

AN ANALYSIS OF GEORGIA STATE BOARD OF EDUCATION DISMISSAL
APPEAL DECISIONS FROM 1991 TO 2001

by

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(Under the Direction of John Dayton)

ABSTRACT

This study identified and analyzed Georgia State Board of Education dismissal appeal decisions of tenured teachers from the years 1991 to 2001. Relevant legislation and judicial decisions related to teacher dismissal were also reviewed. The dismissal cases were categorized based on the State Board of Education's decision to sustain, dismiss, or reverse the local board of education's decision, and arranged into one or more of the grounds of dismissal under the Georgia Fair Dismissal Law.

The data for the study included a detailed analysis of relevant historical documents, constitutional provisions, statutes, regulations, and case law.

Findings of the study include the following:

- 1) There are eight grounds under the Georgia Fair Dismissal Act for termination or suspension of a teacher, principal, or other employee having a contract for a definite period of time. Sanctioned grounds for such actions include:
 - 1) incompetency; 2) insubordination; 3) willful neglect of duties; 4) immorality; 5) inciting, encouraging, or counseling students to violate any valid state law, municipal ordinance, or policy or rule of the local school board of education; 6) to reduce staff due to loss of students or cancellations of programs; 7) failure to secure and maintain necessary educational training; and 8) any other good and sufficient cause.
- 2) The Georgia State Board of Education grants substantial deference to local board decisions. The legal standard of review is that if there is any evidence to support the decision of the local board of education, then the decision will stand, unless there has been abuse of discretion or the decision is so arbitrary or capricious as to be illegal.
- 3) In the years from 1991 to 2001, there were 72 dismissal appeal decision cases to the Georgia Board of Education. Of these 72 cases, 56 were sustained, four were reversed, and 12 were dismissed.
- 4) Cases were based on incompetence; cases were based on insubordination; cases were based on willful neglect of duties; cases were based on immorality; cases were based on inciting, encouraging, or counseling students to violate any valid state law, municipal ordinance, or policy or rule of the local school board of

education; cases were based on reduction in staff due to loss of students or cancellations of programs; cases were based on failure to maintain necessary educational training; and cases were based on any other good and sufficient cause.

INDEX WORDS: Appeal, Appellant, Dismissal, Due process, Hearing, Local Board of Education, Nonrenewal, Nontenured, Reversed, Sustained, Teacher, Tenured, Termination

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DEDICATION

This dissertation is dedicated to my parents, James and Louise Burton.

Throughout my life they have taught me the meaning of perseverance, dedication, and hard work through their daily walk. Their unshakable confidence in me has always served as a source of strength. I am so blessed that I am their daughter.

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CHAPTER 1

INTRODUCTION

Statement of the Problem

Teacher dismissal remains an issue of major concern among teachers, administrators, and the public. Teacher dismissal is one of the most frequently litigated issues. Accordingly, administrators need to be familiar with the law concerning teacher dismissal to effectively perform the duties of their position. According to McGrath (1995), 10 % of teachers who are currently working as educators are incompetent. Many of the educators with such deficiencies are tenured teachers. Leaving teachers in the classroom who are not performing satisfactorily negatively affects the educational process. According to Fuhr (1996), borderline teachers create a negative ripple effect throughout the school. When administrators fail to take action with teachers who are performing poorly, it results in low teacher morale, decreased student achievement, lack of confidence towards schools, teacher and administrator liability, and increased litigation (McGrath, 1995). Because of this, educational reform has become a priority in Georgia and throughout the United States.

It is imperative for administrators to be aware of the current status of the law and the procedures that must take place in order to dismiss educators who are not performing their jobs adequately. According to the American Association of School Administrators (1973), a substantial number of administrators do not take the necessary time or are unaware of the appropriate documentation procedures that are necessary to properly dismiss a poor teacher. Every school administrator should be aware of the fact that even the most minor form of documentation could ultimately find its way into court of law

(Beckham, 1996). To serve effectively, school administrators must be informed regarding the procedures of dismissal and the legal ramifications that could be faced if the state's statutes are not followed. In addition to knowledge of state statutes, school administrators could benefit from an awareness of the Georgia State Board of Appeals decisions of tenured teachers.

Evaluating teachers is one of the primary tasks that school administrators perform, and they must stay within the guidelines of the state, acting in accordance with due process (LaMorte, 2002). It is imperative that educators be aware of the legal grounds leading to dismissal and the procedures that must be followed to ensure a proper dismissal. When dismissing a tenured teacher or a teacher under a continuous contract, all guidelines and procedures must be followed that are set by the state's statutory provisions (LaMorte, 2002).

It is the school administrator's responsibility to provide sufficient evidence through proper documentation and testimony to support cause for dismissal, while ensuring proper due process. The groundwork for documenting legal cause includes recording and investigating complaints against teachers and other employees. In addition to this, the school leader should maintain fairness and confidentiality at all times during this investigation process (Beckham, 1996).

The Georgia Fair Dismissal Act was enacted on March 31, 1975. Under the statute, there are eight grounds for termination or suspension of a teacher, principal, or other employee having a contract for a definite period of time. Sanctioned grounds for such actions, according to the O.C.G.A § 20-2-940, are as follows:

1. Incompetency;
2. Insubordination;
3. Willful neglect of duties;
4. Immorality;
5. Inciting, encouraging, or counseling students to violate any valid state law, municipal ordinance, or policy or rule of the local board of education;
6. To reduce staff due to loss of students or cancellations of programs;
7. Failure to secure and maintain necessary educational training;
8. Any other good and sufficient cause.

According to Fischer, Schimmel, and Kelly (1999), a teacher cannot be terminated in states that have laws listing grounds of dismissal unless school officials can prove that the teacher's actions violated the specific state law. Administrators must be knowledgeable not only in the proper procedures leading to dismissal but also in any requirements for remediation in assisting struggling educators. There should be an ongoing process of documentation by the administrator, reflecting the supervision and evaluation provided to the teacher, as well as meaningful constructive attempts to improve the employee's performance (McGrath, 1995).

The purpose of the study was to identify and analyze Georgia State Board of Education dismissal appeal decisions of tenured teachers for the years 1991 to 2001. The findings summarized in this study can assist Georgia educators with the proper legal procedures and guidelines that must take place when dismissing a tenured teacher. The findings also will provide useful information to educators concerning grounds for dismissal and proper legal due process laws.

Research Questions

This study investigated the following research questions:

- 1) During the time period of 1991 to 2001, how many appeal cases went to the Georgia State Board of Education for review and how many of these decisions were sustained, reversed, or dismissed?
- 2) In the appeal cases that were sustained, reversed, or dismissed by the Georgia State Board of Education, what grounds were used for these decisions?
- 3) What is the current status of the law regarding the dismissal of tenured teachers in Georgia State Board of Education appeals?

Procedures

This study is based on an analysis of Georgia State Board appeal decisions from 1991 to 2001 concerning teacher dismissal. Research for this study focused on analyzing constitutional laws, statutory laws, and case law in order to determine the current laws pertaining to the dismissal of tenured teachers and the appeals process.

The research began with a review of dissertations regarding tenured teacher dismissal and hearing officer decisions in cases of tenured teacher dismissal. This included a detailed reading of “An analysis of the impact of tenure and other selected variables on the dismissal of unsuitable teachers in Georgia” by Parish (1999) and “Due process requirements for teacher dismissal in Georgia” by Prager (1989). These dissertations provided a general framework for the organization of this dissertation.

The author also reviewed Section 20 of the Official Code of Georgia (O.C.G.A.). The primary focus was on teacher termination, due process, and the procedures for formal hearings and appeals to the State Board of Education. This research provided an

outline for local and state appeal procedures in the state of Georgia, as well as grounds for dismissal as described in the Georgia Fair Dismissal Act. In addition to this, a detailed examination of Law in the Schools by Valente (2001), School Law by LaMorte (2002), and Teachers and the Law by Fischer (1999) was conducted. Subsequently, the general laws concerning tenure, appeal procedures, and due process rights of teachers were compiled.

Further relevant research was gathered from pertinent law and educational journals obtained through the use of the “Lexis-Nexis” database at the University of Georgia. Historical literature and other information pertaining to tenured teacher dismissal appeals were also gathered through a thorough search of the University of Georgia library.

Chapter two provides a review of the literature related to the historical events of the establishment of schools, teacher training, and teacher requirements. The review also provides a history of tenure laws, dismissal procedures of tenured teachers, a review of related U.S. Supreme Court cases, local and state hearing procedures, and a detailed review of the Fifth Amendment, the Fourteenth Amendment, and the Georgia Fair Dismissal Act. The review of the literature also provides pertinent information regarding House Bill 1187, currently known as “A Plus Reform Act of 2000.”

Chapter three provides an analysis of the Georgia State Board dismissal appeal decisions of tenured teachers from 1991 to 2001. In analyzing these decisions, the author categorized the cases according to the grounds for dismissal under the Georgia Fair Dismissal Act and discussed them chronologically. The cases were organized according to those with one primary ground for dismissal and those with multiple grounds for

dismissal. In the cases with one primary ground for dismissal, secondary grounds may have been cited but were not the primary reasons for the initial dismissal. This organization was made after careful analysis of the individual cases. Chapter four includes a summary, findings, and conclusions.

Limitations of the Study

The findings of this study are limited to public school teachers in the state of Georgia teaching grades K-12. The study only analyzed dismissal appeals of tenured teachers. This study excluded non-public schools, higher education, and dismissal appeals that did not involve tenured teachers.

Definitions of Terms

This section includes definitions of the terms as they are used in the study.

Appeal: An application to a higher court or board in an attempt to challenge a lower court or board's ruling (LaMorte, 2002).

Appellant: A person who takes an appeal to a higher court or board (LaMorte, 2002).

Cause: Statutory grounds for dismissal, suspension, nonrenewal, or demotion of a public school employee who is professionally certified, as specified by the Georgia Fair Dismissal Act (Prager, 1989).

De Facto: In fact. A state of affairs that does not have the sanctions of laws behind it but must be accepted for all practical purposes. (LaMorte, 2002).

Demotion: A teacher or other school employee who is reassigned from one position in the school system to another having less responsibility, prestige, and salary (O.C.G.A. § 20-2-943a).

Dismissal: The release or discharge of any employee during the contractual period.

Due process of law: The powers of the government are exercised similarly in similar situations in order to protect an individual's rights. This right cannot be denied as provided by the Fifth and Fourteenth Amendments when life, liberty, or property are involved (LaMorte, 2002).

Hearing: A judicial examination of factual or legal issues (LaMorte, 2001).

Local Board of Education: A county or independent board of education, a board of education of an area school system, or any agent authorized to act on behalf of any such board (O.C.G.A. § 20-2-942a).

Nonrenewal: A teacher or other school employee who is discharged at the end of a contract period and does not receive a contract for the ensuing school year.

Nontenured: The status of a professionally certified employee who has not completed the required service requirements to earn procedural rights provided by statute and who works under an annual contract which gives the employee no expectation of continued employment beyond the contract period (Prager, 1989)

School year: A period of at least 180 school days beginning in or about September and ending in or about June (O.C.G.A. § 20-2-942a).

School year contract: A contract for full-time employment between a teacher and a local board of education that covers a full school year (O.C.G.A. § 20-2-942a).

Suspension: To temporarily remove a teacher or other school employee from duty for a designated period of time.

Teacher: A professional school employee certificated by the State Board of Education (O.C.G.A. § 20-2-942a).

Tenured: A professionally certificated public school employee's status who has served the required time in a local school system to earn statutorily provided safeguards; who has the expectations of continued employment beyond the current contract term, and who may not be dismissed, nonrenewed, suspended, or demoted except for cause (Prager, 1989).

Termination: The discharge of any employee, tenured, or nontenured, during the term of a contract (Prager, 1989).

CHAPTER 2

REVIEW OF THE LITERATURE

This chapter outlines a history of education in Georgia and the United States. It also provides a history of teacher tenure in Georgia, an overview of the Georgia Fair Dismissal Act, and requirements for the annual performance evaluation of teachers. Due process requirements are discussed and the procedures for the local board and Georgia State Board of Education are given. The implementation and responsibilities of the Professional Standards Commission and the Code of Ethics are addressed. Finally, related United States Supreme Court cases are analyzed and discussed.

A History of Education in Georgia and the United States

Education in America can be historically traced back to the first English settlement. The early establishments of schools and training of teachers have played an important role in the history of education in the United States. These changes have occurred due to the implementation of modernized school systems, laws, and statutes. Changes regarding teaching requirements, tenure, and due process can be seen in Georgia from the first settlement of Savannah in 1733 to the present day.

Almost 400 years ago, American education began with the first English settlement in Jamestown in 1607. Virginia set aside money for education as early as 1618, but a charter for the Virginia Company was revoked and later stopped these funds (Pulliam & Van Patten, 1995). From 1618 until 1660, Virginia passed laws that required religion to be taught to children. Education was thought of as a private matter and was left to be taught by individual citizens (Good, 1962). Prior to 1622, records indicate that a man named Dr. Copeland collected money to build a school in Virginia from

passengers on one of the ships of the East India Company. A man named Carloff was brought to the colony to be the teacher. At the time of his arrival, conditions were unfavorable for educational movement; therefore, the East India School in Virginia was never established (Dexter, 1904).

In 1642, due to the importance placed on religion and reading the Bible by the New England settlers, Massachusetts developed a law requiring towns to provide education for children. Reading and writing were not always included in the teaching of elementary education. The Massachusetts Law of 1642 and the Connecticut Law of 1650 stated that children must be taught to read and understand the principles of religion and the laws of the Country. In 1661, Evert Pieterse, a schoolmaster in New Amsterdam, was given permission to teach reading, writing, and arithmetic. He charged higher prices for teaching reading and writing (Noble, 1954).

Requirements for certification varied greatly in the early times. In some instances, knowledge of religion was a prerequisite. In other instances, nationality was important and academic proficiency was a factor. In Massachusetts in 1647, a school ordinance required the schoolmaster to be discreet in conversation and well versed in tongues. In 1701, every grammar schoolmaster had to be approved by the minister of the town where he was to be employed, along with the ministers of the two adjacent towns (Dexter, 1904).

The early educational system did not provide for any type of formal training for teachers until the nineteenth century. In earlier colonial days, virtually all of the grammar schoolmasters were college men with knowledge of the academic subjects they taught but

with no special pedagogical training. During this time, the New England colonies had more educated masters and schools than the other colonies (Dexter, 1904).

In 1827, the New York legislature passed an act to promote the education of teachers. This law did not specify how this was to be accomplished so it did not result in teacher training. Later in 1832, the board of regents discussed their plan for training teachers in the academic subjects. There were special appropriations of school funds made annually to support teachers' courses and training. In 1844, the state superintendent called for a ban on these training schools, declaring that they were not fulfilling their obligations to the promoters. At that time, there were nearly 4,000 graduates from the academies (Dexter, 1904).

In Massachusetts, the first public normal school opened in 1839. Normal schools were programs for people that wanted to be teachers (Button & Provenzo, 1989). The academic requirements varied greatly in the different states. The majority of these schools would accept students with common school preparation, which was equivalent to eight years of schooling. In states where rural schools were predominant, the standards were not generally maintained. The minimum requirement for the program was one year of preparation, although two years of preparation was permitted. Students selected their course of study based on the type of school they intended to teach. The positive effects of the normal schools began to become apparent and other states followed the example of Massachusetts. In 1904, every state except Delaware had one or more state normal schools. At that time, there were 535 schools that offered courses for teachers. The student enrollment was 114,353. Georgia's first normal school was established in 1895 (Dexter, 1904).

England influenced Georgia's early educational efforts. The first settlement in Savannah was founded in 1733. The Trustees in England ruled education from 1733 until 1752. Due to the fact that they were 3,000 miles away, the Trustees made decisions to employ and dismiss teachers based upon the complaints of the colonists and teachers. The first schoolmaster in Georgia was Christopher Ortman. He began teaching in 1734, and his primary purpose was to teach English to German settlers (Orr, 1950).

The Old Field Schools were developed in the late 1700's. The purpose of these schools was to teach basic knowledge. The people of the community built the schoolhouse, paid the cost, hired the teacher, and sent their children to the school. The individuals who used the school determined the selection of the teacher. Discussion was held with the person who was applying for the position. Teaching was not a profession that was well thought of in these communities. Men would often go to other neighborhoods to be among strangers if forced to teach at an Old Field School (Orr, 1950).

On December 19, 1831, in Milledgeville, Georgia, a state teachers' organization was formed. It was known as The Teacher's Society and Board of Education of the State of Georgia. This group was founded based upon the desire to resolve the problem of teachers being unable to assist with professional improvement since they were isolated from one another. Carlisle P. Bemen was the first elected president of the organization. Members had to pay an admission fee of one dollar and an annual fee of two dollars (Orr, 1950).

There were nine censors that comprised the board of education of the Society. This group primarily consisted of the same individuals that were members of the state

board of education. In 1831, their address on educational needs focused on the fact that many children born in America were unable to read their native language. The censors wanted to establish a better system of common schools with proper educational facilities and improved educational leadership. The Teachers Society influenced the formation of the first teachers' association named "The Teachers of Georgia" in July 1853 (Orr, 1950).

The common school system was organized in December of 1858. Governor Joseph Brown was a crusader for education in his efforts to establish a school system for Georgia (Coleman, 1991). Public money, local taxes, and a small county tax paid for the school system. The provisions involved distributing money to all white children for education rather than giving money to just those called *poor*. In some counties, an annual appropriation of \$100,000 from the earnings of the Western and Atlantic Railroad was made toward education. In 1860, there were 159,341 school age children with 89,945 of these receiving instruction. This money ensured the continuation of public education and replaced the inadequate *poor* school system (Orr, 1905). The common school movement supported Thomas Jefferson's belief that citizens must be educated in order for the country to have a successful democratic government (Button & Provenzo, 1989).

The common school movement also reflected the attitudes and beliefs of society at that time. The name *teacher* replaced the former name *master*. Along with the name change came changes regarding the responsibilities of the occupation. The teacher was now responsible for teaching and educating the children as well as the organization of the school (Button & Provenzo, 1989).

After the Civil War, the need for a general educational system was getting the attention of educators throughout the state. On August 21, 1867, leading educators across

the state, such as A.A. Lipscomb, H.H. Tucker, G.J. Orr, and J.M. Boonell, planned the organization known as Georgia Teachers' Association. The primary purpose of this group was to develop a comprehensive common school system for Georgia.

In 1868, the constitution provided for a system of general education that would be "forever free to all children of the State." A school board and state commissioner were named to take control. It was not until 1870 that the General Assembly created the state school system (Coleman, 1991).

In 1881, Orr was elected president of the National Educational Association (Orr, 1950). According to Coleman (1991), until Orr's death in 1887, he was the greatest resource of the Georgia public school system and was considered the father of the common school system in Georgia.

In 1885, the National Educational Association (NEA) recommended that civil service principles be applied to the teaching profession. Massachusetts enacted the first teacher tenure law in 1886 (Hamilton, 1956). It was not until years later that Georgia adopted tenure laws for educators.

In the early 1900's, Governor Hoke Smith became a leading advocate and spokesperson for improving public schools. In 1910, Smith and other reformers took important steps toward the improvement of Georgia's public educational system. Laws and constitutional amendments were passed in order to raise teacher certification standards. The State Board of Education was given greater powers, public high schools were established, and there was increased financial support for public schools (Coleman, 1991).

A complete revision of the school law and powers of the State Board of Education took place in 1911. The State School Commissioner, M.L. Brittain, felt that the personnel of the State Board should also include members of the teaching profession. After this revision, the State Board included the Governor, State School Superintendent, and four appointees by the Governor. Three of the four appointees were required to be teachers in rural area schools. The State Board responsibilities included determining the courses to be studied, setting up the rules and regulations of all public schools, and determining textbook selection, which could be changed every 5 years. Each county became a school district and funds were appropriated to each district by the State Board of Education (Orr, 1950).

Revisions from 1911 also affected teacher training which involved a system of certification by the State Board of Education. Teachers could be certified in the following three areas: primary, elementary, and high school. An examination was given to the teacher based on the subject matter he or she would be required to teach. The length of time given on the certificate was dependent on how well the person performed on the test. All applicants were also required to pass the examinations on methods and school management. A certificate issued from the State Department was valid in any county in Georgia (Orr, 1950).

In 1916, the compulsory school attendance law was passed. The law required children from the ages of eight to 14 to attend school for a total of 12 weeks a year. This law brought in about 25,000 children who had never attended school before. Many of these new students were African American (Coleman, 1991).

Georgians witnessed a steady rise in teacher training and preparation over the next 30 years. This was particularly noticed with the number of people attending college. In 1912 and 1919, amendments to the state constitution made high schools part of the public educational system. In 1920, there were 169 accredited high schools. By 1938, this number had increased to 431 (Coleman, 1991).

Eleven states, including Georgia, passed laws in 1913 and 1930 requiring the reading of the Bible in public schools. The compulsory Bible laws required teachers to read aloud several verses every day to students. There were stern penalties imposed for those who did not comply, such as revoking the teacher's certificate or ending financial support from the state. Every state that had the compulsory Bible reading law, when challenged, lost to the state supreme courts until the 1950's (Tyack, James, & Benvot, 1987).

The issue of teaching elementary pupils in any other language than English was addressed through the holding by the United States Supreme Court in *Meyer v. Nebraska* (1923). The teacher was punished for teaching a boy to read German. Nebraska's state law prohibited teaching any foreign language to children who had not yet completed the eighth grade. The Court held that the state law prohibiting the teaching of modern foreign languages to children who are kindergarten through eighth grade was unconstitutional (Zirkel, Richardson, & Goldberg, 1995).

Over the years, the teaching force had changed greatly in Georgia. According to Noble (1954), in 1880, the number of men and women teaching were almost equal. The proportion of women teachers increased over the years until there were eight out of 10 women teaching in 1930.

All previous laws regarding teacher examinations and county licenses were repealed in 1934. The State Board of Education had full authority for granting permits to teachers. In 1937, the State Board of Education changed the requirements for teacher training and issued new certificates. This raised the standards for teachers in the state and made it unlawful for any teacher to be employed without the proper certification in Georgia (Orr, 1950).

In 1937, Governor Rivers worked toward educational reform. With the passage of legislation came the first time the state provided free textbooks for all public school children and guaranteed a school term of seven months. Many people felt the financial setbacks of the depression and feared public schools might close in 1939. Governor Rivers used highway funds to keep the schools open (Orr, 1950). The depression of the 1930's had tremendous financial effects on school finances and on the people who were dependent upon them (Noble, 1954).

History of Teacher Tenure in Georgia

A major effort was exhausted for the attainment of tenure laws and regulations in the 1930's. Teacher tenure was considered civil service extended to teachers. Because of the economic conditions, jobs were limited. Contracts were often not renewed due to arbitrary and irrelevant reasons. In the 1950's and 1960's fewer proposals and laws for tenure legislation were introduced because jobs were more plentiful and teachers were scarce. As of 1967, three-fourths of all states had tenure laws covering school systems that were at least a certain size. These laws were optional with local districts and exempted rural areas (Peterson, Rossmiller, & Volz, 1978).

According to McCarthy and Cambron-McCabe (1992), tenure provides employment for a definite period of time. Tenure contracts are created through state and legislative action and ensure teacher employment will only be terminated for cause. Procedural due process will also be provided (McCarthy & Cambron-McCabe, 1992). Each state is responsible for deciding what positions are covered under tenure. Some states have a separate tenure policy for administrators while other states extend tenure only to teachers. Vested tenure provides for a constitutional property interest entitling the employee to constitutional due process (Valente & Valente, 2001).

In 1937, the Fulton County School System provided tenure through the Civil Service for Teachers Act. The provisions outlined in this Act became effective on July 1, 1937. The law provided civil service benefits to teachers and other employees in all public school systems with a population greater than 200,000. It also established rules and regulations for employment. Tenure provisions stipulated that employees must demonstrate good behavior and efficient service as established by the board of education. At the time of this law, Fulton was the only county school system that met the requirements under these provisions (Georgia laws, 1937).

Teachers, principals, supervisors, and other employees of the county were covered under the tenure law. The probationary period prior to being granted tenure required that the employee be employed for three years. Causes for dismissal outlined under the tenure law included disability, inefficiency, insubordination, and moral turpitude. Employees that were covered under this law, who were demonstrating good behavior and efficient service, could not be dismissed without due process. Due process was clearly outlined. Notice had to be given, charges had to be preferred, and the

employee must be given an opportunity to be heard. Employees could not be discriminated against for exercising any constitutional right (Georgia laws, 1937).

The General Assembly of Georgia enacted tenure provisions in Richmond County in the 1937-1938 school year. Tenure was provided to teachers and principals who had been employed for a period of three years and who had been offered a contract for a fourth consecutive year. Teachers and principals who were currently employed when this Act became effective fell under different requirements. Employees who had been employed for a period of five years or less were employed from one school year to the next. This probationary period was not to exceed three years. The local board of education could use their discretion to make the probationary time less if they chose. Employees who were already employed for a period over five years were required to be re-elected for the next school year. At the time of re-election, employees were covered under the new teacher tenure provisions (Georgia laws, 1938).

Tenure provisions for employment stipulated that employees have good health, maintain professional standards and proficiency, maintain proper conduct that would not discredit the teaching profession, and comply with the rules and regulations that were established by the board of education. The local board reserved the right to judge if any employee had deficiencies in the above areas. If deficiencies were found, the teacher or principal had the right to defend himself or herself before the board of education made a final decision (Georgia laws, 1938).

Professional standing requirements were implemented for every teacher and principal in the school system. Educators were required to meet one of the several requirements. The requirements included earning three or more hours of college credit,

writing a book to be published, publishing a professional article, devising valuable methods of teaching, doing public service work, traveling on an approved plan for educational value, and reading professional literature. The superintendent and the board of education were responsible for approving the outlined provisions. If conditions were met, professional standards would be valid for a period of one to three years (Georgia laws, 1938).

On July 1, 1939, the Civil Service for Teachers Act was implemented in DeKalb County. This Act provided for civil service to qualifying employees in counties with a population of not less than 70,000 or more than 73,000. Employees were covered under this Act as long as they maintained good behavior and efficient service under the rules and regulations that the board of education established. This tenure plan was indistinguishable from the provisions previously stipulated in 1937 for the Fulton County School System (Georgia laws, 1939).

Coverage under the DeKalb tenure plan included teachers, supervisors, principals, and other employees of the school system that were currently employed when the Act became effective. The probationary period prior to entitlement of tenure was three years. Reasons for dismissal included inefficiency, disability, insubordination, and moral turpitude. The provisions also included any personnel or other school systems if those systems merged with a school system currently meeting the requirements. Employees could not be dismissed without due process of notice, charges, and an opportunity to be heard (Georgia laws, 1939).

As a result of the new tenure laws, the courts heard numerous cases. The case of *Long v. Wells* (1938), involved a teacher that had been employed by Fulton County for 13

years and was re-elected as a teacher for the next fiscal year. Long received her contract which contained a number of board regulations. She accepted the contract but said that the provisions in the regulations did not follow the Fulton County tenure act; therefore, the regulations were not binding for her. The board did not acknowledge Long's acceptance and hired another teacher. The court held that the school board could not refuse employment to Ms. Long because she stated that the contract was of "doubtful validity" (National Education Association of the United States [NEAUS], 1947).

The case of *McKown v. Wells* (1939), involved a teacher in the Fulton County School System under a contract covering the 1936-1937 school year, which ended before the Civil Service Act became effective on July 1, 1937. Although she had been employed for three years, she was notified that she would not be re-employed. The court held that she was not covered under the Civil Service Act because she was not employed when the Act became effective (NEAUS, 1947).

County Board of Education of Richmond County v. Young (1939), involved a person who had been employed as a principal for more than five years and was covered under the Civil Service Act of 1937. For the next school year, she was transferred to another school as a teacher with a salary reduction. The court held that a school board may not transfer a person from a principalship to a teaching position with a substantial reduction in salary. The school board may transfer the employees according to what is best for the school system, but if there is a reduction in salary, this cannot be done without cause and a hearing (NEAUS, 1947).

The case of *King v. Wells* (1940), disputed substantive and procedural due process rights. Wells, the Superintendent, informed King that he was bringing charges against

her before the county board for inefficiency as a principal. After the hearing, King was dismissed. The plaintiff appealed on the grounds that her removal was illegal and that the county board had not followed the mandate of the teacher tenure act by providing written rules and regulations regarding dismissal procedures. The court held that although she was not given written rules and regulations as to procedure, it did not invalidate the fact of notice and opportunity to be heard. Because the board complied with substantive and procedural due process rights under the tenure act, the appeal was sustained (NEAUS, 1947).

The Atlanta City School System implemented tenure in 1968 with “The Public School Teacher Tenure Act for Cities over 300,000 Population.” After three years of satisfactory service, all certified teachers and other certified professional personnel were given tenure status. Provisions in the Act stipulated that in the event of creation, merger, or consolidation of the school system, tenured teachers would be given automatic tenure status. It also required employees that were changing their professional certificated position to begin at the probationary status of three years in the new position (Georgia laws, 1968).

The General Assembly of Georgia approved House Bill 368 on March 28, 1974. Known as the “Minimum Foundation Program of Education Act,” the bill provided procedures and requirements for termination or suspension of teachers, principals, or other employees covered under tenure status. The Act also laid the groundwork for due process for employees by providing them with notice, testimony, hearings, appeals, nonrenewals, and organizations of powers and duties (Georgia laws, 1974). Later in 1975, the “Adequate Program for Education in Georgia Act” was created causing the

entire “Minimum Foundations Program of Education Act” to be repealed (Georgia laws, 1975). Both houses of the General Assembly approved the new Act, and it became known as the Georgia Fair Dismissal Act of 1975. It became effective on March 31, 1975 (Prager, 1989).

The Georgia Fair Dismissal Act

The Georgia Fair Dismissal Act was implemented in 1975 to provide educators throughout the state with a system of tenure. The Act did not specifically use the word tenure but did explicitly describe the right to certain procedural safeguards. For the purposes of this study, those educators entitled under the Georgia Fair Dismissal Act to procedural safeguards will be referred to as tenured. Those educators who have not met the requirements will be referred to as nontenured.

Sections 20-2-940 and 20-2-942 of the Official Code of Georgia Annotated (O.C.G.A.) describe the provisions of the Georgia Fair Dismissal Act for meeting the requirements of tenure, the grounds for dismissal, and suspension of professionally certificated employees. In order for employees to meet the requirements for procedural safeguards, referred to as tenure, the following conditions must be met.

1. Any teacher who accepts a school year contract for the fourth consecutive school year from the same local board of education. A teacher is defined as any professional employee that is certificated by the Professional Standards Commission excluding administrators. A complete school year is considered to be 180 days from September to June. Teachers are given a minimum of 10 days for a review period of the contract. The contract must be signed and returned within this 10-day time frame.

2. Any teacher is deemed to have accepted a fourth year contract, if while serving in the third consecutive year, the employee does not receive notice by the local board of education of nonrenewal before April 15 for the ensuing school year. The employee also deems to accept the contract, while serving in the third consecutive year, if notice has not been given to the local board of education by May 1 to not accept the fourth consecutive school year contract.
3. A teacher that has met the requirements in one or two above who is subsequently employed by another local school board and accepts a second consecutive contract for the ensuing school year from the local school board at which the teacher is subsequently employed. A teacher is deemed to have accepted a second consecutive school year contract if, while serving under the first school year contract, the local board does not serve notice to the teacher before April 15 that the local board does not intend to renew the contract for the ensuing school year, and the teacher does not serve notice to the local school board in writing by May 1 of the first year that he or she does not accept the second school year contract.

Professional certificated personnel employed by a county or independent local school system that becomes consolidated with or merged into another county or independent local school system shall continue their employment in the newly created, or surviving, school system. Said professional certificated personnel shall retain and carry over all the rights already accrued and earned in the professional certificated personnel's prior school system. Any reductions in staff due to loss of students or cancellation of programs in the newly created, or

surviving, school system necessitated by the consolidation or merger shall be made first in preference of retaining professional certificated personnel of the basis of uniformly applied criteria set forth in local school board policies of the newly created, or surviving, school system.

Teachers who have satisfied the three employment requirements outlined above are protected under the procedural safeguards provided in the Georgia Fair Dismissal Act. A teacher may not be terminated during a contract period, nonrenewed at the end of a contract period, suspended, or demoted without cause. Nontenured teachers are covered under the specifications of the Georgia Fair Dismissal Act during their contractual period only.

Governor Roy Barnes signed into law House Bill 1187 on April 25, 2000. This bill became known as the “A Plus Reform Act of 2000.” Tenure provisions were revised in Section 20-2-942d of the Georgia Code. Any person who became a teacher on or after July 1, 2000 did not acquire any rights regarding continued employment. Any teacher who had previously acquired any rights to continued employment under this section prior to July 1, 2000 retained all rights.

Administrative tenure is described in Section 20-2-942 of the Georgia Code. Any person who first became an administrator on or after April 7, 1995, would not be entitled to any tenure rights as described in the section with respect to any position as a school administrator. Any school administrator previously protected with procedural safeguards prior to April 7, 1995, retained all rights outlined in the section. Tenure is provided to any administrator who held an administrative position prior to the above date. An administrator who has been involuntarily transferred or assigned to any other

administrative position shall be deemed to be a teacher for the purpose of retaining continuous employment in said administrative position.

Any teacher who has acquired tenure prior to April 7, 1995, and becomes an administrator without any break in employment with the local board for which the employee has been a teacher shall retain rights to continued employment. The rights specified under this provision are in the position as a teacher.

The contract from the local board of education with the school administrator is not to exceed a term of three years. During the contractual period, the school administrator may not be demoted, suspended, or terminated without due process that is specified under due process requirements. The administrator shall have no right to renewal of the contract at the end of the term. The rights provided under this contract shall be in addition to any rights that the employee has previously retained.

As a part of personnel practices, the local board of education may adopt or modify a tenure policy. This policy may include the same policies and procedures for the nonrenewal of contracts for school administrators that exists for nonrenewal contracts for teachers as described in the Georgia Fair Dismissal Act.

There are eight grounds under the Georgia Fair Dismissal Act for termination or suspension of a teacher, principal, or other employee having a contract for a definite period of time. Sanctioned grounds for such actions, according to the O.C.G.A. § 20-2-940, are as follows:

1. Incompetency;
2. Insubordination;
3. Willful neglect of duties;

4. Immorality;
5. Inciting, encouraging, or counseling students to violate any valid state law, municipal ordinance, or policy or rule of the local board of education;
6. To reduce staff due to loss of students or cancellation of programs;
7. Failure to secure and maintain necessary educational training;
8. Any other good and sufficient cause.

Annual Performance Evaluation

The annual performance evaluation of certified professional personnel is outlined in the Official Code of Georgia § 20-2-210. This section describes the evaluation process for all school personnel. All personnel employed by local units of administration shall have their performance evaluated annually by appropriately trained evaluators. The performance evaluation records must be part of the personnel file and are confidential. School superintendents will be evaluated by their local boards of education. Personnel with deficiencies or other needs shall have professional development plans designed to decrease these deficiencies that have been identified during the evaluation process. Progress that is relative to completing the annual professional development plan will be assessed during the annual evaluation process. Each local unit of administration may use the state board's model annual evaluation instrument for each classification of professional personnel certified by the Professional Standards Commission.

Annual teacher evaluations take into consideration a number of factors. It is imperative that these requirements be met. The role of the teacher is considered in meeting the school's student achievement goals. This includes the academic gains of students assigned to the teacher. Teacher observations by the principal and assistant

principal during the delivery of instruction and at other times are also considered.

Participation in professional development opportunities and applying concepts learned to the classroom and school activities are measured. Teachers are also evaluated on communication and interpersonal skills as they relate to interaction with students, parents, colleagues, administrators, and other school personnel. Timelines and attendance for assigned responsibilities are appraised. In addition, adherence to school and local school system procedures and rules are evaluated along with personal conduct while performing school duties.

Student achievement must be taken into consideration when determining the academic gains of students assigned to a teacher. Evaluators should make every effort to have available and to utilize the results of a wide range of student achievement assessments. These assessments should include assessments utilized by the teacher and assessments by the local board. In some instances, a determination of the academic gains of students is dependent upon student assessments that have not yet been administered or results that are not yet available at the time of the annual evaluation. In these instances, the annual evaluation shall be based on information available at the time. As results of student assessments become available, an addendum to the teacher's cumulative annual evaluation shall be completed which can be used in a teacher's subsequent annual evaluation.

The local school system superintendent should identify an appropriately trained evaluator for the purposes of completing an annual evaluation. The evaluator is required to complete the annual evaluation for each certified personnel prior to April 1 of each year. The superintendent of each local school system is responsible for ensuring

compliance with this code; however, the principal is responsible for making certain that these deadlines have been completed and all evaluations have been submitted at the school level by the appropriate date.

The local school system may require each principal and assistant principal of a school to be evaluated annually by the teachers in the school. These evaluations shall be confidential, solicited, and recorded anonymously. The evaluations are made available only to the local school superintendent and the local board of education. These evaluations are in addition to the ones required by a trained evaluator.

Teachers who remove two or more students from their class enrollment in any school year under subsection (b) of Code Section 20-2-738, and whose students are subsequently returned to the classroom by a placement review committee, may be required to complete professional development. Professional development will focus to improve classroom management skills, academic and behavioral skills of student needs, or other instructional skills as identified by the principal of the school in consultation with the teacher.

Due Process Requirements

Due process of law requires that officials follow fair procedures and that governmental action not be arbitrary, unreasonable, or discriminatory before any action is carried out depriving anyone of *life, liberty, or property*. In addition to the rights given in state law, teachers are given rights under the United States Constitution. School boards must show cause as to why teachers are not capable or fit to teach before tenured teachers can be dismissed (Fischer et al., 1999).

There are two types of due process, substantive and procedural. Substantive due process rights refers to the fact that the state does not have the power to deprive any person of life, liberty, or property by unreasonableness or vague purpose. Decisions that are arbitrary, capricious, and without merit are a violation of substantive due process. In order to violate this process, the action must be outrageous and shocking. The United States Supreme Court has determined that the word *liberty* has a substantive aspect that entitles each person a protected interest in acquiring and conveying knowledge. In the *Meyer v. Nebraska* (1923) case previously discussed, the Court defined the breadth of liberty in substantive due process. Decisions as to whether or not something is arbitrary and capricious are not always clear because of the difficulty in determining these factors (Alexander & Alexander, 1995).

Fischer et al. (1999) stated that:

Courts tend to apply a three-step test to determine whether a law or policy is arbitrary: (1) They ask whether there is a legitimate social goal or objective to be attained by the law or policy, (2) they seek a rational connection between the objective and the means created to achieve it, and (3) they look for alternative and less restrictive way of achieving the desired goal. (p. 248)

It is imperative that guidelines are followed at all times due to the statutes and regulations that have been implemented for educators during the hearings and appeals proceedings.

Georgia Code § 20-2-940 describes the steps that must be followed prior to terminating or suspending a teacher. Due process rights are afforded to tenured teachers

at all times and cover nontenured teachers during the contractual period. Notification is the first step that must be taken. The written notice of charges shall include:

- (1) The cause or causes for the discharge, suspension, or demotion in sufficient detail to enable the teacher to fairly show any error that may exist;
- (2) The names of the known witnesses and a concise summary of the evidence to be used against the teacher;
- (3) The time and place where the hearing will be held;
- (4) That the charged teacher or other person, upon request, shall be furnished with compulsory process or subpoena legally requiring the attendance of witnesses and the production of documents and other papers as provided by law.

Suspension notices shall be served either personally or by certified mail and must be served at least three days prior to the hearing date. Termination notices must be served by certified mail at least ten days before the date of the hearing. Legal counsel may represent any teacher against whom charges have been brought.

Local Board of Education Hearing Procedures

The hearing before the local board of education is an important part of due process. It gives the aggrieved party an opportunity to be heard by responding to the charges that have been brought forward. It also provides an opportunity to determine whether or not there are sufficient facts and evidence to support the charges against the aggrieved party. The United States Supreme Court's decision in *Cleveland Board of Education v. Loudermill* (1985), held that there must be a hearing prior to being terminated because a tenured employee has a property right to continued employment (Zirkel et al., 1995).

The Official Code of Georgia § 20-2-940 describes the necessary steps for a formal hearing to take place. Due process requires that the local board of education or an impartial tribunal of not less than three or more than five people shall conduct a hearing. The tribunal shall possess academic expertise to properly conduct the hearing.

The local board shall require that the testimony and other evidence be transcribed by a court reporter or recorded by other appropriate means. If a tribunal hears the case, the local board will cover all reporting expenses. There must be an original transcript of the hearing and two copies to be filed in the office of the superintendent. In the event the local board hears the case, the transcript must be typed. If the appeal is taken to the State Board of Education, the appellant is responsible for the transcript fee.

The chairman or presiding officer shall decide all questions relating to evidence and other legal matters. Either party may appeal the decision to the entire board or hearing tribunal. Both parties, by agreement, may stipulate that some disinterested member of the State Bar of Georgia shall answer any questions that may arise concerning legal matters. During this process, the burden of proof is on the local board of education and they will have the right to open and to conclude.

The local board of education shall render its decision at the hearing or within five days thereafter. If a tribunal hears the case, a transcript of the case is provided to the local board within five days of the hearing and they will have 10 days to act on the tribunal's recommendation. A transcript must be provided to the local board since they make the final decision. The local board of education is also required to notify the parties of their right to appeal to the State Board of Education at this time.

Georgia Code Section 20-2-940 outlines suspension requirements followed by local boards of education. The superintendent has the power to relieve any person from duty temporarily for cause specified in the law as grounds for dismissal or suspension. Suspension shall only be appropriate in such cases pending a hearing where the charges of such seriousness may exist which indicate that the employee could not be permitted to continue to perform the duties without possibility of disruption to the school, its mission, pupils, or personnel. The superintendent will notify the aggrieved party in writing with the appropriate grounds and proper procedures as previously stipulated by the Georgia Fair Dismissal Act. The suspension may not exceed 10 working days and a hearing must be held during this period. A hearing must be held within 10 days from the time of the suspension and notice must be given at least three days prior to the hearing. The aggrieved party will receive the usual salary during this process.

Section 20-2-944 of the Georgia Code specifies the local school superintendent's authority to write a letter of reprimand to any employee for any valid reason. A copy of the letter will be placed in the employee's personnel file. The employee has the right to appeal the decision of the superintendent to the local board of education. The local board will render a decision to affirm or reverse the superintendent. If the board reverses the superintendent's decision, the letter of reprimand is removed from the permanent personnel file.

Georgia State Board of Education's Hearing Procedures

The Official Code of Georgia Annotated outlines procedures for appeals before the Georgia State Board of Education in section 20-2-1160. There are several procedures that must take place when filing an appeal to the State Board of Education. After the

hearing before the local board of education and the procedures previously outlined, any aggrieved party may appeal to the State Board. The aggrieved party may appeal by filing a written request for appeal with the local school superintendent. This request must state the question in dispute, the decision made by the local board of education, and a concise statement explaining the reasons why the decision is being appealed. It is required that the appeal be addressed to and filed with the local school superintendent within 30 days of the decision of the local board of education. The aggrieved party must also provide a transcript of the proceedings to be filed. The person making the appeal shall be responsible for the costs of the transcript unless they are unable to pay due to indigence. The educator must provide an affidavit to the local school superintendent as to this effect.

After the local school superintendent has received the request for the appeal, it is the duty of the superintendent to transmit all information to the State School Superintendent. A copy of the appeal request, along with the transcript of evidence and proceedings, must be provided to the State School Superintendent. The local school superintendent must also provide the written decisions of the local board and any other information in the file pertaining to the appeal. The local school superintendent has 10 days after receiving the request for the appeal to provide all of the necessary documents to the State School Superintendent. If all of the necessary steps have been followed and the appeal is in proper form, the State School Superintendent will inform the parties that the appeal has been docketed, what information is required, and what time lines will be followed.

The State Board of Education is required to notify the parties in writing of its decision within 25 days after the hearing. They shall also notify the aggrieved parties of

their right to appeal the decision to the superior court of the county in which the local school district is located. It is the responsibility of the State Board of Education to clearly describe the procedures and requirements for this appeal. This appeal must be filed in writing within 30 days after the decision of the State Board. Within this 30-day period, it is the duty of the State School Superintendent to provide a copy of the transcripts from the local board's decision and the decision of the State Board of Education.

Professional Standards Commission

In 1858, Georgia developed certification procedures for teachers in the state. This was a cooperative effort among the State Department of Education, teacher preparation institutions, and the state professional teachers' associations. The County Board of Examiners issued certificates of qualification to teachers in schools that received funds from the State. The Georgia State School Commissioner authorized the issuance of a permanent state license in 1887; however, the State Division of Certification was not established until 1924 (Professional Standards Commission, 2001).

In 1946, all teachers were required to have a state teacher's certificate. The dual system of state certification and county certification was discontinued at that time. Subsequently, changes have included increases in the requirements for initial certification, the addition of new fields of certification, the development and continuing assessment of educators, alternative preparation, and trends toward national certification. Throughout these changes, the Division of Certification, teacher preparation institutions, and the educators of Georgia have worked collaboratively (PSC, 2001).

A legislative mandate created the Professional Standards Commission (PSC) in July of 1991. The Commission acts as a separate government agency, which is not connected with the Georgia Department of Education. The primary responsibility of the PSC is to establish a certification and licensure process that is understandable, streamlined, and flexible.

Currently the PSC serves several functions. These include simplifying the process of certification of personnel in Georgia, attracting the highest number of qualified people to become educators in the State, promoting hiring of qualified educators from other states, and improving the level of preparation of educators (PSC, 2001).

Certification

The Professional Standards Commission (PSC) is the governing agency for the state of Georgia for implementing the certification/licensure process. The Professional Standards Commission Rule 505-2-.08 requires that applicants for certification in Georgia satisfy certain special Georgia requirements. The requirements for certification applies to all individuals except those holding certificates in fields with valid life status unless their certification status changes.

The PSC requires an applicant to pass content knowledge assessments appropriate to their field of certification and other assessments as required by the Professional Standards Commission. An applicant may be exempt from passing the PSC content assessment if they hold or have held a professional certificate in another state and have passed the appropriate content assessment(s) required in that state. They are also exempted if they hold a valid certificate from the National Board for Professional Teaching Standards (NBPTS).

All applicants for certification must comply with the ethical standards of the profession and must verify recent study or experience within five years preceding the date of application for certification in Georgia. Any applicant in a teaching field, the leadership field of Educational Leadership, and/or the fields of Media Specialist or School Counseling must complete course work regarding the identification and education of children with special needs.

Educators in the state of Georgia must hold a valid certificate in order to be employed as a teacher. When the certificate expires, it must be renewed through the Professional Standards Commission. The Professional Standards Commission Rule 505-2.13 requires that applicants in Georgia seeking clear renewable certificates must renew by earning 10 quarter hours of acceptable resident college credit or credit specifically approved from Georgia staff development for certification renewal. The renewal credit for valid certificates must be completed within the five-year period preceding the expiration of the certificate. When renewing a certificate that has expired for five years or less, the credit must be completed within the five-year period preceding the date of application.

Two new requirements were implemented for certification and became effective July 1, 2001. They stipulate that any person certified in any field must demonstrate proficiency on a PSC-approved test of computer skill competency or complete a PSC-approved training/course equivalent. Applicants holding NBPTS valid certification will satisfy this requirement. This requirement must be met by all personnel by June 30, 2006. According to the O.C.G.A. § 20-2-21, any educator who applies for renewal of certification is required to have a criminal record check.

Georgia Code of Ethics

The Code of Ethics for educators defines the professional behavior of educators in Georgia and serves as a guide to ethical conduct. The Professional Standards Commission adopted the Code of Ethics on July 1, 1999. The code protects the health, safety, and general welfare of students and educators, ensures the citizens of Georgia a degree of accountability within the education profession, and defines unethical conduct.

The Code of Ethics is divided into three main parts. They include Canons, Ethical Considerations, and Standards. The Canons are the aspirations for the profession. The Ethical Considerations are not binding but serve as a guide in interpreting the Standards. The Standards are binding for educators and serve to show what is required for employment and what is prohibited. There are 10 standards in the Code of Ethics. They include criminal acts, abuse of students, alcohol and drugs, misrepresentation or falsification, public funds and property, improper remunerative conduct, confidential information, abandonment of contract, failure to make a required report, and professional conduct.

The first standard states that an educator is not to be involved in criminal acts and should abide by federal, state, and local laws. An educator may not be convicted of a felony or misdemeanor excluding minor traffic violations.

The second standard refers to abuse of students. An educator should always maintain a professional relationship with all students, both in and outside of the classroom. There should never be any improper conduct regarding physical, emotional, or sexual abuse.

Alcohol or drug use is the third standard. An educator should always refrain from the abuse of alcohol or drugs during the course of professional practice. This includes using any drug, legal or illegal, while on school premises or involving students at school functions.

Misrepresentation or falsification is the fourth standard. An educator should maintain honesty and integrity in the course of the professional practice. This includes refraining from falsifying records, professional qualifications, certification, and employment history. Any misleading information could lead to dismissal.

The fifth standard concerns the use of public funds and property. An educator entrusted with public funds and property should maintain a high level of honesty, accuracy, and responsibility. This also includes the use of facilities.

Improper remunerative conduct is the sixth standard. An educator may not receive monetary supplements for personal use. This also includes tutoring a child outside of school that is currently in your class.

Confidentiality is the seventh standard. An educator should maintain the confidentiality of all students and their records. This includes academic, health and medical information, family status and testing results.

The eighth standard is abandonment of contract. An educator should fulfill all of the terms and obligations of the contract with the local board of education. This includes abandoning the contract for professional services without prior release from the contract and willfully refusing to perform the services by a contract.

The ninth standard is failure to make a required report. This can be covered in many areas. Any suspicions of child abuse must be reported. It is also required that educators report any other educator that violates the Code of Ethics.

The tenth and final standard is professional conduct. Educators are expected to maintain the professional standards at all times. There should be no conduct that will impair an educator from fulfilling the obligations and duties of the profession.

The Code of Ethics interacts with the Georgia Fair Dismissal Law in that they serve as guidelines and standards that can be used for grounds of dismissal from a position. The standards are binding for educators and can be used as just cause for dismissal of educators if they are violated. It is imperative for educators to be familiar with the grounds of dismissal as well as the Code of Ethics that all educators are required to abide.

Related United States Supreme Court Cases

Many teachers who disagree with the treatment of school authorities often employ the courts to settle grievances. Personnel practices have been challenged as being discriminatory, unfair, or a violation of statutory or constitutional provisions. Public school administrators must be more responsible in treating teachers in a more legally defensible method. Supervising and evaluating teachers must be done in regard to the state statutory provisions and the constitutional protections that have been established (LaMorte, 2002).

The Constitution of the United States clearly states in the Fifth and Fourteenth Amendments that no State shall deprive any person of life, liberty, or property without due process of law. Constitutional provisions are required only when the person has a

constitutionally recognized property or liberty interest in the matter (Valente & Valente, 2001). To have a property interest, a person must have a reasonable expectation that the employment will continue. Tenure qualifies as a reasonable expectation that employment will continue because of a continuous contract. The courts have held that this is a sufficient property right that is protected under the due process clause (Fischer et al., 1999). Liberty interests are violated when the teacher's professional reputation or opportunity to pursue the occupation has occurred. The actions of the school must not only affect a constitutional liberty but must also sufficiently affect the individual. This largely depends on specific circumstances, including the nature, disclosure, and particular conduct that occurred (Valente & Valente, 2001).

Perry v. Sindermann (1972), involved a teacher, Robert Sindermann, who had been employed with the state college system for a period of 10 years under a series of one-year contracts. During the 1968-1969 school year, Sindermann had become involved in public disagreements with the Board of Regents. In May 1969, Sindermann's contract came to an end and he was not offered a new contract for the subsequent school year. He was not given any stated reasons as to the nonrenewal of his contract and was not given a hearing. Sindermann challenged the regents' termination of his employment, claiming that they failed to provide him with a hearing, which violated the Fourteenth Amendment's procedural due process clause. He relied on *de facto* tenure based on the language of the college's official faculty guidelines. The guidelines stated that a teacher who had been employed in the system for seven years would be tenured and could only be dismissed for cause. The United States Supreme Court held that a teacher's public criticism of superiors did not constitute basis for termination of employment regardless of

tenure status. The Court also held that there was an objective expectation of re-employment provided through the college's official guidelines; therefore, he was entitled to procedural safeguards before termination of employment (Zirkel et al., 1995).

The *Board of Regents v. Roth* (1972), case involved a teacher, Roth, who was employed by a state university for a fixed term of one year. At the end of the academic year, he was notified that he would not be rehired for the ensuing school year. Roth's contract, state law, and the university regulations did not require that reasons for dismissal or a hearing be given to a nontenured teacher for nonrenewal at the end of the academic year. Roth challenged the state university's action for violating his constitutional rights of being dismissed without notice or a hearing. The Court held that the state or locality may choose to not renew a teacher's contract that is nontenured without notice or a hearing if he has not been deprived of liberty or property (Zirkel et al., 1995).

Regardless of state law procedures, the United States Supreme Court has ruled that teachers are entitled to notice and a hearing if the dismissal deprives them of liberty or property interests under the due process clause of the Fourteenth Amendment. Applying the reasoning in *Roth*, most teachers that have not acquired tenure status in a system that has formal provisions for tenure will rarely be able to establish a property interest. The *Sindermann* case was able to establish a property interest because of the *de facto* tenure system that the state university created which entitled him to due process procedures before dismissal. In both *Roth* and *Sindermann* the Court did not give a description of the type of notice and hearing that must be given when a teacher's due

process rights have been violated. The Court did say in *Sindermann* that the teacher must be given an opportunity to prove that his claim is legitimate (Fischer et al., 1999).

Freedom of expression is also one of concern for tenured teachers as well as nontenured teachers. Public school teachers have received considerable court attention regarding the rights of freedom of expression. Prior to the attention of the respective court cases, several “historic forces” held the view that public employees, including teachers, had limited rights regarding freedom of expression (LaMorte, 2002).

The case of *Pickering v. Board of Education of Township High School District 205* (1968), challenged the right to freedom of public expression. Marvin Pickering, a tenured teacher, was dismissed from his teaching position for sending a letter to the local newspaper concerning a recently proposed tax increase. This letter was critical of the way the board of education and the superintendent had previously handled past revenues that had been raised for schools. After a full hearing, the Board determined to dismiss the appellant for publishing a letter that was detrimental to the operation of the school. The Court held that a teacher’s right to speak on issues of public importance does not constitute a basis for dismissal (LaMorte, 2002).

In *Mount Healthy City School District v. Doyle* (1977), a nontenured teacher phoned in to a radio station the contents of the principal’s memorandum concerning teacher dress code. The radio station aired the contents of the memo as news items. The appellant had previously had several altercations with other teachers, employees, and students, including a situation where Mr. Doyle had made obscene gestures to female students. The teacher was dismissed on the basis of lack of professionalism, obscene gestures, and the radio incidents. The Court held that the employee must show that the

memo was a substantial and motivating factor in the board's actions to terminate. The board must also show that the teacher disrupted the orderly operation of the school. Mr. Doyle was reinstated with pay (Zirkel et al., 1999).

It is apparent that knowledge regarding laws and due process procedures with respect to the dismissal of tenured teachers is necessary for all educators. This is clearly evident in reviewing the Georgia State Board of Education's dismissal appeal decisions that are analyzed in the following chapter.

CHAPTER 3

GEORGIA STATE BOARD OF EDUCATION DISMISSAL APPEAL DECISIONS

Introduction

This chapter provides an analysis of the Georgia State Board of Education dismissal appeal decisions of tenured teachers from 1991 to 2001 and provides an overview of proper dismissal procedures. In analyzing these decisions, the cases were categorized according to the grounds for dismissal under the Georgia Fair Dismissal Act and were discussed chronologically. The cases were organized according to those with one primary ground for dismissal and those with multiple grounds of dismissal. In cases with one primary ground for dismissal, secondary grounds may be cited but were not the primary reasons for the initial dismissal.

Section 20-2-940 of the Official Code of Georgia Annotated specifically outlines the grounds for dismissal for educators. This section delineates the dismissal procedures in Georgia, reasons for dismissal, notice of charges, hearing decisions, and appeal procedures. Educators who disagree with the hearing decisions of the local boards of education may appeal to the Georgia State Board of Education. Under the O.C.G.A. § 20-2-1160, the procedures for formal hearings and appeals to the State Board of Education are outlined for any aggrieved party. All cases that are heard before the State Board of Education are confined to the record of the original hearing before the local board of education. Chapter three examines 72 dismissal cases that were presented to the State Board of Education from 1991 to 2001. In each of these cases, the Appellant believed the local board of education's decision should be challenged. Of the 72 cases,

56 cases were sustained, 12 were dismissed and four were reversed by the Georgia State Board of Education.

In analyzing the appeal decisions to the Georgia Board of Education, the author categorized the cases according to the grounds for dismissal under the Georgia Fair Dismissal Act. The cases were organized according to those with one primary ground for dismissal and those with multiple grounds for dismissal. In the cases with one primary ground for dismissal, secondary grounds may have been cited but were not principal reasons for the initial dismissal. This organization was made after careful analysis of the individual cases.

Summary of the Dismissal Process in Georgia

In order to properly analyze the dismissal appeals, it is important to understand due process, the local board of education's hearing procedures, and the State Board of Education's hearing procedures.

Due Process

There are two types of due process. The first is substantive due process and the latter is procedural due process. Substantive due process rights means that the state does not have the power to deprive any person of life, liberty, or property by unreasonableness or vague purpose. Decisions that are arbitrary, capricious, and without merit are a violation of substantive due process. Procedural due process requires that the process be fair, requiring that adequate notice be given and a hearing be held. It is imperative that the guidelines are followed at all times due to the statutes and regulations that have been implemented for educators during the hearings and appeals proceedings.

Local Board of Education's Hearing Procedures

The hearing before the local board of education is an important part of due process. It gives the aggrieved party an opportunity to respond to the charges that have been brought forward. It also provides an opportunity to determine whether there are sufficient facts and evidence to support the charges against the aggrieved party.

The Official Code of Georgia § 20-2-940 describes the necessary steps for a formal hearing to take place. Due process requires that the local board of education or an impartial tribunal of not less than three or more than five people shall conduct a hearing. If a tribunal is utilized, the members shall possess academic expertise to properly conduct the hearing.

The local board shall require that the testimony and other evidence be transcribed by a court reporter or recorded by other appropriate means. If a tribunal hears the case, the local board will cover all reporting expenses. There must be an original transcript of the hearing and two copies filed in the office of the superintendent. In the event that the local board hears the case, the transcript must be typed. If the appeal is taken to the State Board of Education, the appellant is responsible for the transcript fee.

The chairman or presiding officer shall decide all questions relating to evidence and other legal matters. Either party may appeal the decision to the entire board or hearing tribunal. Both parties, by agreement, may stipulate that some disinterested member of the State Bar of Georgia shall answer any questions that may arise concerning legal matters. During this process, the burden of proof is on the local board of education and they will have the right to open and to conclude.

The local board of education shall render its decision at the hearing or within five days thereafter. If a tribunal hears the case, a transcript of the case is provided to the local board within five days of the hearing and they will have 10 days to act on the tribunal's recommendation. A transcript must be provided to the local board since they will make the final decision. The local board of education is also required to notify the parties of their right to appeal to the State Board of Education at this time.

Georgia State Board of Education's Hearing Procedures

The Official Code of Georgia Annotated outlines procedures for appeals before the Georgia State Board of Education in § 20-2-1160. There are several procedures that must take place when filing an appeal to the State Board of Education. After the hearing before the local board of education and the procedures previously outlined, any aggrieved party may appeal to the State Board. The aggrieved party may appeal by filing a written request for appeal with the local school superintendent. This request must state the question in dispute, the decision made by the local board of education, and a concise statement explaining the reasons why the decision is being appealed. It is required that the appeal be addressed to and filed with the local school superintendent within 30 days of the decision of the local board of education. The aggrieved party must also provide a transcript of the proceedings to be filed. The person making the appeal shall be responsible for the cost of the transcript unless they are unable to pay because of indigence. The educator must provide an affidavit to the local school superintendent as to this effect.

After the local school superintendent has received the request for the appeal, it is the duty of the superintendent to transmit all information to the State School

Superintendent. A copy of the appeal request, together with the transcript of evidence and proceedings, must be provided for the State School Superintendent. The local school superintendent must also provide the written decisions of the local board and any other information in the file pertaining to the appeal. The local school superintendent has 10 days after receiving the request for the appeal to provide all of the necessary documents to the State School Superintendent. If all of the necessary steps have been followed and the appeal is in proper form, the State School Superintendent will inform the parties that the appeal has been docketed, what information is required, and what time lines will be followed.

The State Board of Education is required to notify the parties in writing of its decision within 25 days after the hearing. They shall also notify the aggrieved parties of their right to appeal the decision to the superior court of the county that the local school district is located. It is the responsibility of the State Board of Education to clearly describe the procedures and requirements for this appeal. This appeal must be filed in writing within 30 days after the decision of the State Board. Within this 30-day period, it is the duty of the State School Superintendent to provide a copy of the transcript from the local board's decision and the decision of the State Board of Education.

Table 1

Grounds Cited in the Appeals to the Ga. State Board of Education (1991 – 2001)

Grounds	# of cases citing as primary ground	# of cases Sustained	# of cases Reversed	# of cases Dismissed	% of total cases
Incompetency	12	10	1	1	16.6
Insubordination	16	11	0	5	22.2
Willful neglect of duties	8	8	0	0	11.1
Immorality	11	9	1	1	15.3
Inciting... students	0	0	0	0	0
Reduction in force	4	4	0	0	5.6
Failure to secure necessary training	1	1	0	0	1.4
Other good and sufficient causes	9	4	1	4	12.5
	# of cases citing multiple grounds				
Multiple grounds	11	9	1	1	15.3
TOTAL	72	56	4	12	100.0

Table 2

Appeal Decisions to the Georgia State Board of Education (1991 – 2001)

Year	Total # of cases each year	# of cases Sustained	# of cases Reversed	# of cases Dismissed	% of total cases
1991	5	4	1	0	6.9
1992	7	5	0	2	9.7
1993	4	4	0	0	5.6
1994	4	2	1	1	5.6
1995	4	1	0	3	5.6
1996	13	12	0	1	18.1
1997	12	11	1	0	16.7
1998	7	6	0	1	9.7
1999	6	5	0	1	8.3
2000	2	2	0	0	2.7
2001	8	4	1	3	11.1
Total	72	56	4	12	100

Cases Involving Incompetence

Incompetence is one of the eight reasons that are grounds for dismissal of teachers under the Georgia Fair Dismissal Act. It can be defined as a lack of physical, intellectual, or moral ability; specific lack of legal qualifications or fitness; inadequacy, or insufficiency. A wide variety of reasons have been offered by school boards to substantiate charges of incompetency. The courts have found the following conduct as sufficient to sustain dismissals for incompetence: excessive tardiness or absences during the school year; lack of classroom management, control, or unreasonable discipline; failure to provide the leadership for the job description; lack of knowledge necessary for instruction and inability to convey this knowledge through instruction; refusing to allow supervisory personnel in the classroom; and willful neglect of duty (Dunklee & Shoop, 2002).

Incompetence was charged as the primary ground for dismissal in 12 of the Georgia State Board of Education appeals. There were 10 cases that were sustained, one reversal, and one case was dismissed. This comprised 16.6 % of all appeal cases. Concerning the dismissal case, the Appellant failed to provide any basis for appeal to the State Board and did not file a brief or oral argument for appeal. The case was therefore dismissed.

Incompetency, insubordination, willful neglect of duties, and other good and sufficient cause were the grounds for dismissal in the case of *Douglas Main v. Greene County Board of Education*, (1991). The Appellant was employed for the local school system for fourteen years and served as the English Department Chairperson. On November 28, 1989, the assistant principal observed the Appellant's literature class and

he was given three “needs improvement” ratings on his evaluation. On February 14, 1990, the principal performed an unannounced evaluation, and the Appellant received four “needs improvement ratings.” The principal met with the Appellant and informed him that he would be placed on an extended observation basis because he had received more than five “needs improvement” ratings. The extended observation was not conducted before the local superintendent notified Appellant that his contract would not be renewed.

On appeal, the Appellant argued that the evidence was insufficient to support the local board’s decision. According to the O.C.G.A. § 20-2-940 (e)(4), the local school system has to carry the burden of proof. In this case, the only relevant evidence presented by the local board was two short observations that show, at most, a difference of opinion concerning the method of teaching. The principal testified that he attempted to set a meeting date with Appellant to discuss the evaluations, but they could not agree on a date. The local board argued this showed insubordination on the Appellant’s behalf, but they failed to prove this at the hearing. It is clear that times and dates were never secured to discuss the evaluations with the Appellant. Adequate documentation was lacking in order to support the local board’s case of incompetence and insubordination. The local board had not proven any evidence to substantiate willful neglect of duties or other good and sufficient cause, therefore, the grounds were abandoned. The State Board of Education held that the local board did not carry the burden of proof, therefore, the decision was reversed.

Incompetency was found as the reason for dismissal in the case of *Charles Garner v. Murray County Board of Education*, (1992). Appellant was employed as a

ninth grade social studies teacher for 17 years. The Appellant taught general level classes for students who did not plan to attend college. He had an overall failure rate of 49.5 % in classes that he taught, while two other teachers who taught general level classes had averages of 19 and 29 %. The principal directed the Appellant to change his teaching methods and drop his failure rate to within 10 % of the entire school. The Appellant filed a grievance and a hearing was held. The local school superintendent found the principal properly handled the matter and gave the directive to place Appellant on a Professional Development Plan (PDP).

After the PDP was prepared, the Appellant asked for an extended leave of absence and indicated his intentions to retire. When the Appellant did not submit his letter of resignation by April 13, 1992, he was given notice by the local school superintendent that his contract would not be renewed because of willful neglect of duties, insubordination, incompetency, and other good and sufficient cause. He was charged with failure to change his grading policy or modify his teaching techniques to reduce failure rates. The State Board found that Appellant was not guilty of willful neglect of duties, insubordination, and other good and sufficient cause; however, the Board did find sufficient evidence that the local board had proven incompetency. The decision was sustained.

The Appellant claims in *Harold Jean Mosely v. Gwinnett County Board of Education* (1993), that her mental capacity prevented her from a defense. The Appellant took a leave of absence from her position as an interrelated resource teacher from October 7, 1992, through December 2, 1992. Appellant was certified by a psychiatrist and psychologist to return to work.

The principal observed the Appellant unable to maintain her classroom, she did not prepare lesson plans, and she was consistently late to work. On one occasion the principal had to remove the Appellant from the classroom because the Appellant was despondent. The local superintendent filed charges against the Appellant for incompetency, insubordination, willful neglect of duties, and other good and sufficient cause. The local board contended there was no evidence presented at the hearing that Appellant was mentally incompetent. She attended the hearing after notice was given to her and was aware of what was happening while at the hearing. The State Board concluded that the evidence supported the local board, therefore, the decision was sustained.

Incompetency was the charge in the case of *Delores Snowberger v. Bacon County Board of Education*, (1993). The Appellant taught for 13 and one-half years as a spanish teacher. She was accused of failing to maintain her grade books, directing racial epithets at her students, and she discussed personal sexual activities with her students. The local superintendent notified the Appellant that a hearing would be held to consider the termination of her teaching contract.

On appeal, Appellant claimed the evidence did not support the charges. In *Jones v. Montgomery County Board of Education* (1982), a local board of education found that it is not required to make findings of fact. The local board found evidence that Appellant's grading system of assigning grades was arbitrary. There was also testimony of the students that accused her of inappropriate classroom comments. The State Board held that the local board did present sufficient evidence; therefore, the decision was sustained.

Brenda Comer v. Atlanta Board of Education (1996), was dismissed for incompetency, willful neglect of duties, and other good and sufficient cause under the provisions of O.C.G.A. § 20-2-940. The Appellant was a first grade teacher and had been employed for 16 years. The principal observed her sleeping in class, she failed to record student grades, and was unable to maintain discipline in the classroom.

A tribunal found that after Appellant was placed on a Professional Development Plan her teaching methods had not improved. She received seven “needs improvement” ratings in January and five “needs improvements” ratings in February. The tribunal recommended that the Appellant’s teaching contract not be renewed. It was the opinion of the State Board of Education that there was sufficient evidence to support the local board’s decision; therefore, the decision was sustained.

A fourth grade teacher of 11 years was dismissed in the case of *Edet E. Obong v. City of Atlanta Board of Education* (1996), for incompetency, willful neglect of duties, and other good and sufficient cause. The principal observed the Appellant on several occasions and determined that he was ineffective in managing his classroom and in delivering instruction to the students. The principal provided him with an aide, made observations and suggestions, and permitted him to observe other teachers.

The Appellant did not show any improvement and the principal recommended that his contract not be renewed for the ensuing school year. The Appellant claimed that the principal was biased against him because he was the only male teacher and from Nigeria. The Appellant did not present any evidence to support his charges. The State Board held that there was sufficient evidence to support the local board; therefore, the decision was sustained.

Another example of incompetency was shown in the case of *Franklin Lynn v. City of Atlanta Board of Education*, (1997). Appellant worked as a high school art teacher for 16 years. He took a leave of absence for eight years to obtain his doctoral degree. When he returned to work, his principal and assistant principal noted that he had difficulty maintaining control in his classroom. During an evaluation that was conducted, Appellant received five “needs improvement” ratings. The principal directed Appellant to develop a behavior management plan and placed him on a Professional Development Plan. Following the establishment of this plan, the Appellant received three “needs improvement” ratings on the subsequent evaluation. In addition to the evaluation ratings, the Appellant pushed a student against the blackboard, students were found off task, and he locked an unruly student in a paint storage room for 30 minutes.

The Appellant’s principal recommended termination of his contract to the local superintendent. The superintendent then notified Appellant that his contract would not be renewed for the ensuing school year. On appeal, the tribunal found that the Appellant was not suited to teach in middle school, that he had a problem with classroom management, and Appellant received eight “needs improvement” ratings in two observations. The State Board concluded there was sufficient evidence presented by the local board that Appellant was incompetent, therefore, the decision was sustained.

A guidance counselor at Crawford County High School was accused of regularly advising her students improperly in the case of *Ann Bentley v. Crawford County Board of Education*, (1998). At the hearing, evidence was presented that Appellant had advised a student that pre-algebra could satisfy the state algebra requirement, another student was advised to take general math to satisfy the same requirement, and one student was

advised to take French I and French II in the same semester. The local board found the Appellant guilty of incompetence and other good and sufficient cause.

On appeal, the Appellant claimed that the local board denied her due process because evidence was permitted from previous years. In *Palmer v. Putnam County Board of Education* (1976), the State Board held that evidence of prior year conduct is relevant if it shows a pattern of conduct and is related to the current year conduct under consideration. The State Board held that the evidence was presented to demonstrate a pattern of conduct over an extended period of time. The local board's decision was sustained.

Daniel Shell v. Atlanta City Board of Education (1998), was also a case pertaining to classroom management. He was charged with incompetency and other good and sufficient cause, which was a result of poor management skills. Appellant worked as a middle school teacher for 11 years and was placed on Professional Development Plans in 1994 and 1997 to address his classroom management techniques. The O.C.G.A § 20-2-210 laid the groundwork for personnel with deficiencies. It stipulates that once these problems that have been identified during the evaluation process, a Professional Development Plan is designed to decrease these deficiencies. Despite the help given to the Appellant, these problems still existed.

The local superintendent notified the Appellant that he was seeking termination of his teaching contract. The local board presented sufficient evidence with regards to the problems in the classroom, the disruptions that occurred, and efforts to assist the Appellant. The State Board sustained the local board's decision.

The Appellant was employed as a teacher for 28 years when she was charged with incompetency, insubordination, and other good and sufficient cause in the case of *Carolyn A. Williams v. Atlanta City Board of Education*, (1998). Appellant was placed on a Professional Development Plan because of excessive tardiness. During the period of December 1, 1997 through February 6, 1998, Appellant was tardy on 33 occasions. The Appellant was formally evaluated on three separate occasions. On October 20, 1997, she received three “needs improvement” ratings; on December 1, 1997, she received four “needs improvement” ratings; and on January 8, 1998, Appellant received “needs improvement” ratings in all key areas.

The local superintendent notified the Appellant that her teaching contract would be terminated. On appeal, the Appellant admitted that she was frequently tardy. She contended that because she lived so far away she could not get to work on time because she was at the mercy of traffic conditions. The State Board found that Appellant had an obligation to uphold the same standards of behavior that she required of her students. The State Board found sufficient evidence to support the local board’s decision; therefore, the decision was sustained.

Carolyn Williams v. Atlanta Board of Education (2001), is an appeal that was remanded by the Superior Court of Fulton County. The case was remanded on the basis that the State Board of Education made the decision based upon an incomplete transcript. Appellant was charged with incompetency, insubordination, and other good and sufficient cause. The Appellant received repeated warnings and was placed on a Professional Development Plan for excessive failure rates and tardiness. Due to her

tardiness, other staff members were often required to supervise her homeroom. Appellant claimed that the failure rates were due to excessive absenteeism by the students.

There was nothing presented upon remand to support any charges made by the Appellant. According to *Ransum v. Chattooga County Board of Education* (1978), the legal standard of review by the Georgia State Board of Education is that if there is any evidence to support the decision of the local board of education, then the decision will stand, unless there has been an abuse of discretion or the decision is so arbitrary or capricious as to be illegal. The State Board of Education sustained the decision of the local board.

Cases Involving Insubordination

Teachers can be dismissed for insubordination when they willfully and deliberately violate reasonable school rules and defy school authorities. In order for a rule to be reasonable, it must be clear enough to be understood by the teacher. A school board cannot dismiss a teacher without violating a specific rule. Additionally, teachers cannot be dismissed for insubordination for failing to follow any school rule that violates their constitutional rights. Each case is unique requiring the local and State Board to look at the individual teacher's actions (Fischer, et al. 1999).

Insubordination was listed as the primary ground for dismissal in 16 appeal decisions to the Georgia State Board of Education between the years of 1991 and 2001. This resulted in 22.2 % of all cases. Of the 16 appeals cases, 11 were sustained and five were dismissed because the Appellants did not file within a timely manner. As previously discussed in the O.C.G.A § 20-2-1160, appeals must be addressed to and filed with the local school superintendent within 30 days of the decision of the local board of

education. The local school superintendent has 10 days after receiving the request for the appeal to provide the necessary documents to the State School Superintendent.

The case of *Thomas King v. Atlanta City Board of Education* (1991), was appealed to the State Board because the Appellant claimed that the local board of education improperly terminated his contract by giving him a contract for the 1990-1991 school year. The Appellant was terminated because of insubordination and other good and sufficient causes. The Appellant had been employed with the school system since July 31, 1986 as an electrical instructor. The Appellant was late for school one day and arrived with a baseball bat in his hand when he entered the administrative offices. He asked for the administrator and began swearing loudly at the secretaries. The office staff contacted the police and signed a warrant against the Appellant.

The incident was investigated and the Appellant was instructed by his superior to report to the local board's personnel office but failed to do so. The local superintendent recommended his dismissal after hearing the facts of the incident. During that time frame, the Appellant was issued a contract for employment for the ensuing school year. This contract was issued out of error and the Appellant was notified. The State Board of Education found no error in the tribunal's conclusion that the contract was issued in error and the Appellant had been informed. According to the decision in *Ransum v. Chattooga County Board of Education* (1978), the legal standard of review by the State Board of Education is that if there is any evidence to support the decision of the local board of education, then the decision will stand, unless there has been abuse of discretion or the decision is so arbitrary or capricious as to be illegal. The State Board of Education held

there was sufficient evidence to support the local board; therefore, the decision was sustained.

The case of *Sandra McLesky v. Cherokee County Board of Education* (1991), involved a tenured teacher that was terminated from her contract for insubordination, willful neglect of duties, and other good and sufficient causes. The Appellant was an English teacher for a period of four years. The local school superintendent became aware that Appellant was conducting a modeling agency business, soliciting her students to sign agency agreements, and pay her a fee. In addition to these allegations, the superintendent became aware that Appellant plagiarized the work of one of her students to be included in a novel that she was writing. As a result of these discoveries, the local superintendent terminated her teaching contract.

The Appellant admitted to her administrator that she had a modeling agency and was asked by the local administrator to provide the names of the students involved, but she refused. The local school superintendent wrote a letter to the Appellant directing her to give the names of the students involved. She was informed that refusal to comply would be considered insubordination. The Appellant responded by denying the allegations. The local superintendent with the same directive wrote another letter, but again, the Appellant refused. In Georgia, teachers may be terminated when they willfully and deliberately defy school authorities. The State Board found that there was evidence that Appellant violated the Code of Ethics that defines the professional behavior expected of educators in Georgia and serves as a guide for ethical conduct. The State Board was of the opinion that there was sufficient evidence to support the local board's decision.

James A. Woods v. Fulton County Board of Education (1991), was appealed to the State Board because the Appellant claimed the decision was arbitrary and capricious. Appellant, a tenured teacher, was terminated for insubordination and other good and sufficient causes. The aggrieved party was assigned as the In School Suspension (ISS) teacher and was given instructions as to the proper procedures for the program. The Appellant did not follow the guidelines for the ISS program and became violent when confronted concerning the matter. The Appellant struck the assistant principal in the face and displaced some of the assistant principal's teeth. Next, he then struck the principal in the face.

The Appellant's claim that the local board's decision was arbitrary and capricious was not supported with sufficient evidence. In order for the local board to have violated the Appellant's substantive due process rights, the local board's decision would have to be arbitrary, capricious, and without merit. It was found that striking the assistant principal did not amount to insubordination but other good and sufficient causes. The Appellant was given the directive by the principal to remain at school and the appellant refused, which constituted insubordination. The State Board of Education sustained the local board's decision.

The O.C.G.A. § 20-2-1150 provides for a mandatory "brief period of quiet reflection for not more than 60 seconds" to permit students to have an opportunity to reflect on the coming events of the day. The case of *Brian Brown v. Gwinnett County Board of Education* (1994), resulted over Appellant's concern about the legal liability surrounding the silent moment. The Appellant wrote a letter to the local superintendent and the local board expressing his concerns. An assistant superintendent replied to

Appellant and told him that his principal would discuss the implementation of the law during pre-planning.

During three separate faculty meetings, the principal tried to discuss the new law but was interrupted by the Appellant. At each of these meetings, the Appellant walked out of the meetings early while the principal was still meeting with the staff. On the first day of school, the moment of silence was not observed in the Appellant's classroom. The local superintendent and principal met with Appellant that day and told him that the school system expected him to follow the rules. The following day, the Appellant told the principal again that he would not observe the moment of silence in his classroom and left the school building without making any arrangements for his class to be covered. The local superintendent recommended termination of Appellant's teaching contract on the grounds of insubordination, willful neglect of duties, encouraging students to violate the law, and other good and sufficient cause.

On appeal, the Appellant claimed that the notice of charges was inadequate because it did not provide him with a concise statement of the expected testimony of witnesses. Additionally, he claimed the factual allegations were not matched to specific charges. According to the O.C.G.A. § 20-2-940(b) the notice has to contain a concise summary of the evidence sufficient to permit an employee to present a defense. The local board argued, citing *Dowling v. Atlanta Board of Education* (1973), that the notice has to provide an employee with the essential elements of who, what, when, and where. Appellant also claimed that the hearing officer improperly denied *voir dire* of the local board members. At the beginning of the hearing, the hearing officer asked the local board members whether they had read, heard, or seen anything, or had any prejudgment

about the case, that would prevent them from making a fair and impartial decision. Each of the board members answered negatively. In *Holley v. Seminole County School District* (1985), the court stated that due process does not require *voir dire* of individual board members. The State Board held that Appellant received proper notice, the evidence supported the charges, and the local board acted within its authority. The local board's decision was sustained.

Sherry Hearn v. Chatham County Board of Education (1996), involved a social studies teacher of 27 years. She was dismissed for insubordination after she refused to take a drug test within two hours of a marijuana cigarette being found in her car. The Appellant claimed that her Fourth Amendment right was violated and the decision should be reversed. The Appellant parked her car in the student parking lot and the police were unaware of this fact when the search began. A trained drug-detecting dog alerted the police of the Appellant's car, which was unlocked and the windows were open. The Chatham County Deputy Sheriff searched the car without the Appellant's consent. According to LaMorte (2001), when teachers under their Fourth Amendment right contest screening policies, the courts must balance the privacy rights of the teacher with the government's interest for maintaining a drug free environment.

The Appellant's principal asked her to submit to a drug test, but she refused. The local board had adopted a policy of a drug free environment. As part of this policy, employees were required to submit to a drug test if reasonable suspicion existed. The policy also required a teacher's consent to be given before a car or other belongings could be searched. The Appellant contended that the local board violated its own policy and the policy, therefore, could not be used as the basis for terminating her contract. The

local board did not terminate her contract because marijuana was found in her car, but rather because she refused to take a drug test that was requested by her administrator. It was the opinion of the State Board of Education that the local board did not exceed its authority or violate Appellant's constitutional rights in dismissing her for refusal to take a drug test. The decision was sustained.

In the case of *Zernon Evans v. Atlanta Board of Education* (1997), the teacher displayed some religious pictures in her classroom that her daughter had drawn. The Appellant's principal asked her to remove them from the wall, but she refused. The pictures were not removed until the principal wrote a letter and ordered Appellant to remove them. At this time, she was instructed to keep her religious life separate from the classroom. During the next several years, several incidents occurred that led to a recommendation that her contract not be renewed for the ensuing school year. She was charged with insubordination, willful neglect of duty, incompetency, and other good and sufficient cause.

During the hearing, the tribunal found that Appellant failed to complete a mandatory Professional Development Plan and stated that she did not intend to complete the plan. The Appellant had also continued to interject religion into her classroom activities. She played religious music during an assembly and accused another teacher of being a devil worshipper because she wore a peace symbol. The tribunal recommended that Appellant's contract should not be renewed and the local board adopted the recommendation. The State Board of Education supported the evidence of the local board and the decision was sustained.

Larry Lewis v. Carroll County Board of Education (1997), involved a teacher of 14 years. He was charged with physically disciplining students for misbehavior. The Appellant had previously been instructed against touching students when he disciplined them unless he needed to protect another student from physical injury. On September 16, 1996, the Appellant grabbed a female sixth grade student by the arm when she became disruptive in line. Appellant met with his school principal on this day and admitted touching the student, but he claimed that the incident was insignificant. The principal told the Appellant to leave the school campus, but he did not comply. Instead, he met with the student and asked her if she was hurt.

The local superintendent reassigned the Appellant to another middle school and instructed him not to return to his former school campus between school hours. On October 7, 1996, the Appellant returned to his former school at 11:00 a.m. while school was in session. Based upon the September 16th incident and Appellant's failure to follow directions, he was charged with insubordination and his teaching contract was terminated. The local board's decision was sustained.

A teacher of 30 years was dismissed in the case of *Essie McCrary v. Bibb County Board of Education*, (1997). The Appellant was charged with insubordination, willful neglect of duties, and other good and sufficient cause. The principal noticed a change in the Appellant's attitude at the beginning of the school year. One morning she found Appellant absent from her classroom and in attendance at a gun safety program. The principal directed her to go back to the classroom, but she refused. In another situation, the Appellant had been on the telephone for an extended period of time. An emergency arose and she would not relinquish the phone. The principal disconnected the line and

instructed her to go back to her classroom. The Appellant refused and left the building to use another telephone.

At the hearing, the principal cited 43 separate incidents to support his charges. In *Ransum v. Chattooga County Board of Education* (1978), the legal standard of review by the Georgia State Board of Education is that if there is any evidence to support the decision of the local board, then the decision will stand, unless there has been abuse of discretion or the decision is so arbitrary or capricious as to be illegal. It was the opinion of the State Board that the local board presented sufficient evidence; therefore, the decision was sustained.

Adrian Houston v. Atlanta City Board of Education (1998), involved a fourth grade teacher of nine years. The Appellant was charged with insubordination and willful neglect of duties because he failed to follow his principal's directions to send report cards home. In addition, the Appellant took a group of students on an unauthorized after-school outing after his principal told him that such an outing was against local board policy. At the end of the hearing, both parties stipulated that the tribunal could take longer than the statutory time to render its decision.

On appeal, the Appellant claimed that the local board's decision was not presented within a timely manner under the decision in *Whisenant v. Douglas County Board of Education*, (1997). The O.C.G.A. § 20-2-940(f) requires a tribunal to file its findings and recommendations with a local board within five days after the hearing and a local board is required to make a decision within 10 days after it receives a transcript of the hearing. In *Whisenant*, the parties had not agreed to any extensions in issuing a finding from the local board. The local board's decision was sustained.

In the case of *Kathleen Hemak v. Bibb County Board of Education* (1999), the local board decided Appellant's teaching contract would not be renewed after she was found guilty of insubordination. A student skipped Appellant's keyboarding class one day and went to the counselor's office to obtain a transcript so she could participate in Homecoming festivities. On this particular day, the Appellant gave a test. The Appellant felt the student was trying to get out of taking the test. She informed the student that her grade for the test would be a zero.

The principal wrote a note to the teacher instructing her to let the student make up the test. It was policy to allow students to make up class work when they were absent after speaking with a counselor. The teacher ignored the directive. The principal later called the Appellant into her office and instructed her once again to give the student the test, but the teacher refused. The Appellant was charged with insubordination, incompetency, willful neglect of duties, unprofessional conduct, and other good and sufficient causes. Insubordination was the only charge that the tribunal found sufficient evidence to support. The tribunal did make several recommendations to the principal in the way she managed the school. The State Board sustained the local board's decision.

Arthenia Bryant v. Tift County Board of Education (2001), was a case concerning a teacher that was placed on a Professional Development Plan for the ensuing school year to improve her working relations with other teachers. She had been instructed on numerous occasions to avoid confrontations with other teachers. At the beginning of the school year, the Appellant became engaged in an argument with another teacher. The principal met with the two teachers and instructed them to avoid any other confrontations.

After the meeting with the principal, the Appellant again confronted the other teacher and accused her of being racist and cursed her. Later in the 1999-2000 school year, the Appellant was instructed to sort a test in alphabetical order, but she refused. Instead of complying, the Appellant took the tests into the assistant principal's office, threw them on her superior's desk and accused her of not communicating. In both of these incidents, Appellant received a directive, which she then disobeyed. The State Board held there was sufficient evidence to support the local board; therefore, the decision was sustained.

Cases Involving Willful Neglect of Duties

Willful neglect of duties is a flagrant act or omission, an intentional violation of a known rule or policy. Examples of willful neglect of duties include failing to comply with lesson plan policy, sleeping in class, excessive tardiness, and failing to administer an Individualized Education Program (Dunklee & Shoop, 2002).

Willful Neglect of Duties was the primary charge in eight of the cases that were taken before the Georgia State Board of Education resulting in 11.1 % of all cases. Each of these cases resulted in a decision to sustain the local board of education.

Mary Jon Taylor v. Lee County Board of Education (1991), involved a tenured teacher who had been teaching for 28 years. The Appellant received a letter to notify her that her contract would not be renewed because she refused to improve her teaching techniques. Appellant was repeatedly advised that she was not performing at an appropriate level and was required to attend a remedial program. The evidence showed that Appellant had unsatisfactory evaluations, had given students incorrect information, and her students were not at grade level despite the fact they were on grade level when

they entered her class. Additionally, the evidence showed that she incorrectly graded her students, did not maintain an orderly classroom, and did not communicate with parents when she had been repeatedly instructed to do so by her principal and assistant principal.

The local board voted to uphold the charges that the local superintendent made of willful neglect of duties and other good and sufficient cause. The Appellant claimed that the evidence did not establish that she willfully neglected her duties under the standards established in *Terry v. Houston County Board of Education*, (1986). In *Terry*, the court stated that willful neglect of duty required a flagrant act or omission, or an intentional violation of a rule or policy, or a continuous course of reprehensible conduct, and that negligence is insufficient to substantiate willful neglect of duty. The State Board upheld the decision because the record contained sufficient evidence to support the local board. The decision was sustained.

Louise Mintah v. Spalding County Board of Education (1992), involved a fourth grade teacher. On December 16, 1991, the Appellant fell while in her classroom and struck her head. The Appellant's principal took her to the hospital emergency room at her request. She was diagnosed as having muscle spasms and prescribed some medication. The Appellant did not return to work over the next several days. The principal called her to inquire and ask for her lesson plans. The lesson plans could not be located. After several weeks of not reporting to work or producing lesson plans, the principal contacted the local superintendent.

The local superintendent wrote to the Appellant and told her to let him know if she would be returning to work or if she would be seeing another doctor. The Appellant did not respond. On March 20, 1992, the local superintendent wrote to the Appellant and

informed her that a hearing would be held to terminate her teaching contract because of insubordination and willful neglect of duties. On appeal, the Appellant claimed there was no evidence to support the charges. In *Terry v. Houston County Board of Education* (1986), it was determined that willful neglect of duties requires some flagrant act or omission, an intentional violation of a rule or policy. In the instant case, the Appellant failed to comply with a reasonable directive given by the principal and local superintendent. She also willfully neglected her duties by not having emergency lesson plans available. The local board's decision was sustained.

An employee of nine years was charged with insubordination, willful neglect of duties, and other good and sufficient cause in *Karen Starnes v. Fulton County Board of Education*, (1994). During several observations, the Appellant's principal noted that Appellant had difficulty managing her classes, making transitions, planning, organizing her time, and managing discipline in her class. The O.C.G.A § 20-2-210 stipulates that once problems have been identified during the evaluation process, a Professional Development Plan is designed to decrease these deficiencies. As a result, the Appellant was placed on a Professional Development Plan (PDP).

The principal decided to recommend termination of her teaching contract because she would not submit lesson plans, had not complied with the terms of the PDP, and had not shown any improvement in her ability to teach. On appeal, the Appellant maintained that the principal harassed her. The Appellant was unable to show that there was any error made by the principal. The local board's decision was sustained.

Excessive absenteeism and tardiness were the causes for the case of *Carolyn McCullers v. Fulton County Board of Education*, (1996). The Appellant had been a

teacher for 22 years when she was charged with insubordination, willful neglect of duties, and other good and sufficient cause. At the beginning of the 1994-1995 school year, the Appellant broke her kneecap and was frequently absent from school. The principal asked her to provide medical excuses for the absences, but Appellant did not comply. The Appellant was absent during the school year for 87 days and was chronically tardy from between 10 minutes to one hour late.

At a meeting with the associate superintendent, the Appellant was given three options: she could have a psychiatric examination with a psychiatrist of her own choice, she could submit to a psychiatric examination by a psychiatrist employed by the school system's choice, or she could face termination. The Appellant chose the second option. After the Appellant failed to appear for two examinations, the local superintendent proceeded to terminate her teaching contract. The State Board was of the opinion that the local board's evidence supported the charges, therefore, the decision was sustained.

Willful neglect of duties was charged in the appeal case of *Scott White v. Effingham County Board of Education*, (1996). The Appellant taught Georgia History and had been a teacher for 14 years. The Appellant had an overall failure rate of 50 % when his principal instructed him to modify his teaching methods. All of the special education students and students functioning with support team guidance who were assigned to his class had failed his classes. After the adjustment was made, the Appellant's failure rate was in excess of 30 %.

The local superintendent notified the Appellant that his contract would not be renewed for the ensuing school year. The local board issued a decision to accept the local superintendent's recommendation not to renew Appellant's teaching contract after

finding him guilty of willful neglect of duties. The Appellant claimed on appeal that there was no evidence to support the charges. In *Ransum v. Chattooga County Board of Education* (1978), the legal standard of review by the Georgia State Board of Education is that if there is any evidence to support the decision of the local board of education, then the decision will stand, unless there has been an abuse of discretion or the decision is so arbitrary or capricious as to be illegal. The State Board held there was sufficient evidence to support the local board, therefore, the decision was sustained.

Robin Watkins v. Pickens County Board of Education (1998), was an appeal case of a nine year tenured teacher for excessive absenteeism. During the 1993-1994 school year, the Appellant was absent from school 48-3/4 days, the 1994-1995 school year 54 days, the 1995-1996 18-1/4 days, the 1996-1997 school year 44-3/4 days, and the 1997-1998 school year 23 days absent. On November 14, 1996, Appellant's principal notified her that the local superintendent would not recommend renewal of her teaching contract for the next school year. In March 1997, the Appellant was diagnosed as having major depression and her doctor prescribed medication. After beginning the medication, the Appellant did not miss any school during the remainder of the 1996-1997 school year.

On appeal, the Appellant claimed that the medication restored the control of her actions and the local board should accommodate her illness. Based upon the evidence presented, the local board found that the Appellant intentionally violated the policy regarding absenteeism. The State Board of Education found sufficient evidence to support the local board, therefore, the decision was sustained.

The Appellant served as a middle school technology teacher when he was charged with insubordination, willful neglect of duties, and other good and sufficient cause in the

case of *David Rushforth v. Gwinnett County Board of Education*, (2000). On October 6, 1999, the Forsyth County police arrested Mr. Rushforth for driving under the influence of alcohol (DUI). The Appellant was already on probation from Cobb County because of a previous DUI. Subsequently, a Cobb County judge revoked Appellant's probation and placed him in jail.

The local superintendent notified Appellant that he was seeking termination of his teaching contract. The charges against the Appellant were based on Appellant's failure to appear to teach his class, failure to have lesson plans, and failure to have any record from which final grades could be prepared for his students. On appeal, the Appellant claimed that the notice of charges was improperly mailed to the wrong address. The Appellant contended that the local superintendent knew he was in jail before sending the termination letter, and therefore, should have sent the notice to the Cobb County jail. The O.C.G.A. § 20-2-940(c) provides that service shall be deemed to be perfected when the notice is deposited in the United States mail addressed to the last known address of the addressee with sufficient postage affixed to the envelope. The State Board found that sufficient evidence supported the local board, therefore, the decision was sustained.

Prakash Rai v. Harris County Board of Education (2001), involved a teacher in an alternative school. The local superintendent formally reprimanded Appellant because of his failure to maintain control of the students in his classroom. Upon further investigation by the superintendent, several other incidents were discovered which caused the local superintendent to seek termination of Appellant.

During the hearing, evidence was presented that Appellant asked a substitute teacher to provide the police with false information concerning the sexual conduct of two

students. Other testimony showed that Appellant failed to properly supervise his students. Male and female students would leave the classroom and go to the restroom to engage in sexual conduct. The Appellant claimed he did not urge the substitute teacher to provide false information. In addition, Appellant claimed he was unable to supervise the students because he was understaffed. In the decision of *David L. v. DeKalb County Board of Education* (1996), the State Board held that it is the duty of the hearing tribunal to determine the veracity of the witnesses and the State Board will not go behind such determination if there is any evidence to support the decision. The local board's charges of willful neglect of duties and other good and sufficient cause were sustained by the State Board of Education.

Cases Involving Immorality

School boards often feel they can require teachers to conform to the local board's interpretations of the communities' values because many believe that the teacher's character is of fundamental importance to the development of children. Teaching positions are likely to be put at risk when teachers do not adopt the values that coincide with the mores of the community. Common statutory grounds for dismissal when community values conflict with teacher values or lifestyles include immorality, moral turpitude, unfitness to teach, conduct unbecoming a teacher, teacher misconduct, violation of code of ethics, and subversive activity. There must be a clear relationship demonstrated between the conduct, job performance, or effectiveness of the teacher. The courts have ruled that the private lives of teachers must be private unless the conduct affects their professional responsibilities or reasonably impairs their capabilities. (Dunklee & Shoop, 2002).

There were 11 appeal cases, which comprised 15.3 % of all of the cases that listed immorality as the primary ground for dismissal. Of the 11 cases, there were nine cases sustained, one reversal, and only one case was dismissed because the Appellant did not file to the local school superintendent in a timely manner. According to the O.C.G.A § 20-20-1160, appeals must be addressed to and filed with the local school superintendent within 30 days of the decision of the local board of education. The local school superintendent has 10 days after receiving the request for the appeal to provide all of the necessary documents to the State School Superintendent.

Immorality was the charge in the appeal case of *Kathleen J. Williams v. Gwinnett County Board of Education*, (1992). The Appellant was a teacher for 21 years when she was arrested for disorderly conduct and theft by taking on allegations that she stole a dress from another patron in the Norcross Women's Fitness Center. A policeman discovered the dress in the trunk of the Appellant's car when she asked him to retrieve some heart medicine for her. The Appellant claimed that she had no knowledge of how the dress got there.

The local board conducted their own investigation into the matter. The local superintendent wrote a letter to Appellant to inform her that he was recommending termination of her teaching contract. Appellant claimed the local board failed to show any nexus between stealing and impairment of her job performance. The local board cited *Brannen v. Board of Education* (1978), when immorality was found regarding a teacher involved with shoplifting. The local board found that as a teacher, she serves as a role model for young children and thievery is not an attribute that should be emulated. The State Board of Education found that there was sufficient evidence that she stole the

dress and that such an act does constitute immorality. The local board's decision was sustained.

Patricia Clark v. Glynn County Board of Education (1993), was a case pertaining to drugs and alcohol. Appellant was charged with immorality and other good and sufficient cause after she was arrested on two occasions for driving under the influence of alcohol (DUI). The first arrest occurred after the Appellant had an altercation at her parent's house. Upon her arrest, Appellant was unable to exit her vehicle without assistance from the police. Additionally, the police found two marijuana cigarettes in her bedroom, and she alleged that she was holding them for a Brunswick High School student. Three days later, she was again arrested for DUI.

Appellant met with an assistant superintendent and her principal and confirmed that the arrests had been made. At that time, she was informed that her teaching contract would be terminated. Appellant claimed that the evidence did not support immorality. She also claimed that possession of less than one ounce of marijuana and driving under the influence of alcohol are not crimes involving moral turpitude. The local board responded that the charges did not have to involve moral turpitude to support immorality and holding marijuana cigarettes for a student did constitute other good and sufficient cause. The State Board of Education found sufficient evidence to support the local board; therefore, the decision was sustained.

Charges of sexual harassment were accused in the case of *Dr. Clarence Jones v. Atlanta Public Schools Board of Education*, (1995). The Appellant reprimanded a female student in the lunchroom at Archer High School because she cut in line. She cursed him and made obscene gestures at him while she was being reprimanded. As a result, she was

suspended from after school activities. The assistant principal met with the student and at this time, she accused Appellant of making sexually suggestive comments to her.

The incident was reported to the local superintendent, who appointed an investigator to look into the matter. The investigator found several other students and a teacher who made the same accusations against the Appellant. The local superintendent notified the Appellant that he would seek the termination of his teaching contract. The local board's policy against sexual harassment explicitly states that offensive sexual comments will not be tolerated and if found guilty, the employee will be terminated. The State Board of Education found in favor of the local board; therefore, the decision was sustained.

Insubordination and immorality were the charges in the appeal case of *Robert A. Gee v. Carroll County Board of Education*, (1996). Appellant was accused of improperly touching a female student. The local superintendent charged that Appellant placed his hand under the girl's shirt, grabbed the student between the legs, and reached under the student's shirt and pulled her bra strap as she walked in the hallway. The student testified that each of these events occurred.

On appeal, the Appellant denied touching the student in any inappropriate manner. The Appellant maintained that the student made the allegations because she needed an excuse for skipping school. The local superintendent presented evidence that similar incidents had occurred in previous years but were not reported until these allegations were made. The State Board of Education found there was sufficient evidence to support the charges; therefore, the local board's decision was sustained.

Another case of driving under the influence of alcohol (DUI) was appealed in *Charles Spearman v. Ben Hill Board of Education*, (1996). On January 12, 1996, the Appellant was arrested and convicted of DUI. Appellant was counseled and informed that any further alcohol abuse could result in termination. On August 16, 1996, the Appellant was again arrested for the same offense.

The local superintendent recommended termination of Appellant's teaching contract on the grounds of immorality, incompetence, insubordination, and willful neglect of duties. In *Palmer v. Putnam County Board of Education* (1976), the State Board held that a local board could consider evidence of prior year conduct if the acts have some relevancy to the teacher's current conduct. During his hearing, evidence was presented from previous years of teaching to substantiate the above charges. Appellant had been a teacher for 18 years and was well known in the community. The local newspapers ran stories pertaining to the Appellant's arrest and conviction of DUI. The State Board held that the local board found sufficient evidence to support the charges, therefore; the decision was sustained.

Immorality and other good and sufficient cause were the charges in *Ruth Dorsey Benton v. Fulton County Board of Education*, (1997). The Appellant was stopped for speeding and the police officer smelled a strange odor from the Appellant's car. He asked her if she had been smoking marijuana, and the Appellant admitted that she had. The police officer found marijuana and drug paraphernalia in her car when it was searched.

The local superintendent moved to terminate the Appellant's teaching contract. During the hearing, Appellant said that she had been smoking marijuana because of

constant pain from a back injury. The Appellant claimed that the local board failed to carry the burden of proof because the letter charged her with possession of a controlled substance. In *Dominy v. Mays* (1979), the court upheld the dismissal of a teacher on the grounds of immorality because she had been convicted of possessing marijuana and other drugs. It was the opinion of the State Board that the local board did not abuse its discretion and that the hearing was properly conducted. The local board's decision was sustained.

While undergoing a psychotic episode at his home, the actions of the Appellant resulted in the case of *Eddie Dean Dixon, Jr. v. Emanuel County Board of Education*, (1997). The Appellant awoke from a nightmare and called 911 to report that someone was trying to break into his home. He was alone with his three children. While the operator had the Appellant on the phone, he continuously kept saying that people were trying to break in his house. Appellant told the operator if people shot him, the bullet would also hit the operator because they were on the same phone line. Appellant informed the operator that he had a 16-gauge shotgun and a pistol. Appellant became increasingly more incoherent and shot his daughter in the leg. He then forced his son and other daughter to rub their hands in the blood of the wounded daughter.

The local superintendent notified the Appellant that she would seek termination of his teaching contract on the grounds of immorality. On appeal, the Appellant claims that the local board failed to establish immorality or submit any evidence that he was unfit to perform his duties. According to O.C.G.A § 20-2-940, the burden of proof is on the local board of education in an employee dismissal case. The local board argued that it could reasonably infer immorality because Appellant admitted to shooting his daughter. From

this evidence, the local board could also infer that there was other good and sufficient cause not to employ Appellant because of the possible harm to students and co-workers. The State Board held that there was sufficient evidence to support the charges that Appellant committed an immoral act; therefore, the decision was sustained.

Denial of procedural due process resulted in the case of *G. Anthony Whisenant v. Douglas County Board of Education*, (1997). On April 6, 1993, the Appellant was arrested and charged with sexual battery based upon the complaints of two students. The local superintendent notified the Appellant that a hearing would be held before the local board to decide whether his teaching contact would be terminated. He was charged with immorality and other good and sufficient cause. An agreement was reached between the Appellant and the school system that the hearing would not be held until after the criminal trial was over.

Three and one-half years later, the criminal trial concluded with the Appellant's acquittal on December 2, 1996. On December 4, 1996, Appellant's attorney wrote the local superintendent and advised him that the Appellant was ready to come back to work. With no response from the local superintendent, the Appellant's attorney wrote three more letters on February 3, 1997, March 20, 1997, and April 8, 1997, and asked for a hearing or reinstatement. He also noted that the Appellant was entitled to a hearing within 10 days after the initial suspension, which had been extended until the criminal trial was over. The local superintendent responded on April 14, 1997, and informed the Appellant that he was not going to recommend renewal of his teaching contract. On appeal, the tribunal found that the Appellant made inappropriate sexual comments to female students; used obscene words in classroom discussions; threatened and retaliated

against students when reports were made regarding his inappropriate behavior; and failed to follow explicit directives by school administrators to avoid inappropriate physical contact with students.

The Appellant claimed that he was denied procedural due process because the local board failed to conduct a hearing within 10 days after the criminal trial was over. According to the O.C.G.A. § 20-2-940(g), the State Board concluded that the local board was bound to provide him with a hearing when he asked for the hearing, regardless of any previous postponement agreements. The Appellant also claimed that his due process rights were denied because the tribunal hearing officer, the tribunal, and the local board violated the timeliness for issuing a decision. The State Board held that Appellant's due process rights were denied when the tribunal issued its findings 37 days after the deadline, and the local board issued its decision 27 days after the deadline. The O.C.G.A. § 20-2-940(f) explicitly states that the local board shall render its decision at the hearing or within five days thereafter. If a tribunal hears the case, a transcript of the case is provided to the local board within five days of the hearing and they will have 10 days to act on the tribunal's recommendation. Accordingly, the local board denied Appellant due process by not granting him a hearing when he requested one. The local board also denied due process by failing to render its decision within the proper time frame. The decision of the local board was reversed.

The Appellant was accused of having sexual relations with another teacher in the case of *Kevin Cornett v. Bartow County Board of Education*, (1999). Appellant was accused of having sexual relations with a female colleague in the coach's office and in the female teacher's classroom in the early mornings and late in the afternoons.

The local school superintendent notified the Appellant that a recommendation was being made to terminate his contract on the grounds of immorality and other good and sufficient cause. These charges were based upon the ongoing sexual relationship with another teacher on school property.

On appeal, the female teacher testified that she and the Appellant had sexual relations on numerous occasions on school grounds. Appellant denied any relationship with the female teacher. In *Ransum v. Chattooga County Board of Education* (1978), the legal standard of review by the Georgia State Board of Education is that if there is any evidence to support the decision of the local board of education, then the decision will stand, unless there has been abuse of discretion or the decision is so arbitrary or capricious as to be illegal. The State Board of Education sustained the local board's decision.

Alphonza Griffin v. Richmond County Board of Education (2001), was a case in which the Appellant was found guilty of forcing a female student to perform oral sex on him. The Appellant had been employed for 12 years and was the boys' track coach. On an afternoon when track practice was cancelled for both girls and boys, the incident occurred when Appellant gave the student a ride home in his car. The Appellant was relieved of his duties. The Appellant's hearing was postponed until after Appellant was found not guilty in a criminal trial for the same charges.

The local board sought to terminate Appellant's teaching contract on charges of immorality, willful neglect of duties, insubordination, and other good and sufficient cause. The female student testified that the incident occurred when the Appellant took her home, and her grandmother testified that the student came home late acting very

strangely. The Appellant denied all charges. The local board heard and saw the witnesses, weighed the testimony, and chose to believe the student. The State Board of Education will not now substitute its judgment for that of the local board. In the instant case, the testimony of the student regarding the details of the incident was sufficient evidence to support the local board's decision; therefore, the decision was sustained.

Cases Involving Inciting, Encouraging, or Counseling Students to Violate Any Valid State Law, Municipal Ordinance, or Policy or Rule of the Local Board of Education

There were no cases documenting inciting, encouraging, or counseling students to violate any valid state law, municipal ordinance, or policy or rule of the local board of education as a primary ground for dismissal. In only one case was this ground cited as a secondary cause.

Cases Involving Reduction in Force

The courts have generally recognized the following as reasonable rationale for school districts to implement a reduction in force: decreased enrollment; fiscal, economic or budgetary basis; consolidation of school districts; changes in number of teaching positions; reduction of programs, courses, or services. Eliminating faculty and administrative positions through reduction in force results in a reduction in school district expenditures because staff salaries constitute a major portion of the operating budget (Dunklee & Shoop, 2002).

Reduction in force was the primary charge in four of the cases that went before the Georgia State Board of Education. This comprised 5.6 % of the total cases. Each of these cases resulted in a decision to sustain the local board of education.

In the case of *Lola Gillis-Mincey v. Vidalia City Board of Education* (1996), Appellant had been a teacher for 15 years when she appealed her case to the State Board of Education. The Appellant was one of four teachers who worked in the Title I program when the program was reduced due to a loss of funds. Her principal evaluated all of the Title I teachers and determined that her rating was the lowest with four “needs improvements” on her evaluation.

The local superintendent received the evaluations from the principal and sent written notification to the Appellant that her contract would not be renewed under reduction in force. The local board voted not to renew Appellant’s contract. Appellant claimed on appeal that the principal failed to follow the evaluation procedures required by the State Board of Education and the local board. In *Walker v. LaGrange City Board of Education* (1989), the State Board of Education held that teacher evaluations do not create any substantive rights for teachers and that failure to follow the procedures does not prevent a local board from dismissing a teacher. The State Board upheld the local board’s decision.

Gary Spradlin v. Carrollton City Board of Education (1996), appealed his case to the State Board of Education. The Appellant taught automotive technology when the local board decided to cancel the program. The local superintendent notified the Appellant that his contract would not be renewed due to the cancellation.

During the hearing, the Appellant argued that the local superintendent did not follow the local board’s reduction in force policy because he was not offered two new positions created in other programs as a part of the reorganization. The factors of the local board’s policy are only applicable in situations where less than an entire program is

eliminated and choices are made to determine which employees will be retained and which will not be renewed. The State Board of Education concluded that the local superintendent did not commit any errors in the non-renewal of Appellant's teaching contract; therefore, the decision was sustained.

Another case of reduction in force was brought to appeal in *James Applewhite v. Turner County Board of Education*, (1997). On April 14, 1997, the local board adopted a resolution to reduce the size of the staff in the alternative school program by two positions. The local superintendent notified the Appellant, who was a teacher in the alternative school, that his contract would not be renewed for the ensuing school year.

On appeal, the Appellant claimed that the local superintendent failed to produce evidence to support reduction in force. Evidence was presented at the hearing that the Georgia Department of Education was changing to a full time equivalent formula rather than using block grants, which reduced funding for the program. The local superintendent testified that the local board would receive \$48,000 under the new plan, whereas it had previously received \$165,500 under the block grant method. In *Curry v. Dawson County Board of Education* (1994), the court upheld the elimination of one position under the reduction in force for budget reasons. It was the decision of the State Board of Education that there was sufficient evidence to support the local board; therefore, the decision was sustained.

Kelly F. Dougherty v. Douglas County Board of Education (1999), resulted because of an elimination of the electronics program. The Appellant claimed that he never received actual notice of the charges against him and the date and time of the hearing.

The local superintendent testified that on April 22, 1999, he sent notice by certified mail to the Appellant's last known address of the charges and the date and time of the hearing. According to the O.C.G.A. § 20-2-940, stipulates that notices shall be served by certified mail and service shall be deemed to be perfected when the notice is deposited in the United States mail addressed to the last known address of the addressee with sufficient postage affixed to the envelope. Appellant claimed that the evidence that the notice was received is rebuttable by the evidence of non-receipt. In *James S. v. Rome City Board of Education* (1994), a tribunal hearing was held without the presence of the student. The State Board of Education reversed the local board's decision on the grounds that there was sufficient evidence to show that the student did not receive notice because the notice was not sent to the student's guardian. In the instant case, however, the local superintendent mailed the notice to the Appellant's last known address and there was no evidence that it was mailed improperly. The State Board held that there was sufficient evidence to support the local board; therefore, the decision was sustained.

Cases Involving Failure To Maintain Necessary Training

Educators in the state of Georgia must hold a valid certificate in order to be employed as a teacher. When certificates expire, they must be renewed through the Professional Standards Commission. Failure to maintain necessary training was the primary charge in one case resulting in 1.4 % of cases that were heard before the State Board of Education. This case resulted in a decision to sustain the local board of education.

A teacher of 35 years appealed to the State Board of Education in *Vener Lamar Kidd v. Clarke County Board of Education*, (1997). The Clarke County School System is

a member of the Southeastern Association of Colleges and Schools (SACS), which requires that teachers in the school complete 10 staff development units (SDUs) over a five-year period. SACS notified the local school system that Clarke Central High School would be placed on advised status because the Appellant did not have the required SDUs. The Appellant's principal wrote to him and notified him that he would have until August 18, 1997 to obtain the SDUs. During that time frame, the Appellant only acquired four SDUs. The Appellant was then notified that his teaching contract would be terminated for failure to obtain necessary training.

On appeal, the Appellant claimed that the requirements for a teacher to secure and maintain necessary training outlined in O.C.G.A. § 20-2-940 (a) only refers to the educational training requirements imposed by the State Board of Education. He contended it did not refer to requirements imposed by a non-governmental organization to which the local board may subscribe. The local board claimed that it adopted the standards required by SACS and that it can impose the requirements upon its teachers. Failure to secure the proper standards permits dismissal for failure to maintain the required educational training. The State Board concluded that the local board was within its rights to impose the certification requirements as imposed by SACS. The local board's decision was sustained.

Cases Involving Other Good and Sufficient Cause

Many states statutes provide a general category for teacher dismissal that is covered under other good and sufficient cause. School boards dismiss teachers for a great variety of reasons under this umbrella approach. In states that have just cause for school boards, Legislators believe it is necessary to have some flexibility in employment

functions because it would be impossible for a state legislature to delineate all possible reasons to justify a dismissal. Just cause is generally defined as a cause that resembles a reasonable relationship to a teacher's inability's to conduct the duties assigned or is in a reasonable sense detrimental to the students (Dunklee & Shoop, 2002).

The State Board of Education determined nine cases on appeal that found other good and sufficient cause as the primary reason for dismissal. Four of the cases were sustained, one reversed the local board, and four were dismissed for failure to file in a timely manner. This resulted in 12.5% of all cases.

This case was submitted upon remand from the Supreme Court of Georgia to consider Appellant's denial of due process claims in *Nina Anderson Childs v. Bibb County Board of Education*, (1992). The local board terminated the Appellant's teaching contract for other good and sufficient cause after finding that she improperly changed academic grades for students who attended a summer program she directed. A hearing was originally held before the Professional Practices Commission (PPC). They found that the Appellant, the registrar, and other teachers were regularly changing grades. The local board adopted the finding of the PPC when Appellant was dismissed.

In her initial appeal to the State Board of Education, the Appellant claimed that the local board denied her due process because she followed an acceptable practice. The State Board upheld the local board's decision on the grounds that Appellant had not raised her claims before the local board. During the hearing with the PPC, the record showed that Appellant tried to hide the fact that academic grades were changed without teacher authorization. The local board, the local superintendent, and the administration at Appellant's school did not initiate and was not involved in the practice of changing

grades. The local board found that because the practice of changing grades had become an accepted practice at her school did not require them to give Appellant fair notice that she was subject to disciplinary measures. The local board's decision was sustained.

Joseph A. Medeiros, Jr. v. Clayton County Board of Education (1992), was a case taken to the State Board after a Professional Practice Commission Tribunal (PPC) found the Appellant had improperly taken money from a school fund. Appellant was a sixth grade teacher and was employed by the local board for four years. One of the Appellant's duties was to tend the ice cream stand in the lunchroom for 20 minutes each day. The principal discovered that money was missing from the fund on several occasions after the Appellant worked his shift. Later, the principal removed a five and 10-dollar bill from the ice cream box and recorded the serial numbers. At the end of the Appellant's shift, the money was missing. Approximately two hours later, the principal called the Appellant into his office and the money was found in the Appellant's backpack. The Appellant claimed he did not know how the money got there.

Appellant argued on appeal that the evidence was insufficient to substantiate the charges against him. The Appellant maintains that the origin of the unprofessional conduct was theft by taking, but there was no evidence that he actually had taken any funds. The Appellant cited *Bigby v. State*, (1978); and *Peacock v. State*, (1978), stating that stolen funds is not sufficient to determine theft by taking if the accused has a reasonable explanation for the possession. Appellant also claimed that he had a substantive due process right to be free from arbitrary, capricious, and irrational action by his principal. He claimed the procedures were not followed in O.C.G.A. Section 20-2-

795 that states that there must be a written report to the board of education when a school employee has committed a certain specified crime, including theft.

The local board determined that there was nothing in the act that required the principal to make a report to the local board before he conducted his investigation. The State Board was of the opinion that the notice of charges was sufficient, there was evidence to support the charges, and the Appellant was not denied any substantive due process rights. The decision of the local board was sustained.

A physical education teacher at Lovejoy High School appealed his dismissal in the case of *Lemuel Lackey v. Clayton County Board of Education*, (1994). The Appellant's contract was terminated for other good and sufficient cause because two students found a gun in his car. The Appellant took his car to the Power Transportation Lab at Lovejoy High School so the students could obtain experience working on real problems. The students accidentally dropped the keys between the center console and discovered a pistol. They immediately reported the weapon to the instructor and a security officer. The assistant principal removed it from the car. The appellant claimed that he had no knowledge that the gun was in his car. He also claimed that his brother and father had borrowed his car the previous day to retrieve a hunting dog. The Appellant's father testified that when he returned home, he forgot about the pistol under the seat and failed to retrieve it or tell the Appellant about it. The Appellant was charged with possessing a weapon on campus.

At the hearing, the local board voted to terminate the Appellant's teaching contract. The Appellant argued that he did not violate the zero tolerance policy against weapons because he was unaware that the gun was under the front seat of his car. The

only issue in this case is whether Appellant was aware the gun was in his car. According to O.C.G.A § 20-2-940(e) states that in all hearings the burden of proof shall be on the school system. The State Board found that there was no evidence to show that Appellant knew or could have known that the gun was under the seat of the car. The State Board concluded that the local board did not carry the burden of proof. The local board's decision was reversed.

An example of a teacher's actions outside of the classroom resulted in the appeal case of *George Fuller v. Fayette County Board of Education*, (1997). The Appellant was a physical education teacher and coach for the school system for 25 years. Appellant drove to his wife's former husband's home one evening and became engaged in an argument. During the argument, Appellant slapped the former husband with his hand and screamed that he was going to kill him. As the Appellant hastily drove away, he nearly struck a neighbor with his car.

Both the neighbor and former husband filed charges against Appellant for battery, criminal trespass, and aggravated assault. The Appellant was arrested at his school where he was teaching a physical education class. Later, parents began calling the principal and expressed concern about their children being in the Appellant's class. The Appellant was notified that his contract would be terminated for other good and sufficient cause. There was testimony by the local superintendent and four principals that he had lost his effectiveness as a teacher because of the publicity and the concerns of the parents. The Appellant claimed that evidence of an incident that occurred off of school grounds does not establish a basis for termination. In *Logan v. Warren County Board of Education* (1982), the court held that there is no requirement upon a local board of education to

establish a nexus between a teacher's off-campus activities and the teacher's ability to teach. In the instant case, the Appellant was terminated because he lost his effectiveness as a teacher, not because he became involved in an incident off-campus. The State Board sustained the local board's decision.

Dennis White v. Savannah-Chatham County Board of Education (1997), involved a teacher of six years that was terminated for other good and sufficient cause. The Appellant was accused of exercising poor judgement in placing unruly children outside of the classroom and locking the door when they were disruptive. In addition, he inappropriately made reference to the students' race when classifying them. The students in his class reported this to the principal.

At this time, the local superintendent recommended the termination of the Appellant's teaching contract under the provisions in the O.C.G.A § 20-2-940 for other good and sufficient cause. He charged the Appellant with unprofessional disciplinary actions and inappropriate conduct in singling out certain students by race and color of undergarments. The local board conducted a hearing and voted to terminate his contract. The fact that Appellant locked the door of his classroom, after putting students in a detention area, resulted in a situation where the Appellant was no longer supervising the students. The State Board held that there was sufficient evidence to support the local board; therefore, the decision was sustained.

Cases Involving Multiple Grounds for Dismissal under the Georgia Fair Dismissal Act

There were 11 dismissal cases that were brought before the Georgia State Board of Education with multiple grounds for dismissal in 1991 to 2001. This resulted in 15.3 % of all appeal cases heard by the Georgia State Board of Education. It is evident that

there was not one primary ground that led to the dismissal proceedings. Only one of these cases was dismissed because the Appellant did not submit a transcript, file a brief, or request an oral argument. In the O.C.G.A § 20-2-1160, appeals must be addressed to and filed with the local school superintendent within 30 days of the decision of the local board of education. The local school superintendent has 10 days after receiving the request for the appeal to provide all of the necessary documents to the State School Superintendent.

Fleta P. Smith v. Atlanta City Board of Education (1993), involved a seventh grade teacher. The principal found her students frequently off task, she refused to work cooperatively with school administrators, and she exhibited inappropriate and unprofessional behavior at work. The principal formally evaluated the Appellant on three separate occasions finding many deficiencies with her teaching. On each of these occasions, the Appellant refused to sign the evaluations. The principal placed the Appellant on a Professional Development Plan, and she was required to attend four in-service workshops to assist in her teaching deficiencies. The Appellant failed to attend three of the four workshops.

A tribunal conducted a hearing and found the Appellant guilty of incompetency, insubordination, and willful neglect of duties. On appeal, the Appellant claimed there was insufficient evidence to support the charges. In *Ransum v. Chattooga County Board of Education* (1978), the legal standard of review by the Georgia State Board of Education is that if there is any evidence to support the decision of the local board of education, then the decision will stand, unless there has been abuse of discretion or the

decision is so arbitrary or capricious as to be illegal. The State Board concluded there was sufficient evidence to support the local board; therefore, the decision was sustained.

The Appellant was a classroom teacher and then a media specialist employed with the local board for 27 years in the case of *Carolyn Middleton v. Bibb County Board of Education*, (1996). The principal and the Director of Media Services became aware that the Appellant was failing to complete the tasks of her job. The principal placed the Appellant on a Professional Development Plan, but the Appellant did not complete all of the assignments on the plan. The local superintendent sent the Appellant a letter to notify her that he would not recommend renewal of her contract because of insubordination, incompetence, willful neglect of duties, and other good and sufficient cause.

On appeal, the Appellant claimed that she was denied due process because the notice of her non-renewal was not given before April 15, 1996. The Appellant did not raise this issue at the initial hearing before the local board. According to *Hutcheson v. DeKalb County Board of Education* (1980), the State Board held that if an issue is not raised at the initial hearing, it cannot be raised for the first time when an appeal is made to the State Board of Education. The local board's decision was sustained.

Betsy Morgan v. Atlanta City Board of Education (1996), involved a sixth grade teacher that was charged with incompetency, insubordination, willful neglect of duties, and other good and sufficient cause because of a pattern of rude, insulting, and unprofessional conduct towards students. The Appellant pushed a child from his back and the student fell over a desk. This action resulted in the student hitting the back of his leg against a chair. When the student asked the Appellant why she pushed him, she replied, "so take me to court." After the incident was investigated, a recommendation

was made to place the Appellant on a 20-day suspension. Appellant refused to accept the suspension and requested a hearing on the matter.

The local superintendent wrote to Appellant recommending termination of her teaching contract. On appeal, Appellant claimed that it was an error to admit evidence concerning a 1981 incident when Appellant physically grabbed a student. In *West v. Habsersham County Board of Education* (1987), the State Board held that evidence from prior contract years is not admissible unless it shows a pattern of conduct. In the instant case, the principal made allegations of Appellant pushing a student. Evidence of prior instances of physical contact with students shows pattern of conduct of physical abuse of students, therefore, it is admissible. The State Board concluded that the hearing officer did not err in admitting this evidence. The local board's decision was sustained.

The case of *Tharone B. Ward v. Atlanta Public School Board of Education* (1996), resulted after the Appellant slapped a student. On February 19, 1996, the Appellant escorted a female student to the principal's office because she had become unruly. Appellant left the student at the office while the principal was involved in a conference. When the Appellant returned to his room, he found papers strewn from his desk onto the floor. The female student came back into the classroom and said that she had knocked the papers off the desk. She began cursing at the Appellant as he took her by the arm to go back to the office. The student then tried to strike him in the face. The Appellant fended off the blow and struck her in the face.

The principal investigated the incident and obtained statements from witnesses. The principal then recommended termination of Appellant's teaching contract because he had been involved in other incidents with students. The principal had previously warned

him not to strike any students. The tribunal found him guilty of insubordination, incompetency, willful neglect of duties, and other good and sufficient cause. On appeal, the Appellant claimed that evidence from prior incidents should not have been introduced because it prejudiced the tribunal. In *Palmer v. Putnam County Board of Education* (1976), the State Board held that evidence of prior incidents was admissible. The evidence in the instant case was relevant as to whether Appellant had been directed not to physically abuse students. The State Board found there was sufficient evidence to support the local board; therefore, the decision was sustained.

An example of making sexually suggestive remarks was cited in *Debra Williams v. Atlanta Board of Education*, (1997). The Appellant was accused of using the words “bitch,” “whore,” and “hell” in her classroom when talking to the students. She also told female students in the class, “You have two choices, you can use your brain or you will have to open up your legs.” Appellant’s principal recommended termination of her teaching contract. The Appellant entered negotiations with administrative personnel in an effort to keep her job. The Appellant agreed to a 30-day suspension and a Professional Development Plan to address the unprofessional conduct in classroom activities.

The Appellant later notified the local superintendent that she wanted to proceed with a hearing before the local board. A hearing was scheduled before a tribunal, but the Appellant objected to the tribunal. The hearing was postponed to another date. At the second hearing, the Appellant’s attorney showed up without the Appellant and requested another postponement and it was granted. At the third scheduled hearing on August 27, 1997, the Appellant appeared without her attorney, but with a union representative.

Appellant asked for a postponement to obtain another attorney, but the tribunal denied her request.

On appeal, the Appellant claimed that she was denied due process because the tribunal did not grant her a continuance to obtain an attorney. The court held in *Clark v. State* (1981), that “a motion for continuance is addressed to the sound discretion of the trial court. Absent a showing that it has been abused, that discretion will not be controlled.” In the instant case, the hearing was postponed several times at the Appellant’s request. The local board’s decision to not renew Appellant’s contract based on incompetence, insubordination, and other good and sufficient cause was sustained.

An example of the local board not making any findings of fact or determinations concerning any charges, but instead, merely voting not to renew the Appellant’s teaching contract, occurred in *Elizabeth McCrary v. Houston County Board of Education*, (1998). On two separate occasions the Appellant became engaged in a shouting match with her principal and with the secretary. The Appellant had previously been on a Professional Development Plan because of concerns about her inability to interact with students and other teachers.

The local superintendent notified the Appellant that her teaching contract would not be recommended for renewal because of incompetency, willful neglect of duties, insubordination, and other good and sufficient cause. On appeal, the Appellant claimed there was no evidence to support the charges. According to *Ransum v. Chattooga County Board of Education* (1978), the legal standard of review by the Georgia State Board of Education is that if there is any evidence to support the decision of the local board of education, then the decision will stand, unless the decision is so arbitrary and capricious

as to be illegal. The State Board concluded that the local superintendent presented sufficient evidence to support the local board's decision, whether viewed as insubordinate or other good and sufficient cause. The local board's decision was sustained.

Rhonda Browning v. Atlanta City Board of Education (1999), involved an employee who was a special education teacher. The principal found that the Appellant failed to maintain a clean classroom and placed her on a Professional Development Plan (PDP) to correct the deficiencies. During the conference to discuss the PDP, the Appellant became irate to the point that the principal told her that she would have Appellant removed from the building if she did not calm down. At a later conference, the Appellant became irate again and accused the principal of discriminating against her because of her race and her being overweight.

The local superintendent notified Appellant that he would not recommend the renewal of her teaching contract. The Appellant was found guilty of insubordination, willful neglect of duties, and other good and sufficient cause. There was evidence that Appellant failed to maintain her classroom in a clean condition, she refused to accept her principal's authority, and she engaged in unprofessional conduct toward her principal and other personnel. The State Board held that there was sufficient evidence to support the local board. The decision was sustained.

Julia Plummer v. Dublin City Board of Education (1999), was a case involving a science teacher. The Appellant's principal was concerned about her ability to maintain classroom management and properly present the material to the students. The principal observed that Appellant failed to prepare lesson plans, students slept in her class, and the students did not show any respect towards her.

The local superintendent notified Appellant that he would not recommend renewal of her teaching contract under the provision of O.C.G.A. § 20-2-940 because of incompetency, insubordination, and willful neglect of duties. The State Board held that the local board presented sufficient evidence; therefore, the decision was sustained.

The Appellant was accused of making false statements on his application for employment and using inappropriate language in class in the case of *Thomas J. Amendola v. Atkinson County Board of Education*, (2000). The Appellant had previously been employed with the Ware County Board of Education but failed to indicate this on his employment application. Ware County did not renew Appellant's teaching contract and allowed him to resign as part of a settlement agreement.

The local superintendent notified Appellant that he was seeking termination of his teaching contract on the grounds of insubordination, willful neglect of duties, and other good and sufficient cause. A hearing was held before a tribunal appointed by the local board. At this time, the Appellant made no objections to the service of any of the tribunal members. On appeal, Appellant claimed that he was denied due process because the local board employed one of the tribunal members. In *Hutcheson v. DeKalb County Board of Education* (1980), the State Board of Education held that, as an appellate body, they are not authorized to consider matters that have not been raised before the local board. The State Board concluded that Appellant's claim of bias was groundless. The local board's decision was sustained.

The case of *Donna Cabe v. Walton County Board of Education* (2001), presented a unique question as to whether a teacher can be dismissed for failing to care for some pets because of a psychological impairment, clinical depression, and serving time in jail.

Appellant began manifesting symptoms from clinical depression, but her work at school was never affected. The Appellant raised cats at her home. The police went to Appellant's house, at the request of her family, and found several starving and dead cats. She was charged with 51 misdemeanor charges of cruelty to animals. Using her accrued medical leave, she checked herself into a psychiatric facility. In the fall of 1999, she was sentenced to serve 10 consecutive weekends in jail.

The local superintendent notified Appellant that a recommendation would not be made to renew her teaching contract for the ensuing school year because of willful neglect of duties, immorality, and other good and sufficient cause. The local board found her guilty on all charges.

On appeal, the Appellant raised issues concerning each of the grounds for termination. The local board contended she willfully neglected her duties because she took medical leave during the school year. The evidence showed that Appellant followed all of the requirements for taking medical leave. The State Board held that the absence of a teacher or other employee on an approved leave does not constitute willful neglect of duties regardless of why she took the leave. The local board claimed that it was immoral for Appellant to spend time in jail. The State Board concluded that Appellant's inaction for the pets does not rise to the level of immoral behavior when her mental condition is taken into account. The same arguments were used for the other good and sufficient cause. The State Board held that Appellant continued to be an effective teacher and there was no evidence that anyone was aware that she spent time in jail; therefore, the local board's decision was reversed.

CHAPTER 4

SUMMARY OF DISMISSAL APPEALS, FINDINGS, AND CONCLUSIONS

This chapter provides a summary of dismissal appeals, findings, and conclusions based on Georgia State Board of Education dismissal appeal decisions of tenured teachers from the years 1991 to 2001. The cases were categorized by the State Board of Education's decision to sustain, dismiss, or reverse the local board of education's decision. Each case was arranged into one or more of the grounds of dismissal under the Georgia Fair Dismissal Law and discussed chronologically. This chapter includes a summary of the dismissal appeals. It also includes findings and conclusions based on the analysis of these decisions.

Summary of Dismissal Appeals from 1991 to 2001

The legal standard of review by the Georgia State Board of Education is that if there is any evidence to support the decision of the local board of education, then the decision will stand, unless there has been abuse of discretion or the decision is so arbitrary or capricious as to be illegal. The Official Code of Georgia gives eight grounds for dismissal. The appeal cases were categorized according to these grounds.

1. Incompetence: In the cases reviewed concerning incompetence, 83 % were sustained by the Georgia State Board of Education. Incompetence has been defined as a lack of physical, intellectual, or moral ability; specific lack of legal qualifications or fitness, inadequacy; or insufficiency (Dunklee & Shoop, 2002).
 - (a) Incompetence was charged as the primary ground for dismissal in 12 of the Georgia State Board of Education cases, which constituted 16.6 % of all cases from 1991 to 2001.

(b) Of these 12 cases, 10 cases resulted in decisions to sustain, one was reversed, and one was dismissed.

(c) The cases that resulted in decisions to sustain most frequently cited deficiencies in classroom management, failure to properly prepare lesson plans, failure to maintain grades, inadequate instructional delivery, excessive tardiness, and excessive student failure rates.

2. Insubordination: In the cases reviewed concerning insubordination, 69 % were sustained by the Georgia State Board of Education. Educators can be dismissed for insubordination when they willfully and deliberately violate school rules and defy school authority (Fischer, et al. 1999).

(a) Insubordination was charged as the primary ground for dismissal in 16 cases. This comprised 22 % of the cases before the State Board of Education from 1991 to 2001.

(b) Eleven of these cases resulted in decisions to sustain the local boards of education and five cases were dismissed for failing to file with the local school superintendents within 30 days of the decision of the local boards.

(c) The cases that resulted in decisions to sustain most frequently cited failure to carry out directives given by their superiors. Examples of these were failure to conduct the moment of silence, failure to take a drug test when marijuana was found in an appellant's vehicle, failure to remove religious paraphernalia from classroom, and taking students on an unauthorized outing after appellant was told it was against local board policy.

3. Willful Neglect of duties: In the cases reviewed concerning willful neglect of duties, 100 % were sustained by the Georgia State Board of Education. Examples of willful neglect of duties include failing to comply with lesson plan procedures, sleeping in class, and excessive tardiness (Dunklee & Shoop, 2002).
 - (a) Eight of the appeal cases cited willful neglect of duty as the primary ground for dismissal. This comprised 11.1 % of cases that were taken before the State Board of Education from 1991 to 2001.
 - (b) Each of these cases resulted in the decisions to sustain the local boards of education.
 - (c) The most frequently cited indicators were failure to improve teaching techniques after attending remedial programs; failure to report to work; failure to manage, plan, and discipline classes; absenteeism; and failure to teach classes.
4. Immorality: In the cases reviewed concerning immorality, 82 % were sustained by the Georgia State Board of Education. Common statutory grounds for dismissal regarding immorality include moral turpitude, unfitness to teach, conduct unbecoming a teacher, teacher misconduct, subversive activity, and violating the code of ethics (Dunklee & Shoop, 2002).
 - (a) There were 11 cases that cited immorality as the primary ground for dismissal. This resulted in 15.3 % of all appeal cases from 1991 to 2001.
 - (b) Of these cases, the State Board sustained nine of the local boards of education's decisions, one was reversed, and one was dismissed.

(c) The most prevalent reasons cited for the sustained cases were driving under the influence of alcohol, drug possession, having inappropriate sexual conduct with students, sexual harassment, shoplifting, and being unfit to teach.

5. Inciting, encouraging, or counseling students to violate any valid state law, municipal ordinance, or policy or rule of the local board: There were no cases documenting inciting, encouraging, or counseling students to violate any valid state law, municipal ordinance, or policy or rule of the local board of education as a primary ground for dismissal.
6. To reduce staff due to loss of students of cancellations of programs: In the cases reviewed concerning reduction in force, 100 % were sustained by the Georgia State Board of Education. Reduction in force results from decreased enrollment; fiscal, economic or budgetary basis; consolidation of school districts; changes in number of teaching positions; reductions of programs, courses, or services (Dunklee & Shoop, 2002).
 - (a) There were 4 cases that cited reduction in force as the primary ground for dismissal, which comprised 5.6 % of the appeal cases from 1991 to 2001. (b) All of these cases were sustained and upheld by the Georgia State Board of Education.
 - (c) Each of these cases reduced staff size through an elimination of an entire program or teaching positions that were canceled.
7. Failure to secure and maintain necessary educational training: In the case reviewed concerning failure to secure and maintain necessary training, it resulted in a decision to sustain by the Georgia State Board of Education. Educators in the

state of Georgia must hold a valid certificate in order to be employed as a teacher. When certificates expire, they must be renewed through the Professional Standards Commission.

(a) Failure to maintain necessary training was cited as the primary ground for dismissal in only one of the appeal cases. This comprised 1.4 % of the appeal cases from 1991 to 2001.

(b) The State Board upheld the local board's decision to sustain because the Appellant failed to maintain the necessary requirements.

8. Any other good and sufficient cause: In the cases reviewed concerning other good and sufficient causes, 44 % were sustained by the Georgia State Board of Education. Other good and sufficient cause is a general category that many state statutes provide. Just cause is generally defined as a cause that resembles a reasonable relationship to a teacher's ability's to conduct the duties assigned or is in a reasonable sense detrimental to the students (Dunklee & Shoop, 2002).

(a) There were nine cases that charged other good and sufficient cause as the primary ground for dismissal. This resulted in 12.5 % of all appeal cases from 1991 to 2001.

(b) Of these cases, four were sustained, one was reversed, and four were dismissed.

(c) The most frequently cited indicators for the cases that were sustained were inappropriate conduct, unprofessional disciplinary actions, improperly changing grades, and ineffectiveness as a teacher.

9. Multiple grounds: There were 11 dismissal cases that were brought before the Georgia State Board of Education with multiple grounds for dismissal in 1991 to 2001. The cases were organized according to those with one primary ground for dismissal and those with multiple grounds. This organization was made after careful analysis of the individual cases and was evident that there was not one primary ground that led to the dismissal proceedings. In the cases reviewed concerning multiple grounds, 82 % were sustained by the Georgia State Board of Education.
 - (a) Multiple grounds were charged for dismissal in 11 of the Georgia State Board of Education cases, which comprised 15.3 % of all of the appeal cases from 1991 to 2001.
 - (b) Of these 11 cases, nine were sustained, one was reversed, and one was dismissed.
 - (c) The most prevalent reasons cited for the cases that were sustained were inappropriate and unprofessional behavior toward students and teachers; failure to complete Professional Development Plans; falsifying records; ineffectiveness as a teacher; and striking a student.

Findings

This study found:

1. Under the Georgia Fair Dismissal Act, there are eight grounds for termination or suspension of a teacher, principal, or other employee having a contract for a definite period of time. Sanctioned grounds for such actions are, according to the O.C.G.A § 20-2-940, as follows:

1. Incompetency;
 2. Insubordination;
 3. Willful neglect of duties;
 4. Immorality;
 5. Inciting, encouraging, or counseling students to violate any valid state law, municipal ordinance, or policy or rule of the local board of education.
 6. To reduce staff due to loss of students or cancellations of programs;
 7. Failure to secure and maintain necessary educational training;
 8. Any other good and sufficient cause.
2. The legal standard of review by the Georgia State Board of Education is that if there is any evidence to support the decision of the local board of education, then the decision will stand, unless there has been abuse of discretion or the decision is so arbitrary or capricious as to be illegal.
 3. The Georgia State Board of Education ruled on 72 cases of tenured teachers from 1991 to 2001.
 4. Of the 72 cases that the Georgia State Board of Education reviewed, 56 cases were sustained, four were reversed and 12 were dismissed.

Conclusions

This study concludes:

1. The majority of cases sustained by the Georgia State Board of Education were sustained due to the deferential standard of review and the fact that the local boards of education provided proper legal due process and documentation.

2. The primary cause for cases being dismissed by the Georgia State Board of Education was that the Appellants did not file within a timely manner. The O.C.G.A. § 20-2-1160 stipulates that appeals must be addressed to and filed with the local school superintendent within 30 days of the decision of the local board of education.
- (3) The primary reasons for cases that were reversed by the Georgia State Board of Education were that the local boards did not carry the burden of proof and procedural due process rights were violated.

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