigated cases in the 1960s and 1970s reveal the downward trend that has occurred in the last three decades.

2. Additional research can be conducted to determine if the decline in school board authority cases in matters pertaining to school personnel will continue to decline as has occurred over the last 2 decades.

3. Additional research can be conducted to examine if similar issues, trends, and outcomes continue to occur in school litigation cases in respect to school board authority and matters with respect to school personnel.

4. Additional research can be conducted to determine the significance of the number of cases that were litigated in the seven different regions of the Regional Reporter System.
5. Additional research can be conducted to determine the significance of the number of cases that were litigated according to the four different levels of courts that had a ruling disposition in this research study.

6. Additional research can be conducted to examine the decisions of the courts in cases involving issues pertaining to school board authority and personnel after Loyalsock v. Loyalsock (2007).

7. Additional research can be conducted to determine if public school board members are subjected to training opportunities in respect to matters of public school board authority and school personnel.

8. Additional research can be conducted with postsecondary institutions to determine if educational administration and educational leadership programs are addressing issues pertinent to school board authority and school personnel.

Summary and Conclusions

From 1981-2008, the American judicial system has ruled in 102 cases involving school board authority and matters pertinent to school personnel. There has been a noticeable decline in the number of cases over the time period of this study. All of these cases to some degree addressed the ability of school boards to utilize their authority in governing and managing the operations of their respective school districts. School boards are creatures of state government. They gain their authority from the legislatures and state constitutions from their respective states. Their ability to function is based on their ability to follow the legislative law in implementing policy and action in their respective school districts.
This research study contained vital research for members of public school boards and school administrators. The information gained from this study will allow them to view their policies and procedures in addressing the potential challenges to the authority that is delegated to them. This research study presents school board members and principals with the opportunity to identify existing case law and the subsequent issues and trends within that case law that are relevant to the personnel they employ, govern, and supervise. It hoped that this research will be a viable resource for current and future school board members and administrators as they create policy and procedures that are applicable to their personnel.
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