

A REVIEW AND ANALYSIS OF ACADEMIC FREEDOM
AND PUBLIC SCHOOL TEACHER TENURE

by

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(Under the Direction of John Dayton)

ABSTRACT

Academic freedom as a concept has developed over centuries and continues to evolve in the court system. Public school teachers, while they have protections under Fair Dismissal laws in most states, must navigate how these laws apply in questions of academic freedom. At issue in this study are the questions of the legal history of academic freedom, the current status of the law regarding academic freedom, and how the No Child Left Behind Act might affect the academic freedom of public school teachers. The case *Pickering v. Board of Education of Township High School District 205* (1968) established a two part test used by the courts to determine if the speech of a state employee is a matter of public concern and balancing this concern against the legitimate interest of the state to provide a service to the public. *Connick v. Myers* (1983) further defined the standard of matter of public concern discussing the context, content, and form of the educator's speech. The current status of the law indicates that the Supreme Court has restrained from creating a set standard in decision regarding academic freedom in public schools, and the district courts have been divided in how they treat the issue. It is a complicated issue with many variations between cases making it difficult for educators to have a clear understanding of the legal standing of academic freedom. Another complication has been the addition of the No Child

Left Behind Act. The No Child Left Behind Act details that the programs and practices used in the classroom are to be based on scientific research methods consisting of randomized trials in settings resembling those of the educator. Restrictions on the programs and practices used in the classroom may lead to questions of academic freedom as teachers address the needs of their students. Academic freedom continues to change and develop as educators meet new and different challenges.

INDEX WORDS: Academic freedom, Teacher, Fair dismissal, Due process, Tenured, Nontenured, No Child Left Behind

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DEDICATION

This dissertation is dedicated to my husband, Brian. His unwavering support, encouragement, and editorial help made this accomplishment possible. Thanks for helping me take my life less seriously. I have the paper - - now I'm free.

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CHAPTER 1

INTRODUCTION

Statement of Problem

In 1787, Thomas Jefferson wrote “Above all things, I hope the education of the common people will be attended to; convinced that on their good sense we may rely with the most security for the preservation of a due degree of liberty” (Tanner & Tanner, 1995, p. 4). Jefferson theorized that indifference to education puts liberty and self-governance in peril. Education could provide each individual the opportunity to gain knowledge in order to promote self-governing and freedom (Tanner & Tanner, 1995).

An educational system designed for all was not established at that time and the U.S. Constitution does not grant educational rights to its citizenry. Instead, it was the responsibility of the states to set up and maintain a system of schools. The state of Massachusetts served as an example for the early colonies in establishing a free school system (Tanner & Tanner, 1995). The towns in Massachusetts, under legislation passed in 1789, received the power to establish schools locally. But local opposition to taxation, as well as public apathy, caused the free school system to decline in quality (Tanner & Tanner, 1995). By the 1820s, Massachusetts public schools were in peril and academies built with endowments from the legislature began to emerge (Tanner & Tanner, 1995).

A movement toward a broader curriculum in these academies began to gain strength in some parts of the nation. Between 1830 and the Civil War, schools expanded the curriculum to include history, geography, and government along with the traditional public school subjects of reading, writing, and arithmetic. These subjects were closely linked to the democratic ideals

held by the communities (Tanner & Tanner, 1995). Not all public schools incorporated the new subjects into the curriculum. In those areas where there was resistance to tax-supported schools, the curriculum remained confined to the subjects of reading, writing, and arithmetic (Tanner & Tanner, 1995). The influence of the community through its legislative actions and political forces determined what would be taught in the early public school system (Tanner & Tanner, 1995).

Throughout the development of education in the United States, public school teachers and university professors have extolled the need for protection from political forces seeking conformity in the realm of ideas. This protection has been of particular importance during those times when the educational goals may have been more a reflection of the political policies of those in power, rather than the advancement of new theories or ideas (American Association of University Professors, 1970).

In 1789, Benjamin Franklin sought to create an academy based on the ideal of advancing education beyond the traditional course of study used at the time. He proposed a curriculum based on secular and practical ideals rather than religious and classical training (Tanner & Tanner, 1995). His proposal was met with great opposition from the classicists and religionists which led to the eventual demise of the school (Tanner & Tanner, 1995). The academy he established was dismantled in part because of unpopular teachings in his community (Tanner & Tanner, 1995). Franklin's proposal for changes in the curriculum directly opposed the established teachings of the locally supported schools, and promoted educators' having more freedom to make curriculum decisions without political influence. However, the loss of the academy did not end the influence of Franklin's call for a more modern curriculum. In fact, his academy led to the emergence of the public high school (Tanner & Tanner, 1995).

Academic freedom exists today as an individual and institutional freedom (Standler, 1999). As individuals, educators work under the principle that they may choose avenues and paths of inquiry not previously established. When they engage in such open inquiry, educators are intellectual risk-takers, stretching the limits of current academic knowledge and skills (Standler, 1999).

The recognition of institutional academic freedom has provided universities the opportunity to hire professors, develop curriculum, and gather a student body with limited political influence or direction. Over time, this has allowed professors and institutions to pursue new and challenging ideas, while self-governing their practices and teachings (AAUP, 1970). It is important to realize, however, that neither individual nor institutional academic freedom is absolute (Standler, 1999).

As academic freedom became increasingly recognized by the courts and legislatures, educators gained an increasing right to teach in an environment free of political influence. Justice Frankfurter offered in *Wieman v. Updegraff* (1952) the opinion:

To regard teachers – in our entire educational system, from the primary grades to the university – as the priests of our democracy is therefore not to indulge in hyperbole. It is the special task of teachers to foster those habits of open-mindedness and critical inquiry which alone make for responsible citizens, who, in turn, make possible an enlightened and effective public opinion. Teachers must fulfill their function by precept and practice, by the very atmosphere which they generate; they must be exemplars of open-mindedness and free inquiry. They cannot carry out their noble task if the conditions for the practice of responsible and critical mind are denied to them. They must have the freedom of responsible inquiry, by thought and action, into the meaning of social and economic ideas, into the checkered history of social and economic dogma. They must be free to sift evanescent doctrine, qualified by time and circumstance, from that restless, enduring process of extending the bound of understating and wisdom, to assure which freedoms of thought, of speech, of inquiry, of worship are guaranteed by the Constitution of the United States against infraction by National or State government. (p. 196)

Academic freedom as an educational concept has existed in universities since the development of the German university system (Crabtree, 2002). U.S. courts have also

recognized the concept as part of the K-12 public schools (*Boring v. Buncombe County*, 1998). However, the concept's applicability to K-12 school is still debated. In elementary and secondary schools, academic freedom is more commonly associated with the protections of tenure (DeGeorge, 2001).

Many states provide employment protection to educators through state legislation. However, many of these same states continue to make changes to the rights granted to educators in relation to their job status. Georgia is one of the states in which providing tenure for educators has come under increasing scrutiny. The call to remove tenure became so great that in July of 2000, the state of Georgia passed a law essentially removing the possibility that new teachers could earn tenure (O.C.G.A. § 20-2-942 (2000)). The previous statute provided that teachers were able to receive due process rights after completing three years of satisfactory performance and receiving their fourth consecutive contract from a local school board. New administrators had already faced the loss of tenure in their positions in 1995 (O.C.G.A. § 20-2-942). Many people outside of the education arena perceived that tenure allowed substandard educators to remain in their positions with no possible means of removing them or improving their skills (McKenzie, 1990). In contrast, educators still believed that there was a need for the protection of academic freedom through tenure or fair dismissal laws. Governor Sonny Perdue ran on a platform of reinstating fair dismissal statutes for new teachers in 2002. After he was elected, the Georgia legislature amended the law to allow those teachers hired after July 1, 2000 to be protected by fair dismissal, essentially reinstating the prior law.

The protection that fair dismissal provides Georgia educators does not guarantee lifelong employment (O.C.G.A. § 20-2-940). Rather, they provide the educator due process rights upon the threat of termination or suspension. The statutes define the reasons that administrators and

local school boards may dismiss a teacher after having affected their fourth consecutive contract with the same school system. Georgia's reasons for dismissal, demotion, or non-renewal 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 school board of education
- 6) Reducing staff due to loss of students or cancellation of programs
- 7) Failure to secure and maintain necessary educational training
- 8) Any other good and sufficient cause (O.C.G.A. § 20-2-940 (a))

Along with the statutes regarding fair dismissal procedures, Georgia has a state entity called The Professional Standards Commission (PSC). The PSC develops policies and codes that are used to guide and maintain the quality of teachers that are hired and working in the state of Georgia. The PSC defines the professional behavior of educators in Georgia employed in public schools. The Georgia statute regulating the PSC, O.C.G.A. § 20-2-200, gives the commission the power of provision, regulation, certification, and classification of all certificated professional personnel employed by public schools in the state. The PSC has established 10 standards that “represent the conduct generally accepted by the education profession” (PSC Rule 505-6-01). These standards, briefly summarized, include:

1. Criminal Acts - An educator should abide by federal and state rules, laws, and statutes. Unethical conduct includes but is not limited to felony acts and crimes of moral turpitude.
2. Abuse of Students – An educator should maintain a professional relationship with all students in and out of the classroom. Unethical conduct includes but is not limited to physical abuse, verbal abuse, cruelty, or sexual advances.
3. Alcohol or Drugs – An educator should refrain from being under the influence of alcohol or drugs while being on school premises or attending a school related activity that involves students.
4. Misrepresentation or Falsification – An educator should be honest and truthful when involved in their professional duties. Unethical conduct includes but is not limited to falsifying, misrepresenting, omitting, or erroneously reporting qualifications; criminal history; information submitted to federal, state, or local agencies (such as taxes);

evaluations; reasons for absences and leaves; or information given during an official inquiry.

5. **Public Funds and Property** – An educator should be honest, truthful, and diligent when entrusted with public funds or property. Unethical conduct includes but is not limited to misuse of public funds, failure to account for funds collected from students and/or parents, fraudulent requests for reimbursement, the combination of private and public funds, or use of public property without permission.

6. **Improper Remunerative Conduct** – An educator should maintain integrity with all involved in the school in regards to compensation. Unethical conduct includes but is not limited to soliciting students to make purchases, accepting gifts from vendors for personal use or gain, tutoring assigned students for remuneration, or unauthorized remuneration for coaching duties.

7. **Confidential Information** – An educator should comply with federal, state, and local laws governing the privacy rights of student files or personnel information. Unethical conduct includes but is not limited to sharing of student information, sharing of information prohibited by federal or state law, or violating confidentiality agreements as related to standardized testing.

8. **Abandonment of Contract** – An educator should fulfill the terms and obligations of the local school board's contract. Unethical conduct includes but is not limited to abandoning the contract without prior release or willfully refusing to perform duties required by the contract.

9. **Failure to Make a Required Report** – An educator should file reports related to breach of Professional Standards or other required report. Unethical conduct includes but is not limited to failure to report all requested information when applying or renewing certificates, failure to report breaches of the Code of Ethics, or failure to make a mandatory report within 90 days from the date the breach was made known.

10. **Professional Conduct** – An educator should demonstrate conduct that is generally accepted professional behavior.

If a standard is judged to have been broken, the PSC is authorized to hold an investigation and then must provide notice and opportunity for a hearing to certified educators.

Although the PSC is not a court of law, it can revoke certification and in the state of Georgia revocation would lead to termination under O.C.G.A. § 20-2-940.

The laws that detail the process for employing and dismissing a teacher, such as those in Georgia, have sought to balance the concerns of educators and those of the greater society. A study of these laws and codes reveals that academic freedom and tenure have become intertwined over time. DeGeorge (2001) wrote that while academic freedom protects educational choices, tenure has become more of a job security measure. Academic freedom has

its foundation in ancient history and has continued to evolve. Tenure is a fairly new concept born out of a need to protect educators from the abuses that might arise in a governmental, and thus political, position. It is difficult to speak of academic freedom or tenure without recognizing their interrelationship. Both concepts reflect a desire to safeguard the institution and those in it who are responsible for imparting and seeking knowledge.

Policy makers interested in the societal need for new developments in the field of education must sometimes balance the conflicting interests involved in academic freedom and tenure. On one hand, teachers and institutions must be free to engage in open inquiry without fear of political censorship if they are to advance the field of knowledge. On the other hand, society does have a legitimate interest in maintaining some level of control over the institutions and individuals that it establishes and employs. To do an effective job of balancing these interests, accurate information about the status of the law concerning academic freedom and due process rights is needed. Determining the status of the law in these areas is the focus of this study.

Research Questions

This study investigated the following research questions:

- 1) What is the relevant legal history of academic freedom?
- 2) What is the current status of the law regarding academic freedom in the United States?
- 3) How does the No Child Left Behind Act affect the academic freedoms of public school teachers?

Procedures

This study employed legal research methodology. The research included an extensive search for relevant sources of law, including state constitutional provisions, legislation,

regulations, and case law using the Lexis-Nexis database at the University of Georgia. Scholarly commentary and other relevant documents were obtained using the Galileo database at the University of Georgia. Title 20 of the Official Code of Georgia (O.C.G.A.) was reviewed for the purpose of analyzing the procedures for dismissing, suspending, or terminating an educator in the state of Georgia.

Chapter 2 provides a review of the literature related to the historical events of the establishment of academic freedom and fair dismissal laws. This review also includes Supreme Court cases regarding academic freedom and due process, as well as cases appealed to the Georgia State Board of Education. An examination of the No Child Left Behind Act as it pertains to scientifically research based teaching materials has also been included in Chapter 2.

Chapter 3 provides an analysis of the Supreme Court and Georgia State Board of Education decisions concerning academic freedom. These decisions were categorized by the similarities of legal issues and were arranged chronologically. Chapter 4 includes a summary, findings, and conclusions.

Limitations of the Study

The findings of this study are limited to university professors and public school teachers who have a right to academic freedom with specific examples drawn from cases in K-12 schools in Georgia. The study only examined those cases involving issues of academic freedom and due process.

Definitions of Terms

Academic freedom: The freedom to teach or learn without interference from governmental officials.

Appeal: A legal proceeding by which a case is brought before a higher court for review of the decision of a lower court.

Appellant: A person that appeals from a judicial decision or decree.

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

Due Process: A course of formal proceedings carried out regularly and in accordance with established rules and principles. It is a judicial requirement that enacted laws may not contain provisions that result in the unfair, arbitrary, or unreasonable treatment of an individual.

Hearing: A proceeding of relative formality at which evidence and arguments may be presented on the matter at issue to be decided by a person or body having decision-making authority.

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

Nonrenewal: A teacher or other school employee who is discharged at the end of a contract period and does not receive a contract for the ensuing school year (Burton, 2003).

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

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

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

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

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

Tenure: A status granted after a trial period that gives protection to a teacher from summary dismissal.

Termination: A discharge of any employee, tenured or nontenured, during the term of a contract.

CHAPTER 2

REVIEW OF THE LITERATURE

This chapter reviews the relevant literature concerning academic freedom, fair dismissal, and the No Child Left Behind Act. The chronological presentation of the relevant literature and court cases concerning the topics of academic freedom, fair dismissal, and the No Child Left Behind Act is intended to provide the reader with an accurate historical perspective on the development of the law concerning academic freedom and fair dismissal.

History of Academic Freedom

The concept of academic freedom has “evolved over time and has changed in fundamental conception” (Crabtree, 2002, p. 1). One of the first examples of governmental influence in education and teaching developed with the instructional practices of Socrates. Socrates had devoted his life to seeking knowledge through discussion and questioning of beliefs and thoughts. By pointing out contradictions in ideas, he sought to come closer to the truth. The use of deconstructive processes to break down opinions through the use of dialectic exchanges became his manner of educating Greeks. The second process of his teachings was to construct opinions that were built from fusing generalizations into new knowledge (*Socrates- A Biography of Socrates*. retrieved October 5, 2005 from <http://www.2020site.org/socrates/method.html>). These paths of seeking truth to awaken his students from intellectual and moral complacency fashioned powerful enemies for Socrates among men in the city (Crabtree, 2002).

Socrates went on trial for his teachings because those prominent at the time thought that he was corrupting the youth. The students and followers of Socrates were loyal to him even against the wishes of the elders in the community who did not approve of his methods or his refusal to worship the gods of Athens. Socrates stood trial defending and was executed for the principles he believed in and taught to his students.

It is from Plato's writings that we have learned much about the life of Socrates and his methods of educating (Crabtree, 2002). After the death of Socrates, Plato established the Academy in order to continue the pursuit of knowledge and training of students. The Academy was devoted to research and instruction in philosophy and science. The Academy was not a state institution and did not view its purpose as serving the state. It benefited society, but its aim was the quest of truth (Crabtree, 2002).

During the Medieval Period, universities were created based on academic freedom ideals of seeking and teaching the truth (Crabtree, 2002). Academic freedom at this time was rooted in the belief that the educator's purposes and goals transcended the powers of the local government or religious sects. The local government and religious sects were therefore constrained from interfering with the proceedings and workings of the universities.

In 1850, the Prussian Constitution gave governmental sanction to academic freedom by declaring "science and its teaching shall be free" (Standler, 1999, p. 1). Germany added the educational belief of "the right of faculty to teach on any subject" into their higher education system (Standler, 1999, p. 1). The German Constitution of May 1949 explicitly mentions that "art and science, research and teaching are free" and that all teaching is under the control of the Federal Education Minister (Standler, 1999, p.

1). These concepts were joined in the German university system as the freedom of scientific research, *Lehrfreiheit*, and the right of students to attend any lectures absent any class rolls, *Lernfreiheit* (Standler, 1999). It was first established by Wilhelm von Humboldt at the University of Berlin (RWTH Aachen, 2005). The model for academic freedom extended to all schools of higher education in Germany “following a movement to realize scientific and education freedom as a principle of democracy” (RWTH Aachen, 2005).

American students during this same time period who wanted to pursue higher education typically attended universities in England, France, and Germany (Standler, 1999). In 1876, John Hopkins University developed a program in the United States based on scientific research similar to the one found in the German university system. Established schools in the United States, such as Harvard and Princeton, also began to incorporate scholarly research into their curriculum and practices (Standler, 1999).

While the American university system instituted professorial research into its standards of practice, an important difference remained. The type of academic freedom outlined in Germany was not included in the programs used in United States, due in part to the required curriculum found in American universities. In Germany, there was not a requirement for university students to follow a specific course of study and there has been only one examination to obtain the *Diplom* degree (Standler, 1999). Another difference between the German and American concepts of academic freedom has been the distinction of who is responsible for educating students. The German Constitution provides for the education system and its legal obligation. It clearly states that all education and teaching is under the control of the Federal Education Minister (Standler,

1999). The United States Constitution does not detail a federal right to education. Instead, it is the states' responsibility to provide for the education and training of students, if the states so choose.

Standler (1999) wrote that there are two kinds of academic freedom. There is individual academic freedom, which protects the individual professor, and institutional academic freedom, which protects the universities from interference from the government. Individual academic freedom was included in the *1940 Statement of Principles on Academic Freedom and Tenure* (Euben, 2005). While the statement is not law, the American Association of University Professors (AAUP) can censure universities for violating the principles held by the association. Included in this document are the guiding standards for individual academic freedom. Every university has adopted some form of the principles to govern the process of contractual agreements with professors (Standler, 1999). The *1940 Statement of Principles on Academic Freedom and Tenure* declared:

- a. Teachers are entitled to full freedom in research and in the publication of the results, subject to the adequate performance of their other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution.
- b. Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject. Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment.
- c. College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence they should at all times be accurate, should exercise appropriate restraint, should

show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution. (American Association of University Professors, 1971)

Institutional academic freedom provides protection to the university to prepare curriculum and recruit staff and professors according to their own standards (Standler, 1999). The U.S. Supreme Court in *Regents of the University of California v. Bakke* (1978) decided that academic freedom at a university means that the university can determine for itself on academic grounds: 1) who may teach, 2) what may be taught, 3) how it should be taught, and 4) who may be admitted to study. This protection does not shield professors who work or teach outside the accepted domain. However, it does guarantee that professors can not be removed at the request of legislators or politicians (Standler, 1999).

The idea of academic freedom has continued to develop as a protection for the educator in their teaching, and the student in their learning. In the case of public school teachers, it has primarily occurred during those times when the educational goals may have been more a reflection of the political policies of those in charge rather than the advancement of new theories or ideas (Euben, 2005). In *Boring v. Buncombe County Board of Education* (1998), the Court of Appeals for the Fourth Circuit stated that the four freedoms experienced by universities should also apply to public schools, “unless quite impracticable or contrary to law” (*Boring v. Buncombe County*, 1998, p. 10). Under *Boring*, the principal of academic freedom would therefore be applicable to schools K-12 (Uerling, 2000, p.2). The benefits of academic freedom are “vested in the academy, not in the academicians” (Uerling, 2000, p.2).

However, DeGeorge (2001) stated that academic freedom applies only to universities since “grade and high schools do not develop knowledge, they simply transmit it” (p. 125). Academic freedom has been outlined in contracts with university professors, while tenure has become a term related to protection legally obtained once university requirements have been fulfilled. Elementary and secondary school teachers are also provided the protection of tenure although it is associated more with job security and economic stability than with guiding values on publishing, student learning, or academic autonomy of the university associated with academic freedom (DeGeorge, 2001).

When academic freedom in public schools is challenged, courts must address the conflict over the purpose and philosophical view of the roles of schools and teachers. When “courts restrict or expand constitutional protections for teacher classroom speech, they effectively weigh in on a longstanding debate about whether American schools should encourage an open exploration of ideas or should instead inculcate values” (Welner, p.2, 2003). Both perspectives represent aspects of self-governance in schools. The first perspective “emphasizes reliance on the present democratic process and on the popular governance of schools” (Welner, 2003, p.2). The second perspective “concentrates on the classroom, emphasizing the importance of free expression to the future of the American democratic system” (Welner, 2003, p.2). “The challenge facing courts is to apply a standard that allows for educational authorities to discipline abuses yet protects one of the most valuable of American resources: the innovative teacher” (Welner, 2003, p.2).

Educators have feared arbitrary and capricious retaliation that might cost them their employment due to unpopular or challenging teaching. While not only needing protection for the curriculum and ideas that they were teaching, those in education also found that being a representative of the state came with the price that certain rights had to be balanced against the legitimate demands of the larger society (La Morte, 2005). These rights were recognized in the Fourteenth Amendment. The Fourteenth Amendment states that “No State shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws”.

Academic freedom provided the right to teach in an environment free of political influence, while the Fourteenth Amendment provided teachers the right to due process in those instances where their academic freedom may have been constrained.

History of Fair Dismissal

In 1883, the Civil Service Act (5 U.S.C. 632) was passed to address the abuse of power by political figures on governmental employees (Messer, 2001). This act prompted the National Education Association (NEA) to investigate and seek protection for teachers who work on behalf of the state (Messer, 2001). Their study into the protection of tenure led to the passage of tenure laws in most states.

The first teacher tenure law was passed in the state of Massachusetts in 1886 (Messer, 2001). As with the civil service laws, teacher tenure laws were passed to combat arbitrary and capricious dismissals. Previously, teachers had been subject to dismissals due to reasons unrelated to school performance, such as school board members

creating employment opportunities for their family and friends (Bridges, 1993). As Ellis (1984) points out tenure was in no way intended to prevent, only to regulate, the dismissal of incompetent, ineffective, or inappropriate teachers. It was to address political revenge and not instructional incompetence. If properly enforced, teacher tenure will in fact “protect the competent teacher and not the incompetent teacher” (Brown, 2001, p.14). Tenure, then, was employment protection of academic freedom at the elementary, secondary, and university levels.

In recent years, tenure has become a rigorously debated topic. Many states, however, do not use the term tenure in their statutes governing education employment protection. Instead, these protections come under the heading of fair dismissal, which encompasses due process. Fair dismissal refers to the procedures which school boards must follow in making decisions concerning the employment of educators. Teachers across the nation are granted rights in their employment based upon the statutes passed in each state.

Due process is a concept born of the social contract theory that was espoused as early as Plato and more recently by Thomas Hobbes, John Locke, and Jean Jacques Rousseau. A social contract proposes that:

the government rests on the consent of the governed; persons willingly yielded the freedom they had in the state of nature because they thought the state could offer them certain protections they could not provide for themselves; and although persons relinquished the freedom they had in the state of nature, their entering into a social contract with government included the government’s guarantee against an arbitrary, capricious, and unreasonable denial of their rights of life,

liberty, and property when they and the government interacted. (La Morte, 2005, p. 8)

Educators as representatives of the state have entered into a contract that requires some relinquishing of their freedoms, but also provides them with a means of protection through due process in the Fourteenth Amendment. The right to continue in a contract with the state has through cases and statutes become a liberty and property interest in the eyes of the courts (*Meyer v. State of Nebraska*, *Perry v. Sindermann*, and *Board of Regents of State Colleges v. Roth*).

Due process at its base is the fair treatment of individuals by the state or local government. According to due process, everyone should be treated essentially the same under similar circumstances (La Morte, 2005). Two types of due process have developed. Procedural due process refers to the use of legal mechanisms that provide protection to those who face civil or criminal sanctions in court. For teachers, procedural due process refers to the rights of notice of an impending job action and an impartial hearing. Substantive due process covers the rights of proper treatment by those who are acting under the colors of the state (La Morte, 2005). Substantive due process requires that the motivation for adverse employment actions against teachers be related to job effectiveness. Local school boards may not dismiss, nonrenew, or demote teachers for exercise of constitutional rights or because of the teacher's race, religion, age, sex, ethnicity, or handicapping condition. The right to substantive due process is afforded to all teachers both tenured and nontenured (LaRue, 1996).

In education, due process rights are applied both to students in the process of suspensions and expulsions, and to school employees when they are terminated or

dismissed. The procedures in both instances require notice and hearing related to the charges (LaMorte, 2005). In the case of student expulsions and suspensions, sufficient notice of the removal of the student and the length of time of the removal is required. There should also be a hearing where both sides can discuss what has happened and what will be done. These procedures may be formal or informal based upon the severity of the dismissal. However, with educators these procedures are directed by state statutes and laws regarding due process and the standing of the educator in the state.

Each state outlines in their statutes the laws governing the hiring, retaining, and dismissal of educators. The statutes regarding hiring discuss when contracts are to be signed and who is the governing body directly related to the hiring process. In most cases, the local school board establishes policies and procedures for hiring in conjunction with a state organization such as Georgia's Professional Standards Commission (PSC).

There are also statutes in most states that determine the length of probationary teaching that is required in order to retain the right of due process through a liberty or property claim. The length of probationary teaching required in most states is two to five years, during which a teacher must satisfactorily meet standards in order to receive a contract and continue their employment within a school system. Local school boards outline the policies and procedures their schools and administrations will follow in renewing contracts each year. Most states also provide laws governing the removal of teachers during the school year, versus non-renewal or dismissal at the end of a contract period.

The term tenure has come to signify the passage of teachers from this probationary period into the time where teachers can require due process when a

dismissal or demotion occurs. There are states seeking to limit the ability of teachers and administrators to receive the standing of employees with liberty or property rights to their employment. Mississippi is the only state at this time that does not provide tenure for its teachers, although many states have before them bills regarding the termination of continued employment status (LaRue, 1996). Other states, including Georgia, have removed tenure for administrators. Georgia, however, has reinstated its fair dismissal law. Again, those educators who have received continued employment status under the statutes and laws governing their states are able to require notice and hearing regarding their status of non-renewal or dismissal. Those states that have not provided for this right or have removed this right from teachers and/or administrators have sought to limit the due process requirement.

In Georgia, the legislature has defined a probationary period for teachers as well as the due process rights of those teachers who have passed the probationary stage. During the probationary period for teachers, notification and a hearing are not required to be provided by the local school board when dismissing a teacher at the end of a contract period. After receiving the fourth contract issued by the same local school board, a teacher retains the right of notice and hearing during the processes of suspension, termination, or demotion. The Official Code of Georgia details the timelines and requirements that each local school board must follow when seeking to change the employment status of an educator. It also details the eight reasons for teacher dismissal, suspension, or demotion. In conjunction with the Official Code of Georgia is the office of the Georgia Professional Standards, which is responsible for teacher certification and code of ethics. These two governing bodies and sets of regulations determine the rights

and expectations of teachers for employment and the local school boards to hire, dismiss, and suspend those employed by their system. If a question of a teacher's right to academic freedom arose, it would be the local school board who first determined the matter's significance to the employment of the teacher.

If a teacher or administrator who has successfully met the requirements for tenure in his or her state is to be dismissed, the statutes and laws of that state then establish the steps that must be taken in order to remove that educator. In most states, this means that notice must be given of removal before April 15th of that contract year. The educator may then ask for a hearing before the local school board or another designated group to hear the reasons for dismissal. The hearing also provides an opportunity for the educator to present evidence refuting the claims. States have also determined in their statutes the various provisions whereby educators may be dismissed from their positions. Most states include as reasons for dismissal or termination: incompetency, insubordination, willful neglect of duties, immorality, to reduce staff due to loss of students or cancellation of programs, failure to secure and maintain necessary educational training, and any other good and sufficient cause. If the educator is unsatisfied with the local school board's decision, they may appeal to the state board of education. There are variations throughout the states, but the basic process is similar. Due process rights that educators have in their employment, protected by the Fourteenth Amendment, require notice and hearing when they are to be terminated.

Court Cases

The United States Supreme Court has decided many cases involving educators and their due process rights in employment. In *Pickering v. Board of Education of*

Township High School District 205 (1968) the Supreme Court heard the case of Marvin L. Pickering, a teacher in Illinois who appealed the decision of the Local School Board to dismiss him. Pickering claimed that he was dismissed after he wrote a letter that was published in the local paper criticizing the Board's use of public funds in its athletic department and that his dismissal violated his First Amendment right to free speech. The Court wrote that the information Pickering presented in his letter to the local newspaper was public knowledge and that his statements could easily have been refuted. The Board also alleged that false statements were made in the letter that damaged the professional conduct and working environment at the school. The Court found that no evidence was presented to support this allegation and that there was no direct correlation between the Board's interests and that of the school. Pickering did not work closely enough to the superintendent and the local school board to endanger the working environment between the superintendent, the Board, and himself. The Court found that Pickering could not be dismissed for exercising his rights of free speech (*Pickering v. Board of Education of Township High School District 205*, 1968).

In later cases involving First Amendment rights and academic freedom the Court has used what has become known as the "Pickering balance" (LaMorte, 2004, p. 207). Under the Pickering balance, the Court must balance the interests of the teacher against the interests of the state which is based upon: 1) the need for harmony in the workplace; 2) the need for a close working relationship between the speaker and superiors and whether the speech in question undermines that relationship, especially if personal loyalty and confidence are involved; 3) whether the speech impedes an employee's ability to perform his or her daily responsibilities; 4) the time, place, and manner of the speech; 5)

the context in which a dispute arises; 6) the degree of public interest in the speech; and 7) whether the matter was one on which debate would be vital to informed decision making (*LaMorte*, 2004).

In another decision, the Court found that the dismissal of a non-tenured teacher could be upheld because the teacher lacked a property interest based upon the statutes written in that state. Justice Stewart wrote the opinion of the Court in *Board of Regents of State Colleges v. Roth* (1972) where an assistant professor at Wisconsin State University-Oshkosh was not rehired for the 1969-1970 school year. Wisconsin statutes provide university professors with tenure rights after the completion of their seventh year. However, there is no provision for those simply not receiving a contract the next year before tenure is required. The University did not provide a reason for the non-renewal and so no review or appeal to the university was provided in this case. The Federal District Court found that Roth's non-renewal infringed upon his Fourteenth Amendment rights and ordered the University officials to provide him with reasons and a hearing. The Court of Appeals, however, granted certiorari based upon the question of whether or not Roth had a constitutional right to a statement of reasons and a hearing. The Court of Appeals decided that he did not and Roth appealed to the Supreme Court. The Supreme Court went on to discuss the liberty and property protections that the Constitution provides for those working under the colors of the state. In this discussion, the Court pointed out that while liberty can not simply refer to bodily imprisonment and property can not simply be "real estate, chattels, or money," the courts can not extend the concepts of liberty and property too broadly (*Board of Regents of State Colleges v. Roth*, 1972, p. 572). Roth did not have a liberty claim to his position since it did not keep him from

pursuing other positions. The University did not damage his standing or reputation in the community in their choice to non-renew. Roth also did not have a property claim to his position since the state code indicated that there was no continued employment expectation for those having received fewer than seven contracts. Therefore, Roth did not have a constitutional right to notice or hearing (*Board of Regents of State Colleges v. Roth*, 1972).

Another Supreme Court case, *Mt. Healthy City School District Board of Education v. Doyle* (1977), involved a nontenured teacher who had been in several altercations with coworkers and students. Doyle was informed at the end of the year that he would not be rehired. The school board advised him that he would not be reinstated due to his lack of professional conduct, mentioning specifically the incidents of a radio station call and obscene gestures made at female students. Doyle brought legal action against the school board citing that his dismissal had violated his First and Fourteenth Amendment rights. Justice Rehnquist wrote:

In other areas of constitutional law, this Court has found it necessary to formulate a test of causation which distinguishes between a result caused by a constitutional violation and one not so caused. We think those are instructive in formulating the test to be applied here. (*Mt. Healthy City School District Board of Education v. Doyle*, 1977, p.286)

The Court vacated the lower court's decision stating that while Doyle's radio commentary would be protected speech, the proper test was whether or not he would have been rehired in "the absence of the protected conduct" (*Mt. Healthy City School District Board of Education v. Doyle*, 1977, p.275).

In 1982, Rendell-Baker was discharged from her position as counselor at a school privately operated for maladjusted children. New Perspectives School had dismissed

Rendell-Baker after she had supported a student initiated petition for more student participation on the school's student-staff council. Kohn, the director of the school, informed the State Committee on Criminal Justice of her plans to remove Rendell-Baker since the committee funded Rendell-Baker's position. While the committee agreed with the dismissal, they did request that a grievance committee, which was newly in place in the school, hold a hearing to review the dismissal. Rendell-Baker apparently disagreed with the composition of the committee so a hearing was never held. Rendell-Baker alleged that the school had violated her First, Fifth, and Fourteenth Amendment rights and the case went to the Supreme Court (*Rendell-Baker v. Kohn*, 1982). The U. S. Supreme Court found that while New Perspectives received public funds for its students this did not qualify as acting under the color of the state. Therefore, Rendell-Baker did not have a property claim to her counselor position which would have enabled her to invoke her Constitutional rights.

Not all cases referring to dismissal and First Amendment rights originate in the educational system. In *Connick v. Myers* (1983), an assistant district attorney was asked to transfer to a different department within the district attorney's office. Myers protested the transfer and subsequently distributed a questionnaire inquiring to the feelings and thoughts of office workers concerning transferring policies, morale, and campaign work. While the Court in *Pickering* had established a two-step process for determining First Amendment protection, it did not extend this process to *Connick v. Myers* (1983). The Court detailed that while state employees maintain their rights to speak out against matters of public concern, there are "practical realities involved in the administration of a government office" (*Connick v. Myers*, 1983). However, the majority reiterated the

following from *Pickering v. Board of Education of Township High School District 205* (1968):

Because of the enormous variety of fact situations in which critical statements by . . . public employees may be thought by their superiors . . . to furnish grounds for dismissal, we do not deem it either appropriate or feasible to attempt to lay down a general standard against which all such statements may be judged. (p. 563)

“A review of modern case law dealing with academic freedom reveals that it is no longer as strong a defense as it once was for teachers” (LaMorte, 2004, p. 218). The cases involving the teacher’s, principal’s, or other employee’s constitutional right to notice and hearing, as well as decisions concerning other protected rights being violated, have been diverse in circumstances and specifics and therefore have brought no definitive process to follow when dismissing an educator. The Court has been reluctant to set forth a strong standard by which to resolve all cases (LaMorte, 2004).

The lower courts have therefore struggled to interpret the Supreme Court’s meaning in cases involving academic freedom. In addition to the lack of standard, the complicated questions raised in each case seem to have divided the Courts down a central line. There are cases that have supported both the school’s rights to indoctrinate students and the ability of states to freely use schools to do so. In contrast, there are those cases which seem to support the view that schools are an institution created to question or challenge the values held in society (Welner, 2003).

Cases such as *Mailloux v. Kiley* (1971) and *James v. Board of Education* (1972) which have been heard in the lower courts have supported the view of the school’s role in indoctrinating students. In *Ambach v. Norwick* (1979), the Supreme Court supported the view of the school’s role in indoctrination by writing:

The importance of public schools in the preparation of individuals for participation as citizens, and in the preservation of the values on which our society rests, long has been recognized by our decisions. (p. 76)

Ambach, the New York State Commissioner of Education, was authorized to prohibit those not having United States citizenship from holding a teaching certificate in New York. Norwick was born in Scotland with her citizenship being held in Great Britain. She had met all of the requirements for a teaching certificate, but had refused to seek citizenship. Norwick, along with another colleague lacking citizenship, filed suit against the New York law (*Ambach v. Norwick*, 1979). The District Court ruled that the law was overbroad and unconstitutional since it sought to exclude all resident aliens regardless of subject taught, their nationality, their relationship to this country, or willingness to substitute another type of oath (*Ambach v. Norwick*, 1979). The Supreme Court found jurisdiction over the case and after hearing review decided to reverse the lower court's decision (*Ambach v. Norwick*, 1979).

The Supreme Court reviewed previous Court decisions regarding the purpose of education in society and applied the equal protection analysis (*Ambach v. Norwick*, 1979). In determining the role of teachers in the community, the Court wrote that teachers may be regarded as "performing a task that goes to the heart of representative government" (*Ambach v. Norwick*, 1979). Teachers were viewed as maintaining a great influence over the development of values central to our government no matter what subject taught (*Ambach v. Norwick*, 1979). Given this influence, the state had a legitimate educational goal in requiring teachers to obtain their citizenship in the United States (*Ambach v. Norwick*, 1979).

Supporting the view that schools serve a function of challenging accepted views was found in cases such as *Wilson v. Chancellor* (1976), *Keyishian v. Board of Regents* (1967), *Webster v. New Lenox School District* (1989), *Keefe v. Geanakos* (1969), and *Webb v. Lake Mills Community School District* (1972).

In 1976, Wilson invited a Communist, Anton Kchmareck, to speak to his political science class at the high school. Wilson had other political speakers also present to the class. A Democrat, a Republican, and a member of the John Birch Society had also presented based on Wilson's curriculum to present the four points of view. Wilson was given permission by the principal and the local school board to have this presentation (*Wilson v. Chancellor*, 1976).

After the school board's approval, critics of the decision called a community meeting in order to circulate a petition asking the board to reverse the decision. The petition was later signed by over 800 members of the community. Several letters to the newspaper were written indicating that there was a possibility that all school budgets would be voted down and that members of the local school board would be voted out (*Wilson v. Chancellor*, 1976). The local school board then reversed its decision and issued an order banning all political speakers (*Wilson v. Chancellor*, 1976). The decision went before the District Court based on the contention that the order violated the First Amendment right of free speech.

The District Court dismissed the order by the local school board. The court discussed academic freedom and pointed out that few cases have surfaced in legal opinions (*Wilson v. Chancellor*, 1976). The court applied the conventional freedom of expression analysis stating that school boards' should be allowed great discretion in

imposing restrictions and making school related decisions (*Wilson v. Chancellor*, 1976). However, if the board acts in such a way as to interfere with the constitutional rights of students or teachers, the court must intervene (*Wilson v. Chancellor*, 1976).

The local school board restricted only political speakers, did not demonstrate any evidence that political subjects were inappropriate in a high school curriculum, and could not contend that its actions were in the interest of keeping incompetent speakers out of the classroom (*Wilson v. Chancellor*, 1976). The local school board seemed to only base its decision on fearfulness of voter retribution. Therefore, the board was not acting in a manner that defined procedural safeguards, but created an invalid prior restraint (*Wilson v. Chancellor*, 1976).

Ultimately, the courts have refrained from providing protection for teachers in matters of curriculum speech due to the belief that the elected local school board is in a better position to determine that which is appropriate in the classroom. One example of this position is found in the case of *Fowler v. Board of Education of Lincoln County* (1987).

The 6th Circuit Court heard the academic freedom case of *Fowler v. Board of Education of Lincoln County* (1987). Jacqueline Fowler, a tenured teacher employed in Lincoln County, Kentucky, was dismissed after the local school board determined that she allowed the “R” rated movie *Pink Floyd – The Wall* to be shown in class. The movie contained scenes that included nudity, a violent rape, and enough offensive language to require an automatic “R” rating under the motion picture industry standards (*Fowler v. Board of Education of Lincoln County*, 1987). The local school board scheduled a hearing to be held on July 10, 1984.

Fowler appeared at the hearing with counsel and testified that she had never viewed the movie before showing it in class, but believed that it had significant value to the educational curriculum. The local school board decided after viewing the movie in its entirety and then as it was shown in the classroom to dismiss Fowler on the grounds of insubordination and conduct unbecoming a teacher (*Fowler v. Board of Education of Lincoln County*, 1987).

The district court concluded that Fowler's First Amendment right to protected free speech was violated by the local school board and awarded Fowler reinstatement, back pay with interest, damages for emotional distress and damage to professional reputation, compensatory damages for costs incurred in seeking new employment, costs, and attorney's fees (*Fowler v. Board of Education of Lincoln County*, 1987). However, the Supreme Court reversed the district court's decision and dismissed the cross-appeal which had stated that "on the ground that K.R.S. § 161.-790(1), which proscribes conduct unbecoming a teacher, is unconstitutionally vague as applied to her conduct" (*Fowler v. Board of Education of Lincoln County*, 1987, p. 986). The Supreme Court wrote:

First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. This has been the unmistakable holding of this Court for almost 50 years. (*Fowler v. Board of Education of Lincoln County*, 1987, p.988)

While the Supreme Court has recognized the rights of teachers to exercise their professional judgment under the notion of academic freedom, there are special circumstances which must be considered (*Fowler v. Board of Education of Lincoln County*, 1987). The public school system is fundamental to inculcating the values of a democratic society so the interests of discipline or sound education are materially and

substantially justified (*Fowler v. Board of Education of Lincoln County*, 1987). The Court supported Fowler's dismissal based on the circumstances involved in the showing of the film. Fowler had not previewed the movie in order to use it as an educational tool and was aware of the controversial material it contained. This action constituted serious misconduct (*Fowler v. Board of Education of Lincoln County*, 1987). Judge Merritt wrote a dissenting opinion that a teacher's academic freedom cannot be abridged simply because the local school board does not agree with the content of the speech (*Fowler v. Board of Education of Lincoln County*, 1987).

The factual differences between each of the cases presented before the Court can compound the issue in determining the legal rights and status of the employee. State educational statutes determine the procedures and rights given to those in education regarding to liberty and property interest in their employment. A basic guiding principal should be to follow those guidelines set by each individual state in regard to probationary teachers, tenure, and the dismissal procedures (LaMorte, 2004).

When cases arise in the school system and then are appealed in the state of Georgia, the Georgia State Board of Education holds jurisdiction. From 1975-2005, four cases were appealed to the Georgia State Board of Education in matters pertaining to school materials and the right of the teachers to choose curriculum and curriculum alternatives. *Burns v. Clayton County Board of Education* 1981-25 was the first case heard by the Georgia State Board of Education involving an educator and the question of academic freedom. Sharon Burns went before the State Board of Education to appeal the Local School Board's decision to dismiss her on the grounds of insubordination, willful neglect of duties, encouraging or counseling students to violate board policies and rules,

and for other good and sufficient causes. The dismissal took place after Burns refused to remove posters her principal found objectionable. *Johnson v. Tift County Board of Education 2000-27* raised the issue of First Amendment rights pertaining to remarks made to a newspaper reporter. In *Martin v. Lowndes County Board of Education 2005-44*, the appellant claimed that there was no evidence that she acted unprofessionally with a parent and wanted the letter of reprimand removed from her personnel file. *Ray v. Lowndes County Board of Education 2005-45* involved an educator who wrote a letter to a school board expressing concern with the Local Superintendent's handling of a book removal controversy. These cases illustrate the concept of academic freedom as it applies in Georgia elementary and secondary schools in recent years, as well as the First Amendment protection afforded teachers.

Sharon Burns was a high school social studies teacher in Clayton County during the school year of 1980-1981. As part of her teenage pregnancies unit, Burns instructed her students to make posters that would be displayed in the classroom and in the hallway. Burns had received permission to hang the posters in the hallway from her principal prior to the unit's completion. After the posters were hung in the hallway, the principal removed them because of content he found offensive. He felt the information on the posters encouraged students to be sexually active.

The principal discussed the removal of the posters with Burns on the following day of school. He then discovered that posters were also hung in the classroom and instructed a supervisor to have Burns take down the posters in the classroom also. Burns informed the supervisor that the posters would be removed. However, after going to

Burns room to discuss a possible student demonstration, he found the posters remained on the classroom walls.

The students had planned a demonstration against the removal of the posters so the principal met with Burns and her students to discourage such action. At that time, Burns informed her students that the consequences of a demonstration against the removal of the posters would be a two week suspension.

The principal requested again that Burns remove the posters from the classroom or face termination. Burns did not take down the posters and so faced termination before the Local School Board. The Local School Board dismissed Burns on the grounds of insubordination, willful neglect of duties, encouraging and counseling students to violate board policies or rules, and other good and sufficient cause (*Burns v. Clayton County Board of Education*, 1981).

On appeal, Burns stated that displaying the posters was protected under the First Amendment right of free speech and that the order to remove them would be illegal. If the directive to remove the posters was unlawful, then she could not be found guilty of insubordination (*Burns v. Clayton County Board of Education*, 1981).

The Georgia State Board of Education hearing officer's opinion discussed the issue of academic freedom for Burns versus the need of the administration to maintain order in the school. The decision also addressed the three other charges made by the Local School Board. In the end, the Georgia State Board of Education upheld the dismissal on the grounds of insubordination (*Burns v. Clayton County Board of Education*, 1981).

Johnson v. Tift County Board of Education, Case No. 2000-27 involved an assistant principal employed during the 1999-2000 school year. He was notified in March that he would not be recommended for a contract. Johnson submitted his resignation which the Local School Board accepted. Shortly afterwards, a newspaper reporter contacted Johnson concerning his resignation. In the article, Johnson claimed that there was no consistency in discipline and that policy changes were made day to day. Johnson also stated that his salary should have been higher with a two-year contract versus a one-year contract. After the article appeared in the local newspaper, the Local Superintendent charged Johnson with insubordination and other good and sufficient cause. The Local Superintendent suspended Johnson with pay under the provisions of O.C.G.A. §20-2-940. The Local Board agreed with the suspension of Johnson after holding a hearing on the charges. It was determined that he had made untrue statements in the newspaper article and that there was other good and sufficient cause for action. Johnson then appealed to the State Board of Education (*Johnson v. Tift County Board of Education*, 2000).

Johnson declared that he was not insubordinate in voicing his opinion about the operation of the school, therefore, the Local Board's decision infringed on his right of free speech. However, the Local Board argued that his statements were made publicly and falsely accused his superiors of incompetence. These actions, as presented by the Local Board, established their claim of insubordination. "In *Pickering v. Board of Education*, 391 U.S. 563 (1968), the United States Supreme Court held that a public employee's speech is protected to the extent it is true and deals with issues of public importance" (*Johnson v. Tift County Board of Education*, 2000, p. 2). Since the Local

Board had found that much of Johnson's statements to the press were false, they were not protected by the First Amendment and the Local Board had not infringed on his rights of free speech. Johnson contends that it was not against school policy to speak to the press and that his remarks did not constitute insubordination. The Georgia State Board of Education "has limited insubordination to overt disobedience of a lawful directive from a superior" (*West v. Habersham County Board of Education*, 1986, p. 4). The State Board of Education found that Johnson did not disobey an order or directive so while his statements were false, he was not insubordinate. There was evidence to support other good and sufficient cause when Johnson made his false statements without investigating the facts of the situations described. He then publicized his statements which had the effect of undermining the ability of the principal and superintendent to provide leadership in the school system. The State Board of Education concluded that there was evidence that Johnson displayed unprofessional conduct under the Code of Ethics for Educators. The Local School Board's decision was sustained (*Johnson v. Tift County Board of Education*, 2000).

Judy Martin was a high school English teacher who taught an advanced placement class. During an open house function at the high school, a parent confronted Martin concerning a required reading book. The parent objected to the book and wanted to speak to the person responsible for the reading list. Martin escorted the parent to the advanced placement coordinator, who spoke to the parent regarding her opinions of the reading materials. It was suggested that the daughter read an alternative book, but the parent wanted the book removed from the curriculum and expressed that it was a matter for the Local Board. Martin and the advanced placement coordinator were able to

persuade her to discuss the matter with the principal before going to the Local Board. After speaking with the principal and the Local Superintendent without reaching an agreement, the parent assembled other community members in support of having the book removed from the curriculum (*Martin v. Lowndes County Board of Education*, 2005).

The Local Superintendent issued a letter of reprimand to Martin stating that she had acted inappropriately and unprofessional in handling the parent's complaint by "becoming confrontational, showing little consideration for the parent's opinion, failing to make a reasonable attempt to diffuse the situation, making intimidating comments regarding future class assignments, and divulging information to the public" (*Martin v. Lowndes County Board of Education*, 2005, p. 2). The Local Board argued that Martin had failed to follow school board policy in taking the parent to the advanced placement coordinator before going to the principal, had offended the parent by stating that the following semester also contained objectionable material, and disclosed information about students to a local newspaper. The Local Board upheld the Superintendent's decision to issue a letter of reprimand to remain in Martin's file (*Martin v. Lowndes County Board of Education*, 2005).

On appeal, the Georgia State Board of Education reviewed the claims by the Local School Board concerning Martin's actions. In taking the parent to the advanced placement coordinator, the State Board of Education found that Martin had followed board policies in handling school issues at the lowest level possible. The State Board of Education also found that there was no evidence to support the Superintendent's claims that Martin had acted unprofessionally in attempting to diffuse the situation or that

intimidating comments were made in discussing future assignments with the upset parent. The Superintendent had also charged that Martin had divulged information to the public in a letter to the local newspaper. However, the letter was not introduced into evidence so its contents are speculative. The writing of the letter, though, does not constitute unprofessional conduct. The Georgia State Board of Education did not find evidence to support the claims made by the Local School Board and reversed the Local School Board's decision.

The last case to have gone before the Georgia State Board of Education was *Ray v. Lowndes County Board of Education* (2005). Fredonia Ray was the advanced placement coordinator involved in the *Martin v. Lowndes County Board of Education* (2005) case. The Local School Board policy indicated that when a parent files a complaint concerning books, a school committee reviews the book and then makes recommendations to the Local Superintendent. The committee in this case recommended keeping the book, but in the future parents would be informed of alternative selections that could be read. The Local Superintendent wrote to the parent stating that the book in question would be prohibited as required reading (*Ray v. Lowndes County Board of Education*, 2005).

Ray determined by this action that the Local Superintendent had ignored the recommendations from the committee. She submitted a letter to the school board stating that the teachers had not received support throughout the controversy and that the rejection of the committee's recommendation had caused the situation to become exacerbated (*Ray v. Lowndes County School Board*, 2005). The Local Superintendent replied to Ray's letter ordering her to refrain from making any "further disruptive

employment-related communications” (*Ray v. Lowndes County School Board*, 2005, p.2). The Local Board conducted a hearing and affirmed the Superintendent’s action to write a letter of reprimand to be filed in Ray’s personnel file. The case was then appealed to the Georgia State Board of Education. “The standard for review by the State Board of Education is that if there is any evidence to support the decision of the local board of education, then the local board’s decision will stand unless there has been an abuse of discretion or the decision is so arbitrary and capricious as to be illegal” (*Ray v. Lowndes County School Board*, 2005, p.2). The letter of reprimand issued by the Local Superintendent did not refer to any violated policy and never accused Ray of violating a school board policy. The superintendent does have the right to issue letters to employees that direct them to refrain from disruptive behavior or face being charged with insubordination (*Ray v. Lowndes County School Board*, 2005). The State Board of Education wrote:

Unlike the situation in *Martin v. Lowndes County Board of Education* (2005), this case does not involve a situation where a teacher is accused of unprofessional conduct without any support for such an accusation, but, instead, involves a simple directive from the Local Superintendent to an employee to refrain from what he, and the Local Board, deemed to be disruptive activity. (*Ray v. Lowndes County School Board*, p.2)

The Georgia State Board of Education decided that the letter of cease and desist to Ray was appropriate and the Local Board’s decision was sustained.

These cases represent relevant issues currently facing teachers and academic freedom outside of the university realm. A review of the cases brought before the Georgia Board of Education from the years 1975-2005 indicate that the majority of cases do not involve teachers invoking their First Amendment rights or challenging those policies related to academic freedom. However, academic freedom was at the center of

one case in a Gwinnett County school. A teacher posted test questions that were to be used by the county to determine the progress of students to the following grade. Cases such as this indicate that academic freedom and First Amendment rights are not absent from elementary and secondary schools.

The Professional Standards Commission (PSC), which regulates teaching certification in the state of Georgia, suggested that Hope should voluntarily surrender his teaching certificate after posting test questions from the high stakes test called the Gateway Test used in Gwinnett County (Major, L., Retrieved October 10, 2005 from: <http://www.substancenews.com/archive/Jan03/secrettest.htm>). Hope appealed the commission's recommendation stating that he did not violate the Code of Ethics. The ensuing turmoil from public interest and fury regarding the actions of both the commission and the Gwinnett County School Board caused the PSC to seek outside legal counsel (Major, L., 2003). Judge Catherine Crawford equated Hope's actions of releasing obsolete test questions with altering test scores and recommended that Hope's certification be revoked for six months. Hope appealed the PSC decision to the Fulton County Superior Court. Judge Gail S. Tuscan reversed the decision offering the following statement:

Public policy dictates that Hope, an experienced 17-year veteran educator who works directly teaching and evaluating the very students to be tested, be able to actively participate in the public debate regarding the test and share with the concerned parties the benefit of his hands-on experience with the students, the test and its administration. (Major, L., p. 3)

Hope did not have his teaching license revoked and continues to teach. The question of high stakes testing, academic freedom, and First Amendment rights may come under fire

again as the No Child Left Behind Act increases the pressure for teacher accountability and student achievement through testing.

No Child Left Behind

The Elementary and Secondary Education Act (ESEA) is the main federal law which describes the federal government's requirements regarding public education as well as directing the federal financial aid most of those schools receive (NEA, 2001). President Lyndon B. Johnson signed the act into law in 1965. The ESEA is revised every five to seven years with the latest revision occurring in 2001. This revision, known as the No Child Left Behind Act (NCLB), was signed into law by President George W. Bush on January 8, 2002. To date, it is one of the most extensive educational reforms to address student achievement and teacher quality in elementary and secondary schools (Simpson, LaCava, & Graner, 2004). The stated goal of the No Child Left Behind Act "is to ensure that all children have a fair, equal, and significant opportunity to obtain a high quality education, and reach, at a minimum, proficiency on challenging state academic achievement standards and state academic assessments" (NCLB, 2001). The No Child Left Behind Act dramatically expands the value of high-stakes assessments by creating strong rewards and punishments based on students' performance (Simpson et al., 2004). Schools that perform well are rewarded with public recognition and financial assistance, while those who fail could receive sanctions and are subject to takeover by the state.

Individual schools, school districts, and states are held accountable for the improvements in student achievement and closing the gap between high performing and low performing students. An important accountability component of the No Child Left Behind Act has involved states developing plans to ensure that all teachers of core

academic subjects are highly qualified by the end of the 2005–2006 academic year (NCLB, 2001). Those teachers holding licenses in a general area (such as elementary education) or in a content area will generally be considered highly qualified. The No Child Left Behind Act had also called for special education teachers to be dually certified in their area of instruction as well as content area, if they taught content area material. However, under pressure from teachers, teacher unions, and elected officials, Secretary Rod Paige delayed the requirements until 2007, but only for those in rural communities and those who teach science and multiple areas. In addition to individual teachers being held accountable for their teaching credentials, the methods being used to instruct students are also scrutinized.

The No Child Left Behind Act requires that educators are to use research based methods and practices (NCLB, 2001). This requirement began with the passage of the Reading Excellence Act (REA) in 1999. Research into early reading was linked to educational policy and practice by members of Congress after the publication of the congressionally mandated *Teaching Children to Read* and the National Research Council's *Preventing Reading Difficulties in Young Children* (Eisenhart & Towne, 2003). "Congress saw these efforts as having the potential to inform and improve education policy and practice" (Eisenhart & Towne, 2003, p. 32). The House Education and Workforce Committee focused its efforts on developing measures that would guarantee scientific evidence is used when deciding which reading education programs would be federally funded (Eisenhart & Towne, 2003). "In making such a requirement, legislators were obligated to devise a definition of scientifically based research that set the standard for what would count toward this end" (Eisenhart & Towne, 2003, p. 32).

The first definitions of scientific research in education were seen in the bill presented by Representative Castle (R-DE) as H.R. 4875 in 2000. The bill detailed two definitions for scientifically valid research in the areas of quantitative and qualitative research. These definitions had the potential to “affect service providers and the kind of research they can use to justify program expenditures” (Eisenhart & Towne, 2003, p. 32). It could also affect research in the kind of work they do (Eisenhart & Towne, 2003).

Later, the National Research Council (NRC) published its definition of scientific research in education. The NRC outlined through their principles the flexibility researchers must have to “choose methods based on their research questions and to draw conclusions that are valid for the questions and methods used (Eisenhart et al., 2003, p. 34).

After both the Castle bill and NRC publications, came the No Child Left Behind Act. Scientifically based research as defined by the No Child Left Behind Act involves “research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs” (Simpson et al., 2004, p. 72). Scientifically based research should include using procedures and materials that have been researched through the use of random samples, control groups, and experimental groups. This narrow definition of materials which are suitable for instruction in schools receiving federal funds has several implications toward academic freedom for those teaching in elementary and secondary schools. “By narrowly defining the use of federal dollars for research, NCLB has significantly restricted the manner by which educators can be informed of effective practices” (Simpson et al., 2004, p. 73). Sailor and Stowe (2003) concluded, “With passage of No Child Left Behind and

accompanying education legislation at the federal level, policy has begun to not only inform inquiry, but also to restrict it” (p. 148).

Educators should be knowledgeable about the rights they are afforded as state employees. Academic freedom, as it relates to fair dismissal laws, indicates that educators are granted liberty balanced against the needs of greater society. “Litigation often occurs when a school system’s views regarding academic freedom are not in congruence with a teacher’s perception of autonomy in determining specific subject matter for a particular class, appropriate teaching methods, or the selection of appropriate materials” (LaMorte, 2004, pp. 212,213). Those cases involving the questions of academic freedom and due process will be analyzed in the following chapter.

CHAPTER 3

AN ANALYSIS OF ACADEMIC FREEDOM

Introduction

Academic freedom, as a concept, was developed centuries ago addressing the protections thought essential to maintain and encourage advancement in society, science, and government. Most of the discussion about academic freedom has been found in the university arena. In fact, the major principles outlining the path of academic freedom in case law have been brought by universities and university professors. The Supreme Court decision in *Sweezy v. New Hampshire* (1957) provided the foundation in the American court system for the theory of academic freedom. The Court stated that “the essentiality of freedom in the community of American universities is almost self-evident” and “to impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation” (*Sweezy v. New Hampshire*, 1957, p.249). Justice Frankfurter’s concurrence in *Sweezy v. New Hampshire* (1957) is often quoted as establishing the essential freedoms of the academy. Frankfurter’s passage reads:

It is the business of a university to provide an atmosphere most conducive to speculation, experiment and creation. It is an atmosphere in which there prevail ‘the four essential freedoms’ of a university – to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study. (*Sweezy v. New Hampshire*, 1957, p.263)

In *Boring v. Buncombe County* (1998), the Court of Appeals for the Fourth Circuit stated that these “four essential freedoms” applied to public schools “unless impracticable or contrary to law” (*Boring v. Buncombe County*, 1998, p. 10). The rationale being that the benefits of academic freedom is “vested in the academy, not in the academicians” (Uerling, 2000, p. 2). Therefore, the protections of academic freedom are provided for K-12 public schools as the academy and are not limited to universities. The focus of academic freedom in the courts has been the academy, but that does not mean that teachers do not also benefit from the academic freedoms established in *Sweezy v. New Hampshire* (1957) (Uerling, 2000).

Those cases involving teachers and their claim to academic freedom are treated and analyzed as free speech issues (Uerling, 2000). These cases, while not establishing a distinct right of academic freedom within the Constitution, do institute their own set of rules and regulations. The standards for determining a teacher’s claims of academic freedom violations have been set forth by the courts in decisions focusing on matters of public concern and balancing those concerns against the employer’s ability to promote efficiency (Donehower, 2003).

The Supreme Court set the standard of academic freedom as it relates to public employees in *Connick v. Myers* (1983). “According to Connick, speech touching on a matter of public concern is best identified by the content, form, and context of the speech” (Donehower, 2003, p. 522). For much of the twentieth century the Supreme Court provided public employees little to no First Amendment protection in their speech even if spoken as a citizen (Donehower, 2003). As time passed, the court greatly changed its stand on protected speech decisions when Justice Holmes proclaimed that “a

policeman may have a constitutional right to talk politics, but he has no constitutional right to be a policeman” (*McAuliffe v. Mayor of New Bedford*, 1892, p. 220). Later in the *Connick* and *Pickering* cases, the Supreme Court focused on context differentiating between speech during times as an employee versus speech during times as a citizen (Donehower, 2003).

Matters of public concern are protected freedoms, but determining whether or not a teacher’s curricular speech meets this first criterion has been difficult for the federal courts and loosely defined by the U.S. Supreme Court (Uerling, 2000). This chapter analyzes the legal history of academic freedom in the United States as well as the current status of the law. Also analyzed here are the issues of academic freedom that are present in the No Child Left Behind Act of 2001.

Matters of Public Concern

The Supreme Court decided the *Pickering v. Board of Education of Township High School District 205* case in 1968. The case set forth a two-step process that subsequent cases of academic freedom were measured against. The practice involved deciding if a state employee’s speech addressed a matter of public concern and balancing the teacher’s interest in the matter against the interest of the employer to preserve the work environment. It has come to be known as the “Pickering balance” (LaMorte, 2005, p. 207).

Determining if an issue reaches the level of being a matter of public concern was further developed in *Connick v. Myers* (1983). In this case, the Court established the parameters of content, context, and form in relation to the expression of a public employee’s speech in work related matters. The second prong of the Pickering balance

involves weighing the need for the discussion or presentation of that public concern against the right of the state to maintain order in the workplace.

The courts may base their decisions on this second prong of the Pickering balance using 1) the need to maintain agreement among workers; 2) the need for workers and their supervisors to work closely and whether the speech detracts from the ability to do so; 3) the need for the employee to continue with their work without impediment; 4) the time, place, and manner of the speech; 5) the context in which the speech developed; 6) the degree of interest in the speech; 7) whether or not debate on the matter would enlighten those involved when making decisions (LaMorte, 2005).

In *Pickering v. Board of Education of Township High School District 205* (1968), Marvin L. Pickering, a teacher at Township High School, wrote a letter to the local newspaper detailing concerns over a proposed tax property increase and how past tax increases were handled by the Local School Board and the superintendent. The Local School Board charged that numerous statements in the newspaper letter were false and unfairly accused the Board and the Local Superintendent of wrongdoing. The Board decided in Pickering's hearing that the statements made to the newspaper were indeed false and dismissed Pickering concluding that "the interests of the school required appellants dismissal" and that the letter was "detrimental to the efficient operation and administration of the schools of the district" and hence, under the relevant Illinois statute "interests of the school required his dismissal" (*Pickering v. Board of Education of Township High School District 205*, 1968, p. 563).

Lower courts upheld the Board's decision to dismiss Pickering based on whether or not the facts presented in the newspaper letter were factual and disrupted the operation

of the schools (*Pickering v. Board of Education of Township High School District 205*, 1968).

The Illinois Supreme Court's opinion may be read to suggest that teachers may constitutionally be compelled to relinquish the First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest in connection with the operation of the public schools in which they work, it proceeds on a premise that has been unequivocally rejected in numerous prior decisions of this Court. (*Pickering v. Board of Education of Township High School District 205*, 1968, p. 567)

The Supreme Court of the United States, however, did not support Pickering's dismissal based solely on the school's interest in avoiding "controversy, conflict and dissension among teachers, administrators, the Board of Education, and the residents of the district" (*Pickering v. Board of Education of Township High School District 205*, 1968, p. 566). Earlier cases such as *Wieman v. Updegraff* (1952), *Shelton v. Tucker* (1960), and *Keyishian v. Board of Regents* (1967) had unequivocally rejected the premise that public employees be compelled to relinquish their First Amendment rights. The Supreme Court went about setting up guidelines for public school teachers and their First Amendment protections. When the guidelines were applied in this case, Pickering's relationship with the Board and the superintendent did not constitute a claim to "personal loyalty and confidence necessary to their proper functioning" and thus, did not qualify as an interest outweighing the interest of the teacher (*Pickering v. Board of Education of Township High School District 205*, 1968, p. 568).

The focus here, however, is the question of the First Amendments protections that are granted to Pickering if the newspaper letter addressed a matter of public concern. The Court's opinion addressed the issue of the school having conclusive administration of public funds stating that in a society that "leaves such questions to popular vote. . .debate

is vital to informed decision-making by the electorate” (*Pickering v. Board of Education of Township High School District 205*, 1968, p. 567).

The Court has addressed issues of academic freedom as free speech claims and in the *Pickering* case the Court reiterated the importance of public employees, including teachers, retaining their First Amendment rights to free speech even in cases where they make statements that are directed at their superiors (*Pickering v. Board of Education of Township High School District 205*, 1968). It was acknowledged that *Pickering* had made false statements in his letters to the newspaper, but those were not made “knowingly or recklessly” and the statements did address a matter of public concern (*Pickering v. Board of Education of Township High School District 205*, 1968, p. 564). These public statements, while erroneous and critical, were developed out of a matter of public concern and did not ultimately affect *Pickering*’s ability to perform his duties in the classroom. Therefore, the Supreme Court reversed the lower court’s decision. The Court determined that *Pickering* could not be dismissed for making statements to the newspaper due to the fact that these statements were considered a matter of public concern (*Pickering v. Board of Education of Township High School District 205*, 1968).

The first case limiting *Pickering*’s protection of free speech for teachers was *Mt. Healthy School District v. Doyle* (1977). *Doyle* had been dismissed by the local school board after several altercations with students and co-workers. *Doyle* argued that his dismissal was not due to his performance as a teacher, but in retaliation for making comments on a radio station program. While the comments had been mentioned specifically by the school board in *Doyle*’s dismissal hearing, and while the Supreme Court acknowledged that the comments would qualify for free speech protections, where

other evidence still points to dismissal the Court has upheld the teacher's removal (*Mt. Healthy School District v. Doyle*, 1977).

The *Mt. Healthy School District v. Doyle* (1977) case limited some of the protections afforded in the Pickering case, but *Givhan v. Western Line Consolidated School* (1979) extended Pickering (Daly, 2001). Bessie Givhan was a junior high school teacher that was informed that her contract would be non-renewed after the 1970-1971. During this time, the Western Line Consolidated School was under court ordered desegregation. Givhan had made statements concerning the desegregation order to her principal in private and claimed that those statements were used against her in the Local School Board's choice not to renew her contract. The District Court held that the dismissal for the statements made did indeed infringe upon Givhan's First and Fourteenth Amendment right protections and ordered her reinstatement. Ayers, the principal, then appealed the case to the Fifth Circuit Court of Appeals. The Fifth Circuit Court reversed the decision stating that "although it found the District Court's findings not clearly erroneous, the Court of Appeals concluded that because petitioner had privately expressed her complaints and opinions to the principal, her expression was not protected under the First Amendment" (*Ayers v. Western Line Consolidated School*, 1979, p. 413).

However, the Supreme Court reversed the Court of Appeals decision writing:

This Court's decisions in *Pickering*, *Perry*, and *Mt. Healthy* do not support the conclusion that a public employee forfeits his protection against governmental abridgment of freedom of speech if he decides to express his views privately rather than publicly. While those cases each arose in the context of a public employee's public expression, the rule to be derived from them is not dependent on that largely coincidental fact. (*Givhan v. Western Line School District*, 1979, p. 414)

Another case, not originating in the public school realm, was also examined to determine the First Amendments rights of public employees as they relate to matters of public concern. Sheila Myers had filed a suit contending that she had been dismissed improperly for exercising her First Amendment rights after circulating a questionnaire within the District Attorney's office in which she was employed as an Assistant District Attorney. Harry Connick, her employer, appealed to the United States Court of Appeals for the Fifth Circuit hoping to have the decision reversed. The court of appeals affirmed the decision so Connick sought review with the Supreme Court through certiorari.

Myers had been informed that she was to be transferred within the District Attorney's office. She objected to the transfer and sought information from those in the office concerning matters related to its operation and function.

When a public employee speaks not as a citizen upon matters of public concern, but instead as an employee upon matters only of personal interest, absent the most unusual circumstances, a federal court is not the appropriate forum in which to review the wisdom of a personnel decision taken by a public agency allegedly in reaction to the employee's behavior. (*Connick v. Myers*, 1983, p. 139)

Myers's questionnaire contained only one question the Court considered as falling under the "rubric of public concern" (*Connick v. Myers*, 1983, p.139). The issue of official pressure to participate in political campaigns and issues was viewed by the Court as meeting the criteria for being a matter of public concern.

It was noted by the court that public employees had in times past been required to "swear oaths of loyalty to the State and reveal the groups with which they associated" (*Connick v. Myers*, 1983, p. 143). After the Second World War, passage of loyalty oaths by federal and state legislatures was common. These oaths were aimed at eradicating members of public and private agencies of involvement in "subversive organizations"

(Goldstein, 1976, p. 1295). Many of these cases included other public employees as well as teachers and “were decided without reference to any special constitutional status of teachers” (Goldstein, 1976, p. 1295). However, the opinions of the Court did point out the element of academic freedom in those cases involving educators, particularly those at the university level.

This issue was settled when the Court heard the case of *Keyishian v. Board of Regents* (1967) in which university faculty refused to sign a certificate affirming that they were not supporters of the Communist party. The Court at that time made it illegal to require employees to sign papers denying or confirming association with political parties due to the infringement that such requirements placed on constitutionally protected freedoms of expression (*Keyishian v. Board of Regents*, 1967).

In *Connick v. Myers* (1983), one question in the survey had touched on the issue of group participation and therefore, was afforded some First Amendment protections. Myers had asked a question addressing whether or not those working in the district attorney’s office had felt pressure to participate in the political campaigns of those supported by the office. This question was determined by the Court to meet the criteria of being a matter of public concern. The Court went on to note that questions of free speech related to matters of public concern must be determined based on content, form, and context (*Connick v. Myers*, 1983).

The content, form, and context of Myers’ questionnaire were determined to be very limited, and the questionnaire had the potential to disrupt the environment in which she worked. Therefore, the protection afforded in the First Amendment was not recognized and Connick had the right to dismiss Myers. The Court had found that very

little public concern was involved in the questionnaire and from there the balance of Myers interest in the political ties in the workplace did not override the interest of the District Attorney's office to work efficiently. While the Court expressly did not want to "lay down a general standard against which all such statements may be judged", the two step test founded in *Pickering* was again used (*Connick v. Myers*, 1983, p. 154). Free speech when invoked in governmental positions should first address a matter of public concern and then balance the interest of both parties. This had the affect of curtailing the influence and the expansion of *Pickering* in *Givhan v. Western Line Consolidated School* (1979) due to the added factors that were to be weighed when deciding matter of public concern (Daly, 2001).

The lower courts have struggled to address the scope of academic freedom as it relates to free speech in the classroom. In *Kirkland v. Northside Independent School District* (1989), the Fifth Circuit determined that matters of public concern only applied when "the words or conduct are conveyed by the teacher in his role as a citizen and not in his role as an employee of the school district" (*Kirkland v. Northside Independent School District*, 1989, p. 2). The teacher's choice to teach books that were not on the school board's approved list did not fall into the category of free speech. This action was performed while the teacher was working in his official capacity as a public school employee. The choice to teach unapproved books in the classroom did not rise to the level of public concern according to the court.

In a case decided in 1996, the Fourth Circuit Court found that a teacher who chose a play that contained material the principal found inappropriate did not qualify as protected free speech. Margaret Boring chose a school play in which her students were to

depict a single mother with three daughters, a lesbian, and a girl pregnant with an illegitimate child. Boring informed her principal of the play's title, but not its content. Boring was transferred at the end of the year and viewed her transfer as a demotion. She filed a suit claiming that her demotion was a reaction to the play and that this violated her First Amendment rights to free speech.

The *Boring v. Buncombe County* (1998) case had traveled through the court system. The federal court had dismissed the case sighting a lack of claim. On appeal, the Fourth Circuit reversed the trial court decision deciding that the teacher did indeed have a free speech claim. The seven to six split decision of the Fourth Circuit found that issues of curriculum and classroom policies did not garner First Amendment free speech protection.

The *Kirkland* and *Boring* cases would seem to indicate that Local School Board approved curriculum and policies would not fall into the category of matters of public concern. However, the Sixth Circuit decided in *Cockrel v. Shelby County School District* (2001) that lessons on industrial hemp in a fifth grade classroom as part of a teaching unit on saving trees did fall under matters of public concern. Donna Cockrel had invited Woody Harrelson, an actor, to speak on the benefits of hemp as a possible alternative to wood pulp. Cockrel claims that her principal knew that the presentation, as well as filming by CNN, was to take place in her classroom and that the presentation had been given in the past. It should be noted that the possession of hemp is against the law in Kentucky where Cockrel taught (*Cockrel v. Shelby County School District*, 2001).

Basing its decision on *Connick v. Myers* (1983) the Sixth Circuit Court determined that Cockrel's claim that the demotion was in retaliation for the presentation,

which fell under free speech protections, indeed had merits because the speech was on a matter of public concern. “There is no question that the issue of industrial hemp is a matter of great political and social concern to many citizens of Kentucky, and we believe that Cockrel’s presentations clearly come within the Supreme Court’s understanding of speech touching on matters of public concern” (*Cockrel v. Shelby County School District*, 2001, p. 36). The court goes on to acknowledge that matters of public concern do not automatically receive protection in public employment. It must also be determined if the interest of the employee’s speech outweighs the State’s interest in promoting the efficiency of the public services it performs through its employees (*Pickering v. Board of Education of Township High School District 205*, 1968). In the end, the Local School Board could not provide evidence that the presentation set up by Cockrel disrupted the ability of the school to educate. Therefore, Cockrel’s claim that her First Amendment rights were violated was upheld and the district court’s decision was reversed.

It is evident that the lower courts have struggled with determining how far to apply the guideline of matters of public concern set in the *Pickering* and *Connick* cases. The Fourth, Fifth, and Sixth Circuit Courts have differed in their opinions on what classroom speech is protected under the First Amendment. Donehower (2003) states:

At stake in this determination is the very power structure of public schools. If courts adopt a narrow definition of public concern, school boards will select curricula for the guidance of children; if, on the other hand, courts adopt an expansive understanding of public concern, teachers will decide what children are taught. (p. 3)

In 1988, the Supreme Court decided that substantial limits could be placed on student freedom of expression in the case of *Hazelwood School District v. Kuhlmeier* (1988). The student staff members of the Hazelwood East Spectrum, the high school

newspaper, sued for injunctive relief after the principal of Hazelwood removed two pages from the 1983 May issue. The pages contained material that the principal, Robert Reynolds, found controversial. Two articles addressing teen pregnancy and the impacts of divorce were removed because Reynolds felt that the article on teen pregnancy did not adequately shield the names of those mentioned and that the father in the divorce article was unfairly criticized (*Hazelwood School District v. Kuhlmeier*, 1988). The district court denied the request for injunctive relief finding no First Amendment violation. The Eighth Circuit Court reversed the opinion relying on *Tinker v. Des Moines School District* (1969) stating that school officials could not censor a student publication. The Supreme Court disagreed with the Eighth Circuit's analysis, instead classifying school sponsored newspapers as a non-public forum subject to reasonable regulation by school officials (*Hazelwood School District v. Kuhlmeier*, 1988).

The opinion in part has general applicability to all of those persons that are part of the school community including teachers. The opinion also discussed pedagogical concerns applying only to student speech. The Court's decision then has been used to address all working and sharing of ideas in the school. Lower courts have used the Hazelwood opinion to regulate teacher speech due in part to the fact that teacher speech could be seen as on behalf of the school, that students need to be protected since they are a captive audience, or that some limitations on speech may promote educational goals (Daly, 2001).

The lower courts have developed opinions along the Pickering or Hazelwood line in decisions of classroom speech. The Third, Fourth, Fifth, Ninth, and D.C. Circuits have applied the Pickering stance in their decisions, while the First, Second, Seventh, Eighth,

and Tenth Circuits have employed *Hazelwood* in their analysis of teachers' in-class speech rights (Daly, 2001). Those that have applied *Pickering* have found in-class speech to qualify as a matter of public concern and have attempted to balance the interests of the teacher, parents and students, and the school board.

The split between the courts has led to questions concerning the power of the members of the school community. Elected school boards have assumed more accountability in determining curriculum goals and have taken a leading role in educational decision making. Daly (2001) states: "Metaphorically, school boards may speak with the loudest voice, but the First Amendment does not permit all other voices to be silenced" (p. 12).

Georgia Cases

Georgia cases which are appealed after a Local School Board decision go to the Georgia State Board of Education. Here the Board can decide matters to do with public education. The State Board of Education decides appeals as directed by O.C.G.A. 20-2-1160. The appeals primarily involve issues related to student discipline and the discipline and termination of certificated personnel, although any matter of school law can be appealed. The Georgia State Board has decided cases on appeal since the 1970's (Georgia Department of Education, 2005, http://public.doe.k12.ga.us/pea_board.aspx?PageReq=PEABoardDecisions).

Sharon Burns brought the first case of academic freedom before the Georgia State Board of Education claiming an infringement on her First Amendment rights. Burns was a high school social studies teacher in the Clayton County School system. Burns was teaching a unit on teenage pregnancies and had instructed her students to create posters

that were to be displayed in her classroom and the hallways of the school building (*Burns v. Clayton County Board of Education*, 1981). The principal had been notified that the unit was being taught and was asked if the students could display their posters in the hallways. After viewing the posters for the first time in the hallway, the principal removed all of the posters and discussed with Burns why he had taken them down. He had found the material offensive and sexually suggestive. Later it was revealed that the classroom also contained posters on display (*Burns v. Clayton County Board of Education*, 1981). A supervisor in the school building was sent to discuss with Burns the removal of the posters from the classroom. Burns refused to remove the posters from the classroom. The next day there were rumors that the students in Burns' class were planning a demonstration against the removal of the posters. The principal spoke to Burns and her class concerning the demonstration and the posters. In the presence of the school principal, Burns informed her class that they would be suspended from school for two weeks if they participated in the demonstration. "She neither encouraged nor discouraged the students from conducting the demonstration, but did inform them of the consequences of their participation" (*Burns v. Clayton County Board of Education*, 1981, p. 4).

Burns was notified on March 25, 1981 that she was to be temporarily relieved of her duties and that the Local School Board would be asked to terminate her contract for "insubordination, willful neglect of duties, encouraging or counseling students to violate board policies and rules, and other good and sufficient cause" (*Burns v. Clayton County Board of Education*, 1981, p. 5). The Local School Board hearing was held on April 6, 1981.

Evidence was presented before the State Board of Education that Burns had “taught her course without attempting to inject her own views into the course material” (*Burns v. Clayton County Board of Education*, 1981, p. 4). At the Local School Board hearing, evidence was presented in regards to the information and lessons taught during the unit. Burns had provided her students with a list of agencies to contact to obtain information on birth control and teenage pregnancies. The students were to then create a poster sharing the information that was discovered. There were references to the types and uses of contraceptives in the student posters. According to the principal, the supplying of information on contraceptives was the “equivalent of urging the students to engage in sexual activity” (*Burns v. Clayton County Board of Education*, 1981, p. 5). The principal made one last request for the removal of the posters in the classroom or Burns would face termination. When Burns refused again, the recommendation was made to the Local School Board for her termination.

Burns was charged on four counts at the Local School Board hearing. The charges were: 1) insubordination; 2) willful neglect of duties; 3) encouraging or counseling students to violate board policies and rules; 4) other good and sufficient cause (*Burns v. Clayton County Board of Education*, 1981). The Local Board found Burns guilty of all four charges and moved for dismissal. Burns appealed the Local Board’s decision arguing that “the posters represented free speech, which is protected by the First Amendment of the United States Constitution, and the order by the principal that she remove the posters was an illegal order” (*Burns v. Clayton County Board of Education*, 1981, p. 5). Burns asserted that the principal’s order was unlawful since it was in violation of her First Amendment rights. Therefore, she could not be found guilty of

insubordination because “insubordination requires willful disobedience of a lawful command” (*Burns v. Clayton County Board of Education*, 1981, p. 5). In the appeal, Burns also argued that there was insufficient evidence to support the other charges and that the decision of the board was void due to the hearing being a closed proceeding.

The State Board of Education first addressed the validity of the hearing. The Georgia Code Annotated §40-3301 states:

All meetings of any agency at which official actions are to be taken are hereby declared to be public meetings and shall be open to the public at all times. No resolution, rule, regulation or formal action shall be binding except as taken or made at such meeting (O.C.G.A. §40-3301).

An exception to this is provided for in Georgia Code Annotated §40-3302. The exception states that when there is a discussion concerning the dismissal or a disciplinary action that is to be taken against a public officer or employee, or there is a hearing to address the complaints or charges against a public officer or employee, the hearing may remain closed. Since the Local Board was conducting a hearing to dismiss Burns, the hearing could remain closed therefore, “the actions of the Local Board were valid” (*Burns v. Clayton County Board of Education*, 1981, p. 8).

The question then becomes whether or not the posters were constitutionally protected as an exercise of free speech. Burns had demonstrated that she should be able to teach an approved curriculum in the way she felt best and that she should have control over the presentation and display of that information. In reviewing the case, the State Board of Education referred to the Pickering balance stating that “the scales tip toward the administration of the school when the question of maintaining discipline and authority, or a chain of command, is involved” (*Burns v. Clayton County Board of Education*, 1981, p. 8). Burns was not charged with insubordination for the content of

the posters, but for refusing to remove them from the walls. The principal's order was lawful and Burns's "outright defiance of his order can only be classed as insubordination" (*Burns v. Clayton County Board of Education*, 1981, p. 8). Termination based on this charge was found by the hearing officer to be proper. However, the Local School Board failed to provide evidence to support the other charges of willful neglect of duties, encouraging or counseling students to violate board policies and rules and other good and sufficient cause. Burns's termination on the ground of insubordination was sustained by the State Board of Education.

It should be noted here that the question of the posters being a matter of public concern was never addressed by the State Board of Education. While this has been the first prong of the Pickering balance in the cases presented before the Supreme Court, the Georgia State Board of Education did not deliberate on the speech presented in the posters. Instead, only the balance of interest as presented by the Pickering balance was addressed in the opinion of the State Board of Education. This may be due in part to the State Board of Education's reluctance to overturn Local School Board decisions except in cases involving infringement of due process rights. Prager (1988) stated in her study that "of the cases in the study, most appeals to the state board (77.2%) and to the courts (64.7%) resulted in decisions favorable to the local board" (p. 71).

In 2000, the Georgia State Board of Education heard *Johnson v. Tift County Board of Education*. David Johnson was hired for the 1999-2000 school year to serve as the assistant principal of Tift County High School. In March 2000, Johnson was informed that his contract would not be renewed. Johnson submitted his resignation to the Local School Board, to be effective at the end of the year. Johnson was then

contacted by the local newspaper. The newspaper had contacted Johnson requesting an interview to discuss his resignation (*Johnson v. Tift County Board of Education*, 2000).

On March 18, 2000 the article regarding Johnson's resignation appeared. The headline for the article was "Principal Rips School System" (*Johnson v. Tift County Board of Education*, 2000, p. 1). In the article, Johnson claimed that the principal had reversed disciplinary decisions when they involved the friends of the Local Superintendent's son and that school policies were changed day to day and situation to situation. Johnson also claimed that the Board had failed to give him a two year contract as promised, instead only giving him a one year contract. Five days after the newspaper article was published, the Local School Board charged Johnson with insubordination and other good and sufficient cause. He was then suspended with pay until the Local School Board hearing. At the hearing, the Local School Board determined that Johnson was indeed insubordinate because the statements made in the article were untrue. The decision was to suspend Johnson with pay until the end of the contract term.

In Johnson's appeal to the State Board of Education, he states that his dismissal stemmed from the newspaper article and therefore violated his First Amendment rights to free speech. The Local School Board argued that his statements were false and thus he was insubordinate. However, "the Georgia State Board of Education has limited insubordination to overt disobedience of a lawful directive from a superior" (*Johnson v. Tift County Board of Education*, 2000). Johnson was not violating a direct order in speaking to the press so he could not be found insubordinate.

The Georgia State Board of Education decided that the charge of other good and sufficient cause did apply since Johnson had made statements that were false without

investigating the true causes and circumstances affecting the decisions that were made. His dismissal was upheld by the State Board of Education under the reason of other good and sufficient cause.

In this case, Johnson failed to raise his concerns to the level of scrutiny provided for in Pickering. The State Board of Education stated that “a public employee’s speech is protected to the extent that it is true and deals with issues of public importance” (*Johnson v. Tift County Board of Education*, 2000, p.2). His statements were false which set them beyond the scope of legal protection.

Judy Martin brought a case before the State Board of Education claiming that the letter of reprimand she received from the Local School Superintendent should be removed from her file (*Martin v. Lowndes County Board of Education*, 2005). The Local School Superintendent had decided to place a letter in her personnel file after a situation arose regarding a required reading assignment that a parent had found to be offensive. Martin was a high school English teacher who taught advanced placement courses. During an open house function at the high school, Martin was approached by a parent who was upset at the choice of reading assignments. Martin took the parent to the advanced placement coordinator and the three of them discussed the book. The parent wanted the book removed from the list of required reading assignments (*Martin v. Lowndes County Board of Education*, 2005). At the time, the parent stated that she was going to the Local School Superintendent to discuss the matter. Both teachers informed her that the best course of action would be to go to the school’s principal. A letter of reprimand was issued to Martin after the principal and Superintendent were unable to appease the parent’s concerns and stated that Martin’s handling of the situation was

“inappropriate and unprofessional” (*Martin v. Lowndes County Board of Education*, 2005, p. 2). The Superintendent listed six reasons for the reprimand indicating that Martin acted against policy.

The reprimand placed in Martin’s personnel file alleged that she:

- 1) became confrontational during the initial meeting with the parent;
- 2) showed little consideration for the opinions of the parent;
- 3) failed to make a reasonable attempt to diffuse the situation;
- 4) made inappropriate intimidating comments regarding future assignments;
- 5) divulged information to the public gained from students in the course of your employment;
- 6) exacerbated the situation by suggesting that if the course material was offensive, the student should investigate an alternative selection. (*Martin v. Lowndes County Board of Education*, 2005, p. 2)

Martin appealed the reprimand to the Local School Board who upheld the Superintendent’s decision (*Martin v. Lowndes County Board of Education*, 2005).

Martin then took the case to the State Board of Education stating that she had followed school board policy in handling the situation.

Martin stated that the Local Superintendent did not present evidence to support the letter of reprimand. The State Board found that Local School Board policies had been followed and that Martin had made a reasonable attempt to satisfy the parent’s concerns regarding the reading material (*Martin v. Lowndes County Board of Education*, 2005).

The opinion of the State Board of Education uncovered “no evidence to support Local Board’s decision to uphold the Local Superintendent’s issuance of a letter of reprimand that charged the Appellant with unprofessional conduct” (*Martin v. Lowndes County Board of Education*, 2005, p. 4).

The letter of reprimand in the Martin case never discussed the issue of whether or not the material was appropriate for the classroom. The concerns detailed in the letter

dealt with the handling of the situation and whether or not the situation could have been averted at a lower level. Martin's case, however, does raise the issue of classroom material being at the center of a teacher's case against the school system. This particular case is also linked to another brought before the State Board of Education.

Fredonia Ray brought a case before the State Board of Education in 2005 to have a letter of reprimand removed from her file. Fredonia Ray was the advanced placement coordinator involved in the Judy Martin case. She also served as a Lowndes county English teacher and had worked with Martin to settle the issue with the parent. The book in question went before a review committee which was policy at the time. The committee's recommendation was that the book should remain on the reading list, but an alternative book would be provided if a parent felt that a required reading was offensive. The Local Superintendent informed the parent that the books would be removed from the required reading list, a position that the committee had not endorsed (*Ray v. Lowndes County*, 2005). Because of this, Ray wrote a letter to the Local School Board members discussing the removal of the books and stating that the Local Superintendent's actions would exacerbate the situation. The Local Superintendent stated in a letter to Ray that her letter to the Board members was an attempt to undermine his authority and "constituted a personal attack upon him" (*Ray v. Lowndes County*, 2005, p. 2). The letter also stated that continued behavior in this manner would be considered insubordination.

Ray appealed to the Local School Board which in turn held a hearing on the matter. The Board upheld the decision of the Local Superintendent. Ray then appealed to the State Board of Education (*Ray v. Lowndes County*, 2005). In her case before the State Board of Education, Ray stated that she had a right to voice her concerns to the

Local School Board and that she had not violated any school policy in writing a letter to the Local School Board. The Local School Board argued that the matter should have first been discussed with the Superintendent. The Superintendent acknowledged that the committee had provided an alternative book selection, but that he was not trying to override the decision (*Ray v. Lowndes County*, 2005). He had merely restated the situation to the parent hoping to end the matter. The Georgia State Board of Education's opinion stated:

The standard for review by the State Board of Education is that if there is any evidence to support the decision of the local board of education, then the local board's decision will stand unless there has been an abuse of discretion or the decision is so arbitrary and capricious as to be illegal. (*Ray v. Lowndes County Board of Education*, 2005, p. 2)

The State Board concluded that the Local Superintendent had the right to issue a simple directive since he did not accuse Ray of unprofessional conduct and wrote that "the Local Board did not abuse its discretion in affirming the Local Superintendent's issuance of a cease and desist letter" (*Ray v. Lowndes County Board of Education*, 2005, pp. 2,3).

In review, the cases brought before the United States Supreme Court have greatly varied in circumstances and scope. Finding definite protection for academic freedom or freedom of speech in the public school setting would be hard. The Supreme Court and lower courts have used a two prong test in deciding the First Amendment rights of public employees. The first part of the test is used to determine whether or not the speech of a public employee constitutes a matter of public concern. "The fact that a viewpoint would qualify as a matter of public concern when expressed as a citizen does not automatically mean the same viewpoint deserves public concern protection when expressed as an employee" (Donehower, 2003, p. 4). Would this speech encompass the same distress if

the person were not a public employee? In conjunction with this is the matter of the content, form, and context of the expression. The Court has distinguished between those matters that were truthful or without malicious intent compared to those made in ill will. The time and location of the speech has also been important in the decisions of the courts, as well as, the role of the speaker at the time of expression. If a public employee addresses a concern while in the role of a citizen, the Court has provided more protection. However, the facts of the cases presented before the Court have indicated “several factors involved in such a determination: whether the expression occurred at work, whether the expression occurred as part of the employee’s duties, and whether the expression occurred during time for which the employee was being paid” (Donehower, 2003, p 4).

Cases such as *Keefe v. Geanakos* (1969) and *Parducci v. Rutland* (1970) have recognized the academic freedoms of teachers while working in their official capacity. The first case, *Keefe v. Geanakos* (1969), was brought before the First Circuit Court to decide upon the constitutionality of a teacher using obscene language in the classroom while discussing an article with high school seniors. *Parducci v. Rutland* (1970) also involved a high school English teacher using controversial materials. Parducci had assigned the students in the eleventh grade to read Kurt Vonnegut, Jr.’s book *Welcome to the Monkey House* (*Parducci v. Rutland*, 1970). The principal and the school system’s associate superintendent made known their concerns to Parducci the following morning. Parducci expressed that she would continue to teach the eleventh grade English class at the Jeff Davis High School by the use of whatever material she wanted and in whatever manner she thought best (*Parducci v. Rutland*, 1970). The court noted that a teacher’s entitlement to First Amendment freedoms is an issue no longer in dispute and that a

teacher's First Amendment rights are not affected by the presence or absence of tenure laws (*Parducci v. Rutland*, 1970).

The decisions seem to touch on the belief that teachers, while working in their official public capacity, have a constitutional protection to determine what teaching material they may use (Goldstein, 1976). However, as demonstrated here, few cases address a teacher's choice of curriculum in the classroom or how it is presented. Instead, the private speech of public employees has been the focus of much of the academic freedom debate. Welner (2003) writes:

The current constitutional framework that courts most often apply to these cases limits courts' analyses to relatively meaningless inquiries based on one or more of three superficial considerations: 1) The courts should not interfere with democratic decisions made by locally elected school boards; 2) teacher speech is protected only if it addresses a matter of public concern; and 3) because it is part of the curriculum, teacher classroom speech is subject to district regulation and given little, if any, protection. (p. 3)

What protections then are afforded teachers in the classroom when the curriculum becomes a matter of federal regulation?

No Child Left Behind

Commonly referred to as the NCLB, the No Child Left Behind Act became law in 2002. The federal law has been one of the most expansive and encompassing federal mandates governing education (Simpson, et. al., 2004). The No Child Left Behind Act details the government's expectations for:

increased accountability for States, school districts, and schools; greater choice for parents and students, particularly those attending low-performing schools; more flexibility for States and local educational agencies (LEAs) in the use of Federal education dollars; and a stronger emphasis on reading, especially for our youngest children. (U.S. Department of Education, 2002, p. 1)

The U.S. Department of Education (2002) has presented the four pillars of the NCLB to be: 1) stronger accountability for results; 2) flexibility for states and communities to decide how to spend federal funds; 3) use of educational programs and practices that have been proven effective through rigorous scientific research; and 4) more school choice for parents. At issue here is the third pillar of mandating the methods used by educators must be supported by what has been called scientific based research.

Scientifically Based Research (SBR) is mentioned more than 100 times in the No Child Left Behind Act (Simpson, et. al., 2004). The No Child Left Behind Act defines SBR as “research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs” (No Child Left Behind, 2001). The term gold standard has been used to identify this method of research. This requirement came about in the early stages of development of the No Child Left Behind Act.

Robert Sweet, a staff member for the majority members of the House Education and Workforce Committee, wanted to force federal funds to be used on reading programs that were based on the best available scientific research (Eisenhart & Towne, 2003). In order to ensure that this would happen, legislation had to be created that would require those giving money to “develop, select, or implement reading programs grounded in the best science” (Eisenhart & Towne, 2003, p.32). Mandating that the use of federal funds go to scientifically based programs obligated legislators to define what constituted best science (Eisenhart & Towne, 2003). Representative Castle introduced H.R. 4875 (Castle Bill) in 2000. The bill sought to improve education research, evaluation, information, and dissemination by designating federal funds to only support those studies that were

scientifically valid in design methods for quantitative and qualitative research (Eisenhart & Towne, 2003).

Scientific Research in Education was published by the National Research Council in late 2001 (Eisenhart & Towne, 2003). Two months later the No Child Left Behind Act was signed into law. The definition of scientifically based research in the No Child Left Behind Act was narrower in scope than the original Castle Bill and the publication *Scientific Research in Education* (Eisenhart & Towne, 2003). The No Child Left Behind Act supports those products and materials “validated by means of research designs that use random samples and control and experimental groups” (Simpson, et. al., 2004, p. 72). This definition limits the use of federal funds for educational research, thereby restricting the information concerning effective practices. (Simpson, et. al., 2004) Sailor and Stowe (2003) write that “with the passage of No Child Left Behind (NCLB) and accompanying education legislation at the federal level, policy has begun to not only inform inquiry, but also to restrict it” (p. 148).

The U.S. Department of Education in *Identifying and Implementing Educational Practices Supported By Rigorous Evidence: A User Friendly Guide* (2003) discussed the advancements that have occurred in medicine due to the research methods that have been employed to improve medical practices. These methods can be traced back to two very different theories of research. The first is grounded in the German philosophical tradition of subjectivism (Sailor & Stowe, 2003). Subjectivism maintains “reality can only be understood and described through interpretation and is thus subject to social construction” (Sailor & Stowe, 2003, p. 148). These practices are commonly found in qualitative research methods. The second method is grounded in the philosophical

tradition of British empiricism (Sailor & Stowe, 2003). “Positivists maintain that social and personal phenomena constitute an external reality that can be objectified and measured” (Sailor & Stowe, 2003, p. 148). “So called quantitative research methods derive from positivism” (Sailor & Stowe, 2003, p. 148). In an attempt to bridge the differences between the two theories, Dewey developed the idea of progressive education “as a path to American pragmatic values of democracy, justice, freedom, and equality” (Sailor & Stowe, 2003, p. 149).

The No Child Left Behind Act’s definition of scientifically based research as being only that which has been generated through random samples and experimental groups has set up a system by which “policy moves to restrict not only what can be known, but also what can be done with presumed knowledge” (Sailor & Stowe, 2003, p. 149). Both theories of research have methods that have been developed in order to ensure confidence in the evidence that is presented, therefore, setting up one theory as being better able to measure successful practices denies the veracity of the other method (Sailor & Stowe, 2003).

In order to help educators navigate the complicated issue of scientifically based research as defined by the No Child Left Behind Act, the government developed the What Works Clearinghouse website (WWC). The WWC website states that its purpose is:

to promote informed education decision making through a set of easily accessible databases and user-friendly reports that provide education consumers with ongoing, high-quality reviews of the effectiveness of replicable educational interventions (programs, products, practices, and policies) that intend to improve student outcomes. (U.S. Department of Education, 2002, overview)

The U.S. Department of Education also provides in its publication *Identifying and Implementing Educational Practices Supported By Rigorous Evidence: A User Friendly Guide* (2003) the standards by which it is measuring a program to be used in the classroom. The article details the evaluation criteria that should be used in order to determine if a program meets the No Child Left Behind Act standards. The guide states that those programs indicating strong evidence of effectiveness include those that: 1) use randomized trials that were well-designed and implemented; and 2) show effectiveness in two or more schools similar to that of the educator (U.S. Department of Education, 2003).

The reform of educational research seems to be based in two assumptions: 1) that the failure to use gold standard methods “has undermined efforts to inform educational policy and practice” and 2) that this is what has caused a “lack of improvement in educational outcomes” (Sailor & Stowe, 2003, p. 150). These assumptions, however, would seem to indicate that all research up to this time has caused a failure in education. The approval of one research method over another would then not address the real problems in education (Sailor & Stowe, 2003). Other factors such as the disparity between the funding of medical research and that of educational research seem to have been ignored in the design of acceptable research methodologies in the No Child Left Behind Act (Erickson & Gutierrez, 2002). It also “appears to discount the utility of teacher judgment, that is, their clinical judgment and experience in making educational decisions” (Simpson, et. al., 2004). It is this last factor that puts the No Child Left Behind Act’s standard of scientifically based research in the middle of the discussion of academic freedom.

As mentioned earlier, the lower courts have varied in their treatment of academic freedom as it pertains to curriculum speech, and the Supreme Court has not provided a set standard by which to guide the lower courts. The difficulty has been whether or not classroom matters of curriculum qualify as matters of public concern. The Fourth Circuit Court determined in the *Boring* case that speech centered on curriculum interests was “nothing more than an ordinary employment dispute” (*Boring v. Buncombe County*, 1998, p. 26). The Fifth Circuit Court held the same in *Kirkland v. Northside* (1989) stating that a teacher raising an issue while in the role of employee does constitute a First Amendment infringement. However, the Sixth Circuit applied content analysis more than context and found that any matter of political, social, or other concern to the community met the requirement of matter of public concern (*Cockrel v. Shelby County School District*, 2001).

The issue of curricular speech protection meeting the first prong in the *Pickering* test is important when the power of school boards to determine curriculum remains strong. A broad definition or a narrow definition by the courts in determining what raises an issue to a matter of public concern sets the path for who controls the curriculum. A narrow definition keeps the control in hands of the school board. A broad definition, such as that in the *Cockrel* case, allows teachers to exercise more power in curriculum decisions (Donehower, 2003). In fact, Judge Widener in his dissenting opinion in *Boring v. Buncombe County School District* (1998) wrote:

I do not know of a more significant case to be decided in this court in my experience. The question is who is to set the curriculum, the teachers or the school authorities. Who is to influence young minds? From Plato to Burke, the greatest intellects of Western civilization have acknowledged the importance of the very subject at hand (p. 10)

It becomes very important then to address the issue of curriculum speech when in the end it determines who holds the power of our public education system.

The cases that have been brought before the Supreme Court, the lower courts, and even those before the Georgia State Board of Education rely on the two step test established in *Pickering*, as well as, deciding on issues of due process and fair dismissal procedures. These discussions are linked to the No Child Left Behind Act mandates that require teachers to use and implement programs that are based in scientific research methods, because in the end, how much academic freedom will be afforded educators if many of the programs that have been used in the past are now unsupported. Teachers may begin to question the validity of the curriculum and may present those concerns while working as a state employee. Academic freedom has not been applied consistently in disagreements over the curriculum in public schools. Teachers need to be aware of the responsibility of their profession in training students, inculcating values, and developing a market place of ideas. It is a complicated issue with few clear markers from the courts.

CHAPTER 4

SUMMARY OF ACADEMIC FREEDOM CASES, FINDINGS, AND CONCLUSIONS

Summary

The purpose of this study was to review and analyze academic freedom law cases as they relate to the public school teacher. The questions addressed in this study concern the history of academic freedom, the current status of the law regarding academic freedom in the United States, and how the law No Child Left Behind affects the academic freedom of public school teachers.

Academic freedom has a long and complicated history. One of the first educators working toward freedom in education was Socrates. After Socrates, academic freedom continued to develop in both the religious sects and political bodies during the medieval period. Later, the German university system developed the concept of academic freedom that most closely resembles the function of academic freedom today. In the German university system, the freedom of students to learn and the freedom of teacher to teach were developed. However, academic freedom in the United States took a slightly different turn due to the control that state governments have in the area of education. The students in Germany had the freedom of complete choice in courses and research, while those in the United States have course requirements that must be met.

Academic freedom in the United States exists in two forms within the university system. The first is individual academic freedom which protects the professor. The American Association of University Professors outlined three principles in the *1940 Statement of Principles on Academic Freedom and Tenure* that guide the academic freedoms of professors. The academic freedom principles in this document include:

1. Teachers are entitled to full freedom in research and in the publication of the results, subject to the adequate performance of their other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution.
2. Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject. Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment.
3. College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution. (AAUP, 1970, p. 1)

A professor retains the rights of individual academic freedom after completing the requirements determined by the university. This educational freedom provides protection for their research and publication of results, their discussions and presentations in the classroom, and their statements as private citizens from professional censorship.

Institutional academic freedom applies to the university. The institutional protections are for university systems to have the right to determine what will be taught, who will teach that information, how it will be taught, and who may be accepted to the university.

The Fourth Circuit Court of Appeals extended the concept of academic freedom to include public schools through cases such as *Boring v. Buncombe County* (1998). The four essential freedoms given universities could be applied to public schools except where “impracticable or contrary to law” (*Boring v. Buncombe County*, 1998). The protection is afforded to the academy and not to the academicians (*Boring v. Buncombe County*, 1998). However, the Fourth Circuit ruling does not apply in all district circuits

and the argument has been made that academic freedom does not apply to the elementary and secondary schools. The distinction has been made that educational knowledge on the levels of elementary and secondary schools is transmitted and not developed.

Attempting to balance the rights of the state as an employer and the rights of the teacher in the classroom has become a difficult and burdensome process. Seeking to help with the issue, states have created fair dismissal laws and due process rights to govern those who work in public employment for the state. In educational circles, these protections and rights have come to be known as tenure. The protections of fair dismissal and due process grew out of the social contract theories of Thomas Hobbes, John Locke, and Jean Jacques Rousseau and the Civil Service Act of 1883.

Fair dismissal refers to the procedures that states must follow in issues of education employment. Within the fair dismissal laws are the requirements associated with notice and hearing. Notice and hearing are part of the due process rights afforded in the Fourteenth Amendment.

Due process is the right of everyone to be treated fairly when governmental actions threaten their life, liberty, or property. Two types of due process exists. The first is procedural due process and the second is substantive due process. Procedural due process refers to the right of adequate notice and an impartial hearing for those teachers during dismissal proceedings. Substantive due process refers to the fundamental right to be treated fairly by those working under the colors of the state. Substantive due process is provided for all state employees regardless of employment stature.

Cases of academic freedom have reached the District Courts and the United States Supreme Court. Questions regarding the rights of both teachers and students to academic

freedom have been decided in both levels of the courts. The Supreme Court established a two part test in the case of *Pickering v. Board of Education of Township High School District 205* (1968). The test involved determining if the matter reached a level of public concern and then balancing that concern raised by the teacher, or student, against the employers concern for maintaining a work environment that works efficiently. In *Connick v. Myers* (1983), the Court expanded the definition of matters of public concern to include questions of content, context, and form as they relate to the speech.

The test established in *Pickering v. Board of Education of Township High School District 205* (1968) and the matters of public concern questions of content, context, and form from *Connick v. Myers* (1983) have made it difficult for the lower courts to determine questions of academic freedom as it relates to public school teachers. There is not a clear precedent or standard by which to determine the direction a case might take when it has involved academic freedom. The many circumstances that might give rise to a matter of public concern expressed by a public employee have also contributed to the lack of a clear direction.

In Georgia, four cases have reached the State Board of Education related to the question of academic freedom. The cases that have come before the Board have involved high school teachers and administrators. In each case, the local school board had sought to dismiss or reprimand the teacher or administrator for speech related to their position as a public employee. The local school board prevailed in all.

On the forefront of education is the No Child Left Behind Act. This federal law governs the requirements and direction of federal monetary assistance in education. When it was signed into law in 2002, it was the most comprehensive reform in education

to date. The U.S. Department of Education has established the four pillars of NCLB to be: 1) stronger accountability for results; 2) flexibility for states and communities to decide how to spend federal funds; 3) use of educational programs and practices that have been proven effective through rigorous scientific research; and 4) more school choice for parents. When reviewing the four pillars, the requirement that teachers and local school systems use educational programs and practices that are based on scientific research limits the scope of initiatives that might be used in the classroom.

The U.S. Department of Education has determined that the criteria for being a scientifically based research program or practice is one that has employed randomized trials that were well designed and implemented, and was shown to be effective in a school similar to that of the educator. The government has developed a website that offers guidance into what standards qualify a program or practice to be scientifically based. The What Works Clearinghouse website (WWC) provides educators and school boards with information regarding scientifically based research standards, although it does not specifically endorse a program or practice. Local school boards and educators must determine the curriculum to be used in the classroom based on the parameters provided by the federal government.

Over the course of education, teachers, students, parents, universities, and local school boards have constantly worked to find the balance in seeking and developing knowledge. Determining the balance has at times created issues that had to be resolved in court. These court cases provide direction and standards to help to each of these entities balance the power in education. For those in the classroom there has been the issue of academic freedom; freedom to learn and express ideas as a student, the freedom

to teach and express ideas as a teacher. More recently, a specific set of principles and practices outlined by the federal government must drive the curriculum and educational decisions. The No Child Left Behind Act has altered the course of education creating the potential for more teachers and students to assert their academic freedom in the classroom through cases before the local school boards and courts. For the purpose of this study, the requirements for teachers to provide a curriculum based on certain criteria, while not new, does raise the question of academic freedom protections in a position of public employment.

Findings

This study found the legal history of academic freedom began with the Supreme Court case of *Sweezy v. New Hampshire* (1957). Justice Frankfurter's quote in the *Sweezy v. New Hampshire* (1957) decision is often used when discussing the establishment of the four essential freedoms for universities. These freedoms provide universities with the protection to determine on academic grounds "who may teach, what shall be taught, how it shall be taught, and who may be admitted into study" (*Sweezy v. New Hampshire*, 1957, 263).

Those cases involving academic freedom have been brought before the courts as First Amendment, free speech, infringement issues. In *Pickering v. Board of Education of Township High School District 205* (1968), the United States Supreme Court established the two part test for academic freedom cases. The two steps established in *Pickering* involve deciding if the issue addresses a matter of public concern and balancing this concern against the legitimate interest of the state to provide a service through its employees.

The concept of academic freedom was further developed in the case of *Connick v. Myers* (1983). This Supreme Court case defined matter of public concern adding the requirement that courts review the context, content, and form of the speech when delivered as a state employee (*Connick v. Myers*, 1983).

Judicial application of academic freedom to the public school arena has varied among the lower courts. *Boring v. Buncombe County* (1998) provides free speech protections for public school teachers as vested by the academy, but as a district court of appeals decision it does not apply to all circuits. Other courts have been divided in how they addressed the issue of teacher speech in the classroom. The courts have refrained from providing definite protection for teachers in matters of curriculum speech due to the belief that the elected Local School Board is in better position to determine that which is appropriate in the classroom.

The No Child Left Behind Act has outlined regulations concerning curriculum speech mandating, that the programs and practices in the classroom are based on scientific research. The restrictions of the No Child Left Behind Act have placed one form of research in a position of preference. Those practices and programs which have used randomized trials and have shown effectiveness in two or more schools that are similar to that of the educator are supported to receive federal funds through the No Child Left Behind Act (U.S. Department of Education, 2003). This limits the choices and decisions of practices educators have in the classroom.

Conclusions

Based on these findings, this study concludes that:

- 1) Academic freedom is ancient in origin and continues to evolve.
- 2) Academic freedom in the United States has been a concept that has clearly existed in university system, however, the case of *Boring v. Buncombe County* (1998) has allowed issues at the K-12 public school realm to be heard.
- 3) Administrators need to be aware of the *Pickering* balance and the subsequent content, context, and form issues when addressing matters of academic freedom at the school level.
- 4) The two pronged test from *Pickering* has very little definitive guidelines to inform teachers of their protection, particularly in matters of in-class speech for public school teachers K-12.
- 5) The No Child Left Behind Act defines the practices and programs that schools could use which may lead teachers to question or oppose funded programs based on academic freedom.

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APPENDIX A

BURNS V. CLAYTON COUNTY BOARD OF EDUCATION

STATE BOARD OF EDUCATION

STATE OF GEORGIA

SHARON BURNS,	:	
Appellant,	:	
v.	:	CASE NO. 1981-25
CLAYTON COUNTY BOARD OF EDUCATION,	:	
Appellee.	:	

O R D E R

THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

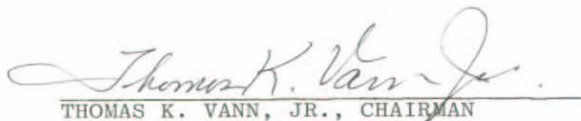
DETERMINES AND ORDERS, that the Findings of Fact and Conclusions of Law of the Hearing Officer are made the Findings of Fact and Conclusions of Law of the State Board of Education and by reference are incorporated herein, and

DETERMINES AND ORDERS, that the decision of the Clayton County Board of Education herein appealed from is hereby sustained.

Mrs. Oberdorfer was not present.

Mr. Foster abstained.

This 8th day of October, 1981.


THOMAS K. VANN, JR., CHAIRMAN

STATE BOARD OF EDUCATION

STATE OF GEORGIA

SHARON BURNS,	:	
	:	
Appellant,	:	
	:	CASE NO. 1981-25
vs.	:	
	:	REPORT OF HEARING OFFICER
CLAYTON COUNTY BOARD	:	
OF EDUCATION,	:	
	:	
Appellee.	:	

PART I

SUMMARY OF APPEAL

Sharon Burns (hereinafter "Appellant"), a teacher in the Clayton County School System, appeals from a decision of the Clayton County Board of Education (hereinafter "Local Board"), to dismiss her because of insubordination, willful neglect of duties, encouraging or counselling students to violate board policies and rules, and for other good and sufficient causes. The primary basis for the appeal is that the Local Board's decision was improper because Appellant's constitutional rights of free speech were restrained by her principal, and she did not have to obey his orders. The Hearing Officer recommends that the decision of the Local Board be sustained.

PART II
FINDINGS OF FACT

Appellant was a high school social studies teacher who was teaching a unit on teenage pregnancies. As a part of her instruction, she had her students make posters which she displayed on the walls of her classroom and in the halls of the high school. The principal of the school found the posters to be offensive and asked Appellant to remove them, but she refused. When Appellant continued to refuse to remove the posters from the walls of her classroom after additional requests, the principal went into the classroom and removed the posters. He then suspended Appellant and began the dismissal proceedings.

Appellant was notified by a letter, dated March 26, 1981, that she was temporarily relieved from duty, and that the Local Board would be asked to terminate her contract on the grounds of insubordination, willful neglect of duties, encouraging or counselling students to violate board policies and rules, and other good and sufficient cause (tolerating or encouraging immorality). The basis for the charges, i.e., Appellant's refusal to remove the posters, was outlined, and a date for the hearing before the Local Board was given. In addition, the known witnesses were listed. The hearing before the Local Board was held on April 6, 1981, and the Local Board made its decision

on the same day. The appeal to the State Board of Education was filed on April 15, 1981.

When Appellant began teaching her unit, she asked the principal if the posters made by her students could be hung on the walls of the classroom and the school. The principal gave his permission, although he had not seen the posters. When he saw the posters in the halls, he found them offensive in that he viewed them as encouraging the students to be sexually active. He immediately removed all of the posters from the hall and discussed with Appellant why he had removed them. On the next school day, the principal learned that there were also posters in Appellant's classroom. He asked one of the supervisors to have Appellant remove the posters from the classroom. The next day, the supervisor met with Appellant, and she told him she would remove the posters. The following day, the principal heard rumors that some students planned to demonstrate against the removal of the posters. He went to Appellant's classroom to ask about the demonstration and discovered she had not removed the posters. The principal explained to Appellant that he wanted the posters removed and that he did not want the students to conduct a demonstration. Appellant refused to remove the posters. A little later, the principal again visited with Appellant and her class, and explained that he wanted the posters

removed and that the students should not demonstrate against the removal. Appellant told her students that if any of them participated in a demonstration, they would be suspended from school for two weeks. She neither encouraged or discouraged the students from conducting the demonstration, but did inform them of the consequences of their participation.

The principal asked Appellant to meet him in his office in the afternoon. He once again asked her to remove the posters or face termination. Appellant again refused to remove the posters. When the meeting ended, the principal went to the classroom and personally removed all of the posters.

The only evidence concerning the planned demonstration was that the students planned on asking for a meeting with the principal which was to occur before the regular school hours. At the meeting, they wanted to express their view concerning the posters and the removal of the posters. The principal testified only that he had heard rumors concerning a demonstration, but he did not testify about any details he might have heard.

Appellant taught her course without attempting to inject her own views into the course material. In the particular assignment, she had given the students a list of agencies to contact about birth control and teenage

pregnancies. The students were then directed to make posters concerning what they had learned. Typical of the agencies contacted by the students was the Planned Parenthood Association. The bulk of the posters prepared by the students contained advice to use contraceptives, or had reference to various types of contraceptives. The principal testified that he felt that encouraging the use of contraceptives was the equivalent of urging the students to engage in sexual activity.

PART III

CONCLUSIONS OF LAW

Appellant was charged with four counts: 1) insubordination; 2) willful neglect of duties; 3) encouraging or counselling students to violate board policies and rules, and 4) other good and sufficient cause (tolerating or encouraging immorality). The Local Board found against Appellant of all four charges. On appeal, Appellant argues that the posters represented free speech, which is protected by the First Amendment of the United States Constitution, and the order by the principal that she remove the posters was an illegal order. She, therefore, could not be found guilty of insubordination because insubordination requires willful disobedience of a lawful command. Appellant then argues that there was insufficient evidence to

sustain any of the other charges. Additionally, Appellant claims that the decision of the Local Board is void because the Local Board would not permit the hearing to be open to the public.

The first issue to be faced in this case is whether the order of the Local Board is valid, because the hearing was closed over the objection of Appellant's attorney. Ga. Code Ann. §40-3301 provides, in part:

"All meetings of any agency at which official actions are to be taken are hereby declared to be public meetings and shall be open to the public at all times. No resolution, rule, regulation or formal action shall be binding except as taken or made at such meeting. . ."

Boards of education are defined as an "agency" in subpart (a) of Ga. Code Ann. §40-3301. An exception is provided in Ga, Code Ann. §40-3302 for:

"Meetings when:
 (1) any agency or other unit is discussing the . . . disciplinary action or dismissal of a public officer or employer, or
 (2) any agency or other unit is hearing complaints or charges brought against a public officer or employee, unless he requests a public meeting."

In order to assert any error for violation of the statute, the complaining party must make a formal and proper motion in the record at the time of the hearing in order to preserve the complaint. Williams v. Mayor, 118 Ga. App. 271, 273 (1968). In the instant case, the attorney for Appellant stated at the beginning of the hearing that he wanted

the hearing to be open to the public, objected to it being closed, and then said, "At this time, I would again move that this hearing be open to the public." The Local Board denied his motion to have the hearing open, and the attorney stated, "Madam Chairman, at the risk of being obnoxious I would like to put this on the record as a continued objection." It appears, therefore, that Appellant's objections to having a closed meeting were properly preserved in the record prior to the conduct of the hearing.

One of the exceptions is applicable when the agency is "discussing ... disciplinary action or dismissal" of a public employee. The other is applicable when the agency is hearing "complaints or charges brought against" a public employee. Only the second exception permits the public employee to request that the meeting be open. In the instant case, the Local Board was discussing the dismissal of Appellant. Arguably, the exceptions in the statute contemplate a bifurcated proceeding where the hearing is open to the public, and then the deliberation can be closed. This approach would be similar to the approach of a trial where the jury retires to deliberate and reach a decision. In the absence of any court decisions or any indication in the legislation that this was the legislative intent, the Hearing Officer does not believe that this was

the intention of the legislature in setting out of the two exceptions. The Hearing Officer, therefore, concludes that the meeting did not have to be open to the public and the actions of the Local Board were valid.

The next issue to be decided is whether the actions of Appellant were constitutionally protected as an exercise of "free speech". In essence, Appellant is maintaining that she had a right to teach whatever she wanted in the classroom, in any manner she desired, and the administration did not have any authority to control her, or what materials she placed upon the walls of the school building. Although there has to be a balancing between the interests of an efficient administration of the public schools and a teachers rights of free speech, see Pickering v. Board of Education, 391 U.S. 563 (1968), the scales tip toward the administration of the school when the question of maintaining discipline and authority, or a chain of command, is involved. The charges against Appellant, and the seeking of dismissal, did not arise because she placed the posters on the walls of her classroom. It does not appear that Appellant had any constitutional right to have the posters remain on the classroom walls after she had been requested by the principal to remove them. The order by the principal was a lawful order and Appellant's outright defiance of his order can only be classed as insubordination.

The Hearing Officer, therefore, concludes that the Local Board properly held that Appellant was guilty of insubordination and her termination was proper.

To the extent a teacher has a duty to obey the lawful orders of the principal, the proof of insubordination also sustains the charge of willful neglect of duties.

In reviewing the evidence concerning the other charges, i.e., encouraging or counselling students to violate board policies and rules, and for other good and sufficient cause (tolerating or encouraging immorality), the Hearing Officer does not find any evidence to support the decision of the Local Board. The charge of tolerating or encouraging immorality arose because the posters did not have any indication that the students should abstain from sexual relations before getting married. There was uncontroverted evidence, however, that Appellant taught her class that they should abstain. She was teaching a course which she had been directed to teach by the Local Board, the posters were prepared by the students and not by Appellant, and Appellant had obtained permission to place the posters on the walls of the school building. There was no evidence that Appellant attempted to assert or impose her views on the students. The fact that the principal, and others, found the posters to be objectionable does not establish that Appellant was encouraging immorality.

The charge of encouraging or counselling students to violate board policies and rules arose from the contention that Appellant encouraged the students to demonstrate. There was no evidence that Appellant did encourage the students to demonstrate. It does not appear from the record that the "demonstration" was anything more than a rumor in that a demonstration did not occur. Appellant complied with the principal's request to stop the demonstration by advising the student's they faced a two-week suspension if they took part in a demonstration. There was no evidence that anything more was required of Appellant in order to comply with the request of the principal. The Hearing Officer, therefore, concludes that there was not any evidence to sustain the charges of encouraging or counselling students to violate board policies and rules and the charge of tolerating or encouraging immorality.

PART IV

RECOMMENDATION

Based upon the foregoing findings and conclusions, the record submitted, and the briefs and oral arguments of counsel, the Hearing Officer is of the opinion the Local Board properly found that Appellant should be dismissed because of insubordination. The Hearing Officer,

therefore, recommends that the decision of the Local Board
to terminate the contract of Appellant should be sustained.



L.O. BUCKLAND
Hearing Officer

APPENDIX B

JOHNSON V. TIFT COUNTY BOARD OF EDUCATION

STATE BOARD OF EDUCATION

STATE OF GEORGIA

DAVID JOHNSON,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2000-27
	:	
TIFT COUNTY	:	
BOARD OF EDUCATION,	:	
	:	DECISION
Appellee.	:	

This is an appeal by David Johnson (Appellant) from a decision by the Tift County Board of Education (Local Board) to suspend him, with pay, until the end of the 1999-2000 school year from his position as assistant principal after finding him guilty of insubordination and other good and sufficient cause under the provisions of O.C.G.A. § 20-2-940 because of remarks he made to a newspaper reporter about the administration of the high school. Appellant claims that the Local Board's action infringed upon his right of free speech under the First Amendment to the Constitution of the United States. The Local Board claims that the issues raised on appeal are moot because the suspension period is over and Appellant is no longer employed by the Local Board. The Local Board's decision is sustained.

The Local Board employed Appellant as an assistant principal at the beginning of the 1999-2000 school year. In March 2000, Appellant was informed that he would not be recommended for contract renewal. Appellant then submitted his resignation, to be effective at the end of the school year, which the Local Board accepted. Shortly thereafter, a newspaper reporter called Appellant and asked for an interview to discuss his resignation. Appellant granted the interview.

On March 18, 2000, an article appeared in the local newspaper that discussed Appellant's resignation. The headline for the article was, "Principal rips school system." In the article, Appellant claimed there was no consistency in discipline because the principal rescinded his disciplinary actions upon orders of the Local Superintendent when the discipline involved friends of the Local Superintendent's son. Appellant also allegedly said that policies made at the school changed from day to day and from situation to situation. Appellant also complained to the reporter that he was supposed to be paid a higher salary than the Local Board was paying him and he was supposed to have had a two-year contract rather than a one-year contract. On March 23, 2000, the Local Superintendent charged Appellant with insubordination and other good and sufficient cause and suspended him with pay pending a hearing under the provisions of O.C.G.A. § 20-2-940.

The Local Board held a hearing on the charges and determined that Appellant was insubordinate because the allegations he made in the newspaper article were untrue and there was other good and sufficient cause for action. The Local Board suspended Appellant with pay until the end of his contract term. Appellant then appealed to the State Board of Education.

Appellant contends that he was not insubordinate in voicing his opinion about the operation of the school and the Local Board's action infringed on his right of free speech. The Local Board argues that since Appellant's statements were untrue, Appellant was insubordinate.

In *Pickering v. Board of Education*, 391 U.S. 563 (1968), the United States Supreme Court held that a public employee's speech is protected to the extent it is true and deals with issues of public importance. In the instant case, the Local Board established that much of what Appellant said was false. Since the speech was false, it was not protected by the First Amendment. Accordingly, the Local Board did not infringe upon Appellant's rights of free speech.

Appellant contends he was not insubordinate because there were no policies that prevented him from talking with the press. The Local Board argues that it is insubordinate to publicly and falsely accuse one's superiors of incompetency and dishonesty in the performance of their duties. The State Board of Education has limited insubordination to overt disobedience of a lawful directive from a superior. *See, e.g., West v. Habersham Cnty. Bd. of Educ.*, Case No. 1986-53 (Ga. SBE, 1987). In the instant case, Appellant did not disobey an order or directive of any superior. Although his statements were false, the State Board of Education concludes that Appellant was not insubordinate.

There was, however, other good and sufficient cause for the Local Board to suspend Appellant. The Local Board showed that Appellant failed to investigate situations to determine the facts, but, instead, chose to attribute false motives, attributes, and actions to the people he was supposed to work with. He then publicized his false conclusions, which had the effect of holding the principal and superintendent up to public ridicule and contempt, thus undermining their ability to provide leadership in the school system. At a minimum, there was evidence from which the Local Board could determine that Appellant displayed unprofessional conduct under the Code of Ethics for Educators¹. The State Board of Education, therefore, concludes that there was evidence to support the Local Board's decision.

¹ Standard 10 of the Code of Ethics provides: "An educator should demonstrate conduct that follows generally recognized professional standards. Unethical conduct is any conduct that seriously impairs the [professional's] ability to function professionally in his or her employment position..."

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board did not deny Appellant any of his rights of free speech and there was evidence to support the Local Board's decision to suspend Appellant, with pay, for other good and sufficient cause. Accordingly, the Local Board's decision is SUSTAINED.

This _____ day of September 2000.

Bruce Jackson
Vice Chairman for Appeals

APPENDIX C

MARTIN V. LOWNDES COUNTY BOARD OF EDUCATION

STATE BOARD OF EDUCATION

STATE OF GEORGIA

JUDY MARTIN,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2005-44
	:	
LOWNDES COUNTY	:	
BOARD OF EDUCATION,	:	
	:	DECISION
Appellee.	:	

This is an appeal by Judy Martin (Appellant) from a decision by the Lowndes County Board of Education (Local Board) to uphold the decision of the Local Superintendent to put a letter of reprimand in her personnel file concerning the manner in which she conducted herself when a parent objected to two novels that were on the advanced placement reading list.¹ In the letter of reprimand, the Local Superintendent claimed that Appellant acted inappropriately and unprofessionally. The Local Superintendent ordered Appellant to stop any further disruptive behavior and to abide by the administration's and Local Board's directives. Appellant claims that there was no evidence that she acted unprofessionally and that she followed the appropriate procedures in handling the parent's complaint. The Local Board's decision is reversed.

Appellant is a high school English teacher who teaches an advanced placement class. On August 24, 2004, a parent approached Appellant during an Open House function and demanded to know who was responsible for assigning a book, which she characterized as smut, for her daughter to read as a summer reading assignment. Appellant took the parent to the advanced placement coordinator, who was responsible for assigning the book and who had taught the book for several years. The three of them discussed the assignment of the book and the fact that the parent's daughter, who would be a senior, had already read the book. The parent was told that her daughter could read alternative books, but the parent insisted that the book was pornographic and filthy and she wanted it removed from the curriculum. She then said that she was going to go to the Local Board about the matter. Appellant and the advanced placement coordinator then advised the parent that the proper course of action would be to discuss the matter with the principal before going to the Local Board.

Two days later, the parent talked with the principal, who was unable to assuage the parent's concerns. The parent then complained to the Local Superintendent, who was also unable to placate the parent. The parent then raised community interest and had several of her friends attend a Local Board meeting to complain about the book.

¹ The offensive books were "The Bean Trees," by Barbara Kingsolver, and "The Bluest Eye," by Toni Morrison. Both books are on the State-approved list of books.

The Local Superintendent issued a letter of reprimand to Appellant because of her “inappropriate and unprofessional” conduct in handling the parent’s complaint. The Local Superintendent alleged that Appellant (1) “became confrontational during the initial meeting with the parent,” (2) “showed little consideration for the opinions of the parent,” (3) “failed to make a reasonable attempt to diffuse the situation,” (4) “made inappropriate intimidating comments regarding future class assignments,” (5) “divulged information to the public gained from students in the course of your employment...,” and (6) “exacerbated the situation by suggesting that if the required course material was offensive, the student should investigate an alternative academic selection.”

Appellant appealed to the Local Board and the Local Board upheld the Local Superintendent’s action. Appellant then filed a timely appeal to the State Board of Education.

The Local Board argues that Appellant (1) failed to follow its policy when she took the parent to the advanced placement coordinator before taking the parent to the principal, (2) told the parent that if she was offended by the book, then she certainly would be offended by the book assigned for the second semester, (3) told the parent that the student should not pursue an advanced placement course of study if she was not open to all types of literature, and (4) disclosed information about students to the local newspaper. Appellant claims that the evidence presented to the Local Board did not support the Local Superintendent’s allegations and that she followed Local Board policy in handling the situation.

“The standard for review by the State Board of Education is that if there is any evidence to support the decision of the local board of education, then the local board’s decision will stand unless there has been an abuse of discretion or the decision is so arbitrary and capricious as to be illegal. *See, Ransom v. Chattooga County Bd. of Educ.*, 144 Ga. App. 783, 242 S.E.2d 374 (1978); *Antone v. Greene County Bd. of Educ.*, Case No. 1976-11 (Ga. SBE, Sep. 8, 1976).” *Roderick J. v. Hart Cnty. Bd. of Educ.*, Case No. 1991-14 (Ga. SBE, Aug. 8, 1991).

The Local Superintendent claimed that Appellant became confrontational with the parent during their initial meeting. There was, however, no evidence that Appellant did not act in a professional manner in her meeting with the parent or that there was a confrontation between the two. The parent testified that Appellant did not appear to empathize with her or understand her position, but the parent did not testify that the meeting was confrontational. The lack of empathy or understanding, even if true, does not rise to the level of being unprofessional conduct.

The Local Superintendent claimed that Appellant showed little consideration for the opinions of the parent. There was no evidence that Appellant did not show any consideration for the parent’s opinion. The parent came into a room that was full of other parents and demanded to know who was responsible for assigning smut for her daughter to read. Appellant, who was not responsible for the book being included in the reading curriculum, offered an apology and said that she had just read the book and had not found it offensive. The parent insisted on knowing who was responsible and Appellant took her to the person who was responsible, the advanced placement coordinator. The parent was condemning the assignment of a book; it was her opinion that the book was smut and pornographic. Appellant attempted to defend the Local

Superintendent's administration by defending the book to the extent that she said she did not find the book offensive. It would be arbitrary and capricious for a local board to inflict sanctions on a teacher for supporting the local superintendent's administration.

The Local Superintendent claims that Appellant failed to make a reasonable attempt to diffuse the situation. Again, there was no evidence that Appellant failed to act professionally or failed to make a reasonable attempt to diffuse the situation. The parent was demanding to see who was responsible for assigning the book and Appellant took her to see the teacher who was responsible for assigning the book. Appellant also told the parent that accommodations could be made for the student in the future with alternative reading assignments. Appellant attempted to do as the parent requested, i.e., introduce her to the teacher who had sent out the reading list, attempted to show the parent a different viewpoint, and attempted to show the parent that her daughter would not be subjected to future books without the parent's approval. These were reasonable attempts to diffuse the situation.

The Local Superintendent claimed that Appellant made "inappropriate intimidating comments regarding future class assignments." In discussing the book, Appellant had remarked to the parent that if she found the book offensive, she would also find the book offered during the second semester offensive, but that the student could be offered an alternative book. We conclude that Appellant's attempt to reach an accommodation with the parent by observing that the parent would probably find future assignments offensive, and offering alternative reading assignments does not constitute inappropriate intimidating comments and, therefore, does not constitute unprofessional conduct.

The Local Superintendent also charged that Appellant divulged information to the public about some of her students. There was no evidence presented to support this charge, but there were references made to a letter that Appellant wrote to the newspaper to defend her position. The letter was not introduced into evidence, nor was it read into evidence, so the letter's contents are speculative. Although Appellant testified that she would not write a letter to the newspaper if a situation of this nature ever arose again, the writing of a letter to the newspaper is not *per se* unprofessional conduct, and does not, therefore, form any basis for disciplinary action without some evidence that Appellant violated some standard of conduct expected of teachers.

The Local Superintendent charged that Appellant "exacerbated the situation by suggesting that if the required course material was offensive, the student should investigate an alternative academic selection." Throughout the hearing, the Local Superintendent criticized Appellant for failing to reach a compromise with the parent, but then the Local Superintendent claims that Appellant's attempt to reach a compromise with the parent by offering alternative reading selections is evidence of unprofessional conduct. This position is inconsistent. As stated above, Appellant's attempt to reach an accommodation with the parent does not constitute unprofessional conduct.

The Local Superintendent also claims that Appellant failed to follow the Local Board policy by taking the parent to another teacher instead of taking her directly to the principal. The Local Board policy provides that problems should be handled at the lowest level possible, migrating from the teacher to the principal and then to the Local Superintendent. There was no

evidence that the policy prohibits a teacher from taking a parent to another teacher in an effort to diffuse the situation at the lowest possible level, especially when the parent is asking to talk to the responsible person and the other teacher is the responsible person. When the parent insisted that she was going to go to the Local Board, Appellant and the other teacher talked her into meeting with the principal, which was the method outlined in the policy. We conclude that there was no evidence to show that Appellant failed to follow Local Board policy.

The parent wanted the book removed from the curriculum, but Appellant did not have any authority to remove the book from the curriculum. Appellant offered alternatives to the parent, but the alternatives did not satisfy the parent's desire to remove the book from the curriculum. Although Appellant was unable to satisfy the parent, neither were the principal or the Local Superintendent able to satisfy the parent. We conclude that Appellant's inability to satisfy the parent's desires did not constitute unprofessional conduct or a violation of the Local Board's policy.

Based upon the foregoing, it is the opinion of the State Board of Education that there was no evidence to support the Local Board's decision to uphold the Local Superintendent's issuance of a letter of reprimand that charged Appellant with unprofessional conduct. Accordingly, the Local Board's decision is REVERSED.

This _____ day of June 2005.

William Bradley Bryant
Vice Chairman for Appeals

APPENDIX D

RAY V. LOWNDES COUNTY BOARD OF EDUCATION

STATE BOARD OF EDUCATION

STATE OF GEORGIA

FREDONIA RAY,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2005-45
	:	
LOWNDES COUNTY	:	
BOARD OF EDUCATION,	:	
	:	DECISION
Appellee.	:	

This is an appeal by Fredonia Ray (Appellant) from a decision by the Lowndes County Board of Education (Local Board) to uphold the decision by the Local Superintendent to issue a letter of reprimand to Appellant. The Local Superintendent issued the letter of reprimand to Appellant and charged her with unprofessional and inappropriate behavior because Appellant wrote a letter to the Local Board stating that she disagreed with the manner in which the Local Superintendent handled a controversy involving a book that was on the advanced placement curriculum. Appellant claims that her letter did not constitute an attack on the Local Superintendent. The Local Board's decision is sustained.

Appellant, an English teacher in the Lowndes County High School, served as the advance placement coordinator. In August 2004, a parent registered a complaint about a book that was on the reading list for advance placement students.¹ The Local Board policy on parent complaints about books provides for the appointment of a committee to review the book and make a recommendation to the Local Superintendent. If the complaining party is dissatisfied with the committee's recommendation, the party has the right to file an appeal with the Local Superintendent. Appellant was appointed to serve on the committee to review the book that the parent complained about.

The committee decided to keep the book in the curriculum but to inform parents that their children could select an alternate book to read if they found the book to be offensive. The Local Superintendent then wrote to the parent that he was "prohibiting the use of The Bean Trees and The Bluest Eye as required reading." Appellant felt the Local Superintendent had rejected the committee's recommendation without discussing the situation with anyone on the committee. Consequently, Appellant wrote a letter to the Local Board members and stated that the teachers had not received any support throughout the controversy involving the books and that she thought that the Local

¹ See, *Martin v. Lowndes Cnty. Bd. of Educ.*, Case No. 2005-44 (Ga. SBE, June 9, 2005) for more details on the protest.

Superintendent's rejection of the committee's decision was going to exacerbate the ill will that had been engendered during the controversy.

Upon receiving the letter, the Local Superintendent wrote a letter to Appellant in which he said that he felt that her actions were an attempt to undermine his authority and constituted a personal attack upon him. He ordered her to refrain from making any "further disruptive employment-related communications" regarding the book incident, and warned her that any further disruptive behavior would be considered insubordination. Appellant then appealed to the Local Board.

The Local Board, after conducting a hearing and receiving the above-stated information, voted to affirm the Local Superintendent's action. Appellant then filed an appeal to the State Board of Education.

Appellant claims on appeal that she had the right to write to the members of the Local Board to voice her concerns and that she did not violate any Local Board policy. The Local Board argues that if Appellant had concerns about the Local Superintendent's actions, she should have first gone to him and discussed them with him before going to the Local Board. Had she gone to the Local Superintendent, she would have learned that it was not his intent to circumvent the committee's decision, that he was merely placating the parent by couching the committee's decision in different language that emphasized the fact that a student did not have to read a book if they found it offensive.

"The standard for review by the State Board of Education is that if there is any evidence to support the decision of the local board of education, then the local board's decision will stand unless there has been an abuse of discretion or the decision is so arbitrary and capricious as to be illegal. *See, Ransum v. Chattooga County Bd. of Educ.*, 144 Ga. App. 783, 242 S.E.2d 374 (1978); *Antone v. Greene County Bd. of Educ.*, Case No. 1976-11 (Ga. SBE, Sep. 8, 1976)." *Roderick J. v. Hart Cnty. Bd. of Educ.*, Case No. 1991-14 (Ga. SBE, Aug. 8, 1991). In the instant case, there was evidence that Appellant did not discuss the Local Superintendent's response to the parent before she wrote a letter to the Local Board and that had she done so she could have avoided all of the subsequent turmoil created by her letter to the Local Board. Although it does not appear that Appellant violated any policy of the Local Board, and the Local Superintendent never accused her of violating any policy, a local superintendent does have the authority to issue letters to employees that direct them to refrain from disruptive activities or face the consequences of being charged with insubordination. Unlike the situation in *Martin v. Lowndes Cnty. Bd. of Educ.*, Case No. 2005-44 (Ga. SBE, June 9, 2005), this case does not involve a situation where a teacher is accused of unprofessional conduct without any support for such an accusation, but, instead, involves a simple directive from the Local Superintendent to an employee to refrain from what he, and the Local Board, deemed to be disruptive activity.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board did not abuse its discretion in affirming the Local Superintendent's

issuance of a cease and desist letter to Appellant. Accordingly, the Local Board's decision is
SUSTAINED.

This _____ day of June 2005.

William Bradley Bryant
Vice Chairman for Appeals

APPENDIX E

GEORGIA CODE OF ETHICS

F. D. Toth, Executive Secretary
Georgia Professional Standards Commission
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THE CODE OF ETHICS FOR EDUCATORS

Effective August 15, 2005

Introduction.

The Code of Ethics for Educators defines the professional behavior of educators in Georgia and serves as a guide to ethical conduct. The Professional Standards Commission has adopted standards that represent the conduct generally accepted by the education profession. The code protects the health, safety and general welfare of students and educators, ensures the citizens of Georgia a degree of accountability within the education profession, and defines unethical conduct justifying disciplinary sanction.

Definitions

"Certificate" refers to any teaching, service, or leadership certificate, license, or permit issued by authority of the Professional Standards Commission.

"Educator" is a teacher, school or school system administrator, or other education personnel who holds a certificate issued by the Professional Standards Commission and persons who have applied for but have not yet received a certificate. For the purposes of the Code of Ethics for Educators, "educator" also refers to paraprofessionals, aides, and substitute teachers.

"Student" is any individual enrolled in the state's public or private schools from preschool through grade 12 or any individual between and including the ages of 3 and 17.

"Complaint" is any written and signed statement from a local board, the state board, or one or more individual residents of this state filed with the Professional Standards Commission alleging that an educator has breached one or more of the standards in the Code of Ethics for Educators. A "complaint" will be deemed a request to investigate.

"Revocation" is the invalidation of any certificate held by the educator.

"Denial" is the refusal to grant initial certification to an applicant for a certificate.

"Suspension" is the temporary invalidation of any certificate for a period of time specified by the Professional Standards Commission.

"Reprimand" admonishes the certificate holder for his or her conduct. The reprimand cautions that further unethical conduct will lead to a more severe action.

"Warning" warns the certificate holder that his or her conduct is unethical. The warning cautions that further unethical conduct will lead to a more severe action.

"Monitoring" is the quarterly appraisal of the educator's conduct by the Professional Standards Commission through contact with the educator and his or her employer. As a condition of monitoring, an educator may be required to submit a criminal background check (GCIC). The Commission specifies the length of the monitoring period.

Standards

Standard 1: Criminal Acts - An educator should abide by federal, state, and local laws and statutes. Unethical conduct includes but is not limited to the commission or conviction of a felony or of any crime involving moral turpitude. As used herein, conviction includes a finding or verdict of guilty, or a plea of *nolo contendere*, regardless of whether an appeal of the conviction has been sought; a situation where first offender treatment without adjudication of guilt pursuant to the charge was granted; and a situation where an adjudication of guilt or sentence was otherwise withheld or not entered on the charge or the charge was otherwise disposed of in a similar manner in any jurisdiction.

Standard 2: Abuse of Students - An educator should always maintain a professional relationship with all students, both in and outside the classroom. Unethical conduct includes but is not limited to:

1. committing any act of child abuse, including physical and verbal abuse;
2. committing any act of cruelty to children or any act of child endangerment;
3. committing or soliciting any unlawful sexual act;
4. engaging in harassing behavior on the basis of race, gender, sex, national origin, religion or disability;
5. soliciting, encouraging, or consummating an inappropriate written, verbal, or physical relationship with a student; and
6. furnishing tobacco, alcohol, or illegal/unauthorized drugs to any student or allowing a student to consume alcohol, or illegal/unauthorized drugs.

Standard 3: Alcohol or Drugs - An educator should refrain from the use of alcohol or illegal or unauthorized drugs during the course of professional practice. Unethical conduct includes but is not limited to:

1. being on school premises or at a school-related activity involving students while under the influence of, possessing, using, or consuming illegal or unauthorized drugs; and
2. being on school premises or at a school-related activity involving students while documented as being under the influence of, possessing, or consuming alcoholic beverages. A school-related activity includes, but is not limited to, any activity sponsored by the school or school system (booster clubs, parent-teacher organizations, or any activity designed to enhance the school curriculum i.e. Foreign Language trips, etc).

Standard 4: Misrepresentation or Falsification - An educator should exemplify honesty and integrity in the course of professional practice. Unethical conduct includes but is not limited to:

1. falsifying, misrepresenting, omitting or erroneously reporting professional qualifications, criminal history, college or staff development credit and/or degrees, academic award, and employment history when applying for employment and/or certification or when recommending an individual for employment, promotion, or certification;
2. falsifying, misrepresenting, omitting or erroneously reporting information submitted to federal, state, and other governmental agencies;
3. falsifying, misrepresenting, omitting or erroneously reporting information regarding the evaluation of students and/or personnel;
4. falsifying, misrepresenting, omitting or erroneously reporting reasons for absences or leaves; and
5. falsifying, misrepresenting, omitting or erroneously reporting information submitted in the course of an official inquiry/investigation.

Standard 5: Public Funds and Property - An educator entrusted with public funds and property should honor that trust with a high level of honesty, accuracy, and responsibility. Unethical conduct includes but is not limited to:

1. misusing public or school-related funds;
2. failing to account for funds collected from students or parents;
3. submitting fraudulent requests for reimbursement of expenses or for pay;
4. co-mingling public or school-related funds with personal funds or checking accounts; and
5. using school property without the approval of the local board of education/governing board.

Standard 6: Improper Remunerative Conduct - An educator should maintain integrity with students, colleagues, parents, patrons, or businesses when accepting gifts, gratuities, favors, and additional compensation. Unethical conduct includes but is not limited to:

1. soliciting students or parents of students to purchase equipment, supplies, or services from the educator or to participate in activities that financially benefit the educator unless approved by the local board of education/governing board;
2. accepting gifts from vendors or potential vendors for personal use or gain where there may be the appearance of a conflict of interest;
3. tutoring students assigned to the educator for remuneration unless approved by the local board of education/governing board or superintendent; and
4. coaching, instructing, promoting athletic camps, summer leagues, etc. that involves students in an educator's school system and from whom the educator receives remuneration unless approved by the local board of education/governing board or the superintendent. These types of activities must be in compliance with all rules and regulations of the Georgia High School Association.

Standard 7: Confidential Information - An educator should comply with state and federal laws and local school board/governing board policies relating to the confidentiality of student and personnel records, standardized test material and other information covered by confidentiality agreements. Unethical conduct includes but is not limited to:

1. sharing of confidential information concerning student academic and disciplinary records, personal confidences, health and medical information, family status and/or income, and assessment/testing results, unless disclosure is required or permitted by law;
2. sharing of confidential information restricted by state or federal law;
3. violation of confidentiality agreements related to standardized testing including copying or teaching identified test items, publishing or distributing test items or answers, discussing test items, violating local school system or state directions for the use of tests or test items, etc.;
4. violation of other confidentiality agreements required by state or local policy.

Standard 8: Abandonment of Contract - An educator should fulfill all of the terms and obligations detailed in the contract with the local board of education or education agency for the duration of the contract. Unethical conduct includes but is not limited to:

1. abandoning the contract for professional services without prior release from the contract by the employer, and
2. willfully refusing to perform the services required by a contract.

Standard 9: Failure to Make a Required Report - An educator should file reports of a breach of one or more of the standards in the Code of Ethics for Educators, child abuse (O.C.G.A. §19-7-5), or any other required report. Unethical conduct includes but is not limited to:

1. failure to report all requested information on documents required by the Commission when applying for or renewing any certificate with the Commission;
2. failure to make a required report of a violation of one or more standards of the Code of Ethics for educators of which they have personal knowledge as soon as possible but no later than ninety (90) days from the date the educator became aware of an alleged breach unless the law or local procedures require reporting sooner;
3. failure to make a required report of any violation of state or federal law soon as possible but no later than ninety (90) days from the date the educator became aware of an alleged breach unless the law or local procedures require reporting sooner. These reports include but are not limited to: murder, voluntary manslaughter, aggravated assault, kidnapping, any sexual offense, any sexual exploitation of a minor, any offense involving a controlled substance and any abuse of a child if an educator has reasonable cause to believe that a child has been abused.

Standard 10: Professional Conduct - An educator should demonstrate conduct that follows generally recognized professional standards. Unethical conduct is any conduct that impairs the certificate holder's ability to function professionally in his or her employment position or a pattern of behavior or conduct that is detrimental to the health, welfare, discipline, or morals of students.

Reporting

Educators are required to report a breach of one or more of the Standards in the Code of Ethics for Educators as soon as possible but no later than ninety (90) days from the date the educator became aware of an alleged breach unless the law or local procedures require reporting sooner. Educators should be aware of local policies and procedures and/or the chain of command for reporting unethical conduct. Complaints filed with the Professional Standards Commission must be in writing and must be signed by the complainant (parent, educator, personnel director, superintendent, etc.). The Commission notifies local and state officials of all disciplinary actions. In addition, suspensions and revocations are reported to national officials, including the NASDTEC Clearinghouse.

Disciplinary Action

The Professional Standards Commission is authorized to suspend, revoke, or deny certificates, to issue a reprimand or warning, or to monitor the educator's conduct and performance after an investigation is held and notice and opportunity for a hearing are provided to the certificate holder. Any of the following grounds shall be considered cause for disciplinary action against the holder of a certificate:

1. unethical conduct as outlined in The Code of Ethics for Educators, Standards 1-10 (PSC Rule 505-6-.01);
2. disciplinary action against a certificate in another state on grounds consistent with those specified in the Code of Ethics for Educators, Standards 1-10 (PSC Rule 505-6-.01);
3. order from a court of competent jurisdiction or a request from the Department of Human Resources that the certificate should be suspended or the application for certification should be denied for non-payment of child support (O.C.G.A. §19-6-28.1 and §19-11-9.3);
4. notification from the Georgia Higher Education Assistance Corporation that the educator is in default and not in satisfactory repayment status on a student loan guaranteed by the Georgia Higher Education Assistance Corporation (O.C.G.A. §20-3-295);
5. suspension or revocation of any professional license or certificate
6. violation of any other laws and rules applicable to the profession (O.C.G.A. §16-13-111); and
7. any other good and sufficient cause that renders an educator unfit for employment as an educator.

An individual whose certificate has been revoked, denied, or suspended may not serve as a volunteer or be employed as an educator, paraprofessional, aide, substitute teacher or in any other position during the period of his or her revocation, suspension or denial for a violation of The Code of Ethics.

Authority O.C.G.A. § 20-2-200; 20-2-981 through 20-2-984.5