A Question of Remediability: Standards of Conduct for Illinois Public School Teachers

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COMMENT
A QUESTION OF REMEDIABILITY:
STANDARDS OF CONDUCT
FOR ILLINOIS PUBLIC SCHOOL TEACHERS

In July, 1884, William T. Vaughn, a public school teacher, was arrested on a charge of assault with intent to commit rape. Although he was acquitted of the charge, the local school board cancelled his teaching contract for that fall. Vaughn sued, but the Illinois Appellate Court for the Third District upheld the board's action, basing its decision on a finding that knowledge of Vaughn's actions had become widespread.

Today, the more than 1,000 school boards in Illinois can dismiss any of the state's approximately 100,000 full-time teachers for any of a variety of reasons. During the past several years, however, the dismissal procedure has become increasingly complex and confusing as the Illinois Legislature and courts have promulgated four statutes and a maze of conflicting case

2. Id. at 348. The court justified its decision to affirm the dismissal by stating that Vaughn lacked the "innate virtue and morality that the law contemplates should be, and parents have a right to expect are, possessed by" teachers. Id. at 349-50.
3. The most recently published figure is 1,025 operating school districts as of fall, 1977. NATIONAL CENTER FOR EDUC. STATISTICS, DIGEST OF EDUCATION STATISTICS 1979, at 60 (1979) [hereinafter cited as DIGEST].
4. A board of education is an agency of the state, created by statute, which is directly responsible for the management of a local district. See McCurdy v. Board of Educ. (Bloomington), 359 Ill. 188, 194 N.E. 287 (1934).
5. See DIGEST, supra note 3, at 53, which estimates the figure to be 107,000. Public, full-time teachers, and part-time teachers are included in the figure as full-time equivalents. Id.
7. See ILL. REV. STAT. ch. 122, §§ 10-22.4, 24-11, -12 (1977); ILL. ANN. STAT. ch. 122, § 34-85 (Smith-Hurd Supp. 1979). Sections 10-22.4, 24-11, and 24-12 apply to municipalities with a population of less than 500,000. Section 34-85 applies to municipalities with a population over 500,000, that is, Chicago. See Chicago Teachers Union v. Board of Educ. (Chicago), 14 Ill. App. 3d 154, 301 N.E.2d 833 (1st Dist. 1973).

Section 10-22.4 provides as follows:

Dismissal of teachers. To dismiss a teacher for incompetency, cruelty, negligence, immorality or other sufficient cause and to dismiss any teacher, whenever, in its opinion, he is not qualified to teach, or whenever, in its opinion, the interests of the schools require it, subject, however, to the provisions of Sections 24-10 to
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law in an attempt to balance the conflicting interests of school boards and teachers. School boards, accountable to the communities they serve, must provide the best possible educational system for their students. Although teachers share this general goal, their professional reputations and source of livelihood are at stake whenever a school board seeks to dismiss a teacher. Consequently, teachers desire to protect their jobs against arbitrary and unfair actions by boards.

During the dismissal process, all interested parties focus their concern on a teacher's conduct. If the conduct is remediable, the Illinois School Code requires that a teacher be served with a warning notice and granted an opportunity to correct the deficient conduct. If, however, the conduct is irremediable, or if a teacher fails to remediate deficient conduct after receiving a warning notice, a school board can remove the teacher by issuing a notice of dismissal. After serving a notice of dismissal, a school board must schedule a hearing to be held by an independent hearing officer employed by the Illinois State Board of Education. Thereafter, a party

24-15, inclusive. Temporary mental or physical incapacity to perform teaching duties, as found by a medical examination, is not a cause for dismissal. Marriage is not a cause of removal.


8. Kelleghan, The 'Guiding Star' in Teacher Dismissals, 52 ILL. B. J. 422, 425 (1964) [hereinafter cited as Kelleghan]. The author states that the “leading cases demonstrate an inability to agree on what is a 'remediable' cause for purposes of notice of dismissal under the Tenure Act,” because “the statute is itself intrinsically unsusceptible to any test other than purely subjective opinion.” Id.


12. This term of art refers to the ability of a teacher to relieve or cure his or her conduct, i.e., to bring the conduct to a level considered by a board of education to be appropriate. Thus, if conduct is irremediable, damage has been done that cannot be repaired or corrected. Grissom v. Board of Educ. (Buckley-Loda Dist. No. 8), 75 ILL. 2d 314, 331-32, 388 N.E.2d 398, 405 (1979).


15. Id.
may appeal a hearing officer’s decision to the Illinois circuit courts, pursuant to the Administrative Review Act.\textsuperscript{16}

Upon review, a court asks: (a) Was the teacher protected by due process procedures during the dismissal procedures? (b) Did the school board correctly characterize the allegedly deficient conduct as remediable or irremediable?\textsuperscript{17} Illinois’ courts have not clearly defined either the standards of conduct or the factors that boards, hearing officers, and courts should consider when determining whether a teacher should be dismissed. Furthermore, Illinois hearing officers and courts should consider private sector labor law factors relevant to the surrounding circumstances in which the alleged deficient conduct occurred.

This Comment examines the question of remediability as addressed in hearing officer and court decisions. The various factors involved in a teacher’s dismissal are explored and nine general categories of teacher conduct that may result in dismissal proceedings are delineated.\textsuperscript{18} Within each category, current and proposed standards for determining whether deficient conduct is remediable or irremediable are detailed, and examples from hearing officer and court cases are discussed. In addition, the types of evidence necessary to sustain a school board’s decision to dismiss a teacher are considered. Throughout these discussions, the goals are to set forth the guidelines for teacher conduct that have emerged from dismissal proceedings, to highlight the unanswered questions that require resolution by the Illinois General Assembly and courts, and to consider the proper roles of the General Assembly, local school boards, and judicial system in teacher dismissals.

**DISMISSAL PROCEDURE: AN OVERVIEW**

A. A Grant of Tenure and a School Board’s Actions

Section 10-22.4 of the Illinois School Code grants a school board the power to dismiss a teacher,\textsuperscript{19} subject only to limitation by the Teacher Tenure Act.\textsuperscript{20} This Act delineates the process of obtaining contractual con-


\textsuperscript{17} This Comment focuses on the standards of remediability and irremediability. Although due process requirements are not analyzed, see note 77 \textit{infra} for a digest of leading cases in that area.

\textsuperscript{18} See text at pages 536-52. The nine categories are (1) incompetency; (2) improper disciplinary techniques; (3) personal misconduct; (4) insubordination; (5) violation of school rules; (6) teacher absences; (7) inadequate teaching qualifications; (8) dismissal in the best interest of the school; and (9) miscellaneous.

\textsuperscript{19} ILL. REV. STAT. ch. 122, § 10-22.4 (1977). See note 7 \textit{supra}.

continued service (tenure) and assures that the dismissal of a tenured teacher will be based on cause rather than partisanship or caprice. Section 24-

22. "Cause" was defined in Jepsen v. Board of Educ. (Dist. No. 307, Kankakee County), 19 Ill. App. 2d 204, 153 N.E.2d 417 (2d Dist. 1958), as "some substantial shortcoming which renders continuance in . . . office or employment in some way detrimental to the discipline and efficiency of the service and something which the law and a sound public opinion recognize as good cause for his no longer occupying the place." Id. at 207, 153 N.E.2d at 419, quoting Murphy v. Houston, 250 Ill. App. 385, 394 (1st Dist. 1928). In Sausbier v. Wheeler, 252 App. Div. 267, 299 N.Y.S. 466 (3d Dep't 1937), the court asserted that cause "must be one which specifically relates to and affects the administration of the office, . . . must be restricted to something of a substantial nature directly affecting the rights and interest of the public . . . and must be one touching the qualifications of the officer or his performance of his duties." Id. at 270-71, 299 N.Y.S. at 472.

Although the Teacher Tenure Act clearly applies to dismissals, a current controversy is whether the due process requirements of section 24-12 apply with equal force to suspensions. A conflict on this issue currently exists between two districts of the Illinois Appellate Court. In Caviness v. Board of Educ. (Ludlow Dist. No. 142), 59 Ill. App. 3d 28, 375 N.E.2d 157 (4th Dist. 1978), the court, referring to the purpose of the Teacher Tenure Act, ruled that the "words 'removed' or 'dismissed,' . . . must encompass any reduction in the extent of employment," including suspensions. Id. at 30-31, 375 N.E.2d at 158 (emphasis in original).

The Third District Appellate Court agreed. Craddock v. Board of Educ. (Annawan Dist. No. 226), 76 Ill. App. 3d 43, 391 N.E.2d 1059 (3d Dist. 1979), appeal docketed, No. 52415 (Ill. Sup. Ct. Aug. 29, 1979). In Craddock, because the board did not comply with the procedures set forth in section 24-12, the court affirmed summary judgment for the teacher, thus invalidating a three-day suspension for calling a student a "son of a bitch." Id. at 46, 391 N.E.2d at 1061. Justice Alloy dissented, noting that sections 10-22.4 and 24-12 do not expressly mention suspension and that although the "complex and costly procedures" of a hearing before an impartial hearing officer "make sense" for a dismissal, they "border on the ridiculous" for temporary discipline. Id. at 48, 391 N.E.2d at 1063 (Alloy, J., dissenting).

Specifically adopting Alloy's dissent, the First District Appellate Court upheld a teacher's suspension in a similar situation. Kearns v. Board of Educ. (N. Palos Dist. No. 117), 73 Ill. App. 3d 907, 392 N.E.2d 148 (1st Dist. 1979). The court stated that the teacher was not entitled to the procedural requirements of section 24-12. Id. at 912, 392 N.E.2d at 152. As support, the court also cited Englebrecht v. Hudson, No. 77-C-429 (N.D. Ill. March 17, 1979) (memorandum opinion and order), which ruled that the procedural requirements were not required. Nevertheless, the Craddock court, in a supplemental opinion denying a motion for a rehearing, specifically disagreed with the United States District Court and reaffirmed its decision. 76 Ill. App. 3d at 52, 391 N.E.2d at 1066. The conflict may be resolved when the Illinois Supreme Court issues its opinion in the Craddock case.

23. Donahoo v. Board of Educ. (Dist. No. 303, Moultrie County), 413 Ill. 422, 109 N.E.2d 787 (1952). The court stated that the purpose of the Teacher Tenure Act was "to improve the Illinois school system by assuring teachers of experience and ability a continuous service and a rehiring based upon merit rather than failure to rehire upon reasons that are political, partisan or capricious." Id. at 425, 109 N.E.2d at 789. Accord, Caviness v. Board of Educ., 59 Ill. App. 3d at 31, 375 N.E.2d at 158 (affirmed order that tenured teacher be reassigned to a full-time teaching position because the Act protects teachers "against capricious, fickle and irregular exploits of school boards"); Relph v. Board of Educ. (DePue Dist. No. 103), 51 Ill. App. 3d 1036, 1039-40, 366 N.E.2d 1125, 1127-28 (3d Dist. 1977) (discharged teacher entitled to employment in a position created within one year of discharge); Kallas v. Board of Educ. (Marshall Dist. No. C-2), 15 Ill. App. 3d 450, 454, 304 N.E.2d 527, 529-30 (4th Dist. 1973) (affirmed dismissal of teacher, although the court recognized that "the Teacher Tenure Law has as its benign purpose job security for worthy teachers and serves as a protective shield against dismissal for trivial, political, capricious or arbitrary causes"); Miller v. Board of Educ. (Dist. No. 132,
12's due process requirements, which are triggered when a teacher acquires tenure under the provisions of section 24-11, do not apply to non-tenured, probationary teachers. During probation, a board can dismiss a teacher for any constitutionally permissible reason, unless the dismissal will affect the teacher's good name, reputation, honor, or integrity. In

Cook County), 51 Ill. App. 2d 20, 28, 200 N.E.2d 838, 842 (1st Dist. 1964) (Teacher Tenure Act protects teachers who serve "at the mercy of the school boards"). See generally Kelleghan, supra note 8; Legislative Development, Teacher Dismissal Legislation: The Nevada Approach, 6 Harv. J. on Legis. 112, 121 (1968). The author stated that tenure provisions insulate teachers from politics, i.e., parental control over the schools. According to the author, the provisions lead to mistrust by parents and students as their control over their community schools is decreased. Id.


25. Id. § 24-11.

26. See, e.g., Titchener v. Avery Coonley School, 39 Ill. App. 3d 871, 350 N.E.2d 502 (2d Dist. 1976) (no due process guarantee of procedural rights of a hearing for the nonrenewal of a contract during probation); Wesclin Educ. Ass'n v. Board of Educ., 30 Ill. App. 3d 67, 331 N.E.2d 335 (5th Dist. 1975) (the only statutory requirements for probationary teachers are dismissal for one of the statutory grounds and written notice at least 60 days before the end of the school term).

A probationary teacher has the "least amount of protection," and a school board has the "maximum amount of flexibility" in dismissing such a teacher. Rockford Educ. Ass'n v. Board of Educ. (Dist. No. 205, Winnebago County), 11 Ill. App. 3d 78, 206 N.E.2d 100, 102 (2d Dist. 1973). Finally, section 24-12 explicitly states that it applies only to tenured teachers.

Section 24-11 of the Illinois School Code creates three types of teachers—first-year probationary teachers, second-year probationary teachers, and tenured teachers. ILL. REV. STAT. ch. 122, § 24-11 (1977). To dismiss a first-year probationary teacher, a board must send the teacher written notice at least 60 days before the end of the school year. A board need not give reasons for dismissal. Id. To dismiss a second-year probationary teacher, a board must specify the reasons for dismissal in the written notice. Id. At the end of the second year, however, a board can, under certain circumstances, extend a teacher's probation to a third year by giving notice of extension and stating the reasons for the action and the corrective measures required of the teacher to enter into tenured status at the end of the third year. See Graham v. Board of Educ. (Dist. No. 77, St. Clair County), 15 Ill. App. 3d 1092, 305 N.E.2d 310 (5th Dist. 1973). The Graham court stated that "the General Assembly did not intend for the optional third year of probation to be required for all new teachers," and that the "Board's policy of automatic extension of the probationary period is contrary to the intent of Section 24-11." Id. at 1098, 305 N.E.2d at 315. But see Donahoo v. Board of Educ., 413 Ill. 422, 109 N.E.2d 787 (1952) (section 24-11's language is mandatory and teacher acquired tenure by completing the two-year period). Accord, Bessler v. Board of Educ. (Dist. No. 150, Peoria County), 69 Ill. 2d 191, 197, 370 N.E.2d 1050, 1053 (1977), Brunstrom v. Board of Educ. (Riverside Dist. No. 100), 52 Ill. App. 3d 653, 658, 367 N.E.2d 1065, 1066-67 (3d Dist. 1977).

The grant of tenure, however, is not de facto, because the legislature intended to provide a second-year probationary teacher who showed promise an extra chance to meet the standards of tenure. Jackson v. Board of Educ. (Trico Dist. No. 176), 63 Ill. App. 3d 671, 675, 305 N.E.2d 41, 45 (5th Dist. 1978).

27. For example, a Board cannot dismiss a teacher for exercising constitutionally guaranteed rights, but can dismiss a teacher for any other reasons. Miller v. School Dist. No. 167 (Cook County), 500 F.2d 711, 712 (7th Cir. 1974); Newborn v. Morrison, 400 F. Supp. 623 (S.D. Ill. 1977).

these cases, procedural due process is required before a dismissal is constitutionally valid.29 A teacher who is not dismissed at the end of the probationary period automatically becomes tenured,30 and acquires a property interest in the teaching position,31 and is legitimately entitled to the procedural due process protections of section 24-12.32

Pursuant to section 24-12, a school board’s first task is to characterize a teacher’s allegedly deficient conduct as remediable or irremediable. If the conduct is remediable, a board issues and serves upon a teacher a notice to remedy, or, in the language of the statute, a “reasonable warning in writing, stating specifically the causes [i.e., deficient conduct] which, if not removed, may result in charges” of dismissal.33 After specifically detailing the charges

Constantineau, 400 U.S. 433, 437 (1971); Austin v. Board of Educ. (Georgetown Dist. No. 3), 562 F.2d 446, 449 (7th Cir. 1977). In Austin, the court stated that a hearing is required to allow a non-tenured teacher the opportunity to clear his or her name when a school board has created a false and defamatory impression about the dismissal. Id.

29. Board of Regents v. Roth, 408 U.S. 564 (1972). The Court stated that “where a person’s good name, reputation, or integrity is at stake, because of what the government is doing to him, notice and an opportunity to be heard are essential.” Id. at 573.


32. Board of Regents v. Roth, 408 U.S. at 577. See Barszcz v. Board of Trustees (Community College Dist. No. 504), 400 F. Supp. 675, 677 (N.D. Ill. 1975), aff’d, 539 F.2d 715 (7th Cir. 1976), cert. dismissed, 429 U.S. 1080 (1976).


33. ILL. REV. STAT. ch. 122, § 24-12 (1977). Accord, Miller v. Board of Educ., 51 Ill. App. 2d at 28, 200 N.E.2d at 842. The court stated that “before serving notice of such charges, [the board] must give the teacher a written warning notice, stating with particularity the causes which, if not removed, may result in the bringing of dismissal charges.” Id. The court also advised that a board “put itself on record.” Id. at 573, 200 N.E.2d at 843. Accord, Yesnowski v. Board of Educ. (Byron Dist. No. 226), 28 Ill. App. 2d 119, 123, 328 N.E.2d 23, 27 (1975).

Applying this rule of law to charges in a notice to remedy or a notice of dismissal, an appellate court found vague the charge of “[f]ailure to effectively perform and carry out your instructional duties.” Hutchison v. Board of Educ. (Greenfield Dist. No. 10), 32 Ill. App. 2d 247, 250, 177 N.E.2d 420, 423 (3d Dist. 1961). In addition, the charge that the best interest of the schools requires a teacher’s dismissal has also been found to be insufficient. Wells v. Board of Educ. (Dist. No. 64, Cook County), 85 Ill. App. 2d 312, 318-19, 230 N.E.2d 6, 10 (1st Dist. 1967). Cf. Keyes v. Board of Educ. (Maroa Dist. No. 2), 20 Ill. App. 2d 763, 766-67 (3d Dist. 1959) (affirmed dismissal of superintendent, finding that he participated in fomenting controversies, conflicts, and dissension in the school district).
against a teacher, the notice advises a teacher to correct specific deficiencies, so that a reviewing court can pass judgment on a board's characterization of the conduct. Therefore, if a board characterizes remediable conduct as irremediable and fails to issue a warning notice, it lacks jurisdiction to dismiss the teacher. The dismissal is void, and the teacher will be reinstated or receive other relief.

Because a warning notice is required for remediable causes, a teacher must have a reasonable time and opportunity to confront and correct the alleged deficient conduct. Fairness dictates that a board first should calculate the necessary period of remediation, then gauge the probable speed of remediation and, after a reasonable period of time, determine the likelihood of a teacher's total remediation. Illinois courts have yet to determine the length of a "reasonable" period of time. The duration of this period should depend on the type of conduct involved. For example, a teacher may need more time to correct incompetent teaching methods than to correct a lack of cooperation with fellow teachers and administrators. Additionally, a teacher's awareness of the problems, the specific circumstances of the alleged deficient conduct, a teacher's personality, and the length of a

36. Grissom v. Board of Educ. 75 Ill. 2d at 333, 388 N.E.2d at 406. See Paprocki v. Board of Educ. (McHenry Dist. No. 156), 31 Ill. App. 3d 112, 114, 334 N.E.2d 841, 844 (2d Dist. 1975) (reversed dismissal because the causes were remediable at one time but the board lacked jurisdiction because it failed to send warning notice).

This ruling may apply only to school boards falling under section 24-12. As a hearing officer explained, section 24-12's requirements apply to small school districts, where a board can give the warning notice. When considering Chicago, however, the legislature recognized the impracticality of the board giving the warning notice and intended that it be given by supervisory officials. Carter v. Chicago Bd. of Educ., at 8 (April 17, 1979) (Wilson, H.O.), appeal docketed, No. 79-L-10752 (Cook County Cir. Ct. May 18, 1979). The Illinois School Code contains a set of provisions that apply just to the City of Chicago. See ILL. REV. STAT. ch. 122, §§ 34-1 to 34-127 (1977); ILL. ANN. STAT. ch. 122, § 34-128 (Smith-Hurd Supp. 1979).

39. To correct a charge of incompetency, a teacher will have to learn and implement new and better teaching techniques. The teacher will also need training and guidance in proper planning and classroom instruction. To correct a charge of lack of cooperation, however, less time is necessary; the teacher need only change his or her attitude.

41. Freeburg Consol. School v. Graham (Aug. 3, 1976) (Forman, H.O.). The hearing officer ruled that 23 days was insufficient to complete training in a new subject area. Id. at 5.
teacher's employment should be examined as part of the surrounding circumstances.

If a teacher does not correct the alleged deficient conduct within a reasonable period after receiving a warning notice, or if the conduct was originally irremediable, a board can move to dismiss a teacher by issuing and serving upon a teacher a notice of dismissal containing specific charges and a bill of particulars. Only a school board can take this action; it cannot be delegated to a third person.

B. The Tests of Irremediability

A board's most important task is to characterize allegedly deficient conduct as remediable or irremediable. The Illinois Supreme Court has formulated three general criteria that hearing officers and courts must consider in determining the correctness of a board's decision. First, hearing officers and courts consider whether damage was done to the students, faculty, or school, and whether the conduct causing the damage could have been corrected if

43. Board of Educ. (Waltonville Dist. No. 1) v. Hart (Jan. 9, 1979) (Schelthoff, H.O.). The hearing officer ruled that 53 days was insufficient to remediate the deficiencies in light of the testimony and the length of the teacher's employment. Id. at 2. See F. ELKOURI & E. ELKOURI, HOW ARBITRATION WORKS (3d ed. 1973) [hereinafter cited as ELKOURI & ELKOURI]. The authors state that "[s]ame consideration generally is given to the past record of any disciplined or discharged employee. An offense may be mitigated by a good past record and it may be aggravated by a poor one." Id. at 638.

44. See Paprocki v. Board of Educ., 31 Ill. App. 3d at 112, 334 N.E.2d at 841 (2d Dist. 1975) (failure to correct remedial grounds, after a warning notice was given, justified dismissal).

45. Welch v. Board of Educ., 45 Ill. App. 3d at 38, 358 N.E.2d at 1366. See Miller v. Board of Educ., 51 Ill. App. 2d at 30, 200 N.E.2d at 843. In Miller, the court ruled that if a board dismisses a teacher without a warning notice, the courts will infer that the board "determined that the charges were irremediable." Id.


47. Paprocki v. Board of Educ., 31 Ill. App. 3d at 114-15, 334 N.E.2d at 843-44, quoting Stroh v. Casner, 201 Ill. App. 281, 286 (3d Dist. 1916). The court in Stroh stated that the "discretionary powers should be exercised by those who have been chosen by the people as members of these respective boards . . . and not by such persons and others jointly." 201 Ill. App. at 286. See Illinois Educ. Ass'n Local Community High School Dist. 218 v. Board of Educ. (Dist. No. 218, Cook County), 23 Ill. App. 3d 649, 320 N.E.2d 240 (1st Dist. 1974); Board of Educ. (S. Stickney Dist. 111), v. Johnson, 21 Ill. App. 3d at 482, 315 N.E.2d 634 (1st Dist. 1974).

48. Wells v. Board of Educ., 85 Ill. App. 2d at 319-20, 230 N.E.2d at 11. Accord, Classroom Teachers Ass'n v. Board of Educ. (United Dist. No. 30, East Moline), 15 Ill. App. 3d 224, 304 N.E.2d 516 (3d Dist. 1973). The court stated that "a public employer such as a board of education, in the absence of a statute, cannot negotiate a collective bargaining agreement which involves a surrender of its legal discretion." Id. at 227, 304 N.E.2d at 519. See also Litin v. Board of Educ. (Chicago), 72 Ill. App. 3d 899, 893, 391 N.E.2d 62, 65 (1st Dist. 1979), appeal denied, No. 52294 (Ill. S. Ct. Nov. 13, 1979). The court in Litin applied this ruling to section 34-85, which covers dismissals in municipalities with populations over 500,000 and stated that only the board can determine whether the causes are remediable and, if they are remediable, serve the required warning notice. Id.
the teacher had been warned by his or her superiors. A second criterion is whether causes that originally were remediable became irremediable by continuing over a long period of time. Finally, a hearing officer or court considers whether individually remediable causes became irremediable because they existed in combination with other causes for dismissal.

The first test used to identify irremediable conduct is two-pronged. Not only must a school board demonstrate that the students, faculty, or school suffered damage, but it also must show that the teacher could not have corrected the deficient conduct if he or she had been warned. The degree of required damage is damage that is so severe as to justify dismissal absent service of a warning notice. In other words, the damage is so severe that the deficient conduct is originally irremediable in nature. This is a high standard, a standard that is higher than that for remediable conduct that becomes irremediable because a teacher fails to remedy deficient conduct specified in a warning notice. Consequently, school boards must realize that they must meet a heavy burden of proof to establish the conduct's irremediability. Although hearing officers and courts will define the parameters of this standard on a case-by-case basis, school boards must now weigh carefully a decision to dismiss a teacher without serving a warning notice and without affording the teacher an opportunity to remedy the deficient conduct.

At least one appellate court has further limited the amount of required damage by suggesting that hearing officers and courts also should consider whether the evidence of damage relates merely to isolated incidents. Deficient conduct may occur only once or twice during an entire school year. Viewed in the context of a teacher's entire employment history, therefore, a hearing officer or court may determine that the damage was not severe and that a decision to reverse the dismissal may be equitable and reasonable.

A teacher's receptiveness to a superior's instructions and suggestions may indicate the remediability of a teacher's conduct. If a teacher does not

50. Id.
51. Gilliland v. Board of Educ., 67 Ill. 2d at 154, 365 N.E.2d at 327. In Gilliland, the parties debated whether certain causes were per se remediable or irremediable. The appellee listed thirty different behaviors asserted as per se remediable. Brief for Appellee at 42-44.
54. Grissom v. Board of Educ., 75 Ill. 2d at 332, 388 N.E.2d at 405.
56. Grissom v. Board of Educ., 75 Ill. 2d at 332, 388 N.E.2d at 406.
cooperate with his or her superiors, or if a warning notice would be futile, the conduct will be considered irremediable.\textsuperscript{57} Additionally, hearing officers and courts should examine the surrounding circumstances. Thus, as one appellate court noted, the evidence supporting a dismissal should show that a teacher's superiors complained to the teacher and demanded changes or that the teacher would not have corrected the deficient conduct even if warned.\textsuperscript{58}

The second test focuses on the length of time during which remediable conduct continues. Illinois courts have reasoned that remediable causes that continue for a long period of time may become irremediable and that any efforts to correct them would therefore be futile.\textsuperscript{59} Aside from this general statement, however, Illinois courts have not set the parameters of this test. For example, the Illinois Supreme Court has found that problems occurring within one academic year are remediable,\textsuperscript{60} but that conduct extending over a period of four years is irremediable.\textsuperscript{61} Similarly, the Illinois Appellate

\textsuperscript{57} Id. at 332, 388 N.E.2d at 406. See Werner v. Community Unit School Dist. No. 4 (Marshall County), 40 Ill. App. 2d 491, 498-99, 190 N.E.2d 184, 186 (2d Dist. 1963). Accord, Wells v. Board of Educ., 85 Ill. App. 2d at 322, 230 N.E.2d at 11. The Wells court stated that there was no evidence in the record that the [teacher] could not have corrected her teaching program and changed its orientation if her superiors had given her a firm program and demanded that she adopt it. Nothing suggests that, had she been warned that her refusal or failure to do so might result in charges, her compliance would not have been complete. . . . Consequently, it would seem that the modification of [her] teaching program would not have had to be so extensive that it can be said that she would be unwilling to undertake it.

\textsuperscript{58} Werner v. Community Unit School Dist. No. 4, 40 Ill. App. 2d at 499, 190 N.E.2d at 186.

\textsuperscript{59} Grissom v. Board of Educ., 75 Ill. 2d at 332, 388 N.E.2d at 504. In Robinson v. Community Unit School Dist. No. 7 (Madison County), 35 Ill. App. 2d 325, 182 N.E.2d 770 (4th Dist. 1962), the court found a "feeling of futility in extending any efforts towards having a spirit of cooperation." Id. at 332, 182 N.E.2d at 774. In Glover v. Board of Educ. (Macon Dist. No. 5), 21 Ill. App. 3d 1053, 316 N.E.2d 534 (4th Dist. 1974), aff'd on other grounds, 62 Ill. 2d 122, 340 N.E.2d 4 (1976), the court ruled that the remediable causes became irremediable because "the teacher refuses or fails to remedy them." Id. at 1057, 316 N.E.2d at 537. And, in McLain v. Board of Educ. (Dist. No. 52, Carmi), 36 Ill. App. 2d 143, 183 N.E.2d 7 (4th Dist. 1962), the court found that "even though separate items may appear remediable, when the teacher for more than a year repeatedly refuses to accept any recommendation, and persists in all her rigid ways, there must come a time when they can no longer be regarded as remediable, being apparently a character defect." Id. at 147, 183 N.E.2d at 9.

\textsuperscript{60} See Grissom v. Board of Educ., 75 Ill. 2d at 333, 388 N.E.2d at 406. The court found that "the [teacher's] problems arose only after the academic year started[,] his dismissal, without the required warning, after several months is clearly distinguishable from Gilliland." Id.

\textsuperscript{61} Gilliland v. Board of Educ., 67 Ill. 2d at 154, 365 N.E.2d at 326. The court found that "[t]here was evidence that the complained-of conduct of the teacher extended over a period of four school years despite numerous parental complaints culminating in discussions between plaintiff and her superiors concerning her conduct." Id.
Court has found conduct continuing for longer than one year to be irremediable.\(^62\)

This lack of clarity is worthwhile; Illinois courts should not establish the exact number of years beyond which conduct becomes irremediable. As the Illinois Supreme Court has ruled, length alone is insufficient to transform remediable causes into irremediable ones, particularly where a board has "sat idly by," allowing remediable causes to become irremediable.\(^63\) School officials cannot disregard their own responsibility to warn a teacher of deficient, remediable conduct and then suddenly notice the deficiencies after they have become irremediable.\(^64\) If this practice were permitted, a board could evade the requirements of a warning notice and dismiss a teacher for irremediable conduct simply by its own inaction. Rather, a school board has an obligation to investigate its teachers' conduct and, where remediable, to serve a teacher with a warning notice.

Finally, the third test requires a consideration of the cumulative effect of the charges.\(^65\) For example, in some cases, individual conduct standing alone may be remediable. Damage is not severe, and the deficient conduct is correctable. When an individual cause appears in combination with other causes, however, the situation changes. A teacher may have a more difficult task correcting these deficiencies, and the cumulative damage from all of the deficiencies may be severe enough to substantiate a finding of irremediability.\(^66\)

In sum, in developing general standards for characterizing conduct as irremediable or remediable, the trend appears to be to consider the context of the alleged deficiencies. Although this process may be burdensome to the courts and confusing to the parties involved, each particular teacher's

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\(^{62}\) See Kallas v. Board of Educ., 15 Ill. App. 3d 450, 304 N.E.2d 527 (4th Dist. 1973). The Kallas court stated that temper outbursts cannot "remain remediable forever as a bar to the discharge of a teacher." \(^{Id.}\) at 452, 304 N.E.2d at 528. As the court concluded, the Teacher Tenure Act "was not intended to lock a teacher into a school system where efforts over a period of years by the administration to help the teacher in remedial causes fails." \(^{Id.}\) at 454, 304 N.E.2d at 530. See also Robinson v. Community Unit School Dist. No. 7, 35 Ill. App. 2d at 330, 182 N.E.2d at 773. The court in Robinson found that an "atmosphere of unpleasantness... had been growing for a number of years and reached a point where it could reasonably be said to no longer be remedial in nature." \(^{Id. Accord,}\) Keyes v. Board of Educ., 20 Ill. App. 2d at 512-13, 156 N.E.2d at 767-68. The Keyes court ruled that the "situation prevailed for several years and although plaintiff must have been aware thereof, the record indicates no effort on his part to remedy the same." \(^{Id}\).

\(^{63}\) Gilliland v. Board of Educ., 67 Ill. 2d at 154, 365 N.E.2d at 327.

\(^{64}\) Id. See, e.g., Allione v. Board of Educ., 29 Ill. App. 2d at 268, 173 N.E.2d at 17. The court questioned how such "bad" conduct "could have escaped the Board's attention," if, indeed, it had lasted for a long period of time. \(^{Id. Accord,}\) Paprocki v. Board of Educ., 31 Ill. App. 3d at 114, 334 N.E.2d at 844. In Paprocki, the court ruled that a board's failure to send a warning notice could not allow it to "later determine that once-remediable causes had become grounds" for dismissal. \(^{Id.}\) The court reasoned that to so hold would permit boards a method, "through the simple passage of time," to avoid the requirements of notice as mandated in section 24-12. \(^{Id}\).

\(^{65}\) Gilliland v. Board of Educ., 67 Ill. 2d at 154, 365 N.E.2d at 326.

\(^{66}\) \(^{Id.}\) at 154, 365 N.E.2d at 327.
strengths and weaknesses are weighed against general rules established by the courts or the General Assembly. Due to the individualized nature of the teaching process and the unique problems faced by individual teachers and school boards, such vague standards are not only appropriate but also essential. They allow courts to consider all of the evidence, to judge the teacher's performance in the context of the school's environment, and then to reach the best decision for that particular teacher and school board.

C. The Roles of Hearing Officers and Courts

In general, the Teacher Tenure Act protects teachers from a school board's abuse of discretion. A board cannot act arbitrarily, unreasonably, capriciously, or through fraud, corruption, oppression, or gross injustice. Specifically, sections 24-12 and 34-85 establish a two-step judicial review mechanism to check and balance a board's power to dismiss a teacher. Unless a teacher requests that no hearing be scheduled, a board must schedule a hearing before a hearing officer when it votes to dismiss a teacher. The hearing officer, an independent, labor law professional selected by the teacher and the board through the Illinois State Board of Education, conducts a public hearing at which a dismissed teacher may be present, offer evidence, and cross-examine witnesses. After hearing the witnesses and considering the evidence, the hearing officer decides whether the teacher should be dismissed or reinstated.

Pursuant to the Administrative Review Act, a party may appeal a hearing officer's decision to the circuit court of the county in which the school district is located. A reviewing court first may consider whether a board and


"Abuse of discretion" has been defined as an "erroneous conclusion ... brought about by temper, humor, caprice, passion, prejudice, perversity of will, discrimination, or partiality." People v. Johnson, 341 Ill. App. 423, 428, 94 N.E.2d 444, 447 (2d Dist. 1950). In Johnson, the court also stated that "the exercise of honest judgment, based upon facts and conditions carefully considered and innately reasonable cannot be said to constitute an abuse of discretion." Id.

68. ILL. REV. STAT. ch. 122, § 24-12 (1977); ILL. ANN. STAT. ch. 122, § 34-85 (Smith-Hurd Supp. 1979). Before the 1975 amendments to section 24-12 and the 1978 amendments to section 34-85, a school board conducted the hearing to determine whether a teacher should be dismissed. See ILL. REV. STAT. ch. 122, § 24-12 (1975); id. § 34-85 (1977).


70. ILL. REV. STAT. ch. 122, § 24-12 (1977); ILL. ANN. STAT. ch. 122, § 34-85 (Smith-Hurd Supp. 1979). These sections require that every hearing officer be accredited by a national labor arbitration organization.


73. ILL. REV. STAT. ch. 122, § 24-16 (1977).
a hearing officer adhered to the due process requirements mandated by section 24-12. If actions or omissions substantially affect a teacher's rights, a court must reverse a hearing officer's decision. Because courts construe section 24-12's procedural provisions strictly in favor of a board, however, teachers have particular difficulty in overturning administrative decisions by a hearing officer based upon due process arguments.

In addition, a reviewing court is empowered to review school board and hearing officer decisions regarding the characterization of the conduct to determine if either has abused its discretion. A court's power to do so, however, is limited; it cannot reweigh the evidence, resolve conflicting

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77. See, e.g., Grissom v. Board of Educ., 75 Ill. 2d 314, 388 N.E.2d 396 (1979). In Grissom, the board chairman was cited as publicly stating, "We never have stopped" trying to get rid of the teacher. Id. at 321, 388 N.E.2d at 400. Although this was a clear expression of bias, the court found nothing wrong with the board's procedures, stating that simply taking a public position on a matter in dispute does not disqualify a board member, absent a showing that the board member is not "capable of judging a particular controversy fairly on the basis of its own circumstances." "Id. at 320, 388 N.E.2d at 400, quoting Hortonville Joint School Dist. No. 1 v. Hortonville Educ. Ass'n, 426 U.S. 482, 493 (1976).

Illinois courts have addressed a series of due process issues under sections 24-11 and 24-12. ILL. REV. STAT. ch. 122, §§ 24-11, -12 (1977). These include: (1) form and service of the Notice to Remedy, Notice of Dismissal, and Bill of Particulars, see, e.g., Morelli v. Board of Educ. (Pekin Dist. No. 303), 42 Ill. App. 3d 722, 356 N.E.2d 438 (3d Dist. 1976); (2) the specificity of the charges made by a board, see, e.g., Carrao v. Board of Educ. (Chicago), 46 Ill. App. 3d 33, 360 N.E.2d 536 (1st Dist. 1977); (3) requirement of a hearing, see, e.g., Smith v. Board of Educ. (East St. Louis Dist. No. 189), 52 Ill. App. 3d 647, 367 N.E.2d 296 (5th Dist. 1977); (4) the role and bias of board members, see, e.g., Carrao v. Board of Educ., 46 Ill. App. 3d 33, 360, N.E.2d 536 (1st Dist. 1977); (5) the role of the board's attorney, see, e.g., Fender v. School Dist. No. 25, 37 Ill. App. 3d 736, 347 N.E.2d 270 (1st Dist. 1976); (6) the effective date of dismissal, see, e.g., Neal v. Board of Educ., 56 Ill. App. 3d 10, 371 N.E.2d 869 (5th Dist. 1977); (7) the findings of fact made by the board and the vote of the board to dismiss the teacher, see, e.g., Reinhardt v. Board of Educ. (Alton Dist. No. 11), 61 Ill. 2d 101, 329 N.E.2d 218 (1975); (8) the open meetings law and board decisions, see, e.g., Davis v. Board of Educ. (Farmer-City Mansfield Dist. No. 17), 63 Ill. App. 3d 495, 380 N.E.2d 58 (4th Dist. 1978); and (9) the suspension of teachers pending hearing, see, e.g., Yuen v. Board of Educ. (Dist. No. U-46, Kane et al. Counties), 77 Ill. App. 2d 353, 222 N.E.2d 570 (2d Dist. 1966).

78. Grissom v. Board of Educ., 75 Ill. 2d at 331, 388 N.E.2d at 405. See Gilliland v. Board of Educ., 67 Ill. 2d at 153, 365 N.E.2d at 326.


80. Board of Educ. (Dist. No. 64, Cook County) v. Rittgers, No. 78-1447 (1st Dist. June 26, 1979) (order disposing of appeal); Carrao v. Board of Educ., 46 Ill. App. 3d at 40, 360 N.E.2d at 542.
evidence, nor substitute its judgment for a prior judgment. Instead, a court must accept the findings and conclusions of a hearing officer on questions of fact as prima facie true and correct. A hearing officer's decision will be affirmed unless it is contrary to the manifest weight of the evidence.

This system, allowing the use of a case-by-case method, protects the interests of both teachers and local school boards. Teachers are fully protected by the Teacher Tenure Act, which forces local school boards to consider carefully whether the conduct is remediable or irremediable. Teachers also are protected by the assurance of an impartial administrative hearing before a hearing officer and, if necessary, administrative review by the courts. At the same time, local school boards and the communities they serve are left relatively free to control their own local school systems. By broadly defining the scope of a board's power to dismiss and mandating only certain due process requirements, the General Assembly has continued the traditional delegation of a school's operation and management to the local level, the level most familiar with the special needs and problems of its community and students.

STANDARDS FOR DEFICIENT CONDUCT

Section 24-12's due process requirements operate in tandem with section 10-22.4, which grants a school board the power to dismiss a teacher for specified reasons. Specifically, a school board can dismiss a teacher for "incompetency, cruelty, negligence, immorality or other sufficient cause." The General Assembly has extended this power by permitting a school board to dismiss a teacher when, in the board's opinion, the teacher is not qualified to teach or when the interests of the school require a dismissal. According to the statute, marriage and temporary mental or physical incapacity to perform teaching duties are inappropriate causes of dismissal.

81. Grissom v. Board of Educ., 75 Ill. 2d at 332-33, 388 N.E.2d at 406.
82. Id. at 331, 388 N.E.2d at 405.
86. Id. §§ 24-12, 24-16.
87. G. BEAUCHAMP, CURRICULUM THEORY 146-47 (3d ed. 1975) [hereinafter cited as BEAUCHAMP].
90. Id.
91. Id.
Under case law, teacher misconduct falls within the following nine general categories: (1) incompetency; (2) improper disciplinary techniques; (3) personal misconduct; (4) insubordination; (5) violation of school rules; (6) teacher absences; (7) inadequate teaching qualifications; (8) dismissal in the best interest of the school; and (9) miscellaneous. As previously discussed, school boards, hearing officers, and courts must determine whether a teacher’s alleged misconduct is remediable or irremediable when considering the dismissal of a teacher for one or more of these causes. The remediability issue pervades all the decisions—from a school board’s initial decision to send a warning notice for remediable causes to a court’s final decision that a school board’s determinations were not contrary to the manifest weight of the evidence. Throughout, the general tests of irremediability are applied. Additionally, hearing officers and courts have used private sector labor law concepts to develop specific tests for differentiating between remediable and irremediable conduct. Together, these tests comprise a surrounding-circumstances test under which hearing officers and courts examine alleged misconduct in light of a teacher’s total job performance.

A. Incompetency

Illinois courts have not defined the term incompetency. Instead, they have accepted the schools boards’ use of the term and have decided the question of dismissal for incompetency according to the facts of each case. The issue of incompetency encompasses the development and implementation of various teaching techniques, including the improper selection and use of instructional methods and the lack of discipline or classroom control.

Both of these deficiencies can be either remediable or irremediable depending upon the particular facts of each case. In general, a hearing officer or
court can examine the extent to which a teacher is able to correct allegedly deficient conduct. Thus, a school board should specifically inform a teacher of his or her weaknesses and then give a firm directive to correct the deficiencies. The directive should not be a suggestion, but should include a concrete program with a demand to adopt it.

Charges of incompetency were remediable. Id. The teacher was charged with the "inability or failure to discipline students, or maintain classroom discipline, . . . to convey proper classroom instruction . . . [and] to utilize proper or appropriate instruction or teaching techniques." Id. at 322, 388 N.E.2d at 401. Even though the court found that there was evidence to support these charges, the court ruled that the damage to the school was not severe, the board failed to show uncorrectability, and the conduct appeared only within one school year. Id. at 332-33, 388 N.E.2d at 405-06. Justice Underwood dissented, noting that the principal wrote six letters to the teacher during the year and that no noticeable improvements were made. Id. at 334, 388 N.E.2d at 406 (Underwood, J., dissenting). He stated that "it will be quite difficult for school boards to discharge their responsibilities to provide effective educational environments if their findings are to be treated as cavalierly as my colleagues have treated these." Id. See Aulwurm v. Board of Educ. (Murphysboro Dist. No. 186), 67 Ill. 2d 434, 437-43, 367 N.E.2d 1337, 1338-41 (1977) (charges of incompetency were found to be remediable; court pointed to specific mitigating factors for each alleged instance of misconduct); Gilliland v. Board of Educ. (Pleasant View Dist. No. 622), 67 Ill. 2d 143, 154, 365 N.E.2d 322, 326 (1977) (charges of ruining student's attitudes toward school, lacking rapport with students, and giving irregular work assignments to be irremediable because the evidence showed that the conduct extended over a period of four years).

At the hearing officer level, decisions have also gone both ways. A dismissal was reversed in Chicago Bd. of Educ. v. Isaac (Aug. 17, 1979) (Petersen, H.O.). The hearing officer noted that although "there is ample room for improvement . . . , the Board has not shown in any tangible way, that [the teacher's] students have suffered as a result of the alleged deficiencies." Id. at 5. The hearing officer further stated that "while the testimony indicates [the teacher] had his share of problems with classroom control, the contradictory nature of the testimony leaves one to conclude that his classroom control was perhaps not too dissimilar to other teachers, or in other words, was average." Id. The officer further stated that "teaching appears to be especially difficult . . . because the calibre of students is not very high." Id. at 6. A dismissal was also reversed in Board of Educ. (Niles Dist. No. 219) v. Agnos (Aug. 6, 1977) (Epstein, H.O.), aff'd sub nom. Board of Educ. (Niles Dist. No. 219) v. Epstein, 72 Ill. App. 3d 723, 391 N.E.2d 114 (1st Dist. 1979), where the hearing officer found "that a good deal of the adverse criticism by the grievant's students appears to be motivated by a feeling that they would like easier tests, higher grades and a less demanding teacher." Id. at 55. The hearing officer noted that "students who wish to be transferred may often use the vehicle of criticism to accomplish that end." Id. at 56. In the following cases, however, the hearing officers affirmed dismissals: School Bd. 138 v. Rathjen (July 29, 1979) (Gerstein, H.O.) (failure to maintain classroom control); Carter v. Chicago Bd. of Educ. (April 17, 1979) (Wilson, H.O.), appeal docketed, No. 79-L-10752 (Cook County Cir. Ct. May 18, 1979) (incompetency shown by the fact that 23 students dropped out of class); Evanston School Dist. No. 65 v. Hairston (Sept. 28, 1978) (Narko, H.O.) (lack of preparation found irremediable).

96. See Hauswald v. Board of Educ. (Dist. No. 217, Cook County), 20 Ill. App. 2d 49, 54, 155 N.E.2d 319, 322 (1st Dist. 1958). The court in Hauswald found that although the assistant principal urged the teacher to place more emphasis on English composition and grammar, the "directive" was left flexible and arguable. Id.

In addition to applying the general tests of irremediability, Illinois hearing officers and courts wisely investigate three specific areas relating to incompetency: (1) the teacher-student relationship; (2) the teaching methods utilized; and (3) whether a teacher has been reassigned to a class for which he or she is not trained. The particular factual framework of each case will determine which of these areas is deserving of primary inquiry. For example, in reversing the dismissal of a teacher charged with incompetency, one hearing officer delineated and applied five factors demonstrating a teacher's relationship with his or her students. The factors considered included the students' abilities to master the course content and the teacher's ability to stimulate students to work, help students in their growth and development as individuals, deal consistently and fairly with students, and create a warm and friendly atmosphere in the classroom.

Another hearing officer examined the teacher's instructional methods to determine the issue of incompetency. Correctly noting that "there are different approaches to the methodology" of teaching and that "what may work for one teacher does not necessarily work for another," he asserted that the mere use of a unique teaching method does not constitute incompetence. Extending this rationale, hearing officers and courts must realize that not only each teacher, but also each type of subject matter and student group may require different instructional methods. To dismiss a teacher without examining why he or she used a particular teaching method and without determining its effect upon the students clearly would violate all notions of procedural due process.

Several cases have involved situations in which a teacher who was trained in one subject area was reassigned to teach another subject due to financial exigencies. Several hearing officers have observed that although a teacher has trouble with a new subject, he or she may deserve to be retained in the new teaching position because the teacher is maintaining classroom control.

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2d 143, 145-46, 183 N.E.2d 7, 8 (4th Dist. 1962). In McLain, the court affirmed the dismissal of a teacher who held back pupils to the pace of the slowest pupil, was rigid in her treatment of her pupils, and lacked cooperation, having been notified repeatedly both orally and in writing of the defects. Id.

98. Board of Educ. (Crete-Monee Dist. No. 201-U) v. Angelotti, at 2, 45-47 (Nov. 9, 1976) (Elson, H.O.). The hearing officer, acknowledging that a dismissal due to incompetency would put an end to a professional career, required the school board to meet a substantial burden of proof. Id. at 40.

99. Id. at 45-47.


101. SAYLOR & ALEXANDER, supra note 10, at 250, 274. For example, the mere use of a lecture format should not be a cause for dismissal. Instead, the board must consider when and how the lecture method is being used in the total context of the teacher's instructional strategy. Thus, a more valid measurement is whether the teacher varies the teaching techniques according to the type of subject matter he or she is teaching. Similarly, teachers of handicapped students cannot be held to the same standard as teachers of students not in special programs. Because these students have special problems, the teaching techniques will differ.
and is making efforts to improve instructional abilities.\textsuperscript{102} One hearing officer, however, disagreed and affirmed the dismissal of a counselor assigned to teaching duties.\textsuperscript{103} Although the hearing officer acknowledged that the board made an error by requiring the counselor to teach a substantive course for which he was unqualified, the hearing officer asserted that efforts were made to assist the teacher but that he failed to remedy the alleged deficiencies.\textsuperscript{104} Evidently, this hearing officer believed that a school board should bear the burden of its reassignments, especially when dealing with a tenured teacher. To first reassign a teacher to a course for which he or she was not trained and then to dismiss that teacher due to instructional problems is patently inequitable. A school board must anticipate that a teacher will need time to learn the course content, to develop appropriate teaching methods, and to prepare adequately to teach. In such a situation, a board's first duty and responsibility should be to help a teacher quickly develop the knowledge and skills necessary to perform the new duties adequately. If, after a reasonable time, a teacher is unable to improve his or her performance, dismissal may be proper.

\textbf{B. Improper Disciplinary Techniques}

Dismissal for improper disciplinary techniques is usually a result of a teacher's attempt to retain classroom control.\textsuperscript{105} Section 10-22.4 of the School Code specifically states that "cruelty" is a cause for dismissal.\textsuperscript{106}

\textsuperscript{102} See, e.g., Chapas v. Board of Educ. Dist. 203 (Oct. 14, 1978) (Dunham, H.O.) (foreign language teacher assigned to teach math); Freeburg Community School v. Graham (Aug. 3, 1976) (Forman, H.O.) (biology and general science teacher assigned to teach chemistry). In Graham, the hearing officer found that there was evidence that the teacher maintained his appearance and pose, was punctual, and was enthusiastic about teaching. \textit{Id.} at 7.


\textsuperscript{104} \textit{Id.} at 4-5.

\textsuperscript{105} Cruelty arises most frequently when associated with a teacher's use of punishment to affect a student's behavior. Punishment may be defined as "withholding the satisfaction of a need and inflicting pain or abuse" to influence conduct. R. Magoon & K. Garrison, \textit{Educational Psychology: An Integrated View} 219 (2d ed. 1976) [hereinafter cited as Magoon]. The use of punishment may be necessary in some situations. Punishment is advantageous when it is used as a deterrent and is particularly useful when it is a natural consequence of an undesirable behavior, used along with rewards, and when a student realizes that the act and not the child is being punished. C.E. Skinner, \textit{Educational Psychology} 459 (4th ed. 1959) [hereinafter cited as Skinner]. When using punishment as a method of discipline, a teacher should consider the form of the punishment, its severity, the time interval between the misbehavior and the punishment, and whether the reason for the punishment is clearly understood by the student. Magoon, \textit{supra} at 219. The more modern trend in discipline is to use rewards to influence a student's behavior. \textit{Id.} at 331. Rewards generate enthusiasm, interest, and high morale and they are believed to have a positive effect on a student's ego development. Skinner, \textit{supra} at 458. Although punishment also seeks to affect future conduct, it associates an unpleasant feeling with the conduct. As Skinner asserts, were it not for the deterrence effect of punishment, it "would have no reason for existing, except as an instrument of revenge and sadism. It would be sheer cruelty." \textit{Id.}

Applying this mandate, Illinois courts have upheld the dismissals of teachers whose use of punishments have ranged from harassing and grabbing students to using a cattle prod to maintain order. As one court asserted, a teacher should be dismissed if he or she fails "to portray the requisite qualities of temper, discretion, and fortitude of a good teacher." Until recently, courts considered the improper use of punishments to be per se irremediable because of a teacher's inability to correct damage suffered by a student. In Grissom v. Board of Education, however, the Illinois Supreme Court considered the severity of the damage suffered by the student. Finding that the discipline was not severe, the court reversed...
the dismissal, even though Grissom's conduct approximated conduct found irremediable in other cases involving harassment\textsuperscript{112} and slapping.\textsuperscript{113}

In addition to the severity of damage caused by a teacher's conduct,\textsuperscript{114} hearing officers and courts should also consider mitigating circumstances. One appellate district analyzed the charges of cruelty in light of the nature of the teacher's actions and, in addition, observed that the complaining students did not testify at the hearing.\textsuperscript{115} Another district, noting the need to require students to behave orderly and respectfully, excused the use of physical force.\textsuperscript{116}

C. Personal Misconduct

Personal misconduct includes immorality, as stated in section 10-22.4,\textsuperscript{117} as well as any conduct considered undesirable by a school board.\textsuperscript{118} Because school boards hold teachers to a high standard of personal conduct,\textsuperscript{119}
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hearing officers and courts should protect teachers from unwarranted invasions into their private lives. Dismissal should result only from conduct that meets the tests of irremediability and not from conduct that is private.120

In addition, charges of personal misconduct should require strong evidence and a close examination of the surrounding circumstances. For example, proof of an uncontrollable temper121 or sexual relationships with students122 has led hearing officers and courts to affirm dismissals. According to Illinois courts, this result is proper even if no criminal conviction has resulted from a teacher’s conduct.123 Hearing officers and courts, noting evidentiary deficiencies, have reversed dismissals of teachers who have been charged with basing grades on a student’s sale of tickets,124 converting

120. This concept has been adopted by federal appellate courts. See, e.g., Norton v. Macy, 417 F.2d 1161 (D.C. Cir. 1969). In Norton, the court reversed the termination of a civil service employee who was charged with an alleged homosexual advance toward another person. Id. at 1168. The court noted that the due process clause “forbids all dismissal which are arbitrary and capricious...[It] may also cut deeper...where a dismissal involves an intrusion upon that ill-defined area of privacy which is increasingly if indistinctly recognized as a foundation of several specific constitutional protections.” Id. at 1163-64. Accord, Mindel v. United States Civil Serv. Comm’n, 312 F. Supp. 485 (N.D. Cal. 1970) (court granted summary judgment in favor of a postal clerk whose termination, due to his private sex life, violated the right to privacy guaranteed by the ninth amendment).

121. See, e.g., Kallas v. Board of Educ. (Marshall Dist. No. C-2), 15 Ill. App. 3d 450, 304 N.E.2d 527 (4th Dist. 1973) (affirmed dismissal of teacher whose temperamental outbursts in class, with parents, and with the administration manifested a self-control insufficient to maintain a proper rapport with the students); Miller v. Board of Educ., 51 Ill. App. 2d 20, 200 N.E.2d 838 (1st Dist. 1964) (affirmed the circuit court’s reversal of the dismissal, finding that although the teacher’s judgment was poor, his temper was not uncontrollable).

122. See, e.g., Carrao v. Board of Educ. (Chicago), 46 Ill. App. 3d 33, 360 N.E.2d 536 (1st Dist. 1977) (charge of taking indecent liberties with a minor supported by evidence); Yang v. Special Charter School Dist. No. 150 (Peoria County), 11 Ill. App. 3d 239, 296 N.E.2d 74 (3d Dist. 1973) (dismissal upheld because the teacher admitted playing strip poker with a student, even though the teacher was acquitted of criminal charges); Lombardo v. Board of Educ. (Dist. No. 27, Cook County), 100 Ill. App. 2d 108, 241 N.E.2d 495 (1st Dist. 1968) (evidence supported charge of touching and kissing female students); Chandler v. East St. Louis School Dist. No. 189, 35 Ill. App. 3d 317, 218 N.E.2d 774 (4th Dist. 1962) (evidence insufficient to prove that teacher attempted to seduce female students).

123. See, e.g., Yang v. Special Charter School Dist. No. 150, 11 Ill. App. 3d 239, 296 N.E.2d 74 (3d Dist. 1973) (acquitted of criminal charge resulting from allegedly playing strip poker with a student); Board of Educ. (Dist. No. 64, Cook County) v. Rittgers, No. 78-1447 (1st Dist. June 26, 1979) (order disposing of appeal) (acquitted of charge of intentionally and fraudulently filing false claims with an insurance company).

school funds for personal use, teaching with an alcoholic odor on the breath, and swearing at students. More important than a sufficient amount of evidence is a hearing officer's or court's consideration of the surrounding circumstances that may mitigate a charge. In one case, a dismissal based upon a charge of drinking beer in a public restaurant was reversed in light of the norms of modern society. Other examples have included consideration of the types of students, a teacher's lack of intent to perform a criminal act, and general community standards.

D. Insubordination

The charge of insubordination has been defined as the "wilful disobedience of a reasonable order emanating from a proper authority." Although

125. Erway v. Board of Educ. (West Richland Community Unit No. 2) (Dec. 14, 1976) (Sembower, H.O.). In this case, a principal was dismissed for violating his fiduciary duty when he bought tires for his automobile out of school funds. The hearing officer reversed the dismissal due to a mix-up in billing procedures at the school and the lack of evidence indicating a conspiracy to avoid payment of state taxes pursuant to ILL. REV. STAT. ch. 122, § 22-6 (1977). Id. at 26. The hearing officer concluded that "unfortunate and inadvertent events" led to the principal's mistake. Id. at 29.

126. Board of Educ. (School Dist. No. 118) v. Norris (Feb. 23, 1977) (Davidson, H.O.), aff'd, No. 77 MR 54 (Vermillion County Cir. Ct. March 15, 1977). The hearing officer found no evidence "that [the teacher] had consumed alcohol either on the school premises or during school hours" or "that . . . her efficiency . . . was diminished in any manner or that her association and cooperation with other teachers was impaired." Id. at 3.


128. Board of Educ. (Kaneland Dist. No. 302) v. Holmes (July 26, 1976) (Azulay, H.O.). The hearing officer asserted that "the consumption of a glass of beer is not considered to be unsociable, illegal, or unacceptable behavior in our society." Id. at 4.


131. Board of Educ. (School Dist. No. 150) v. Dorethy (Aug. 23, 1976) (Adelman, H.O.). Here, the teacher attempted to purchase stolen CB radios from his students. Because he did not know that the radios were stolen, however, the hearing officer concluded that he did not act in an "immoral, incompetent, or irresponsible manner." Id. at 3.

132. See Stone v. Board of Educ. (North Green Dist. No. 3) (March 16, 1977) (Martin, H.O.). The teacher made the following disparaging remark about religion: "Well, aren't all Christians hypocrites?" Id. at 5. The teacher also manifested a liberal, independent attitude in his supervision of the editors of the student yearbook, including allowing alcohol to be served to the editors, allowing degrading editorial to be printed in the yearbook, and not communicating with the principal on the yearbook's budget. Id. at 14. The hearing officer asserted that the teacher was "an unruly man" who "did not meet the standards required of a teacher" in that district and that "the combination of this teacher and this district was a mutual misfortune." Id. at 14-16.

this is a delicate, nebulous area because of the nature of personal relationships within a school, cooperation among teachers, administrators, students, and parents is essential for the proper maintenance of a viable school system. Consequently, in addition to relying on the tests of irremediability, hearing officers and courts should examine the nature of any directions given to a teacher and the type and extent of a teacher's alleged insubordinate conduct. This process will alleviate possible unfairness and the effect of personal antipathy that can develop between a teacher and his or her superiors.

Even before examining a teacher's alleged insubordinate conduct, hearing officers and courts should first examine the nature of a direction given to a teacher by his or her superior. Alleged violations of an order should be brought to a teacher's attention. In addition, the order must be reasonable; the mere assertion of a directive and a teacher's disobedience of it does not constitute sufficient grounds for dismissal. Although hearing officers and courts should not foster insubordination by encouraging a teacher to decide which orders to follow, an order must be valid, appropriate, and not in violation of state law. Following such reasoning, one hearing officer

136. See, e.g., Grissom v. Board of Educ., 75 Ill. 2d at 332-33, 388 N.E.2d at 405-06. In Grissom, the court ruled that the teacher's failure to accept orders or to act upon suggestions was remediable because the conduct was correctible and did not last over a long period of time. Id. Accord, Wells v. Board of Educ., 85 Ill. App. 2d at 321, 230 N.E.2d at 10 (court referred to "very few specific instances exemplifying this alleged attitude"). Cf. Robinson v. Community Unit School Dist. No. 7, 35 Ill. App. 2d at 330, 182 N.E.2d at 773 (court upheld the dismissal noting that the trouble existed over a period of years and instilled a feeling of futility in the minds of the faculty and administration).
138. Berwyn Community School Dist. No. 100 (Cook County) v. Metskas, at 9 (Feb. 16, 1979) (Davidson, H.O.), appeal docketed, No. 79 L 5960 (Cook County Cir. Ct. March 22, 1979). In this case, the school board asserted that the teacher's contract included participation in the state's music contest. Brief and Argument for Defendant at 3. See ELKOURI & ELKOURI, supra note 43, at 641. The Elkouris state that "one of the two most commonly recognized principles . . . is that there must be reasonable rules or standards, consistently applied and enforced and widely disseminated," and that "[a]ll employees who engage in the same type of misconduct must be treated essentially the same unless a reasonable basis exists for variations in the assessment of punishment." Id. at 643-44.
139. See Berwyn Community School Dist. No. 100 v. Metskas, at 10 (Feb. 16, 1979) (Davidson, H.O.). The hearing officer in Metskas stated:

In the event a School Board requires a tenured teacher to be employed at a salary less than that set forth in Section 24-8 and the tenured teacher refuses to so comply, is that the type of insubordination that would authorize dismissal of the teacher?

There are numerous other instances in which the refusal to comply with a direction of the Board could be treated as insubordination so as to justify dismissal of a tenured teacher, i.e., the fostering of bias or prejudice based on color, race, sex,
correctly reversed the dismissal of a teacher who was forced to teach on Saturday in violation of the School Code.\textsuperscript{140}

After examining the directive, a hearing officer or court should analyze a teacher’s conduct. When, for example, a teacher resents authority and is “unnecessarily argumentative, stubborn [and] inattentive to suggestions,”\textsuperscript{141} hearing officers and courts should affirm the dismissal. Examples of such conduct justifying dismissal have included refusing to change even trivial matters\textsuperscript{142} or to follow mandatory directives,\textsuperscript{143} making accusations about other teachers\textsuperscript{144} or a principal,\textsuperscript{145} and threatening and then striking a principal.\textsuperscript{146} Where, however, a teacher does not intend to act in an insubordinate manner,\textsuperscript{147} or honestly disagrees with his or her superiors, but continues to perform satisfactorily,\textsuperscript{148} courts may reverse a teacher’s dismissal.

religion or nationality, the segregation of students based on any of the foregoing, the requirement that teachers employ physical punishment on students, and even, perhaps, the scheduling of classes for a teacher to run twenty-four hours at a time.

It clearly would defy all logic that because a School Board requires action to be taken by a tenured teacher, no matter what that form of action is, and the tenured teacher refused to so take the form of action directed, then that would be insubordination of the type that would justify dismissal of the teacher and one that would have to be sustained either by a hearing officer or by a competent Court reviewing the hearing officer’s decision.

\textit{Id.}

140. \textit{Id.} at 9-10. In brief, the teacher, the conductor of the school’s orchestra, was dismissed after he refused to participate in the state contests for solos, ensembles, and orchestras. The teacher refused because the board reduced the pay for these extra duties, which were to take place on Saturday. \textit{Id.} Section 24-2 of the Illinois School Code, ILL. ANN. STAT. ch. 122, \S{} 24-2 (Smith-Hurd Supp. 1979), states that a “teacher shall not be required to teach on Saturdays.” Therefore, requiring the teacher to teach on Saturdays, while attending and helping his students in the contest, was a violation of the School Code. See \textit{Littrell v. Board of Educ. (Cave-In-Rock Dist. No. 2), 45 Ill. App. 3d 690, 697, 360 N.E.2d 102, 106 (5th Dist. 1977); District 200 Educ. Ass’n v. Board of Educ. (Dundee Dist. No. 300), 31 Ill. App. 3d 550, 334 N.E.2d 165 (2d Dist. 1975).}


142. \textit{See, e.g., McLain v. Board of Educ., 36 Ill. App. 2d at 147, 183 N.E.2d at 9.}


146. \textit{Owens v. Chicago Bd. of Educ. (July 30, 1979) (Sembower, H.O.).}

147. \textit{Aulwurm v. Board of Educ., 67 Ill. 2d 434, 367 N.E.2d 1337 (1977). The teacher, who was charged with refusing to follow the direct order of the head football coach, \textit{id.} at 440-41, 367 N.E.2d at 1340, did not know that the other teacher had been designated as the head coach. \textit{Id.}}

148. \textit{Wells v. Board of Educ., 85 Ill. App. 2d at 321, 230 N.E.2d at 10. The court noted that the teacher, “although convinced the views of her superiors were erroneous, attempted to comply [and] . . . that she patiently and conscientiously worked with the unfortunate and difficult children trying to develop their limited ability, helping them to overcome their handicaps.” \textit{Id.} Accord, \textit{Hutchison v. Board of Educ. (Greenfield Dist. No. 10), 32 Ill. App. 2d 247, 245, 177
E. Violation of School Rules

School boards have the power to make and enforce rules for the management and governance of a school system. Although, as with insubordination, hearing officers and courts should not encourage a teacher to exercise absolute freedom of choice, a single violation of school rules should not necessarily lead to dismissal. Instead, hearing officers and courts should analyze the type of rule broken and decide whether a teacher's conduct meets the tests of irremediability by considering relevant surrounding circumstances.

If a school's administration or board wants to ensure a valid dismissal for the violation of a rule, the rule can be adopted by the board, in written form, and clearly stated. Dismissal may then be appropriate where a school board demonstrates that a teacher had knowledge of the policy and the intent to disregard it. For example, one appellate district affirmed the dismissal of a teacher who twice paddled a student in violation of a known school rule requiring a cooling-off period. If, however, a policy is not mandatory, is ignored by other teachers and administrators, or is of little consequence to a school system, dismissal may not be appropriate. Thus, another appellate court ruled that because the failure to perform ministerial tasks did not harm the quality of the teacher's instruction, the dismissal should be reversed.

N.E.2d 420, 424 (3d Dist. 1961) (superintendent testified that the teacher "had been cooperative and had never refused to carry out orders").


150. The rule of law regarding violations of school rules is changing. Originally, a single violation would justify dismissal. See, e.g., Leddy v. Board of Educ. (Dist. No. 99, Bureau County), 160 Ill. App. 187 (2d Dist. 1911). In Leddy, the court stated that "to hold otherwise would be assuming the position that a teacher . . . . could assume control of the school affairs . . . . and thereby materially interfere with the proper and legal conduct of the school." Id. at 190. Recently, however, hearing officers have examined the rule itself before affirming a dismissal. See notes 153, 155, 156 and accompanying text infra.


156. Wells v. Board of Educ., 85 Ill. App. 2d at 318, 230 N.E.2d at 9. See Werner v. Community Unit School Dist. No. 4 (Marshall County), 40 Ill. App. 2d 491, 495, 190 N.E.2d 184, 185 (2d Dist. 1963); Hauswald v. Board of Educ., 20 Ill. App. 2d at 54-56, 155 N.E.2d at 322. In Hauswald, the court noted that the teacher's "superiors had no firm policy which plaintiff was required to adopt, and . . . the point was left flexible and arguable." Id. at 54, 155 N.E.2d at 322.
F. Teacher Absences

Dismissal for unexcused absences, tardiness, and abandonment\textsuperscript{157} are closely related to dismissal resulting from insubordination and the violation of school rules. A teacher should not be permitted to ignore his or her responsibilities by violating administrative policies regarding absences. Special circumstances, however, can and should mitigate any damage caused by absence or tardiness.

Dismissal is appropriate, for example, where a teacher willfully violates a board's direction not to attend a conference unrelated to teaching duties.\textsuperscript{158} Similarly, hearing officers have upheld dismissals for excessive absenteeism,\textsuperscript{159} a consistent pattern of tardiness,\textsuperscript{160} and the failure to appear at the beginning of a school year.\textsuperscript{161} Hearing officers and courts, however, should reverse a dismissal where an absence does not result in severe consequences\textsuperscript{162} or where special circumstances excuse the conduct. In one case, the Illinois Supreme Court reversed the dismissal of a teacher who missed the first half of a sports event due to a rainstorm that made attendance impossible.\textsuperscript{163} In another case, a hearing officer excused a teacher's failure to participate in a state-wide music contest because participation violated the School Code.\textsuperscript{164} Finally, a hearing officer excused a teacher's failure to appear at the beginning of the school year because the board had

\begin{itemize}
\item \textsuperscript{157} See Brown v. Board of Educ. (Galatia Dist. No. 1), 38 Ill. App. 3d 403, 409, 347 N.E.2d 791, 796 (5th Dist. 1976). The Brown court defined abandonment to require a clear manifestation of intent not to teach. \textit{Id.} While the court ruled that a teacher can lose tenured status by abandonment or resignation, in this case abandonment did not occur because the teacher wrote two letters requesting to teach half time. \textit{Id}.
\item \textsuperscript{159} See, e.g., Board of Educ. (Dist. No. 25) v. Johnson (June 29, 1979) (DeFree, H.O.); Evanston School Dist. No. 65 v. Hairston (Sept. 28, 1978) (Narko, H.O.).
\item \textsuperscript{160} Wapella Community School Dist. No. 5 v. Hindman, at 7 (June 18, 1976) (Elkin, H.O.).
\item \textsuperscript{162} See, e.g., Hanswald v. Board of Educ., 20 Ill. App. 2d at 55, 155 N.E.2d at 323 (court found that the teacher was absent from class only five to ten times a week). \textit{Cf.} School Directors v. Birch, 93 Ill. App. 499 (2d Dist. 1900) (court upheld the dismissal because the teacher's tardiness injured students who had to wait outside in the cold).
\item \textsuperscript{163} Alsburn v. Board of Educ., 67 Ill. 2d at 442, 367 N.E.2d at 1340-41.
\item \textsuperscript{164} Berwyn Community School Dist. No. 100 v. Metskas (Feb. 16, 1979) (Davidson, H.O.), \textit{aff'd}, No. 79 L 5960 (Cook County Cir. Ct. Nov. 14, 1979).
\end{itemize}
denied a necessary leave of absence in retaliation for the teacher's union activities.  

G. Inadequate Teaching Qualifications

Section 10-22.4 states that a school board may dismiss a teacher whenever, in its opinion, a teacher is not qualified to teach. Often, a board uses this vague, catch-all cause for dismissal after listing the charges of incompetency and insubordination. Hence, a board may add this cause for dismissal to a notice to remedy or a notice of dismissal as an independent cause or as a summary or conclusion of previously-listed charges.

Illinois courts' conflicting definitions demonstrate the vagueness of this cause for dismissal. The Illinois Supreme Court has stated that this cause includes a teacher's lack of adequate and efficient standards of instruction, equating qualification to teach with a charge of incompetency. Further, the court has rebutted the contention that this cause for dismissal embraces a teacher's proper state certification to teach. Nevertheless, an appellate district did uphold a teacher's dismissal for the failure to complete additional credits of schooling as part of professional growth. In this case, the court observed the fact that the teacher had experienced no professional growth for twenty-four years and that other teachers did comply with this requirement.

Illinois courts should more precisely articulate the meaning of "qualification to teach." It may include incompetency as well as lack of continued professional standing. If, however, it merely repeats other charges adequately covered by other causes for dismissal, this cause for dismissal is meaningless, adds nothing, and should play no role in the process of a teacher's dismissal.

H. Dismissal in the Best Interest of the School

As with the preceding cause, dismissal if "the interests of the school require it" is also vague and based on a school board's subjective judgment. It is often added to the list of causes stated in a warning notice and a notice of dismissal and appears to be pro forma, adding nothing to the dismissal

171. Id. at 165, 185 N.E.2d at 285.
process. One writer, however, has asserted that this vague standard is a "ray of light" in teacher dismissals. Several courts have agreed, one court calling it the "principal concern" in a teacher dismissal hearing, and another court calling it a "guiding star." Such statements imply that courts will elevate a board's opinion as to the best interest of the school above specific evidence of misconduct. This practice is clearly contrary to the purpose of the Teacher Tenure Act, which prevents arbitrary, unreasonable, or capricious decisions by school boards.

Evidence supporting this cause for dismissal has included the continuous nature of and combination with other, more specific deficiencies with which a teacher is charged. For example, proof of a lack of cooperation with the administration has sustained this cause for dismissal. Student dissatisfaction with a particular type of course, however, fell "far short of establishing that [a teacher's] 'presence' was detrimental to the best interest of the school." Further, a hearing officer ruled that evidence showing the use of teaching methods different from those espoused by the school authorities did not support a charge that a teacher's conduct was detrimental to the best interests of the school.

A hearing officer or court can most logically and usefully analyze this cause for dismissal by examining the charge in light of section 24-12's requirement of a specific charge. Although one court stated that this cause for dismissal is sufficiently specific because it incorporates causes specified in section 10-22.4, another court held that this unamplified reason for dismissal was insufficient because it merely repeated verbatim one of the causes in section 10-22.4. Accordingly, one hearing officer contended that this charge is insufficient.

174. See generally Kelleghan, supra note 8.
176. Meridith v. Board of Educ. (Dist. No. 7, Christian County), 7 Ill. App. 2d 477, 486, 130 N.E.2d 5, 10 (3d Dist. 1955). In full, the court stated that "the best interest of the schools of the district is the guiding star of the Board of Education and for the courts to interfere with the exercise of the power of the board . . . is [an] unwarranted assumption of authority and can only be justified in cases where the board has acted maliciously, capriciously and arbitrarily." Id.
177. See Allione v. Board of Educ., 29 Ill. App. 2d at 268, 173 N.E.2d at 17. In Allione, the court stated: "To sustain the Board's conclusion that the best interest of the school required plaintiff's dismissal in the absence of proof supporting it, would amount to sanctioning the practice of arbitrarily dismissing teachers without regard to their rights under the Tenure Law." Accord, McLaun v. Board of Educ., 36 Ill. App. 2d at 147, 183 N.E.2d at 9.
178. Gilliland v. Board of Educ., 67 Ill. 2d at 154, 365 N.E.2d at 327.
nothing more than a "conclusion and a summary." Because of its vagueness and repetitive use, Illinois' General Assembly and courts should abolish it as a viable alternative cause for dismissal.

I. Miscellaneous

Courts have also considered instances of alleged misconduct that do not fit neatly into any of the above categories. For example, the Illinois courts and General Assembly have dealt with a charge of mental illness or incapacity on the part of a teacher. In 1968, the First District Appellate Court found that emotional instability was an irremediable cause for dismissal. In 1972, the same district court also affirmed the dismissal of a teacher who failed to undergo a psychological examination by a board-approved psychologist. The court stated that a board did not have to wait "until [the teacher's] behavior [became] so aberrational as to be . . . grounds for dismissal." In a 1975 amendment to section 10-22.4, however, the General Assembly abrogated this rule of law, making "temporary mental or physical incapacity" no longer a cause for dismissal.

How this provision will be interpreted is unclear. The Illinois General Assembly and the Illinois Judiciary need to define "temporary." For example, it may mean that a teacher is able to correct the incapacity or that the incapacity is of a type that does not cause severe damage to the student, faculty, or school. In addition, courts should remember this prohibition when examining other charges brought against a teacher. Thus, if a teacher is dismissed due to lack of classroom control and this deficient conduct was caused by a temporary mental incapacity, a hearing officer or court may reverse the dismissal. Such a result may be especially appropriate in cases in which a teacher is undergoing psychiatric or medical care that can improve his or her classroom performance.

A second area of miscellaneous conduct that is not a legal cause for dismissal is a teacher's exercise of his or her first amendment right to free speech. In Pickering v. Board of Education, the United States Supreme Court reversed the dismissal of an Illinois teacher who wrote a letter to a local

186. See Lombardo v. Board of Educ., 100 Ill. App. 2d at 114, 241 N.E.2d at 498 (teacher cried and screamed when the principal told him about the charges).
188. Id. at 986, 284 N.E.2d at 382-83.
newspaper criticizing the district's allocation of funds. The Court ruled that because the letter regarded matters of public concern and presented no question of faculty discipline or harmony, the dismissal must be reversed.\textsuperscript{191} Following similar reasoning, hearing officers have reversed dismissals of teachers who would not join a local union\textsuperscript{192} and teachers who engaged in a union-sponsored strike.\textsuperscript{193}

Finally, hearing officers and courts have addressed other areas of miscellaneous conduct. Due to the particular facts of each case, dismissals of teachers charged with the failure to protect school property,\textsuperscript{194} the failure to produce a school play,\textsuperscript{195} and the use of physical force in self-defense have been reversed.\textsuperscript{196} Dismissals have been affirmed in cases involving such diverse conduct as failure adequately to pursue a course of study while on a sabbatical\textsuperscript{197} and excessive devotion of time to non-school activities that interfere with in-school responsibilities.\textsuperscript{198}

\textsuperscript{191} 391 U.S. at 569-70.

\textsuperscript{192} Board of Educ. (Dist. 204) v. LaVine (March 14, 1978) (Stack, H.O.). An agency shop provision of the collective bargaining agreement provided that "if a teacher does not join the Association, such teacher will, as a condition of continued employment by the Board: (1) Execute an authorization for the deduction of . . . dues . . . to be paid by members of the Association . . . or (2) Pay directly to the Association . . . dues." \textit{Id.} at 5-6. The hearing officer ruled this provision unconstitutional and the dismissal unlawful. \textit{Id.} at 15.

\textsuperscript{193} Sandwich Community Unit School Dist. No. 430 v. Haick (May 22, 1978) (Nathan, H.O.). Although 65 teachers struck, only Haick was dismissed because he refused to sign a pledge that he would not strike during the rest of the year. \textit{Id.} at 17. The hearing officer ruled that such conduct was remediable because no one was injured by the strike since the strike did not affect students' attendance in school. \textit{Id.} at 16.

\textsuperscript{194} See Grissom v. Board of Educ., 75 Ill. 2d at 322-23, 388 N.E.2d at 401 (teacher charged with failure to protect desks from graffiti and textbooks from theft).

\textsuperscript{195} Aulwurm v. Board of Educ., 67 Ill. 2d at 439-40, 367 N.E.2d at 1339-40. The teacher could not produce a Broadway musical because of the unavailability of musicians and because the principal would not allow the teacher to produce four one-act plays, calling them unsuitable. \textit{Id.} at 440, 367 N.E.2d at 1340.

\textsuperscript{196} Service Employees Local 46 v. Chicago Bd. of Educ. (June 26, 1979) (Sembower, H.O.).

\textsuperscript{197} Pittel v. Board of Educ. (Dist. 111, Cook County), 20 Ill. App. 3d at 580, 585, 315 N.E.2d 179, 182-83 (1st Dist. 1974). The teacher attended only two of ten courses that the Board approved. \textit{Id.} at 585, 315 N.E.2d at 182-83. The court ruled that the board's action in dismissing the teacher was not arbitrary because she knew what was expected of her when the leave was granted by the board. \textit{Id.} at 585, 315 N.E.2d at 183. Looking at Section 24-6.1 of the School Code, ILL. ANN. STAT. ch. 122, § 24-6.1 (Smith-Hurd Supp. 1979), the court ruled the conduct irremediable because "[t]his section does not state that warnings are required" and because "[t]he penalty for this type of conduct was set forth in unequivocal terms." \textit{Id.} at 588, 315 N.E.2d at 185.

THE BEST (?) EVIDENCE

Whether or not a board’s decision is contrary to the manifest weight of the evidence, hearing officers’ and courts’ decisions focus on the evidence gathered and introduced by a teacher and a school board. Practitioners for both parties need first to understand the nature of irremediable conduct and then to use the best evidence to support their arguments. Evidence should be collected even before a dismissal process begins. Teachers must be aware of the types of conduct that may lead to dismissal proceedings and what evidence will be used to sustain or reverse a board’s decision. Similarly, a school board must establish policies and procedures for the objective collection of relevant information about a teacher’s conduct. Only then can a school board make a reasonable and supportable decision that is equitable to both a teacher and a community.

To determine whether a teacher’s dismissal is contrary to the manifest weight of the evidence, a hearing officer or reviewing court must determine whether a dismissal finds support in the evidence. As one court stated, “[w]here the proof fails, the charge fails.” The evidence must be more than scanty, but need not be strong and convincing, as in criminal cases. Instead, competent and sufficient evidence must prove that cause for dismissal existed and that the cause was irremediable. A decision will not be contrary to the manifest weight of the evidence unless an opposite conclusion is clearly evident. A court will not, however, reverse a hearing officer’s or lower court’s decision simply because an opposite conclusion is reasonable.

Courts have also considered the nature of the evidence introduced at a hearing. Two Illinois courts have ruled that hearsay evidence is insufficient.


202. Id. The court described the evidence as general and vague, and as constituting “conclusions without the benefit of specific instances.” Id.


to prove that a teacher acted in a deficient manner. In *Gilliland v. Board of Education*, the supreme court relied favorably upon expert testimony to find the causes for dismissal irremediable. Courts also have given weight to other evidence including similar behavior by other teachers, and whether the dismissed teacher took the stand to deny the charges. In addition, courts have taken judicial notice of conditions in a school that may contribute to a teacher's lack of classroom control.

Evaluations conducted to determine whether or not an individual teacher is competent are a source of evidence to which Illinois courts have given little attention. Although neither section 24-11 nor section 24-12 require an evaluation to help a board determine whether or not to extend a teacher's probation or to dismiss a teacher, evaluations can provide direct evidence.

208. Allione v. Board of Educ. (South Fork Dist. No. 310), 29 Ill. App. 2d 261, 265-66, 173 N.E.2d 13, 16 (3d Dist. 1961); Lusk v. Community Consol. School Dist. No. 95, 20 Ill. App. 2d at 258, 155 N.E.2d at 654. See Werner v. Community Unit School Dist. No. 4, 40 Ill. App. 2d at 496, 190 N.E.2d at 186 (court did not rule the hearsay evidence sufficient nor insufficient, but, in reversing the dismissal, noted that the Board made every effort to give the plaintiff a fair hearing).

209. 67 Ill. 2d 143, 154, 365 N.E.2d 322, 325-26 (1977). In *Fowler v. Young*, 77 Ohio App. 20, 30, 65 N.E.2d 399, 404 (1945), the court supported the use of expert testimony when it asserted that "[t]he ordinary layman is not versed in that art, neither is he in a position to measure the necessary qualifications required for the teacher of today. In our judgment this information can be properly imparted by one who is versed in the profession and aware of the qualifications required." Id.


211. In *Kallas v. Board of Educ.*, 15 Ill. App. 3d at 452, 304 N.E.2d at 528, the court affirmed a dismissal, noting that the testimony was "replete with complaints." In *Miller v. Board of Educ.* (Dist. No. 132, Cook County), 51 Ill. App. 2d 20, 31, 200 N.E.2d 838, 843 (1st Dist. 1964), the court noted that the students "were unanimous in their testimony that the plaintiff did a good job as a teacher and that they had not heard him swear, nor seen him strike a student." Similarly, in *Hutchison v. Board of Educ.* (Greenfield Dist. No. 10), 32 Ill. App. 2d 247, 254, 177 N.E.2d 420, 425 (3d Dist. 1961), the court reversed a dismissal, noting that students testified that they "learned something" and were "satisfied with" the teacher. And, in *Pearson v. Board of Educ.* (Dist. No. 5, Macoupin County), 12 Ill. App. 2d 44, 51-52, 138 N.E.2d 326, 330 (3d Dist. 1956), the court found persuasive teacher and student testimony that the teacher was emotional and nervous.

212. See, e.g., *Kallas v. Board of Educ.*, 15 Ill. App. 3d at 452, 304 N.E.2d at 529. The *Kallas* court affirmed the dismissal, noting that "[t]he teacher did not take the stand to deny any of the events testified to." Id. See *Chandler v. East St. Louis School Dist.* 189, 35 Ill. App. 2d at 329, 182 N.E.2d at 776-77 (teacher did deny the charges, and the court reversed the dismissal).

213. See, e.g., *Miller v. Board of Educ.*, 51 Ill. App. 2d at 33, 200 N.E.2d at 844. In *Miller*, the court stated: "In order for a teacher to function properly there must be some way of implementing the requirement that students behave in an orderly and respectful manner. That in many cases students do not so behave is common knowledge." Id.

214. ILL. REV. STAT. ch. 122, §§ 24-11, -12 (1977). See *Jackson v. Board of Educ.* (Trico Dist. No. 176), 63 Ill. App. 3d 671, 675, 380 N.E.2d 41, 44 (5th Dist. 1978). In *Jackson*, the court found "no requirement . . . that a formal evaluation be performed" pursuant to a board's denial of tenure under section 24-11 of the School Code. Id.
of competency. Evaluations are especially pertinent when prepared by skilled professionals who observe a teacher in his or her classroom. Only with such evidence can a board fully and accurately determine a teacher's competence. Charges should not result from rumors or unsubstantiated complaints but from actual visits to a classroom.

If evaluations are to be proper evidentiary tools, however, both their relevance and bias component must be carefully scrutinized. First, the evidence provided by evaluations should be material and relevant; the evidence should help prove whether a teacher's conduct was irremediable, not remediated after a warning notice, or remediable. As an example, only evaluations between the time of a teacher's receipt of a warning notice and a board's decision to dismiss a teacher would be relevant to show that a teacher did not correct deficiencies in a warning notice. Evaluations before a warning notice was received or after a teacher was dismissed would be irrelevant for this purpose.

In addition, evaluations extending many years back in time may or may not be relevant. For example, where a teacher is evaluated once a year over a period of years and the same deficiency appears, a hearing officer or court may not know whether the conduct was cumulative and continuous or merely isolated. Nevertheless, a board can use such evaluations to demonstrate a teacher's inability to correct deficient conduct. Conversely, depending upon the particular facts, a teacher can point to these evaluations to support a charge that the board sat idly by, allowing an originally remedi-able charge to become irremediable.

Second, because dismissal is the most severe penalty a school board can impose, and because dismissal can effectively end a professional career, evaluations should be based on objective criteria established by officially announced, uniformly applied board policy. These criteria should include facts about the surrounding circumstances, e.g., the type of students in the

215. See Beauchamp, supra note 87, at 170. The author asserts that the process of evaluation is difficult and that evaluators have limited experience. Beauchamp defines curriculum evaluation as consisting of "those processes necessary to judge the effectiveness of the curriculum that was planned as well as the effectiveness of the curriculum system itself," id. at 204, which includes the implementation of a curriculum by teachers. In Saylor & Alexander, supra note 10, at 302, the authors define evaluation as the "collection and use of information to make decisions about an educational program." Id., quoting Cronback, Course Improvement through Evaluation, 64 TCHR. C. REC. 672 (1963). According to Saylor and Alexander, evaluations help teachers and other school decision-makers make the best choices of curriculum content, instructional objectives and methods, and evaluation techniques. Id. at 298.

217. See notes 65-66 and accompanying text supra.
218. See note 55 and accompanying text supra.
220. See notes 63-64 and accompanying text supra.
222. Id. at 41.
classroom and the teacher's entire curriculum planning and implementation.223 The fact that some students are difficult224 or have unusual behavior problems225 may mitigate a board's charge of incompetency. Likewise, hearing officers and courts should consider a teacher's total instructional program. In Gilliland, the supreme court noted with approval a three-day evaluation period that presented a complete picture of the teacher's ability and planning.226 In contrast, the supreme court examined other evaluations and observed that the evaluator did not know whether the teacher had prepared lesson plans for the class.227 Without such information, the court reversed the dismissal, noting that the board could not properly dismiss the teacher for lack of proper planning.228 An appellate district agreed with this reasoning and reversed the dismissal of a teacher because the superintendent "didn't know if [the teacher had] followed his suggestion."229 With knowledge of the teacher's activities before and after the time of the evaluation, a school board will be able to show that its decision to dismiss a teacher was not arbitrary but instead was based on solid and valid evidence.

Third, the usefulness of an evaluation is necessarily affected by an evaluator's degree of expertise or possible bias. An evaluator must possess sufficient expertise properly to evaluate a teacher.230 An evaluator should have knowledge about evaluation techniques and should understand the curriculum area taught by the teacher. For example, an evaluator knowledgeable about home economics should evaluate a home economics teacher. Similarly, an evaluator familiar with the goals and objectives of special education should evaluate teachers of students with learning disabilities. In other words, a teacher should be evaluated by teachers, administrators, or others who are aware of the goals and objectives of the specific course or educational program, who have specific knowledge of the problems, level of educational ability, and psychological profiles of the students in the classroom, and who may have had direct experience teaching the same course content.231

Illustrative of this lack-of-knowledge problem was a case in which an evaluator complained that the kindergarten students took eight minutes to recite the pledge of allegiance.232 The hearing officer, in reversing the dismissal,

223. SAYLOR & ALEXANDER, supra note 10, at 333-36.
226. Gilliland v. Board of Educ., 67 Ill. 2d at 151, 365 N.E.2d at 325.
228. Id. at 443, 367 N.E.2d at 1341.
231. Id. at 29.
aptly asserted that the evaluator could not understand why this activity took so long because he was not familiar with how kindergarten classes were conducted. Similar problems can arise in a special education department. An evaluator unaware and unskilled in the special educational and emotional problems of such students will find much about which to complain. As a result of these inadequacies, evaluators lacking sufficient expertise and awareness of the specific nature and content of the instructional process can only collect meaningless evidence.

Further, evaluators should not be biased, arbitrary, capricious, or prejudiced. For example, a principal has "an interest in the outcome" of a case should not be the "only person directly involved in evaluating" the teacher. Similarly, a principal should not taint an evaluator’s remarks by communicating the superintendent’s "concern" about the teacher. Such statements can only create biased preconceptions and are especially damaging where the evaluators visit the teacher’s classroom only one or two times to determine whether he or she has corrected allegedly deficient conduct.

In summary, the best evidence is evidence carefully and routinely gathered in conformity with procedures established by agreement between teachers, administrators, and school boards. The evidence should uphold or rebut a charge of irremediability. More importantly, however, the evidence should include information detailing all of the surrounding circumstances and mitigating factors, as well as any other pertinent information about the teacher, the students, and the administration. Only in this way can specific conduct by a teacher be adequately evaluated by hearing officers and courts in light of the total context of the educational environment.

CONCLUSIONS AND RECOMMENDATIONS

This Comment has set forth the current standards that courts and hearing officers utilize to determine whether a teacher’s dismissal should be affirmed or reversed. It has examined the general tests for determining irremediability, described and categorized improper teacher conduct, and suggested both general standards and specific factors that hearing officers and courts should consider in future proceedings. Together, these standards and factors constitute a surrounding-circumstances test whereby hearing officers and

233. Id.
courts consider alleged misconduct in relation to a teacher's working environment. The development and expansion of this test by Illinois hearing officers and courts would be a recognition of the dynamic nature of the teaching and educational setting. Absent widespread application of private sector labor law tests, hearing officers and courts cannot realistically and equitably review dismissals.

Because the characterization of a teacher's conduct as remediable or irremediable pervades the entire question of a teacher's dismissal, Illinois hearing officers and courts should further clarify the tests of irremediability. Courts need to define the parameters of damage and correctability, especially in light of the supreme court's recent requirement that the damage sustained by students, faculty, or school be severe.\footnote{239} Second, courts should resolve the confusion and furnish guidelines regarding the length of time necessary for a remediable cause to become irremediable. Current case law indicates that it is somewhere over one year\footnote{240} but less than four years,\footnote{241} however, it may be as much as several years.\footnote{242} Third, courts need to explain exactly how remediable causes become irremediable when a school board sits idly by,\footnote{243} and how remediable causes, in combination, can be considered irremediable.\footnote{244} Courts must also determine how school boards should estimate the length of the required period of remediation after a notice of remedy is served on a teacher, and they must formulate clear standards for the type of evidence that best establishes the existence of alleged deficient conduct. Finally, courts should start to apply the well-reasoned tests formulated by hearing officers, who have the direct expertise in both labor and school law. All of the above issues require courts to adopt an active role whereby they will be forced to apply the currently vague and undefined tests to expanded sets of facts on a case-by-case basis. The courts, however, lack clearly-drawn, objective criteria on which to base a decision, criteria that can be provided by the Illinois General Assembly.

The General Assembly can start this process by amending sections 10-22.4, 24-12, and 34-85 to reflect the current status of the law. First, the General Assembly should repeal the power of a school board to dismiss a teacher "whenever, in its opinion, [the teacher] is not qualified to teach, or whenever . . . the interests of the schools require it."\footnote{245} These provisions should be repealed because they are vague, overly broad, and, in many cases, they merely repeat causes for dismissal already alleged.\footnote{246}

\footnote{240. Grissom v. Board of Educ., 75 Ill. 2d at 333, 388 N.E.2d at 406. See note 60 and accompanying text \textit{supra}.}
\footnote{242. See note 62 and accompanying text \textit{supra}.}
\footnote{243. See note 63 and accompanying text \textit{supra}.}
\footnote{244. See notes 65-66 and accompanying text \textit{supra}.}
\footnote{245. ILL. REV. STAT. ch. 122, § 10-22.4 (1977). See note 7 \textit{supra}.}
\footnote{246. See notes 167, 173, 185 and accompanying text \textit{supra}.}
A more difficult legislative task involves sections 24-12 and 34-85. The General Assembly should amend these sections to state that causes may be either remediable or irremediable and that due process requirements may or may not be required in either contingency. Next, the General Assembly needs to determine whether the judicial standards for irremediability should be statutorily mandated or whether other standards should be used by school boards, hearing officers, and courts. If, however, any standards are promulgated, they should be general guidelines that would allow local school boards, hearing officers, and courts maximum freedom to consider carefully the particular facts of each case. General guidelines would also allow practitioners for school boards and teachers the opportunity to make important distinctions based on the facts of each case, distinctions that can make the difference between affirming and reversing a dismissal.

Finally, and most importantly, individual school boards and teachers must take an active role in this area of the law. School board members must become fully aware of their responsibility to decide fairly the professional futures of their employees. Board members must do what they consider to be best for the community they serve and provide checks on administrators to ensure meaningful decision-making. Teachers, too, must become aware of the dismissal process in general. Specifically, they should learn the types of conduct that can lead to a warning notice or dismissal based upon irremediable causes. In addition, both school boards and teachers should develop and implement consistent and workable systems for the collection of evidence to be used in the dismissal process. With these first steps by those directly involved in the dismissal process, as well as by hearing officers, courts, and the General Assembly, Illinois can have a less complex and more equitable system of teacher dismissal.

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247. The need for general guidelines, and the problems associated with enacting legislation that mandates many specific obligations for local school boards can be clearly seen in the area of curriculum prescriptions. See A. Kaplan, Curriculum Inputs: An Analysis of State Legislation Affecting the Public School Curriculum (Sept. 1, 1974) (unpublished master's thesis, Northwestern University), in which, as of December 31, 1973, 118 separate curriculum prescriptions were found to be in force for all regular programs in the public primary and secondary schools in Illinois. These 118 prescriptions were divided into four groups for analysis: programs (for example, industrial arts); courses (automobile maintenance); subjects (engine maintenance); and content (pistons).


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