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AN INVESTIGATION OF COURT DECISIONS RELATED TO EDUCATOR
IMMORALITY

by

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A DISSERTATION

Submitted to the graduate faculty of The University of Alabama at Birmingham,
in partial fulfillment of the requirements for the degree of
Doctorate of Education

BIRMINGHAM, ALABAMA

2019

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2019

AN INVESTIGATION OF COURT DECISIONS RELATED TO EDUCATOR IMMORALITY

BRAD NEWTON

EDUCATIONAL LEADERSHIP

ABSTRACT

This document describes a qualitative, historical, document-based exploration of state and federal case law related to adverse employment actions taken against elementary and secondary educators for the cause of immorality. Historical documents, namely court decisions, were analyzed to identify patterns in the case law. The literature revealed an ever-changing legal standard for the moral behavior of educational professionals. Therefore, this study was initiated to provide continued analysis of court cases related to teacher immorality to deliver useful information and insight to school boards, school administrators, and educators in their professional roles.

Keywords: immorality, fitness to teach, nexus, teacher immorality.

DEDICATION

To Jenny, Ian, and Ezra for their unconditional support and endless inspiration

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The list of persons I am thankful for could not be contained on this page, but there are several who cannot go unmentioned. I am first thankful of God and my family and friends who have supported me spiritually and emotionally throughout all of the challenging times in my life. I wish to thank my parents for always believing in me and elevating confidence in myself. Also, Kay and Franchot who became voluntary parents to me and taught me the importance of higher education. To several of my earliest educators, Mike Heatherly, Brandon Payne, Jim Ball, Elizabeth Cain, and others, I would not be where I am without the foundation you built in me and your insistence that I pursue my potential. And to my more recent educators and committee members, I cannot thank you enough. To Dr. Keith Gurley, Dr. Gary Peters, and Dr. John Tarter for being a true encouragement and opening my eyes to new levels of thought. To Dr. Dave Dagley and Dr. George Theodore for inspiring my interest in this subject matter. To Dr. Tommy Bice, Dr. Vicki Butler, Dr. Loucrecia Collins, and Dr. Dee Dee Jones for being wonderful teachers who freely share your passion with your students. To Dr. Matt Fifolt for helping me achieve a more professional level of writing and the tedious hours you spent editing this document. Last, and certainly not least, I wish to thank Dr. Amy Dagley for tackling this process with me.

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CHAPTER I

INTRODUCTION TO THE STUDY

Since the creation of public education in the United States, the general public has expected teachers to practice extremely high standards of morality (DeMitchell, 2011; Fleming, Cooley, & McFadden-Wade, 2009; Shotwell, 2010). Meanwhile, the definition of moral and immoral behavior in our society has changed and shifted with each generation and the addition of various cultural norms. Even within American society, ethical and moral behavior is defined differently by varying demographic groups throughout the nation (Shapiro & Stefkovich, 2016). As a result, school boards and school administrators must work carefully and closely study the ever-changing field of case law when taking disciplinary action against teachers for immoral conduct.

In addition to the potential stumbling blocks listed above, the courts have created an extra layer of difficulty for school administrators by changing the legal test for proving immorality. The courts originally used the “moral exemplar” test to potentially justify adverse employment actions taken against teachers for immorality. Under that test, the school needed only to prove that the teacher participated in some behavior that violated some known community standard for morality. In more recent years, however, the courts have relied heavily on the “nexus” test which asks whether the behavior creates a negative impact on the school (Dagley, 2011). This newer test creates an additional risk for subjectivity and error on the part of the school administrator.

Because of the potential problems associated with proving immoral teacher behavior, school leaders should have a working knowledge of the types of behaviors the courts have considered worthy of disciplinary action. Furthermore, an effective leader should have the necessary information to adequately inform employees of expected and unacceptable behavior. For these reasons, this study seeks to provide information and guidance regarding teacher immorality to practicing administrators and educators in elementary and secondary education.

Purpose Statement

Parents and students deserve a school system where they feel confident that the children in attendance will be safe and treated appropriately by their teachers. Therefore, this study explored the literature and court cases pertaining to teacher immorality in K-12 public school settings with the goal of providing guidance to practicing administrators, educators, and school board members regarding how to handle inappropriate employee conduct. Ultimately, the research provides a practical and useful definition of educator immorality that might be used to identify, remediate, and terminate (when necessary) educators who exhibit immoral behavior.

Theoretical Base

This research is centered on the postpositivist approach, and is primarily concerned with understanding the facts, events, and problems surrounding the legal aspects of immoral teacher conduct. Very little attention is provided for what is “right” or “wrong.” Rather, the focus is on what has, or has not, occurred. Creswell (2013) described postpositivism as a scientific approach to research that “has the elements of being reductionistic, logical, empirical, cause-and-effect oriented, and deterministic based

on a priori theories” (p. 24). Likewise, this study seeks only to identify what *has* happened and not what should, or could, have happened. An historical approach is appropriate for understanding the sequence of events that has led to current case law and practices related to teacher immorality.

Research Questions

This study was designed to answer the following questions:

1. What were the issues in court cases involving adverse employment actions against certified K-12 public school employees for immoral conduct as delineated by state and federal courts?
2. What were the outcomes of court cases involving adverse employment actions against certified K-12 employees for immoral conduct as delineated by state and federal courts?
3. What were the legal trends in court cases involving adverse employment actions against certified K-12 employees for immoral conduct as delineated by state and federal courts?
4. What guidelines for school employees can be discovered from court cases involving adverse employment actions against certified K-12 employees for immoral conduct as delineated by state and federal courts?

Method

This study is a qualitative, historical, and document-based research study designed to illuminate patterns and implications revealed through statutes and court decisions. There is a focus on creating a framework to aid teachers, administrators, and school board members in assessing and addressing the behavior of teachers by identifying

common elements that lead to the dismissal, exoneration, or reinstatement of educators for reasons associated with immoral teacher conduct.

Documents included in the study consist of literature and court cases related to immoral, or allegedly immoral, teacher behavior. Court cases were drawn by key number from *West Education Law Digest*. A case brief method was used to make data analysis more manageable. The cases were then coded and analyzed to provide some context, or guidance, for education professionals.

The very nature of this study dictated the use of a qualitative approach. The primary source of data included documents related to court cases involving the morality, or moral turpitude, of teachers. Because the qualitative approach to research is often limited by researcher bias (Creswell, 2013), triangulation, repeated longitudinal data collection, and periodic advisement from local experts in the field were employed to reduce the effect of researcher bias.

Definition of Terms

The following key terms were utilized in the study. The definitions provided here may not be the most common definitions of the terms.

Adjudicate: “To resolve a dispute through the court system” (Statsky & Wernet, 1995, p. 449).

Appeal: “A proceeding undertaken to have a decision reconsidered by bringing it to a higher authority” (Garner, 2004, p. 105).

Appellant: “A party who appeals a lower court’s decision, usually seeking reversal of that decision” (Garner, 2004, p. 107).

Appellate Court: “A higher court that hears a case on appeal from a lower court” (Essex, 1999, p. 223).

Appellee: “The party against whom the appeal is taken and whose role is to respond to that appeal” (Garner, 2004, p. 108).

Breach: “Failure to execute a legal duty” (Essex, 1999, p. 223).

Brief: “A written statement setting out the legal contentions of a party in litigation, esp. on appeal; a document prepared by counsel as the basis for arguing the case, consisting of legal and factual arguments and the authorities in support of them” (Garner, 2004, p. 204).

Case law: “The collection of reported cases that form the body of law within a given jurisdiction” (Garner, 2004, p. 229).

Certiorari: “An extraordinary writ issued by an appellate court, at its discretion, directing a lower court to deliver the record in the case for review” (Garner, 2004, p. 241).

Circuit court: “A court usually having jurisdiction over several counties, districts, or states, and holding sessions in all those areas” (Black, 2004, p. 302).

Certificate: “The official document issued by the Alabama Department of Education to an applicant who has been deemed to meet all requirements for the issuance of the document” (<http://www.alabamaadministrativecode.state.al.us/docs/ed/290-3-2.pdf>).

Citation: “A reference to a legal precedent or authority, such as a case, statute, or treatise that either substantiates or contradicts a given position” (Garner, 2004, p. 260).

Concurring opinion: “A vote cast by a judge in favor of the judgment reached, often on grounds differing from those expressed in the opinion or opinions explaining the judgment” (Garner, 2004, p. 309).

Contract: “An agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law” (Garner, 2004, p. 341).

De facto: “Actual; existing in fact; having effect even though not formally or legally recognized” (Black, 2004, p. 352).

Defendant: “A person sued in a civil proceedings or accused in a criminal proceeding” (Garner, 2004, p. 450).

De novo: “Anew; afresh; a second time” (Black, 1990, p. 435).

Dismissal for cause: “A dismissal of a contract employee for a reason that the law or public policy has recognized as sufficient to warrant the employee’s removal” (Garner, 2004, p. 503).

Disposition: “A final settlement or determination” (Black, 2004, p. 398).

Dissenting opinion: “An opinion by one or more judges who disagree with the decision reached by the majority” (Garner, 2004, p. 1125).

Due process clause: The constitutional provision that prohibits the government from unfairly or arbitrarily depriving a person of life, liberty, or property. There are two Due Process Clauses in the U.S. Constitution, one in the 5th Amendment applying to federal government, and one in the 14th Amendment applying to the states (Garner, 2004, p. 539).

Evidence: “Something (including testimony, documents, and tangible objects) that tends to prove or disprove the existence of an alleged fact” (Garner, 2004, p. 595).

Fact: “Something that actually exists; an aspect of reality” (Garner, 2004, p. 628).

Federal Court: “A court having federal jurisdiction, including the U.S. Supreme Court, circuit court of appeals, district courts, bankruptcy courts, and tax courts” (Black, 2004, p. 304).

Holding: “A court’s determination of a matter of law pivotal to its decision; a principle drawn from a decision” (Garner, 2004, p. 749).

Immoral: “Contrary to moral standards” (Statsky & Wernet, 1995, p. 399).

Immorality: Conduct unbecoming; moral turpitude, gross misconduct; “course of conduct as offends the morals of the community and is a bad example to the youth whose ideals a teacher is supposed to foster and elevate” (Reutter, 1994, pg. 653).

Incompetency: “Disqualification, inability, or incapacity to fulfill necessary teaching duties” (Alabama Code 1975, 16-24-8).

Indecent exposure: “An offensive display of one’s body in public, esp. of the genitals” (Garner, 2004, p. 783).

In loco parentis: “Acting as a temporary guardian of a child” (Garner, 2004, p. 803).

Irremediable: An act that could not be corrected with instruction and supervision or if there is no reason to believe the act would be corrected with intervention strategies.

Issue: A disputed point or question to which both parties to action have narrowed their several allegations and upon which they are desirous of obtaining either decision of court on questions of law or of court or jury on question of fact (Black, 1990, p. 831).

Just cause: A legally sufficient reason. Good cause is often the burden placed on a litigant (usu. by court rule or order) to show why a request should be granted or an

action excused. The term is often used in employment-termination cases (Garner, 2004, p. 235).

Key fact: “A fact that is essential to the court’s holding. A fact that would have changed the holding if that fact had been different or had not been in the opinion” (Statsky & Wernet, 1995, p. 453).

Litigation: “The process of carrying on a lawsuit” (Black, 2004, p. 952).

Mandate: “An order from an appellate court directing a lower court to take a specified action” (Black, 2004, p. 980).

Misconduct: “A dereliction of duty, unlawful or improper behavior” (Black, 2004, p. 836).

Moral turpitude: “Conduct that is contrary to justice, honesty, or morality” (Garner, 2004, p. 1030).

Opinion: “A court’s written statement explaining its decision in a given case, including the statement of facts, points of law, and rationale” (Black, 2004, p. 922).

Neglect: “The omission of proper attention to a person or thing, whether inadvertent, negligent, or willful; the act or condition of disregarding” (Black, 2004, p. 871).

Nexus: “A connection or link, often a causal one” (Garner, 2004, p. 1070).

Per se: “Of, in, or by itself; standing along, without reference to additional facts” (Black, 2004, p. 1178).

Plaintiff: “The party who brings a civil suit in a court of law” (Garner, 2004, p. 1188).

Precedent: “A decided case that furnishes a basis for determining later cases involving similar facts or issues” (Garner, 2004, p. 1214).

Prima Facie: “At first view; a fact presumed to be true if not rebutted or proven untrue” (Essex, 1999, p. 225).

Principle: “A basic rule, law, or doctrine” (Garner, 2004, p. 1231).

Procedural due process: “The minimal requirements of notice and hearing guaranteed by the Due Process Clause of the 5th and 14th Amendments, esp. if the deprivation of a significant life, liberty, or property interest may occur” (Garner, 2004, p. 539).

Public schools: An elementary, middle, or high school established under state law, regulated by the local state authorities in the various political subdivisions, funded and maintained by public taxation, and open and free to all children of the particular district where the school is located (Garner, 2004, p. 1372).

Remand: “To send back to the court or tribunal from which it came for some further action” (Garner, 2004, p. 1319).

Respondent: “The party against whom an appeal is taken; the defendant” (Essex, 1999, p. 225).

Revocation: “The process of taking adverse action against a certificate, substitute teacher license, or other license” (Teacher Certification Professional Services, 2017).

State Court: “A court of the state judicial system, as opposed to a federal court” (Black, 2004, p. 306).

Statute: “A law passed by a legislative body” (Garner, 2004, p. 1448).

Substantive due process: “The doctrine that the Due Process Clause of the 5th and 14th Amendments require legislation to be fair and reasonable in content and to further a legitimate governmental objective” (Garner, 2004, p. 539).

Summary judgment: “A judgment rendered without a trial because there was no dispute between the parties on any of the material facts” (Statsky & Wernet, 1995, p. 456).

Teacher: Any certified professional employee of a public school district.

Tenure: “Status afforded to teacher or professor upon completion of trial period, thus protecting him or her from summary dismissal without sufficient cause. Tenure denotes relinquishment of the employer’s unfettered power to terminate the employee’s services” (Garner, 2004, p. 1509).

Termination of employment: “The complete severance of an employer-employee relationship” (Garner, 2004, p. 1511).

Unbecoming: “Not appropriate or suited to one’s appearance, status, character, etc.; unattractive, indecorous, etc.” (*Webster’s New World Dictionary*, 1984, p. 1543)

Unfit: “Unsuitable, not adapted, or qualified for a particular use of service” (Black, 2004, p. 1277).

Willful and Wanton Misconduct: Conduct committed with an intentional or reckless disregard for the safety of others, as by failing to exercise ordinary care to prevent a known danger or to discover a danger (Black, 2004, p. 1020).

Without Prejudice: Without loss of any rights; in a way that does not harm or cancel the legal rights or privileges of a party (Black, 2004, p. 1632).

Writ of Error: A writ issued by an appellate court directing a lower court to deliver the record in the case for review (Black, 2004, p. 1642).

Assumptions

1. The cases included in this research were located using West's Education Law Reporter System under the topic of schools.
2. The cases briefed and analyzed were those represented by the West Education Law System as being associated with immoral or criminal conduct.
3. It is assumed that each case was adjudicated in accordance with all applicable laws.
4. Case brief analysis was used as a method to create a more practical record for data analysis.

Delimitations and Limitations

Limitations.

1. This study was conducted by a practicing school administrator participating in an educational leadership program, not a legal expert or attorney.
2. The court cases presented in this study were identified using West Education Law Reporter which may be subject to editorial bias or contain errors.

Delimitations.

1. Case brief analysis was limited to immorality cases involving K-12 certified public school employees between the years of 1981 and 2017.

Significance

School administrators are charged with a staggering number of complex daily tasks (Kirtman & Fullan, 2016). Chief among them is the responsibility to provide a safe and comfortable learning environment for all students. In order to build confidence with stakeholders that safety and comfort is a primary concern, the school administrator must address immoral behavior directly and swiftly. However, to avoid costly litigation, it is imperative that administrators pursue appropriate corrective actions.

The findings of this study will be a resource to teachers, administrators, and school board members as they work to define, remediate, and terminate immoral teacher conduct. The analysis of judicial opinion involved in this research may generate a set of guidelines that can assist school administrators in understanding the components of due process, the tests used by the courts, and, at a minimum, whether there is suitable evidence to pursue an adverse employment action against a teacher. The results of this research might also be useful to educational leadership professors who are preparing graduate students for careers in school administration.

Organization of Chapters

This historical, document-based, qualitative research study is composed of five chapters. Chapter 1 serves as an introduction to the study and includes the problem statement, purpose, background, theoretical base, research questions, method, definition of terms, limitations and delimitations, and significance for the study. Chapter 2 includes a comprehensive review of literature related to immoral teacher behavior. Chapter 3 includes an explanation of the research design, methodology, and data analysis process used in the study. Chapter 4 includes a summary, interpretation, and analysis of all case

briefs. Finally, Chapter 5 addresses all research questions, summarizes the study, offers conclusions, and provides recommendations for future research.

Summary

This research seeks to answer questions related to the actions taken by school boards and school administrators against public elementary and secondary school employees for the cause of immorality. It is a document-based, qualitative study designed to provide a usable definition for immorality as it relates to certified K-12 public school employees and generate guidance to assist school administrators in the performance of their duties. By its very design, this study attempts to organize and interpret considerable amounts of literature and data. As is the case with most qualitative research, the most significant limitation for the study is the potential for researcher bias.

CHAPTER II

REVIEW OF LITERATURE

Unlike most professions, the specific causes and procedures by which an educator may be dismissed are established and guided by state law (Dagley, 2011; Dagley & Veir, 2002; DeMitchell, 2011; Fleming et al., 2009; Thomas, Cambron-McCabe, & McCarthy, 2009). Furthermore, school boards have been granted significant latitude, by statute and the courts, to determine whether a teacher is fit to teach. In fact, the courts, including the Supreme Court, have established that school boards not only have a right to determine the quality of education professionals in their district, but a duty to do so (Thomas et al., 2009). In a significant 1952 decision, *Adler v. Board of Education*, the United States Supreme Court stated:

A teacher works in a sensitive area in a schoolroom. There he shapes the attitude of young minds towards the society in which they live. In this, the state has a vital concern. It must preserve the integrity of the schools. That the school authorities have the right and duty to screen the officials, teachers, and employees as to their fitness to maintain the integrity of the schools as a part of ordered society, cannot be doubted. (as cited by Thomas et al., 2009, p. 393)

While this places great power with school boards in determining whether or not a teacher, or other educational professional employed by the board, should be dismissed, school officials should be aware that educators are entitled to due process and have several remedies available to protect them from unfair treatment (Thomas et al., 2009).

Thomas and colleagues (2009) wrote, “under certain circumstances restrictions on [teacher’s] freedoms are justified by overriding governmental interests” but “public educators do not shed their constitutional rights as a condition of public employment,” (p. 345). Therefore, school officials should not be arbitrary or capricious when making these decisions. According to Thomas et al. (2009), “Depending on employment status, judicial remedies for the violation of protected rights may include compensatory and punitive damages, reinstatement with back pay, and attorney’s fees” (p. 431).

Neusel (2012) noted, “Most people would agree that a school board has a substantial interest in guarding the school community from anything that would distract it from accomplishing its purpose of educating each child enrolled in its schools” (p. 855). One such distraction could be the actions of an unruly educator. However, taking action against an educator for immoral conduct is not a simple proposition. The courts have been somewhat inconsistent in immorality cases (Fischer, 1999). Although courts have upheld adverse employment actions against teachers, administrators, and other school employees for a variety of reasons, such as sexual misconduct, violating drug laws, using alcohol in school, fraud, falsifying records, theft, assault, and more, the outcomes of such cases must not be assumed (Dagley, 2011, Trebilcock, 2000).

One chief reason for this caution stems from the fact that “immoral conduct” is frequently not well-defined (Dagley, 2011; Fischer, 1999; Fleming et al., 2009; Fulmer, 2002; Neusel, 2012; Rich, 1986). Immorality is based largely on the community standards for appropriate behavior, which often varies from one community to another. This restricts the possibility of generating a definite list of behaviors the courts will deem immoral. Additionally, the court’s requirement that the employee’s behavior show some

negative impact on the school at which he or she works adds another element of interpretation. As such, school boards and administrators must work carefully when pursuing disciplinary action against educators for immoral conduct.

Historical Overview

Brief History of Morality in American Education. Early American schools were developed as a means of promoting the continuance of Protestant Christian beliefs (Hazlett, 2011; Laud, 1997; Shotwell, 2010; Spring, 2016). According to the experts, many early colonial schools were more interested in instilling strong moral values than transferring academic knowledge to their students. Shotwell (2010) argued, “The history of American schools is largely a history of a Protestant institution” (p. 37). Cubberley (1920) wrote that the purpose of mandatory schooling in the early to middle 1600s “was almost wholly religious” (p. 506). When referring to New England colonists, Spring (2016) wrote, “Many Anglo-Americans believed it was necessary to break the will of the child to assure obedience to, in ascending order, their mother, father, government, church, and God” (p. 7).

Although higher education was reserved for the higher classes, “a limited elementary training for the moral discipline of the common man” was extended to the children of most New England colonists” (Lauderdale, 2001, p. 265). The colonial leaders believed that the children of the rich should be educated on moral principles to better prepare them for higher education and church-state leadership. Meanwhile, the poor should receive schooling on the same moral concepts so that they might be more suitable, well-behaved servants.

Hazlett (2011) wrote, “Compulsory education in America arguably originated with Massachusetts’s legislative acts of 1642, 1647, and 1648” (p. 1). Best known among these, the Old Deluder Satan Law of 1647, required that “towns with populations of 50 must hire a reading and writing teacher, and those holding 100 requir[ed] a Latin Grammar School” (p. 1). As its title implies, the purpose of this law was to teach children to read so that they could access the Christian Bible and, as a result, become virtuous citizens. Stillwaggon (2012) noted that the Old Deluder Satan Act established both the religious focus of early American education and the ground work for publicly funding schools.

State Control of Education. The Tenth Amendment, ratified in 1791, stipulated that the states have control over all powers not delegated to, or protected by, the federal government (Thomas et al., 2009). The initial purpose of the Tenth Amendment was to settle fears that the federal government might seek to extend its powers beyond those granted by the Constitution. While state control over education was not necessarily the intent of the Tenth Amendment, it was a significant result. Thomas et al. (2009) wrote, “Since the United States Constitution does not authorize Congress to provide for education, the legal control of public education resides with the state as one of its sovereign powers” (p. 2).

After the establishment of a national government and the Federal Constitution, most states acknowledged that schools should be state institutions under the control of state governments (Cubberley, 1920). Of the 16 states representing the Union in 1800, seven addressed the state’s duty in the matter of education in their constitutions. Though the Federal Constitution made no direct provision for education, it did encourage its

inclusion as a state function. Ultimately, the idea that education should be a function of the states was commonly accepted by 1802. These efforts, along with related legislation, demonstrated the nation's desire for organized education.

Though these new state sponsored schools were not established to promote Christianity like the colonial schools, character and moral education remained part of the curriculum. Kohlberg and Hersh (1977) argued, despite the newly formed government's efforts to separate church and school, moral education found its way into public schools. The authors stated, "A moral education curriculum lurked beneath the surface in schools, hidden as it were from both educators and the public" (p. 54). This hidden curriculum stemmed from a need to keep order in the school and revealed a particular set of moral assumptions and values related to being respectful and obedient. Similarly, Lauderdale (2001) noted that formal education in America has always, intentionally or unintentionally, been involved with moral education.

Shift from Religious Purpose to the Common Good. By the beginning of the eighteenth century, new thoughts on freedom of worship and rising interest in trade and shipping challenged the religious focus of schools (Cubberley, 1920; Lauderdale, 2001). By 1750, there was a marked change in "the old religious fervor and intolerance, and the breaking-up of the old religious solidarity" (Cubberley, 1920, p. 519). Cubberley (1920) remarked, "New secular interests began to take the place of religion as the chief topic of thought and conversation, and secular books began to dispute the earlier predominance of the Bible" (p. 519). This led to the creation of more secular type schools, focused on practical studies like reading, writing, and arithmetic.

In addition to the new emphasis on subject matter, new teachings on morality began to take form (Lauderdale, 2001). Along with traditional moral principles such as honesty, piety, and obedience, new terms of political morality, such as patriotism, liberty, and tolerance were gradually introduced. Lauderdale (2001) said, “Though teaching Christian morality was still dominant in the schools, the fervor of this endeavor as represented in orthodoxy was diminished” (p. 266). In short, the intent of moral education had begun to shift; morality became more about “good citizenship and commitment to country” than strict adherence to Christian beliefs (p. 266).

Lauderdale (2001) wrote, “By the mid-nineteenth century, America was on the brink of the greatest educational revolution in the history of the Western world” (p. 266). At the core of this movement was a desire to provide elementary schools that were common to all students. The term common was intended to mean more than simply available to all, it was intended to indicate a unified focus; creating better citizens (Wraga, 1999). Baines and Foster (2006) said “The Common School Reformers of the 1850s envisioned schools that would serve as linchpins of the community...were to be tuition free and open to everyone” (p. 221). Lauderdale (2001) noted that by the end of the nineteenth century, “the public high school was established as part of that movement” (p. 266).

Bowles and Gintis (1976) explained that the period from 1890 to 1930 represents a “major turning point in the history of U.S. education” (p. 180). During that time, the number of children attending high school increased exponentially. Between 1890 and 1930, the percentage of seventeen-year-olds who were graduates increased from less than 4% to 29%. As evidenced above, the common school movement was successfully

extended to secondary education during the early twentieth century. This led to an increase in course offerings and enrollment, and “the purpose of the public high school in the US began to shift from a near-exclusive focus on preparation for college to increasing recognition of the imperative of education for life” (Wraga, 1999, p. 525).

Despite the success of the common school movement in increasing enrollment and expanding secondary education, a major issue remained: what to teach (Lauderdale, 2001). Many American citizens still desired religion-based education derived from the Bible, while others supported a purely secular school system. As a result, some education officials continued to support a sectarian focus, some pursued an entirely secular purpose, but many worked to find common ground and avoid controversy. In either case, moral education persisted in the schools. Essentially, all that really changed was the associated intent.

Current Trends. Shotwell (2010) wrote, “Major curriculum and student conduct battles were fought in the last century so that now, any hint of religion is regarded as suspicious in the public schools” (p. 37). However, even without the overt influence of religion, standards of moral conduct and mandated character education remain in the public school. Kohlberg and Hersh (1977) referred to the moral development of students at school as a matter of social utility. As stated by Luco (2014), “Morality is supposed to be a source of normative reasons as to why we should act, think, or feel one way rather than another” (p. 362). Therefore, character education and the insistence on adequate moral behavior should represent a significant social duty carried out by modern schools.

Nevertheless, there is considerable confusion and debate about which values and actions constitute strong moral conduct (Lauderdale, 2001). Currently, the common

school terminology is rarely used, but “common-school ideals still resonate with many of us today” (Baines & Foster, 2006, p. 222). However, the issue that plagued the common school movement at its inception, agreement upon what to teach, still hinders its progress today (Wraga, 1999). As a result, some American citizens, especially fundamentalist Christians, have returned to schooling their children at home or in faith-based schools (Hazlett, 2011). These choices are based largely on a desire to “provide religious and moral instruction believed lacking within public schools’ atmosphere and practices” (p. 4).

Morality

According to Luco (2014), morality has both a descriptive and a normative definition. The descriptive definition of morality “refers to a code of conduct actually endorsed by an individual or group” (p. 361). The normative definition refers to a code of conduct that has been established collectively by “all rational persons” (p. 361). Because, “different individuals and groups have endorsed different and incompatible codes of conduct,” an agreeable normative definition of morality seems unlikely (p. 361). As a result, a descriptive definition is more useful. This indicates that determining whether a behavior is moral or immoral is largely dependent upon the standards of the group, or community, in which the behavior occurs.

Kahn (1989) argued, “Presumably uncontroversial is the proposition that the moral-developmental literature abounds in controversy” (p. 1). This controversy arises from the variance that exists between groups and cultures regarding what constitutes moral behavior. Kahn (1989) said:

From some anthropological accounts, for instance, we learn that devout Hindus believe that it is immoral for a widow to eat fish two or three times a week, or for a menstruating woman to cook her family food (Shweder, Mahapatra, & Miller, 1987). Other accounts document that members of the Yanomamo tribe of Brazil at times practice infanticide, and that the women are "occasionally beaten, shot with barbed arrows, chopped with machetes or axes, and burned with firebrands" (Hatch, 1983, p. 91). Some theorists use such illustrative accounts of moral diversity to argue against the proposition, supported by others, that one culture can morally judge another culture. Some also use such accounts to argue against the proposition, again supported by others, that on important dimensions the moral life is similar across cultures. (p. 1)

Kahn (1989) acknowledged the difficulty of applying a universal definition of morality in an increasingly heterogeneous society. However, the author concluded that the process for determining the morality of a behavior should be "one that allows for an analysis of universal moral characteristics as well as allowing for the ways in which these characteristics play out in a particular culture at a particular point in time" (p. 9).

Webster's New World Dictionary (1966) defines morality as "the character of being in accord with the principles or standards of right conduct; right conduct; often, specifically, virtue in sexual conduct" (p. 956). In contrast, immorality is defined as "immoral behavior" (p. 727). Immoral is defined as "not in conformity with accepted principles of right and wrong behavior; contrary to the moral code of the community; wicked; especially, not in conformity with the accepted standards of proper sexual behavior; unchaste; lewd; licentious; obscene" (p. 727). Much like the descriptions

provided by Luco (2014) and Kahn (1989), Webster's (1966) definition of morality is highly dependent upon the standards of the community.

Morality in Schools. As noted in the previous sections, the intentions, beliefs, and infrastructure surrounding public education have changed significantly over the course of American history. However, the idea that teaching morality should be a function of the schools has not. Dewey (1909) wrote, "The moral responsibility of the school, and of those who conduct it, is to society" (p. 7). More recently, Lauderdale (2001) said, "Today, the multi-billion dollar enterprise of schooling has little in common with mid-nineteenth century schooling, except in the area of teaching morality" (p. 267). Kohlberg and Hersh (1977) wrote, "Whether we like it or not schooling is a moral enterprise" (p. 53). This gives rise to a question that has been repeatedly addressed by the courts: If teachers and other educational professionals are tasked with teaching morality, should they not also model moral behavior?

Legal Definition of Immorality

In order to conduct a legal discussion on immorality, it would be helpful to have a legal definition of the term. However, much like generating a general definition for morality, defining immorality has proven difficult. While it does seem clear that immorality has much to do with the standards and practices widely accepted by the community, much is left to interpretation and debate (DeMitchell, 2011). Fischer (1999) noted that "every state statute allowing for the termination of a teacher's contract has some provision relating to character" (p. 477). However, the terms often used in those statutes, such as "unfit to teach," "immorality," or "good cause," are extremely broad and

vague. As a result, teachers often challenge these state statutes, “claiming they are too vague to be constitutional” (p. 477).

Rich (1986) explained that “more diverse meanings of morality are found and what constitutes teacher immorality may vary according to the community or the court that hears the case” (p. 35). In 1989, Harris sought resolution to this issue when the author wrote and defended a dissertation which included a judicial definition of immorality (p. 156). However, Fischer pointed out the continued vagueness of the definition for immorality in 1999. In 2002, Fulmer wrote, “many questions arise when one approaches the subject of “morality,” or the absence of “morality,” or rather, “immorality” (p. 272). In 2012, Neusel stated, “the ambiguous statutory language presents teachers, school boards, and courts with an obvious dilemma: what conduct constitutes immoral conduct?” (p. 855).

Since three decades of scholars have been unable to provide a clear legal definition for immoral conduct, this section will not presume to supply one. It will, however, provide information on the components often provided to explain the rationale typically associated by scholars and practitioners in the field with teacher immorality. For the purpose of this research, these components include moral exemplar, *in loco parentis*, nexus, balancing parental concerns and student rights with teacher rights, and remediable offenses.

Teacher as moral exemplar. Mattingly (1975) explained, before the 1850s, “educational literature stressed the importance of a teacher’s moral character in producing desired changes among his students, but at no point did they explicate the full complexities of the learning process” (p. 62). These ideals led to strong perceptions about

the kind of moral character a teacher needed to possess. Though no solid verification seems to exist for their authenticity, the following list of rules circulated by the New Hampshire Historical Society website likely represents those set forth by early American schools:

Rules for Teachers — 1915

1. You will not marry during the term of your contract.
2. You are not to keep company with men.
3. You must be home between the hours of 8 PM and 6 AM unless at a school function.
4. You may not loiter downtown in any of the ice cream stores.
5. You may not travel beyond the city limits unless you have the permission of the chairman of the school board.
6. You may not ride in carriages or automobiles with any man except your father or brother.
7. You may not smoke cigarettes.
8. You may not dress in bright colors.
9. You may under no circumstances dye your hair.
10. You must wear at least 2 petticoats.
11. Your dresses may not be any shorter than 2 inches above the ankles.
12. To keep the classroom neat and clean you must sweep the floor once a day, scrub the floor with hot soapy water once a week, clean the blackboards once a day and start the fire at 7 AM to have the school warm by 8 AM when the scholars arrive.

Although the focus of American education has shifted many times over the years, especially regarding pedagogical concerns (Resnick, 2004), the expectation that teachers should exhibit strong moral character has not wavered (DeMitchell, 2011; Meese, 2015; Rumel, 2015; Shotwell, 2010). Resnick (2004) explained that during the first half of the twentieth century, American schools were focused on providing training for a recently industrialized society and assimilating millions of non-English speaking immigrants. During the second half of the twentieth century, schools began to focus on preparing students for higher education. However, the changes in the curriculum did not change moral expectations for the teacher.

In 1983, in *Dupree v. School Committee of Boston*, a Massachusetts's court stated that teachers have an "extensive and peculiar opportunity to impress [their] attitude and views" upon their students (as cited by Rumel, 2015, p. 739). Even now, in 2018 news stories are released virtually every day that pertain to the termination of teachers for immoral conduct. Meese (2015) said, "Thus, teaching is a curious profession. Communities feel very comfortable with telling teachers how to do their jobs and live their lives, and likely no other job occupies the minds of the American public as does teaching" (p. 133).

Teachers are expected to do more than just teach content, strategies, and concepts to children from 8:00 a.m. to 3:00 p.m., Monday through Friday. Fulmer (2002) noted "The law recognizes that a teacher's role is unique in our society. Teaching is not merely the rote, mechanical conveyance of factual information from one mind to another. Teaching also involves modeling, supporting, and cultivating moral character" (p. 276). The author continued, "Because of this unique role, teachers are intended by parents,

citizenry, and lawmakers alike to serve as good examples for their young charges” (p. 276).

While there has been some debate regarding whether or not key figures in sports, entertainment, or music have considerable influence over children, there is very little disagreement about the impact teachers have on children (Trebilcock, 2000). This comes largely from the significant amount of time that students spend with teachers. According to DeMitchell (2011), “On average a student will spend at least six plus hours a day for 180 days a year for thirteen years in school” with teachers (p. 337). For this reason, and others, DeMitchell claimed “No other professional activity outside of teaching has such extended control and influence over minors (p. 337). Even Shotwell (2010), who argued against higher moral standards for teachers than other professions said, “We require something more than pedagogical excellence from our public teachers, in part, because most people still feel that teachers should be role models who provide character education” (p. 53).

Meese (2015) used a hypothetical scenario to better explain the moral exemplar concept. In this scenario, Meese asked that the reader imagine he or she is a supervisor who employs an accountant. The accountant has proficiently performed all job duties for three years. Then, one day, it is revealed that the accountant frequently posted ads on Craigslist including requests for casual sex, with explicit language and nude photos. Meese then asked the reader to consider whether he or she would fire the accountant considering that this behavior had no negative effect on the accountant’s job performance. Next, Meese asked the readers to consider the exact same scenario, but replace the accountant with the dean of students at a school in which the reader’s child

was enrolled as an eighth grade student. The second scenario is likely to elicit a different response than the first scenario. This is due to the fact that educators are held to a higher standard than employees of most other professions because they have some special authority over, or relationship to, children.

In Loco Parentis. When a person is described as being *in loco parentis*, this means that he or she has some authority to act in place of the child's parents (Rumel, 2015). One reason the teaching profession is held to a higher standard of conduct than other professions is because teachers stand *in loco parentis* (DeMitchell, 2011); they have a responsibility and duty to protect students from harm (Fleming et al., 2009). Rumel (2013) argued that this is a compelling reason that the public cannot be excluded from the public school. The argument here is based on the idea that if teachers have the authority to act in place of the parents, the parents should have the right to have high expectations for the teacher. Furthermore, if that duty includes protecting the student from harm, it would be reasonable to assume that no harm would be purposefully inflicted by the teacher.

Shift from the Moral Exemplar Standard to the Nexus Standard. In 1885, in *Tingley v. Vaughn*, the Illinois court wrote "If suspicion of vice or immorality be once entertained against a teacher, his[/her] influence for good is gone. The parents become distrustful, the pupils contemptuous and the school discipline essential to success is at an end" (DeMitchell, 2011, p. 327). This early court decision used the "moral exemplar" test to potentially justify adverse employment actions taken against a teacher for immorality. Under this test, the school needed only to prove that the teacher participated in some behavior that violated a known community standard for morality. In more recent years,

however, the courts have relied heavily on the “nexus” test, which asks whether the behavior created some negative impact on the school (Dagley, 2011; Miller, 1997; Rumel, 2015; Trebilcock, 2000). The court created the nexus test in *Morrison v. State Board of Education* (1969) when it recognized that teachers have a right to private lives outside of school and the alleged immoral conduct must be linked to the teacher’s classroom performance before adverse employment actions can be taken (Zirkel, 2011). This case marked a significant change for future cases.

Therefore, much of the contention that exists in the dismissal of public school teachers arises from an attempt to balance the teacher’s right to privacy with the public’s right to insist that teachers with acceptable character teach their children. These two stances can be further explained through an examination of a “publication argument” between Shotwell (2010) and DeMitchell (2011). In the *Journal of Law & Education*, Shotwell presented the nexus concept as a minimal requirement for teacher immorality cases while DeMitchell, in a later edition of the same journal, offered a counterpoint heavily supporting the moral exemplar standard.

Shotwell (2010) argued that Christian standards of moral conduct have excessive control over the private lives of public school teachers because the earliest American schools were created, in most part, to teach and reinforce Protestant Christian values. Further, while various court decisions have removed much of the traces of that religious origin from modern schools, a “continued insistence on rigid moral standards for teachers” remains (p. 39). In conclusion, Shotwell explained, “simply because teachers hold a position of trust, does not mean their private morality should be subjected to closer scrutiny than other members of the community” (p. 73).

In contrast, DeMitchell (2011) argued that early American schooling was largely informal and enjoyed very little control from the central government. The author stated, “The schools were considered extensions of the community, bureaucratic, and lacking a professional core of teachers” (p. 331). DeMitchell maintained that the need for teachers to be exemplars in the community was not derived entirely from the Judeo-Christian principles of early schooling, but also from the significance of being employed in the “positions of *in loco parentis* and/or function in ‘custodial and tutelary’ roles” (p. 329). The author further concluded that removing expectations of teacher behavior would compromise the parent’s right to “criticize a teacher” and “have a qualified immunity to lodge complaints about teachers to the proper educational authorities” (p. 338).

While a number of arguments might be made for either the moral exemplar test or the nexus test, the courts have included the nexus test, both throughout the states and nationally. The court’s inclusion of the nexus test has resulted in a three prong explanation of immoral teacher behavior. Dagley (2011) explained that to take negative action against an employee for immorality the “school must prove (1) that the behavior violates community standards for a school employee in that community; (2) that the employee did the behavior; and (3) that the employee’s behavior had a negative impact on the school” (p. 12). Under the moral exemplar test, only the first two prongs needed to be shown. The inclusion of the nexus test added the third element. It is highly likely that all three prongs would need to be proven in order to defend an adverse employment action against a teacher for immorality.

Balancing Parental Concerns, Student Rights, and Teacher Rights. The nexus test arose from the need to protect the rights of teachers while addressing legitimate

parental concerns and student safety. DeMitchell (2011) stated, “Parents entrust their children to teachers through compulsory education laws for extended periods of time” (p. 337). The author further argued that because of this enormous responsibility, “parents and the community have a legitimate concern about the qualifications and actions of those individuals the school district places in positions of power and trust over their children” (p. 337). Furthermore, DeMitchell explained that this relationship leads to a parent’s right “to criticize a teacher” and “have a qualified immunity to lodge complaints about teachers to the proper educational authorities” (p. 338). The author goes on to say that the parent’s “right to complain without the possibility of an appropriate remedy is an anemic right” (p. 338). In short, if there can be no consequence for immoral teacher behavior, the parent loses their right to protect their children from immoral teachers.

Horner (1995) identified a number of rights that should be afforded to students, such as the right to be free from sexual abuse, the right to bodily integrity, and the right to be free from discrimination. While the rights of students may be somewhat limited in the school setting, they maintain a large portion of their rights at school; especially their right to be free from harm caused by the school setting or school personnel (Rumel, 2013). Furthermore, the leniency provided to school districts in limiting the rights of students has only been to fulfill the need for keeping the school building safe and orderly, not to support the maltreatment of students.

However, the rights of educators are not eliminated in favor of student safety and the comfort level of parents. Fulmer (2002) wrote, “Teachers are naturally reluctant to grant school authorities an unlimited license to police their private conduct that occurs away from school” (p. 280). In situations that occur away from school, have no

connection to students, and have nothing to do with being a teacher, “teachers have raised claims based on guarantees afforded by the Constitution, such as the right to privacy, freedom of speech, and freedom of association” (p. 280). Fulmer (2002) explained that due process under the law requires a rational basis for depriving a person of life, liberty, or property. This gives rise to the nexus concept that was briefly explained earlier. “As such, before dismissing a teacher for ‘immorality’ based on conduct occurring outside the classroom, a majority of jurisdictions will require that a ‘nexus’ be shown between the conduct in question and the teacher’s job” (p. 283).

Though teachers are considered public figures to some extent, they do have private lives. As a result, teachers are afforded a degree of privacy and due process rights (Shotwell, 2010). Shotwell (2010) argued these rights, as they apply in teacher immorality cases, are based largely on *Morrison v. State Board of Education* (1969) in which a veteran teacher was asked to resign because of his sexual orientation. In this case, the court reinstated the teacher and began to create some distinction between the private and public lives of teachers. Decisions that took place prior to *Morrison* depended largely on the nature of the behavior with little or no regard to the effect it had on the teacher professionally. However, in *Morrison*, “The court acknowledged that investigation and dismissal for private conduct, considered by some to be immoral, could result in an unlawful invasion of a teacher’s privacy” (Shotwell, 2010, p. 56). The court also recognized that the vagueness of the term “immoral” represented a violation of due process rights.

Although the definition of nexus varies to some extent between jurisdictions, the general idea is that the conduct in question must have some impact on the teacher’s

ability to teach (Fulmer, 2002). Furthermore, some courts require a rational nexus, a sufficient nexus, or even a substantial nexus. But, “regardless of the degree of nexus, most courts say that the outside conduct must relate to the teacher’s fitness to teach” (p. 285). The *Morrison* decision provided some guidance in determining whether a teacher’s behavior impeded his or her fitness to teach. Although the list was not exhaustive, it provided some considerations for school administrators (Shotwell, 2010; Trebilcock, 2000).

1. The likelihood that the conduct may have adversely affected students or fellow teachers,
2. The degree of such adversity anticipated,
3. The proximity or remoteness in time of the conduct,
4. The type of teaching certificate held by the party involved,
5. The extenuating or aggravating circumstances, if any, surrounding the conduct,
6. The praiseworthiness or blameworthiness of the motives resulting in the conduct,
7. The likelihood of the recurrence of the questioned conduct, and
8. The extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers.

Remediable offenses. Since the early 1990s, more and more cases have been overturned on the grounds that the cause for the dismissal of the educator was remediable (Dagley & Veir, 2002). This concept arose from the court’s interpretation of various state

statutes, regulations, or local school policies. In short, the courts in many states have determined that certain behaviors require a period of remediation prior to a school board taking action against the employee. For example, incompetency is always considered remediable. In situations where the behavior is remediable, school officials must employ corrective steps to eliminate the problem behavior prior to disciplinary action.

Dagley and Veir (2002) wrote, “Prescriptive school reform legislation has made it more difficult to terminate problem schoolteachers by the addition of a duty to remediate prior to beginning termination proceedings” (p. 139). That said, many courts have supported the idea that immoral behavior is not remediable (Dagley & Veir, 2002; Umpstead, Brady, Lugg, Klinker, & Thompson, 2013). Dagley, D., and Dagley, A. (2011) wrote, “One observation is uniform across jurisdictions and across fact patterns: behaviors that are considered immoral are not remediable” (p. 3). For example, “a California court found a teacher’s continued, repeated use of corporal punishment to be not remediable” (Dagley & Veir, 2002, p. 129).

Discussion of Causes for Teacher Dismissal Related to Immorality

Because of the vague definition of immorality, a vast array of behaviors have been investigated as part of this line of litigation. To list them all would be beyond the scope of this investigation. Therefore, for the purpose of this section, only the behaviors that are most repetitive and prominent in the literature are discussed. Since immorality is strongly connected to the public’s perception of acceptable behavior which has evolved as society has changed, each section includes significant attention to the changes that have been observed due to the passage of time and changes in societal expectations of moral conduct. Because this study was designed to investigate current legal trends

regarding teacher immorality, the discussion of largely bygone statutes, beliefs, assumptions, and implications has been limited solely to the purpose of providing historical context. These sections are intentionally arranged alphabetically, as there was no purpose, or effort, to categorize the concepts in any particular way.

The literature often uses the term teacher, but the examples provided by the authors include various education professionals indicating that the term is often used interchangeably with state certified employees. Though the term teacher is frequently used, it is routinely implied that the same principles can be applied to all state certified educational personnel. However, the focus of this research is placed on teachers and other certified personnel. While it is likely many of the concepts discussed here could be applied to non-certified support staff, it should not be assumed.

Criminal activity. The dismissal of teachers for criminal activity is well-established throughout the history of American education (Fischer, 1999; Fleming et al., 2009; Shotwell, 2010; Trebilcock, 2000). However, like other forms of immoral conduct, the *Morrison v. State Board of Education* decision caused a dramatic shift in the way the courts approach teacher dismissal cases involving teacher criminal behavior (Trebilcock, 2000). “School boards now possess the burden of demonstrating a “rational nexus” between the conduct and the duties of a teacher” (p. 453). Since *Morrison*, the need to demonstrate a nexus between the behavior and fitness to teach has complicated the process of disciplining teachers for immoral behavior, even when they have been convicted of a crime.

Determining whether the behavior will result in a negative impact upon teaching ability can often be influenced by whether the conduct occurred on, or off, campus.

(Miller, 1997). If the behavior occurred off campus, the courts may struggle to determine whether a nexus exists between the conduct and the teacher's ability to teach. However, a nexus will more likely be found when the behavior occurred on campus, and for this reason, "Most employers in the United States...readily recognize that a public employee's criminal activity on the job is cause for termination" (Shivers, 2004, p. 622).

Criminal activity including, but not limited to, crimes involving dishonesty, drugs, weapons, assault, etc. represents a large portion of teacher dismissal cases. (Dagley, 2011; Fleming et al., 2009; Stuart, 2008; Trebilcock, 2000). The dismissal of teachers for felony convictions are often upheld (Trebilcock, 2000). "However, once again, this not a universal rule; all factors must be considered" (Trebilcock, 2000, p. 457). The courts will consider the teacher's prior history of criminal activity, the likelihood that the behavior will be repeated, and whether there will be any effect on his or her teaching ability. For example, a Delaware court upheld the dismissal of a teacher who plead guilty to theft and aggravated assault with a gun, despite the fact he had no prior history of criminal behavior and was not deemed likely to repeat the behavior. The court reasoned that the amount of attention the case received was likely to affect his teaching ability (Trebilcock, 2000).

While the vagueness of immorality has been discussed at length, criminal convictions are typically defined as such by the courts. For example, one judge stated, "I don't know what better evidence there could be of immorality than a series of criminal convictions" (Trebilcock, 2000, p. 460). Another court noted, "there is at least a presumption that the felonious conduct has a sufficient relationship or nexus to [the teacher's] fitness to teach to warrant action" (Fischer, 1999, pp. 477-478).

Furthermore, those states that have attempted to better define immorality have included terms such as, “conviction of a felony” and “crimes involving moral turpitude” in their definitions (Fleming et al., 2009). However, like many other sections in this document, there are exceptions. For example, the court reasoned in *Hoagland v. Mount Vernon School Dist., No. 320, Skagit County* that being convicted of a felony does not necessarily affect the teacher’s fitness to teach. The court ruled that being convicted of buying a stolen motorcycle does not “materially and substantially” affect classroom performance (Trebilcock, 2000, p. 458).

Dishonesty. Much of the literature surrounding teacher immorality focuses on sexual and criminal behavior, however, courts and arbitrators have often included lesser offenses under the umbrella of immorality (Dagley, 2011). It may come as no surprise that dishonesty is included in this list of potentially immoral behaviors since honesty represents a universal value for most belief systems and ethical frameworks (Gündüz, 2016). However, some hesitation might arise when attempting to determine whether dishonest practices meet the nexus requirement when criminal behaviors sometimes do not. The courts have been clear that dishonesty can meet the nexus requirement. For example, the termination of a teacher was upheld in *Barrett v. Charleston County School District* when the court found that dishonesty in handling a school account was sufficient evidence that a teacher was unfit to teach (Jefferson Law Book Company, 2002). The courts have reached similar conclusions in cases where teachers have embezzled funds, backdated student records to comply with laws, or even falsified free and reduced lunch applications (Dagley, 2011).

In a more extreme example, 11 Georgia teachers were convicted of racketeering charges in April 2015, for their involvement in changing students' answers on standardized tests so as to increase their scores (Meese, 2015). In addition to their dismissal and revocation of their teaching licenses, these teachers faced severe criminal charges. “By imposing an eleven-year sentence, the presiding judge determined that cheating on an exam was quantifiably worse than involuntary manslaughter, which carries a maximum ten-year prison sentence in Georgia” (Meese, 2015, p. 133). The harsh treatment of these teachers speaks at full volume to the value applied to honest teacher conduct, “the heightened expectations of teachers and the comfort with which the community exercises control over teachers” (Meese, 2015, p. 133).

Drugs and alcohol. The perceptions associated with the use of drugs or alcohol by teachers has transformed over the years. For example, DeMitchell (2009) described how the Supreme Court of Pennsylvania upheld the firing of a teacher from her teaching position in 1939 because the school board learned that she had occasionally taken a drink of beer, shook dice with customers, and showed customers how to play pinball while working a summer job. In contrast, Trebilcock (2000) presented a 1984 case in which a teacher was reinstated by the court after he was dismissed for being arrested for misdemeanor possession of marijuana. Additional variance in these cases exist based upon the severity of the offense, amount of notoriety of the event, and the professional impact of the conduct (Trebilcock, 2000).

Typically, the courts will apply the nexus concept and seek to find whether the action has had any negative impact on the teacher's ability to teach. In one example, a California court upheld the termination of a teacher who had been fired after being

arrested and acquitted on drug charges. The teacher admitted during his trial testimony he had previously smoked marijuana, which led to a negative community response and then later to his dismissal. The court upheld the termination because the community response indicated an impairment of his fitness to teach in the district (Fischer, 1999).

Similarly, the dean of students at a Staten Island school plead guilty to attempted criminal possession of a controlled substance. In exchange for participating in a rehabilitation program, no felony charges were brought against him. However, the school board dismissed him. The hearing officer held that the dean should be reinstated when he successfully completed the drug treatment program. The school district appealed the hearing officer's decision and the appeals court agreed with the school district. The court's decision was based largely on the fact that the dean was responsible for discouraging drug use among students and enforcing rules that discouraged drug use. The court displayed little confidence that the dean could properly enforce rules he, himself, had broken (DeMitchell, 2009).

The case law is similarly mixed when it comes to alcohol use. A court in California supported the revocation of a teacher's teaching certificate after six convictions involving alcohol use (Trebilcock, 2000). Conversely, a Montana court overturned the dismissal of a teacher terminated after his third Driving Under the Influence conviction. The California court reasoned that a series of criminal convictions constituted immorality while the Montana court ruled that three convictions did not automatically represent immorality and insisted that a nexus must be established (Trebilcock, 2000). However, as with the drug cases mentioned above, it is most likely that the courts will require the establishment of nexus in these cases.

Improper discipline. Thomas et al. (2009) wrote, “In 1971, only one state prohibited corporal punishment; today, more than half proscribe its use” (p. 240). Many states are banning its use either by law or state regulation. In states where corporal punishment is still permitted, the reasonableness of the teacher’s actions is typically assessed by “the child’s age, maturity, and past behavior; the nature of the offense, the instrument used, any evidence of lasting harm to the child; and the motivation of person inflicting the punishment” (Thomas et al., 2009, p. 240).

Although the Supreme Court has ruled that corporal punishment in schools is not prohibited by the Constitution, teachers should be aware that its use could be in conflict with state statutes, state policy, or local school board policy (Thomas et al., 2009). Furthermore, teachers should note that “improper administration can result in dismissal, monetary damages, and even imprisonment” (Thomas et al., 2009, p. 243). Corporal punishment will be considered excessive when the discipline is deemed “unreasonable” or is “shocking to the conscience” (Thomas et al., 2009, p. 241). For example, the Tenth Circuit found that holding a 9-year-old girl upside down and paddling her with a split paddle was excessive. Likewise, the court found in *Neal v. Fulton County Board of Education* that a coach “knocking a football player’s eye out of socket with a weight lock” was shocking to the conscience (Thomas et al., 2009, p. 242).

When deciding whether to uphold the termination of a teacher for excessive discipline, the courts will seek to know whether there is significant damage to the student, if the teacher’s behavior is remediable, and if a nexus exists (Thurston, 1990). In one example, a teacher was dismissed for placing a student in isolation in a closet, paddling him with a yardstick, forcing him to lower his blue jeans in front of the class and

administering three additional swats with the yardstick, and then holding him briefly after school for continually interrupting class. The court found that because the teacher had only demonstrated this type of conduct once, and had positive motives during her actions, her behavior was remediable. Similarly, an Illinois appeals court determined that the physical discipline of a student was remediable because the student only missed one day of school despite the fact the student suffered a broken rib and contusions.

School administrators must be careful when disciplining teachers for their actions in this area as the courts have been somewhat inconsistent in their application (Dagley & Veir, 2002). As a result of this inconsistency of application, school officials should be acutely aware of the vague definition of immorality, the state and local policies regarding discipline, and the state and local requirements for teacher remediation when making decisions in this area.

Loyalty oaths and moral clauses. During the early twentieth century, fear of communism and the growth of communist organizations led to the enactment of laws designed to deter people, particularly government employees, from participating in these communist groups (Otalvora, 2010). However, those laws often failed to respect the right to association and were overturned by the United States Supreme Court. For example, “In *Shelton v. Tucker*, the Court invalidated an Arkansas statute that compelled every teacher to file an annual affidavit listing every organization to which he or she belonged or had regularly contributed to within the preceding five years” (Otalvora, 2010, p. 1312). The court typically invalidated these statutes because they were overly vague, did not define permissible conduct, and could not distinguish the degree of membership of the defendants.

Though the courts typically have not supported statutes that require teachers to swear oaths regarding their past conduct or to renounce their beliefs, they have upheld “oaths that merely require the individual to swear support in the future to processes of government” (Otalvora, 2010, p. 1316). In *Dalack v. Village of Tequesta*, the court concluded that it was permissible to require a village councilman to “take an oath affirming that he would support, protect, and defend the U.S. Constitution and would protect the United States from its enemies” (p. 1316). In the case of teachers, these oaths typically include language like “I will promote respect for the flag and institutions of the United States” and “I will faithfully perform the duties of the position upon which I am about to enter” (Chin & Rao, 2003, p. 437).

While it may seem that litigation regarding loyalty oaths and laws designed to prevent association with communist groups is something long past, the potential for lawsuits in this area still exists. Chin and Rao (2003) noted “Academic loyalty oaths are thought of as a relic of the 1950s, but fourteen states require them of some or all professors and teachers by statute” (p. 431). Similarly, Otalvora (2010) explained that the influx of terrorism has led to new anti-terrorism laws that run the same risk as the old anti-communism laws of violating freedom of association rights guaranteed in the First Amendment.

Similarly, moral clauses for teachers are created through state statutes and “are occasionally created through contractual provisions where the teacher agrees to comply with prescribed moral standards” (Fleming et al., 2009, p. 101). Clearly, school systems hope to use these clauses to prevent immoral behavior and support an orderly school environment. However, care must be taken when drafting these clauses because “courts

will not uphold a morals clause that violates a teacher's constitutional rights, such as the rights to due process, privacy, freedom of speech, freedom of association, and equal protection" (Fleming et al., 2009, p. 102).

Marriage and pregnancy. "Despite female domination of the profession, society did not address sex discrimination in education until well into the Twentieth Century" (Stewart, 2003, p. 836). Stewart explained that even though moral standards began to become less stringent during the twentieth century, the "courts continued to uphold rulings that dismissed school teachers for various acts, such as social drinking, smoking, dancing, and even marriage" (p. 836). Shotwell (2010) wrote, "For instance, a typical early twentieth century teaching contract forbade female teachers from riding in cars with men who were not their relatives, secretly marrying, or falling in love" (p. 37). Furthermore, according to Stewart (2003), "Childbearing was considered unacceptable until late into the Twentieth Century" (p. 836).

In *Sullivan v. Meade Independent School District No. 101*, the court upheld the termination of a teacher because it became known she was living with a man outside of wedlock in the community (Rumel, 2015). A federal district court found in *Brown v. Bathke* that a teacher violated, and could not maintain, her position as a role model to her students when she became pregnant outside of marriage. According to DeMitchell (2009), "As late as 1985 a teacher was dismissed for going through a divorce" (p. 69).

Prior to the Civil Rights Act of 1964, which was passed to address gender inequality, teachers were often terminated, forced into resigning, or were pushed into pregnancy leaves that were much longer than necessary (Fisher, 2010). This was particularly true for unwed female teachers. However, in 1976, the Supreme Court found

that Title VII of the Civil Rights Act did not include pregnancy as a form of sex discrimination (Stewart, 2003). Therefore, Congress passed the Pregnancy Discrimination Act of 1978.

As a result, more recent litigation in this area supports the fact that the right to bear children, even out of wedlock, is constitutionally protected (Trebilcock, 2000). Moreover, “personal decisions in marriage, procreation, contraception, child rearing, and education” are all considered constitutionally protected privacy rights (Fleming et al., 2009). For example, in *Ponton v. Newport News Schools*, the judge ruled that the school’s offer to provide leave to an unwed pregnant teacher “without the guarantee that she would get her old position back” was not sufficient to fulfil the teacher’s constitutionally protected right to bear a child (Trebilcock, 2000, p. 455). Also, in *Scherburne v. School Board of Suwanne County*, the court found that the teacher’s cohabitation with a consenting adult was permissible because “the living arrangements were not known to the public until the board publicized them” (Trebilcock, 2000, p. 456).

Sexual misconduct with adults. Meese (2015) wrote, “Despite developing more permissive attitudes towards sex in recent years, our society is still remarkably preoccupied with the sex lives of teachers, arguably more so than any other profession” (p. 144). In fact, a simple internet search including keywords such as “teacher” or “teacher sex” will lead to an “uncountable number of news articles” (p. 144). Many of these news stories are related to relationships between teachers and students, but many outline potentially inappropriate relationships between teachers and other adults. As previously mentioned, sexual relationships between teachers and students are largely described as inappropriate, but “sexual relationships of a teacher with another adult

present more difficulties for courts than teacher/student relationships” (Trebilcock, 2000, p. 456).

“For the greater public, sexual activity is a constitutionally protected aspect of privacy” but “teachers' personal lives are frequently inspected by the greater public, which results in teachers regularly being denied the protections that are given to other citizens” (Meese, 2015, p. 142). Therefore, if the courts find there is a nexus between the private behavior of the teacher and the needs of the school, including the perception of immorality, the courts will likely uphold adverse employment actions against the teacher (Trebilcock, 2000).

For example, one court upheld the termination of an unmarried female teacher because it became known that she was living outside of wedlock with a man in the community (Rumel, 2015). The court reasoned that because the students and community were aware of the behavior, the teacher’s credibility and status as an exemplar had been blemished. In contrast, in *Scherburne v. School Board of Suwanne County*, the court found that the teacher’s cohabitation with a consenting adult was permissible because “the living arrangements were not known to the public until the board publicized them” (Trebilcock, 2000, p. 456). The court also implied that finding a nexus between the living arrangements of a teacher and their fitness to teach would be much less likely in larger communities.

Sexual misconduct with students. “The case of Mary Kay Letourneau captured national attention when she was convicted of second degree child rape for having sex with her sixth grade student, Vili Fualaau, when he was 12 years old” (Knoll, 2010, p. 372). Letourneau eventually had two children with, and also married, Fualaau after she

was released from prison. “High profile cases such as this have led to public outrage and inquiries into school credentialing procedures and termination practices for teachers” (Knoll, 2010, p. 372).

Mitchell (2010) noted “child sexual abuse is a growing epidemic” and sexual relations between teachers and students is a “growing national concern” (p. 101). As a result, “The topic of educator sexual misconduct has recently received increased scrutiny by news media as well as a variety of public bodies, most notably state legislatures” (Surface, Stader, & Armenta, 2014, p. 130). Despite the increased attention placed on teacher sexual misconduct, very little formal research has been conducted in this area (Knoll, 2010).

Knoll (2010) wrote that the profound effect teachers have on the lives of their students combined with the power teachers have over their students could lead to improper relationships; particularly when sex offenders use the teaching profession to target victims. There are two recognized types of abusers: those abusers who focus on students in middle and high school grades, and those who focus on children under the age of 13 (Surface et al, 2014). Sexual misconduct includes “a wide range of behaviors including, but not limited to, sexual innuendo; inappropriate touching; inappropriate text messaging; e-mail, or social media contact with a student; or sex with a student” (Knoll, 2010, p. 130). Additionally, “noncontact acts such as exhibitionism, exposure to pornography, and voyeurism” may be considered child sexual abuse (Mitchell, 2010, p. 102).

Knoll (2010) explained that most sex offenders, teachers or otherwise, utilize a set of grooming patterns to coax their victims into a sexual relationship. “‘Grooming’ is a

term used to describe the process by which sex offenders carefully initiate and maintain sexually abusive relationships with children” (Knoll, 2010, p. 374). Sexual offenders “groom victims by systematically separating them from family and peers...rely[ing] on the victim’s natural sexual curiosity or feed[ing] into a victim’s feelings of being unloved or unappreciated” (Knoll, 2010, p. 372). They then maintain the relationship secrecy, shame, and blame tactics.

Similarly, teacher offenders groom students by showing them special attention (Knoll, 2010). They often choose students who have strained relationships with their parents, are emotionally challenged, or socially challenged as these students are more likely to remain silent about the relationship. The teacher will offer rewards, support, attention, and experiences to build the relationship and then slowly introduce physical contact or other sexual behaviors. Therefore, when the courts analyze these cases, considerable attention will be given to prevalence of grooming strategies.

In a quantitative study of perceived attitudes toward teacher sexual offenders, Fromuth and Holt (2008) found that the age of the student and the sex of perpetrator greatly impacted the general public’s perception of sexual misconduct. “For example, although the scenario was designed to depict a clear case of teacher sexual misconduct (i.e., a teacher having oral sex with a student currently in his/her class), respondents made distinctions based on age in labeling the experience as teacher sexual misconduct” (p. 176). Similarly, female perpetrators receive a less negative perception than do male perpetrators. However, it seems that the courts do not discriminate in the same way. In fact, Fulmer (2002) referred to cases involving the termination of teachers for conduct involving students “The Easy Cases” and this conduct might be defined as “universal

core” conduct (p. 278). Furthermore, Fulmer argued that it makes no difference whether the conduct occurred at, or away from, school.

In *State of Missouri v. John C. Lizotte* (1995), Mr. Lizotte used his position as band director to befriend and develop a sexual relationship with a student from the time she was 13 until she was 16 (Mitchell, 2010). Their relationship included sexual activities both on and off campus and only ended when the student learned that Lizotte had a new girlfriend. Even after the student reported the relationship, the school district took no action and allowed Lizotte to take a new job in a new town. Soon, the new school district was notified of an inappropriate relationship with a student in its district and turned the band director over to the police. Lizotte ultimately faced 129 counts of deviant sexual assault and after pleading to 17 counts was sentenced to two 20-year terms (Mitchell, 2010).

Likewise, Fulmer (2002) reported several instances where the courts upheld the termination of teachers due to immoral conduct. In *Weissman v. Board of Education of Jefferson City School District No. R-1*, the court found that tickling and touching female students on a field trip was immoral. In *Gardner v. C on Professional Competence*, the court upheld the termination of a teacher for asking a student out and commenting that she had a “nice ass” on several occasions (p. 279). An Alaskan court upheld the dismissal of a teacher because he had a sexual relationship with a student at a school district in which he previously worked. In *Board of Trustees of the Compton Junior College District of Los Angeles County v. Stubblefield*, the court concluded that the termination of a teacher was justified when he was caught without pants in a car with a female student.

Sexual orientation. Despite the fact that being homosexual has never been illegal, the legal consequences imposed on gay and lesbian people were similar to the treatment of criminals for a large portion of U.S. history (Cain, 1993). In the 1950s, a senate subcommittee investigated the potential “security risks” of allowing homosexuals to hold governmental positions. The subcommittee concluded that homosexual persons were of weaker moral fiber and therefore more likely to be compromised. Additionally, the subcommittee assumed that homosexuals would be more susceptible to blackmail as they attempted to hide their behavior from public view. As a result of their investigation, the Senate recommended that all homosexuals be removed from their government positions, and in 1953 President Eisenhower issued an executive order for that purpose. However, as time passed and litigation increased, gay and lesbian people began to gain some protections from the courts (Cain, 1993).

Although public perception and court decisions have changed considerably regarding homosexuality, DeMitchell (2009) argued that gay, lesbian, bisexual, and transgendered (GLBT) teachers are held to different standards than other teachers. DeMitchell said the basis for this discrimination stems from school officials claiming that alternate sexual orientation does not allow the teacher to serve as a proper role model. This type of discrimination is typically challenged under the Fourteenth Amendment’s Equal Protection Clause. However, under the Equal Protection Clause, school administrators need only to show a rational reason to justify their actions. This minimal standard often favors school officials (DeMitchell, 2009).

In *Gaylord v. Tacoma School District No. 10*, three years after the *Morrison* decision in 1969, the Washington Supreme Court upheld the termination of James

Gaylord because he was homosexual (DeMitchell, 2009). Despite having taught in the school system for 12 years with no issues and favorable evaluations, the court reasoned that the public knowledge of Gaylord's sexual orientation would impair his teaching performance. Furthermore, the court referred to Gaylord's sexual orientation as choosing to participate in immoral behavior.

In 1988, a key outcome for these cases came in *Jantz v. Muci* when Jantz brought suit against a Wichita school system because a principal denied him a teaching position because he had homosexual tendencies (DeMitchell, 2009). Although Jantz was married and never claimed to be homosexual, he brought an equal protection claim in federal court. Though the Tenth Circuit Court of Appeals ultimately ruled in favor of the defendant school board by granting qualified immunity, the court did assert that decision making based on homosexuality alone could not withstand a rational basis review. Since that time, despite mixed outcomes throughout this line of litigation, it seems that discrimination on the basis of sexual orientation is slowly being deterred by the Equal Protection Clause, privacy rights under the Due Process Clause, and state or local laws.

Social media. While it is a relatively new development, social media has already become a noteworthy portion of teacher immorality literature. Meese (2015) explained that the rise of social media has created some challenging situations for teachers, principals, and other school officials. The pervasive use of social media has created an easily accessible platform for students and teachers to view the personal lives and behaviors of their teachers. This instant access to potentially personal information quickly leads to public judgement regarding the appropriateness of the teacher's behavior.

Furthermore, teachers sometimes aggravate the situation by posting racy photos or evidence of questionable behavior.

As a result, many schools across the country have introduced restrictive policies regarding the use of social media by teachers. Decker (2014) explained that there are two reasons that administrators and policy makers are interested in limiting teacher use of social media. The first is related to the concern that communication platforms like email, texting, and social networking simplifies the process of developing inappropriate teacher-student relationships. The second purpose is to minimize the chance that teachers will share controversial behaviors, opinions, or photos.

Many advocates for restrictive social media policies for teachers quote the simplicity of creating inappropriate relationships behind social media or text messaging as opposed to face-to-face interactions in public places (Decker, 2014). Di Marzo (2012) explained that high profile cases of child sexual abuse, such as the recent case of Pennsylvania State University football Coach Jerry Sandusky, have led state and school officials to scrutinize the connection of social media to cases of abuse. In short, many believe that social media makes it easier for teachers to engage students in inappropriate communications (Papandrea, 2012).

Other concerns include the publication of inappropriate pictures, behavior, or comments (Decker, 2014). In one example, a teacher created a post on Facebook that included a photograph of her student and encouraged her friends to make fun of her student's hairstyle. Other examples include teachers posting evidence of the use of drugs or alcohol. In some cases, teachers have made derogatory remarks about their students, coworkers, administrators, or school district. Some of these teachers had relied on

privacy settings and made efforts to disguise their identity while others made no such attempts.

While many state and school officials might have a legitimate interest in restricting teacher use of social media, di Marzo (2012) pointed out that doing so might run afoul of the First Amendment. The author wrote, “In addition to disadvantaging students in an electronic era,” these bans on social media “are overbroad and do not pass intermediate scrutiny” (p. 124). Similarly, Papandrea (2012) explained that restrictions on teachers’ use of social media likely impedes the teacher’s First Amendment rights for speech.

Other causes. In addition to the conduct mentioned in other sections of this document, teachers have been disciplined for a wide variety of other potentially immoral behaviors (Dagley, 2011; Fleming et al., 2009; Jefferson Law Book, 2002; Trebilcock, 2000). Like the behaviors previously discussed, the courts typically require that adverse employment actions take place only if a nexus exists between the teacher’s behavior and the interests of the school district. However, the courts have upheld teacher disciplinary action absent an explicit nexus when the conduct was considered severe or affected the teacher’s fitness to teach (Fleming et al., 2009).

In light of the wide variety of behaviors that might be termed immoral, Fischer (1999) questioned whether teachers are given appropriate notice of potentially immoral behaviors. The author argued that the vague definition for immorality might create some confusion regarding actual notice. Fischer further observed that many teacher immorality cases “appear to be based on tort principles like intent, foreseeability, and knowledge” (p. 480). The awareness that the courts are more likely to uphold terminations in cases where

there was intent, foreseeability, or knowledge that harm, or an adverse action, could result from the behavior could be very useful to teachers and school officials.

In many cases, teachers face disciplinary action when they act in inappropriate ways. However, similar action can be taken when teachers fail to act as they should (Rumel, 2013). These types of behaviors, often referred to as negligence or neglect of duty, are connected to a failure to protect students from harm. In most cases, in order for the court to find the teacher liable, there must be evidence that the teacher's actions were "willful and wanton" and those actions actually contributed to the student's injury. One example is failure to report suspected child abuse (Gallagher-MacKay, 2014). Other examples might include failure to provide adequate supervision or failure to protect student privacy (Boomer, Hartshorne, & Robertshaw, 1995). Dagley (2011) noted that some less malicious behaviors such as using vulgar language, name calling, not getting along with coworkers, and questionable teaching methods could also be offenses that reach the threshold for termination under the umbrella of immorality.

Summary

Since the founding of the earliest American schools, the public at large has demanded that public school teachers behave in accordance with the highest community expectations for moral behavior. The need for school systems to provide a safe learning environment that is free from harm or significant distraction is well established in public opinion and case law. As a result, the courts have granted significant latitude to school boards in controlling the conduct of teachers, which has led to a somewhat limited expectation of rights for teachers.

Despite the lack of a clear definition for immorality, the courts have upheld the discipline of teachers for a wide variety of behaviors. The courts have often acknowledged that the public view of what constitutes immoral conduct is different in each community and is ever changing with time. Therefore, no comprehensive list of immoral conduct is available. In 1969, the *Morrison* decision created the requirement that school officials must show a nexus between the behavior in question and the teacher's ability, or inability, to perform the various tasks associated with teaching.

In order to discipline teachers for immoral behavior, school officials should be prepared to prove that the teacher willfully participated in some type of behavior that is in clear violation of community standards for immorality and that the behavior negatively impacted the school in some way. Failure to do so could result in costly litigation, expensive remedies, and intense embarrassment for the school district. Therefore, school officials should be careful and well-informed regarding the rights of teachers, students, and parents when making decisions concerning the correction of teacher behavior.

CHAPTER III

METHODOLOGY

This study explored the state and federal case law regarding the dismissal of elementary and secondary public school employees for the cause of immorality. The study is a qualitative, document-based, legal-historical, multiple-case research project. Historical documents, in the form of state and federal court decisions, involving disciplinary action taken against teachers for immorality, were reviewed using qualitative research methods. Qualitative analysis was used to identify patterns, themes, and categories in the case law. These data were then synthesized to address the research questions.

Spilackova (2012) referred to historical research as “a specific type of scientific research work” and “one of the basic approaches of qualitative research” (p. 23). Historical research uses reliable sources or artifacts to articulate the meaning of past events to answer questions, make connections to the present, and even predict the future. As with other research methodologies, the quality of the data greatly impacts the trustworthiness of the results. As a result, the researcher must use caution when selecting data sources to be included in this type of study.

Merriam and Tisdell (2016) referred to documents as “a good source of data” and explained that documents can be “used in the same manner as data from interviews or observations” (p. 182). The authors wrote:

Documents are a good source of data for numerous reasons. To begin with, they may be the best source of data on a particular subject, better than observations or

interviews. Many documents are easily accessible and free and contain information that would take an investigator enormous time and effort to gather otherwise. (p. 182)

Similarly, Creswell (2013) acknowledged documents, such as public records, as a major source of data in qualitative research. If Merriam, Tisdell, and Creswell can be relied upon, and public records are an acceptable medium for explaining phenomenon, then accessing those records should provide answers to the research questions. Therefore, this study utilized the public records of state and federal court cases to explore the historical record of related litigation to answer the research questions.

Statsky and Wernet's (1995) case brief method was used in this study to convert the court opinions into a form useful for analysis. The outline of the case brief method is as follows:

1. Citation: Provide the full citation of the case being briefed.
2. Key Facts: State the facts that were important to the decision of the court.
3. Issues: Provide a specific reference to the rule of law being considered for each issue.
4. Holdings: State the court's answers to the issues, which can be as simple as a YES or NO response.
5. Reasoning: Provide an explanation of why the court decided the holdings for each issue.
6. Disposition: State the order and procedural consequence as a result of the court's holding.

Research Questions

The research questions addressed in this study are:

1. What were the issues in court cases involving adverse employment actions against K-12 public school teachers for immoral conduct as delineated by state and federal courts?
2. What were the outcomes of court cases involving adverse employment actions against K-12 teachers for immoral conduct as delineated by state and federal courts?
3. What were the legal trends in court cases involving adverse employment actions against K-12 teachers for immoral conduct as delineated by state and federal courts?
4. What guidelines for school employees can be discovered from court cases involving adverse employment actions against K-12 teachers for immoral conduct as delineated by state and federal courts?

Data Collection

The federal and state court cases that constituted the data for this study were accessed using West Publishing Company's National Reporting System. The key number system index supplied by West's National Reporter System was used to find relevant data. According to Dagley (2012), the key number index is a classification system that uses a numerical designator to categorize cases by specific legal concept. The key number system allows the researcher to access cases "containing particular points of law that can set precedence for subsequent decisions" (p. 65). Dagley continued, "Within the

digest index the key numbers work like an outline by detailing aspects of the law under each topic” (p. 65).

West’s Education Digest allows the researcher to begin with a broad category and narrow the focus to more specific concepts. This study focused on legal cases related to the dismissal of elementary and secondary education professionals for the cause of immorality. Therefore, West’s Education Digest was utilized to limit cases to those dealing specifically with personnel actions related to immorality within educational settings. Starting under the broad heading of “Education,” results were narrowed to cases involving “Public Primary and Secondary Teachers,” further narrowed to those involving “Teachers and Education Professionals,” and then limited to “Adverse Personnel Actions.” Under the subheading “Adverse Personnel Actions,” key number 578, “Immoral or Criminal Conduct in General,” was selected. This key number provided the list of cases analyzed in the study.

The literature review revealed that court decisions regarding teacher immorality changed dramatically after the *Morrison v. State Board of Education* decision in 1969. Prior to *Morrison*, adverse employment actions were taken against educators with very little controversy. Since *Morrison*, however, the need to show a nexus between the educator’s conduct and his or her fitness to teach has complicated the process of legally defining immorality. Since that time, several researchers have conducted studies similar to the current study in an effort to provide a working definition of immorality in education. The findings of those studies revealed that the definition of immorality in education is constantly changing. As a result, continued study of this topic is required to keep educators abreast of the most recent trends.

A search of the ProQuest database for dissertations and theses listed Cameron's work in 2009 as the last dissertation on this topic. Therefore, this study was primarily focused on more recent cases. The *West's Education Law Digest* provided a list of cases that were decided between 1981 and 2017. The data included court opinions from 107 cases related to educator immorality.

Data Analysis

Merriam and Tisdell (2016) noted, "A positivist orientation assumes that reality exists 'out there' and that it is observable, stable, and measurable" (p. 9). In order to draw conclusions from that reality, the researcher must collect and analyze pertinent data either inductively, or deductively (Miles, Huberman, & Saldaña, 2014). An inductive approach uses data to identify patterns and trends that illuminate a causal link between actions and outcomes which can be used to predict future outcomes. A deductive approach begins with a construct or theory by which the data will be operationalized and tested. Miles et al. (2014) described the deductive approach as "theory-first" and the inductive approach as "theory-later" (p. 238). Despite the differences in these approaches, the authors argued, "by the end of data gathering, both types of researchers are about at the same place...substantiating a cause-and-effect/influences-and-affects network" (p. 238). An inductive approach was utilized in this study.

Merriam and Tisdell (2016) described data as "nothing more than ordinary bits of information found in the environment" (p. 105). However, those data are not "out there, waiting collection" (p. 106). Rather, these data must be identified and evaluated. For this study, public records of state and federal court cases related to the research questions were collected. Each legal case selected for study was read for content and understanding

and briefed using the Statsky and Wernet (1995) case brief method. As recommended by Merriam and Tisdell (2016), once the documents for study are identified, the researcher will adopt a system for coding.

To begin, open coding was used in the reading of each case. Open coding was described by Merriam and Tisdell (2016) as a preliminary system of coding in which the researcher identifies any segment of data that may be potentially relevant for answering the research questions. Once open coding was completed a process of axial coding, or analytical coding, was used to group the open codes. Merriam and Tisdell (2016) described this process of grouping open codes as going beyond descriptive coding because the meaning is determined by reflection and interpretation.

The final grouping of codes was comprised of categories for analysis. The categories were then analyzed for emergent themes to produce discussion and implications as reported in Chapter 5. Study findings should answer the research questions, provide guidelines for school employees, and impart suggestions for further research.

Validity

Merriam and Tisdell (2016) explained that documents are a good source of data because they are easily accessible and more objective than other forms of qualitative data. However, documents are only as useful as the reliability of their source. Therefore, to ensure the authenticity and accuracy of data used in the study, all cases were identified using a highly reputable and trustworthy source, West's National Reporter System. Furthermore, because the qualitative approach to research is often limited by researcher

bias (Creswell, 2013), triangulation and periodic advisement from local experts in the field were employed to reduce the effect of researcher bias.

Summary

The design of this research was a document-based, qualitative study of court decisions related to educator immorality. Cases were obtained through the use of the reporter texts provided through West Education Law Digest. At the time the reporter was accessed, the text included only cases decided between 1981 and 2017. The resulting dataset included 107 cases. Cases were briefed and analyzed for issues, outcomes, and trends to provide insight into how school administrators might handle similar instances of misconduct in their own school settings. This analysis is presented in Chapter 4.

CHAPTER IV

DATA ANALYSIS

Although the focus of American education has shifted many times over the years, especially regarding pedagogical concerns (Resnick, 2004), the expectation that teachers should exhibit strong moral character has not wavered (DeMitchell, 2011; Meese, 2015; Rumel, 2015; Shotwell, 2010). Fulmer (2002) noted “The law recognizes that a teacher’s role is unique in our society. Teaching is not merely the rote, mechanical conveyance of factual information from one mind to another. Teaching also involves modeling, supporting, and cultivating moral character” (p. 276). As such, it comes as no surprise that matters related to the morality, or immorality, of education professionals has long been a matter addressed by our courts. However, since the definition of moral and immoral behavior in our society has changed and shifted with each generation and the addition of various cultural norms, it is advisable to regularly study the issues, outcomes, and trends present in court cases involving adverse employment actions against certified K-12 public school employees for immoral conduct.

The purpose of this study was to determine the issues, trends, and outcomes for court cases related to educator immorality. This chapter describes the data collected from the study of 107 state and federal court cases related to teacher immorality. The cases were drawn from *West’s Education Law Digest* using a key number that located court cases related to adverse employment actions against public school employees for immorality. The *Digest* provided 107 relevant cases, involving 112 employees that were

decided between 1981 and 2017. Each case was analyzed individually to identify key facts and concepts. Then, cases were compared for commonalities, or themes, that might provide sufficient answers to the research questions.

In order to reduce the information contained in the reported court opinions to a more manageable form, cases were briefed based on a briefing process described by Statsky and Wernet (1989). The case brief method used was as follows:

1. Citation: Provide the full citation of the case being briefed.
2. Key Facts: State the facts that were important to the decision of the court.
3. Issues: Provide a specific reference to the rule of law being considered for each issue.
4. Holdings: State the court's answers to the issues.
5. Reasoning: Provide an explanation of why the court decided the holdings for each issue.
6. Disposition: State the order and procedural consequence as a result of the court's holding.

As Dagley (2012) explained, "From the perspective of qualitative research, the case briefs are much like interview transcripts or ethnographer's field notes, and represent a rich source of data about the topic being studied" (pp. 70-71). Even in their abbreviated form, the case briefs are quite lengthy. Therefore, they are located in Appendix A for the reader's convenience.

After all cases were briefed, the resultant data were analyzed to reveal a wide variety of themes and codes. The cases were grouped and compared in numerous ways in an effort to identify the issues, outcomes, and trends as demanded by the research

questions. This chapter will present the data derived from the cases and their conjunctive impact will be discussed in Chapter 5.

Data Analysis

In order to answer the research questions, cases were analyzed by type of misconduct, key issues identified by the court, gender of employee, tenure status, the school level in which the employee worked (e.g., elementary), disciplinary action applied to the employee by the school, and the reasoning and decision of the court. The following overarching themes emerged: definitions of immorality, due process, sufficient or substantial evidence, discipline disproportionate to the misconduct, and misconduct type. Data were initially organized by misconduct type, sexual or nonsexual, early in the analysis process and then disaggregated from there.

Trends in Cases

This study included 107 cases related to immoral conduct that involved 112 employees. The cases were first analyzed for trends to provide general information about the dataset. Of the 112 employees in the study who were accused of immorality, 74 were male and 38 were female. Ninety-eight of the employees, or 87.5% of the population, were identified as holding tenure. Another five employees were identified as non-tenured, and the tenure status of one employee was not reported. Eight employees were identified as contract employees, five of whom were teachers (three males and two females). The remaining three contract employees were all males holding administrative positions: a principal, an associate superintendent, and a special education director. Of the 98 tenured employees, there were 91 teachers, four counselors, two career technical school directors, and one vice principal. Overall, 102 of the 112 employees were identified as teachers,

with 66 male (64.7%) and 36 (35.3%) female. This revealed the gender percentages of the study were not representative of the population for all school teachers.

The cases were further analyzed by the discipline action placed by the school district upon the employee with an emphasis on discipline resulting in employment termination, and whether or not the court upheld the disciplinary action. The disciplinary action of the school was upheld by the court upon 84 employees resulting in 74 terminations. The cases were further delineated in the analysis by categorizing each case as either involving sexual misconduct or nonsexual misconduct. Thirty-four cases, involving 35 employees, were identified as involving sexual misconduct. Of those cases, the disciplinary action of the school upon 26 employees was upheld by the courts, resulting in 23 terminations. Of the 35 employees accused of sexual misconduct, 28 were male. Of those 28 males, the courts upheld the discipline decision of the school against 24 employees, which included 22 male employees being terminated from employment. Overall, according to the data collected male employees accused of sexual misconduct outnumbered female employees four to one.

Seventy-three cases involving 77 employees engaged in non-sexual misconduct were identified. Of the 77 employees who engaged in non-sexual misconduct, the disciplinary action levied against 57 employees was upheld by the courts, resulting in 53 terminations. There were 46 male employees engaged in non-sexual misconduct, of which 33 employees found their discipline was upheld by the court and 31 of the males were terminated from their employment. See Table 1.

Table 1

Court Upheld Discipline Action of School and Termination of Employment, by Employee Gender

	Totals	Discipline Upheld		Termination	
		N	Percent	N	Percent
All Employees	112	84	75	78	69.6
Male	74	58	78.4	55	74.3
Female	38	26	68.4	23	60.5
Sexual Misconduct					
Male	28	24	85.7	22	78.6
Female	7	2	28.6	1	14.3
Non-sexual Misconduct					
Male	46	33	71.7	31	67.4
Female	31	24	77.4	22	71

All cases were further coded to identify if immorality trends could be found by school level. Of the 112 employees examined in the cases, 53 worked at the high school level, 10 worked at the middle school level, 23 worked at the elementary school level. Two employees worked at the district level, two were homebound teachers, and the level at which the employee worked was not reported for 22 employees. Of the 35 employees accused of sexual misconduct, 18 worked at the high school level, seven worked at the middle school level, seven worked at the elementary level and the school level at which the employee worked was not reported for three employees. Of the 77 employees accused of nonsexual misconduct, 35 worked at the high school level, three worked at the middle school level, 16 worked at the elementary school level, two worked at the district level, two were homebound teachers, and the level at which the employee worked was not reported for 19 employees. In sum, the majority of employees involved in the cases worked at the high school level.

In order to determine if trends existed geographically, the cases were analyzed both by state and by region. As shown in Table 2, all 107 cases originated from only 31 states. The states presenting the most cases were New York (21), Pennsylvania (11), Missouri (10), Illinois (8), and West Virginia (6). Therefore, 52% of all the cases included in this study originated in just five states. In fact, New York represented 19.6% of all cases. Those same five states also represent 68% of all female employees represented in the data. California, Missouri, New York, and West Virginia were the only states that reported more than one case involving sexual misconduct, and those four states presented 65% of all sexual misconduct cases. Although Pennsylvania reported the second highest number of cases at 11, 100% of those cases involved non-sexual misconduct.

Overall, the court upheld the disciplinary action imposed by the school board in 75% of all cases. Among states that reported three or more cases, Missouri presented the highest school district success rate at 90%. On the opposite end of the spectrum, Florida presented a 0% success rate for the school district. Other states reporting more than three cases yielded school district success rates more similar to the average: New York was at 76%, Pennsylvania was at 55%, Illinois was at 75%, and West Virginia was at 83%.

Although the cases included in the study were heard in state court, the cases were also analyzed by geographic region to determine if trends could be identified on a broader regional level. Using the structure of the federal court system, each state was grouped and analyzed based on the United States Circuit Court of Appeals jurisdiction. It was anticipated that grouping state courts under the umbrella of its federal circuit court might

allow trends to develop that could not be seen on a smaller state scale because of limited numbers of court cases.

Table 2

Statistics by State

State	Number of cases	Ruled for School	Ruled for Teacher	Number of Employees	Male	Female	Sexual	Non-sexual
AK	2	2	0	2	2	0	1	1
AR	1	1	0	1	0	1	0	1
AZ	2	2	0	2	2	0	1	1
CA	3	2	1	3	3	0	3	0
CO	2	2	0	2	0	2	0	2
CT	2	2	0	2	2	0	0	2
DE	2	2	0	2	2	0	1	1
FL	3	0	3	3	2	1	1	2
IA	1	1	0	1	0	1	0	1
IL	8	6	2	8	5	3	1	7
IN	1	1	0	1	0	1	0	1
KY	2	2	0	3	3	0	0	2
LA	2	2	0	2	2	0	0	2
MA	2	2	0	3	2	1	0	2
MI	2	2	0	2	2	0	0	2
MN	2	2	0	2	2	0	1	1
MO	10	9	1	10	7	3	5	5
MS	1	1	0	1	0	1	0	1
MT	2	2	0	2	2	0	1	1
NC	1	1	0	1	1	0	0	1
NE	1	1	0	1	1	0	0	1
NJ	2	2	0	2	2	0	0	2
NY	21	16	5	21	10	11	11	10
OH	4	1	3	4	3	1	1	3
OK	3	1	2	3	2	1	1	2
OR	2	2	0	2	1	1	1	1
PA	11	6	5	13	7	6	0	11
TN	2	1	1	2	1	1	1	1
TX	1	0	1	2	0	2	1	0
WA	6	5	1	6	6	0	3	3
WV	3	1	2	3	2	1	0	3
Totals	107	80	27	112	74	38	34	73

As shown in Table 3, the Second Circuit Court region presented the most cases at 23. It is important to note, however, that 21 of those cases originated in the state of New York. In contrast, the 17 cases out of the Ninth Circuit region represented cases from six

different states, the most of any region, but that circuit contains a total of nine states, which is also the most of any region.

Table 3

Reporting Analysis by Region

Region	Number of cases	Ruled for School	Ruled for Teacher	Number of Employees	Male	Female	Sexual	Non-sexual
1st Circuit	2	2	0	3	2	1	0	2
2nd Circuit	23	18	5	23	12	11	11	12
3rd Circuit	15	10	5	17	11	6	1	14
4th Circuit	4	2	2	4	1	1	0	4
5th Circuit	4	3	1	5	2	3	1	3
6th Circuit	10	6	4	11	9	2	2	8
7th Circuit	9	7	2	9	5	4	1	8
8th Circuit	15	14	1	15	10	5	6	9
9th Circuit	17	15	2	17	16	1	10	7
10th Circuit	5	3	2	5	2	3	1	4
11th Circuit	3	0	3	3	2	1	1	2
Totals	107	80	27	112	72	38	34	73

There were no sexual misconduct cases in either the First or Fourth Circuit regions, and the Ninth Circuit was the only region with more sexual misconduct cases than nonsexual misconduct cases. In the Ninth Circuit region, cases involving male employees outnumbered cases involving female employees 16 to 1. Interestingly, the Fifth Circuit was the only region where cases involving female employees outnumbered those involving male employees.

The courts ruled in favor of the school district in all cases in the First Circuit region, but there were only two cases in that region, both originating in Massachusetts. The courts in the Eighth Circuit region ruled in favor of the school district in 93% of cases, followed closely by the Ninth Circuit at 88% and the Second Circuit at 78%. The courts did not rule in favor of the school district in a single case presented in the Eleventh Circuit region, but that region only presented three cases, all originating in the state of

Florida. The only regions to include more than one employee in a case were the First, Third, Fifth, and Sixth Circuits.

The behavior in each case was categorized into one of two types of misconduct: sexual or non-sexual misconduct. Sexual misconduct cases involved a variety of allegations pertaining to misconduct with students and other heterogeneous situations with adults. Non-sexual misconduct cases involved such topics as alcohol and drugs, criminal activity, dishonesty, fraud, theft, profanity, and unprofessional conduct.

Issues in Cases

Sexual misconduct. Of the 107 cases reviewed in this study, 34 involved allegations of sexual misconduct. The cases were first grouped by whether the misconduct involved students or minors, or adults. Then, additional analysis within each grouping provided more specific details and categories of information. Finally, information about disciplinary actions supported by the courts was considered.

Employee sexual misconduct involving students or minors. Of the 34 cases identified as sexual misconduct, 26 cases involving 27 employees involved inappropriate sexual conduct between an employee and a student or minor. These cases were further disaggregated as those involving sexual relationships, romantic but non-physical relationships, inappropriate touching, or sexual comments.

Sexual relationships with students. As shown in Table 4, nine cases, involving 10 employees, were related to allegations of an employee engaging in a sexual relationship with a student or minor. Cases involving sexual contact with students were some of the most clear-cut cases included in the study. In eight of the nine cases involving teachers engaging in sexual acts with students, the disciplinary action of the school was upheld.

Table 4
Sexual Relationship with Student or Minor

Case	Misconduct Details
<i>Black v. New York City Dept. of Educ.</i> (2009).	Teacher engaged in sexual relationship with high school student.
<i>Hamm v. Poplar Bluff R-1 School District</i> (1997).	Probationary teacher had 14 y/o student in his darkened home during night hours.
<i>In re Binghamton City School District (Peacock)</i> (2007).	Tenured teacher engaged in inappropriate relationship with student.
<i>Lehto v. Board of Educ. of Caesar Rodney School Dist.</i> (2008).	Teacher engaged in a sexual relationship with 17 y/o former student.
<i>Peaster Independent School District v. Glodfelty</i> (2001).	Former student claimed two high school teachers engaged in sexual relationship with him while he was a high school student.
<i>Shipley v. Salem School District</i> (1983).	Teacher lost civil action involving the assault and battery of a child. Allegations included numerous instances of sexual abuse of the child.
<i>Toney v. Fairbanks North Star Borough School District, Board of Education</i> (1994).	Teacher engaged in a sexual relationship with a high school student, resulting in pregnancy, while previously working for a different school district.
<i>Welch v. Board of Educ. of Chandler Unified School Dist. No. 80 of Maricopa County</i> (1982).	Teacher engaged in romantic relationship with 17 y/o student that ultimately led to their marriage after the student was no longer a student at the school.
<i>Wright v. Mead School District No. 354</i> (1997).	Teacher engaged in sexual relationships with two different students while previously employed in another school district.

In *Hamm v. Poplar Bluff R-1 School District* (1997), a non-tenured teacher was terminated after he was found by police to have a 14 year old girl in his home around midnight. A private investigator employed by the girl's father alerted the police to her presence in the teacher's home. When the police arrived, the teacher lied about the girl's presence in his home. In *Lehto v. Board of Educ. of Caesar Rodney School Dist.* (2008), Lehto, an elementary art teacher, was terminated from employment after he became

involved in a sexual relationship with a 17 year old former student. The record indicated that Lehto had, on multiple occasions, kissed the student, touched and licked her breasts, and fondled her vagina. In *Welch v. Board of Educ. of Chandler Unified School Dist. No. 80 of Maricopa County* (1982), Welch, a teacher, was terminated after it was discovered he had developed a personal relationship with a 17 year old student. Despite approval of the relationship by the student's mother, the student's father did not approve and contacted the school principal to express his concerns. Welch was directed to avoid any inappropriate relationships with students. Later, the day after the student transferred to a different school in a different school district, the student and Welch were married.

Two cases originating in New York did not provide any background information, but held that that school employees engaging in sexual misconduct with students was proper grounds for disciplinary action. *In re Binghamton City School District (Peacock)* (2007) involved a grossly inappropriate relationship between a tenured teacher and a 16 year old female student. Although the court did not provide any additional background information in this case, it held that a two-year suspension was inadequate to satisfy public policy regarding protecting students. Similarly, in *Black v. New York City Dept. of Educ.* (2009), Black, a probationary physical education teacher, was terminated from employment for engaging in an inappropriate sexual relationship with a public high school student.

In both *Toney v. Fairbanks North Star Borough School District, Board of Education* (1994) and *Wright v. Mead School District No. 354* (1997), the courts found that the remoteness in time of offenses involving sexual relationships with students was irrelevant. Furthermore, the fact that such acts occurred at different place of employment

was also irrelevant. In *Toney*, a teacher was terminated because he engaged in sexual relationship with a 15 year old student in a separate school district and state, several years prior to his dismissal. Likewise, in *Wright*, a teacher was terminated because he engaged in a sexual relationship with two different high school aged students seven years prior, while working in a different school district.

Shipley v. Salem School District (1983) was a unique case because the child in question was not one of the employee's students and the entire fact set was unrelated to the teacher's professional duties. In *Shipley*, Shipley was a teacher for the Salem School District who was involved in a civil action related to allegations that he had assaulted and battered a 12 year old boy. The boy did not attend the school where Shipley taught and none of the events occurred at the school. In the civil action, the court ruled in favor of the child based on a finding that Shipley had touched the boy's genitals and forced the boy to touch Shipley's genitals on multiple occasions.

The only case where an employee was accused of having sex with a minor and the court did not uphold the school's disciplinary decision was *Peaster Independent School Dist. v. Glodfelty* (2001). In that case, a 19 year old former student accused two teachers of having a sexual relationship with him while he was a student. The school district never presented any evidence that the teachers had engaged in any inappropriate conduct with the student. Instead, the district attempted to dismiss the teachers based solely on the negative publicity caused by the allegations. The court ruled in favor of the teachers finding that negative publicity could not be cause for dismissal absent evidence that the teachers actually engaged in some type of misconduct.

Romantic, non-physical relationships with students. Two cases, involving two employees, were related to romantic, but non-physical relationships between an employee and a student. In *Andrews v. Independent School Dist. No. 57* (2000), Andrews, a special education teacher at Waller Junior High School, was accused of having a romantic relationship with a 17 year old high school student. The student was enrolled at the high school fed by Waller Junior High but was not one of Andrews's students. There was no evidence of a physical relationship, but the teacher had been previously warned to end all contact with the student by both the school system and the attorney of the parents. In *City School Dist. of City of New York v. McGraham* (2011), a 36 year old female high school teacher developed an improper relationship with a 15 year old male student. The relationship was described as romantic, but was not physical in nature. The relationship consisted mostly of personal electronic communication outside of school hours.

Inappropriate touching. As shown in Table 5, allegations of teachers inappropriately touching students in a sexual manner (apart from sexual relationships), were present in nine cases. Whether the conduct constituted immorality was a common concern addressed by the courts in these cases. Like other educator immorality cases included in this study, the sufficiency of evidence was also extremely important and often arose from individual testimony, physical evidence, and other potential sources. Witness testimony was of the utmost importance in these cases since the majority of these behaviors occurred either off-campus or outside the view of others. Additionally, the courts often noted whether a teacher's behavior made the student feel uncomfortable. This appeared to be helpful in determining whether physical contact between the teacher and student was simply that of a loving teacher, or something more threatening.

Table 5

Inappropriately Touching Students

Case	Misconduct Details
<i>Asch v. N.Y.C. Bd./Dep't of Educ.</i> (2013).	Tenured librarian squeezed high school students' shoulders, touched their hair, and ran his finger down their spines.
<i>Baltrip v. Norris</i> , 23 S.W.3d 336 (2000).	Tenured teacher hugged and attempted to kiss female student after student performed clean-up work at teacher's home construction site.
<i>Fadler v. Illinois State Bd. of Educ.</i> (1987).	Tenured elementary school teacher put his hand inside one female students' pants and squeezed the breast of another female student.
<i>Forte v. Mills</i> (1998).	Tenured physical education teacher repeatedly poked, nudged, and popped the bra straps of female students after warnings to avoid physical contact with students.
<i>Governing Board v. Haar</i> (1994).	Tenured teacher dressed as Santa at a Christmas party and asking female students to sit in his lap and kiss his cheek, rubbed a female student's thigh in a sexual manner, hugged, held hands, and called female students "cute" on a regular basis.
<i>Potter v. Kalama Public School Dist., No. 402</i> (1982).	Contract teacher touched the legs or thighs of multiple elementary school students on multiple occasions. Also raised the dress of a female student a few inches.
<i>Ross v. Robb</i> (1983).	Tenured teacher suggestively embraced high school female student and also allowed male students to sexually harass her.
<i>San Diego Unified Sch. Dist. v. Comm'n on Prof'l Competence</i> (2013).	Tenured teacher allegedly touched multiple elementary school students inappropriately.
<i>Youngman v. Doerhoff</i> (1994).	Tenured teacher hugged, kissed, and rubbed the back of a junior high student.

In *San Diego Unified Sch. Dist. v. Comm'n on Prof'l Competence* (2013),

Jespersion, an elementary mathematics teacher was accused of touching several of his elementary aged students inappropriately. The alleged touching included a wide variety of accusations including touching student's legs, lower back, and buttocks. Jespersen

underwent three criminal trials which resulted in guilty verdicts for nine counts of lewd contact with a child. However, Jespersen's convictions were reversed on appeal due to a substantial likelihood of juror bias and ineffective counsel. In litigation related to his employment, Jespersen maintained that any physical contact he had made with students was entirely appropriate and nonsexual.

Similarly, in *Youngman v. Doerhoff* (1994), Youngman was a middle school language arts teacher for the Gasconade County School System. In March 1993, it was reported to Youngman's principal that Youngman had hugged a student, rubbed his back, and then kissed him twice on the neck. The student told the principal that after the incident he was fearful to return to Youngman's class and thought that Youngman was making a sexual advance. Youngman admitted that the incident occurred but maintained that his only intentions were to console the student, and that he frequently did the same with other students.

In *Fadler v. Illinois State Board of Education* (1987), Fadler was a third grade teacher who was terminated based on two incidents of fondling female elementary school students. At Fadler's disciplinary hearing, the hearing officer concluded that there was sufficient evidence that Fadler had put his hand inside the pants of a female student and groped her buttocks and squeezed the breast of another female student. Similarly, *Potter v. Kalama Public School District, No. 402* (1982) involved Potter, an elementary school teacher, who was reprimanded multiple times for touching his female students. After several reprimands for similar conduct, Potter lifted a female student's dress a few inches. According to Potter, he lifted the dress to observe a bruise on the girl's knee, though the bruise was visible without lifting the dress. During an investigation of the

incident, the school principal and superintendent discovered additional, similar physical contact with female students.

In *Forte v. Mills* (1998), Forte, a physical education teacher, had been repeatedly warned against any physical contact with students, it was alleged that he nudged, poked, and/or snapped the bra straps of female students on numerous occasions. Forte defended his actions as a motivational technique and maintained that teaching physical education required some physical contact. Similarly, in *Asch v. N.Y.C. Bd./Dep't of Educ.* (2013), Asch was a tenured high school library media specialist with over 20 years' experience and an unblemished record who was suspended for squeezing high school student's shoulders, rubbed student's spines and backs, and lifted and rubbed a student's leg while saying something to the effect of "open mouth, insert foot." Asch maintained that his actions were intended to motivate students and were not unlike those employed by other teachers.

The remaining cases in this section involved somewhat more egregious types of conduct. In *Baltrip v. Norris* (2000), Baltrip, a tenured teacher, employed a high school aged female student to do some clean-up work at a house he was building. Baltrip later invited the student back to view the completed home. During the tour of the home, Baltrip hugged the student and allegedly tried to kiss her. Baltrip entered into a plea agreement and pled guilty to misdemeanor assault.

In *Governing Board v. Haar* (1994), Haar was a middle school music teacher who was dismissed after it was found that he sexually harassed his female students. The allegations included Haar dressing as Santa at a Christmas party and asking female students to sit in his lap and kiss his cheek, rubbing a female student's thigh in a sexual

manner, hugging, holding hands, and calling female students “cute” on a regular basis. In *Ross v. Robb* (1983), Ross was a construction teacher who was terminated from employment after a disciplinary hearing where it was found that he sexually harassed a high school aged female student and failed to act when several of his male students did the same. The allegations against Ross included bringing a plastic phallus into his classroom, failing to remove a suggestive centerfold poster from his classroom wall, and failing to discourage obscene and sexually explicit language.

Sexual or vulgar comments. Table 6 lists five cases that dealt with teachers using sexually inappropriate comments with students. All five cases involved male teachers. Two cases involved direct sexual communication and grooming language with students, two cases were related to teachers using sexually explicit jokes and innuendoes in the classroom, and one involved a single instance of a teacher asking a near graduate to “go out” with him. The presence of sufficient evidence was the most common issue identified by the courts in these cases.

In *Sauter v. Mount Vernon School Dist., No. 320, Skagit County* (1990), a teacher was terminated from employment because he developed an inappropriately close relationship with one of his high school aged female students. During the summer, the teacher visited the student at her home and the two took a bike ride together. At the end of the ride, the teacher and the student engaged in a long conversation in which the teacher told the student that he thought she was attractive. During the next school year, the two frequently discussed their current relationships with others and the potential for a relationship with one another, including a physical relationship. In the fall, the teacher

wrote a letter to the student alluding to a nighttime fantasy he had about her the previous night.

Table 6

Inappropriate Comments with Students

Case	Misconduct Details
<i>In re Douglas</i> (2011).	Tenured teacher made statements to high school female students including telling them they "looked sexy," had "sweet stuff," and "turned him on." Also made inappropriate jokes, innuendoes, and lewd comments in class.
<i>Downie v. Independent School Dist., No. 141</i> (1985).	Tenured middle school counselor sent a handwritten note containing profanity to a female student; inappropriately conducted oral surveys with students about their sexual activity; used vulgar and inappropriate language with students; and sexually harassed students.
<i>Gongora v. New York City Dept. of Educ.</i> (2010).	Tenured teacher asked high school student to "go out" with him after the student had completed all requirements for graduation and was no longer under his influence.
<i>Lackow v. Department of Educ. (or "Board") of City of New York</i> (2008).	Tenured teacher repetitively used innuendoes and inappropriate sexually charged comments with students.
<i>Sauter v. Mount Vernon School Dist., No. 320, Skagit County</i> (1990).	Contract teacher engaged in sexually exploitive verbal and written communication with a high school student with the purpose of soliciting a sexual relationship.

In *Downie v. Independent School Dist., No. 141* (1985), Downie was a middle school counselor who was dismissed from employment because he entered into a weight-loss bet with two female students, the terms of which included sexual activity with him. He also sent a handwritten note containing profanity to a female student, inappropriately conducted oral surveys with students about their sexual activity, and used vulgar and inappropriate language with students.

The court found, in *In re Douglas* (2011), that Douglas, a teacher, frequently used a variety of vulgar and sexually inappropriate innuendos with students. The court pointed out that such behavior “compromised his ability to function as a teacher” and “was appropriate ground for termination of even long-standing employees with good work histories” (p. 857). Similarly, in *Lackow v. Department of Education (or Board) of City of New York* (2008), Lackow, a teacher, engaged in numerous instances of misconduct which included telling students “you suck,” giving students the middle finger, and using sexual innuendos.

In *Gongora v. New York City Dept. of Educ* (2010), a case somewhat different from the others in this section, Gongora was a bilingual teacher who called an 18 year old female student on the phone to inform her that she had passed an examination which completed her requirements for graduation. The student’s mother was listening in on the call when Gongora asked the student to “go out” with him. The mother broke into the conversation and confronted Gongora and he hung up the phone. The mother and the student complained about the conversation to the school principal. Gongora maintained that his request was nothing more than a joke predicated on a previous conversation with the student.

Additional case (outlier). *Lile v. Hancock Place School District* (1985) is presented separately here because it contains an extremely unique set of facts. The behavior itself was different in nature than others in the sample and did not seem to align with any groupings. Additionally, the employee was acting in his capacity as a caregiver or father, not in his capacity as a school employee. In *Lile*, Lile was a fourth grade teacher who began dating the mother of one of his students. A short time later, the

mother, the student, and the student's younger sister moved in with Lile. Later, the two girls were placed in the care of their natural father when the mother became ill and was hospitalized. Shortly thereafter, the father filed a complaint against Lile with the local police department alleging that Lile had sexually abused both of the girls. It was found that Lile frequently walked around naked in the home in the presence of the girls. He showered with at least one of the girls on at least one occasion and often entered the bathroom while the girls were bathing and also took a nude photograph of each of the girls bathing. Finally, he encouraged the girls to sleep in the same bed as him when their mother was not home.

Employee sexual misconduct involving adults. As shown in Table 7, nine cases, involving nine employees, were related to sexual misconduct involving adults. Unlike cases involving sexual contact between school employees and students, consent was a pertinent factor in cases involving sexual contact between adults. Therefore, cases in this section were grouped as consensual and non-consensual.

Consensual. *Brito v. Walcott* (2014) and *Mauro v. Walcott* (2014) were separate, but nearly identical cases, regarding the same incident. Brito and Walcott were female high school teachers who went out to dinner with colleagues and returned to the school later in the evening to watch a musical competition held in the first floor auditorium. The teachers attended the event voluntarily and were not present in any official capacity. During the performance, Brito and Walcott were observed by school personnel in a third floor classroom partially undressed and appeared to be engaged in sexual behavior. The school district received negative publicity when the misconduct was reported in local news reports and papers.

Table 7

Sexual Misconduct Involving Adults

Case	Misconduct Details	Misconduct Type
<i>Bertolini v. Whitehall City School Dist. Bd. of Edn.</i> (2000)	Associate superintendent engaged in extramarital affair with colleague and continued to contact coworker after the relationship ended against her wishes.	Non-consensual
<i>Brito v. Walcott</i> (2014).	Tenured teacher engaged in consensual sexual contact on campus, after hours, outside view of students. (Identical incident to <i>Mauro v. Walcott</i>)	Consensual
<i>C.F.S. v. Mahan</i> (1996).	Non-tenured teacher was arrested for indecent exposure prior to employment.	Non-consensual
<i>Clark v. School Bd. of Lake County, Fla.</i> (1992).	After a string of unfortunate events, tenured teacher engaged in weekend of binge drinking which culminated with unspecified instance of abuse of husband and altercation with police officials.	Non-consensual
<i>Downie v. Independent School Dist., No. 141</i> (1985).	Tenured counselor sexually harassed staff and students.	Non-consensual
<i>Mauro v. Walcott</i> (2014).	Tenured teacher engaged in consensual sexual contact on campus, after hours, outside view of students. (Identical case to <i>Brito v. Walcott</i>)	Consensual
<i>San Diego Unified Sch. Dist. v. Comm'n on Prof'l Competence</i> (2011).	Tenured assistant principal posted photos of his face, torso, genitals, and anus accompanied by an explicit message soliciting sex on Craigslist.	Consensual
<i>Villada v. City of New York</i> (2015).	Tenured teacher repeatedly hugged, kissed, embraced, and contacted a coworker against her wishes.	Non-consensual
<i>Yanzick v. School District No. 23</i> (1982).	Tenured teacher lived with a girlfriend and discussed his living arrangements with students	Consensual

In *San Diego Unified Sch. Dist. v. Comm'n on Prof'l Competence* (2011), Lampedusa, a teacher who had worked for the district since 1999, had received favorable evaluations during that time, and had been considered for a promotion to a vice principal position. In June 2008, a parent reported a Craigslist post in which Lampedusa had posted photos of his face, torso, genitals, and anus accompanied by an explicit message soliciting sex. When he was questioned about the post, Lampedusa indicated that he had posted solicitation ads on the site five or six times previously. He also indicated that he planned to continue to post on the site, but would only post items that would be less likely to be offensive.

In *Yanzick v. School District No. 23* (1982), Yanzick was a tenured seventh grade teacher at Polson Middle School. In March 1977, Yanzick was notified that his contract would not be renewed for the following school year. The notification letter named a number of reasons for dismissal including cohabitating with a woman outside of wedlock, making statements to students in class regarding his living arrangements, making various statements to students about abortion, and displaying human fetuses in his classroom without authorization.

Non-Consensual. Five cases involved non-consensual sexual activities and/or sexual harassment of adults. Each of these cases presented different issues for the courts to decide. In *Bertolini v. Whitehall City School Dist. Bd. of Edn.* (2000), Bertolini was employed as the associate superintendent for the Whitehall City School District Board of Education. Prior to obtaining that position, Bertolini was the superintendent of the Leetonia School District. While working in the Leetonia School District, Bertolini became engaged in an extramarital affair with Patti Woods. After Bertolini acquired his

new position at Whitehall, Woods applied for and received a position at Whitehall. For a period of time, Bertolini and Woods continued their relationship. However, Woods eventually ended the romantic relationship. After Woods ended the relationship, Bertolini frequently emailed Woods and sometimes visited her at her office and condominium. Woods testified that Bertolini's continuous contact was annoying, but did not cause her problems at work and did not seem like sexual harassment. However, after becoming exasperated with Bertolini's persistent attempts to contact her, Woods reported the situation to the superintendent.

C.F.S. v. Mahan (1996) involved a probationary teacher and wrestling coach who, shortly after he was hired, received notice that he was being dismissed from his position due to conviction of a crime. The notice explained that the conduct leading to his arrest could bring discredit to the school system. The teacher had been arrested on charges of indecent exposure when he was "seen massaging his penis in the men's room of a public facility," and then when he returned to his car, he exposed his genitals to an undercover officer and suggested anal intercourse (p. 617). The teacher later pled to a lesser charge of misdemeanor disturbing the peace.

In *Clark*, Clark was an elementary school teacher for the Lake County School System. During the summer of 1989, after a series of personal difficulties, Clark engaged in several days of alcohol use which resulted in an incident for which she was charged for the abuse of her husband. Leading up to the incident, Clark had been intimidated and physically injured by a friend of her son. Then, she brought her husband, who was recovering from a disabling stroke, home from the nursing home to care for him. These factors, exacerbated by alcohol use, culminated in an unspecified instance of abuse

against Clark's husband. Although the abuse was unspecified, details of the case indicated that the abuse was of a sexual nature.

Although there was limited background information in the case related to the sexual harassment of staff, *Downie v. Independent School Dist., No. 141* (1985) involved a counselor who was terminated from employment for sexually harassing students and staff, including making inappropriate comments and staring suggestively at their bodies. Similarly, In *Villada v. City of New York* (2015), Villada was a teacher in the City of New York with a 20-year satisfactory employment history, but was fired after it was found that he hugged and kissed another teacher at least once per week for two months despite her continual resistance to his advances. In a later encounter, Villada held her in the air, kissed her repeatedly on the cheek, then kissed her on the lips and forced his tongue into her mouth.

Nonsexual. Of the 107 cases included in the study, 73 were related to allegations of non-sexual misconduct involving 77 employees. Of the 73 cases involving nonsexual misconduct, 30 were related to behaviors that resulted in criminal proceedings. The cases were categorized by misconduct and several cases fit into multiple categories. Ultimately, the cases were grouped as alcohol, dishonesty, drugs, firearms, fraud, inappropriate comments, theft, threats, school issues, and vehicular assault/homicide.

Alcohol. Seven cases, involving seven employees, centered on allegations of misconduct related to alcohol. Six of the seven cases involved female employees and the disciplinary action was upheld in five of the seven cases. As shown in Table 8, cases were further disaggregated as those involving students and those not involving students.

Table 8

Alcohol Related Misconduct

Case	Misconduct Details	Misconduct Type
<i>Blaine v. Moffat County School Dist. Re No. 1</i> (1988).	Tenured teacher consumed alcohol and allowed student use of alcohol during overnight trip related to cheer coaching duties.	Involved students
<i>Bonatesta v. Northern Cambria School Dist.</i> (2012).	Tenured teacher was stopped by police and charged with possession of drugs and paraphernalia. All charges against teacher were later dismissed.	Did not involve students
<i>Cona v. Avondale School Dist.</i> (2013).	Tenured teacher arrested for DUI, pled to driving while impaired, then violated probation multiple times.	Did not involve students
<i>Norton v. Board of Educ. of Jefferson County Schools</i> (1987).	Tenured teacher provided alcohol to students on several occasions.	Involved students
<i>Turk v. Franklin Special School Dist.</i> (1982).	Teacher was charged with DUI.	Did not involve students
<i>Walthart v. Bd. of Dirs. of EDCO Sc. Dist.</i> (2005).	Tenured teacher allowed students to participate in drinking party on her property, leading to death of 4 students in car accident.	Involved students
<i>Zelno v. Lincoln Intermediate Unit 12 BD</i> (2001).	Tenured teacher pled guilty to driving under the influence and driving without a license. These offenses represented her third DUI and her second for driving without a license.	Did not involve students

Alcohol: involving students. Three cases involved school employees providing alcohol to students, or allowing students to drink alcohol. All three cases involved female employees. In *Blaine v. Moffat County School Dist. Re No. 1* (1988), Blaine was a teacher and cheerleading sponsor for the Moffat County School District. While accompanying

the cheerleaders at a hotel during an overnight stay for a basketball tournament, Blaine drank beer in the presence of several cheerleaders. Later that evening, Blaine went to investigate noise coming from one of the rooms occupied by the cheerleaders and found them having a party and drinking beer. Blaine joined the cheerleaders in a drinking game. Similarly, In *Norton v. Board of Educ. of Jefferson County Schools* (1987), Norton was a teacher who was terminated for providing alcohol to underage students. The court did not provide additional background information in the case.

Walthart v. Bd. of Dirs. of EDCO Sc. Dist. (2005) involved a teacher, Walthart, who allowed a group of students, including her son, to have a party in a hay field on their property. Several students were drinking alcohol at the party. During the night, four students left to buy more alcohol. The driver, who had a blood alcohol level over three times the legal limit, crashed into a tree and all four students in the car were killed.

Alcohol: not involving students. Four cases, involving four employees, involved alcohol related incidents that did not involve students. Three of the four employees were female. In *Bonatesta v. Northern Cambria School Dist.* (2012), Bonatesta had taught elementary school for 17 years with good evaluations. One night, Bonatesta's boyfriend picked her up, in her car, after a shift as a cook at her parent's restaurant. Her boyfriend, David Mikitko was not allowed to drive a vehicle that was not equipped with an ignition interlock device. When a police officer, Ronald Schilling, recognized Mikitko driving Bonatesta's vehicle, which was not equipped with an interlock device, he stopped and searched the vehicle. Schilling called for backup from Jason Owens. Schilling searched the vehicle, found a pistol registered to Bonatesta, marijuana, and drug paraphernalia. Bonatesta and Mikitko were charged with possession of drugs and drug paraphernalia.

Owens administered a breathalyzer test to Bonatesta, and allowed her to drive the vehicle away from the scene.

In *Turk v. Franklin Special School Dist.*, 640 S.W.2d 218 (1982), Turk was a third grade teacher with the Franklin Special School District. In January 1981, the school superintendent read in the newspaper that Turk had been arrested for driving under the influence (DUI). Upon further investigation, the superintendent learned that Turk had been in a serious automobile accident in 1979, but was not charged with any violation of law in connection with the accident. During a hearing, Turk explained that on the day of her DUI she had gone to a friend's house intending to stay the night. While there, she had one strong drink, but due to a crash diet, the alcohol had considerably more effect on her. Then, contrary to Turk's understanding, her friend indicated that her husband would be returning home that night. So, Turk left and headed home. While driving, she became dizzy and pulled off the road. Her tires slid off into the ditch and she remained there until police officers responded and charged her with DUI.

Dishonesty. Honesty and integrity is universally associated with good moral character. As such, the courts have often held that dishonesty constitutes immorality and sufficient grounds for termination. Seventeen cases, involving 18 school employees, were related to employees being dishonest in some way. Those cases were further disaggregated as falsifying school documents, general dishonesty, dishonesty regarding leave, and lying to school district staff.

Falsifying school documents. Four cases, involving four employees, were related to falsifying school documents (see Table 9). In *Beatty v. City of New York* (2017), Beatty was a special education home instruction teacher who submitted falsified time sheets.

However, Beatty's timesheets were incorrect, in large part, because both she and the student for whom she submitted incorrect timesheets were displaced from their homes due to damage sustained during Hurricane Sandy. In contrast, *Gisors v. New York City Dep't of Educ. for City Sch. Dist. Region 10* (2012) involved Gisors, a tenured counselor who was terminated for multiple offenses of changing grades, which undermined the credibility of the school's grading system and circumvented the school's authority.

Table 9

Falsifying Documents

Case	Misconduct Details
<i>Beatty v. City of New York</i> (2017).	Tenured teacher submitted false time sheets for instruction she was unable to deliver due to extenuating circumstances (Hurricane Sandy).
<i>Bethel v. Board of Educ. of Capital School Dist.</i> (2009).	Tenured teacher accepted money for grades.
<i>Gisors v. New York City Dep't of Educ. for City Sch. Dist. Region 10</i> (2012).	Tenured counselor tampered with multiple school records, apparently including grades.
<i>Weems v. North Franklin School District</i> (2002).	Contract special education director falsified records to feign compliance with state monitoring.

In *Weems v. North Franklin School District* (2002), Weems was a special education director and school psychologist who was accused of falsifying and backdating student files to feign compliance with federal special education law. According to the record, Weems received a fax containing a list of student files that would be reviewed the following day during a compliance monitoring visit. Weems then stayed late that night to review each of the student files. It was found at Weems's hearing that several of the files had been altered.

General dishonesty. Two cases, involving two employees, were related to generally dishonest behaviors that did not necessarily meet the criteria, or perhaps seriousness, of some of the other cases. For example, while certainly not appropriate, asking a student athlete to weigh in for another at a wrestling competition did not meet the level or definition of fraud. As such, these two cases are presented separately here. One case involved cheating and one involved eavesdropping. The sufficiency of evidence was a common element in each of these cases along with the definition of immorality.

In *Florian v. Highland Local School Dist. Bd. of Educ.* (1983), Florian was a teacher, and then later a counselor and wrestling coach, who instructed a freshman student to weigh-in for another student who was overweight for his weight class. When confronted regarding his actions, Florian admitted the allegations and resigned from his coaching position. Thereafter, the school board initiated proceedings to terminate Florian's teaching contract as well. In *Rado v. Board of Educ. of Borough of Naugatuck*, 583 A.2d 102 (Conn., 1990), Rado was a physical education teacher at Naugatuck High School who was suspended with pay and later terminated based on conduct that led to his arrest on three counts of eavesdropping. The charges were based on allegations that Rado had used wiretaps to intercept personal phone conversations at the high school. Rado was tried and acquitted on criminal charges related to the incident.

Dishonesty regarding leave. Four cases, involving five employees, were related to dishonest or impermissible use of leave time (see Table 10). In *Bethel Park School Dist. v. Krall* (1982), Krall was terminated after she listed illness as the reason for an absence when she was, in fact, attending a conference related to separate employment. In an extremely similar case, *Board of Education of Laurel County v. McCollum* (1986),

McCollum reported sick leave so that he could use the day to haul coal as a side job. In *Noel v. Andrus* (1987), a driver education teacher took the driver education car on vacation over the weekend and lied about taking the car and his whereabouts. Finally, in *Riverview School Dist. v. Riverview Educ. Ass’n, PSEA-NEA* (1993), two teachers reported sick leave to go on a ski trip after their personal leave requests were denied.

Table 10

Dishonesty Regarding Leave

Case	Misconduct Details
<i>Bethel Park School Dist. v. Krall</i> (1982).	Tenured teacher listed illness as reason for absence when, in fact, she was attending a conference related to other employment.
<i>Board of Education of Laurel County v. McCollum</i> (1986).	Tenured teacher took sick leave to haul coal for side job.
<i>Noel v. Andrus</i> (1987).	Non-tenured teacher took driver education vehicle on vacation, initially lied about doing so and asked others, including students, to lie for him.
<i>Riverview School Dist. v. Riverview Educ. Ass’n, PSEA-NEA</i> (1994).	Two tenured teachers attempted to use sick leave to go on a ski trip after their requests for personal leave were denied.

Lying to school district staff. As shown in Table 11, seven cases, involving seven employees, contained instances of lying to district staff. However, the employee’s dishonesty while recounting events was typically overshadowed by the misconduct the employee was lying about. Still, the courts often noted that dishonesty could result in disciplinary action. The court wrote in *Balog v. McKeesport Area School District* (1984), which involved an employee lying about his activities to obtain additional compensation, “Immoral conduct may include lying” (p. 136).

Table 11
Lying to District Staff

Case/Citation	Misconduct Details
<i>Ahmad v. Board of Educ. of City of Chicago</i> (2006).	Tenured teacher misappropriated merchandise from a non-profit organization by misrepresenting herself as an agent of the school system, with intent to sell items for personal gain.
<i>Ball v. Bd. of Educ. of City of Chicago</i> (2013).	Tenured teacher failed to properly supervise students, leading to students engaging in sexual acts, then lied to the district investigator regarding the incident.
<i>Balog v. McKeesport Area School District</i> (1984).	District employee made false statements to district staff regarding his whereabouts and to acquire unauthorized compensation.
<i>Bonatesta v. Northern Cambria School Dist.</i> (2012).	Tenured teacher was accused of lying regarding being stopped by police and charged with possession of drugs and paraphernalia.
<i>Fed. Way Sch. Dist. No. 210 v. Vinson</i> (2011).	Tenured teacher engaged in a profane, off campus, argument with a former student and lied during the investigation of that incident.
<i>Hawzipta v. Independent School Dist.</i> (2000).	Tenured teacher spread false rumors that school principal had purchased pornographic materials.
<i>Jackson v. Bd. of Educ. Chicago</i> (2016).	Tenured teacher accused of failing to report testing irregularities and omitted part of his work history on his employment application.

In *Hawzipta v. Independent School Dist.* (2000), a teacher, after finding pornographic materials in a dumpster with the school principal's name on them, told other staff members that the principal was purchasing pornographic materials and having them delivered to the school. The teacher was unaware that another employee had admitted to ordering the materials. In *Jackson v. Bd. of Educ. of Chicago* (2016), the school board sought the termination of a teacher it believed had lied to district staff about cheating on standardized tests and failing to report testing irregularities.

In *Fed. Way Sch. Dist. No. 210 v. Vinson* (2011), the court found that a teacher lying to the district investigator about his confrontation with a former student was not egregious since there was evidence that the teacher had been treated unfairly in previous investigations. In *Ball v. Bd. of Educ. of City of Chicago* (2013), a tenured special education teacher lied to district staff about her supervision of the students in her class. The teacher claimed that she had properly supervised the students when, in fact, some of them had slipped into a copy room closet and engaged in sexual activities.

Firearms. Five cases, involving five employees, were related in some way to firearms. Two cases involved the actual use of a firearm against a person or property, one involved the threat of firearm use, and two involved the inadvertent possession of a firearm. Four of the five cases involved off-campus conduct, and each of those resulted in criminal proceedings related to the incident in question.

Two cases can be quickly set apart from the others due to the lack of violence or even the threat of violence. In *Bonatesta v. Northern Cambria School Dist.* (2012), Bonatesta's possession of a gun during a traffic stop was deemed legal and no other consideration regarding firearms was presented after establishing that fact. In *Grieb v. Unemployment Compensation Board of Review* (2003), the court stated that Grieb's action of unintentionally leaving unloaded shotguns in her parked car on a school campus was justification for termination. However, the remaining three cases dealt with more violent, or potentially violent, situations.

In *Barringer v. Caldwell County Board of Education* (1996), Barringer was a mathematics teacher who was terminated after he approached the entrance of a pool hall with a 12-gauge shotgun in his hands and a .38 caliber pistol tucked in his waistband.

Two police officers confronted Barringer and ordered he put down the guns. Barringer complied after several requests. When the officers questioned Barringer of his intentions, he indicated that he intended to do harm to someone he thought was in the pool hall.

In re Thomas (1996), involved Thomas, a ninth grade English teacher who drove to her husband's residence where she had words with her husband's girlfriend and then went inside the house. While Thomas was inside, the girlfriend scratched an obscenity on Thomas's car and then entered her own car to leave the residence. Thomas came out of the home with a .357 revolver and fired four times at the girlfriend's car. One bullet struck the girlfriend in the leg.

Winters v. Arizona Bd. of Educ. (2004) involved Winters, a teacher, who was involved in five separate incidents with his neighbors between October 1998 and April 2000. The incident relevant to this section arose when a neighbor allegedly threw a rock through Winters's window. Winters then fired his .357 revolver into his neighbor's air conditioning unit.

Drugs. Twelve cases, involving 13 employees were related to drug use, possession, or sale. Twelve of the 13 employees were male. The possession, use, and sale of drugs led to a wide variety of litigation between teachers and school boards. Teacher immorality cases involving drugs presented a number of challenges because they typically involved the teacher's private conduct. These cases were grouped by those involving students and those not involving students.

Drugs: not involving students. Ten cases, involving 10 employees, were related to private drug use (see Table 12). All 10 cases involved criminal charges against teachers, but only four teachers were actually convicted of a crime.

Table 12

Drugs: Not Involving Students

Case	Misconduct Details
<i>Baker v. School Bd. of Marion County</i> (1984).	Tenured elementary teacher was arrested for possession of illegal alcohol and marijuana.
<i>Bonatesta v. Northern Cambria School Dist.</i> (2012).	Tenured elementary school teacher was stopped by police and charged with possession of drugs and paraphernalia. All charges against teacher were later dismissed.
<i>Chicago Board of Education v. Payne</i> (1981).	Tenured elementary school teacher was twice arrested, and pled guilty to, possession of marijuana. He was later arrested again for possession of marijuana and a controlled substance.
<i>Cona v. Avondale School Dist.</i> (2013).	Tenured high school teacher arrested for DUI, pled to driving while impaired, then violated probation multiple times, led to 17-day absence from school while he was incarcerated.
<i>Dubuclet v. Home Insurance Company</i> (1995).	Tenured teacher was arrested for possession of marijuana and cocaine. (This case was a legal malpractice suit but answered whether teacher's termination would be upheld on the facts).
<i>Dupree v. School Committee of Boston</i> (1983).	Non-tenured middle school teacher was suspended without pay pending the outcome of his criminal proceedings after he was indicted for possession with intent to distribute cocaine.
<i>Esteban v. Department of Educ. of City School Dist. of City of New York</i> (2015).	Tenured teacher was arrested when he entered a courthouse in possession of heroin.
<i>Gedney v. Board of Education of Town of Groton</i> (1997).	Tenured elementary teacher was arrested for possession of cocaine and paraphernalia.
<i>Rogliano v. Fayette County Board of Education</i> (1986).	Tenured teacher was arrested and charged with misdemeanor possession of marijuana. Charges dismissed due to defective warrant.
<i>Woo v. Putnam County Board of Education</i> (1998).	Tenured teacher admitted to regular private use of marijuana

Baker v. School Bd. of Marion County (1984) involved Baker, an elementary school teacher, who also ran a nightclub with his brother. Baker was arrested for possession of illegal alcohol and marijuana when illegal items were found in the manager's office at the nightclub. The charges were later dropped due to a lack of evidence that the alcohol or marijuana belonged to Baker. In fact, Baker's brother admitted that the marijuana belonged to him.

In *Chicago Bd. of Ed. v. Payne* (1981), Payne was a tenured elementary school teacher who was arrested and pled guilty to possession of marijuana. Later, he was arrested again for possession of marijuana and possession of a controlled substance.

Dubuclet v. Home Ins. Co. (1995) was also a case involving a teacher arrested for possession of marijuana and cocaine, but the case was actually a legal malpractice case. Still, the suit answered the question of whether a teacher could be terminated for an arrest related to drug possession.

Dupree v. School Committee of Boston (1983) involved a non-tenured teacher who was arrested for possession with intent to sale cocaine. In *Esteban v. Dep't of Educ. of City Sch. Dist. of N.Y.* (2015), a tenured teacher was arrested when he entered a courthouse in possession of heroin. In *Gedney v. Board of Educ. of Town of Groton* (1997), Gedney was a fourth grade teacher who was arrested and charged with possession of cocaine and possession of drug paraphernalia. In lieu of a conviction, he was assigned to accelerated rehabilitation. In *Rogliano v. Fayette County Bd. of Educ.* (1986), Rogliano was a permanent substitute teacher who was arrested and charged with a misdemeanor related to the possession of a small amount of marijuana.

In *Cona v. Avondale School Dist.* (2013), Cona was a tenured high school social studies teacher who was arrested for driving while intoxicated. Cona pled to a lesser charge and was sentenced to 12 months of probation. The terms of his probation required random drug and alcohol testing. At a screening, Cona tested positive for marijuana. A short time later, he tested positive for alcohol and later still, tested positive again for marijuana and admitted to using alcohol. Cona's probation officer filed a motion against Cona in district court for the alleged probation violation. He was offered a choice between jail time and an additional year of probation. Believing that the recommended sentence would be 15 days in jail that he could serve on the weekends, Cona opted for the jail time. However, Cona was mistaken and was sentenced to 30 days in jail beginning immediately which caused him to miss 17 days of work.

In *Woo v. Putnam County Bd. of Educ.* (1998), Woo was a mathematics teacher with the Putnam County Board of Education. In 1993, Woo was arrested when he sold marijuana to an undercover police officer. Following his arrest, Woo was transferred to a non-teaching position in the board office. During his criminal trial, Woo successfully asserted an entrapment defense and was found not guilty. However, during the trial, Woo admitted that he regularly smoked marijuana at home in the afternoons.

Drugs: involving students. Two cases involved incidents related to drugs that also involved students. In both cases, the court upheld the teachers' terminations. *Board of Education of Hopkins County v. Wood* (1986) dealt with two teachers' off-campus marijuana use with students. The second case, *Bethel v. Board of Educ. of Capital School Dist.*, 985 A.2d 389 (Del., 2009), involved a teacher coercing a student to drive him to

purchase drugs late one evening away from school. The *Wood* case involved criminal charges against the teachers, but *Bethel* did not.

In *Wood*, brothers Greg and Donnie Wood worked for the Hopkins County School System. During the course of an unrelated murder investigation, two 15 year old girls testified that they had been at the Wood brothers' apartment where several individuals were smoking marijuana. The brothers signed a statement pleading guilty to the misdemeanor charge of unlawful transaction with a minor. In *Bethel*, a special education teacher was notified by the school district of its intent to terminate him for misconduct. The alleged misconduct was primarily related to an incident that occurred in April 2007 where the teacher threatened to fail a student if he did not drive him to a downtown area to purchase marijuana.

Fraud. Ten cases, involving 11 employees, were related to incidents of fraud. As shown in Table 13, those cases were further grouped as school related fraud and instances of fraud that were not school related.

Fraud: not school related. Three cases, involving four employees, were related to fraud that was not school related. All three cases involved criminal proceedings and the disciplinary action was upheld in each case. In *Perryman v. School Committee of Boston* (1983), Robert and Carolyn Perryman, both teachers, were suspended following their indictments for welfare fraud. Similarly, in *Stelzer v. State Bd. of Edn.* (1991), Stelzer was a teacher who was convicted of receiving stolen property because she and her husband received over \$43,000 in welfare benefits over five years based on falsified information. As a result, the State Board of Education revoked Stelzer's teaching certificate. In *Green v. New York City Department of Education* (2005), Green was a

teacher in New York who was dismissed from her teaching position after she was convicted of grand larceny in connection with falsifying information on her housing filings.

Table 13

Fraud

Case	Misconduct Details	Misconduct Type
<i>Ahmad v. Board of Educ. of City of Chicago</i> (2006).	Tenured teacher misappropriated merchandise from a non-profit organization with intent to sell items for personal gain.	School related fraud
<i>Cipollaro v. N.Y. City Dep't of Educ.</i> (2011).	Tenured teacher knowingly defrauded the school system of \$98,000 in non-resident tuition over a two year period.	School related fraud
<i>Cochran v. Bd. of Ed. of Mexico Sch. Dist., No. 59</i> (1991).	Tenured welding instructor engaged in fraudulent activity with a government surplus program which ultimately cost the school system \$54,000 in restitution.	School related fraud
<i>Green v. New York City Department of Education</i> (2005).	Tenured teacher was convicted of grand larceny in connection to numerous misrepresentation in her housing filings.	Not school related fraud
<i>Guzman v. City of N.Y.</i> (2014).	Tenured teacher faced allegations of engaging in a scheme to avoid out-of-state tuition for her grandchild.	School related fraud
<i>Homa v. Carthage R-IX School Dist.</i> (2011).	Tenured director of parent education program misappropriated school funds to support a subordinate's efforts to pressure a vulnerable parents to give her child up for adoption	School related fraud
<i>Montanez v. Dep't of Educ. of N.Y.</i> (2013).	Tenured teacher fraudulently obtained free non-resident education for her son.	School related fraud
<i>Perryman v. School Committee of Boston</i> (1983).	Two tenured teachers (spouses), were indicted for welfare fraud.	Not school related fraud
<i>Stelzer v. State Bd. of Edn.</i> (1991)	Tenured teacher and her husband falsified welfare forms and received over \$43000 in benefits over a five year period.	Not school related fraud
<i>Timpani v. Lakeside Sch. Dist.</i> (2011).	Tenured teacher used Scholastic bonus points to purchase items for personal use.	School related fraud

Fraud: school related. Seven cases, involving seven employees, were related to school related fraudulent activities. Of those seven cases, three involved the misuse of programs for personal gain, three involved misrepresentations regarding nonresident tuition, and one was related to the misappropriation of funds.

Ahmad v. Board of Educ. of City of Chicago (2006) involved Ahmad, a teacher in the Chicago Public School (CPS) system for over 30 years, who was removed from the classroom for unspecified disciplinary reasons and was reassigned to the board office where she had no teaching responsibilities. Ahmad, as a representative of CPS, applied for membership to a non-profit organization that provided donated school supplies for a small service fee and shipping costs. Ahmad applied for membership using the school's address and contact information as was required by the organization, but intended to sell the merchandise through her unauthorized side business. Ahmad ordered supplies valued at \$33,979 for the shipping cost of \$4,567.50.

In *Cochran v. Bd. of Ed. of Mexico Sch. Dist., No. 59* (1991), Cochran was a tenured welding instructor for the Mexico Area Vocational Technical School. During his employment, Cochran also oversaw the operation of the school's participation in a federal program designed to allow schools to purchase surplus government property at reduced prices. An audit revealed that several policies required by the program had been violated. Some of the violations included items being sold but still included on inventory and Cochran being overpaid for certain items. Ultimately, the United States government required the school system to pay \$54,000 restitution to the program. Because the various reports and purchase orders were completed by Cochran, the school district held him primarily responsible.

In a somewhat similar case, *Timpani v. Lakeside Sch. Dist.* (2011), it was found that Timpani, an elementary school teacher, had used bonus points from a school book club (Scholastic) account to purchase two televisions, a DVD player, and a microwave for personal use. When the school principal questioned Timpani about the purchase, Timpani was confrontational and disrespectful. A few days later, the superintendent sent a letter to Timpani notifying her of his intention to recommend her dismissal to the school board.

Three cases involved allegations of employees fraudulently receiving a nonresident education for their children, each originated in New York. These cases, like all the New York cases in this study, hinged on whether the penalty imposed by the school district was proportional to the misconduct in question. In *Guzman v. City of N.Y.* (2014), the school district was unsuccessful in terminating Guzman, a teacher who allegedly masterminded a scheme to use a coworker's residential address to enroll her granddaughter at the school where she worked. The school district sought Guzman's termination, because it appeared that her granddaughter actually lived in New Jersey. As such, the Department of Education sought misconduct charges against Guzman as well as \$35,000 for the cost of the education that Guzman's granddaughter received.

In *Cipollaro v. N.Y. City Dep't of Educ.* (2011), Cipollaro was terminated after it was found that she avoided paying the school system \$98,000 over a two-year period by enrolling her children in New York City public schools while she and her family actually resided in Westchester County. Similarly, in *Montanez v. Dep't of Educ. of N.Y.* (2013), Montanez, a teacher with an unblemished record was terminated from employment for

submitting a fraudulent affidavit to obtain a free resident education for her non-resident son.

The final case in this section, *Homa v. Carthage R-IX School Dist.* (2011), dealt primarily with the definition of immorality, but also addressed the employee's misappropriation of funds. In *Homa*, a parent education program director was terminated from employment because she approved, and authorized reimbursement, for a subordinate's trip to a jail to have a conversation with the parent about giving her 11 month old son up for adoption due to her incarceration and personal difficulties. Despite not documenting the trip, the director authorized payment to the teacher for a full day of salary and mileage for 165 miles.

Inappropriate comments. Ten cases, involving 10 employees, were related to teachers making inappropriate comments that were also coded non-sexual. These cases were subdivided as those including inappropriate jokes and innuendos, profanity, racial comments, and other comments.

Inappropriate jokes and innuendos. Two cases, involving two employees, involved teachers using inappropriate jokes and innuendos with students. In *Baldrige v. Board of Trustees, Rosebud County School Dist. No. 19* (1997), a science teacher was accused of several instances of inappropriate behavior including making jokes about testes and menstrual periods, flipping off students, and making innuendos in his classroom. Similarly, in *School Dist. of Phila. v. Jones* (2016), a teacher consistently used inappropriate language with students such as foul language and innuendos.

Profanity. Instances of profanity were present in two cases involving two employees. In *Bethel v. Board of Educ. of Capital School Dist.* (2009), a teacher was

dismissed from employment after it was found that he yelled profanity at a high school football game. However, this case may not be sufficient for determining whether the use of profanity is sufficient cause for the discipline of a school employee since the teacher was also charged with several other instances of misconduct including coercing a student to drive him to buy drugs.

In *Fiscus v. Board of School Trustees of Cent. School Dist. of Greene County* (1987), Fiscus was an art teacher with the Central School District of Greene County. A fifth grade student in Fiscus's class told his mother that Fiscus said "fuck you" to him in class. After investigation, six students from the class corroborated their classmate's story. Each of the students who said Fiscus made the remark had been in some trouble with Fiscus at some point in time. Also, some students in close proximity to Fiscus when the comment was allegedly made reported that they had not heard Fiscus use the obscenity.

Racial remarks. Two cases, involving two employees, were related to an employee's use of racial remarks. In *Clarke v. Board of Educ. of School District of Omaha* (1983), Clarke, a teacher at McMillan Junior High School called a group of African American students in his class "dumb niggers" and made other disparaging remarks directed at black students (p. 252). *McFerren v. Farrell Area Sch. Dist.* (2010), involved McFerren, an African American high school principal in the Farrell Area School District. In November 2007, he was called before the superintendent for a pre-termination hearing. In pertinent part, the charges were related to an incident where McFerren told an African American student that in the real world, "the white man is going to kick your ass" (p. 349).

Other comments. Three cases involved comments of a different nature than those in other groupings. In *Fed. Way Sch. Dist. No. 210 v. Vinson* (2011), Vinson, a tenured teacher, got into an altercation with a former student at a restaurant outside of school hours. In *Matter of Tenure Hearing of Cowan* (1988), Cowan, a music teacher for the Borough of Bernardsville School District, had been reprimanded multiple times for losing his temper and physically or verbally abusing his students. When reprimands, the denial of salary benefits, and psychological counseling failed, the local school board decided to recommend Cowan's dismissal.

In *Scheiber v. New York City Bd. of Educ.* (1993), Scheiber, a tenured mathematics teacher, was terminated from his position after he was found guilty of 14 specifications of misconduct. The conduct occurred over a period of time while Scheiber was a teacher at three different schools. Chief among the allegations was a charge that Scheiber solicited a student to vandalize an assistant principal's automobile.

School issues. Five cases, involving six employees, dealt with employee's involvement in various school issues. Two cases involved the discipline of students, one involved participating in prohibited conduct, one involved a coursework deficiency, and the final case involved improper use of school property. Only one of the cases in this section resulted in the affirmation of the disciplinary action imposed by the school board.

Coursework Deficiency. One case involved a coursework deficiency. *Morris v. Illinois State Bd. of Educ.* (1990) involved Morris, an agriculture teacher, who was first deemed eligible to teach certain agricultural courses based on his work experience. However, new state teacher certification rules, enacted in 1983, required agriculture teachers to have a minimum of 24 hours of coursework in the field of agriculture.

Although Morris lacked the 24 hour requirement, he was allowed to continue working in the school and was not notified of the requirement. In 1988, the superintendent recommended the elimination of the agriculture department, but the district rejected his recommendation. Shortly thereafter, the superintendent learned that Morris did not meet the requirements for certification and recommended his dismissal.

Discipline. Two cases involved allegations of inappropriate discipline. The primary difference between these two cases was the court's determination of the egregiousness of the conduct. In *James v. Trumbull Cty. Bd. of Edn.* (1995) a special education teacher, James, taught students with severe and profound disabilities. After receiving complaints from teachers' aides regarding techniques used by James, the school district conducted an investigation. It was found that James used questionable techniques like placing a towel over student a student's face, and tipping a student backwards while strapped to a chair.

In *Mott v. Endicott School Dist. No. 308* (1986), Mott was a teacher who had struck four students in the genital area with welding tongs. After investigation, Mott was notified he would be discharged and he requested a hearing. The hearing examiner found that Mott had tapped several boys in the genitals. The most recent incident involved Mott jokingly striking four students in the genitals. However, in a previous incident, Mott had stuck two students in the genitals as an act of corporal punishment.

Prohibited conduct. *Everett Area School Dist. v. Ault* (1988) was a combined case involving two teachers, Ault and Baker. On the last day of school in 1987, several students engaged in a water fight. Although teachers and students had been explicitly warned not to engage in water fights, it was not uncommon for such behavior to occur on

the last day of school. Despite the warnings, Ault participated in the water fight with her students. Ault and her students then entered Baker's classroom and sprayed him with water. In response, Baker grabbed a nearby spray bottle and sprayed three students. As it turned out, the spray bottle contained a cleaning solution. Although none of the teachers' actions had been malicious in nature, the three students did require treatment for minor irritations caused by the cleaner.

Improper use of school property. In *Winland v. Strasburg-Franklin Local Sch. Dist. Bd. of Educ.* (2013), Winland, an Ohio Teacher, viewed sexual images on a school issued laptop while out of town at a football clinic during the summer of 2011. The IT department informed the principal of Winland's actions, and the principal informed the superintendent. During a meeting with the superintendent, Winland admitted there was inappropriate content on the computer and offered to resign, but later withdrew his offer.

Theft. Eight cases, involving eight employees, were related to incidents of theft. As shown in Table 14, four cases involved the direct theft of goods or property, two involved embezzling funds, one involved trafficking counterfeit goods, and one was related to the failure to pay taxes.

In *McBroom v. Board of Educ., Dist. No. 205* (1986), a teacher was terminated for taking a student's check from the girl's locker room and attempting to cash it. Conversely, in *Golden v. Board of Educ. of Harrison County* (1981), the school district was unable to terminate a teacher who was convicted of a misdemeanor shoplifting charge. The primary difference between the two cases was that the theft in *McBroom* occurred on campus and the theft in *Golden* did not.

Table 14

Theft

Case	Misconduct Details	Misconduct Type
<i>Golden v. Board of Educ. of Harrison County</i> (1981).	Tenured counselor was arrested for, and pled no contest to, shoplifting.	Theft
<i>Kenai Peninsula Borough Bd. of Educ. v. Brown</i> (1984).	Tenured high school teacher arrested for diverting electricity.	Theft
<i>Kimble v. Worth County R-III Bd. of Ed.</i> (1984).	Tenured high school librarian stole a vase, \$20 gate money, and a set of books belonging to the school.	Theft
<i>Kinniry v. Abington School Dist.</i> (1996).	Tenured teacher was convicted of federal crimes including trafficking in counterfeit goods or services.	Trafficking counterfeit goods
<i>Matter of Shelton</i> (1987).	Tenured teacher swindled funds from corporation.	Embezzled funds
<i>McBroom v. Board of Educ., Dist. No. 205</i> (1986).	Tenured teacher took a student's social security check and attempted to cash it.	Theft
<i>McCullough v. Illinois State Bd. of Educ. by Feuille</i> (1990).	Tenured teacher failed to pay taxes.	Failure to pay taxes
<i>Satterfield v. Board of Educ. of the Grand Rapids Public Schools</i> (1996).	Tenured teacher embezzled funds from a separate employer. Conduct deemed a crime involving moral turpitude.	Embezzled funds

In *Kenai Peninsula Borough Bd. of Educ. v. Brown* (1984), Brown was a teacher who was dismissed from employment after he was convicted of diverting electricity when it was found he had spliced an electric line to bypass the electrical meter. In *Kinniry v. Abington School Dist.* (1996), Kinniry was a teacher whose teaching contract was terminated by the school district after he pled guilty to two federal charges related to trafficking counterfeit goods related to selling items with counterfeit trademarks.

In *Kimble v. Worth County R-III Bd. of Ed.* (1984), Kimble was a librarian for the Worth County R-III School System. The school board dismissed Kimble after she took a set of books from the school in 1982, claimed they had not been received, and then returned them when she thought she would be caught. The board considered her behavior as part of a pattern since she had engaged in similar acts during the 1973-1974 and 1976-1977 school years as well.

In *Matter of Shelton* (1987), Shelton was a teacher who, along with two of his coworkers, formed a small company selling and servicing computer hardware. Over the course of a couple years, Shelton swindled over \$35,000 from his partners by cashing fraudulent checks and not paying taxes. Shelton was charged and pled guilty to one count of theft. A very similar case, *Satterfield v. Board of Educ. of the Grand Rapids Public Schools* (1996), involved a special education teacher who was terminated after he was convicted of embezzling funds from a company for which he worked part-time.

The final case in this section is related to a failure to pay taxes. In *McCullough v. Illinois State Bd. of Educ. by Feuille* (1990), McCullough was employed by the Lawrenceville Unit School District as an elementary school teacher. In the early 1980s, McCullough received significant earnings from commodities trading. However, during that time, McCullough failed to submit tax returns and became the subject of an IRS investigation.

Threats. Five cases, involving five employees, were related to employees making threats. These cases were organized by those involving actual violence, and those not involving actual violence. No cases involved threats against students, nor did any of the threats occur in the presence of students.

In *Ballard v. Independent School Dist. No. 4* (2003), Ballard was a teacher and baseball coach who had been fired twice by the school district, but reinstated by the courts in both cases. During the 1998-1999 school year, the superintendent observed Ballard and another teacher in the middle school copy room. The superintendent instructed the teachers to report to their assigned areas. Ballard responded that he was in his assigned area. The superintendent said he would write Ballard up if he did not report to his assigned area. To this, Ballard said, “If you do, I’ll beat the shit out of you” (p. 1085). The superintendent then asked Ballard if he was threatening him, and Ballard replied, “No, I’m telling you like it is – I’ll do it right here” (p. 1085). During a meeting with the superintendent and school principal regarding the incident, Ballard also threatened to assault a teacher he claimed had been talking about his wife.

In *Horton v. Jefferson County-Dubois Area Vocational Technical School* (1993), Horton was the director of a vocational-technical School. Horton and a team of five other employees at the school were designated to attend a training. The training consisted of several sessions, and if the team missed a session, they would not be permitted to attend the remaining sessions. When the team missed a session, Horton attempted to locate the head counselor for the training to request permission to participate in the remaining classes. Before locating the head counselor, Horton encountered one of the training coordinators and the two engaged in a heated argument. According to the coordinator, Horton grabbed the coordinator’s shirt, made a fist, and made some sort of threat. A few hours later, Horton located the head counselor and that conversation led to Horton saying, “If anyone did this to his people again, he would put a gun to their head and shoot them” (p. 428).

Matter of Tanelli (1984) involved Tanelli, a high school teacher, who was convicted of being a disorderly person for repeatedly making harassing phone calls to his school principal. In *Telemaque v. N.Y.C. Bd.* (2017), Telemaque was employed by the New York City Board/Department of Education as an absent reserve teacher. The board filed disciplinary charges against her for engaging in misconduct, conduct unbecoming or prejudicial, insubordination, and violating the employer's rules. These charges were based on allegations that Telemaque had made threats of violence against school staff.

The single case that did involve actual violence was *Winters v. Arizona Bd. of Educ.* (2004). This case was also presented in multiple other sections. In related part, *Winters* involved a teacher who was involved in five separate incidents with his neighbors. During one of those incidents, the teacher fired a gun at his neighbor's air conditioning unit. The incident pertinent to this section occurred when the teacher violated a protection order by telling the neighbor's children they "had better sleep with one eye open" (p. 176).

Vehicular assault and vehicular homicide. Two cases involved vehicular incidents that both resulted in criminal charges. One involved vehicular homicide and the other involved vehicular assault. In the case of vehicular assault, the court upheld the teacher's termination but the court reversed the teacher's termination in the case of vehicular homicide. While that result may seem contradictory based on the seriousness of the crimes, intent was a key issue in the cases.

In *Bergerson v. Salem-Keizer School Dist.* (2004), Bergerson was an elementary school teacher who was dealing with numerous personal issues and issues with her marriage. While dealing with all these stressors, Bergerson drove to her estranged

husband's girlfriend's residence to confront her husband. The confrontation was non-productive and very emotional. Bergerson returned to her vehicle, took Prozac and pain medication in an attempt to commit suicide, and then drove her van into the back of her husband's pickup truck that was parked in the driveway and pushed the truck into the door of the attached garage. Bergerson pleaded no contest to one count of criminal mischief and the district placed her on administrative leave.

Cisneros v. School Bd. of Miami-Dade County (2008) involved a high school teacher who pled no contest to a vehicular homicide charge that originated from a car accident that occurred six months before he was hired by the school district. The arrest report associated with the accident indicated that Cisneros was driving recklessly, weaving through traffic at speeds close to 75 miles per hour, when he lost control of the van he was driving and crashed. Six of the passengers in the van were injured, including a 7-year-old passenger who was ejected from the vehicle. The child later died and Cisneros was charged with vehicular homicide 16 months after the accident.

Outcomes in Cases

This study included 107 cases, involving 112 employees, related to immorality. The courts applied various definitions of immorality to uphold the disciplinary action imposed by the school board in 80 cases. Thirty-four cases involved sexual misconduct and 73 cases involved nonsexual misconduct. Ultimately, the court found that a wide variety of behaviors could constitute immorality supporting dismissal from employment. The following sections summarize the outcomes of the cases.

Defining Immorality. While each of the 107 cases included in this study were identified as involving immorality, 79 specifically addressed defining or identifying

immoral acts. The term ‘immorality’ might be fairly simple for a person to define. However, arriving at consensus on one definition that is agreeable to multiple people or communities, especially when those communities are located in different states, or regions, is difficult. The term immorality contains too many culturally and socially specific ambiguities, so in the cases analyzed here, each court needed to identify a definition of immorality, or create one, in order to decide whether the conduct in question was, in fact, immoral. As a result, this study included a wide variety of definitions for immorality.

Moral turpitude. Ten cases, involving ten employees, discussed moral turpitude. Seven were related to nonsexual misconduct and four involved criminal proceedings related to the misconduct. Moral turpitude was utilized heavily in Oklahoma and Alaska. Three cases originated in Oklahoma and two originated in Alaska. Florida, Louisiana, and Michigan each had one case that discussed moral turpitude.

The courts’ treatment of the term moral turpitude created a distinction between it and immorality, misconduct, or unbecoming conduct. In essence, the courts delineated moral turpitude as being worse than immorality or misconduct, and generally referred to it as conduct that was shocking to the public conscience. When referring to moral turpitude, the courts gave much attention to the employee’s intent and even more attention to the perceived moral contradiction involved in the act. In *Cisneros v. School Bd. of Miami-Dade County* (2008), the court wrote that acts of moral turpitude “seem to invoke something at a different quantum level” and described character traits such as “abhorrent, vile, corrupt, perverted, and depraved” (p. 1182). Although the misconduct

did not have to be criminal in nature to be considered moral turpitude, any discussion of moral turpitude by the courts was generally accompanied by a discussion of criminality.

In *Andrews v. Independent School Dist. No. 57* (2000), a special education teacher at a junior high school was engaged in a romantic relationship with a minor student attending the high school. The Oklahoma Court of Civil Appeals referenced *Kelley v. City of Tulsa*, (1977) to define moral turpitude as something immoral in itself, where intent is important and an unintentional act is not moral turpitude. Based on this definition, the court found that a teacher having a romantic relationship with a student is in conflict with good morals even if the relationship is not sexual in nature. The court further pointed out that an act of moral turpitude need not be prohibited by statute, or punishable by law to merit termination from employment.

In *Cisneros*, the Florida District Court of Appeal explained that moral turpitude referred to a criminal act that was base, vile, or depraved. The definition referenced by the court (from the Florida Administrative Code), specified that the conduct in question could be either private or non-private. Additionally, although moral turpitude under the Florida Administrative Code referred to a criminal act, it was the nature of the action, and not the fact that it was criminal, that made it moral turpitude. In the instant case, the court held that a teacher's conviction of vehicular homicide did not constitute moral turpitude because and teacher's actions did not fit the categories of vile, base, or depraved; despite the tragic outcome of the incident. In *Dubuclet v. Home Ins. Co.* (1995), the Louisiana Court of Appeal held that being arrested for possession of marijuana and cocaine constituted an act of moral turpitude even though criminal charges related to the incident were dismissed.

Although several courts determined acts of moral turpitude were not limited to criminal acts, moral turpitude could not be simply construed as bad behavior. In *Ballard v. Independent School Dist. No. 4* (2003) where a teacher and baseball coach told the school superintendent he would “kick [his] ass,” the Oklahoma Supreme Court held that a school teacher’s unexecuted threat to physically assault the school superintendent and another teacher, made on school premises but outside the general purview of the students, did not constitute “moral turpitude” justifying dismissal under O.S.2001, § 6-101.22. The court explained that moral turpitude “cannot be used as a catchall for every kind of conduct that is offensive, inappropriate or unprofessional” (p.1087). The court described moral turpitude as misconduct that “involves a level of conduct higher than mere impropriety” (p. 1087).

In *Hawzipta v. Independent School Dist.* (2000), which involved a teacher spreading false rumors about the school principal ordering pornographic materials, the court found that there was no evidence the teacher was informed that another employee confessed to ordering the materials. As such, there was no proof that the teacher had knowledge his information was incorrect. Therefore, although the information he shared about the principal was false, his behavior did not constitute moral turpitude. This speaks to the level of intent often needed to uphold a finding of moral turpitude.

In *Kenai Peninsula Borough Bd. of Educ. v. Brown* (1984), the Alaska Supreme Court explained that Alaska statute defined immorality as “an act which, under the laws of the state, constitutes a crime involving moral turpitude” (p. 1039). The court wrote, “By defining immorality in this manner, the legislature obviated the need for a separate showing of nexus (p. 1039). The court further noted, “finding that a crime involving

moral turpitude has been committed raises at least a presumption that there is a nexus between the teacher's act and the teacher's fitness to teach" (p. 1041). This gave rise to the *Kenai* presumption, further explained and applied in a Michigan court in *Satterfield v. Board of Educ. of the Grand Rapids Public Schools* (1996), which indicated that teachers who engaged in crimes involving moral turpitude were presumed unfit.

In another case out of Alaska, *Toney v. Fairbanks North Star Borough School District, Board of Education* (1994), Toney was a tenured teacher with the Fairbanks North Star Borough School District. In 1980, while employed by a different school district in another state, Toney engaged in a sexual relationship with a 15 year old female student. As a result of the relationship, the student gave birth to a child. The court found that Toney's sexual relationship with a 15 year old student was both illegal and immoral under AS 14.20.170(a)(2)-(3), which defined immorality as an act that constitutes a crime of moral turpitude. Although the relationship occurred several years prior to his employment with the school district, the statute did not limit its application to acts that occurred while the teacher was under contract with the school district.

Two cases from the state of New York discussed moral turpitude, *Matter of Chaplin v. New York City Department of Education*. (2008) and *In re Douglas* (2011). Like most cases out of New York, these opinions were devoid of much detail about the misconduct in question, and the court did not provide any definition of moral turpitude. However, the court did point out in *Matter of Chaplin* that "acts of moral turpitude committed in the course of public employment are an appropriate ground for termination of even long-standing employees with good work histories" (p. 227). Similarly, in *In re*

Douglas, the court held that telling students they “looked sexy,” had “sweet stuff,” and “turned him on” constituted moral turpitude (p. 858).

Vagueness. Seven cases in the study addressed whether the term immorality is too vague to withstand constitutional scrutiny. As previously mentioned, the term immorality is a fairly subjective term. Although many states use the term in their statutes as a potential cause for disciplinary action against teachers, few states provide a thorough definition for the term. Therefore, on a number of occasions, the courts have considered whether the term was too vague to be constitutionally permissible. Simply stated, the courts have generally held that the term immorality is not unconstitutionally vague as long as it is accompanied by a limiting structure, such as fitness to teach.

In *Barringer v. Caldwell County Bd. of Educ.* (1996), the court explained that a statute should be upheld “where reasonable persons would know that their conduct is at risk” (p. 378). The court further noted that “difficulty in determining whether certain marginal offenses are within the meaning of the language under attack as vague does not automatically render a statute unconstitutional for indefiniteness” (p. 378). The key element in this explanation was associated with ensuring that the use of the term in the statute provided adequate notice of which behaviors might be subject to discipline. In order to ensure adequate clarity, many courts have concluded, “the vagueness issue could be avoided by adopting the limitation...that the conduct must render the teacher unfit for the performance of his duties” (*Youngman v. Doerhoff*, 1994, p. 340).

In *Ross v. Robb* (1983), the Missouri Supreme Court, referencing *Thompson v. Southwest School District* (1980), provided a clear explanation of how potential vagueness issues could be addressed. Because the term ‘immorality’ lacked specificity, it

needed to be interpreted along with other subsections of the statute to generate a more precise meaning. According to the court, that precise meaning was that “immoral conduct means conduct rendering plaintiff unfit to teach” (p. 259).

The necessity for limiting the definition of immorality to conduct which renders the teacher unfit to teach gave rise to the required showing of nexus. In order to avoid vagueness issues, the school district must show that the employee’s conduct limits his or her ability to perform the duties associated with the teaching profession. Proving the existence of a nexus between the conduct and the teacher’s fitness can be a difficult task, especially when the conduct in question took place off campus. This concept will be discussed more completely below.

Application of state statute or court precedent. The court applied state statute to reach its decision regarding immorality in 23 cases, applied court precedent to reach its decision in 71 cases, and did not articulate the basis for its reasoning in 13 cases. This speaks to the lack of specificity in state statutes regarding the definition of immorality. In states where immorality was not well defined, the courts typically relied on prior court decisions to determine whether the conduct in question constituted immorality. In some states, like Alaska, where immorality was more clearly defined, the court did not have such a need to rely on prior decisions to reach its conclusions.

Moral Exemplar v. Nexus. Although the definition of immorality varied from state to state, two general types of definition were present, those related to the moral exemplar and those related to nexus. Definitions using the moral exemplar standard were based on the behavior itself, and the expectation that a teacher be held to a higher moral

standard than others. Definitions using the nexus standard were based on the behavior *and* the impact the behavior had on the employee's ability to teach.

The moral exemplar standard was applied in 22 cases and the nexus standard was applied in 50 cases. This finding supports the notion that the nexus standard is being applied in more cases than is the moral exemplar standard. However, cases as recent as 2016 utilized a moral exemplar type definition of immorality, indicating that although the nexus standard for determining immorality is becoming the most widely used, the moral exemplar standard has not been entirely discarded. In cases where the nexus standard was utilized, the disciplinary action was overturned 22% of the time, and the decision was overturned in 27% of cases that utilized the moral exemplar standard.

The moral exemplar standard is based on the idea that teachers, being in a role of supervision over students, must adhere to a higher standard of conduct so that they might set a good example for their students. In *Balog v. McKeesport Area School Dist.* (1984), a Pennsylvania court utilized the following definition of immorality: "A course of conduct as offends the morals of the community and is a bad example to the youth whose ideals a teacher is supposed to foster and to elevate" (p. 136). This definition is very representative of definitions of immorality used under the moral exemplar standard. The key element is that a teacher must set a "proper" example for students. However, much ambiguity arises in attempting to define what is "proper."

Under the nexus standard, the courts have been very careful to avoid creating an exhaustive list of immoral behaviors, but instead, have attempted to create a definition of immorality that is broad enough to encompass a wide variety of potential misconduct, but specific enough to protect the individual rights of teachers. As a result, most courts have

adopted definitions of immorality that require some nexus between the teacher's conduct and his or her fitness to teach. The courts have used a wide variety of logic when deciding whether a nexus exists between the teacher's conduct and his or her job duties. If the conduct took place on the school campus, there is typically very little issue showing a nexus between the behavior and the employee's ability to perform as a teacher (*Sauter v. Mount Vernon School Dist., No 320, Skagit County*, 1990). However, when the conduct takes place off campus, a nexus becomes more difficult to prove. That said, the courts have found each of the following could adequately demonstrate a nexus:

- Conduct that sets a bad example for youth or failure to serve as a positive role model for students (*Sch. Dist. of Phila. v. Jones*, 2016; *Bonatesta v. Northern Cambria School Dist.*, 2012; *McFerren v. Farrell Area Sch. Dist.*, 2010; *Lehto v. Board of Educ. of Caesar Rodney School Dist.*, 2008).
- Conduct that brings widespread negative notoriety (*Esteban v. Dep't of Educ. of City Sch. Dist. of N.Y.*, 2015; *Bergerson v. Salem Keizer School Dist.*, 2004; *Peaster Independent School Dist. v. Glodfelty*, 2001; *Woo v. Putnam County Bd. of Educ.*, 1998).
- Conduct that inflicts damage, or threat of potential damage, on any student (*Mauro v. Walcott*, 2014; *Brito v. Walcott*, 2014; *Winters v. Arizona Bd. of Educ.*, 2004; *Satterfield v. Board of Educ. of the Grand Rapids Public Schools*, 1996).
- Conduct that has an adverse effect on the school community (*Cona v. Avondale School Dist.*, 2013, *Winland v. Strasburg-Franklin Local Sch.*

Dist. Bd. of Educ., 2013; *Walthart v. Bd. of Dirs. of EDCO Sc. Dist.*, 2005; *Gedney v. Board of Educ. of Town of Groton*, 1997).

- Conduct that renders the teacher unfit to teach (*San Diego Unified Sch. Dist. v. Comm'n on Prof'l Competence*, 2013; *Homa v. Carthage R-IX School Dist.*, 2011; *Hamm v. Poplar Bluff R-1 School Dist.*, 1997; *Baldrige v. Board of Trustees, Rosebud County School Dist. No.19, Colstrip, Mont.*, 1997).
- Conduct which materially and substantially affects the teacher's performance (*Fed. Way Sch. Dist. No. 210 v. Vinson*, 2011; *In re Young*, 2010; *Matter of Chaplin v. New York City Dept. of Educ.*, 2008; *Weems v. North Franklin School Dist.*, 2002).
- Conduct that is criminal, especially crimes or conduct involving moral turpitude (*Ahmad v. Board of Educ. of City of Chicago*, 2006; *Toney v. Fairbanks North Star Borough School Dist., Bd. of Educ.*, 1994; *Dupree v. School Committee of Boston*, 1983).
- Conduct that brings the education profession into public disgrace (*Clark v. School Bd. of Lake County, Fla.*, 1992)

While a few courts have chosen not to acknowledge a required nexus, most have, and others have argued that there is an inherent presumption that immoral conduct infers a nexus to the teacher's ability to teach (*Kenai Peninsula Borough Bd. of Educ. v. Brown*, 1984; *Stelzer v. State Bd. of Edn.*, 1991). However, most courts agree that a nexus must be present, not only to allow for teacher privacy in off campus behavior, but also to avoid the potential for vagueness in the term immorality. Several courts have found that the

term immorality would be unconstitutionally vague without a limiting structure such as a nexus requirement (*Alford v. Ingram*, 1996).

In *Balog v. McKeesport Areas School Dist.* (1984), which involved a vocational director lying to district staff about his whereabouts to acquire additional compensation, the Commonwealth Court of Pennsylvania utilized a definition of immorality established in 1939 in *Horosko v. Sch. Dist. of Mount Pleasant Tp.* That definition described immoral conduct as “a course of conduct as offends the morals of the community and is a bad example to the youth whose ideals a teacher is supposed to foster” (p. 136). Over 30 years later, and more than 75 years after the *Horosko* decision, the commonwealth court utilized the same definition in *Sch. Dist. of Phila. v. Jones* (2016). The “bad example to youth” portion of this definition indicates a nexus between the conduct and the teacher’s duties as a teacher.

Similarly, the California Court of Appeals, in *San Diego Sch. Dist. v. Comm’n on Prof’l Competence* (2013), described immoral conduct as conduct that renders the teacher unfit to teach (p. 1142). The court wrote, “the terms ‘immoral’ or ‘unprofessional conduct’ are so broad and vague that, standing alone, they could be constitutionally infirm; hence the proper criteria is fitness to teach” (p. 1142). However, the court further noted that fitness to teach should be clearly defined as well. For that purpose, the court utilized a set of factors established in *Morrison v. State Board of Education* (1969) which, in short, made it clear that a teacher could not be terminated for behavior that had no impact on his or her professional duties.

The Ohio Court of Appeals, in *Winland v. Strasburg-Franklin Local Sch. Dist. Bd. of Educ.* (2013), explained that immoral conduct must be a “fairly serious matter”

and “cannot be some private act which has no impact on the teacher’s professional duties,” but must in some way “be hostile to the school community” (p. 1196). In this case, the court found that a teacher’s acts of viewing sexual images on a school issued laptop during the summer did not meet the definition of immorality. Key to this interpretation was the fact that the teacher’s actions took place during the summer, out of town, and did not, in the court’s opinion, constitute “a fairly serious matter.”

Some states, however, have either ignored, or embedded, the idea of requiring a nexus between the conduct and the teacher’s duties. In *Ahmad v. Board of Educ. of City of Chicago* (2006), the Illinois Appellate Court applied a dictionary definition of immorality and defined it as “shameless conduct showing moral indifference to the opinions of the good and respectable members of the community” (p. 164). The court did not explain who “the good and respectable members of the community” were, or how their opinions might be accessed.

In *Kenai Peninsula Borough Bd. of Educ. v. Brown* (1984), the Alaska Supreme Court explained that Alaska statute defined immorality as “an act which, under the laws of the state, constitutes a crime involving moral turpitude” (p. 1039). Using this definition, the court was not required to determine a nexus between the misconduct and the teacher’s fitness, because a nexus could be assumed. The court wrote, “By defining immorality in this manner, the legislature obviated the need for a separate showing of nexus”. The court further noted, “finding that a crime involving moral turpitude has been committed raises at least a presumption that there is a nexus between the teacher’s act and the teacher’s fitness to teach” (1041).

Fitness to teach. Fitness to teach was frequently discussed in the cases. The most common application of the term was as a limiting factor for determining nexus. In *San Diego Unified Sch. Dist. v. Comm’n on Prof’l Competence* (2013), determining fitness to teach was well explained. To determine fitness to teach, the courts may consider the adverse effect the conduct has on students, or anticipated effect on students. The court might also consider, “the proximity or remoteness in time of the conduct, the type of certificated held by the teacher, extenuating circumstances, and likelihood of recurrence of the conduct” (p. 1143).

While numerous examples of fitness to teach have been presented above as a limiting structure for determining immorality under the nexus standard, it has also been utilized as a free standing cause for employee disciplinary action. For example, in *Baldrige v. Board of Trustees, Rosebud County School District* (1997), the court explained that Montana a statute allowed teachers to be dismissed for “immorality, unfitness, incompetence, or violation of the adopted policies” (p. 57). Under this construction, unfitness was utilized as an independent cause for dismissal and not simply a limiting factor in determining immorality.

Sufficient or Substantial Evidence. Evidence was discussed in every case in the study, but specific issues related to evidence were discussed in 49 cases. The importance of evidence was well stated in *Jackson v. Bd. of Educ. of Chicago* (2016), “a reviewing court will not reverse an agency’s findings unless they are against the manifest weight of the evidence” (p. 388). Common knowledge suggests that evidence is a critical factor in any case. As such, that point will not be belabored much here. This section is primarily included as a reminder that the appropriateness or blameworthiness of any conduct can

only be assessed after there is evidence that the conduct actually occurred. Similarly, conclusions regarding other critical elements of the case, such as due process, fitness to teach, remediability, or disproportionality of the assessed penalty, can only be reached based on credible evidence.

To determine whether there was sufficient evidence that the employee engaged in misconduct, the court reviewed the record. When the facts of a case were undisputed, the court accepted the evidentiary findings of the board. In contrast, if the facts were disputed, the court reviewed the evidence. However, the court's review was not limitless. "Though the trial court is required to exercise its independent judgment on the evidence, it is to give a strong presumption of correctness to the [agency's] findings" (*San Diego Unified Sch. Dist. v. Comm'n on Prof'l Competence*, 2013, p. 1141).

The courts were clear that agency decisions must be based on credible evidence. Not just in regard to the conduct itself, but also in regard to each of the pertinent factors of the case. Evidence in administrative hearings included typical forms of evidence but also included hearsay evidence if it was relevant and supported by other evidence in the record (*Gongora v. New York City Dept. of Educ.*, 2010 & *Walthart v. Bd. of Dirs. of EDCO Sc. Dist.*, 2005). Additionally, the assessment of conflicting evidence was left to the hearing officer, or other fact finder presiding over the case. "A verdict which is supported by conflicting but competent evidence will not be disturbed on appeal" (*Hawzipta v. Independent School Dist.*, 2000, p. 101).

Due Process. While it could be assumed that courts consider questions related to due process in every case, those considerations were not always recorded in the court's written opinion. Of the 107 cases included in this study, 25 specifically addressed

relevant questions related to due process. Due process, as provided by the Fifth and Fourteenth Amendments of the United States Constitution, requires notice and an opportunity to be heard prior to the removal of any liberty or property interests (see *Cleveland Board of Education v. Loudermill* (1985)). The court, in *Vukadinovich v. Board of School Trustees of Michigan City and Schools* (1992), wrote, “The mere deprivation by state action of a constitutionally protected interest in ‘life, liberty or property’ is not in itself unconstitutional; what is unconstitutional is the deprivation of such an interest *without due process of law*” (p. 410).

Notice. Notice is the first element of due process. Prior to taking any disciplinary action against a teacher, the school board or its designee, must provide the teacher with notice of the charges against him or her. The purpose of this step is to provide the teacher with an opportunity to prepare a defense. In *Winland v. Strasburg-Franklin Local Sch. Dist. Bd. of Educ.* (2013), the court wrote, “Before terminating a teacher’s contract, the employing board of education must furnish the teacher with written notice of its intention to terminate the contract containing the grounds for action” (p. 1194).

Because the intent of notice is to provide the teacher with an opportunity to prepare a defense, the particular charges upon which disciplinary action is to be taken should be included in the notice. However, the courts have held that there is no requirement that the notice include each and every broken rule or behavior. The notice must include grounds that are adequately specific “so that a reasonable teacher can prepare a defense” (*Timpani v. Lakeside Sch. Dist.*, 2011, p. 12). The court further held that “a teacher may reasonably expect the district to comply substantially with its own declared policies” (p. 13). As such, notice may indicate that the employee is being

charged with violating policies relating to a particular subject, but not specifically list and number each and every policy that might have been violated.

The key point regarding notice is that the teacher have the opportunity to predict the matters that he or she may need to defend. For example, in *Turk v. Franklin Special School Dist.* (1982), the court held that the school district failed to provide adequate notice to the teacher when her notice included only a single incident of driving under the influence, but two other incidents were introduced during her hearing. The court found that “the board acted in flagrant disregard of the statutory requirement and fundamental fairness in considering matters that should have been specifically charged in writing” (p. 21). The board’s error resulted in the court ruling in favor of the teacher.

Hearing. In addition to notice, due process requires that the employees be provided a meaningful opportunity to defend their actions. The Supreme Court of Connecticut said, “At the core of due process is the requirement for an impartial tribunal” (*Rado v. Board of Educ. of Borough of Naugatuck*, 1990, p. 556). At the heart of what legally constitutes a fair hearing are terms such as arbitrary, capricious, and bias. If the court finds evidence that the board acted arbitrarily, capriciously, or with bias, due process has been violated. When considering whether a board acted arbitrarily, capriciously, or with bias, the court considers all of the evidence on record. If there is adequate evidence to support the board’s decision, even if the court disagrees with that decision, the court will typically uphold the board’s decision. Conversely, if the evidence is lacking, the court may conclude that the board’s decision was arbitrary.

In *Ross v. Robb* (1983), the court noted that a fair trial is present unless the record shows “the Board heard the evidence with an unbendable or preconceived notion that the

petitioner was guilty as charged” (p. 260). Similarly, the *Rado* court wrote, “it is a difficult burden to show bias as a matter of law” and that “burden of establishing a disqualifying interest on the part of an adjudicator rests upon the one seeking disqualification” (p. 556). However, in *Gongora v. New York City Department of Education* (2010), the court found that the arbitrator’s decision was arbitrary and biased when she failed to articulate what evidence led to her decision and relied upon “her unsupported hunch” when reaching her conclusions (p. 177).

Discipline Disproportionate to the Misconduct. While not considered in the majority of cases in this study, 27 cases ruled on whether the school district imposed a penalty that was disproportionate to the offense. The courts in most states considered whether the decision of the board was arbitrary, capricious, or in excess of the board’s authority. If the answer to that question was “no,” the court generally upheld the disciplinary action imposed by the school board. The courts in Colorado, Indiana, Michigan, Mississippi, Ohio, and Oregon each dealt with one case of this type.

For example, in *Fiscus v. Board of School Trustees of Cent. School Dist. of Greene County* (1987), the Indiana Court of Appeals was asked whether a teacher’s single utterance of the phrase “fuck you” to students merited termination from employment. The court found that the school board’s decision was not arbitrary or capricious and upheld the board’s decision. The court wrote, “Having held that the School Board’s ruling was neither arbitrary nor capricious, we can not now invade its discretion regarding the penalty” (p. 1142).

The majority of these cases, however, came out of the state of New York and were significantly different. Every case that originated in New York (21 cases), addressed

disproportionality. This is a result of New York’s Education Law § 3020-a, which requires the reviewing court to “consider whether the penalty imposed is so disproportionate to the offense, in light of all the circumstances, as to be shocking to one’s sense of fairness” (*Asch v. N.Y.C. Bd./Dep’t of Educ.*, 2013, p. 421). Guidance regarding this requirement to review the appropriateness of the imposed penalty was outlined in *Matter of Pell v. Board of Educ. of Union Free School Dist. No. 1* (1974). The key element, frequently used by the New York courts, was whether the penalty seemed “shocking to the court’s sense of fairness” after all the circumstances were considered.

Of those 21 New York cases, three were overturned because the court found the penalty “shocking to the court’s sense of fairness” (*Beatty v. City of New York*, 2017, p. 414; *Brito v. Walcott*, 2014, p. 546; *Mauro v. Walcott*, 2014, p. 549). In *Beatty*, where a homebound teacher submitted false timecards because she was displaced from her home after hurricane Katrina, the court wrote, “we believe [the penalty of termination] is disproportionate to the level of petitioner’s misconduct and exceeds the standards that society requires to be applied to this offense” (p. 415). Likewise, in *Brito* and *Walcott* (separate cases regarding the same incident), the court overturned the penalty of termination for two female teachers who engaged in consensual sexual acts with one another on campus, after hours, and outside the view of students.

In contrast, in *In re Binghamton* (2007), the New York Supreme Court, Appellate Division, held that a teacher’s two-year suspension was not a sufficient penalty for a teacher’s act of engaging in a grossly inappropriate relationship with a student. The court wrote, “respondent lacked remorse for his inappropriate relationship with the student” and “the suspension is not adequate.” The court further noted, “Whether respondent’s

termination is the only penalty that would assure this, or whether some other restrictions could be effective, is an issue to be resolved by the Hearing Officer” (p. 1044).

Remediability. Remediability was discussed in 14 cases involving 14 employees. These cases all originated from just three states: Illinois, Minnesota, and Washington. The disciplinary action imposed by the school board was upheld in 13 of the 14 cases that involved a discussion of remediability. In employment, remediation refers to notifying employees that their conduct or performance is in conflict with established standards and providing an opportunity for them to correct their shortcomings prior to facing disciplinary action or termination. In short, the courts indicated that if the behavior was deemed immoral, it was almost certainly irremediable as well. Some flexibility could be found where intent was questionable, but without doubt, egregious immoral acts were not considered remediable. If the conduct was irremediable, immediate dismissal was appropriate.

In *Ball v. Board of Educ. of City of Chicago* (2013), the court explained that under Illinois statute Section 34-85, “No written warning shall be required for conduct that is cruel, immoral, negligent, or criminal or which in any way causes psychological or physical harm or injury to a student. (p. 1005) Similarly, the court in *Ahmad v. Board of Education of the City of Chicago* (2006) wrote, “where teachers indulge in conduct that is immoral at best, and criminal or quasi-criminal at worst, they demonstrate a basic character flaw which makes their future employment untenable” (pp. 166-167).

In *Matter of Shelton* (1987), a teacher and two of his coworkers formed a small company selling and servicing computer hardware. Over the course of a couple years, the teacher swindled over \$35,000 from his partners by cashing fraudulent checks and not

paying taxes. The court determined that the teacher's conduct was irremediable because his continued presence in the school district would cause lasting disorder among the faculty and the learning environment. However, the court did make note of the fact that reassignment, not termination, might have been a more suitable option in a larger school district.

In Sauter v. Mount Vernon School Dist., No. 320, Skagit County (1990), a mathematics teacher developed a close relationship with one of his female students which culminated with the teacher writing an explicit letter indicating that he desired a physical relationship with her. The Washington Court of Appeals referenced four different cases typically relied upon in Washington for determining whether there is sufficient cause to terminate a teacher's contract (*Clarke v. Shoreline Sch. Dist. 412*, 1986, *Hoagland v. Mount Vernon School Dist. 320, Skagit County*, 1981, *Potter v. Kalama Pub. Sch. Dist. 402*, 1982, and *Pryse v. Yakima School Dist. No. 7*, 1981). Each case developed tests for determining whether the conduct in question provided sufficient cause for termination. The *Clarke* case further interpreted the other cases to conclude that in cases involving egregious conduct, remediability of the conduct was irrelevant. Applying the egregious exception outlined in *Clarke* the court found that Sauter's behavior was egregious, sexually exploitive, directly related to his duties as a teacher, and lacked any positive educational aspect or legitimate professional purpose and, therefore, provided sufficient cause for immediate termination.

The courts consistently found that egregious misconduct cannot be remedied. In *Mott v. Endicott School Dist. No. 308* (1986), the court found that Mott's actions of striking students in the genitals with welding tongs was "so patently unacceptable that the

school district was entitled to discharge the teacher for his actions in this case regardless of prior warnings” (p. 204). Moreover, the court noted in *Fadler v. Illinois State Board of Education* (1987), where a teacher was found to be fondling children, even if conduct of this type could be remedied by a reprimand after the fact, the damage inflicted by the conduct could never be remedied.

Sexual misconduct. Thirty-four cases, involving 35 employees, were related to sexual misconduct. Generally, the court upheld the disciplinary action in these cases so long as the evidence supported the allegations. This is evidenced largely by the fact that the court has upheld the disciplinary action imposed by the school board in 74% of cases. However, the court disagreed with the school’s discipline of the employee in nine cases involving 10 employees. Table 15 shows that of the 35 employees involved in these cases, 28 were male and seven were female. The court disagreed with the school’s discipline of 71% of female employees accused of sexual misconduct, but only disagreed with the discipline of 14% of males.

Table 15

Ruling Favor in Sexual Misconduct Cases

Gender	Number of employees	Ruled in Favor of School	Percent
Male	28	24	86%
Female	7	2	29%
Total	35	26	74%

Sexual misconduct involving students. The courts were more likely to uphold the disciplinary action in cases related to sexual misconduct involving students than in cases not involving students. As shown in Table 16, the courts upheld the disciplinary action in 81% of cases involving sexual misconduct between employees and students. The

disciplinary action was upheld by the courts 87% of the time when dealing with male employees. The disciplinary action was only upheld 50% of the time when dealing with female employees.

Table 16

Outcomes of Sexual Misconduct Involving Students

Gender	Number of employees	Ruled in Favor of School	Percent
Male	23	20	87%
Female	4	2	50%
Total	27	22	81%

Sexual misconduct involving adults. Nine cases, involving nine employees, were related to sexual misconduct that was not related to students. Shown in Table 17, the courts upheld the disciplinary action of 56% of employees accused of sexual misconduct involving adults. The disciplinary action was upheld for 83% of male employees accused of sexual misconduct with adults, while the court did not uphold any disciplinary actions against female employees in this category. However, it is important to note that two of the three female employees shown in Table 17 were involved with one another in the same consensual sexual incident, so the court was likely to rule the same in each of their cases.

Table 17

Outcomes of Sexual Misconduct Involving Adults

Gender	Number of employees	Ruled in Favor of School	Percent
Male	6	5	83%
Female	3	0	0%
Total	9	5	56%

Nonsexual misconduct. Nonsexual misconduct was discussed in 73 cases involving 76 employees, including 31 female employees and 46 male employees. The disciplinary action imposed by the school board was upheld in 74% of the cases. The disciplinary action was upheld for 77% of female employees accused on nonsexual misconduct and for 74% of male employees.

Criminal activities. Thirty cases, involving 32 public school employees, were related to criminal activities. These included arrests related to drugs, driving under the influence, eavesdropping, firearms, tax evasion, theft or fraud, vehicular assault, vehicular homicide, and one unspecified act of moral turpitude. The disciplinary action was upheld for 88% of the employees in these cases. Twenty-three of the employees were convicted of a crime. The disciplinary action imposed by the school board was upheld for all but three of those employees.

Alcohol. Seven cases, involving seven employees, were related to alcohol. The disciplinary action was upheld in five of the seven cases. Three of the cases were related to providing alcohol to, or allowing the use of alcohol by, students. The disciplinary action was upheld in all three of those cases. Only one male employee was involved in this category.

Dishonesty. Thirty-four cases, involving 36 employees, were related to dishonesty. The disciplinary action was upheld in 29 of the 36 cases. Twenty-two cases were related to fraud or theft. The disciplinary action was upheld in 18 of those 22 cases. Seven cases were related to lying or general dishonesty. The disciplinary action was upheld in four of those seven cases. Four cases related to the impermissible use of leave and the disciplinary action was upheld in all four cases.

Drugs. Twelve cases, involving 13 employees, were related to drugs. The disciplinary action was upheld in nine of those twelve cases. Two of the cases involved students as well and the disciplinary action was upheld in both cases. Only one female employee was involved in this category.

Firearms. Five cases, involving five employees, involved firearms. The disciplinary action was upheld in four of the five cases. The only case in which the disciplinary action was overturned related to the possession of a firearm during a traffic stop for which the employee had a permit. Three of the cases were related to actual violence or the threat of violence and the disciplinary action was upheld in all three of those cases.

Inappropriate comments. Ten cases, involving 10 employees, were related to making inappropriate comments. The disciplinary action was upheld in seven of the 10 cases. Nine of the cases involved making inappropriate comments to students and the disciplinary action was upheld in seven of those cases. The one case that involved an employee using inappropriate language with an adult was reversed.

Threats. Five cases, involving five employees, was related to making threats. The disciplinary action was upheld in three of the five cases. None of the threats were made against students. Four cases involved making threats against school staff and the disciplinary action was upheld in two of those four cases.

School issues. Six cases, involving seven employees, were related to school issues. The disciplinary action was upheld in only two of these cases. Two cases were related to improper discipline. The disciplinary action was upheld in one of the two cases. One case involved participating in prohibited conduct, one involved a coursework

deficiency, and one involved the improper use of a school laptop. The disciplinary action was reversed in each of these cases. The final case in this section involved improper supervision of students and the disciplinary action was upheld in that case.

Vehicular assault and vehicular homicide. Two cases, involving two employees, were related to vehicular incidents that resulted in criminal charges. One involved vehicular homicide and the other involved vehicular assault. In the case of vehicular assault, the court upheld the teacher's termination but the court reversed the teacher's termination in the case of vehicular homicide.

Summary

This chapter presented a wide variety of issues, outcomes, and trends revealed in the data. The information was organized in an attempt to assist the reader in following the process of analysis used by the researcher and recognize the most significant findings. Chapter 5 includes a summary of this information and recommendations for utilizing the findings.

CHAPTER V

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

The purpose of this study was to examine state and federal cases involving adverse employment actions against certified K-12 public school employees for immoral conduct to determine the issues, trends, and outcomes in those cases. This chapter includes a summary of findings related to the research questions which led to the theoretical implications and practical applications of the findings. The chapter concludes with suggestions for further research.

Summary of Findings

Each case brief in the sample summarized the issues, outcomes, and trends present in the case. The sample revealed similar issues among educator immorality cases across the country. Cases involved a wide variety of sexual and nonsexual misconduct. The definition of immorality, or the vagueness of that definition, was a common matter addressed by the courts in the outcome of cases. Likewise, potential due process violations and questions related to the sufficiency of evidence were often present in case analysis. The disproportionality of the disciplinary action was only discussed by courts from a few states, but appeared often enough to be considered a significant factor. Various trends related to gender, outcomes, and geographic locations were also observed in the data.

Issues

Research Question 1 asked, “What were the issues in court cases involving adverse employment actions against certified K-12 public school employees for immoral conduct as delineated by state and federal courts?”

Sexual misconduct. Of the 107 cases reviewed in this study, 34 involved allegations of sexual misconduct. These cases presented a variety of allegations of sexual misconduct involving both students and adults. Sexual misconduct involving students included employees engaging in sexual relationships, romantic but non-physical relationships, inappropriate touching, and sexual or vulgar comments with students. Sexual misconduct involving adults included both consensual and nonconsensual sexual behaviors. In cases involving students, the courts typically upheld the disciplinary action imposed by the school board if the evidence proved the misconduct occurred. However, school districts were less successful in cases involving adults because it was more difficult to show a nexus between the misconduct and the employee’s job duties.

Nonsexual misconduct. Seventy-three cases were related to allegations of non-sexual misconduct. Of the 73 cases involving non-sexual misconduct, 30 were related to behaviors that resulted in criminal proceedings, but the courts were clear that misconduct did not have to be criminal to constitute immorality. Conversely, not all criminal behaviors were deemed immoral. Allegations of nonsexual misconduct in these cases were numerous and included a variety of behaviors related to alcohol, dishonesty, drugs, firearms, inappropriate comments, threats, school issues, and vehicular assault/homicide.

Outcomes

Research Question 2 asked, “What were the outcomes of court cases involving adverse employment actions against certified K-12 employees for immoral conduct as delineated by state and federal courts?”

Of the 107 cases included in the study, the court upheld the disciplinary action imposed by the school board in 80, or 75% of cases. The disciplinary action was upheld in 82% of all sexual misconduct cases, and in 74% of all nonsexual misconduct cases. The sample revealed a number of behaviors that might constitute immorality and justify the use of adverse employment actions against employees who engaged in questionable conduct. The following categories were created to catalogue the types of behavior that have been deemed by the courts, under certain circumstances, to constitute immoral behavior:

- Sexual offenses involving students
- Sexual offenses involving adults
- Criminal acts
- Alcohol related misconduct
- Dishonesty
- Fraud and theft
- Incidents involving firearms
- Inappropriate speech
- Threats
- Use of violence
- Use, sale, or possession of drugs

This list is not exhaustive and does not necessarily represent how the courts will view a particular behavior in context. It is simply a list of broad categories of conduct the courts have previously deemed immoral. Furthermore, a wide range of behaviors might be included in each of these categories. In order to prevail in court, the school district must provide sufficient evidence that the conduct occurred, comply with all components of due process, and show that the conduct is in fact immoral as defined in their respective state.

Definition of immorality. When ruling on teacher immorality cases, the courts typically utilized one of two standards, the moral exemplar standard or the nexus standard. Under the moral exemplar standard, immorality was defined based on the perceived wrongness of the misconduct. This definition was based largely on whether the conduct conflicted with community values. Under the nexus standard, the courts also sought to determine whether the alleged conduct negatively impacted the employee's fitness to teach.

The first step under either standard was to determine whether evidence supported a finding that the misconduct actually occurred. Then, the question was whether the conduct was in violation of accepted standards for behavior. Under the moral exemplar standard, this is where the analysis stopped. However, under the nexus standard, to address vagueness issues, the court then sought to determine whether a nexus existed between the misconduct and the employee's fitness to discharge his or her duties. If all three elements were present, the school district was very likely to prevail. So, the moral exemplar standard was a two-prong process requiring evidence that the misconduct occurred and evidence that the conduct violated the standards of the community. The

nexus standard was three prong process that required evidence of those same two prongs but also required a third prong: whether the misconduct impaired the employee's fitness.

Due process. While it could be assumed that courts consider questions related to due process in every case, those considerations were not always recorded in the court's written opinion. Twenty-five of the 107 cases included in this study specifically addressed a wide variety of questions related to due process. School districts were required to provide employees accused of misconduct notice and an adequate opportunity to present a defense prior to taking disciplinary action against them.

Disproportionate penalty. While not considered in the majority of the cases in this study, 27 cases ruled on whether the school district imposed a penalty that was disproportionate to the offense. The courts in most states considered whether the decision of the board was arbitrary, capricious, or in excess of the board's authority, but the courts in Colorado, Indiana, Michigan, Mississippi, New York, Ohio and Oregon also considered whether the penalty imposed by the board was excessive. Twenty-one of the cases originated from the state of New York. Five cases were overturned due to a disproportionate penalty, but it is appropriate to note that each of these cases came out of the state of New York between 2010 and 2017.

Sufficient evidence. Evidence was discussed in every case in the study, but specific issues related to evidence were discussed in 49 cases. The importance of evidence was well stated in *Jackson v. Bd. of Educ. of Chicago* (2016), "a reviewing court will not reverse an agency's findings unless they are against the manifest weight of the evidence" (p. 388). Common knowledge suggests that evidence is a critical factor in any case. In immorality cases, the courts were clear that the appropriateness or

blameworthiness of any conduct could only be assessed after it was established that there was sufficient evidence that the conduct actually occurred. Furthermore, conclusions regarding other critical elements of the case, such as due process, fitness to teach, remediability, or disproportionality of the assessed penalty, could only be reached based on credible evidence.

Trends

Research Question 3 asked, “What were the legal trends in court cases involving adverse employment actions against certified K-12 employees for immoral conduct as delineated by state and federal courts?”

This study included 107 cases, involving 112 employees, related to immoral conduct. The cases were further delineated as those involving sexual misconduct and those involving nonsexual misconduct. Thirty-four cases, involving 35 employees, were related to sexual misconduct. Seventy-three cases, involving 77 employees, related to nonsexual misconduct.

The disciplinary action was upheld in 80 of the 107 total cases. The employee was terminated from employment in 74 cases and suspended in six cases. Of the 34 cases involving sexual misconduct, the disciplinary action was upheld in 26 cases, resulting in 23 terminations and 3 suspensions. Of the 73 nonsexual misconduct cases, the disciplinary action was upheld in 54 cases, resulting in 51 terminations and three suspensions.

Of the 112 employees included in the study, 98 were tenured, eight were contract employees, five were non-tenured, and the tenure status of one was not reported. Of the 98 tenured employees, 92 were teachers, two were career technical school directors, three

were counselors, and one was an assistant principal. Of the eight contract employees, five were teachers, one was a principal, one was a special education director, and one was an associate superintendent. All five of the non-tenured employees were teachers, and all five were male.

Despite the fact that more than 75% of all public elementary and secondary teachers are female (National Center for Education Statistics, 2017), the sample revealed almost twice as many cases brought by men than by women. Of the 112 employees included in the study, 38 were female and 74 were male. The disciplinary action was upheld for 26 of the 38 females, including 23 terminations and three suspensions. The disciplinary action was upheld for 58 of the 74 males, including 55 terminations and three suspensions. The disciplinary action was upheld for 33 of the 46 males accused of nonsexual misconduct, including 31 terminations and two suspensions. The disciplinary action was upheld for 24 of the 31 females accused of nonsexual misconduct, including 22 terminations and two suspensions.

Although news outlets often present news stories indicating that sexual misconduct perpetrated by female teachers is becoming commonplace, the data in this study did not support this assumption. Of 35 employees accused of misconduct, only seven were female. The disciplinary action was upheld for 24 of the 28 males accused of sexual misconduct, including 22 terminations and two suspensions. The disciplinary action was upheld for two of the seven females accused of sexual misconduct, including one termination and one suspension.

Of the 112 employees, 53 worked at the high school level, 10 worked at the middle school level, 23 worked at the elementary school level, two worked at the district

level, two were homebound teachers, and the level at which the employee worked was not reported for 22 employees. Of the 35 employees accused of sexual misconduct, 18 worked at the high school level, seven worked at the middle school level, seven worked at the elementary level and the school level at which the employee worked was not reported for three employees. Of the 77 employees accused of nonsexual misconduct, 35 worked at the high school level, three worked at the middle school level, 16 worked at the elementary school level, two worked at the district level, two were homebound teachers, and the level at which the employee worked was not reported for 19 employees.

All 107 cases originated from only 31 states. The states presenting the most cases were New York with 21, Pennsylvania with 11, Missouri with 10, Illinois with eight, and West Virginia with six. Therefore, 56 or 52% of all the cases included in this study originated in just five states. In fact, New York represents 19.6% of cases alone. Those same five states represent 68% of all female employees represented in the data. California, Missouri, New York, and West Virginia were the only states that reported more than one case involving sexual misconduct, and those four states presented 65% of all sexual misconduct cases. Another item of interest is related to cases originating in Pennsylvania. Although Pennsylvania reported the second highest number of cases at 11, 100% of those cases involved nonsexual misconduct.

Overall, the court upheld the disciplinary action imposed by the school board in 80, or 75% of cases. Among states that reported three or more cases, Missouri presented the highest school district success rate at 90%. On the opposite end of the spectrum, Florida presented a 0% success rate for the school district. Other states reporting more than three cases yielded school district success rates more similar to the average: New

York was at 76%, Pennsylvania was at 55%, Illinois was at 75%, and West Virginia was at 83%.

Although the cases included in the study were heard in state court, the cases were also analyzed by geographic region to determine if trends could be identified on a broader regional level. Using the structure of the federal court system, each state was grouped and analyzed based on the United States Circuit Court of Appeals jurisdiction. It was anticipated that grouping state courts under the umbrella of its federal circuit court might allow trends to develop that could not be seen on a smaller state scale because of limited numbers of court cases.

The Second Circuit region presented the most cases at 23. It is important to note, however, that 21 of those cases originated in the state of New York. The 17 cases out of the Ninth Circuit region represented cases from six different states, the most of any region, but that region contains nine states, also the most of any region. There were no sexual misconduct cases in either the First or Fourth Circuit regions, and the Ninth Circuit was the only region with more sexual misconduct cases than nonsexual misconduct cases. In the Ninth Circuit region, cases involving male employees outnumbered cases involving female employees 16 to 1, and the Fifth Circuit was the only region where cases involving female employees outnumbered those involving male employees.

The courts ruled in favor of the school district in all cases in the First Circuit region, but there were only two cases in that region, both originating in Massachusetts. The courts in the Eighth Circuit region ruled in favor of the school district in 93% of cases, followed closely by the Ninth Circuit at 88% and the Second Circuit at 78%. The courts

did not rule in favor of the school district in a single case presented in the Eleventh Circuit region, but that region only presented three cases, all three originating in the state of Florida. The only regions to include more than one employee in a case were the First, Third, Fifth, and Sixth Circuits.

As shown in Table 18, there were 33 cases in the sample in the timeframe between 1981 and 1989. Of those cases, the school district prevailed in 85%. In 26 cases between 1990 and 1999, the school district prevailed in 81% of cases. In 21 cases between 2000 and 2009, the school district prevailed in 76% of cases. Finally, in 27 cases between 2010 and 2017, the school district prevailed in only 55% of cases. These data clearly indicate that school districts are progressively having more difficulty in disciplining employees for immorality.

Table 18

Decisions Over Time

Time Frame	Number of Cases	Ruled in Favor of School District
1981-1989	33	85%
1990-1999	26	81%
2000-2009	21	76%
2010-2017	27	55%

Guiding Principles

Research Question 4 asked, “What guidelines for school employees can be discovered from court cases involving adverse employment actions against certified K-12 employees for immoral conduct as delineated by state and federal courts?”

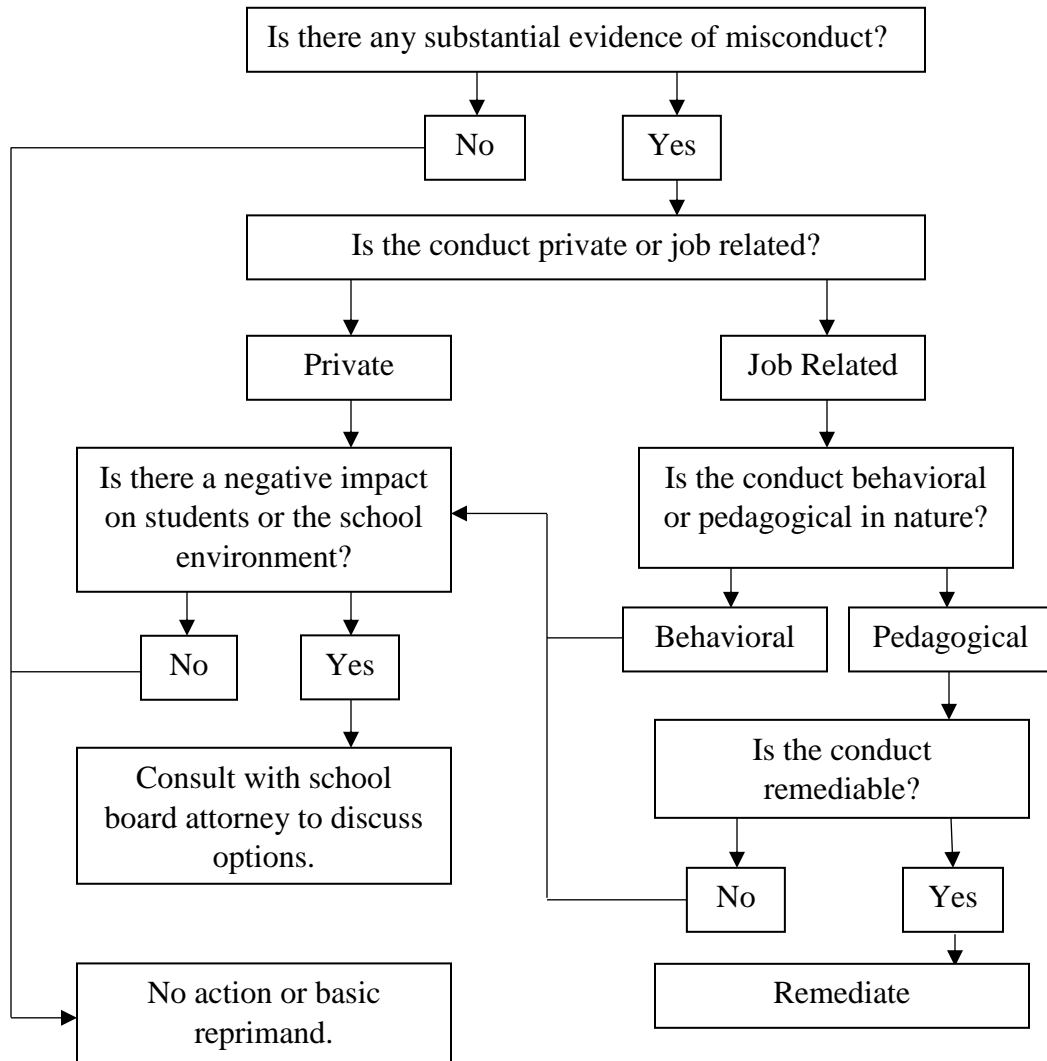
The stakes are high when dealing with employee misconduct. Handling an employee misconduct case improperly could literally compromise the safety of students

and staff. As such, school boards must ensure that all procedures are followed to the letter when addressing allegations of misconduct. The following recommendations and flow chart were developed by the researcher utilizing information obtained directly from the cases included in the study and from the researcher's experiences. This information is provided as an assistant resource, but should not be considered a substitute for true legal advice.

Recommendations.

1. The school board should ensure that there are clearly articulated policies regarding expectations related to employee behavior, and that those policies are properly disseminated to all staff.
2. All allegations of employee misconduct should be investigated swiftly and fairly.
3. There must be adequate, legally obtained evidence that the misconduct occurred.
4. There must be adequate, legally obtained evidence that the misconduct has a negative effect on the school environment or the employee's fitness to discharge his or her duties.
5. The school board must ensure that all facets of due process are properly observed.

Figure 1.

Immorality Action Flow Chart.

Theoretical Implications

Many of the findings that emerged from this study echo those of prior research on this topic. As the literature indicated, immorality cases are based largely on whether there is sufficient evidence that the conduct occurred, whether that conduct violates community standards for moral behavior, and whether there is a nexus between the conduct and the

employee's ability to perform the duties associated with his or her job. Additionally, the findings associated with due process and other procedural considerations are consistent with previous similar studies. However, the most significant finding produced by this study, especially considering its absence in the literature, is the substantial shift in the outcomes in court cases involving adverse employment actions against certified K-12 employees for immoral conduct.

While it is clear that there has been a shift in the outcomes regarding teacher immorality cases, it is difficult to determine a direct cause for the shift. Data collected for this study indicated that the courts have begun to give at least some additional consideration to the circumstances and difficulties that preceded an employee's behavior. Also, some courts have begun to give more attention to the employee's intent when deciding cases. Finally, there was some evidence that courts, especially in certain states, are becoming more open to overruling the school district's opinion regarding the appropriateness of the penalty imposed for a particular behavior. Given the amount and type of information present in the data collected for this study, any further explanation would be mostly conjecture and largely unreliable.

Suggestions for Further Research

The most obvious implication for further study arising from this study relates to the recent shift in the outcomes of court cases regarding teacher immorality. A study designed expressly to determine the cause, or causes, of these recent trends could be quite useful to the field. An explanation would not only be useful to researchers and the literature, but could also provide much needed information to educators, school administrators, school boards, and school attorneys.

Additionally, this study focused on cases within PK-12 public school employees. The court decisions likely have implications related to higher education as well. Further study could be conducted to discover if similar issues, outcomes, and trends appear in immorality cases in higher education. Finally, studies of this nature easily lend themselves to future studies. As time passes, new cases will be tried and new implications might be found.

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APPENDIX A

CASE BRIEFS

Citation: Ahmad v. Board of Educ. of City of Chicago, 847 N.E.2d 810, 365 Ill.App.3d 155 (Ill. App., 2006).

Key Facts: Ahmad taught in the Chicago Public School (CPS) system for over 30 years. In 1999, she was removed from the classroom for unspecified disciplinary reasons and was reassigned to the board office where she had no teaching responsibilities. In 2001, it was discovered that Ahmad, as a representative of CPS, applied for membership to a non-profit organization that provided donated school supplies for a small service fee and shipping costs. Ahmad applied for membership using the school's address and contact information as was required by the organization, but intended to sell the merchandise through her unauthorized side business. Ahmad ordered supplies valued at \$33,979 for the shipping cost of \$4,567.50. The school board was alerted to the scheme when Ahmad failed to pay the shipping charges and the organization contacted the school about payment.

The school board charged Ahmad with numerous violations of board policy in late 2001. In late 2002, a hearing officer found that Ahmad had fraudulently gained membership to a non-profit organization to obtain goods she intended to sell for profit. Applying an analysis from *Gilliland v. Board of Education of Pleasant View Consolidated School Dist., No. 622*, 67 Ill.2d.143 (1977), where the Illinois Supreme Court laid out a standard to terminate a tenured teacher without due process by requiring a school board to demonstrate the conduct was "irremediable," the hearing officer found Ahmad's conduct to be irremediable and the school board terminated her employment. Ahmad filed a complaint for administrative review before the circuit court, who reversed

the decision of the board and ordered that she be reinstated with back pay. The school board appealed.

Issue: Did a tenured teacher engage in irremediable immorality when she misrepresented herself as a school representative to a non-profit company for the purpose of receiving supplies she could sell for personal gain?

Holding: Yes.

Reasoning: The Illinois Appellate Court reasoned there was no need to apply the *Gilliland* test used by the hearing officer because Illinois statute (105 ILCS 5/10-22.4) was amended to allow for tenured teachers to be removed for cause. Two categories of misconduct are identified in the code to constitute cause: irremediable and remediable. The purpose of the *Gilliland* test was to determine what was irremediable conduct, but the current state statute defines irremediable conduct as “cruel, immoral, negligent, or criminal or which in any way causes psychological or physical harm or injury to a student” (p. 818 quoting 105 ILCS 5/34-85). Within the amended code irremediable misconduct does not require due process. The court noted that while the term immoral was not defined by statute, using it in its common meaning the court found Ahmad engaged in several instances of immoral, and possibly criminal, misconduct (p. 819) which was considered irremediable under the code and appropriate grounds for termination.

Disposition: The Illinois Appellate Court reversed the circuit court’s judgment and reinstated the hearing officer’s decision to terminate the teacher.

Citation: *Andrews v. Independent School Dist. No. 57*, 12 P.3d 491 (Okla. Civ. App., 2000).

Key Facts: Andrews was a special education teacher at a junior high school. She was accused of having a romantic relationship with a minor student attending the high school. Although the student had attended the school where Andrews taught, he was never one of her students. Andrews had been previously warned to end all contact with the student by both the school system and the lawyer representing the parents of the student. Andrews was terminated from her teaching position for moral turpitude after she was found in her home with the student.

Andrews filed suit against the school district for wrongful termination and the trial court found that Andrews had engaged in an inappropriate relationship with the student which constituted moral turpitude. Andrews appealed and argued that the trial court erred when it admitted recordings of phone conversations secretly obtained by the boy's mother. She further argued that the trial court violated her due process rights by erroneously admitting evidence beyond the scope of the issues indicated in her termination notice. Next, Andrews argued that because there was no evidence of a sexual relationship, the relationship did not constitute moral turpitude. Finally, Andrews objected to the admission of deposition testimony from a man who claimed to have had a sexual relationship with her when he was a student, some 15 years earlier.

Issue I: Were a teacher's due process rights violated when the trial court allowed evidence beyond the scope of the issue framed by her termination notice when it admitted evidence of prior contact with the student?

Holding I: No.

Reasoning I: Andrews argued that her due process rights were violated because the trial court included evidence not included in the disciplinary notice she received. The court ruled that the evidence was within the scope of the notice because the notice referenced prior contact, including hugging and kissing the student in public.

Issue II: Did a middle school teacher's romantic relationship with a seventeen year old boy, absent evidence of sexual contact, constitute moral turpitude?

Holding II: Yes.

Reasoning II: The court referenced *Kelley v. City of Tulsa*, (1977) to define moral turpitude as something immoral in itself, where intent is important and an unintentional act is not moral turpitude. Based on this definition, the court found that a teacher having a romantic relationship with a student is in conflict with good morals even if the relationship is not sexual in nature. The court further pointed out that an act of moral turpitude need not be prohibited by statute, or punishable by law.

Issue III: Did the admission of taped phone conversation between the teacher and minor child, and the notes of witnesses entered into evidence constitute an error of the trial court?

Holding III: No.

Reasoning III: Andrews waived any objection to the admission of recordings of telephone conversations when her lawyer said that there was no objection to whether the tapes be admitted into evidence. Furthermore, the court ruled that even if the trial court erred in admitting the handwritten notes of an individual who witnessed Andrews and the student kissing, those notes were harmless since other evidence already supported the same facts.

Issue IV: Was the testimony of a man who claimed to have a sexual relationship with Andrews 15 years earlier, when he was a minor, properly admitted by the trial court?

Holding IV: Yes.

Reasoning IV: Despite the length of time between the man's alleged relationship with Andrews and the time of the trial, the court found that the man's testimony was properly used as evidence related to Andrews's credibility.

Disposition: The Oklahoma Court of Civil Appeals affirmed the trial court, upholding the employment termination of the teacher.

Citation: *Asch v. N.Y.C. Bd./Dep't of Educ.*, 104 A.D.3d 415, 960 N.Y.S2d 106, 2013 NY Slip Op 1360 (N.Y. App. Div., 2013).

Key Facts: Asch was a tenured library/media specialist with over 20 years' experience. His record was unblemished prior to the allegations discussed in this case. The allegations against Asch included failure to obtain proper permission before taking students on a field trip and that he inappropriately touched several students. The allegations included rubbing several male students on their shoulders, backs, and spines; whispering into one student's ear, striking two male students on the buttocks with a rolled up newspaper; running his fingers through a student's hair; grabbing and squeezing a male student's stomach; and lifting and rubbing a male student's leg while saying words to the effect of "Open mouth, insert foot" (p. 109). The remaining charges related to taking students on a field trip to Boston without proper permission.

During the disciplinary hearing, the hearing officer found evidence that Asch had failed to obtain proper permission for a student who attended the field trip. He also found evidence that Asch had, on occasion, squeezed student's shoulders, rubbed student's spines and backs, and lifted and rubbed a student's leg while saying something to the effect of "open mouth, insert foot." However, the hearing officer found that Asch's behavior did not indicate sexual misconduct, but rather a misunderstanding regarding appropriate physical boundaries. As such, the hearing officer rejected the department of education's recommendation of termination and imposed a six-month suspension without pay and mandatory counseling regarding appropriate physical boundaries. Asch filed a petition against the department of education. The New York Supreme Court vacated the hearing officer's decision, reasoning that the hearing officer had discriminated against Asch (an openly gay male) because heterosexual female librarians had not been disciplined for similar conduct. The department of education appealed.

Issue I: Did the hearing officer's decision have a discriminatory effect?

Holding I: No

Reasoning I: The court reasoned that although the other librarians had demonstrated some similar conduct, they did not squeeze a student's shoulder, touch a student's hair, or run their fingers down a student's spine. Since Asch was the only librarian who engaged in this type of behavior, it was not discriminatory to discipline Asch while not disciplining the other librarians. Furthermore, the record was devoid of any indication that the charges, or the imposed penalty, were motivated in any way by Asch's sexual orientation.

Issue II: Did the hearing officer demonstrate bias in evaluating the testimony and credibility of witnesses?

Holding II: No

Reasoning II: The court found that the hearing officer's decision to dismiss several charges, while upholding the rest, was evidence that the hearing officer had consider all evidence and only made determinations based on sufficient credible evidence.

Issue III: Did a teacher's conduct of inappropriately touching students warrant a penalty of six months suspension without pay?

Holding III: Yes

Reasoning III: State statute (Education Law § 3020-a) required the court to consider whether the penalty imposed was, in context, disproportionate to the offense. The court found, based on precedent set in *Matter of Pell v. Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County* (1974), that the penalty was not "shocking to one's sense of fairness" (p. 421).

Disposition: The New York Supreme Court, Appellate Division, reversed the New York Supreme Court's judgment and reinstated the penalty of six-month's suspension, without pay, imposed by the hearing officer .

Citation: Baker v. School Bd. of Marion County, 450 So.2d 1194, 17 Ed. Law Rep. 1288 (Fla. Dist. Ct. App., 1984).

Key Facts: Baker was an elementary school teacher with the Marion County School District. Baker also ran a night club with his brother. Baker was arrested for

possession of illegal alcohol and marijuana when the items were found in the manager's office at the nightclub. However, the charges were dropped due to a lack of evidence that the alcohol or marijuana belonged to Baker. In fact, Baker's brother admitted that the marijuana belonged to him. After the charges against Baker were dismissed, the Professional Practices Board found no cause to discipline him. Still, the school district fired Baker for immorality and the stigma that arose from his arrest. Baker appealed.

Issue I: Did the record contain sufficient evidence that a teacher possessed illegal alcohol and marijuana constituting immorality and misconduct in office under Florida statute?

Holding I: No

Reasoning I: The court noted that "possession of marijuana has been held to constitute immorality under chapter 231, Florida Statutes" (pp. 1194-1195). However, there was no evidence proving the alcohol and marijuana belonged to Baker. In fact, Baker's brother admitted ownership of the marijuana.

Issue II: Did the possibility that a teacher's effectiveness was impaired by his arrest justify his dismissal, absent evidence he engaged in the misconduct?

Holding II: No

Reasoning II: The court held that Florida statute required substantial, competent evidence of misconduct to uphold the termination of a teacher. Impaired effectiveness, absent evidence of misconduct, could not justify dismissal of a teacher.

Disposition: The Florida District Court of Appeal reversed the board's decision to terminate Baker's employment.

Citation: *Baldrige v. Board of Trustees, Rosebud County School Dist. No 19*, Colstrip, Mont. 287 Mont. 53, 951 P.2d 1343, 124 Ed. Law Rep. 424 (Mont., 1997).

Key Facts: Baldrige was a science teacher with the Rosebud County School District. The principal of the school where Baldrige worked received a report from a parent, suggesting Baldrige had been behaving inappropriately. According to the report, Baldrige put on a rubber glove, held it up suggestively, and asked for a female volunteer. Baldrige was suspended with pay while an investigation took place. The investigation revealed several allegations of inappropriate behavior including making jokes about testes and menstrual periods, flipping off students, and making innuendos in his classroom. After a hearing, the school district dismissed Baldrige from his teaching position for incompetence, unfitness, and violation of school policies.

On appeal, the county superintendent reversed Baldrige's dismissal, noting that state statute § 20-4-207, MCA (1987), authorized a "school district to dismiss a teacher for immorality, unfitness, incompetence, or violation of the adopted policies" (p. 57) and that a school district could only dismiss a tenured teacher for good cause. In her application of the statute, the county superintendent found that Baldrige had behaved inappropriately on at least eight occasions, but determined that his conduct did not render him unfit to teach because he received stellar evaluations and his students and peers were not offended by his behavior. The district appealed to the state superintendent. The state superintendent, finding that the county superintendent erred as a matter of law, reinstated Baldrige's dismissal. Baldrige petitioned for judicial review and the district court upheld the state superintendent's decision, finding that the county superintendent erred in concluding Baldrige was not unfit and his misconduct was insufficient to warrant

dismissal. The district court noted that the county superintendent's conclusions were inconsistent with her findings of fact. Baldrige appealed.

Issue: Did a teacher's use of inappropriate jokes, language, and innuendos in the classroom render him unfit to teach under state statute?

Holding: Yes

Reasoning: The court found that under the statute (§ 20-4-207, MCA (1987)), a teacher may be dismissed for "unfitness." Although "unfitness" was not defined in the statute, the court relied on several cases to determine that a teacher's numerous instances of inappropriate conduct, often related to sex or gender, rendered him unfit to teach as a matter of law. The court further noted that the teacher's intent was irrelevant. The court wrote, the "[teacher's] conduct was inappropriate on the face of it and it is his conduct and lack of judgment in engaging in the conduct, rather than his intent, which is at issue" (p. 61).

Disposition: The Supreme Court of Montana affirmed the district court, effectively affirming the termination of the teacher's employment.

Citation: Ball v. Bd. of Educ. of City of Chicago, 2013 IL App (1st) 120136, 994 N.E.2d 999, 374 Ill.Dec. 62, 297 Ed. Law Rep. 486, 36 IER Cases 533 (Ill. App. Ct., 2013).

Key Facts: Ball, a tenured special education teacher in Chicago Public Schools (CPS), was found to have inadequately supervised her students when three students under her supervision engaged in sexual contact. In May 2009, Ball and her aide sent her students to lunch around 10:55 a.m. while she reported to an office on the second floor to

attempt to register for a professional development session. After lunch, Ball's aide brought the students to that office around 11:15 a.m. and waited while she continued to try to register for the professional development session. During that time, two students requested and were granted a bathroom pass. On their way to the restroom, the two students met up with a third student and went into a closet in the copy room. Two of the students engaged in oral sex while the other watched. The students then went back to class unescorted.

Ball's aide took the class back to Ball's classroom on the third floor at approximately 11:45 a.m. Ball testified that she returned to the room around noon, but Ball's aide testified that she did not return until approximately 2:00 p.m. At around 2:00 p.m., Ball sent her students to computer class unescorted. Once again, three of the students did not report to their assigned location. Instead, they went to the auditorium where they engaged in oral sex and intercourse.

When an investigator for the board began investigating the incident, Ball testified that either she or her aide always escorted students. She further testified that her aide escorted the students on the day in question. However, Ball's aide and students testified that Ball rarely escorted the students and that the students were not escorted on the day of the incident. Therefore, the investigator concluded that Ball had been dishonest in her testimony and that she was negligent the day of the incident.

During Ball's hearing, the hearing officer found video evidence that Ball's students had been unescorted during the times in question. The hearing officer concluded that although Ball's behavior was not in line with the procedures clearly articulated by the principal and policy, there was no pattern of reckless behavior but only a moment of

carelessness and neglect. As such, the hearing officer, believing that the behavior was remediable, recommended that Ball be reinstated in a warning performance status.

The board accepted the hearing officer's findings of fact but rejected the proposed action. The board elected to terminate Ball's contract for the cause of knowingly violating school rules, abandoning her post, indifference, and dishonesty. Ball sought administrative and the circuit court affirmed the board's decision. Ball appealed.

Issue I: Did a teacher engage in irremediable immorality when she improperly supervised students, leading to the students engaging in sexual acts, and then lied to a district investigator about the facts of the incident.?

Holding I: Yes

Reasoning I: The court held that under the applicable statute (105 ILCS 5/35-85), teacher activity that is cruel, immoral, negligent, or criminal is irremediable and adequate cause for dismissal. The court found that the teacher's failure to adequately supervise her special education students, and making false statements to investigators about the incident amounted to negligent and immoral acts that were irremediable *per se*.

Issue II: Did the board violate Ball's due process rights?

Holding II: No

Reasoning II: The fact that the board rejected the hearing officer's recommendation did not violate Ball's due process rights. The board provided a written opinion in support of its decision which cited relevant facts, witness testimony, and video evidence, which clearly outlined its reasons for rejecting the hearing officer's recommendations. Further, the court found that the board's decision was not arbitrary or

capricious. Ball argued that the board failed to place blame on other staff members. However, the court found that Ball had primary responsibility for the students.

Disposition: The Illinois Appellate Court affirmed the circuit court's decision to uphold Ball's termination.

Citation: *Ballard v. Independent School Dist. No. 4*, 77 P.3d 1084, (Okla., 2003).

Key Facts: Ballard was a teacher and baseball coach for Independent School District No. 4, also known as Colbert School District, from 1984 until 1998. In 1991, Ballard protested a school board decision to reduce the baseball budget. A short time later, the school board voted to non-renew Ballard's coaching contract. In 1992, Ballard's teaching position was eliminated as part of a reduction in force. Ballard sued, and the district reinstated him to his teaching and coaching positions as part of a settlement. In 1997, the district hired a new superintendent. In 1998, Ballard's contract was terminated upon the recommendation of the new superintendent. Ballard appealed and the state court ordered him reinstated.

During the 1998-1999 school year, the superintendent observed Ballard and another teacher in the middle school copy room. The superintendent instructed the teachers to report to their assigned areas. Ballard responded that he was in his assigned area. The superintendent said he would write Ballard up if he did not report to his assigned area. To this, Ballard said, "If you do, I'll beat the shit out of you" (p. 1085). The superintendent then asked Ballard if he was threatening him, and Ballard replied, "No, I'm telling you like it is – I'll do it right here" (p. 1085). During a meeting with the

superintendent and school principal regarding the incident, Ballard also threatened to assault a teacher he claimed had been talking about his wife.

Ballard was suspended for his comments. The board held a hearing regarding the incident and voted to terminate Ballard's employment for moral turpitude. Ballard brought a civil rights action and a state law claim for a *de novo* hearing regarding his dismissal to the federal district court, which affirmed the school board's termination decision and dismissed Ballard's other claims. Ballard appealed and the Tenth Circuit certified a question to the Oklahoma Supreme Court regarding whether Ballard's conduct constituted moral turpitude under state statute, which is the premise of this case.

Issue: Did a school teacher's unexecuted threat to physically assault the school superintendent and another teacher, made on school premises but outside the general purview of the students, constitute "moral turpitude" justifying dismissal under O.S.2001, § 6-101.22?

Holding: No

Reasoning: The Supreme Court of Oklahoma considered the use of "moral turpitude" across the state statutes and several prior cases involving moral turpitude. The court examined cases of criminal conduct, and under what conditions an act can be considered assault. The court found that an unexecuted threat against a superintendent and a teacher, outside of the purview of students, did not constitute moral turpitude under the state law.

Disposition: The Oklahoma Supreme Court held that a school teacher's unexecuted threat to physically assault the school superintendent and another teacher,

made on school premises but outside the general purview of the students, did not constitute “moral turpitude” justifying dismissal under O.S.2001, § 6-101.22.

Citation: Balog v. McKeesport Area School District, 484 A.2d 198, 86 Pa.Cmwlth. 132, 21 Ed Law Rep. 590 (Pa. Commw. Ct., 1984).

Key Facts: Balog was the Director of Vocational Education for the McKeesport Area School District. In June 1981, the school board voted to terminate Balog’s employment. Balog appealed and the secretary of education affirmed the board’s decision, citing evidence that Balog had made false statements to district staff about his whereabouts and to acquire unauthorized compensation, pressured his staff to provide positive evaluations of him, demeaned his staff, and had a staff member complete coursework for a course he was taking at the University of Pittsburgh. The Secretary also found that Balog neglected a number of his duties by failing to revise schedules and supervise assignments. After the secretary affirmed the board’s decision, Balog appealed to the Pennsylvania Commonwealth Court.

Issue: Did a teacher’s conduct of lying to district staff constitute immorality under state statute?

Holding: Yes

Reasoning: The court applied state statute (Section 1122 of the Public School Code of 1949) to determine that immorality may include lying, and held that the record included sufficient evidence that Balog made false statements to district staff and neglected his duties.

Disposition: The Pennsylvania Commonwealth Court upheld the secretary's order affirming Balog's dismissal from employment.

Citation: *Baltrip v. Norris*, 23 S.W.3d 336, 146 Ed. Law Rep. 573 (Tenn. Ct. App., 2000).

Key Facts: Baltrip was a tenured teacher with Claiborne County Schools. During the 1994-1995 school year, Baltrip employed a female student to do some clean-up work at a house he was building. In May 1995, Baltrip invited the student back to view the completed home. During the tour of the home, Baltrip hugged the student and allegedly tried to kiss her. Later that day, the student filed a complaint against Baltrip with the Department of Human Services.

In June 1995, sexual battery charges were brought against Baltrip. A few days later, Baltrip was suspended pending an investigation of the charge. In September 1995, at a preliminary hearing, Baltrip's sexual battery charge was reduced to misdemeanor assault. Baltrip was then allowed to return to teaching. However, the grand jury indicted Baltrip on a sexual battery charge in December 1995 and he was again suspended from his teaching position.

Believing that a misdemeanor conviction would not affect his teaching position, Baltrip entered into a plea agreement and pled guilty to misdemeanor assault. Thereafter, Baltrip was returned to his teaching position. However, after numerous complaints from the student's mother, the superintendent drafted unprofessional conduct charges against Baltrip and suspended him pending resolution of the charges.

In October 1996, the board held a hearing on the charges. Three days later, during its regularly scheduled meeting, the board recessed to confer with their attorney regarding the various forms of discipline available to the board. After consulting with their attorney, the board resumed open session and voted to dismiss Baltrip from his teaching position. Baltrip filed a complaint with the Chancery Court of Claiborne County and the chancery court affirmed the board's decision. Baltrip appealed.

Issue I: Did a teacher engage in unprofessional conduct warranting dismissal when he hugged and kissed a female student leading to a conviction of misdemeanor assault?

Holding I: Yes

Reasoning I: The court relied upon *Morris v. Clarksville–Montgomery County Consol. Bd. of Educ.* (1993), which clarified the definition of unprofessional conduct under Tennessee statute as “conduct that violates the rules or the ethical code of a profession or that is unbecoming a member of a profession in good standing, or which indicates a teacher’s unfitness to teach”, to determine that the teacher’s conduct was adequate cause for dismissal under the statute (p. 339). More specifically, the court found that the teacher’s conduct “[could not] be reconciled with [his] role as a teacher” (p. 339).

Issue II: Did the school board’s private meeting with an attorney to discuss options violate the Open Meetings Act?

Holding II: No

Reasoning II: The court relied upon *Smith County Educ. Ass’n v. Anderson* (1993) and *Van Hooser v. Warren County Bd. of Education* (1991) to determine that board did not violate the Open Meetings Act when it met with an attorney in closed

session prior to taking action on an unprofessional conduct charge that was likely to result in litigation.

Disposition: The Tennessee Court of Appeals affirmed the school board's decision to terminate Baltrip's teaching contract.

Citation: *Barringer v. Caldwell County Board of Education*, 473 S.E.2d 435, 123 N.C.App. 373, 473 S.E.2d 435, 111 Ed. Law Rep. 994 (N.C. Ct. App., 1996).

Key Facts: Barringer was a mathematics teacher for the Caldwell County Board of Education. In March 1993, Barringer approached the entrance of a pool hall with a 12-gauge shotgun in his hands and a .38 caliber pistol tucked in his waistband. Two police officers confronted Barringer and ordered he put down the guns. Barringer complied after several requests. When the officers questioned Barringer of his intentions, he indicated that he intended to do harm to someone he thought was in the pool hall.

Barringer subsequently requested and was granted a leave of absence. In August 1993, the Caldwell superintendent initiated dismissal procedures against Barringer. In October 1993, the school board voted to dismiss Barringer for immorality. Barringer sought judicial review in the Caldwell County Superior Court on the grounds that the term immorality was unconstitutionally vague. The superior court affirmed the termination of Barringer's employment and he appealed.

Issue: Did the vagueness of the term "immorality" preclude disciplinary action against a teacher who approached a pool hall in the late hours of the night, with malicious intent, armed with loaded firearms?

Holding: No

Reasoning: The court cited multiple cases, and the statute itself (G.S. § 115C-325(e)(1)b), to determine that the statute was not unconstitutionally vague, as it provided adequate notice that a teacher of “ordinary intelligence” would know approaching a crowded pool hall with fully loaded weapons, and intent to harm others, would have a negative effect on his employment as a teacher.

Disposition: The North Carolina Court of Appeals affirmed the superior court, upholding Barringer’s employment termination.

Citation: Beatty v. City of New York, 148 A.D.3d 413, 48 N.Y.S.3d 393, 340 Ed. Law Rep. 1079 (N.Y. App. Div., 2017).

Key Facts: Beatty was a special education home instruction teacher. The school district terminated Beatty’s employment after it was determined that Beatty had submitted falsified time sheets. Beatty filed a petition with the Supreme Court of New York County seeking to vacate the penalty of termination imposed by the city department of education. The court denied her petition and Beatty appealed.

During the timeframe in question, both Beatty and one of her students were displaced from their homes due to damage sustained during Hurricane Sandy. Beatty did not provide instruction to the student for two months while they were displaced. However, in January 2013, Beatty submitted documentation that indicated she had provided instruction to the student during that time frame. Beatty indicated that she had filled out the time sheets in advance of the dates and then submitted them without correction on a subsequent date. Because she had provided instruction to other students on the dates in question, her salary would have been the same regardless of how many

students she instructed or how many hours she spent doing so. However, the records indicated that she had instructed the child when she had not and she did not reported the changes in instruction to her supervisor.

Prior to the incident in question, Beatty had an unblemished record in her 17-year career as a special education home instructor. The student's mother testified that Beatty was a good teacher who served her child well. Beatty's principal testified that she had never previously received a complaint about Beatty. Coworkers and a fellow homebound instructor testified that she was a dedicated teacher.

Issue: Did the penalty, termination of employment, shock the court's sense of fairness where a teacher's conduct included falsifying time sheets?

Holding: Yes

Reasoning: The appellate court, applying *Pell v. Board of Educ. of Union Free School Dist. No. 1* (1974), reasoned that although Beatty's actions could be classified as misconduct, the circumstances surrounding her actions, coupled with her previously unblemished record, indicated that her behavior was likely an isolated instance of neglect and did not warrant a penalty so severe as dismissal from employment. The court noted that Beatty's misconduct was "more a matter of lax bookkeeping than implementation of any venal scheme" (p. 414). As such, the court concluded that the penalty of termination was disproportionate to the level of misconduct.

Disposition: The Supreme Court, Appellate Division, held that the penalty of termination of employment was shocking to one's sense of fairness. The court reversed the New York Supreme Court's decision and remanded to the department of education for the imposition of a lesser penalty.

Citation: *Bergerson v. Salem-Keizer School Dist.*, 194 Or.App. 301, 95 P.3d 215, 190 Ed. Law Rep. 971 (Or. Ct. App. 2004).

Key Facts: Bergerson was an elementary school teacher with the Salem-Keizer School District for 19 years. In 1999, Bergerson began dealing with marital difficulties. Ultimately, her husband moved out of the home in December 1999. In August 2000, Bergerson's estranged husband was in a serious motorcycle accident. Bergerson became very involved in her husband's medical care and spent significant time away from work.

As her husband's medical condition improved, Bergerson learned for the first time that her husband was involved in another relationship when her husband's girlfriend approached her and asked her to cease her involvement in her husband's medical care. Around that time, Bergerson also learned that her son's girlfriend was pregnant and planned to give the child up for adoption. A short time later, in November 2000, Bergerson was informed that the counselor she had been seeing was leaving the practice.

In January 2001, Bergerson drove to her estranged husband's girlfriend's residence to confront her husband. The confrontation was non-productive and very emotional. Bergerson returned to her vehicle, took Prozac and pain medication in an attempt to commit suicide, and then drove her van into the back of her husband's pickup truck that was parked in the driveway and pushed the truck into the door of the attached garage.

Bergerson pleaded no contest to one count of criminal mischief and the district placed her on administrative leave. In November 2001, the district superintendent notified Bergerson that she was recommending her dismissal. At an informal hearing in

December 2001, the hearing officer presented findings to the school board and the school board voted unanimously to terminate Bergerson's employment. Bergerson appealed to the Fair Dismissal Appeals Board (FDAB). The FDAB reversed the district's decision on the grounds that, although the charges of immorality and neglect of duty were substantiated, the district's decision to terminate Bergerson was unreasonable and excessive. The school district petitioned for judicial review, and the court of appeals denied the petition. The school district again petitioned the court and Bergerson cross-petitioned, challenging various FDAB findings.

Issue I: Was termination of employment unreasonable or excessive where a teacher attempted suicide by ingesting Prozac and painkillers and then drove her van into her estranged husband's truck?

Holding I: No

Reasoning I: Relying on Oregon Statute ORS 342.905(6), which limited the FDAB's ability to reverse the disciplinary action of the school board unless it was unreasonable or clearly excessive, the court found that the FDAB did not adequately explain why dismissal was a clearly excessive, or unreasonable, penalty. The FDAB's statements regarding the school board basing dismissal on a single incident and relative leniency shown to other teachers who had attempted suicide did not support the finding that no reasonable school board would have reached the same conclusion.

Issue II: Did a teachers conduct of attempting suicide by ingesting Prozac and painkillers and then driving her van into her estranged husband's truck constitute immorality?

Holding II: Yes

Reasoning II: Based on *Ross v. Springfield School District No. 19* (1988), the court held that the the legislature had entrusted the FDAB to determine whether a teacher's conduct constituted immorality. As such, the court found that the FDAB correctly substantiated the immorality claims, based not solely on the suicide attempt, but also on Bergerson's actions which caused harm and created substantial risk of physical harm to third party individuals.

Disposition: The Oregon Court of Appeals reversed and remanded the FDAB's decision.

Citation: *Bertolini v. Whitehall City School Dist. Bd. of Edn.*, 139 Ohio App.3d 595, 744 N.E.2d 1245, 152 Ed. Law Rep. 259 (Ohio Ct. App., 2000).

Key Facts: Bertolini was employed as the associate superintendent for the Whitehall City School District Board of Education. Prior to obtaining that position, Bertolini was the superintendent of the Leetonia School District. While working in the Leetonia School District, Bertolini became engaged in an extramarital affair with Patti Woods. After Bertolini acquired his new position at Whitehall, Woods applied for, and received, a position at Whitehall as well. For a period of time, Bertolini and Woods continued their relationship. However, in November 1997, Woods ended the romantic relationship.

After Woods ended the relationship, Bertolini frequently emailed Woods and sometimes visited her at her office and condominium. Woods testified that Bertolini's continuous contact was annoying, but did not cause her problems at work and did not seem like sexual harassment. However, after becoming exasperated with Bertolini's

persistent attempts to contact her, Woods reported the situation to the superintendent. The superintendent notified Bertolini that he would be suspended with pay pending the outcome of an investigation into potential sexual harassment claims against him.

After the investigation, the superintendent recommended Bertolini's termination. The board voted to terminate Bertolini and Bertolini appealed. A referee held hearings to gather evidence and recommended that the board reinstate Bertolini with back pay and physically expunge the record of the hearing from the board minutes. The board rejected the referee's recommendation and voted to terminate Bertolini's contract. Bertolini appealed and the trial court affirmed the board's decision. Again, Bertolini appealed.

Issue I: Did a teacher's adulterous affair with another district employee constitute immorality as required for termination under state statute?

Holding I: No

Reasoning I: Relying on *Florian v. Highland Local School Dist. Bd. of Educ.* (1983), which indicated immorality must involve "conduct [which is] hostile to the school community and cannot be some private act which has no impact on the teacher's professional duties" (p. 605), the court found that Bertolini's affair involved private acts that did not affect the school environment nor his professional duties, and therefore, did not constitute immorality despite his colleagues' negative perception. (See p. 606 for a note on moral exemplar v. nexus). Though the court noted that Bertolini's initial dishonesty regarding the affair might be evidence of immorality, such behavior did not merit termination where the teacher "was well respected, had no prior disciplinary infractions, and was under severe emotional pressure at the time of the offense" (p. 609).

Disposition: The Ohio Court of Appeals reversed the lower court's decision, effectively overturning associate superintendent's employment termination.

Citation: Bethel Park School Dist. v. Krall, 445 A.2d 1377. 67 Pa.Cmwlth. 143, 445 A.2d 1377, 4 Ed. Law Rep. 781 (Pa. Commw. Ct., 1982).

Key Facts: Krall was a teacher with the Bethel Park School District. Meanwhile, she was also an elected director of another school district in the community where she lived. Krall wanted to attend a conference related to her director position, but knew that Bethel Park would not approve paid leave for a conference not related to her teaching position. Therefore, Krall chose to attend the conference and then claim her absence was due to illness when she returned. After learning of Krall's dishonesty, the school board held a hearing and later dismissed Krall. Krall appealed and the secretary of education ruled in favor of Krall, concluding that Krall's conduct did not amount to immorality. The school board appealed the Secretary's decision.

Issue: Did a teacher's misrepresentations regarding an absence constitute immoral conduct warranting dismissal?

Holding: Yes

Reasoning: The court applied a definition of immorality, set in *Horosko v. Sch. Dist. of Mount Pleasant Tp.* (1939), that conduct constitutes immorality when it offends the morals of the community and sets a bad example for students. The court further clarified, based on Appeal of Flannery (1962), that immorality was "not limited to sexual conduct, but may included lying" (p. 146). As such, the court found that it was not unreasonable for the board to conclude Krall's deceit constituted immorality.

Disposition: The Commonwealth Court of Pennsylvania reversed the Secretary's decision and upheld Krall's employment termination.

Citation: *Bethel v. Board of Educ. of Capital School Dist.*, 985 A.2d 389, 254 Ed. Law Rep. 873 (Del., 2009).

Key Facts: Bethel was employed as a special teacher with the Capital School District. In May 2007, the school district notified Bethel of its intent to terminate him for misconduct. The alleged misconduct was primarily related to an incident that occurred in April 2007 involving Bethel and a student, but the school district also accused Bethel of improper grading practices, using inappropriate language at a football game, and sleeping during the work day. After receiving the notification of intent, Bethel requested and received a pre-termination hearing.

After reviewing testimony and evidence, the hearing officer concluded that in April 2007, Bethel threatened to fail a student if he did not drive him to a downtown area to purchase marijuana. Additionally, the hearing officer found that Bethel had changed one student's grade from 39 to 70 for \$30 and another student's grade from 48 to 69 for \$10. Finally, relying on testimony of the assistant principal, the hearing officer found that, in 2006, Bethel yelled profanity in the presence of students at a football game. Based on these findings, the hearing officer recommended, and the board acted on, Bethel's employment termination. Bethel sought review of the school board's decision and the Kent County Superior Court affirmed the school board's decision. Bethel appealed.

Issue I: Did the school board violate due process by considering evidence related to a teacher's performance throughout the entire period of his employment with the school district or by admitting hearsay evidence?

Holding I: No

Reasoning I: Teacher received notice of the charges against him, a meaningful opportunity to present witnesses and cross examine witnesses called by the school district. State statute related to grounds for terminating teachers (14 *Del. C.* § 1413 and 14 *Del. C.* § 1420) did not limit the timeframe from which incidents could be considered in a termination hearing. Furthermore, each of the incidents that were considered took place during the same school year. With respect to hearsay evidence, Chapter 14 of Title 14 of the Delaware Code allowed agencies to consider all relevant evidence in administrative hearings, including hearsay evidence.

Issue II: Did the record contain substantial evidence that a teacher coerced a student to drive him to purchase drugs, accepted money for grades, and willfully used inappropriate language at a school event constituting immorality and misconduct warranting termination from employment?

Holding II: Yes

Reasoning II: Although the hearing officer admitted hearsay evidence, the board's decision to terminate Bethel was not based solely on hearsay evidence. Chapter 14 of Title 14 of the Delaware Code allowed agencies to consider all relevant evidence in administrative hearings, including hearsay evidence. As such, the court found there was sufficient evidence in the record to justify the board's decision.

Disposition: The Supreme Court of Delaware affirmed the lower court's decision to uphold teacher's employment termination.

Citation: *Black v. New York City Dept. of Educ.*, 62 A.D.3d 468, 878 N.Y.S.2d 356, 244 Ed. Law Rep. 287, 2009 N.Y. Slip Op. 03768 (N.Y. App. Div., 2009).

Key Facts: Black was employed as a probationary physical education teacher in New York City. Black's employment was terminated due to an alleged inappropriate sexual relationship with a public high school student. Black petitioned for reinstatement and the New York County Supreme Court granted his petition. The Department of Education appealed.

Issue: Did a teacher's sexual relationship with a student constitute appropriate grounds for dismissal from employment?

Holding: Yes

Reasoning: The court referenced several cases as examples, and held that Black failed to establish that his termination was arbitrary and capricious, or constitutionally impermissible, in violation of statute, or done in bad faith.

Disposition: The New York Supreme Court, Appellate Division reversed the lower court's decision, effectively upholding teacher's employment termination.

Citation: *Blaine v. Moffat County School Dist.* Re No. 1, 748 P.2d 1280, 44 Ed. Law Rep. 763 (Colo., 1988).

Key Facts: Blaine was a teacher and cheerleading sponsor for the Moffat County School District. While accompanying the cheerleaders at a hotel during an overnight stay

for a basketball tournament, Blaine drank beer in the presence of several cheerleaders. Later that evening, Blaine went to investigate noise coming from one of the rooms occupied by the cheerleaders and found them having a party and drinking beer. Blaine joined the cheerleaders in a drinking game.

The school board notified Blaine of disciplinary charges against her for neglect of duty and Blaine requested a hearing. At the hearing, the hearing officer found that Blaine had indeed consumed alcohol with the students and did not attempt to stop the cheerleaders from consuming alcohol. Despite those findings, the hearing officer recommended that Blaine be retained but face a five day suspension. The school board accepted the hearing officer's findings of fact but rejected the recommendation for retention. The board voted to dismiss Blaine and she appealed. The court of appeals affirmed the board's decision, and again, Blaine appealed.

Issue I: Did the school board violate statute by accepting the hearing officer's findings of fact but rejecting his recommendation of retention?

Holding I: No

Reasoning I: Under the Colorado Teacher Tenure Act, the school board may not look outside of the hearing officer's findings to discover new evidence, but the school board is not bound by the hearing officer's recommendation for dismissal or retention. However, the school board may only reject the recommendation if it is fully warranted by the evidentiary findings of the hearing officer.

Issue II: Did a teacher's actions of consuming alcohol in the presence of students and allowing student alcohol use during an off-campus trip constitute neglect of duty?

Holding II: Yes

Reasoning II: The court found that Blaine's conduct was in violation of district policies and represented a clear breach of duty under statute. The court also noted that neglect of duty, unlike immorality, is directly related to a teacher's fitness to teach.

Disposition: The Supreme Court of Colorado upheld Blaine's termination.

Citation: Board of Educ. of Hopkins County v. Wood, 717 S.W.2d 837, 35 Ed. Law Rep. 824 (Ky., 1986).

Key Facts: Brothers, Greg and Donnie Wood, both worked for the Hopkins County School System. During the course of an unrelated murder investigation, two 15-year-old girls testified that they had been at the Wood brothers' apartment where several individuals were smoking marijuana. Further investigation by the county attorney confirmed the testimony and the Wood brothers were charged with contributing to the delinquency of a minor. In September 1983, the brothers signed a statement pleading guilty to the misdemeanor charge of unlawful transaction with a minor.

School officials then initiated their own investigation and suspended both brothers pending a hearing. After the hearing, the school board voted unanimously to terminate both Greg and Donnie Wood. The brothers sought review and the circuit court affirmed the board's decision. On appeal, the court of appeals reversed and reinstated the teachers based on the fact that no written reports were prepared prior to, during, or after the hearing. The school board appealed.

Issue: Did teachers' off campus conduct involving marijuana use with students constitute immorality justifying termination of their teaching contracts?

Holding: Yes

Reasoning: The court found that off-campus marijuana use with two 15-year-old students was immoral and unbecoming of a teacher. Furthermore, based largely on *Morrison v. State Board of Education* (1969), the court found the conduct worked contrary to protecting the school community and students from harm, thereby establishing a sufficient nexus between the teachers' off-campus behavior and their ability to perform as a teacher.

Disposition: The Supreme Court of Kentucky reversed the appellate court's decision and reinstated the circuit court's decision to uphold the teachers' employment terminations.

Citation: *Board of Education of Laurel County v. McCollum*, 721 S.W.2d 703, 36 Ed. Law Rep. 1026 (Ky., 1986).

Key Facts: McCollum was a homebound teacher for the Laurel County School System. In May 1982, McCollum took a sick day to drive a coal truck to Ohio. Due to his absence, he failed to visit a homebound student on that day. Because McCollum filed paperwork indicating he was sick, he received pay for the day. In May 1982, the superintendent preferred charges against McCollum. At the disciplinary hearing, the school board terminated McCollum for insubordination and conduct unbecoming a teacher. McCollum sought review and the circuit court affirmed the board's decision. On appeal, the court of appeals reversed because the charges against McCollum had not been documented in his performance records. The school board appealed.

Issue I: Did a tenured teacher's impermissible use of sick leave constitute unbecoming conduct, justifying termination, absent written performance records?

Holding I: Yes

Reasoning I: The court found that the purpose of the statute, KRS 161.790, was to promote good order and prevent arbitrary removal of capable teachers for political or personal reasons. The statute was not intended to protect those who engage in inappropriate, and potentially criminal, conduct. Furthermore, the court reasoned there was no reason to expect a record of school performance would also include documentation of incidents related to unbecoming conduct that occurred away from school.

Issue II: Was there sufficient evidence that McCollum engaged in conduct unbecoming a teacher?

Holding II: Yes

Reasoning II: The school board relied upon McCollum's sick leave paperwork, a business record of McCollum loading 25.1 tons of coal destined for Rickenbacker Air Force Base in Ohio, and McCollum's failure to visit the homebound student he was ordered to visit. The court found that this evidence was sufficient.

Disposition: The Supreme Court of Kentucky reversed the appellate court's decision and reinstated McCollum's employment termination.

Citation: *Bonatesta v. Northern Cambria School Dist.*, 48 A.3d 553, 162 Lab.Cas. P 61,270, 282 Ed. Law Rep. 521 (Pa. Commw. Ct., 2012).

Key Facts: Bonatesta had taught elementary school for 17 years with good evaluations. In March 2009, Bonatesta's boyfriend picked her up, in her car, after a shift as a cook at her parent's restaurant. Her boyfriend, David Mikitko was not allowed to

drive a vehicle that was not equipped with an ignition interlock device. When a police officer, Ronald Schilling, recognized Mikitko driving Bonatesta's vehicle, which was not equipped with an interlock device, he stopped and searched the vehicle. Schilling called for backup from Jason Owens. Schilling searched the vehicle, found a pistol registered to Bonatesta, marijuana, and drug paraphernalia. The two were charged with possession of drugs and drug paraphernalia. Owens administered a breathalyzer test to Bonatesta, and allowed her to drive the vehicle away from the scene.

After the incident, the school district in which Bonatesta worked suspended her without pay and initiated a termination proceeding pending the outcome of the criminal charges. At a suppression hearing for the criminal charges, the drug charges against Bonatesta and Mikitko were dismissed when Owen's and Schilling's testimony did not agree. Owens testified that he did not see drugs or drug paraphernalia in Bonatesta's vehicle and that Bonatesta had passed a breathalyzer test. Despite the dismissal of the criminal charges, the school district decided to go forward with Bonatesta's termination based on the belief that Bonatesta had been too intoxicated to drive on the night of the incident and had lied about how much she had to drink during a pre-termination hearing.

In June 2010, the school board conducted a hearing where Bonatesta claimed to have had one or two drinks on the night in question, but maintained that she was not intoxicated. She also testified that she had no reason to believe Mikitko was intoxicated when he came to pick her up. However, Officer Owens testified at the hearing he believed Bonatesta and Mikitko were both intoxicated the night of the incident. Owens claimed that he had no authority concerning allowing Bonatesta to drive away from the scene because he was outside of his jurisdiction. He said that decision was Schilling's.

On cross-examination, Owens admitted he had testified under oath at the suppression hearing that Bonatesta had passed the breathalyzer test, was fine to drive, and was not seen to violate the law in any way. He also acknowledged that there had been numerous complaints that Officer Schilling had been watching bars outside his jurisdiction, planting evidence, and attempting to set people up.

Despite the contradictions between Owens's suppression hearing testimony and that at the board hearing, the school board credited Owens's testimony and voted to suspend Bonatesta for almost two months without pay. Bonatesta appealed and the trial court reversed the school board's decision, finding that it was not founded upon substantial evidence. The trial court noted that the board's decision was based entirely upon Owens's testimony. Given the fact that Owens had previously contradicted his own testimony, the trial court did not find his testimony credible. The school board appealed.

Issue: Did evidence surrounding a traffic stop involving a teacher support a finding that the teacher had engaged in immoral conduct?

Holding: No

Reasoning: The trial court correctly found that Owens's testimony lacked credibility and no other evidence was available to prove Bonatesta engaged in any immoral conduct.

Disposition: The Commonwealth Court of Pennsylvania affirmed the trial court's decision to reverse the teacher's 75 day suspension without pay.

Citation: Brito v. Walcott, 115 A.D.3d 544 (2014)

Key Facts: Brito was a high school French teacher. In November 2009, Brito went out to dinner with colleagues and returned to the school later in the evening to watch a musical competition held in the first floor auditorium. Brito attended the event voluntarily and was not present in any official capacity. During the performance, Brito was observed in a third floor classroom partially undressed and appeared to be engaged in sexual behavior with a colleague. The school district allegedly received negative publicity when the misconduct was reported in local news reports and papers.

During the disciplinary hearing regarding the incident, multiple witnesses gave corroborating testimony that Brito engaged in sexual conduct with an adult colleague in a dark, empty, third floor classroom while a musical performance was taking place in the auditorium on the first floor. The hearing officer recommended termination of employment. Brito petitioned the New York Supreme Court to vacate the hearing officer's findings and restore her to her teaching position. The court vacated and remanded for a new hearing and the imposition of a lesser penalty. The department appealed.

Issue I: Was there adequate evidence supporting the hearing officer's finding that a teacher's on campus, consensual, sexual acts with a coworker constituted misconduct?

Holding I: Yes

Reasoning I: The court found the corroborating testimonies of multiple witnesses to be adequate evidence to reach the hearing officer's findings of misconduct.

Issue II: Did the hearing officer violate Brito's due process rights?

Holding II: No

Reasoning II: Brito was accorded a full and fair hearing with notice and an opportunity to be heard. There was some question regarding the lack of availability of surveillance video from the hallway outside the classroom. However, the court reasoned that the witness testimony was sufficient to provide adequate due process and the camera did not record what occurred in the classroom anyway.

Issue III: Did a teacher's on campus, consensual, sexual acts with a coworker constitute misconduct meriting termination of employment?

Holding III: No

Reasoning III: The court relied on *Pell v. Board of Educ. of Union Free School Dist. No 1* (1974), which articulated a standard for determining whether a penalty is disproportionate to the offense. Since Brito presented an otherwise unblemished record, the court found that there was no evidence that Brito's behavior was anything more than a one-time mistake. Furthermore, the court reasoned that sexual conduct between two consenting adults is not criminal or improper. While the location of the behavior was questionable, the court did not find the incident affected her ability to teach, endangered any student, or rose to the severity necessary for a penalty of termination.

Disposition: The New York Supreme Court, Appellate Division, remanded for the imposition of a lesser penalty.

Citation: *C.F.S. v. Mahan*, 934 S.W.2d 615, 114 Ed. Law Rep. 973 (Mo. Ct. App., 1996).

Key Facts: C.F.S. was a probationary teacher and wrestling coach for the St. Louis Public Schools System (SLPSS). Shortly after he was hired, C.F.S. received notice that he was being dismissed from his position due to conviction of a crime. The notice

explained that the conduct leading to his arrest could bring discredit to the school system. C.F.S. requested and was granted a hearing. At the hearing, the board reviewed the transcript of C.F.S.'s arrest. C.F.S. had been arrested on charges of indecent exposure when he was "seen massaging his penis in the men's room of a public facility," and then when he returned to his car, he exposed his genitals to an undercover officer and suggested anal intercourse. C.F.S. later pled to a lesser charge of misdemeanor disturbing the peace.

At the time of the arrest, C.F.S. was employed by a different school system, but tendered his resignation after the incident. He later sought employment with SLPSS. C.F.S. argued that he had admitted the conviction to the principal in SLPSS during his interview but still received the teaching position. He also argued that the board should not take action on the conduct because it occurred prior to his employment with SLPSS. Ultimately, the board voted to dismiss him. Upon review, the circuit court affirmed the school board's decision. C.F.S. appealed.

Issue I: Did a teacher's actions related to his arrest for public indecency provide good cause for the termination of his probationary employment?

Holding I: Yes

Reasoning I: The court found that the school board had authority under the statute (§ 168.126) to conclude a probationary teacher who had been arrested for indecent exposure was unsuitable to serve as a teacher and coach. The court also found that conduct occurring prior to a teacher being hired could constitute good cause for termination.

Issue II: Was the board restricted by the fact that C.F.S. had reported his arrest to the principal prior to be hired?

Holding II: No

Reasoning II: According to Missouri statute, the board, not the principal, is the governing authority of the employment of probationary teachers. Furthermore, there was no evidence that the principal notified the board of C.F.S.'s arrest and conviction.

Disposition: The Missouri Court of Appeals affirmed the teacher's dismissal from employment.

Citation: Matter of Chaplin v. New York City Dept. of Educ., 48 A.D.3d 226, 850 N.Y.S.2d 425, 229 Ed. Law Rep. 202, 2008 N.Y. Slip Op. 01012 (N.Y. App. Div., 2008).

Key Facts: Chaplin was a teacher in New York City. After Chaplin's conviction of an unspecified crime involving moral turpitude, the School District elected to dismiss her employment. Chaplin requested that her criminal trial take place prior to her disciplinary hearing. The request was granted and the hearing took place after her conviction, but prior to appellate review of her conviction. The hearing resulted in Chaplin's termination. Chaplin petitioned for annulment of her employment termination, claiming that her hearing should have taken place after appellate review of her criminal conviction, but the New York Supreme Court denied her petition. Chaplin appealed.

Issue I: Did a teacher have a right to stay related disciplinary proceedings until after the conclusion of all criminal proceedings related to misconduct?

Holding I: No

Reasoning I: The court cited *Matter of Watson v. City of Jamestown* (2006) and found that Chaplin did not have a constitutional right to delay her disciplinary proceedings pending the outcome of her criminal trial. Furthermore, although Chaplin successfully requested a stay of the penalty phase of the disciplinary hearing until after her trial, she failed to ask for a stay pending appellate review of her conviction.

Issue II: Did the penalty of termination shock the court's sense of fairness where a teacher committed an act of moral turpitude?

Holding II: No

Reasoning II: Citing *Matter of Kelly v. Safir* (2001), the court found that the penalty of termination was not shocking to the court's sense of fairness considering her conviction of a crime involving moral turpitude and its impact upon her fitness to teach.

Disposition: The New York Supreme Court, Appellate Division, affirmed, upholding the teacher's termination.

Citation: *Chicago Bd. of Ed. v. Payne*, 102 Ill.App.3d 741, 58 Ill. Dec. 368, 430 N.E.2d 310, 2 Ed. Law Rep. 171 (Ill. App. Ct., 1981).

Key Facts: Payne was a tenured elementary school teacher for the Chicago Board of Education. Payne was arrested and pled guilty to possession of marijuana in February 1976. Payne was arrested again in January 1978 for possession of marijuana and possession of a controlled substance. School officials were alerted to Payne's conduct when they read about his arrest in a local newspaper. The school superintendent notified Payne of charges against him and a hearing was held. The hearing officer found that Payne's conduct had no effect on his fitness to teach and held that Payne's dismissal was

improper. The board sought judicial review and the circuit court reversed the hearing officer's decision finding that there was sufficient evidence that Payne had possessed drugs and that his conduct had an adverse effect on his ability to perform his teaching duties. Payne appealed.

Issue I: Was there sufficient evidence of teacher's misconduct?

Holding I: Yes

Reasoning I: The court found that Payne's guilty plea to possession of marijuana in 1976 provided adequate evidence that he possessed drugs.

Issue II: Was there a nexus between the teacher's conduct and his fitness to teach?

Holding II: Yes

Reasoning II: Relying on *Morrison v. State Board of Education* (1969), which established a test to facilitate the determination of whether a nexus exists between a teacher's conduct and his fitness to teach, the court found that Payne's behavior impaired his ability to function as a role model for students, was likely to be repeated, and received public notoriety. As such, the required nexus was established.

Issue III: Did a teacher commit irremediable misconduct when he possessed a small amount of marijuana?

Holding III: Yes

Reasoning III: Citing *Morris v. Board of Education of the City of Chicago* (1981) and "simple logic", the court held that conduct is irremediable when damage to students, faculty, and the school could not be corrected by a warning. In this case, the court found that a warning could not have remedied the damage caused by Payne's conduct.

Furthermore, Payne was arrested for the same crime twice so it was reasonable for the board to conclude that remediation would not have corrected Payne's behavior.

Disposition: The Illinois Appellate Court affirmed the circuit court, upholding the teacher's termination from employment.

Citation: *Cipollaro v. N.Y. City Dep't of Educ.*, 83 A.D.3d 543, 922 N.Y.S.2d 23, 266 Ed. Law Rep. 899, 2011 N.Y. Slip Op. 03131 (N.Y. App. Div., 2011).

Key Facts: Cipollaro was a teacher in New York City with an adequate performance record. It was found that Cipollaro had avoided paying the school system \$98,000 over a two-year period by enrolling her children in New York City public schools while she and her family actually resided in Westchester County. At her hearing, the hearing officer found sufficient evidence that Ciporallo had defrauded the school system and terminated her employment. Cipollaro petitioned for vacature of the hearing officer's decision and the New York Supreme Court denied her petition. Ciporallo appealed.

Issue I: Was there any basis to disturb the hearing officer's decision?

Holding I: No

Reasoning I: The court determined that Ciporallo's claims that the evidence was conflicting were incredible and the hearing officer acted appropriately.

Issue II: Did the penalty of dismissal shock the conscience where a teacher knowingly defrauded the school system of \$98,000 in non-resident tuition over a two year period?

Holding II: No

Reasoning II: Citing *Matter of Winters v. Board of Educ. of Lakeland Cent. School Dist.* (2002), the court found that the penalty of termination was not shocking to the conscience considering Ciporallo's lack of remorse and the seriousness of defrauding the school system of \$98,000; even if her record was otherwise adequate.

Disposition: The New York Supreme Court, Appellate Division, affirmed the court of appeals, affirming the hearing officer's determination to terminate teacher's employment.

Citation: *Cisneros v. School Bd. of Miami-Dade County*, 990 So.2d 1179, 237 Ed. Law Rep. 545, 33 Fla. L. Weekly D2198 (Fla. Dist. Ct. App., 2008).

Key Facts: Cisneros was a high school teacher for the Miami-Dade County School District. In May 2002, Cisneros pled no contest to a vehicular homicide charge that originated from a car accident that occurred six months before he was hired by the school district. The arrest report associated with the accident indicated that Cisneros was driving recklessly, weaving through traffic at speeds close to 75 miles per hour, when he lost control of the van and crashed. Six of the passengers in the van were injured, including a 7-year-old passenger who was ejected from the vehicle. The child later died and Cisneros was charged with vehicular homicide 16 months after the accident.

In March 2006, the school board notified Cisneros of its intention to bring dismissal proceedings due to his conviction of a crime involving moral turpitude. At Cisneros's termination hearing, the Administrative Law Judge (ALJ) presiding over the hearing found that vehicular homicide was a crime involving moral turpitude, providing

proper cause for dismissal. Cisneros appealed the school board's final order dismissing him from employment.

Issue I: Did a teacher's criminal conviction for vehicular homicide constitute a crime involving moral turpitude warranting dismissal from employment?

Holding I: No

Reasoning I: The court found that the school board rule relied upon for the teacher's dismissal only applied to pre-employment convictions discovered during the application process. In this case, the applicable rule was a state rule pertaining to teachers who were already employed (Rule 6B-4.009(6) of the Florida Administrative Code). Under Rule 6B-4.009(6), moral turpitude referred to conduct that was base, vile, or depraved. The court ruled, based largely on a similar case (*Gage v. Department of Professional Regulation* (1982)), that the teacher's actions did not fit the categories of vile, base, or depraved; despite the tragic outcome of the incident.

Disposition: The Florida District Court of Appeal reversed the school board's decision to dismiss teacher from employment.

Citation: *City School Dist. of City of New York v. McGraham*, 17 N.Y.3d 917, 958 N.E.2d 897, 934 N.Y.S.2d 768, 274 Ed. Law Rep. 695 (N.Y., 2011).

Key Facts: McGraham was a 36-year-old female high school teacher who developed an improper relationship with a 15-year-old male student. The relationship was described as romantic, but was not physical in nature. The relationship consisted mostly of personal electronic communication outside of school hours. During a disciplinary hearing, the hearing officer found McGraham guilty of the charges against her, but due to

the fact that McGraham was remorseful for her conduct, imposed a 90 day suspension without pay instead of the termination penalty the school district supported. The school board petitioned to vacate or modify the arbitration award. The New York Supreme Court granted the petition and remanded the case for the imposition of a new penalty.

McGraham appealed and the New York Supreme Court, Appellate Division, reversed the lower court's decision and reinstated the 90 day suspension. The school district appealed.

Issue I: Did a 90 day suspension without pay violate the public policy of protecting children where a teacher engaged in a romantic, but non-sexual, relationship with a student?

Holding I: No

Reasoning I: Based on *Matter of Sprinzen* (1979), which set precedent regarding whether courts might intervene in the arbitration process, the court concluded, "Looking at the award on its face, it cannot be said that either statutory or common law prohibits the penalty imposed by the hearing officer" (p. 899).

Issue II: Was the hearing officer's determination arbitrary, capricious, or irrational?

Holding II: No

Reasoning II: The court reasoned that it was rational, under the circumstances, for the hearing officer to find that the teacher's actions constituted serious misconduct, but that she was remorseful and her actions were unlikely to be repeated, such that termination was not mandated.

Disposition: The New York Court of Appeals affirmed the lower court's decision to reinstate the hearing officer's award, a 90 day suspension without pay.

Citation: Clark v. School Bd. of Lake County, Fla., 596 So.2d 735, 74 Ed. Law Rep. 405, (Fla. Dist. Ct. App., 1992).

Key Facts: Clark was an elementary school teacher for the Lake County School System. During the summer of 1989, after a series of personal difficulties, Clark engaged in several days of alcohol use which resulted in Clark being charged for the abuse of her husband. Leading up to the incident, Clark had been intimidated and physically injured by a friend of her son. Then, she brought her husband, who was recovering from a disabling stroke, home from the nursing home to care for him. These factors, exacerbated by alcohol use, culminated in an unspecified instance of abuse against Clark's husband. Although the abuse was unspecified, details of the case indicated that the abuse was of a sexual nature.

After Clark pled *nolo contendere* to the abuse charges and successfully completed the conditions of her probation, her name was expunged from the abuse registry. In August 1989, Clark was suspended from her teaching position pending a hearing related to her conduct. The hearing officer found that Clark's conduct, under the circumstances, was not sufficiently "notorious" to constitute immorality under Florida statute (§ 231.36(4)(c) clarified by Rule 6-4.009(2) of the Florida Administrative Code) and ordered she be reinstated with back pay. The school board accepted the hearing officer's findings of fact, but disagreed with some of the hearing officer's conclusions of law and dismissed Clark. Clark appealed the final order of the school board.

Issue: Did a teacher's inappropriate actions during a private, consensual, sexual moment with her husband constitute immorality?

Holding: No

Reasoning: The court referenced *Thaw v. Board of Public Instruction of Dade County* (1970) and held that the school board failed to provide the teacher adequate notice that the charges against her involved a sexual act.

Disposition: The Florida District Court of Appeal reversed the school board, reinstated the hearing officer's conclusions of law, and remanded with instruction to reinstate the teacher with back pay.

Citation: *Clarke v. Board of Educ. of School District of Omaha*, 215 Neb. 250, 338 N.W.2d 272, 13 Ed. Law Rep. 505 (Neb., 1983).

Key Facts: Clarke was a teacher at McMillan Junior High School. In 1981, shortly after court ordered desegregation in the school district, Clarke called a group of African American students in his class "dumb niggers" and made other disparaging remarks directed at black students (p. 252). Clarke admitted his behavior and the superintendent suspended Clarke pending a complete review of the incidents. Clarke requested and was granted a hearing. Following the hearing, the school board voted to terminate Clarke's employment. Clarke appealed and the district court reversed the board's decision finding that Clarke's behavior was inappropriate but not immoral. The school board appealed.

Issue: Did a teacher commit an immoral act within the meaning of Neb.Rev.Stat. § 79-1260 (Reissue 1981) when he called several black students in a racially mixed class "dumb niggers."?

Holding: Yes

Reasoning: Because the term immorality was not explicitly defined in statute, the court relied upon several previous cases from various states to conclude that the definition of immorality must relate directly to a teacher's ability to teach. The court held that Clarke's conduct in making disparaging remarks toward African American students in his class was not only being insensitive and crude to students of that race, but he was also modeling, or teaching, that negative behavior to students of other races. Therefore, Clarke's behavior extended beyond inappropriate and constituted immorality because it impaired his ability to teach.

Disposition: The Supreme Court of Nebraska reversed the district court and reinstated the board's decision to terminate the teacher's contract.

Citation: *Cochran v. Bd. of Ed. of Mexico Sch. Dist.*, No. 59, 815 S.W.2d 731, 79 Ed. Law Rep. 692 (Mo. Ct. App., 1991).

Key Facts: Cochran was a tenured welding instructor for the Mexico Area Vocational Technical School. During his employment, Cochran also oversaw the operation of the school's participation in a federal program designed to allow schools to purchase surplus government property at reduced prices. An audit revealed that several policies required by the program had been violated. Some of the violations included items being sold but still included on inventory and Cochran being overpaid for certain items. Ultimately, the United States government required the school system to pay \$54,000 restitution to the program. Because the various reports and purchase orders were completed by Cochran, the school district held him primarily responsible.

After an investigation into the various violations, the school district initiated disciplinary proceedings against Cochran. Cochran filed a motion to dismiss the board and appoint a judge as the hearing officer because of the potential for bias. The motion was denied and the board held the hearing. After the hearing, the board voted 4-2 to terminate his contract. Cochran petitioned for review and the circuit court upheld the board's decision. Cochran appealed the circuit court's decision.

Issue I: Did the school board violate a teacher's due process rights when its attorney had multiple roles in the teacher's termination hearing?

Holding I: No

Reasoning I: The court referenced numerous prior cases to determine that although the school board attorney fulfilled multiple roles during the disciplinary process, there was no evidence that the board was influenced in any way by the attorney. Additionally, the board's prior knowledge of the circumstances that led to the disciplinary action did not violate due process. In fact, the board's dual role in bringing charges and making a decision regarding the charges is statutory in nature and essentially demands prior knowledge of the facts. Therefore, the only way to show the board was biased is to provide evidence that the board had previously committed to make its decision without respect to the evidence that was presented.

Issue II: Did a teacher's actions related to fraudulent transactions with a government surplus program constitute immorality?

Holding II: Yes

Reasoning II: The court relied upon *Thompson v. Southwest School District* (1980). *Thompson* was a vagueness case that defined immorality under Missouri statute

as “conduct rendering plaintiff unfit to teach” (p. 63). Applying *Thompson*, the court found that the board had sufficient evidence that Cochran’s integrity had been damaged by his actions. As such, his ability to be an example for his students had come into question, creating a sufficient nexus between his behavior and his fitness to teach.

Disposition: The Missouri Court of Appeals upheld the termination of the teacher’s contract.

Citation: *Cona v. Avondale School Dist.*, 303 Mich.App. 123, 842 N.W.2d 277, 301 Ed. Law Rep. 524, 37 IER Cases 136 (Mich. Ct. App., 2013).

Key Facts: Cona was a tenured high school social studies teacher. In February 2010, Cona was arrested for driving while intoxicated. Cona pled to a lesser charge and was sentenced to 12 months of probation. The terms of his probation required random drug and alcohol testing. In May 2010, Cona tested positive for marijuana. Then in August, he tested positive for alcohol. In February 2011, Cona again tested positive for marijuana and admitted to using alcohol. Cona’s probation officer filed a motion against Cona in district court for the alleged probation violation. In April 2011, Cona took a day off work, which he reported as a sick day, to appear in court regarding the alleged probation violation. Cona was offered a choice between jail time and an additional year of probation. Believing that the recommended sentence would be 15 days in jail that he could serve on the weekends, Cona opted for the jail time. However, Cona was mistaken and was sentenced to 30 days in jail beginning immediately.

Cona called his ex-wife, explained how to use the district’s computer system for reporting absences (AESOP), gave her his confidential AESOP password, and asked her

to enter his absence as personal days. However, Cona's ex-wife had difficulty with the system and entered Cona's absence as "family illness." Cona later asked his ex-wife to enter a leave of absence for him. Again, the ex-wife had difficulty with the computer system and instead reported that Cona's father was sick and Cona had gone to Florida to see him. When Cona learned of this, he instructed his ex-wife to report to the superintendent and tell him the truth, which she did.

The Monday after Cona was released from jail, he met with the superintendent and expressed his interest in returning to work. However, Cona was placed on administrative leave for the remainder of the school year. Cona received a letter stating that he would be reassigned to a middle school position after the resolution of his suspension. The parties then entered into settlement negotiations. However, negotiations eventually broke down and the superintendent filed written tenure charges against Cona with the board.

The superintendent's charges against Cona explained the circumstances of Cona's original impaired-driving arrest and the subsequent probation violations. The charges also explained that Cona had missed work during his incarceration and had given false reasons for the absence. Further, the superintendent concluded that because students had learned of Cona's incarceration, his moral authority as a teacher had been compromised. As a result, the board unanimously voted to discharge Cona. Cona appealed the board's decision to the state's tenure commission. Initially, some confusion arose regarding the application of state statute. The statute related to teacher tenure had been amended between the time of the conduct and the time of the review. The hearing referee applied the amended statute and the commission upheld Cona's dismissal. Cona appealed.

Issue I: Was the tenure commission's application of the amended statute appropriate?

Holding I: Yes

Reasoning I: Although the behavior occurred prior to the amendment of the statute, the charges against Cona were filed after the amendment. The court reasoned that the retrospective application of a law is only improper when it would take away or impair a vested right. The court found that a statutory right, though valuable, is not a vested right.

Issue II: Was evidence concerning the teacher's marijuana use properly considered, even though not specifically mentioned in written tenure charges?

Holding II: Yes

Reasoning II: Although the allegations regarding marijuana use were not specifically addressed in the written tenure charges, the parties may present any evidence at the hearing that is relevant to any issue under consideration so long as it is not otherwise inadmissible.

Issue III: Did a teacher's conduct resulting in his incarceration have an adverse effect on the school community?

Holding III: Yes

Reasoning III: The court found that Cona's 17-day absence hampered the learning process for the students in his classes. Also, there was evidence that students who had discovered Cona's incarceration had planned protests and other disruptive activities. Finally, there was at least some evidence that the widespread knowledge of Cona's conduct posed a threat to the school's anti-alcohol efforts.

Issue IV: Did a teacher's 17-day absence caused by an arrest and subsequent probation violations related to marijuana and alcohol use warrant discharge from his teaching position?

Holding IV: Yes

Reasoning IV: Relying on MCL 38.101(1), which outlined the requirement that teacher dismissals should be "not arbitrary or capricious," the court found that a driving while impaired conviction, missing 17 days of work due to incarceration, and providing false reasons for absences were legitimate causes for dismissal and were "not arbitrary or capricious" (p. 289).

Disposition: The Michigan Court of Appeals affirmed the tenure commission's decision upholding the teacher's dismissal from employment.

Citation: *In re Douglas*, 87 A.D.3d 856, 929 N.Y.S.2d 127, 270 Ed. Law Rep. 820, 2011 N.Y. Slip Op. 06397 (N.Y. App. Div., 2011).

Key Facts: Douglas was a 17-year, tenured, chemistry teacher in New York City with an unblemished record. In 2007, four students made three allegations of sexual misconduct against Douglas. The first allegation indicated that Douglas asked a female student if she had a boyfriend, told her she had been dressing sexy, asked to touch her breast, and touched his genitals in front of her. The second allegation indicated Douglas simulated a woman's breast with a balloon and told a student she had some "sweet stuff" (p. 858). The third allegation included Douglas telling a female student the way she sat in class was sexy and turned him on. After hearing testimony from Douglas, other potential witnesses, and the four female students, the hearing officer dismissed the second

allegation, but found both the first and third allegations credible. As such, Douglas's employment was terminated and Douglas petitioned for review. The Supreme Court, New York County, dismissed his petition and Douglas appealed.

Issue I: Did the evidence support specifications of sexual misconduct?

Holding I: Yes

Reasoning I: The court found that although Douglas claimed there was inconsistency among the testimony of the students, the hearing officer carefully considered all testimony and correctly resolved all inconsistencies in favor of the students.

Issue II: Did the penalty of termination shock the court's sense of fairness where evidence supported a finding that the teacher was guilty of sexual misconduct?

Holding II: No

Reasoning II: The court held that sexual misconduct was an appropriate ground for termination, even in the case of long-standing employees with satisfactory work histories. Acts of moral turpitude compromise a teacher's ability to function as a teacher.

Disposition: The New York Supreme Court, Appellate Division, affirmed the hearing officer's decision to terminate Douglas's employment.

Citation: *Downie v. Independent School Dist., No. 141*, 367 N.W.2d 913, 25 Ed. Law Rep. 518 (Minn. Ct. App., 1985).

Key Facts: Downie was a junior high school counselor for Independent School District No. 141. In 1984, Downie was suspended pending an investigation of allegations that had been made by three school staff members. After the investigation, Downie was

notified of several charges of misconduct and a hearing was scheduled. The hearing examiner made numerous findings confirming each of charges identified by the investigation. In brief, it was found that Downie entered into a weight-loss bet with two female students, the terms of which included sexual activity with Downie; telling male teachers about the bet; sending a handwritten note containing profanity to a female student; inappropriately conducting oral surveys with students about their sexual activity; using vulgar and inappropriate language with students; sexually harassing staff and students; and breaching the confidentiality of students he counseled. Based upon these findings, the hearing examiner recommended Downie be terminated immediately. The board voted to terminate Downie's contract and he petitioned for review of the school board's decision.

Issue I: Was there sufficient evidence that the teacher engaged in misconduct?

Holding I: Yes

Reasoning I: In *Kroll v. Independent School District No. 593* (1981), the court held that "Substantial evidence is evidence upon which reasonable minds can rely in arriving at a conclusion" (p. 916). In the instant case, the court found that the hearing examiner developed an exhaustive and well-reasoned record of the proceedings, which provided more than sufficient evidence to support the examiner's conclusions were reasonable.

Issue II: Did a teacher's conduct of breaching confidentiality and sexually harassing students and staff warrant immediate dismissal under Minnesota Statute § 125.12 (1982)?

Holding II: Yes

Reasoning II: The court noted that under Minnesota Statute § 125.12 (1982), serious conduct, such as immoral conduct and conduct unbecoming a teacher, did not require remedial efforts prior to dismissal. The court found that a counselor's job requires more sensitivity and confidentiality than that of a regular teacher such that counselors should be held to a higher standard of care. Furthermore, the court found that Downie's argument that he should have received warning and an opportunity to correct his behavior is without merit because a counselor should be well aware that breaching confidentiality and engaging in inappropriate conduct with students is against the code of ethics that binds counselors. As such, and considering the harm to students, the court found that Downie's immediate discharge was proper under the statute.

Disposition: The Minnesota Court of Appeals affirmed Downie's dismissal.

Citation: *Dubuclet v. Home Ins. Co.*, 660 So.2d 67, 103 Ed. Law Rep. 547 (La. Ct. App., 1995).

Key Facts: Dubuclet was a tenured teacher in Orleans Parish. Dubuclet pled guilty to possession of marijuana and cocaine. Because he was a first time offender, Dubuclet's criminal proceedings were dismissed after the successful completion of a period of probation. Despite the dismissal of his criminal proceedings, the Orleans Parish School Board commenced disciplinary proceedings against Dubuclet and terminated his teaching contract.

Dubuclet's attorney filed two lawsuits. One of the lawsuits dealt with the denial of unemployment benefits for Dubuclet and the other sought judicial review of Dubuclet's termination. After the unemployment lawsuit failed, Dubuclet's attorney abandoned the

termination lawsuit and it was ultimately dismissed for failure to prosecute. Dubuclet then filed a legal malpractice suit against his former attorney for failing to advance his case. The District Court ruled in favor of Dubuclet's former attorney, finding that Dubuclet experienced no harm because the case could not have been won. Dubuclet appealed.

Issue: Did a teacher's conduct leading to his arrest for possession of marijuana and cocaine constitute immorality warranting termination of his teaching contract?

Holding: Yes

Reasoning: The court found that immorality, under La.R.S. 17:462, did not require conviction of a crime, but only evidence the conduct took place. The dismissal of the criminal charges against Dubuclet and the expungement of his criminal record did not erase the behavior. Furthermore, such behavior was found to constitute moral turpitude and Dubuclet could not have won his wrongful termination lawsuit.

Disposition: The Louisiana Court of Appeals affirmed the district court's judgment that teacher could not have won his reinstatement suit.

Citation: Dupree v. School Committee of Boston, 446 N.E.2d 1099, 15 Mass.App.Ct. 535, 10 Ed. Law Rep. 336 (Mass. App. Ct., 1983).

Key Facts: Dupree was a junior high school teacher in Boston. In April 1981, Dupree was indicted on charges of possession of cocaine with intent to distribute. As a result, Dupree was suspended pending the outcome of his criminal proceedings. Dupree sued and the superior court ruled in his favor, finding that although his actions amounted

to misconduct, that misconduct occurred away from school and was unconnected to his school-related duties. The school district appealed.

Issue: Did Dupree’s indictment for possession of cocaine with intent to sell constitute misconduct in office when his questionable actions took place off campus?

Holding: Yes

Reasoning: The court relied on several previous cases to determine that some conduct “no matter where or when performed, is so inimical to the duties inherent in the employment than an indictment for that crime is for misconduct in office” (p. 537). The court found that teachers are held to a higher expectation of trust than some other public officials. Furthermore, teachers are expected to be role models for their students. As such, Dupree’s actions worked contrary to the public concern regarding student drug use and mandated drug education in school.

Disposition: The Massachusetts Court of Appeals reversed the superior court and reinstated the teacher’s suspension.

Citation: *Esteban v. Dep’t of Educ. of City Sch. Dist. of N.Y.*, 131 A.D.3d 880, 17 N.Y.S.3d 21, 322 Ed. Law Rep. 461, 2015 N.Y. Slip Op. 06965 (N.Y. App. Div., 2015).

Key Facts: Esteban, a school teacher, entered a courthouse in possession of heroin, which led to his arrest and widespread negative publicity. The department of education brought disciplinary charges against Esteban, which were submitted to an arbitrator for determination. The arbitrator determined that the appropriate penalty for the offense was dismissal. Esteban filed a petition with the New York Supreme Court to

vacate the arbitrator's penalty determination. The court granted the petition, vacated the portion of the arbitrator's determination that imposed the penalty of termination, and remanded for the imposition of a lesser penalty. The school district appealed.

Issue: Did a teacher's conduct of being arrested for the possession of heroin warrant the penalty of termination of employment?

Holding: Yes

Reasoning: The appellate court found that it was not irrational or against public policy for the arbitrator to find that Esteban's public possession of heroin warranted the penalty of dismissal.

Disposition: The New York Supreme Court, Appellate Division, overturned the supreme court's ruling and reinstated the arbitrator's penalty of dismissal.

Citation: Everett Area School Dist. v. Ault, 548 A.2d 1341, 120 Pa.Cmwlth. 514, 49 Ed. Law Rep. 942 (Pa. Commw. Ct., 1988).

Key Facts: Ault and Baker were teachers for the Everett Area School District. On the last day of school in 1987, several students engaged in a water fight. Although teachers and students had been explicitly warned not to engage water fights, it was not uncommon for such behavior to occur on the last day of school. Despite the warnings, Ault participated in the water fight with her students. Ault and her students then entered Baker's classroom and sprayed him with water. In response, Baker grabbed a nearby spray bottle and sprayed three students. As it turned out, the spray bottle contained a cleaning solution. Although none of the teachers' actions had been malicious in nature, the three students did require treatment for minor irritations caused by the cleaner.

Subsequently, the school board charged each of the teachers with intemperance and immorality and imposed a 15 day suspension without pay. The teachers appealed to the court of common pleas, who overturned the board's decision, finding that the teachers' conduct did not amount to immorality. The school district appealed.

Issue: Did teachers' conduct of engaging in a jovial (though forbidden) water fight constitute immorality, justifying a 15 day suspension?

Holding: No

Reasoning: The court referenced several prior cases and ultimately determined that the teachers' conduct did not constitute "immorality" under Section 1122 of the Public School Code of 1949, Act of March 10, 1949, P.L. 30, *as amended*, 24 P.S. § 11–1122. The court found that the teachers' conduct was certainly unprofessional, but did not rise to the level of immorality since the behavior was not sexual in nature, illegal, or offensive to the morals of the community.

Disposition: The Pennsylvania Commonwealth Court affirmed the lower court's decision to overturn the 15-day suspension imposed by the school district.

Citation: *Fadler v. Illinois State Board of Education*, 106 Ill. Dec. 840, 506 N.E.2d 640, 38 Ed. Law Rep. 1245 (Ill. App. Ct., 1987).

Key Facts: Fadler was a third grade teacher with Prairie du Rocher Community Consolidated School District No. 143. In November 1984, the school board passed a resolution to dismiss Fadler for two incidents of fondling female students. At Fadler's disciplinary hearing, the hearing officer concluded that there was sufficient evidence that Fadler had put his hand inside the pants of a female student and groped her buttocks and

squeezed the breast of another female student. As such, the hearing officer sustained Faldler's dismissal. Fadler appealed and the circuit court upheld his dismissal. Again, Fadler appealed.

Issue: Did a tenured teacher engage in irremediable immorality when he sexually groped two female students?

Holding: Yes

Reasoning: Based on several prior court cases, the court found that Fadler's behavior constituted immorality because it caused harm to students and harm to the school itself. Relying on *Gilliland v. Board of Education of Pleasant View Consolidated School District No. 622* (1977), which provided a test for the remediability of conduct, the court further found that Fadler's conduct was irremediable, noting that even if a warning could have been effective in stopping the conduct, it could not have corrected the psychological damage inflicted upon the students.

Disposition: The Illinois Appellate Court upheld Fadler's termination.

Citation: Fed. Way Sch. Dist. No. 210 v. Vinson, 172 Wash.2d 756 (Wash., 2011).

Key Facts: Vinson was a school teacher in the Federal Way School District. Vinson taught for nearly 20 years without incident and was reported to be an excellent teacher. In January 2005, Vincent filed a complaint against his principal and a fellow teacher alleging sexual and malicious harassment related to Vinson's sexual orientation. According to the record, the district investigator assigned to look into the complaint put very little effort into the investigation. However, when the fellow teacher filed a later

complaint against Vinson, the same investigator initiated a very thorough investigation which resulted in Vinson being transferred to another school and instructed not to retaliate against any of the witnesses involved in the investigation.

In May 2007, Vinson got into an altercation with a former student at a restaurant outside of school hours. The former student was one of the student witnesses Vinson had been instructed not to retaliate against. The argument was mutual and brief but contained a slew of vulgar words. Once again, the same investigator was assigned to review this newest incident. Due to fear that the investigator was biased against him, Vinson was untruthful about the altercation. In July 2007, as a result of the altercation and Vinson's dishonesty during the investigation, the district notified Vinson he would be discharged from his teaching duties. Vinson appealed and the hearing officer found that the school district did not establish sufficient cause to justify Vinson's termination.

The school district sought review of the hearing officer's decision via a statutory writ of review. The Superior Court of King County denied the writ and affirmed the hearing officer's decision. The school district appealed. The Court of Appeals initially dismissed the appeal as moot because Vinson rescinded his application for reinstatement and his right to recover attorney fees when he found employment with another school. However, the school district filed a motion for reconsideration on the ground that the parties had not settled. Upon a grant of motion for reconsideration, the Court of Appeals found that there was sufficient cause for Vinson's termination. Vinson petitioned for review.

Issue I: Did a teacher's off campus argument with a former student and lying during the investigation of that incident create sufficient cause for his dismissal from employment?

Holding I: No

Reasoning I: Because sufficient cause for the termination of a teacher was not defined in Washington statute, the court relied upon *Hoagland v. Mount Vernon School District No. 320, Skagit County* (1981). *Hoagland* laid out eight factors that should be considered in cases involving the termination of teachers. These eight factors were designed to ensure that some nexus existed between the teacher's conduct and his or her teaching duties. Using the *Hoagland* factors, the court found the hearing officer's decision was not arbitrary and capricious and that Vinson's behavior did not substantially affect his teaching performance. Referencing *Mott v. Endicott Sch. Dist. No. 308* (1986), the court did make a substantial effort to emphasize that cases involving egregious conduct, such as sexually exploitive conduct or physical abuse, would be subject to stricter scrutiny than less flagrant cases. However, the court found that the conduct in this case did not constitute egregious conduct.

Disposition: The Washington Supreme Court reversed the lower court's decision, and reinstated the hearing officer's decision to overturn the teacher's termination.

Citation: *Fiscus v. Board of School Trustees of Cent. School Dist. of Greene County*, 509 N.E.2d 1137, 40 Ed. Law Rep. 36 (Ind. Ct. App., 1987).

Key Facts: Fiscus was an art teacher with the Central School District of Greene County. A fifth grade student in Fiscus's class told his mother that Fiscus said "fuck you"

to him in class. After investigation, six students from the class corroborated their classmate's story. Each of the students who said Fiscus made the remark had been in some trouble with Fiscus at some point in time. Also, some students in close proximity to Fiscus when the comment was allegedly made reported that they had not heard Fiscus use the obscenity. Despite the potential issues with the students' testimony, the school board took the students' word over that of the teacher and terminated her employment. Fiscus filed a complaint with the superior court who upheld the school board's decision. Fiscus appealed.

Issue I: Did a teacher's single utterance of the phrase "fuck you" constitute immorality?

Holding I: Yes

Reasoning I: Based on several prior cases, and the school board's explanation that immorality referred to conduct that "offends the moral standards of the community," the court could not find that the board's interpretation was arbitrary or capricious (p. 1141).

Issue II: Was the cancellation of a teacher's contract an excessive penalty for the one-time use of profanity?

Holding II: No

Reasoning II: Since the court could not find that the board's actions were arbitrary or capricious, it had no authority to overrule the board's authority to decide the appropriate penalty.

Disposition: The Indiana Court of Appeals affirmed the trial court, and upheld the teacher's termination.

Citation: *Florian v. Highland Local School Dist. Bd. of Educ.*, 493 N.E.2d 249, 24 Ohio App.3d 41, 32 Ed. Law Rep. 768 (Ohio Ct. App., 1983).

Key Facts: Florian was a teacher, and then later a counselor and wrestling coach, for Highland Local School District. In 1981, on two separate occasions, Florian instructed a freshman student to weigh-in for another student who was overweight for his weight class. When confronted regarding his actions, Florian admitted the allegations and resigned from his coaching position. Thereafter, the school board initiated proceedings to terminate Florian's teaching contract as well. Florian requested and was granted a hearing. The referee assigned to the hearing found that Florian's conduct was directly related to his teaching duties and constituted immorality. After the hearing, the board accepted the referee's findings and voted to terminate Florian's contract at a special called meeting in 1982. Florian petitioned the court of common pleas, which granted summary judgment in favor of the school board. Florian appealed.

Issue: Did a teacher's conduct of instructing students to weigh-in for overweight wrestlers at wrestling events represent gross inefficiency, immorality, willful and persistent violations of reasonable regulations, or other good and just cause?

Holding: Yes

Reasoning: The court held that under *Jarvella v. Bd. of Edn.* (1967), immoral conduct must have some impact on the teacher's professional duties to avoid vagueness. The court found that Florian's conduct was directly related to his teaching duties, directly involved students, and was hostile to the school environment, noting that a teacher, especially a counselor, should exhibit the characteristics of a positive role model and model integrity when solving problems.

Disposition: The Ohio Court of Appeals affirmed the trial court's decision upholding teacher's contract termination.

Citation: *Forte v. Mills*, 672 N.Y.S.2d 497, 250 A.D.2d 882, 126 Ed. Law Rep. 362 (N.Y. App. Div., 1998).

Key Facts: Forte was a physical education teacher in the Manhasset Union Free School District. Although Forte had been repeatedly warned against any physical contact with students, it was alleged that he nudged, poked, and/or snapped the bra straps of female students on numerous occasions. Forte defended his actions as a motivational technique and maintained that teaching physical education required some physical contact. At a disciplinary hearing, a hearing panel heard testimony, reviewed the evidence, and found Forte guilty of conduct unbecoming a teacher and insubordination. Subsequently, Forte was dismissed from his teaching position. Forte unsuccessfully appealed to Mills, the Commissioner of Education. Forte sought review of Mills's decision.

Issue I: Did a teacher engage in conduct unbecoming a teacher when he repeatedly nudged, poked, and snapped the bra straps of female students?

Holding II: Yes

Reasoning II: The court found that evidence in the record supported a finding that Forte had popped female students' bra straps and poked them in the back near their bra, in a way that made the girls feel uncomfortable, even after being warned to stop doing so. The continued behavior, regardless of Forte's intentions constituted conduct unbecoming a teacher.

Issue III: Was dismissal an appropriate penalty where a teacher repeatedly nudged, poked, and snapped the bra straps of female students?

Holding III: Yes

Reasoning III: The court applied a standard set in *Pell v. Board of Educ.* (1974) to determine whether dismissal was an appropriate penalty in the instant case. The court found that Forte engaged in potentially harassing, and sexually suggestive, behavior after been repeatedly warned against it. As such, the court found that termination was not excessive.

Disposition: The New York Supreme Court, Appellate Division, confirmed Mills's decision upholding Forte's termination.

Citation: *Gedney v. Board of Educ. of Town of Groton*, 703 A.2d 804, 47 Conn. App. 297, 122 Ed. Law Rep. 1240 (Conn. App. Ct., 1997).

Key Facts: Gedney was a fourth grade teacher in the Groton School System. In October 1991, he was arrested and charged with possession of cocaine and possession of drug paraphernalia. In lieu of a conviction, he was assigned to accelerated rehabilitation. Based on his conduct, the school board terminated his teaching contract. He requested and was granted a hearing. The hearing officer found that Gedney had possessed narcotics, but recommended that he be returned to his teaching position. The school board accepted the hearing officer's findings, but rejected his recommendation and voted to terminate Gedney's contract. Gedney appealed to the trial court on the basis that he had been discriminated against due to his disability as a recovering addict. The trial court dismissed his appeal. Again, Gedney appealed.

Issue I: Did a teacher's conduct of possession of cocaine and drug paraphernalia constitute moral misconduct supporting his termination from employment?

Holding I: Yes

Reasoning I: The court relied upon *Rado v. Board of Educ. of Borough of Naugatuck* (1990) to determine that criminal conduct deteriorated Gedney's ability to function as a coworker and a role model for students. Although Gedney qualified as having a disability under Section 504 of the Rehabilitation Act, he failed to show that he was terminated for no other reason than his disability. The court found that although Gedney's possession of a narcotic substance was causally related to his drug addiction, his criminal conduct and subsequent arrest was not.

Disposition: The Connecticut Appellate Court affirmed the trial court, upholding the teacher's termination.

Citation: *Gerig v. Board of Educ. of Cent. School Dist.*, R-III, 841 S.W.2d 731, 79 Ed. Law Rep. 692 (Mo. Ct. App., 1992).

Key Facts: Gerig was an English and media teacher for Central School District. As part of a class assignment, students submitted various articles, stories, and advertisements to be included in a class newspaper. Gerig then took the submissions, edited the content he deemed inappropriate, and distributed a final paper which included all of the edited submissions. Despite Gerig's edits, the paper included multiple articles with strong sexual references, promotion of drug use, references to erectile dysfunction, and remarks about the local police using drugs and alcohol on duty. Gerig claimed that the assignment represented an established teaching technique. However, the school board

disagreed and initiated dismissal proceedings against him. Gerig appealed and the circuit court granted summary judgment in favor of the school board. Again Gerig appealed and the appellate court reversed and remanded. The board appealed.

Issue: Did a teacher's actions in allowing students to view a school newspaper publication filled with inappropriate content constitute immoral conduct warranting termination?

Holding: Yes

Reasoning: The court found that state statute RSMo 168.114 (1986) listed immoral conduct as a proper cause for the dismissal of a tenure teacher, and immoral conduct was defined, in *Schmidt v. Board of Education* (1986), as "immoral conduct rendering the teacher unfit to teach" (p. 733). The court held that Gerig's conduct of distributing a class newspaper known to contain sexual content, vulgar references, and other inappropriate content to students violated "even the most relaxed standards of behavior" and rendered him unfit to teach (p. 735).

Disposition: The Missouri Court of Appeals reversed the appellate court's decision and reinstated the board's decision to terminate the teacher.

Citation: *Gisors v. New York City Dep't of Educ. for City Sch. Dist. Region 10*, 94 A.D.3d 584, 942 N.Y.S.2d 108, 278 Ed. Law Rep. 1088, 2012 N.Y. Slip Op. 02948 (N.Y. App. Div., 2012).

Key Facts: Gisors was a tenured guidance counselor employed by the New York City Department of Education (DOE). In 2004, Gisors was charged by the DOE with several instances of misconduct including changing a student's grade, submitting an

altered doctor's note for an absence, failing to return timecards, leaving school during school hours without permission, and altering her time on the staff sign-out sheet. A disciplinary hearing was scheduled multiple times, but Gisors requested adjournment due to medical leave on multiple occasions. However, she never produced documentation to verify medical leave.

In the meantime, Gisors discharged her attorney and then requested an adjournment to give her time to find counsel. A hearing was finally held in March 2008 despite Gisors's objection. The hearing officer heard testimony regarding the grade change but then adjourned the hearing until April 1, 2008 to give Gisors an opportunity to locate counsel and to prepare her defense. Gisors appeared at the April 1, 2008 hearing without counsel and refused to participate, arguing that the hearing was unconstitutional. The hearing officer refused Gisors's request for another adjournment to obtain an attorney, and heard the testimony of a DOE investigator.

The hearing resumed on April 3, 2008 and the hearing officer heard testimony regarding the remaining charges. Again, Gisors refused to participate. The hearing was set to resume on April 29, 2008, but Gisors did not appear. She later submitted a doctor's note stating she was unable to work until May 15, 2008. The hearing was set to resume on May 16, 2008, but Gisors presented a note from a different doctor stating that she was advised to rest at home until May 16, 2008. The hearing was then set to resume May 28, 2008, but an attorney claiming to represent Gisors sent an email to the hearing officer stating that Gisors would not attend any further hearings due to disability and unspecified state and federal litigation. Gisors did not respond to the DOE's requests for a medical evaluation and did not appear for the next two hearings. The hearing officer gave Gisors

one final opportunity to present a defense in July 2008. When Gisors did not appear, the hearing proceeded without her and the hearing officer concluded the proceedings.

The hearing officer found Gisors guilty of grade changing, not submitting time cards, and altering time sheets. As such, the hearing officer imposed a penalty of a six-month suspension without pay. Gisors petitioned for vacature of the arbitration award, but the New York Supreme Court upheld the hearing officer's decision. Gisors appealed.

Issue I: Was a counselor's due process rights violated when she refused to attend her own hearing?

Holding I: No

Reasoning I: The court referenced several cases and held that Gisors failed to establish that the hearing officer was biased, especially where she was afforded more than adequate opportunity to present a defense. In fact, the court found that Gisors attempted to stonewall the proceedings on several dates. Finally, the hearing officer's decision was based on credible evidence.

Issue II: Did a counselor's actions of tampering with school records warrant a penalty of six months suspension, without pay?

Holding II: Yes

Reasoning II: Based on the standard set in *Pell v. Board of Educ.* (1974), the court found that the penalty was not shocking to one's sense of fairness nor disproportionate considering there were multiple offenses that undermined the credibility of the school's grading system, involved repeated tampering with multiple school records, and circumvented the school's authority.

Disposition: The New York Supreme Court, Appellate Division, affirmed the lower court's decision to uphold the hearing officer's decision, confirming teacher's six-month suspension without pay.

Citation: *Golden v. Board of Educ. of Harrison County*, 285 S.E.2d 665, 169 W.Va. 63, 1 Ed. Law Rep. 1354 (W. Va., 1981).

Key Facts: Golden was a high school guidance counselor for the Harrison County School System. In December 1978, Golden pled *nolo contendere* to a misdemeanor charge of petty theft. The school board notified Golden that it considered shoplifting an immoral act and dismissed her in January 1979 pending a hearing. In order to accommodate proper due process, the board rescinded Golden's dismissal, payed back pay for the elapsed time, and suspended her pending a hearing. At the hearing, Golden testified that she had accidentally walked out of the store with the items in her purse because she was distraught over several personal issues. The board was not persuaded by Golden's testimony and elected to terminate her employment. Golden appealed and the circuit court affirmed the school board's decision. Again, Golden appealed.

Issue: Did a counselor engage in immorality when she was arrested for, and pled no contest to, shoplifting?

Holding: No

Reasoning: Based on *Morrison v. State Board of Education* (1969), the court found that to avoid vagueness, the term immorality must be connected by a nexus between the teacher's conduct and the teacher's fitness to perform his or her job duties.

Under that standard, the court found that no nexus existed between Golden's guilty plea for shoplifting and her ability to function as a guidance counselor.

Disposition: The West Virginia Supreme Court of Appeals reversed the circuit court's decision and reinstated the teacher.

Citation: *Gongora v. New York City Dept. of Educ.*, 34 Misc.3d 161, 930 N.Y.S.2d 757, 272 Ed. Law Rep. 606, 2010 N.Y. Slip Op. 20554 (N.Y., 2010).

Key Facts: Gongora was a bilingual teacher in the New York City Department of Education with an unblemished teaching record. During the 2006-2007 school year, Gongora called an 18-year-old female student on the phone to inform her that she had passed an examination which completed her requirements for graduation. The student's mother was listening in on the call when Gongora asked the student to "go out" with him. The mother broke into the conversation and confronted Gongora and he hung up the phone. The mother and the student complained about the conversation to the school principal. Gongora maintained that his request was nothing more than a joke predicated on a previous conversation with the student.

The school district charged Gongora with sexual misconduct and a hearing was held. During the hearing, the hearing officer reviewed testimony that indicated Gongora had called the student on 11 occasions and had previously made sexual advances toward the student. However, those charges were never substantiated and the student never testified. Despite the absence of the student's testimony and a lack of evidence beyond hearsay, the hearing officer sustained the sexual misconduct charge against Gongora and

imposed a penalty of termination. Gongora petitioned for vacature of the hearing officer's decision.

Issue I: Did a teacher's arbitration proceedings satisfy due process?

Holding I: No

Reasoning I: The court found that the hearing officer lacked substantial evidence and erred in making a determination without the testimony of the student involved in the incident. Furthermore, the court determined that a number of entries in the record indicated that the hearing officer was biased and had predetermined her decision prior to examining all the evidence. Additionally, the hearing officer failed to set forth findings of fact and conclusions of law that were unambiguous and definite on each charge.

Issue II: Did a teacher's single request to a student to "go out" constitute sexual misconduct?

Holding II: No

Reasoning II: Utilizing the standards set forth in the collective bargaining agreement, the court found that Gongora's request to "go out" was at best a bad joke, and at worst a one-time lapse in judgment. However, the court reasoned that a one-time lapse in judgment toward an 18-year-old student no longer under his influence did not constitute sexual misconduct and would not impact his ability to perform his job duties in the future.

Issue III: Was the penalty of termination shocking to the conscience?

Holding III: Yes

Reasoning III: Based on numerous prior court cases, the court concluded that Gongora's request to "go out" was at best a bad joke, and at worst a one-time lapse in

judgment. As such, the court reasoned that the penalty of termination was shocking to the conscience.

Disposition: The New York Supreme Court vacated the arbitrator's decision and remanded for a redetermination of the penalty.

Citation: *Governing Board v. Haar*, 33 Cal.Rptr.2d 744. 28 Cal.App.4th 369, 94 Ed. Law Rep. 384 (Cal. Ct. App., 1994).

Key Facts: Haar was a middle school music teacher for the ABC Unified School District. In February 1992, the school district initiated dismissal proceedings against Haar for immoral conduct. More specifically, there were several allegations that Haar was sexually harassing female students. These allegations included Haar dressing as Santa at a Christmas party and asking female students to sit in his lap and kiss his cheek, rubbing a female student's thigh in a sexual manner, hugging, holding hands, and calling female students "cute" on a regular basis. At Haar's hearing, the Commission on Professional Competence ruled that the district had not provided sufficient evidence to prove the charges and ordered that Haar be reinstated. The district petitioned for review and the superior court ruled in favor of the school district. Haar appealed.

Issue I: Was there substantial evidence to support a finding that Haar engaged in immoral conduct by sexually harassing female students?

Holding I: Yes

Reasoning I: The evidence indicated that Haar encouraged female students to sit in his lap and kiss his cheek, rubbed a student's thigh in a sexual manner, frequently called girls cute, hugged students, and tried to hold a female student's hand after the

student pulled away. Although the court recognized that many of these actions might not constitute immorality in isolation, Haar's conduct constituted sexual harassment and immorality when viewed in its entirety.

Issue II: Did a teacher engage in immoral conduct rendering him unfit to teach when he sexually abused female students?

Holding II: Yes

Reasoning II: The court relied upon the standards set forth in *Morrison v. State Board of Education* (1969) to determine whether Haar was unfit to teach. Under that test, the court concluded that the severity and repetitive nature of the conduct rose to the level of sexual harassment. Therefore, Haar was deemed unfit to teach which supported termination.

Disposition: The California Court of Appeal affirmed the trial court's decision, reinstating the teacher's employment termination.

Citation: *Green v. New York City Department of Education*, 793 N.Y.S2d 405, 197 Ed. Law Rep. 714 (N.Y. App. Div., 2005).

Key Facts: Green was a teacher in New York. She was dismissed from her teaching position in 2003 after she was convicted of grand larceny in connection with falsifying information on her housing filings. During arbitration, the hearing officer found that Green's conviction, coupled with prior convictions for fraud, indicated that Green did not learn from her past experiences and was not an appropriate role model for students. The New York Supreme Court denied Green's petition for review and Green appealed.

Issue: Was the penalty of termination so disproportionate to the offense of grand larceny that it was shocking to the conscience?

Holding: No

Reasoning: Referencing *Matter of Hegarty v. Bd. of Educ.* (2004), the court found that termination did “not shock the conscience” considering that Green’s conduct resulted in a conviction of grand larceny; especially considering she had prior convictions for fraud for similar conduct (p. 266).

Disposition: The New York Supreme Court, Appellate Division, affirmed the hearing officer’s decision to uphold Green’s termination.

Citation: *Grieb v. Unemployment Compensation Board of Review*, 827 A.2d 422, 573 Pa. 594, 178 Ed. Law Rep. 838 (Pa., 2003).

Key Facts: Grieb was a part-time health and physical education teacher for the State College Area School District. In 1999, Grieb lost her home in an eminent domain proceeding. In the process of moving to a new residence, Grieb loaded her car with several items, including three unloaded shotguns. She did not unload the items that evening because it was raining. The next morning, Grieb was unexpectedly called in early to work and forgot to remove the shotguns from her vehicle before reporting to campus. Later in the day, a custodian saw and reported the guns. The district suspended Grieb without pay. Grieb sought unemployment benefits but the compensation referee concluded that Grieb had engaged in willful misconduct, and therefore, denied unemployment benefits. The Unemployment Compensation Board of Review affirmed

the referee's decision. On review, the commonwealth court affirmed the Unemployment Board's decision.

Issue: Did a teacher engage in misconduct warranting dismissal from employment when she unintentionally brought loaded shotguns onto the school campus in her vehicle?

Holding: Yes

Reasoning: The court recognized that Grieb's conduct was unintentional, but held that her violation of the school district's weapons policy was valid cause for her dismissal from employment. However, the court further held that because Grieb's conduct was not intentional or egregious, she was entitled to unemployment benefits.

Disposition: The Pennsylvania Supreme Court reversed the commonwealth court's decision to deny unemployment benefits.

Citation: *Guzman v. City of N.Y.*, 110 A.D.3d 581, 975 N.Y.S.2d 386, 298 Ed. Law Rep. 986, 2013 N.Y. Slip Op. 06962 (N.Y. App. Div., 2014).

Key Facts: Guzman, a teacher in New York, allegedly masterminded a scheme to use a coworker's residential address to enroll her granddaughter at the school where she worked. It appeared that Guzman's granddaughter actually lived in New Jersey. As such, the Department of Education sought misconduct charges against Guzman as well as \$35,000 for the cost of the education that Guzman's granddaughter received. During arbitration, the hearing officer imposed a penalty of termination. Guzman challenged the arbitration award. The New York Supreme Court upheld the termination. Guzman appealed.

Issue: Did a teacher engage in misconduct warranting dismissal when she filed false paperwork with the school district so that her granddaughter could attend a school for which she was not zoned to attend?

Holding: No

Reasoning: “Despite making a strong case that petitioner and her daughter-in-law were not credible regarding the family’s living situation, respondent Department of Education failed to sufficiently establish that the child’s residence had been moved to petitioner’s New Jersey home, or that petitioner and her son and daughter-in-law engaged in the scheme motivated by the desire to save on out-of-state tuition” (p. 387). However, evidence did support a finding that Guzman filed false paperwork in order to enroll the child in the school where she worked. However, the court did not find this level of misconduct warranted termination from employment.

Disposition: The New York Supreme Court, Appellate Division, vacated the termination and remanded for the imposition of a lesser penalty.

Citation: Hamm v. Poplar Bluff R-1 School District, 955 S.W.2d 27, 122 Ed. Law Rep. 340 (Mo. Ct. App., 1997).

Key Facts: Hamm was a probationary teacher with the Poplar Bluff School System. In August 1996, the Poplar Bluff Police Department received a call shortly before midnight from a private investigator indicating that a 14-year-old girl was in his home. The investigator had been employed by the girl’s father. Just after midnight, two officers arrived at Hamm’s home. The house was dark and no one appeared to be moving around inside. The officers knocked on the door and Hamm answered. The officers asked

Hamm if the girl was inside and he told them she was not. The officers asked if they could look around inside and Hamm refused their entry without a search warrant. The officers left the house but continued to monitor it from a distance. A few minutes later, the girl ran from the house and down an alley where the officers took her into custody.

The school board held a disciplinary hearing regarding Hamm's behavior that night. Based on the evidence that Hamm had a 14-year-old female in his darkened home in the middle of the night, and denied her presence there to police, the school board terminated him for immoral conduct. Hamm petitioned for judicial review, and the Court of Appeals affirmed the board's decision. Hamm appealed.

Issue: Did evidence support the determination that a teacher had an unrelated, 14 year-old, female in his home during night hours and denied her presence to police, constituting immoral conduct warranting dismissal?

Holding: Yes

Reasoning: The court applied *Ross v. Robb* (1983) which defined immoral conduct as conduct that renders a teacher unfit to teach. Based on *Ross*, the court held that Hamm's conduct constituted immoral conduct and rendered him unfit to teach. The court reasoned:

[h]iding the presence of a fourteen-year-old girl in a darkened residence in the late evening—early morning hours, and in denying her presence when confronted by police, did not demonstrate the morals required of a person employed to teach and coach children of the same approximate age. (p. 30)

Disposition: The Missouri Court of Appeals affirmed Hamm's termination from employment.

Citation: Hawzipta v. Independent School Dist., 13 P.3d 98, 149 Ed. Law Rep. 250 (Okla. Civ. App., 2000).

Key Facts: Hawzipta was a career teacher for Frontier Public Schools. In April 1999, a student informed Hawzipta that there was inappropriate written material in the dumpster. The teacher asked the student to bring the material to him and later accompanied the student to the dumpster and retrieved additional inappropriate material from the dumpster. The material was pornographic in nature. The name on the labels had been removed, but an invoice number was on the labels. Hawzipta turned the material over to the local education association representative. He later called the company that disseminated the material and claimed the operator told him the material was shipped to the school principal.

The education association representative informed the superintendent what had taken place. The superintendent met with Hawzipta several times and he told the superintendent that he believed the materials belonged to the principal. The superintendent then spoke to a fellow administrator who admitted that he had purchased the material for personal use at his home on campus and had discarded the material in the school dumpster. The evidence is unclear whether Hawzipta was informed that another employee admitted ownership of the material, but it was clear he continued to spread allegations against the principal. The superintendent believed Hawzipta knew the true owner of the material but continued to implicate the principal in retaliation for a previous disciplinary action. Therefore, Hawzipta's dismissal was recommended by the superintendent, and carried out by the school district, for the cause of moral turpitude.

Hawzipta sought appellate review of his employment termination and the district court concluded that the district had failed to prove Hawzipta was guilty of moral turpitude and ordered his reinstatement. The district court's decision was based largely on the absence of evidence that Hawzipta was aware that another employee had admitted to purchasing the pornographic material. The school district appealed the district court's decision.

Issue: Did a teacher engage in conduct that constitutes moral turpitude when he unknowingly spread false rumors about his school's principal?

Holding: No

Reasoning: The court found that there was no evidence that Hawzipta was informed that another employee confessed to ordering pornographic materials. As such, there was no proof that Hawzipta had knowledge his information was incorrect. Therefore, although the information he shared about the principal was false, his behavior did not constitute moral turpitude.

Disposition: The Oklahoma Court of Appeals affirmed the lower court's decision to reinstate the teacher.

Citation: Homa v. Carthage R-IX School Dist. 345 S.W.3d 266, 161 Lab.Cas. P 61,138, 270 Ed. Law Rep. 902 (Mo. Ct. App., 2011).

Key Facts: Homa was a tenured teacher in a Missouri school district who served as the director of a voluntary parent education program called Parents as Teachers (PAT). The PAT program was designed to help parents gain confidence, understand their child's developmental progress, and provide early developmental screening for children. The

program required adherence to a number of documentation guidelines to ensure the proper expenditure of funds. As director of the program, Homa was responsible for ensuring the guidelines were followed. In September 2007, a PAT employee asked Homa for permission to visit a parent in jail. The parent was a Guatemalan woman being held in jail, pending deportation due to her immigration status. Homa approved the visit but informed the teacher she would only receive half of the mileage pay for her trip. Homa did not notify her supervisor of the trip, nor get approval for the trip as the PAT guidelines required. When the teacher returned from her trip, she told Homa that she had a conversation with the parent about giving her child up for adoption due to her circumstances. Despite not documenting the trip, Homa authorized payment to the teacher for a full day of salary and mileage for 165 miles.

When the PAT program refused to reimburse the school district for the trip due to the lack of documentation, the district superintendent requested a meeting with Homa and the teacher. When the superintendent asked the teacher why she went to the jail, the teacher indicated the reason was to get the parent to give her child up for adoption. Homa did not make any effort to dispute the response and gave no indication that she was surprised or offended by the comment. The superintendent then asked Homa and the teacher to write a statement regarding the trip. In their written statements, both Homa and the teacher indicated the reason for visiting the jail was to take a birth certificate application to the parent.

Later, Homa was placed on administrative leave pending an investigation into her conduct relating to her participation in the incident. The board ultimately found that Homa had knowingly participated in an effort to pressure an incarcerated woman to give

her child up for adoption and allowed the misappropriation of school funds. As such, the board terminated Homa's employment. Homa petitioned for review and the circuit court affirmed the school board's decision. Homa appealed the circuit court's decision.

Issue I: Did a teacher engage in immoral conduct warranting dismissal when she covered up a subordinate's actions related to pressuring an incarcerated woman to give up her child for adoption and misappropriated funds in the process?

Holding I: Yes

Reasoning I: The court relied upon several prior cases to determine that immoral conduct required some nexus between the conduct and the teacher's fitness to teach. Relying on factors established by *In re Thomas (1996)*, related to fitness to teach, the court found that Homa's casual attitude toward the incident indicated a likelihood that the conduct would be repeated, and the school board's decision was not arbitrary and capricious because it had acted upon sufficient evidence.

Issue II: Was there sufficient evidence a teacher engaged in immoral conduct rendering her unfit to teach?

Holding II: Yes

Reasoning II: The court found that there was sufficient evidence that Homa knew of the teacher's intentions to persuade an incarcerated parent to give up her 11-month old son for adoption. Homa exhibited a very casual attitude regarding the incident, concealed the teacher's actions, and actually authorized payment for her actions.

Disposition: The Missouri Court of Appeals affirmed the school board's decision to terminate Homa's employment.

Citation: Horton v. Jefferson County-Dubois Area Vocational Technical School, 157 Pa.Cmwlth. 424, 630 A.2d 481, 85 Ed. Law Rep. 897 (Pa. Commw. Ct., 1993).

Key Facts: Horton was the director of the Jefferson County-Dubois Area Vocational-Technical School. In October 1989, Horton and a team of five other employees at the school were designated to attend a training. The training consisted of several sessions, and if the team missed a session, they would not be permitted to attend the remaining sessions. When the team missed a session, Horton attempted to locate the head counselor for the training to request permission to participate in the remaining classes. Before locating the head counselor, Horton encountered one of the training coordinators and the two engaged in a heated argument. According to the coordinator, Horton grabbed the coordinator's shirt, made a fist, and made some sort of threat. A few hours later, Horton located the head counselor and that conversation led to Horton saying, "If anyone did this to his people again, he would put a gun to their head and shoot them" (p. 428). After hearing of Horton's conduct, the school committee dismissed Horton for immorality, violation of school law, persistent negligence, and cruelty. Horton appealed and the Secretary of Education dismissed his appeal. Again, Horton appealed.

Issue: Did a teacher's conduct in threatening training program personnel constitute immoral conduct?

Holding: No

Reasoning: The court noted that no precedent existed for determining that harassment constituted immorality. At the time, only sexual misconduct and shoplifting had been determined to constitute immorality by the court. While the court stated that harassment might rise to the level of unprofessional conduct, it found that a single

instance of unprofessional conduct did not automatically rise to the level required to constitute immorality. In this case, the court found that Horton's conduct was unprofessional, but was not willful or persistent, and did not rise to the level necessary to constitute immorality.

Disposition: The Pennsylvania Commonwealth Court reversed the teacher's employment termination.

Citation: *In re Binghamton City School District (Peacock)*, 848 N.Y.S.2d 382, 227 Ed. Law Rep. 905 (N.Y. App. Div., 2007).

Key Facts: Peacock was a tenured teacher for the Binghamton City School District. Because of a grossly inappropriate relationship with a 16-year-old female student, the hearing officer at his disciplinary hearing imposed a one-year suspension. The school district appealed and the New York Supreme Court remitted the matter to the hearing officer for the imposition of a new penalty. After reconsideration, the hearing officer imposed a two year suspension. The school district then filed, and was granted, a petition to vacate the two year suspension. Peacock appealed.

Issue: Did a two-year suspension adequately satisfy public policy of protecting students where a teacher engaged in a grossly inappropriate relationship with a female student?

Holding: No

Reasoning: In light of the hearing officer's findings that Peacock lacked remorse and did not appreciate the harm he had caused, the New York Supreme Court, Appellate

Division, held that a two-year suspension was inadequate to satisfy public policy regarding protecting students.

Disposition: The New York Supreme Court, Appellate Division, affirmed the lower court's decision and remitted the matter to the hearing officer for the imposition of a new penalty.

Citation: *In re Thomas*, 926 S.W.2d 163, 111 Ed. Law Rep. 1023 (Mo. Ct. App., 1996).

Key Facts: Thomas was a ninth grade English teacher for the Cape Girardeau School District. Thomas and her husband were living apart. During the summer of 1994, Thomas drove to her husband's residence where she had words with her husband's girlfriend and went inside the house. The girlfriend scratched an obscenity on Thomas's car and then entered her own car to leave the residence. Thomas came out of the home with a .357 revolver and fired four times at the girlfriend's car. One bullet struck the girlfriend in the leg.

A few days later, after hearing of the incident, Thomas's school principal called her to a meeting to discuss the incident. In August 1994, the school board notified Thomas of its intentions to terminate her contract for immoral conduct. At a hearing in September 1994, the board heard testimony regarding the incident, a prior incident, and various testimony related to the importance of maintaining a school environment that was free from guns and violence. The board voted unanimously to terminate Thomas's teaching contract. Thomas challenged the board's decision citing a lack of definition for immoral conduct and an insufficient showing of a nexus between her conduct and her

fitness to teach. The circuit court, unpersuaded by Thomas's arguments, affirmed the board's decision. Again, Thomas appealed.

Issue I: Did a teacher's behavior related to shooting her estranged husband's girlfriend constitute immoral conduct rendering her unfit to teach?

Holding I: Yes

Reasoning I: The court relied upon factors established in *Ross v. Robb* (1983) to determine whether Thomas's actions rendered her unfit to teach. The court ruled that intentionally shooting another person is clearly contrary to good morals and therefore constitutes immoral conduct and such behavior negatively impacted her relationships within the school community and destroyed her ability to serve as a role model for her students.

Issue II: Did the school board violate a teacher's due process rights by failing to wait for the resolution of her criminal charges?

Holding II: No

Reasoning II: The court ruled that Thomas was not terminated for the conviction of a crime, but rather for immoral conduct. Therefore, the board had no need to wait for the resolution of her criminal proceedings.

Disposition: The Missouri Court of Appeals affirmed Thomas's employment termination.

Citation: *In re Young*, 202 N.J. 50 (2010)

Key Facts: Young was a teacher for the School District of the Borough of Roselle. In February 2007, one of Young's former students alleged that he and Young had

engaged in sexual contact on two occasions. That report led to an investigation by the Department of Children and Families (DCF). Statutory process required that the DCF investigate the incident within 24 hours and then report whether a formal investigation should follow within 72 hours. The DCF classified the complaint as unfounded, which indicated that there was not enough evidence that the incident rose to the statutory definition of child abuse to warrant a formal investigation.

Despite the DCF's finding, the school district brought charges against Young. At the hearing, the student testified that Young had on one occasion rubbed his genitals and kissed him. The student also claimed that on another occasion, Young took him to a hotel and the two engaged in oral and anal sex. In stark contrast, Young denied any sexual contact between the two. Furthermore, Young maintained that state statute did not allow disciplinary charges against him since the DCF found the child abuse charges to be unfounded. The Administrative Law Judge (ALJ) conducting the hearing found the student's testimony and evidence credible and rejected Young's claim that the school district had no standing to bring charges against him. The ALJ recommended Young's termination. Young appealed and the appellate court affirmed the ALJ's decision. Again, Young appealed.

Issue I: Did the dismissal of child abuse or neglect charges against the Young by the Department of Children and Families prevent the institution of disciplinary charges against him?

Holding: No

Reasoning: Despite possibly contradictory language in the statute, the Supreme Court of New Jersey concluded that the DCF's investigation of child abuse did not

preclude the school system's investigation of unbecoming conduct. At the heart of that decision, the court reasoned that unbecoming conduct involves a different standard than abuse or neglect.

Disposition: The Supreme Court of New Jersey affirmed the lower court's decision and supported Young's termination.

Citation: Jackson v. Bd. of Educ. of Chicago, 2016 IL App (1st) 141388, 53 N.E.3d 381, 403 Ill.Dec. 327, 332 Ed. Law Rep. 480, 2016 IER Cases 140,596 (Ill. App. Ct., 2016).

Key Facts: Jackson was a tenured elementary school teacher at Jackie Robinson Elementary school. Jackson's record indicated that he generally received excellent ratings on teacher evaluation reviews. Jackson also participated as a teacher in a tutoring program designed to improve standardized test scores by offering tutoring before school and on Saturdays.

Court testimony indicated that in March 2010, Jackson and another teacher were summoned to the principal's office. While there, the standardized testing coordinator, Jack Silver, told the teachers that someone at the district office said they could break the seal on the testing booklets, look at the questions, and teach from the booklet. Jackson testified that he never had a booklet in his possession or taught the information in the booklet.

During the testing, the teacher who had been called to the principal's office along with Jackson, discovered several students had notes in their possession prior to testing. The teacher, and her colleague who was proctoring the exam, took the notes and placed

them in the garbage. The teachers suspected that the notes were provided by Jackson and were taken directly from the questions in the test booklet, so they retrieved a couple pages from the waste basket for evidence and reported the incident. When the matter was investigated in April 2010, Jackson reported the conversation in the principal's office with Jack Silver, but stated that he did not think he was being asked to cheat at the time of the conversation. He stated that he never cheated nor broke the seal of a standardized test.

The board subsequently fired Jackson for test cheating, not reporting test irregularities, and falsely reporting the same irregularities. Shortly after the initial administrative hearing was to begin, the board added the charge of knowingly falsifying his job application by omitting his previous employment and termination with the Chicago Police Department (CPD). Jackson contended that he had omitted his experience with the CPD because he only included employment he thought was relevant to teaching, not because he had been terminated due to an investigation of allegations that he mistreated an arrestee and was dishonest during the investigation of the incident. When applying for his position with Chicago Public Schools, Jackson's criminal background check came back clear.

During the administrative hearing, the hearing officer found that the board failed to produce enough evidence to substantiate any of the charges against Jackson. In December 2011, the board accepted the hearing officer's findings and conclusions regarding the cheating charges but rejected the conclusions regarding reporting irregularities and submitting a false employment application. As such, the board dismissed Jackson for irremediable conduct. Jackson petitioned for review with the Cook

County Circuit Court. The circuit court reversed the board's order and reinstated Jackson with back pay and benefits. The Board appealed.

Issue I: Was the board's decision to terminate Jackson for falsification of his employment application against manifest weight of evidence?

Holding I: Yes

Reasoning I: The appellate court referred to the hearing officer's evidence as *prima facie* true and correct. The court would only reverse the hearing officer's findings regarding manifest weight of evidence if the opposite conclusion were clearly evident.

Issue II: Did the fact that a teacher did not immediately report standardized testing irregularities provide the board with cause for termination?

Holding II: No

Reasoning II: The hearing officer, the board, and the circuit court all concluded that the cheating allegations against Jackson were unproven. Furthermore, the board did not present any evidence of established rules or procedures for teachers and staff to report testing irregularities.

Issue III: Did a teacher's omission of certain work history on his employment application constitute irremediable immorality?

Holding III: No

Reasoning III: Although falsification of an employment application is a proper ground for dismissal under Illinois School Code, the court held that Jackson's omission of his previous employment with CPD did not amount to falsification. The application did not require disclosure of the applicant's most recent employment or information about termination from previous jobs. In fact, the application contained only three spaces

for listing employment history and listed no questions regarding any discharge information.

Disposition: The Illinois Appellate Court affirmed the circuit court's decision which reversed the board's order and reinstating Jackson with back pay and benefits.

Citation: James v. Trumbull Cty. Bd. of Edn., 663 N.E.2d 1361, 105 Ohio App.3d, 109 Ed. Law Rep. 349 (Ohio Ct. App., 1995).

Key Facts: James was a special education teacher, teaching students with severe and profound disabilities, for the Trumbull County Board of Education. After receiving complaints from teachers' aides regarding techniques used by James, the school district conducted an investigation. It was found that James used questionable techniques such as using aversives, placing a towel over student a student's face, and tipping a student backwards while strapped to a chair. After the investigation, James's employment was terminated. James appealed her termination and a referee was appointed to hear the matter. The referee reviewed testimony and evidence and recommended that James not be terminated. However, the school rejected the referee's recommendation and dismissed James. James appealed and the trial court reinstated James with back pay. The district appealed.

Issue I: Did a teacher's use of controversial disciplinary techniques provide good and just cause for discharge?

Holding I: No

Reasoning I: The court utilized Ohio statute R.C. 3319.16, which outlined gross inefficiency, immorality, willful and persistent violations of regulations, or other good

and just cause as potential grounds for the termination of a tenured teacher. Applying the statute, the court found that the school board failed to identify any rule or regulation that James had violated and provided no evidence that she had harmed or abused any students. Though James's methods might have been controversial, they were recognized treatments and there was no evidence that she intentionally or maliciously tried to harm any students. As such, the court found no sufficient cause for James's employment termination.

Disposition: The Ohio Court of Appeals upheld the trial decision to overturn teacher's termination.

Citation: Kenai Peninsula Borough Bd. of Educ. v. Brown, 691 P.2d 1034, 22 Ed. Law Rep. 439 (Alaska, 1984).

Key Facts: Brown was a teacher at Kenai Central High School. Brown was convicted in 1980 of diverting electricity when it was found he had spliced an electric line to bypass the electrical meter. During his criminal proceedings, Brown remained on staff with the school. Once all Brown's appellate remedies were exhausted, the school district recommended his dismissal. He was suspended with pay pending the board's decision regarding the recommendation. In May 1982, Brown was notified that the board approved a recommendation for his termination and that he had a right to request a hearing. He requested a hearing and argued that his crime was not a crime involving moral turpitude. Following the hearing, the board voted to dismiss Brown. Brown sought review and the superior court ordered that he be reinstated with back pay. The board appealed.

Issue I: Were a teacher's due process rights violated when the school board dismissed him from employment?

Holding I: Yes and no

Reasoning I: The board's original dismissal of the teacher could not be effectuated until such time that the teacher received a requested hearing. The subsequent hearing provided Brown with adequate due process, but he was entitled to back pay for the time that elapsed between the initial dismissal and the hearing.

Issue II: Did a teacher engage in immoral conduct supporting dismissal by illegally diverting electricity?

Holding II: Yes

Reasoning II: Alaska statute AS 14.20.170(a)(2) provides for the dismissal of a tenured teacher for immorality. Under the statute, immorality is defined, in applicable part, as a crime involving moral turpitude. The court found that Brown's actions constituted theft and therefore met the statutory requirements, including intent, for a crime involving moral turpitude. As such, termination was permissible.

Disposition: The Alaska Supreme Court reversed the district court, upheld the teacher's termination, but ordered that the district pay back pay for the time that elapsed between the original dismissal and the termination hearing.

Citation: *Kimble v. Worth County R-III Bd. of Ed.*, 669 S.W.2d 949, 17 Ed. Law Rep. 1257 (Mo. Ct. App., 1984).

Key Facts: Kimble was a librarian for the Worth County R-III School System. The school board dismissed Kimble after she took a set of books from the school in 1982,

claimed they had not been received, and then returned them when she thought she would be caught. The board considered her behavior as part of a pattern since she had engaged in similar acts during the 1973-1974 and 1976-1977 school years. Kimble petitioned for review of the board's decision and the circuit court reversed on the grounds that the record was void of substantial and competent evidence rendering the board's decision arbitrary. The board appealed. Kimble argued that the board lacked evidence, the term immorality was unconstitutionally vague, and even if she had engaged in the alleged conduct, it would not be grounds for dismissal.

Issue I: Was there substantial and competent evidence in the record that a teacher engaged in misconduct warranting dismissal?

Holding I: Yes

Reasoning I: The court found that although there were conflicting reports and theories included in the record, the record as a whole presented sufficient evidence to support the board's findings and the standard of review prevented the court for substituting its own judgment for that of the board.

Issue II: Was the term immorality unconstitutionally vague?

Holding II: No

Reasoning II: The courts had previously addressed this issue in *Ross v. Robb* (1983) and found that the term immorality was not unconstitutionally vague when limited to conduct which rendered the teacher unfit to teach.

Issue III: Did a teacher's repetitive theft of various items constitute immorality?

Holding III: Yes

Reasoning III: The court held, based on the definition of immorality established in *Ross v. Robb* (1983), that Kimble's conduct was immoral and negatively impacted her ability to serve as a teacher. The court noted that theft is clearly against the most relaxed standards of morality and three occurrences of theft represented a pattern. Such behavior negatively impacted Kimble's relationships with students and teachers and required additional, undue, supervisory burdens.

Disposition: The Missouri Court of Appeals reversed the circuit court's decision and reinstated the board's decision to terminate the teacher's employment.

Citation: *Kinniry v. Abington School Dist.*, 673 A.2d 429, 108 Ed. Law Rep. 312 (Pa. Commw. Ct., 1996).

Key Facts: Kinniry was a teacher for the Abington School District. Kinniry's teaching contract was terminated by the school district in 1993 after he pled guilty to two federal charges related to trafficking counterfeit goods. Kinniry appealed his termination to the Secretary of Education arguing that the district failed to prove his conduct violated the morals of the community or had any negative effect on his effectiveness. Sixteen months later, the Secretary of Education issued a decision upholding the Kinniry's termination. On appeal, Kinniry argued that the school district failed to prove immorality, the Secretary violated due process because there was a 16 month delay in his decision, and he commingled Kinniry's appeal and de-certification processes.

Issue I: Did a teacher's federal conviction for trafficking counterfeit goods meet the statutory requirements to constitute immorality?

Holding I: Yes

Reasoning I: *Horosko v. Sch. Dist. of Mount Pleasant Tp.* (1939) clarified the definition of immorality to include conduct that is in conflict with the moral standards of the community and sets a bad example for students. Utilizing the standard set in *Horosko*, the court found that the conviction of federal crimes is offensive to the morals of every community in the United States. Furthermore, these type of crimes are embedded in deceit and untruthfulness and, therefore, set a poor example for students.

Issue II: Were a teacher's due process rights violated by a 16-month delay in the secretary's decision?

Holding II: No

Reasoning II: Kinniry could show no harm or prejudice that resulted from the delay in the Secretary's decision. Moreover, the record indicated that Kinniry contributed to the delay by submitting unsatisfactory paperwork. Furthermore, Kinniry presented no evidence of any actual commingling of his appeal and decertification processes.

Disposition II: The Pennsylvania Commonwealth Court affirmed the secretary's decision upholding the teacher's employment termination.

Citation: *Lackow v. Department of Educ. (or "Board") of City of New York*, 51 A.D.3d 563, 859 N.Y.S.2d 52, 233 Ed. Law Rep. 845, 2008 N.Y. Slip Op. 04744 (N.Y. App. Div., 2008).

Key Facts: Lackow was a tenured biology teacher in New York City. In December 2004, when a female student yelled an offensive remark toward Lackow, Lackow responded, "No, you suck, well that's what it says in the boys' bathroom" (p. 53). Lackow's comment instigated an investigation by the school district, which resulted

in a total of 16 allegedly inappropriate comments made by Lackow. The comments included a wide variety of sexual innuendos. The district commenced termination proceedings against Lackow. At his hearing, the hearing officer sustained nine of the specifications and recommended termination of employment. Lackow petitioned for review and the New York Supreme Court dismissed all but three of the specifications, indicating that several of the comments were inoffensive when considered in context. As such, the court vacated the termination and remanded the case to the hearing officer for the imposition of a lesser penalty. The school district appealed.

Issue I: Did the trial court err in vacating findings that Lackow made offensive statements because some of the statements that were made were contextually inoffensive?

Holding I: Yes

Reasoning I: The New York Supreme Court, Appellate Division, found that there was adequate evidence of misconduct and the Supreme Court had overstepped its authority by ignoring the hearing officer's credibility determinations and the testimony of at least one credible witness.

Issue II: Did a teacher's repetitive use of inappropriate comments and innuendoes warrant the penalty of termination from employment?

Holding II: Yes

Reasoning II: In New York, the standard for reviewing the penalty imposed during an administrative hearing is whether the penalty is so disproportionate to the offense that its effect is "shocking to the court's sense of fairness" (set in *Matter of Pell v. Bd. of Educ.* (1974)) (p. 569). Utilizing that standard, the court found that termination did not shock the conscience where a teacher's conduct included insubordination, sexual

harassment, inappropriate language, and conduct unbecoming a teacher. Furthermore, the fact that Lackow continued to engage in such behavior after being warned three times indicated a pattern of irresponsible and inappropriate conduct.

Disposition: The New York Supreme Court, Appellate Division, reversed the supreme court's decision and reinstated the hearing officer's decision supporting termination.

Citation: *Lehto v. Board of Educ. of Caesar Rodney School Dist.*, 962 A.2d 222, 240 Ed. Law Rep. 289 (Del., 2008).

Key Facts: Lehto was an elementary art teacher for the Caesar Rodney School District for seven years. In early 2007, Lehto became involved in a sexual relationship with a 17-year-old former student. The record indicated that Lehto had, on multiple occasions, kissed the student, fondled and licked her breasts, and fondled her vagina. The school board was alerted to the relationship after one of the student's friends reported the relationship to a parent, who then notified police. Although the fourth degree rape charges against Lehto failed in court, the board notified him of its intent to terminate his contract on the basis of immorality.

Lehto argued that his relationship with the student did not constitute immorality because it did not impair his ability to perform his teaching duties and the student was not a student currently under his influence. The school board concluded that Lehto's conduct impaired his ability to serve as a role model to his students and issued a written decision terminating his employment. Lehto appealed, but the superior court upheld the school board's decision. Again, Lehto appealed.

Issue I: Did a teacher engage in immorality warranting dismissal when he became sexually involved with a 17-year-old former student?

Holding I: Yes

Reasoning I: Although the term immorality was not defined in the statute (14 *Del. C.* § 1411), the court applied a definition established in *Skripchuk v. Austin* (1977). In *Skripchuk*, the court found that immorality must be accompanied by an impairment of the teacher's fitness or effectiveness. The court reasoned that Lehto's conduct impaired his ability to function as a role model and disciplinarian for his students which established a sufficient nexus to meet the definition of immorality set forth in *Skripchuk*.

Issue II: Was there substantial evidence to support the board's finding that a teacher's relationship with a 17-year-old former student constituted immorality justifying dismissal?

Holding II: Yes

Reasoning II: The relationship, and the sexual nature of the relationship, was not disputed. The court found that Lehto's conduct was in conflict with the mores of the community and created an impairment upon his fitness to teach.

Disposition: The Delaware Supreme Court affirmed the lower court's decision upholding the teacher's dismissal from employment.

Citation: *Lile v. Hancock Place School District*, 701 S.W.2d 500, 29 Ed. Law Rep. 848 (Mo. Ct. App., 1985).

Key Facts: Lile was a fourth grade teacher for the Hancock Place School District. In 1980, he met the mother of one of his students. Lile began dating the girl's mother and

the mother, the student, and her younger sister moved in with him. In 1984, the two girls were placed in the care of their natural father when the mother became ill and was hospitalized. Shortly thereafter, the father filed a complaint against Lile with the local police department alleging that Lile had sexually abused both of the girls. The investigation revealed a number of questionable behaviors. It was found that Lile frequently walked around naked in the home in the presence of the girls. He showered with at least one of the girls on at least one occasion and often entered the bathroom while the girls were bathing. Lile took a nude photograph of each of the girls bathing. Finally, he encouraged the girls to sleep with him when their mother was not home.

After the investigation, the school district initiated its own investigation and made similar findings. Lile was suspended pending board action and the board later voted to terminate Lile's teaching contract. Lile appealed the school board's decision citing a lack of evidence, due process violations, and invasion of privacy. The circuit court affirmed the board's decision and Lile appealed.

Issue I: Was there sufficient evidence to support a teacher's termination for immorality?

Holding I: Yes

Reasoning I: The showing of actual harm was not required. The school board only needed to show that harm was likely to occur. Furthermore, although two of the board's findings were based on hearsay evidence and did not warrant disciplinary action on their own, other substantial evidence in the record supported the board's decision without the aid of the two erroneous findings.

Issue II: Was there a sufficient nexus between a teacher's sexual abuse of two young girls and the school community to warrant employment termination for the cause of immorality?

Holding II: Yes

Reasoning II: The court utilized factors set forth in *Thompson v. Southwest School District* (1980), to determine that Lile's teaching effectiveness had been damaged by his conduct. The court found that the age of the children made them more susceptible to psychological harm. Moreover, the children were similar in age to Lile's students. Given the above factors, and the notoriety of the case, it was reasonable for the school board to conclude that Lile's effectiveness with students and parents had been impaired.

Issue III: Was a teacher deprived of his due process rights?

Holding III: No

Reasoning III: The court found that the board's action was not arbitrary or capricious and Lile was provided notice of the charges against him and an opportunity to be heard. Therefore, Lile's due process rights were accommodated.

Issue IV: Were a teacher's privacy rights violated?

Holding IV: No

Reasoning IV: The court found that walking around naked and sharing bathroom facilities with two young girls, especially when the girls were not his own daughters, did not represent a legitimate expectation of privacy. Furthermore, if it were a legitimate privacy issue, Lile's expectation of privacy did not outweigh the board's interest in protecting students from harm.

Disposition: The Missouri Court of Appeals affirmed the circuit court, upholding the teacher's dismissal from employment.

Citation: Matter of Shelton, 408 N.W.2d 594, 40 Ed. Law Rep 985 (Minn. Cr. App., 1987).

Key Facts: Shelton was a teacher at Blooming Prairie High School. In 1979, Shelton and two of his coworkers formed a small company selling and servicing computer hardware. Over the course of a couple years, Shelton swindled over \$35,000 from his partners by cashing fraudulent checks and not paying taxes. In March 1986, Shelton was charged and pled guilty to one count of theft. Following Shelton's conviction, the school board passed a resolution to terminate his contract. A hearing was held in October 1986, and the examiner concluded that since Shelton had an otherwise unblemished record and his behavior was likely remediated, he should be reinstated. The school board rejected the examiner's conclusions and recommendation and voted to terminate Shelton. Shelton challenged the school board's decision.

Issue I: Did a teacher engage in irremediable misconduct warranting immediate dismissal from employment when he swindled funds from a corporation owned by himself and two coworkers?

Holding I: Yes

Reasoning I: The court relied upon *Kroll v. Independent School District No. 593* (1981) to determine whether Shelton's conduct was remediable. The record supported the board's conclusion that Shelton's conduct was irremediable because his continued presence with the school district would cause lasting disorder among the faculty and the

learning environment. However, the court did make note of the fact that reassignment, not termination, might have been a more suitable option in a larger school district.

Issue II: Did Shelton's termination violate the criminal offender's rehabilitation statute?

Holding II: No

Reasoning II: The court found that Shelton's behavior of embezzling several thousand dollars from coworkers over an extended period of time was not remediable, and therefore, did not violate the criminal offenders rehabilitation statute.

Disposition: The Minnesota Court of Appeals affirmed the teacher's dismissal.

Citation: Matter of Tanelli, 194 N.J. Super 492, 477 A.2d 394, 18 Ed. Law Rep. 353 (N.J. Super. Ct. App. Div., 1984).

Key Facts: Tanelli was a high school teacher for the Montclair School District. Tanelli was convicted of being a disorderly person for repeatedly making harassing phone calls to his school principal. On appeal, an Administrative Law Judge (ALJ) recommended dismissal. However, the State Board of Education reversed Tanelli's dismissal and remanded the matter to the ALJ with instructions to review all mitigating factors surrounding the matter and not solely the criminal conviction. After review, the ALJ assessed a penalty of eight months' loss of salary. The Board reversed the ALJ's decision and ordered Tanelli's dismissal. Tanelli appealed.

Issue: Did the record contain sufficient credible evidence that a teacher engaged in unbecoming conduct supporting dismissal by making harassing phone calls to his school principal?

Holding: Yes

Reasoning: The court reasoned that the board did not use Tanelli's conviction alone to reach its decision. In fact, the board remanded the matter to ensure the presence of any mitigating factors. However, Tanelli offered no evidence of mitigating factors but continued to maintain his innocence. Therefore, the board found that Tanelli offered no reason or potential excuse for his actions.

Disposition: The New Jersey Superior Court, Appellate Division, upheld the teacher's employment termination.

Citation: Matter of Tenure Hearing of Cowan, 224 N.J.Super 737 (N.J. Super. Ct. App. Div., 1988).

Key Facts: Cowan was a music teacher for the Borough of Bernardsville School District. Over the course of 10 years, Cowan had been reprimanded multiple times for losing his temper and physically or verbally abusing his students. When reprimands, the denial of salary benefits, and psychological counseling failed, the local school board decided to recommend Cowan's dismissal. The school board's decision was affirmed by an Administrative Law Judge and that decision was later affirmed by the Commissioner of Education. Cowan appealed to the Superior Court of New Jersey, citing a number of procedural errors and the Commissioner's use of hearsay evidence.

Issue I: Did the school board meet the requirements of due process by determining probable cause in a timely manner?

Holding I: Yes

Reasoning I: The court found that the 45 day period allotted for the school board to determine probable cause did not begin to toll until the end of the 15 day period allotted for the teacher to respond to the charges against him. As such, the school board met the required time requirements.

Issue II: Was there sufficient evidence to support the charges against a teacher?

Holding II: Yes

Reasoning II: Hearsay evidence could be used to support the charges against Cowan. However, in order to prove the charges, hearsay evidence should be accompanied by some other legally competent evidence. Furthermore, in order to prove Cowan's actions amounted to misconduct, each individual act did not need to be proven by a residuum of competent evidence. Evidence associated with each individual act could be combined to support a finding of a course of unbecoming conduct.

Disposition: The New Jersey Superior Court affirmed the state board of education, upholding the teacher's employment termination.

Citation: Mauro v. Walcott, 155 A.D.3d 547, 982 N.Y.S.2d 109, 302 Ed. Law Rep. 304, 37 IER Cases 1623, 2014 N.Y. Slip Op. 01814 (N.Y. App. Div., 2014).

Key Facts: Mauro was a high school French teacher. In November 2009, Mauro went out to dinner with colleagues and returned to the school later in the evening to watch a musical competition held in the first floor auditorium. Mauro attended the event voluntarily and was not present in any official capacity. During the performance, Mauro was observed in a third floor classroom partially undressed and appeared to be engaged in

sexual behavior with a colleague. The school district allegedly received negative publicity when the misconduct was reported in local news reports and papers.

During the disciplinary hearing regarding the incident, multiple witnesses gave corroborating testimony that Mauro engaged in sexual conduct with an adult colleague in a dark, empty, third floor classroom while a musical performance was taking place in the auditorium on the first floor. The hearing officer recommended termination of employment. Mauro petitioned the New York Supreme Court to vacate the hearing officer's findings and restore her to her teaching position. The court denied her petition. Mauro appealed.

Issue I: Was there adequate evidence supporting the hearing officer's findings of misconduct?

Holding I: Yes

Reasoning I: The court found the corroborating testimonies of multiple witnesses to be adequate evidence to reach the hearing officer's findings of misconduct.

Issue II: Did the hearing officer violate a teacher's due process rights?

Holding II: No

Reasoning II: Mauro was accorded a full and fair hearing with notice and an opportunity to be heard. There was some question regarding the lack of availability of surveillance video from the hallway outside the classroom. However, the court reasoned that the witness testimony was sufficient to provide adequate due process and the camera did not record what occurred in the classroom anyway.

Issue III: Was the penalty of termination shockingly disproportionate to teacher's misconduct of engaging in consensual sex with a consenting adult coworker?

Holding III: Yes

Reasoning III: The court relied on *Pell v. Board of Educ. of Union Free School Dist. No 1* (1974), which articulated a standard for determining whether a penalty is disproportionate to the offense. Since Mauro presented an otherwise unblemished record, the court found that there was no evidence that her behavior was anything more than a one-time mistake. Furthermore, the court reasoned that sexual conduct between two consenting adults is not criminal or improper. While the location of the behavior was questionable, the court did not find the incident affected her ability to teach, endangered any student, or rose to the severity necessary for a penalty of termination.

Disposition: The New York Supreme Court, Appellate Division, remanded for the imposition of a lesser penalty.

Citation: *McBroom v. Board of Educ.*, Dist. No. 205, 98 Ill. Dec. 864, 494 N.E.2d 1191, 33 Ed. Law Rep. 404 (Ill. App. Ct., 1986).

Key Facts: McBroom was a tenured physical education teacher. In May 1983, McBroom found a \$290 social security check belonging to a student in the girl's locker room. McBroom took the check, and instead of returning it to its owner, attempted to deposit it. McBroom was arrested and pled guilty to theft and deceptive practices. In the meantime, the local newspaper ran several articles about the incident. The school board dismissed McBroom and a hearing officer affirmed the board's decision, citing McBroom's inability to fulfill her teaching duties due to the extensive notoriety of her actions in the community. McBroom petitioned for administrative review and the circuit court affirmed the hearing officer's decision despite the testimony of McBroom's doctor

that her conduct was a product of her depression and was high unlikely to reoccur.

McBroom appealed.

Issue I: Did a teacher engage in irremediable misconduct warranting dismissal from employment when she stole and attempted to cash a student's social security check?

Holding I: Yes

Reasoning I: The court utilized *Chicago Bd. of Ed. v. Payne* (1981), and several other cases, to determine that cause for the dismissal of a teacher included some shortcoming which substantially reduced the teacher's effectiveness. The court found that McBroom's actions in stealing a check from a student's locker became a matter of general knowledge and reduced her effectiveness and credibility as a teacher. Additionally, the court reviewed *Gilliland v. Board of Education* (1977), which established the rules and procedures related to the remediation of teachers prior to dismissal, to determine that remediability should be subjected to a two-prong test. The first prong related to whether the conduct caused harm or an adverse effect on the school environment. The second prong related to whether the conduct could have been corrected if the teacher had been warned by a superior. The court concluded that McBroom's conduct was detrimental to the school environment, satisfying the first prong of the *Gilliland* test, and the second prong was irrelevant when the teacher's conduct was criminal.

Issue II: Did McBroom's emotional and mental state at the time of the incident preclude her dismissal?

Holding II: No

Reasoning II: McBroom's argument that her behavior was an isolated incident related to her depressed emotional state did not justify her misconduct, especially when she testified in trial court that she knew what she had done and was capable of correcting her mistake.

Disposition: The Illinois Appellate Court affirmed the circuit court's ruling, upholding McBroom's dismissal from employment.

Citation: McCullough v. Illinois State Bd. of Educ. by Feuille, 150 Ill. Dec. 430, 562 N.E.2d 1233, 64 Ed. Law Rep. 237 (Ill. App. Ct., 1990).

Key Facts: McCullough was employed by the Lawrenceville Unit School District as an elementary school teacher. In the early 1980s, McCullough received significant earnings from commodities trading. However, during that time, McCullough failed to submit tax returns and became the subject of an IRS investigation. As a result of the investigation, McCullough was indicted on three felony counts and three misdemeanor counts, related to tax evasion. In response to his indictment, McCullough refused to attend his arraignment, denounced the authority of the United States government, and was arrested by United States Marshals.

After a psychiatric evaluation, McCullough was found mentally competent to stand trial. During the trial, he refused to comply with trial procedures and then refused to leave the courtroom when instructed to do so. As a result, McCullough was again taken into custody. He was later released from custody and transferred to a psychiatric unit. After treatment, in 1987, McCullough pled guilty to three misdemeanor counts and was ordered to pay his owed taxes and continue to receive counseling. By that time, several

local media outlets had covered McCullough's legal proceedings and the school board was well aware of the situation. In June 1987, the school board dismissed McCullough. He requested a hearing and the hearing officer upheld the board's decision. Again, McCullough challenged his dismissal and the circuit court affirmed. McCullough appealed.

Issue I: Did a teacher's criminal tax conviction and his post-indictment conduct constitute irremediable misconduct warranting his dismissal from employment?

Holding I: Yes

Reasoning I: The court utilized *Chicago Bd. of Ed. v. Payne* (1981), and several other cases, to determine that cause for the dismissal of a teacher included some shortcoming which substantially reduced the teacher's effectiveness. The court found that McCullough's commission of a crime and the notoriety that surrounded it, caused students, parents, and coworkers to doubt McCullough's reputation and ability to discharge his duties. Therefore, his conduct constituted sufficient cause for termination. Next, the court reviewed *Gilliland v. Board of Education* (1977), which established the rules and procedures related to the remediation of teachers prior to dismissal, to determine that remediability should be subjected to a two-prong test. The first prong related to whether the conduct caused harm or an adverse effect on the school environment. The second prong related to whether the conduct could have been corrected if the teacher had been warned by a superior. Regarding the first prong, the court found that McCullough's conduct damaged his relationships with students, parents, and staff and negatively influenced his ability to teach. As for the second prong, the court first noted that even if the conduct had been remediable, the school board was not aware of

the conduct until after McCullough's conviction. Finally, as clarified in *McBroom v. Board of Educ., Dist. No. 205* (1986), remediation was inapplicable to situations involving criminal conduct.

Issue II: Did the circumstances merit an exception for temporary mental incapacity?

Holding II: No

Reasoning II: McCullough never produced sufficient evidence that his conduct was caused by mental illness. However, even if he had, the board did not dismiss him for his mental condition, but for immorality, incompetency, and other good cause.

Disposition: The Illinois Appellate Court affirmed the circuit court, upholding the teacher's dismissal from employment.

Citation: *McFerren v. Farrell Area Sch. Dist.* 993 A.2d 344, 256 Ed. Law Rep. 806 (Pa. Commw. Ct., 2010).

Key Facts: McFerren was hired as a high school principal by the Farrell Area School District in 2005. At the end of the school year, McFerren received an excellent rating on his evaluation and was appointed assistant to the superintendent in addition to his principal duties. In April 2007, the school board appointed a new superintendent and informed her that the board intended to pursue McFerren's termination. As such, the new superintendent began to keep notes regarding McFerren's performance in a confidential file separate from his personnel file. In June 2007, McFerren's title of assistant to the superintendent was removed, and in November 2007, he was called before the superintendent for a pre-termination hearing.

At the hearing, McFerren was notified of the charges against him, including neglect of duty, persistent and willful failure to comply with school laws, and recently added charges of immorality and intemperance. The neglect of duty and the persistent and willful failure to comply with school laws charges were predicated on a number of isolated events in which McFerren made insubordinate comments, did not attend a meeting in person as instructed, made a variety of executive decisions without superintendent approval, failed to plan professional development activities, and took vacation leave without approval. The immorality charges were related to an incident where McFerren told an African American student that in the real world, “the white man is going to kick your ass” (p. 349). After hearing the charges and testimony, the school board voted to terminate McFerren’s employment. McFerren appealed and the Secretary of Education upheld the school board’s decision. McFerren petitioned for review of the Secretary’s decision.

Issue I: Did a principal’s statement, “the white man is going to kick your ass” violate the morals of the community as required to be considered immorality?

Holding I: No

Reasoning I: The court relied upon the definition of immorality established in *Horosko v. Sch. Dist. of Mount Pleasant Tp.* (1939), which defined immoral conduct as conduct that “offends the morals of the community and is a bad example to the youth whose ideals a teacher is supposed to foster and elevate” (p. 353). The court found that an African American principal saying “the white man is going to kick your ass” to an African American student was possibly unprofessional but did not violate the morals of

the community. Furthermore, the court reasoned that immoral conduct is something more serious than unprofessional conduct.

Issue II: Did a principal engage in persistent acts or omissions as required to be considered persistent and willful violation of school laws or neglect of duty?

Holding II: No

Reasoning II: According to the court, in order to dismiss an employee for persistent and willful violation of school law, the district must point to a policy or order that was deliberately violated.

Issue III: Did a principal have knowledge that his acts or omissions in question were wrong and could lead to discipline or discharge if repeated?

Holding III: No

Reasoning III: The court found that in order for negligence of duty to be shown, the district must prove that the employee had knowledge of the district's performance expectations and had been warned of the consequences of failing to meet them. Furthermore, persistent negligence required numerous incidents of the same misconduct, not a conglomeration of various separate incidents.

Issue IV: Did a principal exhibit an abnormal loss of self-control as required to be considered intemperance?

Holding IV: No

Reasoning IV: The court found that McFerren had lost his temper and/or raised his voice on four occasions over a two and a half year period. The court reasoned that this did not represent an abnormal loss of self-control.

Issue V: Did a principal intentionally disregarded his duties?

Holding V: No

Reasoning V: The court found that McFerren was not responsible for several of the tasks he was accused of disregarding. Furthermore, there was no evidence that the alleged failure was willful.

Disposition: The Commonwealth Court of Pennsylvania reversed the Secretary of Education's decision and reinstated the principal.

Citation: *Montanez v. Dep't of Educ. of N.Y.*, 110 A.D.3d 487, 973 N.Y.S.2d 132, 297 Ed. Law Rep. 1002, 2013 N.Y. Slip Op. 06615 (N.Y. App. Div., 2013).

Key Facts: Montanez, a New York City teacher with an unblemished teaching record, used a fraudulent affidavit to obtain a free resident education for her non-resident son. During arbitration, the hearing officer found her guilty of misconduct and terminated her employment. Montanez filed a petition to vacate with the New York Supreme Court and the court denied the petition. Montanez appealed.

Issue I: Did the evidence support the hearing officer's findings?

Holding I: Yes

Reasoning I: The finding that Montanez fraudulently obtained a free public school education for her son during the 2009-2010 school year was supported by adequate evidence.

Issue II: Did a teacher's actions related to fraudulently obtaining free non-resident education for her child warrant the penalty of termination?

Holding II: Yes

Reasoning II: The court referenced *Cipollaro v. N.Y. City Dep't of Educ.* (2011) and found that employment termination was not shocking where a teacher engaged in fraudulent behavior.

Disposition: The New York Supreme Court, Appellate Division, affirmed the hearing officer, upholding the penalty of termination.

Citation: *Morris v. Illinois State Bd. of Educ.*, 198 Ill.App.3d 51, 555 N.E.2d 725, 144 Ill.Dec. 366, 61 Ed. Law Rep. 200 (Ill. App. Ct., 1990).

Key Facts: Morris was an agriculture teacher for the Mazon-Verona-Kinsman Community District No. 2 school system. When Morris was first employed in 1979, he was deemed eligible to teach certain agricultural courses based on his work experience. However, new state teacher certification rules, enacted in 1983, required agriculture teachers to have a minimum of 24 hours of coursework in the field of agriculture. Although Morris lacked the 24 hour requirement, he was allowed to continue working in the school and was not notified of the requirement.

In 1988, the superintendent recommended the elimination of the agriculture department, but the district rejected his recommendation. Shortly thereafter, the superintendent learned that Morris did not meet the requirements for certification and recommended his dismissal. A hearing was held and the hearing officer found that the district had sufficient, irremediable, cause to terminate Morris. Morris sought judicial review and the circuit court reversed the hearing officer's decision. The district appealed.

Issue: Did a teacher's coursework deficiency provide irremediable cause supporting dismissal from employment?

Holding: No

Reasoning: The court utilized the *Gilliland* test established in *Gilliland v. Board of Education* (1977), which delineated irremediable conduct by whether the conduct caused damage to students, faculty, or the school and whether the conduct could have been corrected if the teacher had been warned. The court found that the teacher's coursework deficiency had not caused any damage to the district and could have been corrected if the district had given proper warning. As such, the teacher's conduct was considered remediable and required warning of deficiency prior to dismissal from employment. Finally, the court found the district's implication that the teacher's conduct might be immoral, meritless and offensive.

Disposition: The Illinois Appellate Court affirmed the circuit court's decision to reinstate the teacher.

Citation: *Mott v. Endicott School Dist. No. 308*, 713 P.2d 98, 105 Wash.2d 199, 30 Ed. Law Rep. 582 (Wash., 1986).

Key Facts: Mott was a teacher for the Endicott School District. During the 1981-1982 school year, Mott was placed on probation due to unsatisfactory teaching evaluations. Over the next couple of months, Mott made considerable progress and would have likely been soon taken off probation except four students complained to the principal that Mott had struck each of them in the genital area. The board suspended Mott pending an investigation. After the investigation, Mott was notified he would be discharged and he requested a hearing.

The hearing examiner found that Mott had tapped several boys in the genitals. The most recent incident involved Mott jokingly striking four students in the genitals. However, in a previous incident, Mott had stuck two students in the genitals as an act of corporal punishment. Despite those findings, the examiner found that Mott's conduct was remediable. However, the size of the school made it impossible for Mott to remain on campus without having frequent contact with the students. Therefore, the examiner found sufficient cause for Mott's dismissal. Mott sought review and the superior court found that the district had sufficient cause to dismiss Mott and that his behavior was not remediable. On appeal, the court of appeals found that Mott's conduct was remediable and he should be reinstated. The school district appealed.

Issue I: Did a teacher's act of intentionally striking students in their genitals provide irreparable cause warranting dismissal?

Holding I: Yes

Reasoning I: Relying on *Hoagland v. Mount Vernon School Dist. No. 320, Skagit County* (1981), the court found that intentionally striking a student's genitals was egregious conduct that lacked any legitimate professional or educational purpose. As such, the conduct constituted sufficient cause for dismissal. Regarding remediability, the court found that intentionally striking a student's genitals was so flagrantly unacceptable that prior warnings and remediation were not necessary. The court noted, "the striking of students in the genitals , for whatever reason, is so patently unacceptable that the school district was entitled to discharge the teacher for his actions in this case regardless of prior warnings" (p. 204).

Disposition: The Washington Supreme Court reversed the court of appeals and reinstated the teacher's employment termination.

Citation: Noel v. Andrus, 810 F.2d 1388, 37 Ed. Law Rep. 494 (5th Cir., 1987).

Key Facts: Noel was a probationary teacher with the Lafayette Parish School Board. In the summer of 1984, Noel was assigned to teach driver's education. During that time, Noel took two days of vacation without prior authorization. During that vacation, Noel took the school's training car to New Orleans with a friend, but told the school secretary that he would leave the car at the junior high school. Upon Noel's return, school administrators met with Noel and investigated the incident. They found that Noel had lied, improperly used school property, and asked two students to lie on his behalf.

After the investigation, the superintendent submitted a written report to the school board and the board later voted not to renew Noel's employment. Noel sued the school district under Section 1983, claiming that he was denied due process and was deprived of his liberty and property rights under the Fourteenth Amendment. The district court found that Noel had engaged in the alleged conduct, but the school board deprived Noel of his procedural rights. Both Noel and the school board appealed.

Issue I: Did the school district violate a probationary teacher's due process rights when it did not renew the teacher's contract without a hearing?

Holding: No

Reasoning: The court found that under Louisiana law (La.Rev.Stat. § 17:442), the school board was under no obligation to provide a pre-determination hearing for a probationary teacher. The court also found that probationary teachers were granted no

liberty or property interests under the statute and such constructs were supported by prior, federal, litigation (*Board of Regents of State Colleges v. Roth* (1972), *Cleveland v. Board of Education v. Loudermill* (1985)). Finally, the court found that dishonesty was a reasonable cause for dismissal.

Disposition: The United States Court of Appeals, Fifth Circuit, held that the school board did not violate Noel's due process rights, fulfilled all statutory requirements for termination of probationary teachers under state law, and did not infringe on Noel's liberty or property interests.

Citation: Norton v. Board of Educ. of Jefferson County Schools, 748 P.2d 1337, 44 Ed. Law Rep. 789 (Colo. App., 1987).

Key Facts: Norton was a teacher with Jefferson County Schools. The school board filed several charges against Norton and a hearing was held. Many of the charges against Norton were dismissed by the hearing officer, but the hearing officer did find that Norton had provided alcohol to underage students and enlisted students to run personal errands for her during school hours. Based on the findings the hearing officer found that Norton's actions amounted to immorality and neglect of duty. However, the hearing officer felt that Norton had learned her lesson and indicated a desire to recommend probation but the statute only allowed a recommendation of retention or dismissal. As such, the hearing officer recommended dismissal.

Based on the hearing officer's findings and recommendation, the school board voted to dismiss Norton. However, before the board voted, they allowed members of the public and a fellow teacher to address the board. Some supported Norton and others

spoke in opposition. After the comments from the public, the board voted 4-1 to dismiss Norton. Norton sought review.

Issue I: Did the board's error in allowing public comment prior to deciding Norton's case jeopardize its final decision?

Holding I: No

Reasoning I: Although the court found that the board should not have allowed public comment prior to making its final decision, and urged boards not to do so in the future, doing so in this case was harmless.

Issue II: Did a teacher's actions related to providing alcohol to minors and allowing students to run errands on her behalf warrant the recommendation of dismissal from employment?

Holding II: Yes

Reasoning II: The statute (Section 22-63-117(8), C.R.S), only allowed the hearing officer to make a recommendation of retention or dismissal. The fact that the hearing officer lamented not having a third option did not make one so, and did not require the hearing officer to recommend retention.

Disposition: The Colorado Court of Appeals affirmed Norton's dismissal.

Citation: *Peaster Independent School District v. Glodfelty*, 63 S.W. 3d 1, 160 Ed. Law Rep. 671 (Tex. App., 2001).

Key Facts: Glodfelty and Dobbs were term contract teachers for the Peaster Independent School District for a number of years. In 1998, a former student made allegations that he had consensual sexual relationships with both Glodfelty and Dobbs

when he was a student. After speaking with the former student, Glodfelty, and Dobbs, the superintendent recommended that the school board non-renew Glodfelty's and Dobbs's teaching contracts. Although Glodfelty and Dobbs denied the existence of any sexual relationship, the superintendent argued that the allegations against them diminished their credibility and effectiveness regardless of whether the allegations were substantiated. The school board accepted the superintendent's recommendation of termination. On appeal, the Commissioner of Education affirmed the board's decision. Again, the teachers appealed and the court of appeals found that widespread publicity of the allegations was irrelevant if there was no evidence that the allegations were true. As such, the court of appeals reinstated Glodfelty and Dobbs. The school board appealed.

Issue: Did widespread publicity of allegations of sexual misconduct against teachers support non-renewal where there was no evidence that any misconduct actually took occurred.

Holding: No

Reasoning: The court found that the school board failed to provide evidence that the teachers engaged in any prohibited activity. Although the school district's policy allowed nonrenewal of teachers for activities that impair effectiveness, there must be evidence that the activity actually occurred.

Disposition: The Texas Court of Appeals affirmed the lower court's decision to reinstate Glodfelty and Dobbs.

Citation: *Perryman v. School Committee of Boston*, 17 Mass.App.Ct. 346, 458 N.E.2d 748, 15 Ed. Law Rep. 533 (Mass. App. Ct., 1983).

Key Facts: Robert and Carolyn Perryman were both teachers in Boston. The two were suspended following their indictments for welfare fraud. During the disciplinary hearing, the school committee elected to enter into executive session after the teachers' attorney threatened future litigation if his clients were disciplined. Following the executive session, the school committee voted to suspend the teachers and the teachers brought action against the school committee. Meanwhile, three registered voters brought action against the committee alleging violation of the Open Meeting Law. The superior court ruled in favor of the teachers, but against the registered voters on the open meeting claim. A consolidated appeal followed.

Issue I: Did the teachers' actions related to welfare fraud constitute misconduct in office warranting suspension?

Holding I: Yes

Reasoning I: The court ruled that the then recent decision in *Dupree v. School Comm. of Boston* (1983) was applicable to the present case and found that although the teachers' conduct did not have a direct impact on their duties, their actions violated the public trust inherent in their teaching positions. As such, disciplinary action was warranted.

Issue II: Did the school committee violate the Open Meetings Law by meeting in executive session?

Holding II: No

Reasoning II: The court found that the school committee was within its authority to enter executive session when future litigation was likely.

Disposition: The Massachusetts Appeals Court reversed the superior court, upheld the teachers' suspensions, and ruled that the school committee did not violate the Open Meetings Law.

Citation: *Potter v. Kalama Public School Dist.*, No. 402, 644 P.2d 1229, 31 Wash.App. 838, 4 Ed. Law Rep. 303 (Wash. Ct. App., 1982).

Key Facts: Potter was an elementary school teacher for the Kalama Public School District. In the fall of 1978, Potter was reprimanded by the school principal for putting his hand on a female student's knee. In June 1979, Potter was placed on probation and received a letter of reprimand from the superintendent after he blew a female student a kiss and instructed her not to tell anyone. In February 1980, Potter lifted a female student's dress a few inches. According to Potter, he lifted the dress to observe a bruise on the girl's knee, though the bruise was visible without lifting the dress. During an investigation of the incident, the school principal and superintendent discovered additional, similar physical contact with female students.

Potter was discharged and received a hearing. During the hearing, seven girls testified that Potter had touched them inappropriately. The hearing officer concluded that Potter's conduct constituted sufficient cause for termination. Potter sought review in superior court arguing that the reasons for his dismissal were remediable and required a written program for improvement and an evaluation of its success prior to discharge under state statute (RCW 28A.67.065). The superior court affirmed Potter's termination. Potter appealed.

Issue: Did a teacher's conduct related to inappropriately touching female students constitute irremediable misconduct?

Holding: Yes

Reasoning: The court utilized factors established in *Hoagland v. Mount Vernon School Dist. No. 320, Skagit County* (1981) to determine that Potter's conduct substantially affected his teaching performance, justifying dismissal from employment. In regard to Potter's argument that he was entitled to remediation prior to dismissal, the court held that RCW 28A.67.065 related to teaching deficiencies and was not applicable to conduct which had no "positive education aspect or legitimate professional purpose" (p. 842). Furthermore, even if Potter's conduct were remediable, he previously failed to correct his behavior in spite of progressive discipline.

Disposition: The Washington Court of Appeals affirmed the teacher's dismissal.

Citation: *Rado v. Board of Educ. of Borough of Naugatuck*, 583 A.2d 102, 216 Conn. 541, 64 Ed. Law Rep. 834 (Conn., 1990).

Key Facts: Rado was a physical education teacher at Naugatuck High School. He was suspended with pay following his arrest on three counts of eavesdropping. The charges were based on allegations that Rado had used wiretaps to intercept personal phone conversations at the high school. Rado was tried and acquitted on the charges. However, in March 1987, the school board voted to consider terminating Rado's teaching contract.

An impartial panel was assembled to conduct a hearing related to Rado's conduct. The panel determined that there was sufficient evidence to terminate Rado if evidence

upon which he was acquitted of criminal charges was used. However, the majority of the panel concluded that the evidence should not be used and, therefore, the panel recommended that Rado be reinstated. The school board met and discussed the panel's recommendation, determined that all of the evidence should have been included, and voted 8-1 to dismiss Rado. Prior to the board meeting, Rado filed a motion to disqualify four of the board members for bias, but the motion was denied. Rado appealed and the trial court found that there was no evidence the board members were biased, all of the evidence was admissible, and there was sufficient evidence to support Rado's termination. As such, the trial court affirmed the board's decision to terminate Rado. Rado appealed.

Issue I: Did a teacher's conduct related to eavesdropping and wiretapping constitute sufficient grounds for termination?

Holding I: Yes

Reasoning I: The court found that Rado's conduct could result in a class D felony, and therefore constituted moral misconduct under state statute (§ 10-151(d)). The court further held that Rado's conduct met the nexus requirement set in *Tucker v. Board of Education* (1979) to qualify as "other due and sufficient cause" for employment termination. The court described this nexus by noting that Rado's conduct had set a poor example for students and negatively impacted his working relationships.

Issue II: Was there adequate evidence to conclude that a teacher engaged in eavesdropping and wiretapping supporting termination from employment?

Holding II: No

Reasoning II: The court found that no evidence on the record was precluded by the Erasure Act, and sufficient evidence supported Rado's dismissal from employment.

Disposition: The Connecticut Supreme Court upheld the teacher's employment termination.

Citation: Riverview School Dist. v. Riverview Educ. Ass'n, PSEA-NEA, 639 A.2d 974, 162 Pa. Cmwlth. 644, 90 Ed. Law Rep. 280 (Pa. Commw. Ct., 1994).

Key Facts: Luczak and Miller were elementary school teachers for the Riverview School District. In November 1990, both Luczak and Miller submitted personal leave requests to go on a ski trip in February 1991. The superintendent rejected their requests and the teachers filed a grievance. The school board upheld the superintendent's decision and the teachers did not appeal. However, on the week of the trip in February, both Luczak and Miller called in sick. When they returned to work, they both submitted letters from the same psychologist indicating that they were recovering from psychological stress.

The superintendent suspended both teachers pending a disciplinary hearing. Under the grievance procedure, their hearing was conducted by an arbitrator. The arbitrator ruled in favor of the teachers, finding that the school district failed to determine whether their leave was justified under sick leave. The school district petitioned for review and the trial court denounced the teachers' behavior but refused to overturn the arbitrator's decision due to its limited scope of review. Again, the school district appealed.

Issue: Did two teachers' use of sick leave to go on a ski trip after their requests for personal leave had been denied provide just cause for termination under state statute and/or the collective bargaining agreement between the school district and the Riverview Education Association?

Holding: Yes

Reasoning: The court found that the applicable statute (24 P.S. § 5-514) had been interpreted in *Balog v. McKeesport Area School Dist.* (1984) to mean that lying or making false statements to school district staff could constitute immorality. Furthermore, the teachers' conduct could be interpreted as persistent and willful misconduct as applied in *Lucciola v. Secretary of Education* (1976). In either case, termination was justified.

Disposition: The Commonwealth Court of Pennsylvania reversed the trial court's decision and upheld the teachers' termination from employment.

Citation: *Rogliano v. Fayette County Bd. of Educ.*, 347 S.E.2d 220, 176 W.Va 700, 34 Ed. Law Rep. 933 (W. Va., 1986).

Key Facts: Rogliano was a permanent substitute teacher in the Fayette County School System. In February 1982, he was arrested and charged with a misdemeanor related to the possession of a small amount of marijuana. After hearing of the charges, the superintendent suspended Rogliano pending the outcome of his criminal proceedings. Rogliano's criminal charges were dismissed and the superintendent recommended that he be reinstated with back pay. Concerned that Rogliano's criminal charges were dismissed due to a technicality, the school board elected to hold a hearing to review the charges against him. After the hearing, the board voted to dismiss Rogliano.

Rogliano appealed and the circuit court found that the board had not shown the existence of a nexus between Rogliano's conduct and his effectiveness as a teacher. The circuit court remanded the case to the board for further proceedings. During the additional proceedings, the school district presented several witnesses who claimed Rogliano was known as a drug user and they did not want their children in his classroom. Also, several district administrators testified to the adverse effects drug use has on a school system. After the additional proceedings, the board again terminated Rogliano. On appeal, the circuit court found in favor of the school board. Again, Rogliano appealed.

Issue: Did a teacher's possession of a small amount of marijuana generate a sufficient nexus between his conduct and his ability to teach to justify the termination of his employment?

Holding: No

Reasoning: The court relied upon *Golden v. Board of Educ.* (1982) to determine that the dismissal of a teacher for off-campus immorality required a rational nexus between the conduct and the teacher's professional duties. The court found, in the present case, that such a nexus did not exist. Rogliano's dismissed misdemeanor charge related to possession of a small amount of marijuana did not inspire enough negative notoriety to impair his ability to function as a teacher. Further, he was a well-liked, above average teacher, and whatever notoriety did emerge was mostly attributable to the board's proceedings against him.

Disposition: The West Virginia Supreme Court of Appeals reversed the circuit court's decision and reinstated the teacher.

Citation: Ross v. Robb, 662 S.W.2d 257, 15 Ed. Law Rep. 606 (Mo., 1983).

Key Facts: Ross was a construction teacher for the Moberly Public School District No. 81. The school board terminated Ross after a disciplinary hearing where it was found that Ross failed to act when several of his male students sexually harassed a female classmate. The allegations against Ross included bringing a plastic phallus into his classroom, failing to remove a suggestive centerfold poster from his classroom wall, and failing to discourage obscene and sexually explicit language. Ross sought review of his termination and the circuit court reversed the board's decision on the grounds that the disciplinary procedures had not offered Ross a fair trial. On appeal, the court of appeals transferred the case due to a lack of jurisdiction relating to Ross's constitutional claims.

Issue I: Did a teacher engage in immoral conduct when he engaged in the sexual harassment of a female student, and failed to intervene when male students also harassed the female student?

Holding I: Yes

Reasoning I: The court relied on *Thompson v. Southwest School District et al* (1980) to determine that the vagueness of the term "immoral conduct" required evidence that the conduct in question impaired the teacher's fitness to teach. The court held that the record included substantial evidence that Ross had failed to take action against students sexually harassing a female classmate, and such conduct rendered him unfit to teach.

Issue II: Was there any evidence that the board had an unbendable or preconceived notion that Ross was guilty of immoral conduct?

Holding II: No

Reasoning II: Although the board's attorney participated in conducting the hearing, there was no evidence in the record that the hearing was improper or unfair.

Disposition: The Missouri Supreme Court upheld the teacher's termination from employment.

Citation: San Diego Unified Sch. Dist. v. Comm'n on Prof'l Competence, 214 Cal.App.4th 1120, 154 Cal.Rptr.3d 751, 291 Ed. Law Rep. 339 (Cal. Ct. App., 2013).

Key Facts: Jespersen was an elementary mathematics teacher. In January 2003, a parent complained to the guidance counselor that Jespersen had touched her daughter. The counselor reported the allegation to the principal. The principal asked the district police to investigate the matter. The following day, the principal received a complaint from a different parent that Jespersen had touched her child on the leg. A few days later, the principal excused Jespersen from the school. In late January 2003, the principal sent a letter to parents notifying them that an employee had been removed due to allegations of inappropriate behavior. Later, in a second letter, the principal explained to the parents of Jespersen's students that Jespersen had been temporarily reassigned pending the outcome of an investigation of allegations of inappropriate behavior. In April 2003, Jespersen was arrested.

Jespersen then underwent three criminal trials. The first trial returned one guilty verdict for lewd contact with a child and deadlocked on the remaining 12 counts. The second trial reviewed the remaining 12 counts of lewd contact with a trial and returned one guilty verdict, but Jespersen was granted a new trial on that count. As for the other counts, three returned not guilty and two were declared a mistrial. A third trial

commenced on the remaining seven counts. Jesperson was convicted on all seven counts. However, Jesperson's convictions were reversed on appeal due to a substantial likelihood of juror bias and ineffective counsel.

Because his convictions were overturned, the district was required to give Jesperson an opportunity for reemployment. However, in November 2008, the district notified Jesperson of its intent to terminate his contract. Jesperson requested a hearing with the Commission on Professional Competence. The Commission evaluated evidence regarding only one of Jesperson's former students, ultimately found the student's testimony unreliable, and found in favor of Jesperson. The school district sought review in the Superior Court of San Diego County. The Superior Court disagreed with the Commission's finding that the student's testimony was unreliable and vacated the Commission's decision. Jesperson appealed.

Issue I: Did substantial, credible, or reliable evidence in the record support a finding that the teacher's touching of students was so offensive, inappropriate, or immoral that it rendered him unfit to teach justifying termination from employment?

Holding I: No

Reasoning I: The court relied heavily on factors initiated in *Morrison v. State Board of Education* (1969), which were designed to determine whether a teacher's conduct impacted his fitness to teach, as required for a finding of immorality. The court found that although there was evidence that Jesperson had touched his students, there was no substantial, credible, or reliable evidence to support a finding that his physical contact with students rose to the level of offensive, inappropriate, or immoral touching. Furthermore, in the absence of a finding of inappropriate touching, no evidence supported

any adverse effect on fellow teachers, classroom performance, or his overall ability to teach. As such, there was no evidence of a nexus between Jesperson's conduct and his fitness to teach.

Disposition: The California Court of Appeal reversed trial court's decision to terminate the teacher's employment.

Citation: San Diego Unified Sch. Dist. v. Comm'n on Prof'l Competence, 194 Cal.App.4th 1454, 124 Cal.Rptr.3d 320, 267 Ed. Law Rep. 301 (Cal. Ct. App., 2011).

Key Facts: Frank Lampedusa was a teacher with the San Diego Unified School District. Lampedusa had worked for the district since 1999 and had received favorable evaluations during that time. There had even been discussion of promoting Lampedusa to a vice principal position. In June 2008, a parent reported a Craigslist post in which Lampedusa had posted photos of his face, torso, genitals, and anus accompanied by an explicit message soliciting sex. When he was questioned about the post, Lampedusa indicated that he had posted solicitation ads on the site five or six times previously. He also indicated that he planned to continue to post on the site, but would only post items that would be less likely to be offensive.

In July 2008, the school district placed Lampedusa on administrative leave and then provided a notice of intention to dismiss his employment in November 2010. Lampedusa requested a hearing before the Commission on Professional Competence. The commission found no nexus between Lampedusa's conduct and his ability to teach and reinstated him. The school district sought review and the Superior Court of San Diego County upheld the commission's decision. The school district appealed.

Issue I: Did an assistant principal engage in immoral conduct rendering him unfit to serve as a school employee when he engaged in online sex solicitation?

Holding I: Yes

Reasoning I: The court relied heavily on factors initiated in *Morrison v. State Board of Education* (1969), which were designed to determine whether a teacher's conduct impacted his fitness to teach, as required for a finding of immorality. The court found that Lampedusa's posting of pornographic material impaired his ability to perform his job duties and was inconsistent with the requirements of teaching middle school students. The court further noted that posting an internet advertisement soliciting sex, including graphic photographs and language, constituted immoral and unprofessional conduct supporting termination. The court added that schoolteachers, along with certain other professions, carry added responsibilities and limitations on freedom that other professions do not.

Disposition: The California Court of Appeal reversed the lower court and ruled in favor of the school district.

Citation: *Satterfield v. Board of Educ. of the Grand Rapids Public Schools*, 556 N.W.2d 888, 291 Mich.App. 435, 114 Ed. Law Rep. 1192 (Mich. Ct. App., 1996).

Key Facts: Satterfield was a special education teacher for Grand Rapids Public Schools. In 1993, Satterfield was convicted of embezzling funds from a company for which he worked part-time. Based on his conviction, the school board initiated termination proceedings against him. Following a hearing, a hearing officer for the State Tenure Commission concluded that Satterfield had been convicted of a crime involving

moral turpitude and discharge was warranted. Satterfield sought judicial review of the Commission's decision.

Issue I: Did the presumption that a teacher is unfit to teach if he or she commits a crime involving moral turpitude illegally shift the burden of proof from the school board to the teacher?

Holding I: No

Reasoning I: The court explained that under *Kenai Peninsula Borough Bd. of Ed. v. Brown* (1984), a teacher's conviction of a crime involving moral turpitude raises a presumption that said teacher is unfit to teach. The presumption that a teacher is unfit to teach if he or she commits a crime involving moral turpitude requires the teacher to present evidence to rebut the presumption of unfitness, but the burden of proving reasonable and just cause remains with the school board.

Issue II: Did a teacher's act of embezzling funds from a place of employment separate from his teaching position provide reasonable and just cause for his dismissal from employment?

Holding II: Yes

Reasoning II: The court explained that state statute M.C.L. § 38.101 required reasonable and just cause for the termination of tenured teachers. Though not explicitly stated, the court's handling of the case indicated that the *Kenai* presumption was applicable, and the conviction of a crime involving moral turpitude provided reasonable and just cause for the termination of a tenured teacher. Further, although the court refuted Satterfield's argument that the school district must prove an adverse effect on the school environment, or its stakeholders, as a result of the conduct in question, it held that an

adverse effect was present. The court explained that retaining Satterfield after his conviction would have an adverse effect on the school and would deteriorate his ability to serve as a role model for students which represented a rational nexus between his misconduct and his job duties.

Disposition: The Michigan Court of Appeals affirmed the teacher's employment termination.

Citation: Sauter v. Mount Vernon School Dist., No. 320, Skagit County, 791 P.2d 549, 58 Wash.App. 121, 60 Ed. Law Rep. 646 (Wash. Ct. App., 1990).

Key Facts: Sauter was a mathematics teacher for the Mount Vernon School District. During the 1985-1986 school year, Sauter developed a close relationship with one of his female students. During the summer of 1986, Sauter visited the student at her home and the two took a bike ride together. At the end of the ride, Sauter and the student engaged in a long conversation in which Sauter told the student that he thought she was attractive. During the next school year, the student visited Sauter at his office on a regular basis. The two frequently discussed their current relationships with others and the potential for a relationship with one another, including a physical relationship.

In September 1986, Sauter wrote a letter to the student alluding to a nighttime fantasy he had about her the previous night. Although some of the language in the letter indicated a relationship between the two of them would be taboo, much of the letter indicated that Sauter desired a physical relationship with her. The student submitted the letter to the school administration and the superintendent notified Sauter that he would be dismissed from his teaching position. On appeal, the hearing officer affirmed Sauter's

termination. Sauter sought review and the Skagit County Superior Court affirmed the hearing officer's decision. Sauter appealed.

Issue: Did a teacher's actions, using spoken and written communication to express a desire to engage in a physical relationship with a student, provide sufficient cause for termination from employment?

Holding: Yes

Reasoning: The court referenced four different cases typically relied upon in Washington for determining whether there is sufficient cause to terminate a teacher's contact (*Clarke v. Shoreline Sch. Dist.* 412 (1986), *Hoagland v. Mount Vernon School Dist. No. 320, Skagit County* (1981), *Potter v. Kalama Pub. Sch. Dist.* 402 (1982), and *Pryse v. Yakima School Dist. No. 7* (1981)). Each case developed tests for determining whether the conduct in question provided sufficient cause for termination. The *Clarke* case further interpreted the other cases to conclude that in cases involving egregious conduct, remediability of the conduct was irrelevant. The court in the instant case applied the egregious exception outlined in *Clarke* and found that Sauter's behavior was egregious, sexually exploitive, directly related to his duties as a teacher, and lacked any positive educational aspect or legitimate professional purpose. Therefore, there was sufficient cause for termination.

Disposition: The Washington Court of Appeals affirmed the teacher's termination.

Citation: *Scheiber v. New York City Bd. of Educ.*, 593 N.Y.S.2d 563, 190 A.D.2d 804, 80 Ed. Law Rep. 953 (N.Y. App. Div., 1993).

Key Facts: Scheiber was a tenured mathematics teacher employed by the New York City Board of Education. Scheiber was terminated from his position after he was found guilty of 14 specifications of misconduct. The conduct occurred over a period of time while Scheiber was a teacher at three different schools. Chief among the allegations was a charge that Scheiber solicited a student to vandalize an assistant principal's automobile. Scheiber petitioned for review of the school board's decision.

Issue I: Was there sufficient evidence to support the finding that Scheiber was guilty of misconduct?

Holding I: Yes

Reasoning I: While the court did not elaborate, it found that there was sufficient evidence to find Scheiber guilty of 14 specifications of misconduct.

Issue II: Did a teacher's conduct, including soliciting a student to vandalize an assistant principal's vehicle (among other charges) warrant the penalty of dismissal from employment?

Holding II: Yes

Reasoning II: Utilizing a standard set in *Matter of Pell v. Board of Educ.* (1974), which stated that a teacher's dismissal should not be "shocking to one's sense of fairness" (p. 804), the court found that, in view of the circumstances, Scheiber's termination did not offend one's sense of fairness.

Disposition: The New York Supreme Court, Appellate Division, upheld the teacher's dismissal from employment.

Citation: Sch. Dist. of Phila. v. Jones, 139 A.3d 358, 332 Ed. Law Rep. 393 (Pa. Commw. Ct., 2016).

Key Facts: Jones was a vocational teacher in the district for six years. When the electronics program he taught was discontinued, he was reassigned as a math teacher. Members of a group called City Year spent time in Jones's classroom serving as assistant teachers, tutors, and mentors. In April 2009, four members of the City Year group submitted a letter to Jones's principal containing alleged statements Jones made in his classroom while teaching. The letter indicated that Jones spoke unprofessionally to his students, including the use of foul language and discussion of inappropriate topics such as sex. After receiving the letter, Jones's principal solicited written statements from seven of Jones's students. Of the seven students, five confirmed the allegations against Jones.

At an investigatory hearing in June 2009, Jones admitted to making some of the statements, but insisted that they were taken out of context in some cases and misinterpreted in others. He also asserted that he was trying to create trust and rapport with his students. After the hearing, Jones sent a letter to his principal apologizing for his remarks and maintained that he was trying to build rapport with his students and some of the remarks were misinterpreted or misrepresented. Also, Jones stated that he changed his teaching approach immediately after learning of the concerns regarding his behavior.

In December 2010, Jones was dismissed from his teaching position. Jones appealed to the Secretary of Education. The Secretary reinstated Jones in September 2011 and ordered the back payment of any compensation Jones lost during the term of his dismissal. The district then filed a petition for reconsideration. In December 2011, the Secretary granted the district's petition but did not act on it until November 2013. At that

time, the Secretary reinstated Jones's employment from August 2009 to December 2010, and then terminated Jones's employment as of December 15, 2010. Both the district and Jones sought review in the Commonwealth Court of Pennsylvania.

Issue I: Did a two-year delay in issuing a reconsideration decision violate a teacher's due process rights?

Holding I: No

Reasoning I: The court relied upon *Kinniry v. Abington School Dist.* (1996), which held that the passage of time between a hearing and final adjudication does not necessarily constitute a violation of due process if there was no harm or prejudice caused by the delay. In the instant case, the court noted that Jones did not allege any harm or prejudice caused by the delay in the secretary's decision. Because Jones did not offer any evidence that he suffered some prejudice or harm to his interests, caused by the delay, his due process rights were not violated.

Issue II: Did a teacher's repetitive use of unprofessional language with students constitute immorality within the school code?

Holding II: Yes

Reasoning II: The court relied upon a definition of immorality established in *Horosko v. Sch. Dist. of Mount Pleasant Tp.* (1939). The court explained that in order to prove immorality under *Horosko*, the school district must prove three elements: (1) the alleged immoral act actually occurred; (2) the act offends the morals of the community; and (3) the act sets a bad example for students. For the first tenet, several students and community members reported the acts, and furthermore, Jones did not deny they occurred. For the second tenet, the court recognized the City Group members as

representatives of the community. As such, the court recognized the group's letter to Jones's principal as evidence that they were offended by his actions. For the third tenet, the court simply concluded that bad behavior cannot set a good example for students.

Issue III: Did the district violate a teacher's due process procedures rights by failing to comply with mandatory procedures set forth in the school code?

Holding III: Yes

Reasoning III: The court cited both *Bd. of Regents of State Colleges v. Roth* (1972) and *Cleveland Board of Education v. Loudermill* (1985), leading cases regarding due process rights in teacher dismissal cases, to determine that Jones, as a tenured employee, had a property interest in continued employment and was due notice and a hearing prior to dismissal. The court noted that the school code echoed these same requirements. While the district did provide Jones with a statement of charges, it did not provide a hearing until eight months after his termination, and that hearing did not comply with procedures set forth in the school code. Further, the retroactive order of the secretary attempting to correct these due process blunders could not "cure the defect" (p. 369). Relying on multiple prior cases, the court held that these errors in due process constituted "fatal defects" requiring reversal (pp. 374-376).

Disposition: The Commonwealth Court of Pennsylvania reversed the acting Secretary's order and remanded the matter to the Secretary of Education with the direction to reinstate the teacher and provide compensation for damages.

Citation: *Shipley v. Salem School District*, 64 Ore. App. 777, 669 P. 2d 1172 (Or. Ct. App., 1983).

Key Facts: Shipley was a teacher for the Salem School District. In 1981, Shipley was involved in a civil action related to allegations that he had assaulted and battered a 12-year-old boy. In that action, the court ruled in favor of the child and ordered Shipley pay damages to the child. After the court ruled in favor of the child, the superintendent sent notice that the school district planned to terminate Shipley's employment. The notice included the facts upon which the district's action was based. The facts included allegations that Shipley had either touched the boy's genitals or forced the boy to touch Shipley's genitals on multiple occasions. The boy did not attend the school where Shipley taught and none of the events occurred at the school. The school board terminated Shipley's teaching contract. On appeal, the Fair Dismissal Appeals Board (FDAB) reversed the school board's decision on the grounds that the notice provided to Shipley did not provide adequate notice of the nexus between Shipley's conduct and his fitness to teach. The school board sought review of the FDAB's decision.

Issue: Did a school district provide adequate notice of the charges against a teacher regarding his dismissal for immorality related to the assault and battery of a child, so that he might prepare an adequate defense?

Holding: Yes

Reasoning: The court found that notice, as required by state statute ORS 342.895(2), must include a statement of the facts relied upon to support the statutory grounds for dismissal. Because the dismissal of a teacher for immorality under Oregon statute (342.865 and 342.175) required the showing of a nexus, the notice should include facts which set out the nexus between the teacher's conduct and his teaching responsibilities. However, the court concluded that the notice provided by the school

board did not have to include specific facts regarding the nexus between the conduct and fitness to teach when such nexus could be easily inferred.

Disposition: The Oregon Court of Appeals reversed the FDAB's decision and reinstated the board's decision to terminate Shipley.

Citation: *Stelzer v. State Bd. of Edn.*, 595 N.E.2d 489, 72 Ohio App.3d 529, 75 Ed. Law Rep. 1186 (Ohio Ct. App., 1991).

Key Facts: Stelzer was a teacher in Ohio. In 1988, she was convicted of receiving stolen property because she and her husband received over \$43,000 in welfare benefits over five years based on falsified information. As a result, the State Board of Education notified Stelzer that the board was considering the revocation of her teaching certificate and she had a right to be heard on the matter. At the hearing, the hearing officer recommended that Stelzer's certificate not be revoked because she was not an active participant in the scheme, the crime had no relation to her teaching duties, and she had no issues with her employer or coworkers. In May 1989, the Board rejected the referee's recommendation and revoked Stelzer's teaching certificate for conduct unbecoming a teacher, citing the seriousness and longevity of the offense. Stelzer sought review of the board's decision and the Auglaize County Common Pleas Court affirmed. Stelzer appealed.

Issue I: Did a teacher's participation in the theft of welfare benefits constitute conduct unbecoming a teacher supporting the revocation of her teaching certificate?

Holding I: Yes

Reasoning I: The court found that being convicted of a felony constituted sufficient cause for certificate revocation under R.C. 3319.31(A). In response to the appellants argument that there must be some nexus between her conduct and her ability to teach, the court explained “The Ohio Supreme Court has not adopted such a nexus requirement when interpreting R.C. 3319.31(A)” (p. 532). The court concluded that the board had sufficient, and credible, evidence to support its finding that Stelzer’s actions constituted conduct unbecoming a teacher which provided sufficient cause for the revocation of her teaching certificate.

Issue II: Was the revocation of a teacher’s teaching certificate an appropriate penalty for participating in the theft of welfare benefits?

Holding II: Yes

Reasoning II: The court held that R.C. 3319.31(A) provided that unbecoming conduct was a proper cause for the revocation of a teaching certificate. Since the evidence supported the allegation Stelzer engaged in conduct unbecoming a teacher, the revocation of her teaching certificate was an appropriate penalty.

Disposition: The Ohio Court of Appeals affirmed the revocation of Stelzer’s teaching certificate.

Citation: *Telemaque v. N.Y.C. Bd.*, 148 A.D.3d 503, 50 N.Y.S.3d 323, 342 Ed. Law Rep. 382, 2017 N.Y. Slip Op. 01834 (N.Y. App. Div., 2017).

Key Facts: Telemaque was employed by the New York City Board/Department of Education as an absent reserve teacher. The board filed disciplinary charges against her for engaging in misconduct, conduct unbecoming or prejudicial, insubordination, and

violating the employer's rules. These charges were based on allegations that Telemaque had made threats of violence against school staff. A hearing was held, and the hearing officer recommended termination from employment. Telemaque brought action against the city Board of Education with a motion to vacate the arbitration award terminating employment. The New York Supreme Court denied the motion. Telemaque appealed.

Issue I: Was a teacher's due process rights violated due to hearing officer bias or the rejection of her argument that the principal was not authorized to prefer charges against her?

Holding II: No

Reasoning II: The Supreme Court, Appellate Division, determined that the motion court properly concluded that Telemaque failed to provide clear and convincing evidence that the hearing officer was biased against her. The court also found that Telemaque was afforded due process and she waived her argument that the principal was not authorized to bring charges against her since she failed to raise that argument during the arbitration process.

Issue II: Did a teacher's threats of violence warrant termination from employment?

Holding II: Yes

Reasoning II: The court utilized a standard used in *Villada v. City of New York* (2015) to determine that the penalty of termination was not disproportionate to the offense given Telemaque's lack of remorse and failure to appreciate that her threats of violence were taken seriously.

Disposition: The Supreme Court, Appellate Division, affirmed the motion court's decision and confirmed the arbitration award.

Citation: *Timpani v. Lakeside Sch. Dist.*, 2011 Ark.App 668, 386 S.W.3d 588, 288 Ed. Law Rep. 436 (Ark. Ct. App., 2011).

Key Facts: Timpani taught elementary school in the Lakeside School District for more than 20 years. In November 2007, it was found that Timpani had used bonus points from a school book club (Scholastic) account to purchase two televisions, a DVD player, and a microwave for personal use. When the school principal questioned Timpani about the purchase, Timpani was confrontational and disrespectful. The principal informed Timpani that the district superintendent said using school bonus points for personal use was improper. To this, Timpani replied, "He is full of crap" and "This school sucks" (p. 2).

The superintendent scheduled a meeting with Timpani and the principal to offer Timpani an opportunity to defend her actions. During the meeting Timpani was rude and confrontational and maintained that she believed the bonus points were for her personal use, that she had never been instructed not to use them for personal use, and that the principal had lied about the details of their initial confrontation. A few days later, the superintendent sent a letter to Timpani notifying her of his intention to recommend her dismissal to the school board. The school board voted to dismiss Timpani. Timpani sought review with the circuit court. The circuit court affirmed the school board's decision. Timpani appealed.

Issue I: Did the superintendent provide adequate notice of the allegations against Timpani?

Holding I: Yes

Reasoning I: The superintendent's oral advisement of most, even if not all, of the rules he believed the teacher had broken, in combination with written notice that did not specifically list the rules, substantially complied with the notice requirements for termination of employment under the Teacher Fair Dismissal Act. Furthermore, the superintendent set forth the factual basis for each of the four grounds for termination in such clear detail that any "reasonable teacher" would have had no trouble preparing a defense.

Issue II: Did a teacher's use of rewards points, earned from purchases with school funds, for personal items warrant termination?

Holding II: Yes

Reasoning II: The court held that, although the school district had no written policy concerning use of the bonus points, a written policy about such a minor topic was not necessary or feasible. Additionally, the evidence indicated that other teachers in the district understood that the use of bonus points for personal use was improper. Furthermore, Timpani was dishonest, rude, and disrespectful when confronted with the allegations. Though the court did not specifically enumerate the basis for its holding, in context of the case, it seems likely the court relied upon the Teacher Fair Dismissal Act to reach its conclusion.

Disposition: The Arkansas Court of Appeals affirmed the circuit court's decision, upholding the teacher's contract termination.

Citation: Toney v. Fairbanks North Star Borough School District, Board of Education, 881 P.2d 112, 5 Ed. Law Rep. 380 (Alaska, 1994).

Key Facts: Toney was a tenured teacher with the Fairbanks North Star Borough School District. In 1980, while employed by a different school district in another state, Toney engaged in a sexual relationship with a 15-year-old female student. As a result of the relationship, the student gave birth to a child. The child was given up for adoption and the student's father negotiated an agreement with Toney that required Toney to pay medical bills related to the birth of the child and resign from his teaching position. Toney acted upon the terms of the agreement and resigned from his teaching position in the middle of the 1981-1982 school year.

In August 1982, Toney applied for, and received a teaching position in the Fairbanks North Star Borough School District. On his application, Toney indicated that he never resigned from a teaching position and had never been convicted of a crime involving moral turpitude. In 1992, Toney's now-former student notified the Fairbanks School District of their prior relationship and his subsequent resignation from his previous school system. After investigating the allegations, the Fairbanks School District terminated Toney's teaching contract. Toney sought review of his termination disputing the district's ability to take action on acts he committed prior to employment with the district. The Superior Court upheld the termination. Toney appealed.

Issue: Did a teacher's sexual relationship in a different school district, in a different state, several years prior to his employment constitute an act of moral turpitude justifying termination of employment for the cause of immorality?

Holding: Yes

Reasoning: The court found that Toney's sexual relationship with a 15-year-old student was both illegal and immoral under AS 14.20.170(a)(2)-(3). Although the relationship occurred several years prior to his employment with the school district, the statute did not limit its application to acts that occurred while the teacher was under contract with the school district.

Disposition: The Alaska Supreme Court affirmed the superior court, upholding the teacher's employment termination.

Citation: Turk v. Franklin Special School Dist., 640 S.W.2d 218, 7 Ed. Law Rep. 463 (Tenn., 1982).

Key Facts: Turk was a third grade teacher with the Franklin Special School District. In January 1981, the school superintendent read in the newspaper that Turk had been arrested for driving under the influence (DUI). Upon further investigation, the superintendent learned that Turk had been in a serious automobile accident in 1979, but was not charged with any violation of law in connection with the accident. The superintendent concluded that Turk had an alcohol problem and presented her with an ultimatum to choose between resigning her teaching position or accepting probationary status and attending counseling. Turk refused to accept either option. The superintendent then notified Turk that he was charging her with unbecoming conduct for her DUI conviction.

Turk requested a hearing. During the hearing, she explained that on the day of her DUI she had gone to a friend's house intending to stay the night. While there, she had

one strong drink, but due to a crash diet, the alcohol had considerably more effect on her. Then, contrary to Turk's understanding, her friend indicated that her husband would be returning home that night. So, Turk left and headed home. While driving, she became dizzy and pulled off the road. Her tires slid off into the ditch and she remained there until police officers responded and charged her with DUI.

After Turk's explanation, despite objection, the school board's attorney began questioning Turk about her previous car accident in 1979. He then questioned Turk about her attendance record and a potential alcohol problem. Although the 1979 accident and Turk's attendance record were not indicated in the notice of charges sent to Turk by the superintendent, the school board considered those items in conjunction with Turk's DUI conviction and voted to terminate her employment. Turk sought review and the chancery court reversed Turk's dismissal because the board considered charges of which Turk had not been notified. The school board appealed from the chancery court's decision.

Issue I: Did a school board violate a teacher's due process rights by considering the teacher's previous automobile accident, attendance record, and potential alcohol problem, which were not presented in the notice that was provided?

Holding I: Yes

Reasoning I: The court explained that T.C.A § 49-1414 required notice to specifically include all charges in writing. Because Turk was only notified of charges related to her DUI conviction, her previous car accident, attendance record, and potential alcohol problem should not have been considered.

Issue II: Did a teacher's DUI conviction provide sufficient cause for termination from employment?

Holding II: No

Reasoning II: Given the circumstances surrounding Turk's DUI and the lack of evidence of a substantial adverse effect on Turk's capacity to teach, the court found that Turk's behavior did not provide sufficient cause for termination. The court did not specify a specific statute or case supporting its finding.

Disposition: The Tennessee Supreme Court affirmed the chancery court's decision overturning Turk's termination.

Citation: Villada v. City of New York, 126 A.D.3d 598, 6 N.Y.S.3d 52, 316 Ed. Law Rep. 996, 2015 N.Y. Slip Op. 02418 (N.Y. App. Div., 2015).

Key Facts: Villada was a teacher in the City of New York. Villada had a 20-year satisfactory employment history, but was fired after it was found that he hugged and kissed another teacher at least once per week for two months despite her continual resistance to his advances. In a later encounter, Villada held her in the air, kissed her repeatedly on the cheek, then kissed her on the lips and forced his tongue into her mouth. Villada petitioned for review and the New York Supreme Court upheld the dismissal. Villada appealed.

Issue: Did a teacher's sexual harassment of a coworker support termination of his employment?

Holding: Yes

Reasoning: The court cited *Gongora v. New York City Dept. of Educ.* (2010) to determine that sexual harassment was a violation of the rules and policies of the department of education. Since the teacher communicated her distaste for Villada's

advances on several occasions, Villada should have understood that his actions were unwelcome. As such, the behavior clearly violated the district's sexual harassment policies. Considering the egregious nature of the misconduct, the court found the penalty of termination was appropriate (again cited *Gongora* which references back to standard for determining disproportionality set in *Matter of Pell v. Board of Educ.* (1974)).

Disposition: The New York Supreme Court, Appellate Division, affirmed.

Citation: *Walthart v. Bd. of Dirs. of EDCO Sc. Dist.*, 694 N.W.2d 740, 197 Ed. Law Rep. 388 (Iowa, 2005).

Key Facts: Walthart was a teacher in the Edgewood-Colesburg Community School District for 18 years. One night in September 2000, a group of students, including Walthart's son, had a party in a hay field on Walthart's property. Several students were drinking alcohol at the party. During the night, four students left to buy more alcohol. The driver, who had a blood alcohol level over three times the legal limit, crashed into a tree and all four students in the car were killed.

After the incident, the school superintendent provided Walthart notice that he was recommending her contract be terminated. Walthart requested a private hearing with the board. After the hearing, the board voted unanimously to terminate Walthart's contract. Walthart filed a notice of appeal. The adjudicator who presided over the appeal ruled that the board failed to present a preponderance of competent evidence and reversed the board's decision. The board appealed and the district court reversed the adjudicator's decision and reinstated the board's decision to terminate Walthart's contract. Walthart appealed.

Issue I: Did the trial court err by refusing to consider matters that were outside the record as certified by the board?

Holding I: No

Reasoning I: The court held that state statute (Iowa Code section 279.17) did not allow the district court to consider evidence not included in the record certified and filed by the board. When appealing the school board's decision, Walthart's only avenue for ensuring additional evidence was included in the record was through application to the adjudicator. Since Walthart withdrew her application prior to the adjudicator ruling upon it, she lost her only means of supplementing the record.

Issue II: Did the district court err when it admitted hearsay testimony?

Holding II: No

Reasoning II: Based on Iowa Code § 279.16, the court ruled that hearsay evidence is admissible in board hearings, provided that it is given the proper weight. While hearsay evidence should not be the only basis for making a decision, the hearsay evidence in this case was obtained from credible witness and corroborated and supported the evidence. Therefore, it was appropriate to rely, in part, on student testimonies.

Issue III: Did the record contain sufficient evidence that a teacher engaged in misconduct warranting dismissal when she was complicit in students participating in an underage drinking party on her property which led to the death of four students in an automobile accident?

Holding III: Yes

Reasoning III: The court found that the evidence indicated Walthart was aware students were drinking at the party and did nothing to stop it except to take some

students' car keys. As a result, her reputation as a teacher and ability to be an effective role model was damaged. Furthermore, retaining her on the faculty would undermine the meaning of the school's anti-alcohol policy. The court held that these facts provided just cause for dismissal under Iowa Code § 279.27.

Disposition: The Iowa Supreme Court affirmed the district court's decision, upholding the school board's decision to terminate the teacher's employment.

Citation: *Weems v. North Franklin School District*, 37 P.3d 354. 109 Wash.App. 767, 160 Ed. Law Rep. 631 (Wash., 2002).

Key Facts: Weems was a special education director and school psychologist for the North Franklin School District. In 1996, Weems was accused of falsifying and backdating student files to feign compliance with federal special education law. According to the record, Weems received a fax containing a list of student files that would be reviewed the following day during a compliance monitoring visit. Weems then stayed late that night to review each of the student files. It was found at Weems's hearing that several of the files had been altered. During the hearing, Weems tried unsuccessfully to explain the alterations and also argued that the changes did not constitute misconduct anyway. The hearing officer concluded that Weems had knowingly altered student records and upheld his termination. Weems sought review in the Franklin County Superior Court. The superior court upheld his termination. Weems appealed.

Issue I: Did the school district's failure to provide a complete transcript of testimony require reversal or a new trial?

Holding I: No

Reasoning I: Although statute required that the school district provide a complete record of the administrative hearing, the missing portion of the record was adequately corrected. Therefore, no prejudice could be shown.

Issue II: Did a special education director's conduct in altering and backdating student files to feign compliance with federal law provide sufficient cause for termination?

Holding II: Yes

Reasoning II: The court relied upon *Sauter v. Mt. Vernon Sch. Dist., No. 320, Skagit County* (1990) to determine that certificated employees may be terminated for deficiencies that are irremediable, conduct that substantially affects performance, or conduct which lacks any positive educational aspect. In the instant case, the court found that deliberately falsifying school documents to feign compliance with state and federal law constitutes misconduct, unprofessional conduct, and dishonesty. The court further found, under *Sauter*, that these behaviors served no legitimate professional purpose, and therefore, did not require remedial action by the school district.

Disposition: The Washington Court of Appeals affirmed the director's termination.

Citation: *Welch v. Board of Educ. of Chandler Unified School Dist. No. 80 of Maricopa County*, 136 Ariz. 552, 667 P.2d 746, 12 Ed. Law Rep. 1290 (Ariz. Ct. App., 1982).

Key Facts: Welch was a teacher at Chandler High School. In the fall of 1980, Welch developed a personal relationship with a 17-year-old student. The student's parent

were divorced. The student's guardian, her mother, knew and approved of the relationship. However, when the girl's father learned of the relationship, he called the school and expressed concern to the school principal. School officials questioned Welch and he denied any involvement with the student. Then, school officials directed Welch to avoid any relationships with students that might be considered inappropriate.

In November, the student transferred to a different school in a different district. The following day, the student and Welch were married. After learning of the marriage, the school board filed charges of unprofessional conduct against Welch. Welch requested and received a hearing before a commission. The commission found that Welch had a private and personal relationship with the student. However, because the relationship was consensual, permitted by the girl's mother, and did not have a direct effect on the school, the commission recommended Welch be reinstated. The school board accepted the commission's findings of fact, but rejected its recommendation. The board voted to dismiss Welch. On review, the superior court reversed the board's decision. The board appealed.

Issue I: Did a teacher's inappropriate relationship with a student constitute good cause for his dismissal from employment?

Holding I: Yes

Reasoning I: The court explained that cases of off-campus behavior typically require the showing of a nexus between the behavior and the teacher's fitness to teach. However, the current case included behavior between a teacher and a student at the school, indicating an on-campus origin and impact. Therefore, the court found that the

school board was not required to show nexus. The court further held that Welch's insubordination and dishonesty may be considered good cause for dismissal.

Issue II: Was the board's action arbitrary, capricious, or an abuse of discretion?

Holding II: No

Reasoning II: While the court might not have reached the same conclusion as the board, given the evidence, it was not unreasonable, arbitrary, or capricious for the board to reach the conclusion that it did.

Disposition: The Arizona Court of Appeals reversed the superior court and reinstated the board's decision to dismiss the teacher from employment.

Citation: *Winland v. Strasburg-Franklin Local Sch. Dist. Bd. of Educ.*, 999 N.E.2d 1190 (2013)

Key Facts: During the summer of 2011, an Ohio Teacher, Winland, viewed sexual images on a school issued laptop while out of town at a football clinic. After the school IT department discovered the computer had been used to view sexually explicit images, Winland stated that he had been performing a search of the actor Shane Diesel because the actor had been mentioned during a conversation with other coaches at the clinic. When he clicked on an Internet Movie Database link from the Shane Diesel Wikipedia page, pornographic pop-ups appeared on the computer. The IT department informed the principal, and the principal informed the superintendent.

During a meeting with the superintendent, Winland admitted there was inappropriate content on the computer and offered to resign, but later withdrew his offer. The superintendent sent a letter to notify Winland that he was recommending that the

board of education consider suspension and/or termination. Winland requested a hearing. The hearing officer considered the evidence and Winland's school record. The evidence indicated Winland had viewed sexually explicit images on the school laptop. Winland's record was impeccable with the exception of one instance of falsely reporting leave.

After consideration, the hearing officer recommended a suspension of 45 days without pay for failure to return his computer in a timely fashion and 45 days without pay for inappropriate use of the school computer. The school board accepted the hearing officer's findings of fact, but rejected the recommended penalty and terminated Winland's contract. Winland sought review of the board's decision. The trial court reversed the termination, stating that Winland's conduct was not hostile to the community and was private conduct that had no impact on his professional duties. The board of education appealed.

Issue: Did a teacher's actions of viewing sexually explicit images on a school issued laptop computer constitute good and just cause for termination from employment?

Holding: No

Reasoning: The court relied on *Hale v. Bd. of Edn.* (1968) to determine teachers could only be terminated for "a fairly serious matter" (p. 1195). This definition was further narrowed in *Florian v. Highland Local School Dist. Bd. of Educ.* (1983) to conduct which is hostile to the school environment and "cannot be some private act which has no impact on the teacher's professional duties" (p. 1196). Based on these cases, the court reasoned that Winland's private conduct in the present case did not impact his professional duties as a teacher. Furthermore, the court did not believe the

conduct rose to the level of a “fairly serious matter” that might be considered good and just cause for termination of employment (p. 1196).

Disposition: The Ohio Court of Appeals affirmed the trial court’s decision to reinstate the teacher.

Citation: *Winters v. Arizona Bd. of Educ.*, 83 P.3d 1114, 207 Ariz. 173, 185 Ed. Law Rep. 354 (Ariz. Ct. App., 2004).

Key Facts: Winters began teaching at Buckeye Union High School in 1997. Between October 1998 and April 2000, Winters was involved in five separate incidents with his neighbors. In the first incident, Winters and his neighbor were both cited for disorderly conduct following a verbal altercation. The citations were later dismissed. The second incident arose when a neighbor allegedly threw a rock through Winters’s window. Winters then fired his .357 revolver into his neighbor’s air conditioning unit. Winters pled guilty to a misdemeanor firearm charge. In the third incident, Winters was charged with disorderly conduct when he and a different neighbor got into a physical altercation. The charges were later dismissed. The fourth incident came on the following day, when Winters engaged in a verbal confrontation with an 18-year-old former student at a convenience store. Those charges were dropped due to insufficient evidence. The final incident occurred when Winters violated a protection order by telling the neighbor’s children they “had better sleep with one eye open” (p. 176).

In August 2000, the State Board of Education initiated disciplinary proceedings against Winters to revoke his teaching license. Winters sought review and the Maricopa

County Superior Court affirmed the board's decision. Winters appealed from the superior court's decision.

Issue: Did a teacher's off-campus actions generate a sufficient nexus between his conduct and his fitness to teach as to constitute immorality warranting termination from employment?

Holding: Yes

Reasoning: The court relied upon numerous cases and reference material to find that a teacher's off-campus conduct must be related to his fitness to teach to be actionable. Relying most heavily on *Welch v. Board of Education* (1983), the court found that Winters's conduct indicated a pattern of behavior and a tendency to react with violence and aggression. Furthermore, a portion of his misconduct included making threats of harm against children. Therefore, a sufficient nexus was present. The fact that the incidents occurred off school property did not negate the gravity of his conduct.

Disposition: The Arizona Court of appeals affirmed the lower court's decision to uphold the revocation of Winters's teaching certificate.

Citation: *Woo v. Putnam County Bd. of Educ.*, 504 S.E.2d 644, 202 W.Va. 409, 129 Ed. Law Rep. 853 (W. Va., 1998).

Key Facts: Woo was a mathematics teacher with the Putnam County Board of Education. In 1993, Woo was arrested when he sold marijuana to an undercover police officer. Following his arrest, Woo was transferred to a non-teaching position in the board office. During his criminal trial, Woo successfully asserted an entrapment defense and

was found not guilty. However, during the trial, Woo admitted that he regularly smoked marijuana at home in the afternoons.

Shortly after Woo was acquitted, two local newspapers published articles related to Woo's arrest and acquittal. Subsequently, the board began debating what should, or could, be done regarding Woo's admission of drug use. Apparently, some of the board's correspondence was leaked and several news stories appeared with terminology used during the board's discussions. Meanwhile, a group of parents began circulating a petition opposing Woo's placement back in the classroom. The board considered transferring Woo to another school in the district, but apparently that information was leaked as well, because a new petition surfaced in that school community opposing Woo's placement there.

Ultimately, the board voted 3-2 to dismiss Woo as a teacher on the grounds of immorality. Woo grieved his termination and a hearing was held. The Administrative Law Judge appointed by the Grievance Board to preside over the hearing upheld the board's decision and found that the notoriety created by Woo's behavior constituted a sufficient nexus between Woo's private behavior and his ability to teach to justify termination. Woo appealed and the circuit court found that much of Woo's notoriety was influenced, or tainted, by information that leaked from the board and ruled in favor of Woo. The school board appealed.

Issue: Did the notoriety of teacher's private conduct constitute a sufficient nexus to justify termination for immorality?

Holding: Yes

Reasoning: The court found, under *Golden v. Bd. of Educ.* (1981) that a nexus is required to terminate a teacher for off-duty conduct. Under *Golden*, substantial notoriety may constitute sufficient nexus. The court found that the notoriety surrounding Woo did create a sufficient nexus to justify his termination. Although some of the notoriety might have been tainted by information that was leaked by the board, a substantial amount of the notoriety predated, and was unaffected by, the leaked information.

Disposition: The West Virginia Supreme Court of Appeals reversed the circuit court's decision and reinstated the ALJ's decision upholding the teacher's termination.

Citation: *Wright v. Mead School District No. 354*, 944 P.2d 1, 87 Wash.App. 624, 124 Ed. Law Rep. 312 (Wash. Ct. App., 1997).

Key Facts: Wright was a music teacher for Mead School District. In 1993, the administration at Mead learned that Wright had engaged in sexual conduct with two female students while working in another school district. Additionally, Wright had consumed alcohol, and allowed students to consume alcohol, while on school-sponsored trips. Although the conduct had taken place in a different school district, the superintendent at Mead issued a termination notice to Wright. Wright requested and was granted a hearing. The hearing officer found that Wright had engaged in sexual conduct with two students at the high school at which he previously taught. Subsequently, Wright's employment was terminated. Wright sought review and the Superior Court of Spokane County upheld his termination. Wright appealed.

Issue I: Was Wright afforded due process?

Holding I: Yes

Reasoning I: The court relied on *Cleveland Bd. of Educ. v. Loudermill* (1985) to determine that due process only required that Wright be provided notice of the charges and an opportunity to be heard. Since Wright received notice and a hearing, he was afforded due process.

Issue II: Did a teacher's sexual contact with two high school students seven years prior to his termination provide sufficient cause for dismissal?

Holding II: Yes

Reasoning II: The court relied on *Hoagland v. Mount Vernon School Dist. No. 320* (1981) to determine that sufficient cause for the dismissal of a teacher is interpreted to mean "conduct which materially and substantially affects the teacher's performance" (p. 628). Further, based on *Sauter v. Mount Vernon Sch. Dist., No. 320, Skagit County* (1990), the court held that the remediability of the conduct need not be considered in cases where the conduct "lacks a positive educational aspect or legitimate professional purpose (p. 630). Additionally, even if remediability should be considered, the court found that "sexual misconduct is conduct which cannot be remedied" (p. 631) (referencing *Pryse v. Yakima School Dist. No. 7* (1981). Finally, the court found that the remoteness in time of the offense did not prevent the school district from taking action since the discharge statute (RCW 28A.400.300(1)) had no limitation period.

Disposition: The Washington Court of Appeals affirmed the superior court's decision to uphold the teacher's termination from employment.

Citation: *Yanzick v. School District No. 23*, 641 P.2d 431, 196 Mont. 375, 2 Ed. Law Rep. 1179 (Mont., 1982).

Key Facts: Yanzick was a tenured seventh grade teacher at Polson Middle School. In March 1977, Yanzick was notified that his contract would not be renewed for the following school year. The letter named a number of reasons for dismissal including cohabitating with a woman outside of wedlock, making statements to students in class regarding his living arrangements, making various statements to students about abortion, and displaying human fetuses in his classroom without authorization.

Yanzick requested a hearing before the board and his request was denied. The Montana Supreme Court required the board to hold a hearing. After the hearing, the board affirmed their original decision to non-renew Yanzick's contract. Yanzick appealed to the County Superintendent and the County Superintendent upheld the board's decision. Yanzick then appealed to the State Superintendent and the State Superintendent upheld the County Superintendent's decision. On appeal, the district court ruled that Yanzick's living arrangement did not render him unfit to teach and ordered that he be reinstated with back pay. The board appealed.

Issue I: Must a teacher's conduct adversely affect the teacher's performance to justify termination?

Holding I: Yes

Reasoning I: The court found that state statute required the showing of a nexus between the conduct and the teacher's ability to teach prior to disciplining a tenured teacher.

Issue II: Did a teacher's conduct adversely affect his performance justifying nonrenewal of his teaching contract?

Holding II: Yes

Reasoning II: The court relied on *Jerry v. Board of Education of City School District of Syracuse* (1974) to determine that a teacher's employment could be terminated if the conduct directly affected the teacher's professional responsibilities or if the conduct became the subject of so much notoriety that it impaired the teacher's capability to discharge his duties. Yanzick's conduct was well known to his students and the public which created a number of issues for the school including regular complaints and community disapproval. The notoriety of Yanzick's living arrangement was due, in large part, to Yanzick discussing it with students in his classroom.

Disposition: The Supreme Court of Montana reinstated Yanzick's termination.

Citation: *Youngman v. Doerhoff*, 890 S.W.2d 330, 96 Ed. Law Rep. 1225 (Mo. Ct. App., 1994).

Key Facts: Youngman was a middle school language arts teacher for the Gasconade County School System. In March 1993, it was reported to Youngman's principal that Youngman had hugged a student, rubbed his back, and then kissed him twice on the neck. The student told the principal that after the incident he was fearful to return to Youngman's class and thought that Youngman was making a sexual advance. The principal shared the report with the superintendent, Doerhoff.

The principal and Doerhoff met with Youngman. Youngman admitted that the incident occurred but maintained that his only intentions were to console the student, and that he frequently did the same with other students. Doerhoff later notified Youngman of disciplinary charges against him for immoral conduct. Youngman requested and received a board hearing. At the conclusion of the hearing, the board found Youngman guilty of

immoral conduct and terminated his employment. Youngman sought review and the District Court upheld his termination. Youngman appealed.

Issue: Did the record contain sufficient evidence that a teacher's acts of hugging and kissing a student constituted sexual harassment and immoral conduct?

Holding: No

Reasoning: Although the court emphasized that making sexual advances toward a 14 year old student could constitute immorality, there was no evidence in the record indicating Youngman's conduct was predicated on any sexual motivation. Conversely, the record indicated that Youngman only intended to comfort the student. Because there was no evidence that Youngman's behavior was sexually motivated, nor any evidence that he had been made aware his actions were unwelcome by either students or staff, the court found that his conduct did not constitute sexual harassment or immoral conduct under the statute (§ 168.114.1(2)).

Disposition: The Missouri Court of Appeals reversed the decision of the circuit court and reinstated the teacher.

Citation: Zelno v. Lincoln Intermediate Unit 12 BD, 786 A.2d 1022, 160 Ed. Law Rep. 440 (Pa. Commw. Ct., 2001).

Key Facts: Zelno was a tenured teacher at an alternative education facility operated by the Lincoln Intermediate School System. In 1999, Zelno pled guilty to driving under the influence of alcohol (DUI) and driving while her license was suspended. This represented her third DUI and second offense for driving while her license was suspended. In the summer of 2000, the school board learned of her

convictions and initiated dismissal proceedings against her. The board voted unanimously to terminate Zelno's teaching contract. She appealed to the Secretary of Education. The Secretary affirmed the board's decision. Zelno sought review of the secretary's decision.

Issue: Did a teacher's conduct, which resulted in three drunken driving and two driving without a license convictions, constitute immorality under statute and provide cause for termination?

Holding: Yes

Reasoning: The court relied the definition of immorality set forth in *Horosko v. Sch. Dist. of Mount Pleasant Tp.* (1939) which determined immorality referred to conduct that "offends the morals of the community and is a bad example to youth" (p. 1024). The court found that Zelno's conduct set a bad example for students, affected her credibility, and impacted her ability to teach. The court further noted that Zelno's argument that her conviction for drunken driving did not affect her ability to teach would be more persuasive if it wasn't her third offense. The repeated nature of the conduct indicated a damaging pattern of behavior. As such, her conduct constituted immorality and was proper cause for termination.

Disposition: The Commonwealth Court of Pennsylvania affirmed Zelno's termination.

APPENDIX B

ALL CASES

Year	Case/Citation	State
2006	<i>Ahmad v. Board of Educ. of City of Chicago</i> , 847 N.E.2d 810, 365 Ill.App.3d 155 (Ill.App., 2006).	IL
2000	<i>Andrews v. Independent School Dist. No. 57</i> , 12 P.3d 491 (Okla. Civ. App., 2000).	OK
2013	<i>Asch v. N.Y.C. Bd./Dep't of Educ.</i> , 104 A.D.3d 415, 960 N.Y.S2d 106, 2013 NY Slip Op 1360 (N.Y. App. Div., 2013).	NY
1984	<i>Baker v. School Bd. of Marion County</i> , 450 So.2d 1194, 17 Ed. Law Rep. 1288 (Fla. Dist. Ct. App., 1984).	FL
1997	<i>Baldridge v. Board of Trustees, Rosebud County School Dist. No 19, Colstrip, Mont.</i> , 287 Mont. 53, 951 P.2d 1343, 124 Ed. Law Rep. 424 (Mont., 1997).	MT
2013	<i>Ball v. Bd. of Educ. of City of Chicago</i> , 2013 IL App (1st) 120136, 994 N.E.2d 999, 374 Ill.Dec. 62, 297 Ed. Law Rep. 486, 36 IER Cases 533 (Ill. App. Ct., 2013).	IL
2003	<i>Ballard v. Independent School Dist. No. 4</i> , 77 P.3d 1084 (Okla., 2003).	OK
1984	<i>Balog v. McKeesport Area School District</i> , 484 A.2d 198, 86 Pa.Cmwlth. 132, 21 Ed Law Rep. 590 (Pa. Commw. Ct., 1984).	PA
2000	<i>Baltrip v. Norris</i> , 23 S.W.3d 336, 146 Ed. Law Rep. 573 (Tenn. Ct. App., 2000).	TN
1996	<i>Barringer v. Caldwell County Board of Education</i> , 473 S.E.2d 435, 123 N.C.App. 373, 473 S.E.2d 435, 111 Ed. Law Rep. 994 (N.C. Ct. App., 1996).	NC
2017	<i>Beatty v. City of New York</i> , 148 A.D.3d 413, 48 N.Y.S.3d 393, 340 Ed. Law Rep. 1079 (N.Y. App. Div., 2017).	NY
2004	<i>Bergerson v. Salem-Keizer School Dist.</i> , 194 Or.App. 301, 95 P.3d 215, 190 Ed. Law Rep. 971 (Or. Ct. App. 2004).	OR
2000	<i>Bertolini v. Whitehall City School Dist. Bd. of Edn.</i> , 139 Ohio App.3d 595 (Ohio App. Ct., 2000)	OH
1982	<i>Bethel Park School Dist. v. Krall</i> , 445 A.2d 1377, 67 Pa.Cmwlth. 143, 445 A.2d 1377, 4 Ed. Law Rep. 781 (Pa. Commw. Ct., 1982).	PA

2009	<i>Bethel v. Board of Educ. of Capital School Dist.</i> , 985 A.2d 389, 254 Ed. Law Rep. 873 (Del., 2009).	DE
2009	<i>Black v. New York City Dept. of Educ.</i> , 62 A.D.3d 468, 878 N.Y.S.2d 356, 244 Ed. Law Rep. 287, 2009 N.Y. Slip Op. 03768 (N.Y. App. Div., 2009).	NY
1988	<i>Blaine v. Moffat County School Dist. Re No. 1</i> , 748 P.2d 1280, 44 Ed. Law Rep. 763 (Colo., 1988).	CO
1986	<i>Board of Educ. of Hopkins County v. Wood</i> , 717 S.W.2d 837, 35 Ed. Law Rep. 824 (Ky., 1986).	KY
1986	<i>Board of Education of Laurel County v. McCollum</i> , 721 S.W.2d 703, 36 Ed. Law Rep. 1026 (Ky., 1986).	KY
2012	<i>Bonatesta v. Northern Cambria School Dist.</i> , 48 A.3d 553, 162 Lab.Cas. P 61,270, 282 Ed. Law Rep. 521 (Pa. Commw. Ct., 2012).	PA
2014	<i>Brito v. Walcott</i> , 115 A.D.3d 544, 982 N.Y.S.2d 105, 302 Ed. Law Rep. 300, 37 IER Cases 1621, 2014 N.Y. Slip Op. 01813 (N.Y. App. Div., 2014).	NY
1996	<i>C.F.S. v. Mahan</i> , 934 S.W.2d 615, 114 Ed. Law Rep. 973 (Mo. Ct. App., 1996).	MO
2008	<i>Matter of Chaplin v. New York City Dept. of Educ.</i> , 48 A.D.3d 226, 850 N.Y.S.2d 425, 229 Ed. Law Rep. 202, 2008 N.Y. Slip Op. 01012 (N.Y. App. Div., 2008).	NY
1981	<i>Chicago Bd. of Ed. v. Payne</i> , 102 Ill.App.3d 741, 58 Ill. Dec. 368, 430 N.E.2d 310, 2 Ed. Law Rep. 171 (Ill. App. Ct., 1981).	IL
2011	<i>Cipollaro v. N.Y. City Dep't of Educ.</i> , 83 A.D.3d 543, 922 N.Y.S.2d 23, 266 Ed. Law Rep. 899, 2011 N.Y. Slip Op. 03131 (N.Y. App. Div., 2011).	NY
2008	<i>Cisneros v. School Bd. of Miami-Dade County</i> , 990 So.2d 1179, 237 Ed. Law Rep. 545, 33 Fla. L. Weekly D2198 (Fla. Dist. Ct. App., 2008).	FL
2011	<i>City School Dist. of City of New York v. McGraham</i> , 17 N.Y.3d 917, 958 N.E.2d 897, 934 N.Y.S.2d 768, 274 Ed. Law Rep. 695 (N.Y., 2011).	NY
1992	<i>Clark v. School Bd. of Lake County, Fla.</i> , 596 So.2d 735, 74 Ed. Law Rep. 405, (Fla. Dist. Ct. App., 1992).	FL

1983	<i>Clarke v. Board of Educ. of School District of Omaha</i> , 215 Neb. 250, 338 N.W.2d 272, 13 Ed. Law Rep. 505 (Neb., 1983).	NE
1991	<i>Cochran v. Bd. of Ed. of Mexico Sch. Dist., No. 59</i> , 815 S.W.2d 731, 79 Ed. Law Rep. 692 (Mo. Ct. App., 1991).	MO
2013	<i>Cona v. Avondale School Dist.</i> , 303 Mich.App. 123, 842 N.W.2d 277, 301 Ed. Law Rep. 524, 37 IER Cases 136 (Mich. Ct. App., 2013).	MI
2013	<i>Douglas v. New York City Bd./Dept. of Educ.</i> , 87 A.D.3d 856, 929 N.Y.S.2d 127, 270 Ed. Law Rep. 820, 2011 N.Y. Slip Op. 06397 (N.Y. App. Div., 2011).	NY
1985	<i>Downie v. Independent School Dist., No. 141</i> , 367 N.W.2d 913, 25 Ed. Law Rep. 518 (Minn. Ct. App., 1985).	MN
1995	<i>Dubuclet v. Home Ins. Co.</i> , 660 So.2d 67, 103 Ed. Law Rep. 547 (La. Ct. App., 1995).	LA
1983	<i>Dupree v. School Committee of Boston</i> , 446 N.E.2d 1099, 15 Mass.App.Ct. 535, 10 Ed. Law Rep. 336 (Mass. App. Ct., 1983).	MA
2015	<i>Esteban v. Dep't of Educ. of City Sch. Dist. of N.Y.</i> , 131 A.D.3d 880, 17 N.Y.S.3d 21, 322 Ed. Law Rep. 461, 2015 N.Y. Slip Op. 06965 (N.Y. App. Div., 2015).	NY
1988	<i>Everett Area School Dist. v. Ault</i> , 548 A.2d 1341, 120 Pa.Cmwlth. 514, 49 Ed. Law Rep. 942 (Pa. Commw. Ct., 1988).	PA
1987	<i>Fadler v. Illinois State Board of Education</i> , 106 Ill. Dec. 840, 506 N.E.2d 640, 38 Ed. Law Rep. 1245 (Ill. App. Ct., 1987).	IL
2011	<i>Fed. Way Sch. Dist. No. 210 v. Vinson</i> , 172 Wash.2d 756 (Wash., 2011).	WA
1987	<i>Fiscus v. Board of School Trustees of Cent. School Dist. of Greene County</i> , 509 N.E.2d 1137, 40 Ed. Law Rep. 36 (Ind. Ct. App., 1987).	IN
1983	<i>Florian v. Highland Local School Dist. Bd. of Educ.</i> , 493 N.E.2d 249, 24 Ohio App.3d 41, 32 Ed. Law Rep. 768 (Ohio Ct. App., 1983).	OH
1998	<i>Forte v. Mills</i> , 672 N.Y.S.2d 497, 250 A.D.2d 882, 126 Ed. Law Rep. 362 (N.Y. App. Div., 1998).	NY

1997	<i>Gedney v. Board of Educ. of Town of Groton</i> , 703 A.2d 804, 47 Conn. App. 297, 122 Ed. Law Rep. 1240 (Conn. App. Ct., 1997).	CT
1992	<i>Gerig v. Board of Educ. of Cent. School Dist., R-III</i> , 841 S.W.2d 731, 79 Ed. Law Rep. 692 (Mo. Ct. App., 1992).	MO
2012	<i>Gisors v. New York City Dep't of Educ. for City Sch. Dist. Region 10</i> , 94 A.D.3d 584, 942 N.Y.S.2d 108, 278 Ed. Law Rep. 1088, 2012 N.Y. Slip Op. 02948 (N.Y. App. Div., 2012).	NY
1981	<i>Golden v. Board of Educ. of Harrison County</i> , 285 S.E.2d 665, 169 W.Va. 63, 1 Ed. Law Rep. 1354 (W. Va., 1981).	WV
2010	<i>Gongora v. New York City Dept. of Educ.</i> , 34 Misc.3d 161, 930 N.Y.S.2d 757, 272 Ed. Law Rep. 606, 2010 N.Y. Slip Op. 20554 (N.Y., 2010).	NY
1994	<i>Governing Board v. Haar</i> , 33 Cal.Rptr.2d 744, 28 Cal.App.4th 369, 94 Ed. Law Rep. 384 (Cal. Ct. App., 1994).	CA
2005	<i>Green v. New York City Department of Education</i> , 793 N.Y.S.2d 405, 197 Ed. Law Rep. 714 (N.Y. App. Div., 2005).	NY
2003	<i>Grieb v. Unemployment Compensation Board of Review</i> , 827 A.2d 422, 573 Pa. 594, 178 Ed. Law Rep. 838 (Pa., 2003).	PA
2014	<i>Guzman v. City of N.Y.</i> , 110 A.D.3d 581, 975 N.Y.S.2d 386, 298 Ed. Law Rep. 986, 2013 N.Y. Slip Op. 06962 (N.Y. App. Div., 2014).	NY
1997	<i>Hamm v. Poplar Bluff R-1 School District</i> , 955 S.W.2d 27, 122 Ed. Law Rep. 340 (Mo. Ct. App., 1997).	MO
2000	<i>Hawzipta v. Independent School Dist.</i> , 13 P.3d 98, 149 Ed. Law Rep. 250 (Okla. Civ. App., 2000).	OK
2011	<i>Homa v. Carthage R-IX School Dist.</i> 345 S.W.3d 266, 161 Lab.Cas. P 61,138, 270 Ed. Law Rep. 902 (Mo. Ct. App., 2011).	MO
1993	<i>Horton v. Jefferson County-Dubois Area Vocational Technical School</i> , 157 Pa.Cmwlt. 424, 630 A.2d 481, 85 Ed. Law Rep. 897 (Pa. Commw. Ct., 1993).	PA

2007	<i>In re Binghamton City School District (Peacock)</i> , 848 N.Y.S.2d 382, 227 Ed. Law Rep. 905 (N.Y. App. Div., 2007).	NY
1996	<i>In re Thomas</i> , 926 S.W.2d 163, 111 Ed. Law Rep. 1023 (Mo. Ct. App., 1996).	MO
2016	<i>Jackson v. Bd. of Educ. of Chicago</i> , 2016 IL App (1st) 141388, 53 N.E.3d 381, 403 Ill.Dec. 327, 332 Ed. Law Rep. 480, 2016 IER Cases 140,596 (Ill. App. Ct., 2016).	IL
1995	<i>James v. Trumbull Cty. Bd. of Edn.</i> , 663 N.E.2d 1361, 105 Ohio App.3d, 109 Ed. Law Rep. 349 (Ohio Ct. App., 1995).	OH
1984	<i>Kenai Peninsula Borough Bd. of Educ. v. Brown</i> , 691 P.2d 1034, 22 Ed. Law Rep. 439 (Alaska, 1984).	AK
1984	<i>Kimble v. Worth County R-III Bd. of Ed.</i> , 669 S.W.2d 949, 17 Ed. Law Rep. 1257 (Mo. Ct. App., 1984).	MO
1996	<i>Kinniry v. Abington School Dist.</i> , 673 A.2d 429, 108 Ed. Law Rep. 312 (Pa. Commw. Ct., 1996).	PA
2008	<i>Lackow v. Department of Educ. (or "Board") of City of New York</i> , 51 A.D.3d 563, 859 N.Y.S.2d 52, 233 Ed. Law Rep. 845, 2008 N.Y. Slip Op. 04744 (N.Y. App. Div., 2008).	NY
2008	<i>Lehto v. Board of Educ. of Caesar Rodney School Dist.</i> , 962 A.2d 222, 240 Ed. Law Rep. 289 (Del., 2008).	DE
1985	<i>Lile v. Hancock Place School District</i> , 701 S.W.2d 500, 29 Ed. Law Rep. 848 (Mo. Ct. App., 1985).	MO
1987	<i>Matter of Shelton</i> , 408 N.W.2d 594, 40 Ed. Law Rep 985 (Minn. Ct. App., 1987).	MN
1984	<i>Matter of Tanelli</i> , 194 N.J.Super 492, 477 A.2d 394, 18 Ed. Law Rep. 353 (N.J. Super. Ct. App. Div., 1984).	NJ
1988	<i>Matter of Tenure Hearing of Cowan</i> , 224 N.J.Super 737 (N.J. Super. Ct. App. Div., 1988).	NJ
2014	<i>Mauro v. Walcott</i> , 155 A.D.3d 547, 982 N.Y.S.2d 109, 302 Ed. Law Rep. 304, 37 IER Cases 1623, 2014 N.Y. Slip Op. 01814 (N.Y. App. Div., 2014).	NY

1986	<i>McBroom v. Board of Educ., Dist. No. 205</i> , 98 Ill. Dec. 864, 494 N.E.2d 1191, 33 Ed. Law Rep. 404 (Ill. App. Ct., 1986).	IL
1990	<i>McCullough v. Illinois State Bd. of Educ. by Feuille</i> , 150 Ill. Dec. 430, 562 N.E.2d 1233, 64 Ed. Law Rep. 237 (Ill. App. Ct., 1990).	IL
2010	<i>McFerren v. Farrell Area Sch. Dist.</i> 993 A.2d 344, 256 Ed. Law Rep. 806 (Pa. Commw. Ct., 2010).	PA
2013	<i>Montanez v. Dep't of Educ. of N.Y.</i> , 110 A.D.3d 487, 973 N.Y.S.2d 132, 297 Ed. Law Rep. 1002, 2013 N.Y. Slip Op. 06615 (N.Y. App. Div., 2013).	NY
1990	<i>Morris v. Illinois State Bd. of Educ.</i> , 198 Ill.App.3d 51, 555 N.E.2d 725, 144 Ill.Dec. 366, 61 Ed. Law Rep. 200 (Ill. App. Ct., 1990).	IL
1986	<i>Mott v. Endicott School Dist. No. 308</i> , 713 P.2d 98, 105 Wash.2d 199, 30 Ed. Law Rep. 582 (Wash., 1986).	WA
1987	<i>Noel v. Andrus</i> , 810 F.2d 1388, 37 Ed. Law Rep. 494 (5th Cir., 1987).	LA
1987	<i>Norton v. Board of Educ. of Jefferson County Schools</i> , 748 P.2d 1337, 44 Ed. Law Rep. 789 (Colo. App., 1987).	CO
2001	<i>Peaster Independent School District v. Glodfelty</i> , 63 S.W. 3d 1, 160 Ed. Law Rep. 671 (Tex. App., 2001).	TX
1983	<i>Perryman v. School Committee of Boston</i> , 17 Mass.App.Ct. 346, 458 N.E.2d 748, 15 Ed. Law Rep. 533 (Mass. App. Ct., 1983).	MA
1982	<i>Potter v. Kalama Public School Dist., No. 402</i> , 644 P.2d 1229, 31 Wash.App. 838, 4 Ed. Law Rep. 303 (Wash. Ct. App., 1982).	WA
1990	<i>Rado v. Board of Educ. of Borough of Naugatuck</i> , 583 A.2d 102, 216 Conn. 541, 64 Ed. Law Rep. 834 (Conn., 1990).	CT
1993	<i>Riverview School Dist. v. Riverview Educ. Ass'n, PSEA-NEA</i> , 639 A.2d 974, 162 Pa. Cmwlth. 644, 90 Ed. Law Rep. 280 (Pa. Commw. Ct., 1994).	PA
1986	<i>Rogliano v. Fayette County Bd. of Educ.</i> , 347 S.E.2d 220, 176 W.Va 700, 34 Ed. Law Rep. 933 (W. Va., 1986).	WV

1983	<i>Ross v. Robb</i> , 662 S.W.2d 257, 15 Ed. Law Rep. 606 (Mo., 1983).	MO
2011	<i>San Diego Unified Sch. Dist. v. Comm'n on Prof'l Competence</i> , 194 Cal.App.4th 1454, 124 Cal.Rptr.3d 320, 267 Ed. Law Rep. 301 (Cal. Ct. App., 2011).	CA
2013	<i>San Diego Unified Sch. Dist. v. Comm'n on Prof'l Competence</i> , 214 Cal.App.4th 1120, 154 Cal.Rptr.3d 751, 291 Ed. Law Rep. 339 (Cal. Ct. App., 2013).	CA
1996	<i>Satterfield v. Board of Educ. of the Grand Rapids Public Schools</i> , 556 N.W.2d 888, 291 Mich.App. 435, 114 Ed. Law Rep. 1192 (Mich. Ct. App., 1996).	MI
1990	<i>Sauter v. Mount Vernon School Dist., No. 320, Skagit County</i> , 791 P.2d 549, 58 Wash.App. 121, 60 Ed. Law Rep. 646 (Wash. Ct. App., 1990).	WA
1993	<i>Scheiber v. New York City Bd. of Educ.</i> , 593 N.Y.S.2d 563, 190 A.D.2d 804, 80 Ed. Law Rep. 953 (N.Y. App. Div., 1993).	NY
2016	<i>Sch. Dist. of Phila. v. Jones</i> , 139 A.3d 358, 332 Ed. Law Rep. 393 (Pa. Commw. Ct., 2016).	PA
1983	<i>Shipley v. Salem School District</i> , 64 Ore. App. 777, 669 P. 2d 1172 (Or. Ct. App., 1983).	OR
1991	<i>Stelzer v. State Bd. of Edn.</i> , 595 N.E.2d 489, 72 Ohio App.3d 529, 75 Ed. Law Rep. 1186 (Ohio Ct. App., 1991).	OH
2017	<i>Telemaque v. N.Y.C. Bd.</i> , 148 A.D.3d 503, 50 N.Y.S.3d 323, 342 Ed. Law Rep. 382, 2017 N.Y. Slip Op. 01834 (N.Y. App. Div., 2017).	NY
2011	<i>Timpani v. Lakeside Sch. Dist.</i> , 2011 Ark.App 668, 386 S.W.3d 588, 288 Ed. Law Rep. 436 (Ark. Ct. App., 2011).	AR
1994	<i>Toney v. Fairbanks North Star Borough School District, Board of Education</i> , 881 P.2d 112, 5 Ed. Law Rep. 380 (Alaska, 1994).	AK
1982	<i>Turk v. Franklin Special School Dist.</i> , 640 S.W.2d 218, 7 Ed. Law Rep. 463 (Tenn., 1982).	TN
2015	<i>Villada v. City of New York</i> , 126 A.D.3d 598, 6 N.Y.S.3d 52, 316 Ed. Law Rep. 996, 2015 N.Y. Slip Op. 02418 (N.Y. App. Div., 2015).	NY

2005	<i>Walthart v. Bd. of Dirs. of EDCO Sc. Dist.</i> , 694 N.W.2d 740, 197 Ed. Law Rep. 388 (Iowa, 2005).	IA
2002	<i>Weems v. North Franklin School District</i> , 37 P.3d 354, 109 Wash.App. 767, 160 Ed. Law Rep. 631 (Wash., 2002).	WA
1982	<i>Welch v. Board of Educ. of Chandler Unified School Dist. No. 80 of Maricopa County</i> , 136 Ariz. 552, 667 P.2d 746, 12 Ed. Law Rep. 1290 (Ariz. Ct. App., 1982).	AZ
2013	<i>Winland v. Strasburg-Franklin Local Sch. Dist. Bd. of Educ.</i> , 999 N.E.2d 1190, 300 Ed. Law Rep. 396, 2013 -Ohio- 4670 (Ohio Ct. App., 2013).	OH
2004	<i>Winters v. Arizona Bd. of Educ.</i> , 83 P.3d 1114, 207 Ariz. 173, 185 Ed. Law Rep. 354 (Ariz. Ct. App., 2004).	AZ
1998	<i>Woo v. Putnam County Bd. of Educ.</i> , 504 S.E.2d 644, 202 W.Va. 409, 129 Ed. Law Rep. 853 (W. Va., 1998).	WV
1997	<i>Wright v. Mead School District No. 354</i> , 944 P.2d 1, 87 Wash.App. 624, 124 Ed. Law Rep. 312 (Wash. Ct. App., 1997).	WA
1982	<i>Yanzick v. School District No. 23</i> , 641 P.2d 431, 196 Mont. 375, 2 Ed. Law Rep. 1179 (Mont., 1982).	MT
1994	<i>Youngman v. Doerhoff</i> , 890 S.W.2d 330, 96 Ed. Law Rep. 1225 (Mo. Ct. App., 1994).	MO
2001	<i>Zelno v. Lincoln Intermediate Unit 12 BD</i> , 786 A.2d 1022, 160 Ed. Law Rep. 440 (Pa. Commw. Ct., 2001).	PA
