

EXAMINING ADMINISTRATIVE AUTHORITY TO DISMISS TENURED TEACHERS
IN GEORGIA

by

ADAM L. KURTZ

(Under the Direction of John Dayton)

ABSTRACT

Teacher quality is important to student learning. This legal research reviews historical foundations and Georgia State Board of Education appeals decisions to determine the level of administrative authority granted to Georgia school districts by the Georgia Fair Dismissal Act of 1975. This act provides veteran teachers with due process protections commonly known as tenure and districts with eight reasons for dismissal or non-renewal. These areas are: 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; or 8) any other good and sufficient cause. Most cases appealed, over 85%, are decided for the Local Board of Education. An analysis of all appeals decisions provides clarity of definition for these eight areas for dismissal. Operational definitions that emerged from State Board of Education appeals decisions provide guidance to Local Boards of Education, school administrators and teachers.

INDEX WORDS: Teacher dismissal, Due process, Teacher tenure, Teacher rights, Georgia Fair Dismissal Act, Non-renewal

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DEDICATION

This is dedicated to my father, P. David Kurtz.

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I would like to thank Dr. John Dayton for supporting me and guiding me through, what has been a learning process that has exceeded all expectations. It is my sincerest hope to be able to continue to learn from Dr. Dayton and others like him throughout my life.

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CHAPTER 1

INTRODUCTION

Statement of the Problem

This dissertation examines the question: What level of administrative authority is granted to Georgia school districts to dismiss tenured teachers under the Georgia Fair Dismissal Act of 1975?¹ It is important to address this question because student learning is directly connected to the quality of their teachers and dismissal is a necessary tool in ensuring that schools are staffed with high quality teachers. Economists Eric Hanushek and Steven Rivkin (2006) performed a meta-analysis of studies that examined the relationship between student achievement and teacher quality, and they found a consistently strong positive relationship. In an earlier work, Hanushek (1992) found that the most effective teachers' students demonstrated a year's worth of additional learning when compared to the students taught by the least effective teacher. Linda Darling-Hammond (2000) discovered that when it comes to student achievement "schools can make a difference, and a substantial portion of that difference is attributable to teachers" (p. 2). According to Nye, Konstantopoulos, and Hedges (2004), the effect of a high quality teacher is even more pronounced for students coming from backgrounds of poverty.

Teacher quality is so important to student learning that the federal government required that all teachers be considered "highly qualified" in the No Child Left Behind Act (NCLB). Although the No Child Left Behind Act has been in effect for nearly a decade, there is a renewed push for high quality teachers coming from the Obama administration. At a speech before the

¹ Dismissal of a teacher during a contract period and non-renewal of a tenured teacher are afforded due process protections by the same provisions in the Georgia Fair Dismissal Act. The terms dismissal and non-renewal are used interchangeably in this work. In this work the term non-renewal refers to instances in which a tenured teacher is not offered a subsequent contract.

Hispanic Chamber of Commerce in 2009 President Barack Obama said, “From the moment students enter a school, the most important factor in their successes is not the color of their skin or the income of their parents, it’s the person standing at the front of the classroom.” Beyond rhetoric, the administration has used grant funds to support reforms aimed at improving teacher quality. There are three primary tools available to school leaders to ensure all students have the opportunity to learn from a high quality teacher: 1) hiring and retaining quality teachers; 2) professional development to train high quality teachers; and 3) dismissal or non-renewal of poor quality teachers.

Academic work in the area of teacher dismissal usually takes the form of legal reviews that focus narrowly on the balance of teacher rights as they pertain to a specific constitutionally protected conduct. The Georgia Fair Dismissal Act, codified in part as Official Code of Georgia Annotated (O.C.G.A.) 20-2-940 specifies eight areas for non-renewal of tenured teachers: 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; or 8) any other good and sufficient cause. To date there is no current and comprehensive examination of the interpretation and application of these eight areas. Thus, there are no operational guidelines to inform local administrators, school boards, and their legal counsel as they consider the non-renewal of tenured teachers.

In an effort to better understand how districts can ensure high quality teachers in every classroom, this study reviewed relevant research on the relationship between teacher quality and student achievement. Through improved knowledge of teacher quality and its various measures,

the three administrative tools for improving teacher quality can be better understood. After exploring the strengths and limitations of hiring and retaining quality teachers and professional development, this work focuses on the role of teacher dismissal. Specifically, this section explores how an improved understanding of the levels of administrative authority to dismiss teachers plays a necessary part in improved student performance.

Teacher Quality and Student Achievement

A large number of studies have addressed the relationship between teacher quality and student learning. It is not the purpose of this work to conduct an exhaustive review of the many studies that investigated this relationship. Rather, this work primarily examines what are considered to be seminal meta-analyses of research on the relationship between teacher quality and student performance. It also includes selected studies to illustrate key points. The work of Darling-Hammond (2000) is especially illuminating as it drew on data from all 50 states including a “survey of policies, state case study analysis, the 1993-94 Schools and Staff Surveys (SASS), and the National Assessment of Education Progress (NAEP)” (p. 1). She concluded that “both the qualitative and quantitative analyses suggest that policy investments in the quality of teachers may be related to improvements in student performance” (p. 1). These works generally seek to determine which teacher characteristics have the greatest positive impact on student performance. Some major areas of focus for research in this area include: 1) teacher content knowledge; 2) teacher experience; 3) teacher education; 4) teacher pedagogy; and 5) teacher certification or licensure. Another set of works focuses on teacher quality independent of any specific characteristics. These works generally measure teacher quality as a function of consistent academic growth for the students they teach.

It is clear that the research examining teacher quality, as measured by the five characteristics addressed above, returns somewhat mixed results. Additional studies have examined a variety of characteristics such as teacher intelligence, emotional objectivity, ability to connect with students, and various teacher beliefs. These investigations have also frequently returned conflicting results. Consequently, there is no single model through which teacher quality can be measured. Nye, Konstantopoulos, and Hedges (2004) wrote, “It is important to recognize that failure to find that some set of measured teacher characteristics are related to student achievement does not mean that all teachers have the same effectiveness in promoting achievement” (p. 238). Regardless of which specific teacher trait or combination of traits contributes most to teacher quality, research is clear that teacher quality has a significant impact on student learning and performance.

Studies that examine teacher quality as a function of student performance over time clearly indicate that students of high performing teachers consistently demonstrate increased learning when compared to their peers (Hanushek & Rivkin, 2006). In 1996 Sanders and Rivers conducted a study titled *The Cumulative and Residual Effects of Teachers on Future Student Academic Achievement*. In this work they examined the effects teachers had on student achievement over a three year period. Their work found that “the single most dominant factor affecting student academic gain is teacher effect” (p. 6). They also found that “the effects of teachers are both additive and cumulative”

Policy Implications

There are a number of policy implications that emerge from research on teacher quality as it relates to student performance. Unfortunately, the fact that there is no clear model of what constitutes a high quality teacher complicates policy development. Much of the responsibility

for ensuring each child is taught by a high quality teacher falls on the shoulders of district and building level administrators. School administrators are in a pivotal position to impact the quality of teaching in their schools. Again, they have three main tools: 1) hiring and retaining quality teachers; 2) in-service training for teachers in the practices of high quality teachers; and 3) dismissal of poor quality teachers. The highly regarded National Commission of Teaching and America's Future (NCTAF) examined teacher quality and explored policy implications. The NCTAF (1997) report titled *Doing What Matters Most: Investing in Quality Teaching*, addressed the hiring of quality teachers and on-the-job professional training. In later reports, NCTAF examined retention and recruitment of teachers, but at no point did their work address the dismissal of poorly qualified teachers. In a 38 page critique of this report, Ballou and Podgursky (1999) disagree with many of the assertions. They offer market based reforms and local control as a solution, but fail to address the issue of dismissing unfit teachers.

Hiring high quality teachers

Hiring is one of the main tools at the disposal of school administrators for staffing their classrooms with high quality teachers. However, no model or blue print is available for predicting which teacher applicants will, in fact, turn out to be highly competent and effective teachers. A starting point is to ensure that applicants meet the degree and state licensure requirements. As discussed above, however, there is a great deal of variance in what different states require to be a certified teacher. Further, research findings report mixed results regarding the impact of subject matter knowledge, pedagogical competence, and certification requirements on student achievement (Darling-Hammond, 2000). Similarly, although it seems common sense to give considerable attention to applicants with teaching experience, here again the research

provides no clear indication that this qualification is the “silver bullet” for ensuring a high level of student learning (Andrew & Schwab, 1995; Denton & Peters, 1998).

It is not the purpose of this research to examine policy implications for hiring high quality teachers, but these are explored in a number of reports. Among the more notable are the NCTAF (1997) report *Doing What Matters Most: Investing in Quality Teaching* and the U.S. Department of Education (2009) report *The Secretary’s Sixth Annual Report on Teacher Quality: A Highly Qualified Teacher in Every Classroom*. The U.S. Department of Education report focused entirely on the policy objectives designed to improve the teachers hired in U.S. schools. The report addressed the problem of hiring high quality teachers on three fronts; 1) teacher preparation; 2) state assessments of the quality of teacher candidates; and 3) state certification requirements. The 132 page report on teacher quality does not address either professional learning once on the job or the dismissal of poor quality teachers.

Professional development

On-the-job training is another viable tool for enabling teachers to develop further competence. Professional development can be targeted to individual teachers through coaching and mentoring as well as groups of teachers via workshops and seminars. A number of recent reports addressed improving teacher quality through policy supporting better targeted professional learning. Based on the thorough examination of professional development offerings for teachers, the 2010 NCTAF report entitled *Team Up for 21st Century Teaching and Learning: What Research and Practice Reveal About Professional Learning* described the current trend in professional development opportunities as “fragmented and disconnected: professional development is not aligned with student and teacher needs, curriculum is not aligned with assessment, and standards are not aligned with curriculum” (p. 4). In addition, The National

Staff Development Council (NSDC) (2009) noted that rather than examining individual teacher needs, professional learning often relies on “drive by workshops” designed for the masses. Thus, while professional development has the potential to be a vehicle for enhancing teacher expertise, much can to be done to improve effectiveness.

The design of a comprehensive professional development plan that addresses varying individual needs requires thoughtful, system-wide support and an allocation of necessary resources. In addition, the common paradigm for professional development must change. NCTAF 2010 reviewed relevant research in the area of professional development and offered an alternative to the widely used workshop model. Similar insights can be gleaned from the work of the National Staff Development Council (2009). Regardless of improvements in the models, teacher enthusiasm and motivation are central in the acquisition of effective pedagogy (Beltmann, 2009).

Dismissal of unqualified teachers

Another tool for addressing the need to staff schools with competent teachers is dismissal of those who are unsuccessful in maximizing student learning. It is the goal of every administrator to hire well and develop and deliver professional learning that results in a high quality teacher in every classroom. Hiring and professional development may work a large percentage of the time. However, common sense suggests that no matter what profession people enter, many will be successful, and some, for various reasons, will not succeed. Dismissal of teachers is an administrator’s vitally important tool of last resort. Interestingly, very little attention is given to this option. This is understandable since one of the most challenging responsibilities facing any administrator is letting go of incompetent staff. Unfortunately, this tool of last resort is often under-utilized. There are a number of reasons that poor quality

teachers are not often removed from their positions. Chait (2010) cited inadequate evaluation systems, the time and cost involved in dismissal, the difficulty of winning cases, school culture, and the lack of effective replacements as the main reasons that poor quality teachers are allowed to remain in the classroom. The works of Adamowski, Therriault & Cavanna (2007) and Painter (2000) find similar barriers to improving teacher quality.

Dismissal or non-renewal of poor quality teachers is critically important to student success in school. Sanders and Rivers (1996) found that students who received instruction from a high quality teacher for three years in a row performed, on average, over 50% higher on mathematics achievement tests than students who received instruction from a poor quality teacher for the same three years. Similarly, Economist Eric Hanushek (2009) conducted research in which he estimated that removing the poorest performing 6 to 10 percent of teachers would result in significant learning gains over time. Using mathematics test scores to measure learning, the researcher found that over a thirteen year period, the United States could rise from its current 29th ranking to the 7th ranking nation in the world (Hanushek, 2009). Such a rise in performance is important for the nation to compete in a global economy. Additionally, these gains are important in the lives of the students that they represent. Students who are successful in school have significantly greater opportunities in life, such as higher earning potential, a higher standard of living, and lower incarceration rates.

Another important reason for dismissing unqualified teachers is that they “diminish the school culture and learning environment for all teachers and students in a school....chronically ineffective teachers depress the learning of their peers and therefore the achievement of other students in the school” (Chait, 2010, p.3). Chait (2010) cited a teacher survey conducted by Public Agenda and Learning Point Associates in 2009. In this survey, almost two thirds of the

teachers reported working in a school with a few teachers that were “failing to do a good job and are going through the motions” (p. 2). In another report examining the impact of poor quality teachers, Weisberg, Sexton, Mulhern, & Keeling (2009) found:

an overwhelming majority of both teachers (68 percent) and administrators (91 percent) agree or strongly agree that dismissing poor performers is important to maintaining high-quality instructional teams. This may seem self-evident, but it suggests a consensus that teacher performance management should entail accountability, not just development. (p. 16)

Both teachers and administrators reported the presence of poor performing teachers in their schools. In addition, the majority of teachers and administrators noted that the presence of ineffective teachers has a negative impact on school culture.

Another major reason for removing ineffective teachers is that they disproportionately impact students from a background of poverty. According to the National Center for Educational Statistics, School and Staffing Survey (SASS) (2008), 2.9 percent of the tenured teachers in highest poverty districts were dismissed, compared to only 2.2 percent of the tenured teachers in the lowest poverty districts. The discrepancy in the dismissal rates for non-tenured teachers is even greater, with high poverty districts dismissing 40 percent more than districts with lower poverty rates (NCES, 2008). Chait (2010) asserted that these differences indicate a greater number of low quality teachers present in the poorest districts. In addition, Lankford, Loeb, and Wyckoff (2002) found that:

teachers are systematically sorted across schools and districts such that some schools employ substantially more qualified teachers than others....Nonwhite, poor, and low performing students, particularly those in urban areas attend

schools with less qualified teacher....transfer and quit behavior of teachers is consistent with the hypothesis that more qualified teachers seize opportunities to leave difficult working conditions and move to more appealing environments. Teachers are more likely to leave poor urban schools, and those who leave are likely to have greater skills than those who stay” (pp. 54-55).

The problem of ineffective teachers may be particularly critical for Georgia. According to data from the U. S. Department of Education National Center for Educational Statistics (2007-2008 survey), Georgia has the eighth highest poverty rate as measured by percent of students receiving free and reduced lunch. In addition, Georgia has particularly weak standards for teacher certification. Linda Darling-Hammond (2000) asserts that “states with the lowest and least well-enforced standards have tended to include many in the southeast (Louisiana, Mississippi, Georgia, South Carolina)” (p. 12).

Fortunately, Georgia has a mechanism for dismissing teachers. The Georgia Fair Dismissal Act of 1975 affords tenured teachers with protections of due process of law while providing school districts with the previously mentioned eight areas for dismissal or non-renewal. A thorough understanding of the application and interpretation of these eight areas for dismissal is invaluable in ensuring that administrators are able to keep schools staffed with high quality professionals.

Research Examining the Application of the Georgia Fair Dismissal Act

The gap in the knowledge of teacher dismissal in Georgia has not been filled by research. A thorough review of databases reveals that there is virtually nothing that has been published on this vital topic. At best, there are two unpublished dissertations that investigate the dismissal of teachers in the state of Georgia (Burton, 2003 & Parish 1999). Burton’s (2003) research, titled

An Analysis of Georgia State Board of Education Dismissal Appeals Decisions from 1991 to 2001, reviewed state board appeals decisions during a ten year period. Although this work is exhaustive for the time period reviewed and does provide some guidance to administrators, the interceding nine years of decisions not included in this work have great importance. Between 2001 and the present, the state has applied policies outlined in the *A Plus Education Reform Act of 2000* and the nation has experienced an era of accountability ushered in by No Child Left Behind. In contrast to Burton's work, Parish (1999) examined the impact of teacher tenure on the dismissal of unsuitable teachers. By focusing on the differences in dismissing tenured and non-tenured teachers, Parish's research provides some valuable information for policy development but does little to inform the administrative application of existing law.

In addition to these dissertations, there is a well thought out paper entitled *The Fair Dismissal Act: 10 Mistakes School Systems Make* (Doyle, 2006). This paper is the most specific and begins to focus on operationalizing each of the eight areas of dismissal codified in the Fair Dismissal Act of 1975. This work is not exhaustive, but it does provide some broad guidance for school districts to follow. Each of these studies takes a somewhat broad look at teacher dismissal in Georgia but each falls short of providing the thorough, recent information necessary to inform practice and policy in the year 2010.

Research Questions

This study is designed to investigate the following research questions:

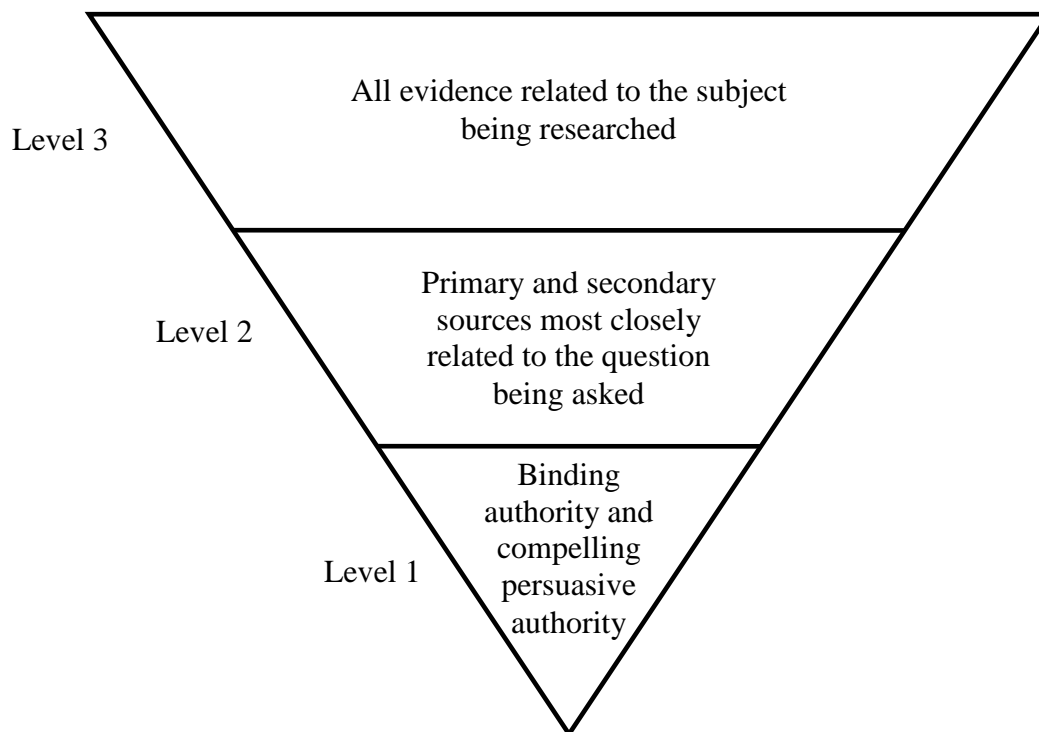
- 1) Since its inception in 1975, how has the State Board of Education interpreted the eight areas for dismissal outlined in the Fair Dismissal Act?
- 2) What is the frequency with which appeals are made in each of these eight areas?
- 3) How often is each of the eight areas for dismissal upheld?

Research Design

There are many methods through which researchers approach the examination of questions and issues of a legal nature. This dissertation is primarily based upon the black letter law method of research. The black letter law method is concerned with the use of evidence in the form of the Constitution, statutes, court judgments and other published works. This type of research involves little, if any, use of evidence collected through what is generally considered empirical observation. In order for black letter law research to have value, these sources, particularly court decisions, are reassembled into a coherent framework. This construction is then used to “search for order, rationality and theoretical cohesion” (McConville & Chui, 2007, p. 1). Black letter law research requires the use of legal reasoning and interpretative tools to analyze and evaluate the law and suggest remedies or improvements to current statutes (McConville & Chui, 2007).

Black letter law research can be thought of as an inverted pyramid with three levels. In this model the broadest level is at the top and includes all sources of evidence that are related to the subject being researched. The researcher must then logically analyze these sources to see which most directly relate to the specific research question being asked. This analysis narrows the evidence to level 2. The researcher then reviews these primary and secondary sources of evidence to determine which have the greatest persuasive authority, and which have binding authority in a particular case. These sources are those that are left in level one. Finally, the researcher must connect the salient points from each of these level one sources to the specific case or subject being addressed. A graphic of this process is represented in figure 1.1 below.

Figure 1.1

Black Letter Law Research Process

This study will employ black letter law research to address the primary question: What level of administrative authority to dismiss tenured teachers is granted to Georgia school districts under the Georgia Fair Dismissal Act of 1975? At level 3 of the inverted pyramid as shown in figure 1.1, all information relating to the dismissal of tenured teachers in the state of Georgia was collected and reviewed. The process began by identifying and reviewing works that create the foundation for the teacher rights later codified in the Fair Dismissal Act. Additional sources reviewed include relevant areas of the United States Constitution, Georgia Constitution, statute, case law, and other legal reviews. A review of all State Board of Education appeals decision relating to termination of tenured teachers was also conducted at this level. All cases from the inception of the law in 1975 through present were examined. Those cases that helped to clarify

the eight areas set in the Georgia Fair Dismissal Act of 1975 under which a tenured teacher may be terminated or non-renewed are summarized at level 2. An analysis of precedents set and rationale for decisions is performed at level 1. This includes an examination of State Board of Education appeals decisions that have emerged over time. Descriptive statistics were also used to help identify patterns in appeals decisions and clarify the interpretation of the law over time.

Consistent with traditional black letter law research, this work is designed to inform practice and policy development. This review is expected to provide information for a number of levels of practitioners including members of local boards of education, district level administrators, school level administrators, teachers, and attorneys representing each of these groups.

Limitations

This study includes all public school teacher and administrator dismissal and non-renewal cases that have been appealed to the State Board of Education since the inception of the Fair Dismissal Act of 1975. The primary limitation of this research is that it focuses on State Board of Education appeals decisions. There are limited instances in which these appeals decisions are reversed by a Georgia superior or higher court. A second limitation is that this work primarily focuses on substantive due process and only tangentially addresses procedural due process.

CHAPTER 2

REVIEW OF THE LITERATURE

Sam Harbin, a prominent Georgia School Law Attorney, said, “A principal sets the level of teaching in the school with the least effective teacher that they allow to remain employed there” (2006). Following this line of thought, ineffective teachers not only adversely affect the students they teach but can serve to lower teaching standards in the schools where they work (Chait, 2010). For this reason it is imperative that school level administrators are knowledgeable in the area of teacher dismissal and non-renewal. A thorough understanding of administrative authority to dismiss tenured teachers can facilitate improved learning for students.

The state of Georgia has provided teachers with a tool to protect their employment rights from arbitrary and capricious dismissal decisions after three years of successful teaching and the acceptance of a fourth contract from the same district. The statute that extends these protections is the Georgia Fair Dismissal Act of 1975 as codified in Official Code of Georgia Annotated (O.C.G.A.) § 20-2-940 & O.C.G.A. § 20-2-942. This legislation provides the opportunity for teachers to gain tenure, which is a right to continue employment beyond the current contract. These tenure rights are not designed to be an absolute right, protecting a teacher at the expense of the school or the students. Even tenured teachers may be dismissed for a lawful cause. Yet, unfortunately, lack of familiarity on the part of many administrators has allowed tenure to be translated into eternal employment regardless of one’s performance. For this reason it is imperative that building level administrators familiarize themselves with how Georgia laws and constitution support schools in dismissing teachers that are not well suited for the profession.

Teacher dismissal practices must work to balance the rights of the teacher with those of the students that they serve.

This chapter identifies the historical and legal foundations for teachers' right to continued employment in Georgia schools. The intent of this chapter is twofold: The first major section begins with a broad scale examination of teachers' rights and then looks more specifically at the Georgia Fair Dismissal Act of 1975, including subsequent revisions; The second section examines the circumstances under which dismissal of a tenured teacher is permitted. A review of State Board of Education rulings can provide guidance to administrators regarding how the Georgia Fair Dismissal Act of 1975 has been applied since its inception. This black letter legal review is designed to go from the broad to the specific in an effort to help illuminate the line between a teacher's right to continued employment and a district's responsibility to ensure quality instruction for all students.

Historical and Legal Foundations

Magna Carta

Early enumerations of the rights of the people are expressed in The Magna Carta, or the "Great Charter" of 1215. This document is one of the earliest western expressions of individual rights including the right of due process. It served to codify the idea that rights are derived from God and given to the people. Even though the "freeman" described in this document refers mostly to barons and other landowners, this was still a sharp contrast to the divine sovereignty with which Kings had ruled. The Magna Carta recognized individual rights that must be respected by the government.

The Magna Carta recognized several rights that relate to the continued employment of teachers today. Among these is the right to property. In short, property rights allow individuals

to own goods that cannot be taken by another without legal authority and due process of law. In the present day property rights can include financial compensation and the ability to find future employment. This latter interpretation plays an important role in the retention and dismissal of tenured teachers.

The Magna Carta recognized the right of individuals to due process. Through translation, this charter asserts that:

No freeman shall be taken, or imprisoned, or disseized, or outlawed, or exiled, or in any way harmed--nor will we go upon or send upon him--save by the lawful judgment of his peers or by the law of the land. (¶39)

In establishing the right to due process of law as opposed to the arbitrary decision of the King, this document became the foundation for the Fifth Amendment to the United States Constitution. The right to due process affords individuals the rights of notice and hearing, and an opportunity to appeal decisions for an impartial review under the law. The ability to appeal decisions helps to guarantee that judgments are just and lawful. Without due process individuals could be imprisoned or stripped of property without cause. In the case of tenured teachers, the property right of continued employment cannot be violated without due process.

Declaration of Independence

In 1776, the Second Continental Congress declared American independence and adopted the Declaration of Independence. The Declaration of Independence clearly describes that governments derive their authority through the consent of the people. This is specified in the second paragraph: "Governments are instituted among Men, deriving their just powers from the consent of the governed". This document serves to establish that power rests in the hands of the people through the application of just laws.

The Constitution of the United States

The Constitution of the United States is based on the belief that government derives power from the people and enumerates specific rights that are maintained by the people. The United States Constitution addresses the due process rights of citizens in both the Fifth Amendment and the Fourteenth Amendment. The Fifth Amendment focuses on the responsibility of the federal government while the Fourteenth Amendment refers to the responsibilities of the states (Monk, 2000).

The Fifth Amendment ensures that these rights can't be violated without just cause and due process. This amendment was inserted as part of the Bill of Rights and ratified at the same time as the Constitution. It has roots in the Magna Carta and was of particular import in the Bill of Rights as a guarantee that the newly established government could not commit the same unjust acts that the colonists were subjected to under English rule.

The Fifth Amendment states that individuals cannot "be deprived of life, liberty, or property, without due process of law". Due process of law protects individuals from arbitrary and capricious acts by the government. It also provides for notice and a hearing prior to denying an individual life, liberty or property. Later, during the civil rights movement of the 1960s, the courts interpreted this to mean that tenured teachers have property interest in continued employment and as a result, the right to appeal terminations decisions. This will be fully discussed later in this chapter.

To ensure that government actions are both fair and fairly applied according to the law, due process must be both substantive and procedural. Substantive due process ensures that the law is fair and does not violate an individual's fundamental rights. According to Monk (2003):

rights not specifically listed in the Constitution have often been controversial.

Under substantive due process, the Supreme Court decides which rights are “fundamental” and cannot be deprived by the states. These rights are generally categorized as “liberty” or “property” interests. (p. 216)

In short, substantive due process ensures that decisions involving governmental interference with the liberty or property of an individual are neither arbitrary nor capricious.

Procedural due process is concerned with the fair application of the law rather than the law itself. In observing procedural due process, all government actions that serve to deprive an individual of life, liberty or property must provide notice and an opportunity to be heard. Local school boards are allowed to act as impartial hearing boards for reviewing the dismissal of tenured teachers in the state of Georgia. This process of providing notice and a hearing meets the due process requirements of the Fifth Amendment. A detailed examination of procedural due process in Georgia will be discussed later in this chapter.

The Fourteenth Amendment to the Constitution is used to ensure constitutional protections to teachers and other government employees. Section one of the Fourteenth Amendment to the United States Constitution reads “nor shall any State deprive any person of life, liberty, or property, without due process of law”. This amendment was ratified in 1868 in order to recognize citizenship rights and rights to “equal protection of the laws” (Monk, 2003, p. 213), with former slaves being central among those protected by this amendment. It has since been interpreted more broadly. One group that has gained recognized protection under the Fourteenth Amendment is government employees, including public school teachers.

State Constitution

The State of Georgia's Constitution identifies rights similar to those found in the United States Constitution. In fact, the first and second paragraphs of the state constitution very closely resemble the rights enumerated in the Fifth and Fourteenth Amendments to the United States Constitution. These paragraphs read:

Paragraph I. *Life, liberty, and property.* No person shall be deprived of life, liberty, or property except by due process of law.

Paragraph II. *Protection to person and property; equal protection.* Protection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws. (1983, ¶ 1-2)

Paragraph I mirrors the rights provided for by the Fifth Amendment. Both provide for due process of law in matters that involve life, liberty, or property. Similarly, Paragraph II provides for equal protections of the law in the same manner as the Fourteenth Amendment.

Georgia has had ten different constitutions since the Declaration of Independence was written. The right to due process did not appear in the constitution until 1861. Equal protection of the laws was added to a version penned in 1868 (Katz, 1986). Both of these rights have remained in the Georgia Constitution through the adoption of the current constitution in 1983.

Constitutional Rights of Government Employees

The manner in which constitutional rights have been interpreted and applied has changed over time. In the late 1800's and early 1900's it was often thought that government employment was a privilege that could be revoked for almost any reason, including exercising constitutionally protected right to free speech. It is easy to see where this idea came from given that originally

government service meant that one was in the service of the King. The notion that government service is a privilege is one of the many vestiges of the colonial rule that did not end with the revolution. In fact support for this idea can be seen in various legislation and court rulings into the middle of the 20th century.

McAuliffe v. Mayor of New Bedford, Massachusetts (1892) is one such court case. Justice Oliver Wendell Holmes' is often quoted as saying "The Petitioner may have the constitutional right to talk politics, but he has no constitutional right to be a policeman" (*McAuliffe v. Mayor of New Bedford, Mass.* 1892). This quote embodies the idea that government employees, a policeman in this case, may place his job in jeopardy for exercising his first amendment right to free speech. During this time, the right to continued employment was not yet seen as a property right as later court opinions declared.

The Hatch Act of 1939 placed limitations on government employees' free speech rights. It prohibited certain political conduct and limited freedom of expression for executive branch employees (Weiser, 2005). The legislation was written to limit the political actions and the influence of government employees. At the time of enactment there were problems with government employees using the influence of their positions to further political interests. Although this legislation served to limit the misuse of government offices, it also limited the free speech rights of federal employees.

In *Adler v. Board of Education of the City of New York* (1952) the Supreme Court reaffirmed the belief that government employees did not enjoy the same rights as other individuals. The *Adler* case affirmed the right of the Board of Education to deny employment to individuals that were affiliated with certain groups that the Board of Education found

objectionable. Specifically the majority opinion, penned by Justice Milton, asserted that teachers:

may work for the school system upon the reasonable terms laid down by the proper authorities of New York. If they do not choose to work on such terms, they are at liberty to retain their beliefs and associations and go elsewhere. (*Adler v. Board of Education of the City of New York*, 1952)

In short, the majority opinion found that individuals could exercise their First Amendment rights, but that they could lose the right to be employed by the school district if the district found the affiliated group to be subversive. In a dissenting opinion, Justice Black said:

public officials cannot be constitutionally vested with powers to select the ideas people can think about, censor the public views they can express, or choose the persons or groups people can associate with. Public officials with such power are not public servants; they are public masters. (*Adler v. Board of Education of the City of New York*, 1952)

Fifteen years later the majority of the Supreme Court would agree with the dissenting opinion and find this same law unconstitutional and a violation of the first amendment (*Keyishian v. Board of Regents*, 1967). This change of position of the courts resulted from the large redefinition of individual rights that took place in the civil rights era of the late 1960's and 1970's.

Civil Rights for Government Employees

In 1968 the courts ruled that teachers did not give up their constitutional rights in exchange for a career in public service in *Pickering v. Board of Education of Township High School District 205* (1968). The *Pickering* case found that a public school teacher could not be

fired for exercising his constitutional right to free speech, even if that speech directly disagreed with a proposed school district bond referendum (1968). In this case a teacher wrote a letter to the local newspaper opposing a school bond referendum. The majority opinion declared:

Teachers are, as a class, the members of a community most likely to have informed and definite opinions as to how funds allotted to the operation of the schools should be spent. Accordingly, it is essential that they be able to speak out freely on such questions without fear of retaliatory dismissal (*Pickering v. Board of Education of Township High School District 205*, 1968, p. 571).

This statement indicates strong support for teachers' ability to exercise their rights without being fired from their teaching positions.

The next year, 1969, the Supreme Court again furthered the idea that students and teachers have constitutional rights in *Tinker v. Des Moines Independent Community School District*. The majority opinion stated that it could "hardly be argued that either students or teachers shed their constitutional rights... at the school house gate." (*Tinker v. Des Moines Independent Community School District*, 1969, p. 506) These court decisions eventually led to the identification of continued employment as a property right.

Property Interest

Constitutional protections, as they apply to continued employment of certified school personnel, rests on the idea that employment could represent a property interest or that discontinued employment, depending on how it is carried out, could impinge on ones liberty interest, particularly as it pertains to future employment. Liberty interests will be explored in the following section. In the first instance, the Supreme Court ruled that the property interest in

continued employment beyond one's contract, absent laws, policies or practices to the contrary, does not alone constitute a property right (*Board of Regents of State Colleges v. Roth*, 1972). In *Board of Regents of State Colleges v. Roth*, the Supreme Court narrowed the definition of property rights with the following language: "To have a property interest in a benefit, a person must clearly have more than an abstract need or desire for it... He must, instead, have a legitimate claim of entitlement to it." (1972, p. 577)

The term property interest as used by the Supreme Court has come to mean property or items of value that one has a legitimate legal right to. In the case of teacher employment, this means that a teacher does not have a legitimate property interest in continued employment beyond the terms of their current contract unless state law, policy or practice dictate otherwise. In Georgia, the Fair Dismissal Act of 1975 is the state law that creates a property right for teachers that have achieved tenure by giving them a "legitimate claim of entitlement" to future contracts. The creation of property interest by the Georgia Fair Dismissal Act of 1975 will be explored in depth later in this paper. Given that a property right is created, Fifth Amendment protections now apply. These protections include the right to have due process of the law. Specifically, both notice and a hearing must be afforded to tenured teachers that are not offered subsequent contracts. In this way, the local board of education can meet the requirements of procedural due process.

Liberty Interest

Although at the time the Fourteenth Amendment's reference to liberty was written to mean one's ability to be free in movement or free from incarceration, liberty has come to be defined much more broadly. Liberty interests were used in the 1920s to invalidate state laws that prohibited private schools and prohibited the teaching of foreign languages in school. One of the

most famous cases involving liberty interests is *Roe v. Wade* (1973). In this case the Court ruled that the concept of personal liberty in the Fourteenth Amendment was “broad enough to encompass a woman’s decision whether or not to terminate her pregnancy.”(1973, p. 152). For the purposes of teacher dismissal, liberty interests primarily refer to a teacher’s good name and reputation. This being the case, any dismissal or suspension that threatens a teacher’s good name or reputation requires due process afforded by the Fourteenth Amendment.

Early History of Teacher Tenure in Georgia

It is important to understand both the early and the recent history of teacher tenure in the State of Georgia. An examination of the early history sheds light on how the state legislature originally defined tenure and the steps for attaining it. And, a study of the more recent history reveals how these definitions have been refined, and how the definitions apply to all Georgia public school teachers including specification of clear guidelines on the limitations that tenure provides. It is these limits to the protections of tenure that allow for the dismissal of unfit teachers that have managed to attain tenure status.

One of the first examples of teacher tenure in Georgia came about in 1922. In August the state legislature amended Atlanta’s charter so that teacher tenure could be granted. In October of that year, the Atlanta Board of Education passed a policy allowing teachers who had three years of satisfactory performance to obtain civil service status. This status provided for procedural due process in the form of notice of charges and a hearing before dismissal could take place (Altenbaugh, 1992).

In 1937, Dr. Leo C. Mundy presented the Teacher Tenure Act bill to the Georgia State Legislature (Wilkes-Barre, 1938). The act was passed in March of that year and titled Civil Service for Teachers Act. This law targeted districts that had a population over 200,000. The

legislation focused on large districts because it was thought that political pressures on a teacher were greater in a larger district than they were in a smaller rural district. The Teachers Tenure Act was designed to protect teachers in large districts from this political pressure so that they could focus on properly educating their students. At the time only Fulton County met the population requirement.

This bill legislated four important aspects of tenure. First, it set forth the requirements for being awarded tenure. Similar to the 1922 policy set by the Atlanta Board of Education, tenure was granted to all teachers in the county after a three year probationary period provided they maintained good behavior and efficient service under established rules of the local school board. Second, it specified four areas under which a tenured teacher could be dismissed. These four were disability, inefficiency, insubordination and moral turpitude. The third aspect of the bill was that tenured teachers were afforded procedural due process to include both notice of charges and a right to be heard. The Civil Service for Teachers Act did not describe the hearing process or any additional rights to appeal hearing decisions. Finally, this act made clear that “No employee shall be discriminated against for the exercise of any constitutional right” (Georgia Laws, 1937, p. 880). Under this act, districts were allowed to move employees as necessary to “promote the efficiency of the county school system” (Georgia Laws, 1937, p. 880). This act did not grant any due process rights to administrative suspensions.

A decade later, in 1947 the Georgia General Assembly chose to address administrative suspensions by adding the following language to Georgia Code:

Section 32-1010. The county superintendent of schools shall superintend examinations of all teachers of his county as provided by law. He shall suspend any teacher under his supervision for nonperformance of duty, incompetency,

immorality or inefficiency, and for other good and sufficient causes. From his decision the teacher may appeal to the county board of education, and either the superintendent or the teacher, being dissatisfied with the decision of the board, may appeal to the State Board of Education, the decision of which shall be final.

(Georgia Laws, 1947, p. 1191)

The language of this section provided some procedural due process rights to teachers facing suspension. Specifically, this section granted the right to appeal a suspension decision, first to the local school board and then to the State Board of Education. The law also outlined the circumstances under which a teacher could be suspended. Thus, at the hearing the local board of education was required to show a cause in terms of one of the following outlined areas: incompetency; immorality or inefficiency; and for other good and sufficient causes (Georgia Laws, 1947).

Although this 1947 amendment to Georgia Code only addressed temporary suspension from service, this is one of the first laws to grant due process rights to all teachers in the state of Georgia. Previous laws only addressed specific districts. The property interest created through permanent removal from employment, as is the case with dismissal and non-renewal of a teaching contract, are no different than the property interest created through the temporary removal from a job as is the case in suspension. For these reasons, this law begins to set the precedent that due process rights are afforded to all Georgia teachers when a property interest is involved.

The Georgia General Assembly enacted a detailed tenure law in 1948 for Richmond County. The act, titled Richmond County Educational System, provided tenure for teachers and principals employed by the Richmond County Board of Education. Tenure was granted after a

three year probationary period. Teachers with five or more years experience outside of the county could have their probationary period reduced to one year. This law identified the following set of reasons for which a teacher could be terminated or subjected to a reduction in salary:

- (a) Physical or mental incapacity to carry on his work as teacher.
- (b) Failure to maintain professional standards and professional efficiency.
- (c) Conduct reflecting discredit on the teaching profession or the public schools of Richmond County.
- (d) Disobedience of the rules and regulations of the Board of Education or of any lawful order of the Superintendent of Schools. (Georgia Laws, 1948, p. 1451)

This act was much more comprehensive than those that had come before. It was the first act to outline options for continuing education experiences that a tenured teacher must meet to maintain professional standing. Under this legislation, teachers would need to complete one of seven different requirements to meet this expectation. Options included: publishing an article or book, receiving college credit hours, traveling on an approved plan, and other learning opportunities as outlined by the Board of Education and the Superintendent of Schools. Fulfilling one of the approved professional activities provided the teacher with three additional years of professional standing (Georgia Laws, 1948).

This legislation is significant for a number of reasons. It used the same three year probationary period that is still used in Georgia today. It was also one of the first laws to clearly articulate the expectation of ongoing professional learning for teachers in order to remain

employed by the board of education. This act provided a clearly defined set of reasons that a tenured teacher could be removed from their employment with the district.

In 1949, the Georgia Legislature passed legislation that provided for contracts by stipulating that, “contracts for teachers, principals and other professional personnel shall be in writing, signed in duplicate by the teacher in his own behalf, and by the superintendent of schools on behalf of the board.” (Georgia Laws, 1949, p. 1409) In defining the use of contracts for teachers and other professional employees in school systems, the legislature created a property interest for this group of educators. Teacher contracts create a property interest for the contract period, ensuring that due process rights are granted. This was the first legislation to make written teacher contracts universal in the state of Georgia. Prior to this, the type of employment agreements used was determined by each individual board of education. This legislation and related earlier laws laid the foundation for the Georgia Fair Dismissal Act of 1975.

Recent History of Teacher Tenure in Georgia

Georgia Fair Dismissal Act of 1975

Shortly after the Supreme Court began to use the Fourteenth Amendment to apply constitutional protections to public school teachers and other government employees, states began to pass legislation to define where the rights of the individual employee began and ended. In 1975, Georgia passed the legislation commonly referred to as the Georgia Fair Dismissal Act of 1975. Codified, in part, as Official Code of Georgia Annotated (O.C.G.A.) § 20-2-942, this law served to apply the rights outlined in the Georgia Fair Dismissal Act of 1975 to experienced teachers. These rights allowed for continued employment or the renewal of contracts for teachers that had gained the status commonly referred to as tenure. Although the act does not

define or even use the term “tenure,” it does give teachers who have satisfactorily completed a three year probationary period, protections commonly referred to as tenure. Tenure is generally defined as the:

status of a professionally certificated public school employee who has served the required time in a local school system to earn statutorily provided procedural safeguards; who has the expectation to continued employment beyond the current contract term, and who may not be dismissed, non-renewed, suspended, or demoted except for cause (Prager, 1989, p. 11).

Under the Georgia Fair Dismissal Act of 1975, tenure status is afforded to any teacher that meets one of the following employment requirements:

1. A teacher or other employee certificated by the Professional Standards Commission, excluding administrators, that has accepted a fourth school year consecutive contract from the same local education agency.
2. A teacher or other employee certificated by the Professional Standards Commission, excluding administrators, that does not receive a notice of nonrenewal from the local board of education by April 15 of the employee’s third consecutive school year contract and the employee does not give written notice rejecting a fourth consecutive school year contract to the local board of education.
3. If a teacher that has gained tenure status by one of the means described above becomes employed by another local education agency, they resume their tenure rights only after they have accepted a second consecutive contract from that local education agency.

Conversely, a teacher who has not achieved tenure status by meeting the above requirements does not share the protections of the Georgia Fair Dismissal Act of 1975 in regards to continued employment and contract renewal under this code section (O.C.G.A. § 20-2-940 & Lumley, 2000). Tenure provides for continued employment, allowing teachers that have met the requirements of the legislation to be ensured future contracts.

There are, however, legitimate circumstances under which a tenured teacher may be dismissed from their duties. The Georgia Fair Dismissal Act of 1975 defines the areas under which a contracted school district employee may be terminated, suspended, demoted or non-renewed. The eight areas outlined by Official Code of Georgia Annotated § 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; or
- (8) Any other good and sufficient cause.

Dismissal, suspension, non-renewal and demotion all have an impact on an individual's ability to make money. For this reason, they each create a property right. These terms are defined below.

- Dismissal applies to any teacher, tenured or not, that is terminated from employment before the end of a contract.
- Suspension occurs when a teacher is removed from their assigned duties for a limited period of time.
- Non-renewal takes place when a contracted employee is discharged at the end of a contract period. In this instance the employee will not receive a contract for the following school year.
- Demotion is when a school employee is reassigned from one position to another. In order to qualify as a demotion, the new assignment must have less responsibility, prestige, and salary (O.C.G.A. § 20-2-943a).

The Georgia Fair Dismissal Act of 1975 also defines the process due to any contracted employee being suspended or dismissed for one of these eight reasons. The due process includes clear notice of the charge, a right to a hearing, the right to subpoena witnesses, the right to be represented by council, and the right to appeal. This act also gives superintendents the power to suspend, with pay, contracted personnel for a period of ten days or less pending a hearing. This suspension can be used only in cases where the employee's continued presence in the work place would be dangerous or interfere with the mission of the school (O.C.G.A. 20-2-940). Court and State School Board interpretations of "dangerous" and "interfere" will be fully discussed below.

This act protects competent teachers from dismissal or suspension for arbitrary reasons. At the time the Georgia Fair Dismissal Act of 1975 was adopted, it was felt that this protection was necessary to attract and retain quality teachers as well as to insulate classroom instruction from the politics of the moment that can often surround schools and school boards. By insulating teachers from concerns about future employment they could devote their full attention

to developing and delivering quality lessons. In this way, schools could attract high quality teachers that wanted to focus on effective instruction.

Opponents of teacher tenure feel that this act has protected ineffective teachers, undermining the quality of education that a school is able to provide (Kersten & Brandfon, 1988). According to Parish:

personnel administrators indicated that the law impeded school administrators' ability to dismiss unsuitable teachers. Personnel administrators also reported that once teachers in their systems had earned the statutorily provided procedural safeguards of Georgia's Fair Dismissal Law that it was improbable that those teachers would be dismissed for unsuitable performance (1999, p.74).

Although Georgia's Fair Dismissal Act of 1975 is perceived as limiting the dismissal of ineffective teachers, this statute can be a tool for administrators to use in the dismissal of teachers whose actions fall in one of the eight areas outlined above. In order to improve learning for all students, administrators must become familiar with how the eight identified areas are applied under varying circumstances. Later in this chapter, key State Board of Education rulings as well as related court decisions will be reviewed to help understand how these eight areas are interpreted.

In order to improve the quality of instruction, a school administrator must become familiar with the eight justifications for termination, suspension, demotion or non-renewal. The eight reasons for dismissal are explored in great depth below so that their interpretation and proper application can be fully understood.

Although the two pieces of legislation passed after the Georgia Fair Dismissal Act of 1975 have an impact on the attainment of tenure status, the eight reasons identified in this act have not been altered. The last two acts that have had an impact on tenure and due process rights in Georgia are the A Plus Education Reform Act of 2000 and Georgia Senate Bill 193 which passed in 2004.

A Plus Education Reform Act of 2000

With much help from Democratic Governor Roy Barnes, Georgia House Bill 1187, known as the A Plus Education Reform Act of 2000, stripped teachers of the ability to earn tenure status if they first became employed after July 1st of 2000. This legislation contained language in section (d) stating,

A person who first becomes a teacher on or after July 1, 2000, shall not acquire any rights under Code section to continued employment with respect to any position as a teacher. A teacher who had acquired any rights to continued employment under this Code section prior to July 1, 2000, shall retain such rights.” (A Plus Education Reform Act of 2000, 2000, p. 138)

The Governor’s Implementation Task Force for the A Plus Education Reform Act of 2000 *Implementation Manual* (2001, Section 72) indicated that the intention in repealing the right to continued employment afforded teachers of tenured status is to “ensure the quality of teachers in the classrooms of students to continually improve student achievement and student learning.”

In place of the tenure rights previously granted under the Georgia Fair Dismissal Act of 1975, the A Plus Education Reform Act of 2000 gave all teachers, whether they were employed before or after July 1st 2000, the right to request written explanation of the reasons that their contracts were not renewed (Lumley, 2000). The A Plus Education Reform Act of 2000 stated

“Upon request, a written explanation for failure to renew such contract shall be made available to such certified personnel by the executive officer” (p. 72). The written explanation for non-renewal afforded to educators was inserted into this legislation as part of a compromise between Governor Barnes and the Professional Association of Georgia Educators (PAGE). This compromise allowed Governor Barnes to pass the A Plus Education Reform Act of 2000 while claiming teacher support for the reform effort (Savannah Morning News, 2000).

The compromise granting the right to request a written explanation of reasons for non-renewal was extended to all certified public education personnel by the A Plus Education Reform Act of 2000. This is significant for a number of reasons. First, this wording undermines a 1995 amendment to O.C.G.A. § 20-2-942. That amendment modified section (c) of Georgia Code § 20-2-942 so that an administrator who had not achieved tenure prior to April 7th 1995 could not attain any rights to continued employment after that date (Georgia School Laws, 2009). Second, the right to a written explanation of reasons for non-renewal gave all certified employees, having attained tenure or not, similar due process rights to those afforded under the Georgia Fair Dismissal Act of 1975. Prior to this provision in O.C.G.A. § 20-2-211 it was held by the United States Supreme Court, in *Board of Regents v. Roth* (1972), that non-tenured teachers did not have a right to notice and hearing when they are non-renewed.. This same case asserted that explanations of non-renewal could create a liberty interest thereby giving the teacher the right to request due process hearings. The language in the A Plus Education Reform Act of 2000, Ga. H.B. 1187, arguably provided an opportunity for teachers and administrators to claim that a liberty interest exists regardless of their tenure status. If in fact a liberty interest does exist, due process rights also apply.

Georgia Senate Bill 193

The A Plus Education Reform Act of 2000 is regularly cited as one of the two major reasons that Governor Roy Barnes was not reelected for a second term in 2002 (Hayes & McKee, 2004). Once in office, Republican Governor Sonny Perdue signed Georgia Senate Bill 193, restoring rights afforded teachers under the Georgia Fair Dismissal Act of 1975 (Georgia Association of Educators, 2004). Tenure rights first denied in 2000 were restored effective July 1st 2004, by amending language in O.C.G.A. § 20-2-942(d) (Supp. 2003) (Lumley, 2003). The word “not” was struck from the first sentence in section (d) amending the language to allow all teachers that began employment after July 1st 2000 to gain tenure as outlined in O.C.G.A. 20-2-942. Although Senate Bill 193 restored due process rights that were stripped from teachers in the A Plus Education Reform Act of 2000, it did not remove wording in the of O.C.G.A. 20-2-211 that granted all certificated personnel the right to request a written explanation of reasons for non-renewal from the chief executive officer of the school district, the school superintendent.

Summary of the History of Tenure

Over the centuries there has been a growing awareness and expansion of what constitutes property rights. These rights were first expressed in the Magna Carta of 1215 and refined over the centuries into the Constitution of the United States as well as the Constitution of the State of Georgia. Throughout the last hundred years, these rights were codified by various laws as they pertained to continued employment of teachers. Over time, the courts have interpreted these laws. In Georgia, much of this interpretation takes place in the form of appeals decisions before the State Board of Education.

Maintaining high quality instructional personnel in Georgia public schools requires, on occasion, the termination or non-renewal of tenured teachers. Public school administrators must

know the foundational underpinnings of teacher tenure and what it represents in terms of a property interest for the individuals that have attained tenure status. A thorough understanding of the constitutional protections that tenure represents makes it easier to honor those protections while removing unfit teachers from service.

In addition to a firm understanding of the property interests created by tenure status and the due process rights that are afforded teachers who have attained that status, administrators must know how the State Board of Education and the courts have interpreted the eight areas under which a tenured teacher can be removed from employment. These eight areas were originally defined by the Georgia Fair Dismissal Act of 1975 and have not been altered. The relatively longstanding nature of these areas allows for the exploration of numerous rulings that have helped to clarify their definition over the years. By clarifying the definition and understanding how each of these eight justifications for removal from duty have been applied, an administrator can confidently apply the law to a given situation with some certainty of how the application will be viewed by the State Board of Education and the courts. The remaining portion of this chapter focuses on various appeals decisions that help to provide understanding of the eight areas identified in the Georgia Fair Dismissal Act of 1975. Although the granting of tenure status has changed since 1975, the eight areas for termination and suspension have held constant.

State Board of Education Rulings

In order to ensure students receive instruction from competent and qualified teachers, the school superintendent must recommend dismissal or the non-renewal of teachers that do not meet this standard. It is the responsibility of Local Boards of Education to make a final determination as to whether a teacher should be dismissed or non-renewed. Teachers protected

by the Georgia Fair Dismissal Act have a right to appeal these decisions to the State Board of Education. Since the inception of the Fair Dismissal Act in 1975, the State Board has ruled on 303 appeals cases. The State Board of Education is not a fact finding body. Cases are appealed based upon questions of substantive and/or procedural due process. Appeals based upon questions of substantive due process are concerned with the fair application and interpretation of the eight areas for dismissal identified in the Georgia Fair Dismissal Act. Appeals based upon questions of procedural due process include clear notice of charge, a right to a hearing, a right to subpoena witnesses, the right to be represented by council, and the right to appeal.

All 303 appeal case summaries were read and coded according to the following: 1) the local board decision was upheld or reversed; 2) substantive reasons for appeal; 3) procedural reasons for appeal; and 4) the extent to which the ruling set precedent for future decisions. The 62 cases summarized below were selected because they set prescient for future interpretation and application of the eight substantive areas for dismissal. With the exception of two relevant cases, it is beyond the scope of this legal investigation to examine questions of procedural due process. The cases summarized below will be analyzed in chapter 3.

Palmer v. Putnam County Board of Education, (Ga. SBOE 1976-8). The State Board of Education upheld the local board's decision to non-renew a tenured teacher charged with incompetency, inefficiency, and non-performance of duties. In this case, the appellant claimed that 1) the local board was not an impartial body and should not have heard the appeal; 2) the acts from prior years should not be considered during a dismissal hearing since a new contract had been issued for the current year.

The assertion that the local board was not an impartial body was based on the fact that the board had originally voted to non-renew the teacher. The State Board held that the non-renewal

was a tentative action based on the superintendent's recommendation. The State Board found that this action alone was not sufficient to disqualify the local board from hearing the case.

The State Board also rejected the appellant's claim that misconduct prior to the current school year should not be considered since a new contract was issued for the current year. In fact, the State Board findings stated "general inability, misconduct or bad attitude of a teacher may be shown by acts and deeds over several years, for minor infractions can accumulate and later become major problems."

Antone v. Green County Board of Education, (Ga. SBOE 1976-11). The State Board of Education affirmed the local board's decision to non-renew a tenured teacher for insubordination and incompetency. In this case, the State Board made clear that if there is any evidence to support a local board's decision, then the State Board will not overturn that decision. The summary asserted that "a decision of a local board of education will not be disturbed unless an abuse of its discretion is shown and where there is any evidence to support the decision below, it will not be overturned."

Ransum v. Chattooga County Board of Education, (Ga. SBOE 1977-2). The State Board of Education reversed a local board's decision not to renew a teacher's contract because of willful neglect of duties and insubordination. The charge of willful neglect of duties was supported by evidence that the appellant left her class unattended to use the restroom. The principal was aware of this during the year but took no action and did not attempt to inform the teacher of the seriousness of this action. The State Board found that because the principal was aware of this practice and never took action or made an attempt to warn the teacher, the charge in the non-renewal becomes suspect.

Similarly, the State Board found that incidents described as insubordination were known by the principal and never addressed. This charge was made based on the fact that the teacher handbook indicated that teachers should stand outside of their doors between classes to supervise students. The appellant had a class outside from which students walked directly toward and away from the door rather than parallel to the door as in a hallway setting. The appellant asserted that she was able to observe students and maintain discipline standing inside her door. The principal was aware that the appellant did not stand outside her door during class changes but never addressed the issue. For this reason, the State Board held that this incident did not rise to the level of insubordination.

Dominy v. Atlanta Public Schools, (Ga. SBOE 1977-5). The State Board of Education upheld the local board's decision to dismiss a teacher for immorality. The charge of immorality is based on the fact that the teacher was arrested for and charged with violating the Georgia Controlled Substance Act for possessing cocaine, glutethzmid, and marijuana. In summarizing this case, the State Board acknowledged that Georgia Courts and previous State Board decisions have not set a standard of evidence necessary to support a charge of immorality. This summary sets some general criteria and cautions:

The concept of morality or immorality covers a broad spectrum. Care must, therefore, be exercised by the reviewer to insure that individual concepts, i.e., subjective concepts, of morality are not used as the standards in determining whether there is evidence of immorality. In addition, the standards of review applied by the State Board of Education should be uniformly applied regardless of whether a case arose in a metropolitan urban area or in a rural area. The evidence

of immorality must, therefore, meet certain objective standards that can be consistently applied.

In absence of Georgia precedent, the State Board relied on decisions from other states. These cases include *Morrison v. State Board of Education*, *Pettit v. State Board of Education*, and *Weissman v. State Board of Education*. From these cases, the State Board concluded that there is a special relationship between a teacher and the students that they teach. The State Board also cited language in the Pettit decision that indicated that immoral acts do not need to manifest themselves in the classroom before action can be taken. In the summary of this case, the State Board held that a teacher's actions "must have some relation to teaching and must be found to have an adverse impact on the school, the students, or other teachers in order to be judged immoral."

In this case the State Board found that violations of the law were an objective standard that could be used to support the charge of immorality. The State Board supported concerns of the local board that the teacher's behavior could have a negative impact on the teacher's ability to impart moral values in the classroom and to function in the system. The summary highlighted the problem of student drug use and the community's awareness of the arrest.

Beard v. Laurens County Board of Education, (Ga. SBOE 1977-14). The State Board of Education upheld the local board's decision to non-renew a tenured teacher charged with incompetency. The appeal was based upon the assertion that the evidence did not support the charge. In response the State Board said that incompetency "requires a showing that students are not learning as they should." The State Board went on to declare that it is the responsibility of the local board to determine what constitutes incompetency and the responsibility of the reviewing body to affirm that decision where "any evidence" exists to support the finding. The

State Board claimed that a reviewing body must accept the local board's determination "unless it is wholly unsupported by the evidence."

Baker v. Camden County Board of Education, (Ga. SBOE 1978-1). The State Board of Education upheld the local board's decision to non-renew a teacher for willful neglect of duties. The teacher appeal claimed that this termination was politically and racially motivated. The appellant claimed that other teachers had some actions similar to those he was being dismissed for. The State Board found that the totality of the appellant's actions did constitute willful neglect of duties even though any single action may not have risen to that level. In their summary of the case, the State Board said "Any one of his actions, taken alone, might have been comparable to the actions of any other teacher, but, taken together, his actions represented willful neglect of duties." Additionally, the State Board cited the fact that the Professional Practices Commission did not find, as a matter of fact, that the termination was politically or racially motivated.

Brannen v. The Board of Education for the City of Savannah and the County of Chatham, (Ga. SBOE 1978-19). The State Board of Education upheld the local board's decision to terminate the contract of a teacher for immorality. The appellant shoplifted some undershirts valued at \$3.50. The appellant stipulated that he had taken the shirt. He went on to argue that the sentence was too harsh given that he was "suffering from emotional trauma brought about by his divorce eleven days before the incident." He was also cooperating with the district attorney in the investigation of a police officer that was attempting to extort money from the appellant. The State Board held that this action was sufficient to support the charge of immorality and the local board decision was sustained.

Barker v. Twiggs County Board of Education, (Ga. SBOE 1978-34a). The State Board of Education upheld the local board's decision to non-renew the contract of a teacher for any other good and sufficient cause. The appellant asserted that the local board's appeal decision was improper because it conflicted with the recommendation of the Professional Practices Commission. In this case, the state hearing officer recommended that the local board decision be reversed. The majority of the State Board disagreed. The majority opinion indicated that the Professional Practice Commission found that there was evidence that the accounting records were improperly maintained. The State Board affirmed the decision of the local board to use this evidence as the basis for a not renewing the appellant's contract.

Wynne v. The Board of Education of the City of Savannah and the County of Chatham, (Ga. SBOE 1978-37). The State Board of Education upheld the local board's decision to non-renew the contract of a librarian that had failed to maintain the necessary educational training and failed to meet the terms of the contract. The appeal claimed that the local board did not have the authority to require additional training. The State Board found that the local board did have the authority to require educational training beyond what was required by the State.

Jones v. Meriwether County Board of Education, (Ga. SBOE 1979-4). The State Board of Education reversed the local board's decision to demote an administrator to the position of classroom teacher. The appeal claimed that the decision was arbitrary and capricious and that notice was improper.

The appellant was originally informed that he would not receive a contract because of a reduction in force. Later, he was offered a contract for a teaching position at a reduced salary. The appellant requested a hearing. Hearing notice was given but only provided a date and time of the hearing. No information about charges, witnesses, or summary was provided in the notice.

At the hearing the council for the appellant objected to both the inadequate notice and the failure to properly follow the reduction in force policy. The district had a number of administrative positions for which the appellant was qualified and had seniority.

The State Board found that the improper notice was sufficient to reverse the local board's decision to non-renew or demote the appellant. The State Board also found that the failure to reassign the appellant to available administrative positions for which he was qualified also constituted a reversible error in both the non-renewal and the demotion of the appellant.

Lawson v. Talbot County Board of Education, (Ga. SBOE 1979-22). The State Board of Education upheld the local board's decision to non-renew the contract of a tenured administrator because of a reduction in force. The appellant asserted that the decision was arbitrary and capricious. In this case, the local board had closed the elementary school at which the appellant worked because the district had experienced a loss of students. The appellant was not reassigned because all other positions for which the appellant was qualified were filled. Some of these positions were filled with personnel that had not achieved tenure. The State Board found that the law does not require the local board to consider seniority when conducting a reduction in force. It also found that the Fair Dismissal Act provides due process rights to teachers that have attained tenure but does not create an increased expectation of continued employment. The summary claimed that "The Act does not grant a 'tenured' teacher any greater expectation to continued employment than a 'nontenured' teacher has."

Hicks v. Dougherty County Board of Education, (Ga. SBOE 1980-30). The State Board of Education reversed the local board's decision to terminate the contract of a teacher for immoral conduct. In this case the teacher was accused of having a sexual relationship with a student. The student cited 3 different times that these sexual encounters were to have occurred.

Other witnesses testified that the appellant was in other locations at the times that the incidents were to have occurred. The State Board found that there was insufficient evidence to support the charge.

Coughlin v. Lagrange City Board of Education, (Ga. SBOE 1981-26). The State Board of Education affirmed the local board's decision not to renew a teacher's contract because of incompetency and neglect of duties. The charges were based upon several classroom observations made by administrators in which the appellant did not maintain discipline. The appellant argued that the administration could not have a sufficient understanding of the classroom management based on these limited observations. Yet, the State Board found that a pattern could be established with a limited number of observations. In fact, the State Board findings held that "Although these observations may have been of limited length, their number and consistency could reasonably cause the fact-finder to determine that they reflected the normal state of affairs within Appellant's classroom."

Logan v. Warren County Board of Education, (Ga. SBOE 1981-39). The State Board of Education upheld the local board's decision not to renew the contract of a principal for immorality. In this case the appellant's contract was not renewed because he had been convicted in federal court of tax evasion. The appellant argued that the local board was required to show a connection between his off duty conduct and his ability to effectively perform the duties of principal. The State Board disagreed, citing the fact that the position "is one of public trust and confidence which is inconsistent with conviction of a crime involving moral turpitude."

Brooks v. White County Board of Education, (Ga. SBOE 1982-1). The State Board of Education upheld the local board's decision to terminate the contract of a teacher for immorality and inciting, encouraging or counseling students to violate valid state law. In this case the

appellant engaged in a discussion of sodomy during class time. At the time of this case there was a law against sodomy in the state. The State Board found that this discussion was sufficient to support the dismissal of the appellant.

Kelson v. The Board of Public Education for the City of Savannah and the County of Chatham, (Ga. SBOE 1982-15). The State Board of Education upheld the local board's decision to terminate the contract of a teacher for insubordination and failing to follow established regulations. The appellant asserted that there was no insubordination because the act was a single incident and not sustained refusal to follow a rule or regulation. The State Board found that this single act violated several provisions in the local board's regulation. Additionally, the State Board indicated that insubordination does not need to be sustained over time. The appeal summary stated that "Insubordination does not require sustained disobedience of a rule or regulation; a single incident which is willfully undertaken can constitute insubordination."

McLeod v. Gordon County Board of Education, (Ga. SBOE 1982-21). The State Board of Education reversed the local board's decision to reassign an administrator on the grounds of incompetence and willful neglect of duties. The appeal claimed that the local board had not met the burden of proof for either charge. The State Board agreed.

The evidence that the local board provided to support the charge of willful neglect of duties and the charge of incompetence was that the appellant failed to file proper documents for federal funding when he started the current position. The local board also asserted that the appellant did not promptly respond to two letters left on his desk by the superintendent. In the case of filing incomplete paperwork for federal funds, the State Board found that the appellant; 1) was hired without prior experience with filing this type of paperwork, 2) the appellant's immediate supervisor at the time also signed off on the incomplete paperwork, and 3) the

appellant corrected the paperwork once the inadequacies came to his attention. For these reasons the State Board found that this act did not constitute either willful neglect of duties or incompetence. In the case of the appellant's failure to answer the superintendent's letters in a timely manner, the State Board found the appellant had taken action but did not generate a response because the superintendent had not provided sufficient instructions. The State Board concluded that this act did not constitute either willful neglect of duties or incompetence.

Saxby v. Bibb County Board of Education, (Ga. SBOE 1983-15). The State Board of Education reversed the local board's decision to terminate the contract of a teacher for immorality, willful neglect of duty, and any other good and sufficient cause. The appellant is accused of engaging in a sexual relationship with a student. Witness testimony placed the appellant at other public locations at the time that each of the sexual encounters was to have occurred. Because of this testimony, the State Board found that there was insufficient evidence to support the charge.

Lansford v. Chatham County Board of Education, (Ga. SBOE 1983-34). The State Board of Education upheld the local board's decision to non-renew the contract of a tenured teacher for willful neglect of duty. In this case the appellant submitted a request for two days of sick leave. During these two days, he was not under a doctor's care and he drove a bus of private school students on a field trip. The State Board found that the appellant had knowingly claimed sick leave when he was not entitled to. This was found to constitute willful neglect of duties.

Watson v. Hogansville City Board of Education, (Ga. SBOE 1984-3). The State Board of Education upheld the local board's decision to terminate the contract of the superintendent for any other good and sufficient cause. In this case the superintendent improperly accounted for district funds. This improper accounting included filing false reimbursements for funds, failure

to deposit funds, and consuming school meals without paying for them. The State Board found that this was sufficient to support the charge of any other good and sufficient cause.

Terry v. Houston County Board of Education, (Ga. SBOE 1984-5). The State Board of Education upheld the local board's decision to terminate the contract of a tenured teacher for incompetency, willful neglect of duties, and any other good and sufficient cause. In this case, the appellant showed his class a movie that contained profanity and nudity. The movie was rated "R" by the motion picture industry and had not been previewed by the appellant. The State Board did not identify which charge this act supported as they found that showing a movie with nudity and profanity did constitute an act for which the teacher could be dismissed. The appellant also argued that the local board's action was an unconstitutional restraint of his freedom of expression. The State Board ruled that there was no evidence to support the assertion that this action rises to the level of an infringement upon the constitutional rights of the appellant to freedom of expression.

Crisp v. Telfair County Board of Education, (Ga. SBOE 1984-11). The State Board of Education upheld the local board's decision to non-renew the contract of a tenured teacher for insubordination and willful neglect of duties. The appellant violated the district smoking policy, failed to perform hall duty, and spent class time on topics that were completely unrelated to the subject she was teaching. The appeal argues that due process requires that the appellant receive a warning that these acts could be considered improper. The State Board found that a warning was not necessary and that the appellant should have been aware of the smoking policy and the requirement to perform hall duty. Additionally, the appellant should have understood that class time should be spent on the assigned subject. These acts were found to constitute insubordination and willful neglect of duty.

Greene v. Clarke County Board of Education, (Ga. SBOE 1985-20). The State Board of Education upheld the local board's decision to non-renew a teacher as a result of a reduction in force. The appellant asserted that the non-renewal was improper because he had more seniority than other teachers that were retained. The local board's policy allowed for the consideration of certification in the reduction in force policy. The retained teachers each had certification that allowed them to teach courses that the appellant was not qualified to teach. The State Board found that "Once the Local Board has shown good cause for dismissal based on cancellation of programs, there is nothing to prevent them from dismissing the teacher who is the most limited in terms of qualification and certification."

Akins v. Bulloch County Board of Education, (Ga. SBOE 1985-35). The State Board of Education upheld the local board's decision to terminate the contract of a teacher for immorality. In this case the appellant pled guilty federal funds from a school program. This act was sufficient to support the charge of immorality and the termination of the appellant's contract.

Faver v. Fayette County Board of Education, (Ga. SBOE 1986-3). The State Board of Education upheld the local board's decision to terminate a teacher for "inciting, encouraging or counseling students to violate any valid state law, municipal ordinance, or policy or rule of the Local Board of Education and any other good and sufficient cause." The appellant claimed that there was no evidence to support the charges. In this case, the appellant provided an adult male and an adult female student with a free motel room at the motel where he worked evenings. The State Board found that

While Appellant may not have had a responsibility to refuse the student a room, providing the room to the student free of charge is evidence the Local Board

could have considered to determine Appellant encouraged the student to violate a valid state law.

At the time of this act, state law clearly prohibited sexual intercourse between unmarried persons.

Knighton v. Dougherty County Board of Education, (Ga. SBOE 1986-41). The State Board of Education upheld the local board's decision to non-renew the contract of a tenured teacher for incompetency and willful neglect of duties. The appellant cited *Terry v. Houston County Bd. of Ed.*, 178 Ga. App. 296 (1986) in maintaining that the evidence did not rise to the level of willful neglect. The State Board cited the *Terry* case as it determined that "willful neglect must arise from flagrant act or omission, or an intentional violation of a known rule or policy, or a continuous course of reprehensible conduct." In this case, the acts were not found to be intentional or flagrant so they did not meet this definition of willful neglect. The State Board did find that the acts in this instance, failure to maintain order in the classroom over a two year period, did constitute incompetency.

West v. Habersham County Board of Education, (Ga. SBOE 1986-53). The State Board of Education reversed the local board's decision to non-renew the contract of a tenured teacher for insubordination and incompetency. The appeal argued that there was no evidence to support the charges. Several of the acts that local board cited as evidence to support the non-renewal occurred after the appellant received notice of non-renewal. The State Board held that these acts could not be considered. Of the acts that remained, none rose to the level of insubordination or incompetency.

The local board asserted that the teacher was insubordinate when she: 1) played a video about slavery when she was to teach the period of time between World War I and World War II

even though the principal had directed all teachers not to show videos that were not reflective of the subject matter being taught; and 2) did not allow the principal to review grades before posting them. In the instance of the video, the State Board agreed with the appellant in that it could have been related to integration and segregation during the time being studied.

Additionally, the State Board held that even if the principal's view that the video was unrelated to the subject, it would constitute an error in judgment, rather than insubordination because there was no evidence of willful disregard for the principal's orders. The State Board summary supported this and claimed that "In order to constitute insubordination, some intent to disregard the orders of a superior must be shown on the part of the person who is alleged to be insubordinate." In the instance of the grade posting, evidence shows that the teacher made a good faith effort to find the principal and meet this requirement.

The local board asserted that the teacher was incompetent because she improperly averaged student grades. The State Board cited *Black's Law Dictionary*, 906 (4th Ed. 1968.) as they defined incompetency as requiring a lack of ability. In this case, the local board was able to show error but did not present evidence establishing a lack of ability on the part of the appellant. The State Board summary asserted that "Mere negligence or error does not constitute insubordination. Likewise, violation of the orders of a superior based upon a legitimate misunderstanding of the nature of the orders does not constitute insubordination."

Lusane v. Clayton Board of Education, (Ga. SBOE 1987-26). The State Board of Education upheld the local board's decision to non-renew the contract of a tenured teacher as a part of a reduction in force. Poor attendance was cited as the justification for choosing the appellant over other non-tenured teachers. In this case, the appellant argued that the local board was required to consider teacher tenure and that it was required to have a written reduction in

force policy. The State Board disagreed, stating that “O.C.G.A. §20-2-940 does not establish any requirement to maintain tenured teachers in preference to non-tenured teachers, nor is there any principle created that tenured and non-tenured teachers are to be treated differently.” The State Board also asserted that a written reduction in force policy is not required and that attendance is an objective measure that can be considered during a reduction in force.

Johnson v. Lee County Board of Education, (Ga. SBOE 1987-37). The State Board of Education upheld the local board’s decision not to renew the contract of a teacher charged with insubordination, willful neglect of duty, inciting students to violate valid law of policy, and any other good and sufficient cause. In this case the appellant allowed students violate law and policies that required students to wear safety glasses when using certain equipment and to sign out in the office before leaving campus. The appellant also failed to turn in a report requested by the principal and intentionally misled the principal. The State Board found that these actions were not sufficient to support the charges of willful neglect of duties, insubordination, or inciting students to violate valid law or policy. They were, however, sufficient to support the charge of any other good and sufficient cause.

Allen v. Dekalb County Board of Education, (Ga. SBOE 1988-7). The State Board of Education upheld the local board’s decision to terminate the contract of a teacher for willful neglect of duties. The appellant did not report to work because a handicap prevented her from driving the distance from her apartment to the school. The appellant argued that Georgia Equal Employment for Handicapped Code required the school district to transfer the appellant to a school closer to her residence. The State Board held that the local board had a contractual right to assign all teachers where required for the efficient operation of the district. The State Board cited *Dugger v. Delta Air Lines, Inc.*, 173 Ga. App, 16, 18(1984) as support for the contention

that the local board is not required to “maintain a person who cannot perform the duties of the job because of that person’s handicap.”

Sherling v. Colquitt County Board of Education, (Ga. SBOE 1989-21). The State Board of Education upheld the local board’s decision to terminate the contract of a teacher for immorality. The appellant was charged with possession of marijuana because a police search of her property found 22 marijuana plants and a pipe containing marijuana residue. The appellant asserted that she could not be dismissed because the marijuana belonged to her husband and she had not been convicted of possession. The State Board held that a conviction is not necessary for dismissal and that the local board can make a finding based upon the evidence presented.

Childs v. Bibb County Board of Education,(Ga. SBOE 1990-13). The State Board of Education upheld the local board’s decision to terminate the contract of a counselor for any other good and sufficient cause. Evidence presented indicated that the appellant changed student grades without proper authorization. This was in violation of district policy. The State Board found that the unauthorized grade changes were sufficient to support the charge of any other good and sufficient cause.

Peterson v. Brooks County Board of Education, (Ga. SBOE 1990-29). The State Board of Education reversed the local board’s decision to non-renew the contract of a principal for insubordination, willful neglect of duties, and incompetence. This case was reversed because: 1) the appellant was denied due process; 2) he was not permitted to conduct a thorough cross examination; and 3) the evidence did not show willful neglect of duties, incompetency, or insubordination.

The local board supported the charge of willful neglect of duties and incompetency with evidence that the appellant had not properly logged long distance phone calls as required by the

superintendent. The State Board cited *Terry v. Huston County Board of Education*, 178 Ga. App 296 (1986), as it held that willful neglect of duties required “a flagrant act or omission, or an intentional violation of a known rule or policy, or a continuous course of reprehensible conduct rather than simple negligence.” Because the appellant took immediate action once he was informed the calls were improperly logged, this act did not constitute willful neglect of duties or incompetence.

The local board supported the charge of insubordination with evidence that the appellant kept using a roster system for lunchroom charges when he had been directed to go to an identification card system. The evidence indicated that the appellant had indeed implemented the identification card system but also used the roster system for students that had forgotten their cards. The State Board cited *West v. Habersham County Board of Education* (Ga. SBOE 1986-53) as it held that negligence, error or legitimate misunderstandings do not constitute insubordination. There must be intent to disregard a superior’s direction for insubordination to exist. The State Board found that no intent existed in this instance.

The Local Board appealed this case to the Superior Court. The Superior Court asserted that State Board improperly excluded evidence that helped to demonstrate that the charges were substantiated. State Board’s decision was reversed and the non-renewal was permitted.

Belser v. Atlanta City Board of Education, (Ga. SBOE 1991-2). The State Board of Education upheld the local board’s decision to non-renew the contract of a teacher for insubordination and incompetence. The appellant asserted that she was not given assistance in the correction of deficiencies and that there is not sufficient evidence to support the charges. The local board supported the charge of incompetence with evidence that the appellant had unsatisfactory teaching performance, didn’t follow her lesson plans, and didn’t teach science and

social studies as required by the curriculum. The State Board held that this evidence supported the charge of incompetency.

The local board provided evidence that a professional development plan, the employment of another teacher to assist the appellant, peer observations and feedback, and opportunities to observe other teachers were used to support the improvement of instruction. The State Board held that the local board provided sufficient assistance for growth.

The local board provided evidence that the appellant did not participate in required professional learning opportunities, refused to meet with the principal, and failed to turn in class schedules. The State Board held that these actions constituted insubordination.

Curry v. Dawson County Board of Education, (Ga. SBOE 1991-7). The State Board of Education upheld the local board's decision to non-renew the contract of an administrator because of a reduction in force. In this case, the position was eliminated so that the local board could administer the Support Services in a more financially efficient fashion. The appellant asserted that the elimination of position was improper because the law only allows a reduction in force if programs are canceled or there is a loss of students. The State Board held for the local board in finding that this position constituted a program through which support services were administered and that the administration of these services would no longer be conducted with a single central position. As a result, the district was changing the manner in which this program would be administered so it was appropriate to eliminate this position as a reduction in force.

Main v. Green County Board of Education, (Ga. SBOE 1991-9). The State Board of Education reversed the local board's decision to non-renew the contract of a tenured teacher for incompetence, willful neglect of duties, insubordination, and any other good and sufficient cause. The appellant asserted that the evidence did not support the charges. The local board presented

evidence from two observations in which the appellant received a total of seven marks of “needs improvement”. The State Board held that this evidence demonstrated minor errors and difference of opinion over instructional methods. The State Board decision held that :

a school system cannot establish that a teacher is incompetent if a teacher overlooks or fails to accomplish one or two minor details during the course of two short evaluations. At a minimum, there must be a showing that the conduct was not the result of an oversight, or that it was more than a mere difference in educational philosophy.

The State Board also found that the local board failed to offer sufficient evidence to support the charges of insubordination, willful neglect of duties, and any other good and sufficient cause.

Woods v. Fulton County Board of Education, (Ga. SBOE 1991-13). The State Board of Education upheld the local board’s decision to dismiss a teacher for insubordination and any other good and sufficient cause. The appellant struck the assistant principal in the face resulting in “a broken nose and several displaced teeth.” The appellant asserted that this action was the result of provocation by the assistant principal. The State Board held that

Insubordination requires some willful disobedience of, or refusal to obey, a reasonable and valid rule, regulation or order issued by the school board or an administrative superior. A local board, however, does not need a specific rule or regulation to govern all teacher conduct. See, *Calfee v. Atlanta Bd. of Educ*, Case No. 1982-18 (St. Bd. of Ed, Dec. 9, 1982).

The State Board concluded that the appellant was not insubordinate because he “did not refuse to obey any valid rule or order from an administrative superior.” The State Board did find that

justification for dismissal existed in the charge of any other good and sufficient cause. The summary stated:

There was, however, evidence to sustain the charge of "other good and sufficient cause". Whatever reasons the Local Board had for reaching its decision, violence of the nature displayed by Appellant cannot be condoned within a school system, regardless of whom it is directed against. Thus, if a teacher strikes another teacher, a student, a parent, or a superior, then the teacher can be dismissed for other good and sufficient cause.

Medeiros v. Clayton County Board of Education, (Ga. SBOE 1992-21). The State Board of Education upheld the local board's decision to terminate the contract of a teacher for immorality. In this case the teacher took cash from the school ice cream fund. The appellant asserted that the evidence did not support the charge because he was not seen taking the funds. The missing bills, identified by their serial numbers, were found in the appellant's backpack. The State Board found that this evidence was sufficient to support the charge.

Mintah v. Spalding County Board of Education, (Ga. SBOE 1992-23). The State Board of Education upheld the local board's decision to terminate the contract of a teacher for insubordination and willful neglect of duty. The appellant asserted that there was insufficient evidence to support the charges. In this case, the appellant was asked to provide emergency lesson plans during a period of absence and asked to return to work when two different doctors had cleared her to return to work. In both instances she refused. The State Board found that the refusal to return to work when directed to do so constituted insubordination. Additionally, the State Board held that the failure to turn in emergency lesson plans constituted willful neglect of duties.

Clark v. Glynn County Board of Education, (Ga. SBOE 1993-34). The State Board of Education upheld the local board's decision to terminate the contract of a teacher for immorality and any other good and sufficient cause. In this case, the appellant was arrested for several criminal offenses, including possession of marijuana, driving under the influence, simple battery, and simple assault. The appellant asserted that the local board could not support the charge of immorality because the crimes that the appellant committed were not crimes of moral turpitude. The State Board did not provide guidance in this area but they did support the local board in the assertion that possessing two marijuana cigarettes, which the defendant said she was holding for a student, constituted any other good and sufficient cause.

McCullers v. Fulton County Board of Education, (Ga. SBOE 1996-5). The State Board of Education upheld the local board's decision to terminate the contract of a teacher for insubordination, willful neglect of duty, and any other good and sufficient cause. In this instance the appellant did not follow the local board's attendance policy and absence reporting procedures. The State Board supported the local board's assertion that this failure to follow established policy constituted willful neglect of duty. In addition, the appellant failed to appear for psychiatric examinations requested by the Associate Superintendent for Human Resources on two different occasions. This, coupled with appellant's failure to produce medical documentation for absences as requested by the principal, was found to constitute insubordination.

Duncan v. Clayton County Board of Education, (Ga. SBOE 1996-10). The State Board of Education upheld the local board's decision to terminate the contract of a principal for any other good and sufficient cause. In this instance, the appellant violated standards 1 and 2 of the Professional Practices Commission "which provide that it is unethical to disregard generally

recognized standards of assessment, treatment, instruction or supervision of students, and that an educator should not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation”. Specifically, the appellant violated established practice by improperly sharing standardized test information so that teachers could prepare students.

Carruthers v. Monroe County Board of Education (Ga. SBOE 1996-36). The State Board of Education reversed the local board’s decision not to renew the contract of a assistant superintendant for any other good and sufficient cause. In this case the only evidence presented was the fact that the appellant had been indicted by a federal grand jury on charges of receiving child pornography. The State Board held that “mere allegations of misconduct are insufficient to terminate an employee's contract. It is only in the newspapers, on radio and television, and in public opinion that a person can be deemed guilty based upon mere allegations; in law, which we are bound to follow, guilt requires a local board of education to at least prove misconduct.” The State Board found that a federal indictment on charges of receiving child pornography is not sufficient to support the charge of any other good and sufficient cause.

White v. Effingham County Board of Education, (Ga. SBOE 1996-42). The State Board of Education upheld the local board’s decision to non-renew the contract of a teacher for willful neglect of duties. In this case, the appellant was directed to adjust his teaching methods so that there were fewer failures in his class and to meet the needs of special education students. He was placed on a professional development plan to support this expectation. The appellant did not modify his instruction. He continued to have a high failure rate. The appellant asserted that there was no evidence and that the non-renewal was improper. The appellant characterized the administration’s expectation that he modify teaching methods to improve the failure rate as a request to change grades in violation of O.C.G.A. 20-2-940(a). The State Board supported the

local board in finding that changing teaching methods to improve a teacher's failure rate is not the same as requiring a teacher to change grades. Evidence was found to show that the teaching methods had not been modified as requested by the administration and as required by the special needs of a student in the class.

Spearman v. Ben Hill County Board of Education, (Ga. SBOE 1996-63). The State Board of Education upheld the local board's decision to terminate the contract of a teacher for incompetence, insubordination, and willful neglect of duties. After being informed that additional alcohol abuse could result in dismissal, the appellant was arrested a second time for driving under the influence of alcohol. The appellant claimed that the local board failed to show a nexus between off duty conduct and ability to perform the job duties. The State Board cited *Dominy v. Mayes*, Ga. App. 187, 257 S.E.2d 317 (1979) and *Logan v. Warren County Board of Education*, 549 F. Supp. 145 (S.D. Ga. 1982) in asserting that the local board is not required to establish such a nexus. Additionally, the State Board found that the appellant was insubordinate in that he continued to engage in alcohol abuse after being directed not to do so.

Kueber v. Colombia County Board of Education, (Ga. SBOE 1997-33). The State Board of Education upheld the local board's decision not to renew the contract of a teacher charged with insubordination, willful neglect of duty, inciting students to violate valid law of policy, and any other good and sufficient cause. In this case the appellant, an automotive teacher, gave a student without a driver's license the keys to the student's mother's car. The car had been repaired as a part of the automotive program. The keys were given so that the student could return them to his mother. The student took the car for a "joy ride". The State Board found this action does not constitute inciting or encouraging a student to violate state law or local board policy since the appellant's intent was to have the student give the keys to his mother.

In a separate incident the appellant used profanity in front of his advisement class. This is not permitted under district policy. The State Board found that this act was sufficient to support the charge of willful neglect of duties.

Kidd v. Clarke County Board of Education, (Ga. SBOE 1997-40). The State Board of Education upheld the local board's decision to terminate the contract of a teacher for failure to secure and maintain necessary educational training and any other good and sufficient cause. The appellant claimed that he was not required to complete the training required by the local board since he had a lifetime teaching certificate. The State Board held for the local board, supporting the requirement of additional training. The state hearing officer in this case asserted that "The State Board of Education is of the opinion that the control and management of the schools necessarily includes the authority to impose requirements on its teachers that may go beyond the minimum requirements established by the State Board of Education for a teacher to become certified."

Dixon v. Emanuel County Board of Education, (Ga. SBOE 1997-45). The State Board of Education upheld the local board's decision to terminate the contract of a teacher for immorality and any other good and sufficient cause. The appellant asserted that the local board did not provide sufficient evidence to prove immorality. The local board based the charge of immorality on the fact that the appellant intentionally shot his daughter in the leg. A criminal court found the appellant not guilty by reason of insanity. The appellant claimed that the local board could not find he acted immorally when a criminal court had judged him to be insane at the time of the incident. The State Board cited *Hathcock v. State*, 214 S.Ed.2d 628 "It is well-settled that a jury is free to reject expert opinion testimony and substitute their own knowledge and experience" (1993). The State Board applied this same reasoning to the local board in allowing the local

board to reject the findings of the criminal court. The local board weighed the evidence presented by the appellant and found that this was indeed an immoral act.

Fuller v. Fayette County Board of Education, (Ga. SBOE 1997-49). The State Board of Education upheld the local board's decision to terminate the contract of a teacher for any other good and sufficient cause. Evidence from the superintendent and four principals indicated that the appellant had lost his effectiveness as a teacher following his arrest at school for an action that occurred off campus. The State Board held that this testimony provided sufficient evidence to support the charge of any other good and sufficient cause.

Cornett v. Bartow County Board of Education, (Ga. SBOE 1999-17). The State Board of Education upheld the local board's decision to terminate the contract of a teacher for immorality and any other good and sufficient cause. These charges are based upon evidence that the appellant engaged in sexual conduct on school property both before and after the school day. The evidence presented was sufficient to support the charges.

Rushforth v. Gwinnett County Board of Education, (Ga. SBOE 2000-14). The State Board of Education upheld the local board's decision to terminate the contract of a teacher for insubordination, willful neglect of duties, and any other good and sufficient cause. The appellant asserted that the evidence did not support the charges. In this case, the appellant failed to show up for work because he was incarcerated for driving under the influence. The appellant claimed that he did not intentionally fail to show up for work. The State Board rejected this argument in finding that this was willful neglect of duties because the incarceration was the natural consequence of a choice made by the appellant. The appellant failed to have emergency lesson plans prepared as directed by the administration. The appellant also failed to maintain student

records from which grades could be prepared. The State Board found each of these acts to be a willful failure to follow administrative directions.

Cabe v. Walton County Board of Education, (Ga. SBOE 2001-02). The State Board of Education reversed the local board's decision not to renew the contract of a tenured teacher for willful neglect of duty, immorality, and any other good and sufficient cause. The appellant asserted that the evidence didn't support the charges. The evidence presented indicated that the appellant allowed several pets to die from neglect over a year earlier when she was clinically depressed. The evidence presented also showed that the appellant took approved leave to get treatment for her depression and to appear in court to answer to animal cruelty charges. The local board asserted that the leave constituted willful neglect of duties. The State Board rejected this assertion in finding that approved leave, for any reason, does not constitute willful neglect. The immorality charge was supported by evidence that the appellant neglected cats to the point that they died, and she served jail time on the weekends because of this neglect. The State Board found that the jail time served for cruelty to animals and the neglect itself do not rise to the level of immorality, given the mental state of the appellant at the time of the neglect.

Gaines v. Bibb County Board of Education, (Ga. SBOE 2005-01). The State Board of Education upheld the local board's decision to terminate the contract of a teacher for any other good and sufficient cause. In this case the appellant struck a student in the face twice then proceeded to choke the student. The principal intervened. The appellant said that the actions were self-defense since the student struck the appellant first. There was no evidence that these actions were self defense as the student did not continue to strike the appellant and was only trying to get away from the appellant. The State Board found that the appellant's actions were sufficient to support the charge of any other good and sufficient cause.

Cooper & Berto v. Atlanta City Board of Education, (Ga. SBOE 2005-08). The State Board of Education reversed the local board's decision not to renew the contract of two tenured teachers for any other good and sufficient cause. The appellants were not receiving contract renewals because the positions they each held were being eliminated as a part of a restructuring plan. Both appellants were vocational supervisors at specific schools. Under the restructuring plan, these positions were moved with very few changes in duties. The appellants were told they could apply for the new positions that were now under the office of the Technology/Career Education Department at a much lower salary.

The appellants asserted that the evidence presented by the local board did not support the charge of any other good and sufficient cause. The State Board agreed, declaring that the charge is not a catch all to be used by districts as they see fit. The State Board further articulated that any other good and sufficient cause could only be used where it applies to actions or inactions on the part of the teacher being dismissed. Based on this interpretation, this charge could not be used to justify the non-renewal of a contract based on the district's restructuring plan.

Leontovich v. Cobb County Board of Education, (Ga. SBOE 2006-40). The State Board of Education upheld the local board's decision to terminate the contract of a teacher for any other good and sufficient cause. The appellant was unable to be around children under the age of 16 as a condition of bond. The appellant claimed that he had to meet the conditions of the bond and that the district should assign him to an administrative position. The State Board agreed with the local board in finding that by agreeing to conditions of bond that prohibited contact with children under 16, the appellant abandoned his contract. The State Board held that the inability to teach as a condition of bond does constitute any other good and sufficient cause for termination.

Hawkins v. Dekalb County Board of Education, (Ga. SBOE 2009-28). The State Board of Education upheld the local board's decision to terminate the contract of a teacher for any other good and sufficient cause. The appellant was verbally and physically abusive to a 4th grade student when she "snatched" him by the shirt and made a point to call him out in front of the class. The appellant cites *Cooper v. Atlanta City Board of Education* (Ga. SBOE 2005-08) in claiming the local board is using the charge of any other good and sufficient cause as a catch all phrase to support an arbitrary decision of dismissal. The State Board found that there is cause and that these actions rise to the level that they constitute other good and sufficient cause. The decision of the local board was not arbitrary.

Chatman v. Wilkinson County Board of Education (Ga. SBOE 2010-20). The State Board of Education upheld the local board's decision not to renew the contract of a teacher charged with insubordination, willful neglect of duty, failure to secure and maintain necessary educational training, and any other good and sufficient cause. In this case the appellant, a certified special education teacher, was dismissed for failing to secure appropriate subject area certification as required by the federal No Child Left Behind Act (NCLB). The State Board found that the failure to add the additional certification area required by NCLB was sufficient to support the charge of failure to secure and maintain necessary educational training.

Wilson v. Atlanta Public Schools Board of Education (Ga. SBOE 2010-26). The State Board of Education upheld the local board's decision to terminate the contract of a teacher for failure to secure and maintain necessary educational training. In this case the appellant failed to secure a teaching certificate for the area in which she was hired. The appellant was hired to teach Spanish at an elementary school. The appellant's Spanish certification expired, but she maintained an early childhood certificate. The State Board found that the appellant "did not

obtain the proper certification. Rather, the Appellant obtained a certification in Early Childhood, which is not the position she was assigned when she signed her contract. Thus, the Local Board's decision is supported by the evidence.”

Bright v. Emanuel County Board of Education, (Ga. SBOE 2010-54) The State Board of Education upheld the local board's decision to terminate the contract of a teacher for any other good and sufficient cause and immorality. Text messages, phone records, and interviews indicated that the appellant was having a sexual relationship with a high school student. The State Board found that this was sufficient to support the charges.

Servy v. Coweta County Board of Education, (Ga. SBOE 2010-81). The State Board of Education upheld the local board's decision to terminate the contract of a teacher for willful neglect of duty, immorality, and any other good and sufficient cause. In this case the charges are supported with evidence that the appellant played an inappropriate video for his class and that he referenced a student using an inappropriate name. The video was about a girl named Becky who engaged in oral sex. Several times before and after playing the video the teacher referred to a student in his class even though her name was not Becky. The State Board found that these acts were sufficient to support the charges.

Adams v. Fulton County Board of Education, (Ga. SBOE 2010-91). The State Board of Education upheld the local board's decision not to renew the contract of a principal charged with incompetency, insubordination, willful neglect of duties, immorality, and any other good and sufficient cause. In this case the appellant was a principal of a school that had an abnormally high number of wrong to right erasures on the state standardized tests. The Georgia Professional Standards Commission (GPSC) performed an investigation. A GPSC finding of “probable cause” was reached based upon information that the appellant failed to follow testing procedures.

The GPSC recommended a one year suspension of the appellant's certification. The State Board concluded that this finding, along with the superintendent's testimony indicating that retaining such an employee "would harm the confidence in the school district," was sufficient to support the charge of any other good and sufficient cause.

Bullock v. Fulton County Board of Education, (Ga. SBOE 2010-92). The State Board of Education upheld the local board's decision not to renew the contract of an assistant principal charged with incompetency, insubordination, willful neglect of duties, immorality, and any other good and sufficient cause. In this case the appellant was an assistant principal of a school that had an abnormally high number of wrong to right erasures on the state standardized tests. The Georgia Professional Standards Commission (GPSC) performed an investigation. A GPSC finding of "probable cause" was reached based upon information that the appellant failed to follow testing procedures. The GPSC recommended a one year suspension of the appellant's certification. The State Board concluded that this finding, along with the superintendent's testimony indicating that retaining such an employee "would harm the confidence in the school district," was sufficient to support the charge of any other good and sufficient cause.

CHAPTER 3

AN ANALYSIS OF STATE BOARD OF EDUCATION RULINGS

The chapter presents an analysis of Georgia State Board of Education appeals decisions in order to address the following research questions:

- 1) Since its inception in 1975, how has the State Board of Education interpreted the eight areas for dismissal outlined in the Fair Dismissal Act?
- 2) What is the frequency with which appeals are made in each of these eight areas?
- 3) How often is each of the eight areas for dismissal upheld?

There have been 303 dismissal cases appealed to the Georgia State Board of Education between the time this act was passed and February of 2011. Using the black letter law research method, this chapter identifies and analyzes findings from the 62 State Board of Education appeals decisions presented in chapter 2. Following the historical evolution of each area for dismissal, the precedent setting findings are analyzed to add clarity and definition.

To set the context for the findings and analysis, a brief statistical summary of the 303 cases is presented. Appeals to the State Board of Education often cite multiple charges to support the recommendation of dismissal or non-renewal. A distribution of these charges can be seen in table 3.1.

Table 3.1

Distribution of Charges Cited in Appeals Cases to the Ga. State Board of Education

Area for Dismissal	Number of Cases	% upheld
Incompetency	79	86.1%
Insubordination	112	86.6%
Willful Neglect of Duties	111	86.5%
Immorality	28	71.4%
Inciting Students to Violate Law or Policy	7	100%
Reduction in Force	49	97.9%
Failure to Maintain Training	11	100%
Any Other Good and Sufficient Cause	98	87.7%

Over 85% of the cases appealed to the State Board of Education since 1975 have been decided in favor of the local board of education.

Procedural Due Process

State Board of Education decisions that address issues of procedural due process are generally not examined in this work. There are two exceptions in which a clear understanding of the State Board's positions on evidence are important to understanding the burden of proof necessary to support a charge in any one of the eight substantive areas for dismissal and non-renewal. The first such exception is illustrated in *Palmer v. Putnam County Board of Education* (Ga. SBOE 1976-8). In this case the State Board asserted that "general inability, misconduct or bad attitude of a teacher may be shown by acts and deeds over several years, for minor infractions can accumulate and later become major problems" (Ga. SBOE 1976-8). This ruling has made it acceptable to use evidence from previous years to establish a pattern of misconduct.

Several later rulings have made clear that misconduct from a prior year cannot be the sole grounds for a dismissal in the current year but can be used to show a continued pattern of misconduct.

The second important decision that addresses issues of procedural due process is *Antone v. Green County Board of Education* (Ga. SBOE 1976-11). In this case, the State board held “that a decision of a local board of education will not be disturbed unless an abuse of its discretion is shown and where there is any evidence to support the decision below, it will not be overturned” (Ga. SBOE 1976-11). This case helped to define the “any evidence” rule that is used as a standard in all future cases. In short, if there is any evidence to support the decision of the local board, the State Board of Education will support the local board’s decision.

Eight Substantive Areas for Dismissal

Incompetence

Fourteen of the 62 cases summarized in this work involved the charge of incompetence. Of these nine cases, seven have value in helping to narrow the definition of incompetence. The most explicit definition is found in *West v. Habersham County Board of Education* in which the State Board of Education, citing *Black’s Law Dictionary*, assert “Incompetence denotes the lack of ability, legal qualification, or fitness to discharge the required duty” (Ga. SBOE 1986-53). Following this definition, local boards of education are required to establish two facts to support the charge of incompetence: 1) the evidence must establish a lack of ability, and 2) the duty must be a required function of the job. In a subsequent year the State Board of Education held that:

a school system cannot establish that a teacher is incompetent if a teacher overlooks or fails to accomplish one or two minor details during the course of two short evaluations . At a minimum, there must be a showing that the conduct was

not the result of an oversight, or that it was more than a mere difference in educational philosophy (*Main v. Green County Board of Education*, Ga. SBOE 1991-9).

This refined definition creates the additional requirement for local boards to provide evidence that the charge is supported by a demonstrated pattern of inability rather than isolated or occasional error or oversight. The wording in the *Main v. Green County Board of Education* decision adds clarity to the concept of required duties. This case states that a difference of educational philosophy or approach to teaching between the teacher and administration does not constitute a required job duty where the preferred approach has not been made clear by the administration prior to the observation. (Ga. SBOE 1991-9)

Although this definition allows for differences in educational philosophy or approach, the State Board of Education has identified some specific job requirements. In *Beard v. Laurens County Board of Education*, the State Board of Education said that incompetence “requires a showing that students are not learning as they should” (Ga. SBOE 1977-14). Similarly, in *Belser v. Atlanta City Board of Education*, the State Board upheld the charge of incompetence based upon evidence that the teacher had unsatisfactory teaching performance, didn’t follow her lesson plans, and didn’t teach Science and Social Studies as required by the curriculum (Ga. SBOE 1991-2). In addition to quality instruction and student learning, in *Coughlin v. Lagrange City Board of Education* the State Board affirmed a teacher’s incompetence because of a failure to maintain classroom discipline (Ga. SBOE 1981-26).

The State Board has left it to local boards to continue to define required duties. As early as 1977, in *Beard v. Laurens County Board of Education* the State Board asserted:

It has been said that whether or not incompetency exists is a question of fact to be determined by the jury, or by the judge sitting without a jury. *Comtan v. School Directors*, 8 Ill. App. 2d 243, 131 N. E. 2d 544 (1955); *see*, Anno, 4 A. L. R. 3d 1090, 1102. It is not, therefore, a determination that can be made by a reviewing body. If there is any evidence to support a finding of incompetency, then the reviewing body will accept that finding. Conversely, if the trier of fact determines that incompetence does not exist, then the reviewer must accept that determination, regardless of the evidence that has been presented which the reviewer might believe establishes incompetence, unless it is wholly unsupported by the evidence. (Ga. SBOE 1977-14)

This wording indicates that the local boards determine which duties are required. Additionally, it establishes support for local board rulings where there is any evidence to uphold that ruling. However, if a charge is wholly unsupported, the State Board will reverse the local board's decision. The use of this any evidence rule is illustrated in *Caughlin v. Lagrange City Board of Education*. In this case, the State Board held that observations of limited length could be used to establish incompetence if "their number and consistency could reasonably cause the fact-finder to determine that they reflected the normal state of affairs within the Appellant's classroom." (Ga. SBOE 1981-26)

In contrast, in *McLeod v. Gordon County Board of Education*, the State Board found that there was no evidence to support the charge of incompetence. Although the local board presented evidence of incomplete paperwork and a failure to respond to two different letters, there was no evidence to show that these errors were the result of a lack of ability to perform these duties (Ga. SBOE 1982-21). In 1991, the State Board ruled differently on two cases that

both involved charges of incompetence supported with evidence of unsatisfactory teaching. In *Main v. Green County Board of Education*, the local board presented evidence of two unsatisfactory observations. The State Board held that these two observations did not provide evidence of a lack of ability, but rather provided evidence of a difference in educational philosophies (Ga. SBOE 1991-9). In *Belser v. Atlanta City Board of Education*, the local board provided evidence of unsatisfactory teaching. In addition, there was evidence that established this as a pattern of behavior rather than error or isolated incidents. As a result, the State Board upheld the local board's decision (Ga. SBOE 1991-2).

Insubordination

Eighteen of the 62 cases summarized in this work included the charge of insubordination. Although the first appeal to the State Board of Education that involved the charge of insubordination was heard in 1975, it was not until 7 years later that the State Board began to develop a working definition of this charge (*Peavy v. Pulasik County Board of Education*, Ga. SBOE 1975-15). In *Kelson v. The Board of Education for the City of Savannah and the County of Chatham*, the State Board found that "Insubordination does not require sustained disobedience of a rule or regulation; a single incident which is willfully undertaken can constitute insubordination" (Ga.SBOE 1982-15). Further clarification is written in the case *West v. Habersham County Board of Education*. In this case, the State Board of Education provided a working definition for the charge of insubordination (Ga. SBOE 1986-53). The State Board summary said:

In order for an act to constitute insubordination, some intent to disregard the orders of a superior must be shown on the part of the person who is alleged to be insubordinate. Mere negligence or error does not constitute insubordination.

Likewise, violation of the orders of a superior based upon a legitimate misunderstanding of the nature of the orders does not constitute insubordination (*West v. Habersham County Board of Education*, Ga. SBOE 1986-53).

Using this definition, local boards of education are required to show evidence that a legitimate order was deliberately disobeyed. The requirement that there be some showing of intent insures that miscommunications or mistakes do not rise to the level of insubordination. Future cases cite the definition of insubordination used in *West v. Habersham County Board of Education* (*Peterson v. Brooks County Board of Education*, Ga. SBOE 1990-29). In *Woods v. Fulton County Board of Education* (Ga. SBOE 1991-13), the State Board reinforced and added clarity to the earlier definition with this wording:

Insubordination requires some willful disobedience of, or refusal to obey, a reasonable and valid rule, regulation or order issued by the school board or an administrative superior. A local board, however, does not need a specific rule or regulation to govern all teacher conduct. See, *Calfee v. Atlanta Bd. of Educ.*, Case No. 1982-18 (St. Ed. of Ed, Dec. 9, 1982).

This added to the definition established in *West v. Habersham County Board of Education* by requiring that the order given be “valid and reasonable.” It also clarified that the local board does not need to show a violation of a specific rule or regulation to support a charge of insubordination. In this newer definition the idea of intent is expressed with the phrase “willful disobedience.”

There are a range of acts that have been identified as grounds for sustaining the charge of insubordination. In *Belser v. Atlanta City Board of Education*, the State Board ruled that a

teacher's failure to participate in required professional learning opportunities, refusal to meet with the principal, and failure to turn in class schedules constituted insubordination (Ga. SBOE 1991-2). The next year in *Mintah v. Spalding County Board of Education*, the appellant was asked to provide emergency lesson plans during a period of absence and asked to return to work when two different doctors had cleared her to return to work. In both instances she refused. The State Board found that the refusal to return to work when directed to do so constituted insubordination (Ga. SBOE 1992-23). In a similar case, an administrator directed a teacher to provide medical documentation for absences and appear for a psychiatric examination. The teacher did not comply with either direction. The State Board supported the local board's assertion that these acts were insubordination (*McCullers v. Fulton County Board of Education*, Ga. SBOE 1996-5). In another case, the appellant failed to have emergency lesson plans prepared as directed by the administration. In addition, the appellant failed to maintain student records from which grades could be prepared. The State Board found each of these acts to be a willful failure to follow administrative directions supporting the charge of insubordination (*Rushforth v. Gwinnett County Board of Education*, Ga. SBOE 2000-14).

In *Spearman v. Ben Hill County Board of Education*, a charge of insubordination was upheld based entirely upon an act that took place outside of any school related duties or responsibilities. After the teacher's first arrest for driving under the influence of alcohol, an administrator "informed him that further alcohol abuse could result in dismissal." In the summer prior to the following school year, the appellant was again arrested for driving under the influence of alcohol. The State Board of Education supported the local board's assertion that this act constituted insubordination (Ga. SBOE 1996-63).

In *Main v. Green County Board of Education*, the State Board reversed the local board's decision because there was no indication that the appellant had a clear understanding of the administrative expectation. The State Board summary stated:

The principal testified that he attempted to set a meeting date with Appellant after the February 23, 1990, meeting but was unable to agree on a date. The Local Board argues that this shows that Appellant was insubordinate. There was, however, no evidence that the principal directed Appellant to appear at a given place at a given time, or to be ready for another evaluation on a particular date. In the absence of any showing that Appellant failed to follow a particular directive, we conclude that the Local System failed to carry the burden of proof to establish that Appellant was insubordinate (Ga. SBOE 1991-9).

In this straightforward case, the State Board affirmed that local boards must provide evidence that a clear direction or "particular directive" was given and not followed.

In the less straightforward *West v. Habersham County Board of Education*, the State Board also found for the appellant. In this case, the charge of insubordination was supported by two different acts: 1) the appellant played a video about slavery when she was to teach the period of time between World War I and World War II even though the principal had directed all teachers not to show videos that were not reflective of the subject matter being taught; and 2) the appellant did not allow the principal to review grades before posting them. In the instance of the video, the State Board agreed with the appellant in that it could have been related to integration and segregation during the time being studied. Additionally, the State Board held that even if the principal's view that the video was unrelated to the subject were true, it would constitute an error in judgment, rather than insubordination because there was no evidence of willful disregard for

the principal's orders. In the instance of the grade posting, evidence shows that the teacher made a good faith effort to find the principal and meet this requirement. The fact that the local board failed to demonstrate intent for either of these acts kept them from rising to the level of insubordination (Ga. SBOE 1986-53).

Two other cases in which the local board failed to show intent are *Peterson v. Brooks County Board of Education*, (Ga. SBOE 1990-29) and *Ransum v. Chattooga County Board of Education*, (Ga. SBOE 1977-2). In the case of *Peterson v. Brooks County Board of Education*, the local board supported the charge of insubordination with evidence that the appellant kept using a roster system for lunchroom charges when he had been directed to go to an identification card system. The evidence indicated that the appellant had indeed implemented the identification card system but also used the roster system for students that had forgotten their cards. The State Board cited *West v. Habersham County Board of Education*, 1986-53, as it held that negligence, error or legitimate misunderstandings do not constitute insubordination. There must be intent to disregard a superior's direction for insubordination to exist. The State Board found that no intent existed in this instance (Ga. SBOE 1990-29).

In *Ransum v. Chattooga County Board of Education* the charge of insubordination was made based on the fact that the teacher handbook indicated that teachers should stand outside of their doors between classes to supervise students. The appellant had a class outside from which students walked directly toward and away from the door rather than parallel to the door as in a hallway setting. The appellant asserted that she was able to observe students and maintain discipline standing inside her door. The principal was aware that the appellant did not stand outside her door during class changes but never addressed the issue. For this reason, the State Board held that this incident did not rise to the level of insubordination (Ga. SBOE 1977-2).

In contrast, in the case of *Crisp v. Telfair County Board of Education*, (Ga. SBOE 1984-11), failure to perform hall duty was found to constitute insubordination. Additionally, the State Board found that there was no requirement for the administration to provide a warning. The State Board summary provided the following clarification on the issue of the need to give a warning:

Appellant cites cases supporting the principle that an individual must be given a reasonable opportunity to know what is prohibited so that the individual may act accordingly. In the instant case, Appellant, as an educator ... was aware of the no smoking policy, the requirement that she be in her room on time, and the requirement that she monitor the hallway. Appellant's due process rights were not violated because she did have a reasonable opportunity to know what conduct was prohibited (Ga. SBOE 1984-11).

The failure to provide a warning in this case did not harm the appellant because the State Board found that she was aware of the smoking policy and duty expectations.

Another defining difference in these cases is that in the case of *Ransum v. Chattooga County Board of Education*, the appellant did perform hall duty but did not do so in the prescribed manner. In *Crisp v. Telfair County Board of Education*, the appellant made no effort to perform hall duty and violated other school policies. The State Board summary said that:

The charge of insubordination can be supported by the evidence that Appellant smoked in her room in violation of Local Board policy, by the evidence that Appellant failed to perform hall duty as required, and by the evidence that Appellant arrived late to her room (Ga. SBOE 1984-11).

Willful Neglect of Duties

Twenty-four of the 62 cases summarized included the charge of willful neglect of duties. The State Board of Education provides an operational definition of willful neglect of duties by citing *Terry v. Houston County Bd. of Ed*, 178 Ga. App. 296 (1986). The opinion in this case asserts that “willful neglect must arise from flagrant act or omission, or an intentional violation of a known rule or policy, or a continuous course of reprehensible conduct.” (*Terry v. Houston County Board of Education*, Ga. SBOE 1984-05). This definition provides three forms of behavior which can be used to support the charge of willful neglect of duties: 1) a flagrant act or omission; 2) an intentional violation of a known rule or policy; and 3) a continuous course of reprehensible conduct. *Terry v. Houston County Bd. of Ed*, 178 Ga. App. 296 (1986) is cited in a number of State Board of Education appeals summaries (*Knighton v. Dougherty County Board of Education*, Ga. SBOE 1986-41 and *Peterson v. Brooks County Board of Education*, Ga. SBOE 1990-29). Although it is not always cited, State Board decisions in the area of willful neglect of duties are generally consistent with this definition.

There are a number of examples of actions that the State Board has determined to constitute willful neglect of duties. In an early case, *Baker v. Camden County Board of Education*, (Ga. SBOE 1978-1), the local board of education supported the charge of willful neglect of duties by asserting that the appellant:

- (1) failed to improve his teaching techniques as recommended by a Professional Practices Commissioner reviewer,
- (2) failed to abide by a specified work day schedule,
- (3) failed to sign in as required by school policy,
- (4) left his classroom unattended while there were students attending the class
- (5) visited other classroom teachers in the halls during the school day while there were students

attending his class, (6) used photocopying equipment in the main office without authorization, and (7) committed hostile action toward the curriculum director on February 7, 1977 (*Baker v. Camden County Board of Education*, Ga. SBOE 1978-1).

Although, the State Board indicated that there was some conflicting evidence, they found there was sufficient evidence to assert that the:

Appellant's consistent disregard of the principal's directives appears to be the overriding motivating factor for his dismissal. Any one of his actions, taken alone, might have been comparable to the actions of any other teacher, but, taken together, his actions represented willful neglect of duties (*Baker v. Camden County Board of Education*, Ga. SBOE 1978-1).

The consistent and ongoing nature of the behaviors cited by the State Board indicate that the charge of willful neglect of duties can be supported by a pattern of smaller acts over time.

Other examples of acts that were used to support the charge of willful neglect of duties include the failure to turn in emergency lesson plans (*Mintah v. Spalding County Board of Education*, Ga. SBOE 1992-23). In *Mintah v. Spalding County Board of Education*, (Ga. SBOE 1992-23), the school administration clearly communicated the requirement to turn in emergency lesson plans on at least three different occasions. The appellant failed to do so. The State Board found this failure to act constituted willful neglect of duties. In *White v. Effingham County Board of Education*, (Ga. SBOE 1996-42), the appellant was directed to adjust his teaching methods so that there were fewer failures in his class and to meet the needs of special education students. He was placed on a professional development plan to support this expectation. The appellant did not modify his instruction. He continued to have a high failure rate. The State

Board supported the local board in finding that changing teaching methods to improve a teacher's failure rate is not the same as requiring a teacher to change grades. Evidence was found to show that the teaching methods had not been modified as requested by the administration and as required by the special needs of a student in the class.

Failure to report to work has been used to support the charge of willful neglect in a number of cases. In *Lansford v. Chatham County Board of Education*, (Ga. SBOE 1983-34), a teacher took sick leave to drive a bus for a private school field trip. This was found to constitute willful neglect of duties. In *McCullers v. Fulton County Board of Education*, (Ga. SBOE 1996-5), the appellant improperly reported absences on at least 10 occasions, failed to provide medical excuses for all absences when asked, and was chronically tardy. The tribunal that originally heard the case found that the appellant willfully neglected her duties by intentionally violating the attendance policy. The State Board supported this finding and dismissed the appellant's claim that the violations were trivial by stating "Whether the violations were trivial and the effect of 20 years of outstanding service were decisions for the Local Board to make, and the State Board of Education will not substitute its judgment for that of the Local Board." In *Rushforth v. Gwinnett County Board of Education*, (Ga. SBOE 2000-14), the appellant failed to show up for work because he was incarcerated. The appellant claimed that he did not intentionally fail to show up for work. The State Board rejected this argument in finding that this was willful neglect of duties because the incarceration was the natural consequence of a choice made by the appellant.

In *Allen v. DeKalb County Board of Education*, (Ga. SBOE 1988-7), the appellant did not report to work because a handicap prevented her from driving the distance from her apartment to the school. The appellant argued that Georgia Equal Employment for Handicapped Code

required the school district to transfer the appellant to a school closer to her residence. The State Board held that the local board had a contractual right to assign all teachers where required for the efficient operation of the district. The State Board cited *Dugger v. Delta Air Lines, Inc.*, 173 Ga. App, 16, 18(1984) as support for the contention that the local board is not required to “maintain a person who cannot perform the duties of the job because of that person’s handicap.” State Board of Education appeals decisions have consistently found absences in violation of local attendance policies constitute willful neglect of duties. In *Cabe v. Walton County Board of Education*, (Ga. SBOE 2001-02), the State Board reversed the local board in finding that the appellant took approved leave to get treatment for her depression and to appear in court to answer to animal cruelty charges. The local board asserted that the leave constituted willful neglect of duties. The State Board asserted “that the absence of a teacher or other employee while on an approved leave does not constitute willful neglect of duty regardless of the reason why the teacher took the leave.”

Knighton v. Dougherty County Board of Education, (Ga. SBOE 1986-41) is another case in which the State Board found the acts charged by the local board were not sufficient to support the charge of willful neglect of duties. In this case the appellant failed to follow record keeping procedures and failed to maintain order in the classroom. The State Board found that these acts “show that appellant was not measuring up to the standards required; they do not show that appellant intentionally violated the rules, or that her conduct was so reprehensible or flagrant.” In this case, the State Board did support the local board’s assertion that these same acts constitute incompetence.

In *Peterson v. Brooks County Board of Education*, (Ga. SBOE 1990-29), the State Board again cited *Terry v. Huston County Board of Education* as it reversed the local board’s decision.

In this case, the charge of willful neglect of duties was paired with the charge of incompetence. Both charges were supported by the fact that the appellant allowed the improper logging of telephone calls on one monthly report. The State Board found that there was no intent and claimed that this was “simple negligence at worst.” *McLeod v. Gordon County Board of Education*, (Ga. SBOE 1982-21) is another case in which the charge of willful neglect of duties was paired with the charge of incompetence. The charges were supported by the fact that the appellant filed two reports that were not completed properly and failed to answer two letters from the superintendent. The appellant corrected and resubmitted the reports upon being made aware of their deficiencies. The appellant also took action as a result of the letters from the superintendent. He did not respond because the letters did not provide instructions to do so. The State Board found that the local board failed to show any intent and that the acts were the result of error or miscommunication. As a result they did not constitute either willful neglect or incompetence.

The charge of willful neglect of duties was paired with insubordination in *Crisp v. Telfair County Board of Education*, (Ga. SBOE 1984-11). In this case, the State Board found that:

The charge of insubordination can be supported by the evidence that Appellant smoked in her room in violation of Local Board policy, by the evidence that Appellant failed to perform hall duty as required, and by the evidence that Appellant arrived late to her room. The charge of willful neglect of duty can be supported by the same evidence as above as well as the evidence that Appellant spent a great deal of class time discussing topics unrelated to the subject of the class.

This case shows that the State Board recognizes that some conduct could constitute more than one charge.

Immorality

Of the 303 cases appealed to the State Board of Education since 1975, twenty-eight or 9.2% include the charge of immorality. Sixteen of the 62 cases summarized in Chapter 2 included the charge of immorality. The first appeal decision involving the charge of immorality was heard two years after the Fair Dismissal Act was established. In this case, *Dominy v. Atlanta Public Schools*, (Ga. SBOE 1977-5), the State Board first established a working definition for the charge immorality. At the time this case was appealed, Georgia courts had not developed a definition for immorality. In absence of Georgia precedent, the State Board relied on decisions from other states. These cases include *Morrison v. State Board of Education*, 82 Cal. Rptr. 175, 461 P. 2d 375 (1969), *Pettit v. State Board of Education*, 109 Cal. Rptr. 665, 513 P. 2d 889 (1973), and *Weissman v. State Board of Education*, 547 P. 2d 1267 (Coia. 1976). From these cases, the State Board concluded that there is a special relationship between teachers and the students in their classrooms. The State Board also cited language in the Pettit decision which indicated that immoral acts do not need to manifest themselves in the classroom before action can be taken. In the summary of this case, the State Board held that a teacher's actions "must have some relation to teaching and must be found to have an adverse impact on the school, the students, or other teachers in order to be judged immoral." The State Board added:

The concept of morality or immorality covers a broad spectrum. Care must, therefore, be exercised by the reviewer to insure that individual concepts, i.e, subjective concepts, of morality are not used as the standards in determining whether there is evidence of immorality. In addition, the standards of review

applied by the State Board of Education should be uniformly applied regardless of whether a case arose in a metropolitan urban area or in a rural area. The evidence of immorality must, therefore, meet certain objective standards that can be consistently applied.

These general criteria and cautions highlight the care that must be taken to ensure that morality has some objective measures that could be applied in any location.

In *Dominy v. Atlanta Public Schools*, the State Board found that violations of criminal law were an objective standard that could be used to support the charge of immorality. The State Board supported concerns of the local board that the teacher's illegal drug use could have a negative impact on the teacher's ability to impart moral values in the classroom and to function in the system. The summary highlighted the problem of student drug use and the community's awareness of the teacher's arrest.

In general, immorality cases fall into 3 categories of behavior: 1) drugs; 2) theft; and 3) inappropriate sexual conduct. There are 5 miscellaneous cases, such as *Cabe v. Walton County Board of Education*, (Ga. SBOE 2001-02), and *Dixon v. Emanuel County Board of Education*, (Ga. SBOE 1997-45), which fall outside of these categories. Examples of these miscellaneous cases are reviewed later in this section. All cases of theft were upheld; of the 14 inappropriate sexual conduct cases, 10 were upheld; and all 4 drug cases were upheld. Table 3.2 summarizes the distribution of cases and percent upheld in each of these categories.

Table 3.2

Categories of Appeals to the Ga. State Board of Education Involving Immorality

Categories	Number of Cases	Percent of Cases Upheld
Theft	5	100.00%
Inappropriate Sexual Conduct	14	71.43%
Drug Use or Possession	4	100.00%
Other	5	20.00%
Total	28	

A total of 10 cases involved criminal charges – in some cases the local board waited until after court proceedings to terminate and in others the local board took action prior to court proceedings. Most of the criminal proceedings involved acts of illegal drug use or theft. In only one case of sexual misconduct was there a criminal proceeding.

The acts related to theft varied greatly. In the earliest case involving theft, the appellant was caught shoplifting merchandise valued at \$3.50 (*Brannen v. The Board of Education for the City of Savannah and the County of Chatham, Ga. SBOE 1978-19*). Despite cooperating with the district attorney in a sting operation against a probation officer and police officer that tried to blackmail the appellant, he was dismissed for immorality prior to any criminal proceedings. The State Board found that this act constituted immorality. In *Logan v. Warren County Board of Education, (Ga. SBOE 1981-39)* a principal's contract was not renewed because he had been convicted in federal court of tax evasion. The principal argued that the local board was required to show a connection between his off-duty conduct and his ability to effectively perform the duties of principal. In response, the State Board asserted:

Where, however, there has been a conviction and the conduct has been determined to be criminal and of a nature which involves moral turpitude, the necessity of establishing a relationship between the conduct and the ability to perform as an employee does not exist. As pointed out by the Professional Practices Commission tribunal, the position of principal is one of public trust and confidence which is inconsistent with conviction of a crime involving moral turpitude (Ga. SBOE 1981-39).

This language clarified when it is unnecessary for the local board to establish a relationship between off-duty conduct and the ability to perform the duties of the job.

The two cases of theft that involved school property or funds were both upheld by the State Board of Education. In *Akins v. Bulloch County Board of Education*, (Ga. SBOE 1985-35) an educator was convicted of misapplication of program benefits in a school sponsored activity. The State Board held that this act constituted immorality. In *Medeiros v. Clayton County Board of Education*, (Ga. SBOE 1992-21) the appellant was terminated for taking cash from the school ice cream fund. This theft also constituted immorality.

The case of *Dominy v. Atlanta Public Schools*, cited above, was the earliest appeal that supported the charge of immorality for possession of drugs. In this case, the State Board made clear that when an educator is in possession of drugs “it is for the board of education as fact finders to determine whether the authorized inference of ‘immorality’ is to be drawn from the proven facts.” Later in *Sherling v. Colquitt County Board of Education*, (Ga. SBOE 1989-21) the appellant cited *Dominy* in asserting that it was improper for the local board to take action when there had been no adjudication in the criminal case against the appellant. The State Board disagreed, holding that:

The inference to be drawn is whether the acts constitute immorality, and not, as Appellant contends, whether she committed a criminal act. The Local Board could determine whether Appellant possessed drugs based upon a preponderance of the evidence, as presented in a hearing before the Local Board. There is no violation of due process if an administrative hearing is conducted prior to a criminal proceeding.

In a later immorality case involving drugs, the appellant argued that she could not be dismissed because she was not charged with a crime of moral turpitude and the local board failed to show a negative impact on her ability to teach (*Clark v. Glynn County Board of Education*, Ga. SBOE 1993-34). The State Board supported the dismissal without directly supporting the charge of immorality in finding that:

Although there was no evidence that Appellant's conduct had become known in the community so that it would have affected her ability to teach, there was evidence that Appellant admitted she was holding marijuana cigarettes for a high school student. The Local Board could decide that such conduct, at a minimum, constituted other good and sufficient cause to terminate Appellant's teaching contract.

The State Board did not clarify whether or not a crime that does not involve moral turpitude and has not been linked to one's ability to teach constitutes immorality.

Although there is some ambiguity about what sexual conduct rises to the level of immorality, there are a number of examples that have been upheld by the State Board of Education. These examples provide some indication of prohibited conduct. This prohibited conduct is not limited to acts involving physical contact or actual intercourse. In *Brooks v. White*

County Board of Education, (Ga. SBOE 1982-1) the State Board upheld the decision to terminate the contract of a teacher for immorality and inciting, encouraging or counseling students to violate a valid state law. The charges were supported by evidence that the teacher had engaged in a discussion of sodomy during class time including telling students that he had engaged in sodomy. In *Servy v. Coweta County Board of Education*, (Ga. SBOE 2010-81) a teacher's contract was terminated for "playing an inappropriate video, and using an inappropriate name in referencing a student." The evidence indicated that:

Appellant played an inappropriate video that contained explicit sexual language regarding oral sex. The song included a derogatory use of the name Becky as the female engaging in oral sex. The record further shows that, after becoming aware of the slang connotation to the name "Becky," Appellant called a student "Becky" even though it was not her name. Moreover, Appellant admits to writing the name "Becky" in reference to this student on the chalkboard. Thus, there is sufficient evidence to conclude that Appellant knowingly engaged in intentional and reprehensible conduct.

The State Board upheld the local board's decision to terminate the appellant's contract.

Cases of immorality that involve sexual relationships have been upheld where sufficient evidence exists. In *Cornett v. Bartow County Board of Education*, (Ga. SBOE 1999-17) the appellant was dismissed for engaging in sexual conduct with another teacher while at school. The State Board upheld the local board's decision to terminate the appellant's teaching contract. In *Bright v. Emanuel County Board of Education*, (Ga. SBOE 2010-54) a teacher's contract was terminated because he was having a sexual relationship with a high school student. The State Board upheld this termination. Cases that involve charges of immorality supported by physical

acts of sexual conduct have only been reversed by the State Board when there has been insufficient evidence to establish that the acts took place (*Hicks v. Dougherty County Board of Education*, Ga. SBOE 1980-30 and *Saxby v. Bibb County Board of Education*, Ga. SBOE 1983-15).

The final instances of immorality that the State Board of Education has addressed through the appeals process don't fall into one of the three categories addressed above. Two that are particularly worth exploring involve crimes committed by educators. In *Dixon v. Emanuel County Board of Education*, (Ga. SBOE 1997-45) the State Board of Education upheld the local board's decision to terminate the contract of a teacher for immorality and any other good and sufficient cause. The appellant asserted that the local board did not provide sufficient evidence to prove immorality. The local board based the charge of immorality on the fact that the appellant intentionally shot his daughter in the leg. A criminal court found the appellant not guilty by reason of insanity. The appellant claimed that the local board could not find he acted immorally when a criminal court had judged him to be insane at the time of the incident. The State Board cited *Hathcock v. State*, 214 S.Ed.2d 628 "It is well-settled that a jury is free to reject expert opinion testimony and substitute their own knowledge and experience" (1993). The State Board applied this same reasoning to the local board in allowing the local board to reject the findings of the criminal court. The local board weighed the evidence presented by the appellant and found that this was indeed an immoral act. The State Board supported this assertion.

In contrast, the State Board reversed the local board's decision not to renew the contract of a tenured teacher for willful neglect of duty, immorality, and any other good and sufficient cause in *Cabe v. Walton County Board of Education*, (Ga. SBOE 2001-02). The immorality charge was supported by evidence that the appellant neglected cats to the point that they died,

and she served jail time on the weekends because of this neglect. The State Board found that the jail time served for cruelty to animals and the neglect itself do not rise to the level of immorality, given the mental state of the appellant at the time of the neglect. The State Board does not provide any specific guidance as to the seemingly contradictory stances taken in these two cases.

In 2010, there were two cases in which the charge of immorality was supported by evidence that administrators had access to tests that had an abnormally high number of erasures (*Adams v. Fulton County Board of Education*, Ga. SBOE 2010-91, and *Bullock v. Fulton County Board of Education*, Ga. SBOE 2010-92). In both cases, the Georgia Professional Standards Commission (GPSC) had performed investigations and issued findings of “probable cause” that the appellants had not followed proper test procedures. The GPSC recommended a one-year suspension of their certificates. The State Board found that this did not constitute immorality but was sufficient to terminate their employment based on the charge of any other good and sufficient cause.

Inciting Students to Violate Law or Policy

In the over three decades since the Georgia Fair Dismissal Act has been in effect, there have only been seven cases appealed to the State Board of Education that involve a charge of inciting, encouraging, or counseling students to violate any valid state law, municipal ordinance, or policy or rule of the local board of education. All of these cases include additional charges. The State Board affirmed the local board’s ruling in all seven of these cases, but the specific charge of inciting students was only supported in two appeals.

In *Brooks v. White County Board of Education*, (Ga. SBOE 1982-1) the charge of inciting or counseling students to violate law or policy was supported with evidence that the appellant engaged in a discussion with students about sodomy during class time. The evidence also

indicated that the appellant told students that he had engaged in sodomy. At the time of this act, sodomy was illegal in the state of Georgia. The State Board supported the local board's assertion that this action was sufficient to uphold the charge of inciting or counseling students to violate law or policy.

In *Faver v. Fayette County Board of Education*, (Ga. SBOE 1986-3) the appellant provided an adult male and an adult female student with a free motel room at the motel where he worked evenings. The State Board found that

While Appellant may not have had a responsibility to refuse the student a room, providing the room to the student free of charge is evidence the Local Board could have considered to determine Appellant encouraged the student to violate a valid state law.

At the time of this act, state law clearly prohibited sexual intercourse between unmarried persons.

Although the State Board does not provide a complete definition of how the charge of inciting or encouraging students to violate law or policy will be interpreted, it does make clear that there must be some intent. This is evidenced in *Johnson v. Lee County Board of Education*, (Ga. SBOE 1987-37). In this case, the appellant had knowledge that students were violating a policy of the local board, but evidence did not show intent on the part of the appellant. As a result, the State Board held that

the facts do not show evidence that Appellant incited, encouraged, or counseled students to violate any valid state law, municipal ordinance, or policy or rule of the Local Board. This charge would require Appellant to have an intent to have students violate law or policy, which intent was not shown.

The appellant was dismissed for any other good and sufficient cause. The requirement to show intent is supported in *Kueber v. Colombia County Board of Education*, (Ga. SBOE 1997-33). In this case, the appellant, an automotive teacher, gave a student without a driver's license the keys to the student's mother's car. The car had been repaired as a part of the automotive program. The keys were given so that the student could return them to his mother. The student took the car for a "joy ride". The State Board found this action does not constitute inciting or encouraging a student to violate state law or local board policy since the appellant's intent was to have the student give the keys to his mother.

Reduction in Force

The Georgia Fair Dismissal Act allows for the dismissal or non-renewal of certified personnel due to a reduction in force "due to loss of students or cancellation of programs." There have been 49 cases appealed to the State Board of Education that include the charge of reduction in force. Twenty, or 40.9%, of these cases have been heard in the last 18 months. The charge of Reduction in Force often stands alone. In fact, only 3, or 6.1%, of the cases had an additional charge. In every case but one, the State Board sustained the decision of the local board.

In *Jones v. Meriwether County Board of Education*, (Ga. SBOE 1979-4) the appellant's contract was non-renewed due to a reduction in force. Later the appellant was offered a contract for a teaching position at a reduced salary. The appellant requested a hearing and received notice that only included a date and time. The State Board found that the improper notice was sufficient to reverse the local board's decision to non-renew or demote the appellant. The State Board also found that the failure to reassign the appellant to available administrative positions

for which he was qualified also constituted a reversible error in both the non-renewal and the demotion of the appellant.

In *Lawson v. Talbot County Board of Education*, (Ga. SBOE 1979-22) the State Board added some clarity to the charge of reduction in force as it relates to the issue of teacher seniority. The appeals summary said in part:

There have not been any decisions on whether a teacher or other employee who has been employed for more than three years has any greater rights to employment under the Fair Dismissal Act than a teacher or other employee who was been employed for less than three years. The Fair Dismissal Act does not address the issue. The Act merely grants a teacher or employee who has signed four or more successive annual contracts the right to have a hearing in the event of non-renewal of his or her contract, whereas the teacher or employee who has been employed for less than four years is not entitled to a hearing. The Act does not grant a "tenured" teacher any greater expectation to continued employment than a "nontenured" teacher has.

Although the non-renewal of teachers or other employees who have been continuously employed for more than three years, when there are employees who have been employed less than four years, may have detrimental effects on the moral of the remaining teachers, the decision is left within the sound discretion of the local board. The Fair Dismissal Act does not indicate that there was any intent on the part of the General Assembly to grant teachers and other employees any expectation to continue to be employed by a local board. If such was the intent, it

must be considered by the General Assembly rather than by the State Board of Education on appeal.

This decision was the first to indicate that local boards of education are not required to consider seniority when implementing a reduction in force. Later cases show that seniority is used as a criterion to reduce staff when it is part of a district's reduction in force policy.

In *Greene v. Clarke County Board of Education*, (Ga. SBOE 1985-20) the State Board found that "once the Local Board has shown good cause for dismissal based on cancellation of programs, there is nothing to prevent them from dismissing the teacher who is the most limited in terms of qualification and certification." In this case, the appellant asserted that his non-renewal due to a reduction in force was improper because he had more seniority than other teachers that were retained. The local board's policy allowed for the consideration of certification in the reduction in force policy. The retained teachers each had certification that allowed them to teach courses that the appellant was not qualified to teach. The local board's decision was upheld.

In *Lusane v. Clayton Board of Education*, (Ga. SBOE 1987-26) the State Board of Education held that poor attendance on the part of the employee can be considered when implementing a reduction in force. Additionally, the State Board indicated that a local board is not required to have a reduction in force policy or to consider tenure when removing teachers as part of a reduction in force.

A few years later, in *Curry v. Dawson County Board of Education*, (Ga. SBOE 1991-7), the State Board defined "programs" as it applies to the charge of reduction in force. The State Board asserted that

‘programs’ in O.C.G.A. § 20-2-940 (a) (6) refers to a plan or system used to perform a given task. In this case, that means the program of administering support staff through a single administrative position, which the Local Board has chosen to eliminate.

Additionally, the State Board summary asserted that

contrary to Appellant's argument that a position cannot be eliminated in order to economize, the underlying purpose of being able to terminate teachers due to the loss of students or cancellation of programs is to economize. The provision recognizes that if there has been a loss of students or programs have changed, then it is unnecessary for a local board to continue the employment of some of the teachers.”

Failure to Maintain Educational Training

Since the adoption of the Georgia Fair Dismissal Act of 1975 there have only been 11 cases appealed to the State Board of Education that included the charge of failure to secure and maintain necessary educational training. The local board decision was upheld in all 11 appeals. In 9 of these cases, failure to secure and maintain necessary educational training was the only charge. Failure to secure or maintain certification with the Georgia Professional Standards Commission has been used as evidence to support this charge in a number of cases (*Carlyle v. Chatham County Board of Education*. Ga. SBOE 1981-11, *Dickens v. DeKalb County Board of Education*. Ga. SBOE 1989-31, and *Adjei v. Atlanta City Board of Education*. Ga. SBOE 2003-36). There are 2 cases that expand this definition to include training above and beyond that required for a teaching certificate.

In *Wynne v. The Board of Education of the City of Savannah and the County of Chatham*, (Ga. SBOE 1978-37) the State Board of Education upheld the local board's decision to non-renew the contract of a librarian that had failed to secure and maintain the necessary educational training and failed to meet the terms of the contract. The appeal claimed that the local board did not have the authority to require additional training. The State Board found that the local board did have the authority to require educational training beyond what was required by the State. Specifically the State Board decision stated that "there does not appear to be any error of law in the Local Board permitting the school administration to suggest and implement the increased educational requirements for the professional staff." This decision clarified that the definition of "necessary educational training" includes locally required training beyond teacher certification.

This expanded definition was affirmed in *Kidd v. Clarke County Board of Education*, (Ga. SBOE 1997-40). In this case, the State Board of Education upheld the local board's decision to terminate the contract of a teacher for failure to secure and maintain necessary educational training and any other good and sufficient cause. The appellant claimed that he was not required to complete the training required by the local board since he had a lifetime teaching certificate. The State Board held for the local board, supporting the requirement of additional training. The state hearing officer in this case asserted that "The State Board of Education is of the opinion that the control and management of the schools necessarily includes the authority to impose requirements on its teachers that may go beyond the minimum requirements established by the State Board of Education for a teacher to become certified."

Several recent cases have focused on the need for certification to be in the proper subject area or field. In *Chatman v. Wilkinson County Board of Education* (Ga. SBOE 2010-20) the State Board found that a certified special education teacher could be dismissed for failing to

secure appropriate subject area certification as required by the federal No Child Left Behind Act. In *Wilson v. Atlanta Public Schools Board of Education* (Ga. SBOE 2010-26), the State Board upheld the local board's decision to terminate the contract of a teacher that failed to secure a teaching certificate for the area in which she was hired. The teacher was hired to teach Spanish at an elementary school. The appellant's Spanish certification expired, but she maintained an early childhood certificate. The State Board found that the appellant "did not obtain the proper certification. Rather, the Appellant obtained a certification in Early Childhood, which is not the position she was assigned when she signed her contract. Thus, the Local Board's decision is supported by the evidence."

Any Other Good and Sufficient Cause

The charge of any other good and sufficient cause was included in 98 cases that were appealed to the State Board of education. Only 13.2% of these cases had any other good and sufficient cause as the only charge. In all other cases it was paired with at least one other charge. Cases appealed to the State Board that included the charge of any other good and sufficient cause were upheld at a rate of 87.7%.

Although any other good and sufficient cause has been used for decades, there is still no operational definition of this charge. There are, however, a number of appeals decisions that provide some examples of how this has been applied by the State Board. In addition, some guidance for interpreting the charge of any other good and sufficient cause can be found in *Cooper & Berto v. Atlanta City Board of Education*, (Ga. SBOE 2005-08). In this case, the State Board of Education reversed the local board's decision not to renew the contract of two tenured teachers for any other good and sufficient cause. The appellants were not to receive contract renewals because the positions they each held were being eliminated as a part of a restructuring

plan. Both appellants were vocational supervisors at specific schools. Under the restructuring plan, these positions were moved with very few changes in duties. The appellants were told they could apply for the new positions that were now under the office of the Technology/Career Education Department at a much lower salary.

The appellants asserted that the evidence presented by the local board did not support the charge of any other good and sufficient cause. The State Board agreed, declaring that the charge is not a catch all to be used by districts as they see fit. The State Board further stated that any other good and sufficient cause could only be used where it applies to actions or inactions on the part of the teacher being dismissed. Based on this interpretation, this charge could not be used to justify the non-renewal of a contract based upon actions of the district, in this case the district's restructuring plan.

Some examples of charges that were determined to fall under the umbrella of any other good and sufficient cause include:

- Improper maintenance of records (*Barker v. Twiggs County Board of Education, Ga.* SBOE 1978-34a).
- Failure to follow district policy and misuse of district funds (*Watson v. Hogansville City Board of Education, Ga.* SBOE 1984-3).
- Improper change in student grades (*Childs v. Bibb County Board of Education, Ga.* SBOE 1990-13).
- Striking a teacher, student, parent, or superior (*Woods v. Fulton County Board of Education, Ga.* SBOE 1991-13).
- Possession of marijuana (*Clark v. Glynn County Board of Education, Ga.* SBOE 1993-34).

- Violation of the Educator’s Code of Ethics by improperly sharing standardized test information with students (*Duncan v. Clayton County Board of Education*, Ga. SBOE 1996-10).
- Losing effectiveness as a teacher following an arrest at school for an action that occurred off-campus (*Fuller v. Fayette County Board of Education*, Ga. SBOE 1997-49).
- Striking a student several times in retaliation for a student striking her (*Gaines v. Bibb County Board of Education*, Ga. SBOE 2005-01).
- Inability to work with children under 16 years of age as a condition of bond (*Leontovich v. Cobb County Board of Education*, Ga. SBOE 2006-40).
- Verbal and physical abuse to a student (*Hawkins v. Dekalb County Board of Education*, Ga. SBOE 2009-28).

In *Carruthers v. Monroe County Board of Education* (Ga. SBOE 1996-36), the State Board found that a federal indictment on charges of receiving child pornography is not sufficient to support the charge of any other good and sufficient cause. In this case, the only evidence presented was the fact that the appellant had been indicted by a federal grand jury. The State Board held that “mere allegations of misconduct are insufficient to terminate an employee's contract. It is only in the newspapers, on radio and television, and in public opinion that a person can be deemed guilty based upon mere allegations; in law, which we are bound to follow, guilt requires a local board of education to at least prove misconduct.”

Chapter Summary

The black letter law analysis of the eight substantive areas for dismissal is primarily based upon State Board of Education appeals summaries of the 62 cases and quantitative data extracted from all 303 appeals decisions heard through March of 2011. Table 3.3 indicates the

number of cases used to operationalize the eight substantive areas for dismissal and non-renewal codified in the Georgia Fair Dismissal Act of 1975.

Table 3.3

Number of Cases Used to Operationally Define the Eight Substantive Areas for Dismissal

Area for Dismissal	Number of Cases
Incompetency	14
Insubordination	18
Willful Neglect of Duties	24
Immorality	16
Inciting Students to Violate Law or Policy	4
Reduction in Force	5
Failure to Maintain Training	4
Any Other Good and Sufficient Cause	29

CHAPTER 4

SUMMARY, FINDINGS, AND CONCLUSIONS

The overriding purpose of this study was to address the question: What level of administrative authority is granted to Georgia school districts to dismiss tenured teachers under the Georgia Fair Dismissal Act of 1975? This question is of critical importance because teacher dismissal is one of the three primary tools available to school leaders to ensure all students have the opportunity to learn from high quality teachers. A thorough understanding of this law and its application can support school administrators in the removal of unfit teachers from their schools. Removing and replacing unfit teachers with more effective teachers can improve student learning and boost the morale of other faculty members (Darling-Hammond, 2000; Chait, 2010).

Research examining the application of the Georgia Fair Dismissal Act of 1975 is limited to two unpublished dissertations and legal reviews that focus narrowly on the balance of teacher rights as they pertain to a specific constitutionally protected conduct. The Georgia Fair Dismissal Act, codified in part as Official Code of Georgia Annotated (O.C.G.A.) 20-2-940 specifies eight areas for non-renewal of tenured teachers: 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; or 8) any other good and sufficient cause. Although the unpublished dissertations, which have examined the application of this act, explore some Georgia Board of Education appeals decisions, to date there is no current and comprehensive

examination of the interpretation and application of these eight areas. In short, there are no operational guidelines to inform local administrators, school boards, and their legal counsel as they consider the non-renewal of tenured teachers. Unfortunately, lack of familiarity on the part of administrators can result in the retention of unfit teachers. For this reason it is imperative that school administrators become acquainted with how Georgia laws and constitution support schools in dismissing teachers that are not well suited for the profession.

Consistent with traditional black letter law research, this work was designed to inform practice and policy development. It was the intent of this legal review to provide information for a number of levels of practitioners including members of local boards of education, district level administrators, school level administrators, and teachers, as well as, attorneys representing each of these groups.

Although this work focused on administrative authority to dismiss tenured teachers, it is important to understand the constitutional rights conferred by the Georgia Fair Dismissal Act of 1975. This act was designed to protect teachers from arbitrary and capricious dismissal decisions. Through this act teachers are granted tenure after three years of successful teaching and the acceptance of a fourth contract from the same district. Once a teacher has gained tenure, they have a property interest in continued employment beyond the current contract period. Tenure rights are not designed to be an absolute, protecting a teacher at the expense of the school or the students. Even tenured teachers may be dismissed for cause. Teacher dismissal practices must work to balance the rights of the teacher against those of the students that they serve.

This study was designed to investigate the following research questions:

- 4) Since its inception in 1975, how has the State Board of Education interpreted the eight areas for dismissal outlined in the Fair Dismissal Act?

- 5) What was the frequency with which appeals were made in each of these eight areas?
- 6) How often was each of the eight areas for dismissal upheld?

Summary of the Study

This study employed black letter law research. All information relating to the dismissal of tenured teachers in the state of Georgia was collected and reviewed. The process began by identifying and reviewing works that create the foundation for the teacher rights later codified in the Fair Dismissal Act of 1975. Additional sources reviewed included relevant areas of the United States Constitution, Georgia Constitution, statute, case law, and other legal reviews. A review of all State Board of Education appeals decision relating to termination of tenured teachers was conducted. All cases from the inception of the law in 1975 through February 2011 were examined. Those cases that help to clarify the eight areas set in the Georgia Fair Dismissal Act of 1975 under which a tenured teacher may be terminated or non-renewed were summarized. Operational definitions of the eight substantive areas for dismissal emerged from an analysis of precedents set and rationale for appeals decisions. In addition, descriptive statistics were used to help identify patterns in appeals decisions and clarify the interpretation of the law over time.

Findings

Incompetence

Of the 303 cases reviewed and analyzed, 79 include the charge of incompetence. Of these 79 cases 86.1% were upheld by the State Board of Education. The characteristics that the State Board has used to operationally define incompetence are:

- a lack of ability or fitness to discharge a required duty
 - evidence must establish a lack of ability
 - evidence must establish that the duty is a required function of the job

- “At a minimum, there must be a showing that the conduct was not the result of an oversight, or that it was more than a mere difference in educational philosophy” (*Main v. Green County Board of Education*, Ga. SBOE 1991-9)
- the State Board has left it to local boards to continue to define required duties

Insubordination

Of the 303 cases reviewed and analyzed, 112 include the charge of insubordination. Of these 112 cases 86.6% were upheld by the State Board of Education. The characteristics that the State Board has used to operationally define insubordination are:

- “Insubordination requires some willful disobedience of, or refusal to obey, a reasonable and valid rule, regulation or order issued by the school board or an administrative superior. A local board, however, does not need a specific rule or regulation to govern all teacher conduct” (*Woods v. Fulton County Board of Education*, Ga. SBOE 1991-13)
- “intent to disregard the orders of a superior must be shown on the part of the person who is alleged to be insubordinate” (*West v. Habersham County Board of Education*, Ga. SBOE 1986-53)
- “mere negligence or error does not constitute insubordination” (*West v. Habersham County Board of Education*, Ga. SBOE 1986-53)
- “violation of the orders of a superior based upon a legitimate misunderstanding of the nature of the orders does not constitute insubordination” (*West v. Habersham County Board of Education*, Ga. SBOE 1986-53)
- “Insubordination does not require sustained disobedience of a rule or regulation; a single incident which is willfully undertaken can constitute insubordination” (*Kelson v. The*

Board of Education for the City of Savannah and the County of Chatham, Ga. SBOE 1982-15)

Willful Neglect of Duties

Of the 303 cases reviewed and analyzed, 111 include the charge of willful neglect of duties. Of these 111 cases 86.5% were upheld by the State Board of Education. The characteristics that the State Board has used to operationally define willful neglect of duties are:

- a flagrant act or omission (*Terry v. Houston County Board of Education, Ga. SBOE 1984-05*)
- an intentional violation of a known rule or policy (*Terry v. Houston County Board of Education, Ga. SBOE 1984-05*)
- a continuous course of reprehensible conduct (*Terry v. Houston County Board of Education, Ga. SBOE 1984-05*)
- a pattern of smaller infractions over a period of time

Immorality

Of the 303 cases reviewed and analyzed, 28 include the charge of immorality. Of these 28 cases 71.4% were upheld by the State Board of Education. The characteristics that the State Board has used to operationally define immorality are:

- “must have some relation to teaching and must be found to have an adverse impact on the school, the students, or other teachers in order to be judged immoral” (Pettit v. State Board of Education 109 Cal. Rptr. 665, 513 P. 2d 889, 1973)
 - “subjective concepts of morality are not used as the standards in determining whether there is evidence of immorality” (*Dominy v. Atlanta Public Schools, Ga. SBOE 1977-5*)

- “The evidence of immorality must, therefore, meet certain objective standards that can be consistently applied” (*Dominy v. Atlanta Public Schools*, Ga. SBOE 1977-5)
- The State Board did not clarify whether or not a crime that does not involve moral turpitude and has not been linked to one’s ability to teach constitutes immorality.
- Does not require adjudication in a criminal case
- Generally involves theft, drug use or possession, or inappropriate sexual conduct

Inciting Students to Violate Law or Policy

Of the 303 cases reviewed and analyzed, 7 include the charge of inciting students to violate valid law or policy. Of these 7 cases 100% were upheld by the State Board of Education. The characteristics that the State Board has used to operationally define the charge of inciting students to violate valid law or policy are:

- The evidence must show some intent to encourage, incite or counsel students to violate valid law or policy.
- Mere knowledge of students violating law or policy is not sufficient to show intent.

Reduction in Force

Of the 303 cases reviewed and analyzed, 49 include the charge of reduction in force. Of these 49 cases 97.9% were upheld by the State Board of Education. The characteristics that the State Board has used to operationally define reduction in force are:

- A reduction in force must be the result of a loss of students or cancellation of programs
- Local Boards may cancel programs in order to restructure even if there is no loss of students.

- Local Boards are not required to consider teacher seniority when removing staff as part of reduction in force.
- The application of a reduction in force is under the sole discretion of Local Board.
- Local Boards are not required to have a reduction in force policy or to consider tenure when removing teachers as part of a reduction in force.

Failure to Maintain Educational Training

Of the 303 cases reviewed and analyzed, 11 include the charge of failure to secure and maintain necessary educational training. Of these 11 cases 100% were upheld by the State Board of Education. The characteristics that the State Board has used to operationally define the charge of failure to secure and maintain necessary educational training are:

- Teachers must be properly certified through the Georgia Professional Standards Commission.
- Teacher certification must be in the proper subject area for the teaching assignment.
- Districts can require additional training beyond that required for certification.

Any Other Good and Sufficient Cause

Of the 303 cases reviewed and analyzed, 98 include the charge of any other good and sufficient cause. Of these 98 cases 87.7% were upheld by the State Board of Education. The characteristics that the State Board has used to operationally define any other good and sufficient cause are:

- There is no operational definition of this charge.
- This charge can only be applied to actions and inactions of the teacher
- This charge is not a catch all to be used by districts as they see fit.
- This charge can stand alone without being paired with another charge.

Conclusions and Discussion

The operational definitions above provide a basis for administrative authority to dismiss tenured teachers in Georgia. Conversely, the operational definitions also provide teachers with a clear understanding of what conduct is not protected by the Georgia Fair Dismissal Act of 1975. An improved understanding of these eight substantive areas for dismissal and their interpretation and application over time offers clear guidelines for all parties involved in the removal of unfit teachers.

Dismissals and non-renewals appealed to the Georgia State Board of Education were most often decided in for the local school district. Less than 15% of the cases appealed have judgments in favor of the educator being dismissed. As shown in table 3.1, the most used charges are insubordination, willful neglect of duties, and any other good and sufficient cause. Cases including these charges were upheld between 86.5% and 87.7% of the time. The charge of immorality was upheld the least often. Only 71.4% of these cases were found for the local school district. Appeals that included the charges of failure to maintain training or inciting students to violate valid law or policy were upheld 100% of the time. Appeals including the charge of reduction in force were upheld 97.9% of the time.

The relatively clear definitions of failure to maintain training, reduction in force, and inciting students to violate valid law or policy make it easier for all parties to understand the what actions and levels of evidence are necessary to support these charges. Conversely, the less straight forward definitions of charges like immorality and any other good and sufficient cause make them more difficult for all parties to understand and apply. As a result these charges are appealed at a higher rate and upheld at a lower rate.

Limitations or Recommendations for Future Studies

This study included all public school teacher and administrator dismissal and non-renewal cases that have been appealed to the State Board of Education from the inception of the Fair Dismissal Act of 1975 through February 2011. The primary limitation of this research was that it focused on State Board of Education appeals decisions. There are instances in which these appeals decisions are reversed by a Georgia superior or higher court. A second limitation is that this work primarily focuses on substantive due process and only tangentially addresses procedural due process. Although procedural due process rights can be grounds for an appeal to the State Board of Education, they are not grounds for dismissing teachers. This work was designed to clarify the eight areas for dismissal under the Georgia Fair Dismissal Act of 1975. It is imperative that local school boards, administrators, and their attorneys are well versed in the requirements of procedural due process.

There are a number of related topics that could provide an improved understanding of the complexity of dismissing unfit teachers in Georgia. These areas for future examination include: 1) the application of procedural due process protections in Georgia; 2) the analysis of superior and appeals court decisions in Georgia dismissal cases; 3) a review of litigation in the area of employment discrimination; and 4) the study of the extent to which local board decisions follow precedent established by the Georgia State Board of Education.

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