

COURT CASES ALLEGING EMPLOYMENT DISCRIMINATION IN PUBLIC SCHOOLS

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A DISSERTATION

Submitted in partial fulfillment of the requirements
for the degree of Doctor of Education
in the Department of Educational Leadership,
Policy, and Technology Studies
in the Graduate School of
The University of Alabama

TUSCALOOSA, ALABAMA

2014

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ABSTRACT

The purpose of this research was to examine Court Cases Alleging Employment Discrimination in Public Schools by analyzing 115 law based court cases ranging during 1980-2012, through the most available publication of *West's Educational Law Digest* of 2012. Employment is a means to provide sustainable income to support the individual(s) and families. Employment Discrimination in Public Schools represents a small section of income-based employment opportunities in the United States compared to the private sector. The Civil Rights Act of 1964 prohibits employment discrimination in the United States.

This study examined cases identified as prohibited in some areas and questionable in others. Schools and school districts must follow the law as ascribed by the United States Constitution and laws that prohibit discrimination. For the timeframe referenced for this dissertation, other legislative acts will examine laws relative to Employment Discrimination. Specifically, Title VII of the Civil Rights Act of 1964, Section 1981 and 1983; U.S.C. 42 will help to reemphasize the importance of fair labor practices throughout this nation's school districts.

At the conclusion for this study, the results will bring awareness by assisting school boards, school districts and schools to use fair hiring practices by following the letter of the law and preventing unnecessary litigation and undue media attention when the ultimate goal is providing quality education to each student and creating lifelong learners and responsible citizens.

DEDICATION

First, all Glory and Honor is given to God the Father, Jesus Christ the Son, and through the power of the Holy Spirit. For without the Grace of God this research project would not BE a reality. We surely walk with His Goodness and Mercy.

The research project is dedicated to my friend and wife, Kim, who has always been so loving and understanding. Kim thanks for believing in me and always being in my corner through the smooth and rough times. We are entering our season of Grace. Thanks for those shared sacrifices along this journey. To my beautiful daughters, Kristin, Rebecca, and Stephanie, who have shared me with the community, religious activities, and other endeavors when I should have been at home providing more quantity time, and not just quality time, with the family. To my Mom Barbara Doyle who instilled the value of getting a good education which cannot be taken away from you. In loving memory of R. J. “Bud” Doyle who was one of the smartest and prosperous men I knew and did not have a great educational foundation, yet valued it greatly and supported the idea that you can accomplish a great deal through hard work and placing your faith in the Lord.

I would like to remember Dr. Harold Bishop whose inspiration allows me to persevere with integrity, determination, and distinction. Next, Dr. Sylvia Coleman and Daphane Wilkerson shared inspiration, encouragement, and resources allowing me to move forward during this project. Special thanks go to Bob Starkey, Darin Clark, and Edna Keeton for providing the facility to operate in and the philosophy, vision, and dream to think out of the box. The concept of “follow through” continues to reign in my thoughts.

Last, but not least, to Kimmie who at three years old can operate an iPad with finesse alongside her Grandpoppie. In addition, to our newest family member, Juliet who was born during Chapter Two Literature Review and Chapter Three Methods, has given me the fortitude to finish strong.

ACKNOWLEDGMENTS

Many thanks to the members of my committee who saw a piece of coal and through the pressure, rigors and toils, and tribulations helped to shape a diamond. Special thanks go to each committee member for encouraging me to finish well, when I thought about “calling it a day.” Dr. Dagley served as Chair and was the driving force during this project. If not for his guidance and enthusiasm for law, I would have dismissed the attempt to follow through on my dissertation. His expectations are high along with providing valid points that reflect good research techniques while developing a healthy respect and understanding for the law.

Dr. John Tarter is great to work with and commands a certain amount of finesse for satisfactorily completing the project. Dr. Tarter asked those “what if” and “how about” questions. Drs. Tarter and Dagley have worked together on several other projects and I believe them to be men of integrity.

Dr. Roxanne Miller is well versed in the exploits of good literature and grammatical requirements. Dr. Miller has many outstanding interests in addition to her teaching classes. As with all my committee members, her time is at a premium so I am eternally grateful for her consideration and cooperation in helping me to complete this dissertation.

Dr. John Dantzler is a research specialist and involved in many worthwhile projects throughout the Southeastern region of the United States. Dr. Dantzler’s qualitative research class ensured students were well grounded and prepared to use comprehensive thinking when using interview techniques supplied by the Institutional Review Board (IRB). A more thorough

approach will be needed in order to fulfill statistical data for this dissertation and other research projects.

Dr. David Campbell is the President of Northeast Alabama Community College (NEAA) and has always been an encourager. Under Dr. Campbell's leadership and vision, NEAA continues to expand its facilities and provides valuable services to students throughout the Northeast region of Alabama, Southern Tennessee, and Western Georgia. Personal thanks to Dr. Campbell for the sacrifice in those long commutes to The University of Alabama in Tuscaloosa.

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CHAPTER I

INTRODUCTION

Public schools are important institutions in the United States of America. They have a vital role in economic development for individuals and society at large, and they help to perpetuate the culture. They are also important employers. The Civil Rights Act of 1964 forbids employment discrimination in public schools. Nearly 50 years after the passage of the Civil Rights Act, data about employment, income, and job mobility demonstrate that employment discrimination continues in American schools, corporations, and businesses both large and small (Baldi & McBrier, 1997; Grodsky & Pager, 2001; Wu & Leffler 1992).

Earning a good education has always played an important role in the lives of millions of Americans. The shift from an agricultural society to the industrial age with the modern school movement during the turn of the 19th century was paramount in developing our nation (www.2.ed.gov). The need for more buildings, administrators, and teachers increased with the nation's population (Dewey, 2001). Nevertheless, with the need for more quantity and more quality in employees, unfair hiring and promotional practices sometimes went unnoticed by most people. Employers often claimed they were acting equitably when hiring minorities, yet research points out there is significant separation between what employers say and what they do (Pager & Quillian, 2005).

Using what has been described as “particularistic manipulation,” gate-keeping actors likely exert flexibility and discretion, thereby determining rather informally, what attributes identify who is considered the best employee to hire or promote (Roscigno, 2007). These

employment practices can contribute to a form of structural racism consistent with broad formulations that have been described as “Laissez Faire Racism” which involves persistent negative stereotyping of African Americans, a tendency to blame Blacks themselves for the Black-white gap in socioeconomic standing.

Laissez Faire Racism is crystallizing in the current period as a new American racial belief system at a point when African Americans are heavily urbanized, nationally dispersed and occupationally and heterogeneously populated (Bobo, 1996).

This phrase is also used to emphasize the forms and mechanisms of that domination are now far more loosely coupled, complex, and permeable than the past. The basis for retaining the term “racism” is twofold. First, African Americans remain in a unique and fundamentally disadvantaged structural position in the American economy and polity. Second, racial discrimination continues to confront African Americans albeit in less systematic and absolute ways in its current form (Bobo, Kluegel, & Smith 1997).

Another form of racism, “Color-Blind Racism,” is the basic idea that race and racial characteristics should be disregarded when it comes to selecting which people receive certain treatment and rights. This ideology emerged in the late 1960s and is institutionalized and structured in today’s society. While most Americans would never admit to having discriminatory ideas against an entire race of human beings, they endorse a system, which accepts this color-blind racism. They participate in this structured system, and unless we, as a society, work to end this mentality, racism will remain a staple in our country (Bonilla-Silva 2004).

“Jim Crow Discrimination” tended to produce disparate outcomes by race and reflected major societal and institutional practices oppressing Blacks (Bobo et al., 1997; Pettigrew & Martin 1987). Jim Crow was the name of the racial caste system that operated primarily, but not

exclusively in southern and Border States, between 1877 and the mid-1960s. Jim Crow was more than a series of rigid anti-Black laws. It was a way of life. Under Jim Crow, African Americans were relegated to the status of second-class citizens. Jim Crow represented the legitimization of anti-Black racism (Pilgrim, 2000).

With the onset of demands for better service, public education brings special concerns and issues that are relevant today. There are varying degrees of employment discrimination in school districts nationally both rurally and in urban areas (Waks, 2002). No individual or institution is immune to the effects of employment discrimination. Discrimination is an influential mechanism, yet is seldom examined (Mong & Roscigno, 2009). Researchers have identified discrimination and have called for a greater understanding of the underlying social interactional processes involved (Reskin 2003; Vallas 2003).

Problem Statement

As demonstrated in the review of literature, there is a consensus that employment discrimination in schools is wrong and prohibited by law. Despite the existence of laws enacted to protect the rights of all Americans, many minorities, including African Americans, Native Americans, Hispanic Americans, and women, representing all racial groups, often experience the results of unfair and insensitive practices (Hensen, 1998). Pager and Quillian (2005) demonstrated that fundamental classifications pertaining to race, national origin, gender, affiliation, and geographic location play an important role in how school districts decide on employment matters, including both hiring and termination. However, no representative study has used case law, in which school employees or aspiring school employees have alleged the

existence of unlawful discrimination, as a source of data about employment discrimination in the schools.

Statement of Purpose

The purpose of this study is to qualitatively analyze court cases occurring in the federal courts between 1981 and 2011, in which an applicant or employee has alleged employment discrimination by a public school district. In popular usage, employment discrimination can be considered a broad subject. In legal usage, Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based upon race, color, religion, sex, and national origin (U. S. Equal Employment Opportunity Commission, 2005). While race and gender may be the prevalent alleged causes for employment discrimination brought against employing school boards by aggrieved applicants or employees, it may well be that other factors, such as job performance, negative summative evaluations, or not following established policies and procedures, can also contribute to the reasons for dismissal. These “mixed motive” types of situations, where the plaintiff applicant or school employee alleges discrimination, but the school district points to another reason for its decision, can be a rich source of data about the role of discrimination in matters of employment in public school settings (e.g., *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973)).

Significance of the Study

The Civil Rights Acts of 1964 (Public Law 88-352, 78 Stat. 241, enacted July 2, 1964), was a landmark piece of legislation in the United States. It barred discrimination in several areas of public interaction, including housing, employment, voting, and education. The Act was

enacted as part of a national promise to end unequal application of voter registration requirements and unequal access to public accommodations in housing, employment, and education. The operational part of the Civil Rights Act, Title VII, as it appears in Volume 42 of the United States Code, beginning at Section 2000e, outlawed employment discrimination based on race, color, religion, sex, and national origin.

The Civil Rights Act of 1964 and its Title VII carried a message that, in this country employers need to follow the law of the land rather than the whims and wants of those in power. It should have brought awareness to the issue of comparative rights, for those who are in power versus those who are not in power. It should not matter if the individual worked in a courtroom, boiler room, boardroom or classroom; each person should be entitled to certain unalienable rights as spelled out in the United States Constitution.

The court cases represented in this study are real stories brought by real people who felt strongly enough about perceived unequal treatment in the workplace of public schools, that they brought their employer or potential employer to court. Examined qualitatively, those stories can provide an understanding of the situations, fact-patterns, outcomes, and trends hidden within 30 years of litigation.

Today there are still important issues to be resolved. Without legislative action, individual citizens would have little recourse in defending the respective freedoms written in the United States Constitution. Job seekers in the 21st century competing in a global society must understand the expectations associated with success in order to facilitate favorable change and compete in the job market. A report in *West's Education Law Reporter* indicated that gender and age discrimination cases have been increasing at high rates in the federal courts, with the four most common causes of workplace bias claims being those based upon race, gender, disability,

and age. Gender discrimination is the fastest growing section in court cases (*127 Ed. Law Rep.* [1], 1998). From the issues, outcomes, legal rationales, and trends provided by the court cases in the sample, this study intend to provide recommendations for school administrators, to serve as a guide to be used by them and their employing school boards, to reduce the amount of litigation and legal issues associated with employment discrimination in public schools.

Research Questions

The following research questions guided this study:

1. What are the issues in court cases involving public K-12 schools, in which a plaintiff has alleged employment discrimination?
2. What are the outcomes in court cases involving public K-12 schools, in which a plaintiff has alleged employment discrimination?
3. What are the trends in court cases involving public K-12 schools, in which a plaintiff has alleged employment discrimination?
4. What legal principles for school administrators can be discerned from court cases involving public K-12 schools, in which a plaintiff has alleged employment discrimination?

Limitations

The following limitations are relevant and significant to this research:

1. Cases drawn as a source of data for this study were all cases pertaining to employment discrimination in the public schools, filed during the years of 1981 through 2011.

2. The cases were derived from *West's Education Law Reporter* and its digest system, using the Key Number Schools 133.1 Selection and Appointment, and the Key Number Schools 133.1(1) In General.

3. The cases researched were litigated in appellate-level state courts, federal district courts, federal courts of appeal, and the United States Supreme Court.

4. The research was performed by an educator and not an attorney, and was therefore performed through the perspective of qualitative educational research, rather than traditional legal research.

Delimitations

The following delimitations apply to this study:

1. The cases reviewed were delimited to those obtained through *West's Educational Law Digest* using Key Number Schools 133.1 Selection and Appointment, and to those cases obtained through the same digest, using Key Number Schools 133.1(1) In General.

2. The case were delimited to those reported in the *West's Educational Law Digest* from 1980-2012.

3. The cases were delimited to those found using the Key Numbers described above, in the timeframe described above, and having within them an allegation of employment discrimination brought by the plaintiff.

Assumptions

The following assumptions are relevant to this study:

1. This study assumed that the court cases were handled using the prescribed procedural rules applicable to their related jurisdictions.

2. This study assumed that the editors for *West's Education Law Reporter* and *West's Education Law Digest* identified court cases alleging employment discrimination using the same Key Number identification numbers.

3. This study assumed that the editors for *West's Education Law Reporter* and *West's Education Law Digest* identified the claims of employment discrimination with the Key Number Schools 133.1 Selection and Appointment and with the Key Number Schools 133.1(1) In General.

Definitions of Legal Terms

The following legal terms apply to the terminology employed in this study.

Absolute immunity: “A complete exemption from civil liability, usu. Afforded to officials while performing particularly important functions, such as a representative enacting legislation, and a judge pressing over a lawsuit” (Black, 1995, p. 753).

Adjudge: to pass on judicially, to decide, several, or decree or to sell or can be (Black, 1995, p. 26).

Adjudicate: To settle in the exercise of judicial authority (Black, 1995, p. 26).

Affirm: To ratify, uphold, approve, make firm, confirm, establish, and reassert (Black, 1995, p 37).

Age Discrimination in Employment Act of 1967 (ADEA): The ADEA prohibits employment discrimination nationwide based on age with respect to employees 40 years of age or older. ADEA also addresses the difficulty older workers face in obtaining new employment after being displaced from their jobs. The ADEA applies to employers and industries affecting commerce with 20 or more full-time employees 29 USC Section 630(b).

Appellant: The party who takes an appeal from one court or jurisdiction to another (Black, 1995, p. 64).

Appellee: The party in the calls against whom an appeal is taken; that is, the party who has an interest averse to setting aside reversing the judgment (Black, 1995, p. 64).

Appellate court: Court having jurisdiction of appeals and review of decisions of lower courts; the court to which causes all removable appeal, certiorari, error law report (Black, 1995, p. 64).

Arbitrary: In an unreasonable manner, as fixed or done capriciously or at pleasure (Black, 1995, p. 69).

Americans with Disability Act of 1990 (ADA): Congress intended that the act provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities and provide broad coverage; ADA Amendments Act of 2008, Pub. L. 110 – 325, Section 2, September 25, 2008, 122 Stat 3553.

Appeal: “Resort to a superior court to review the decision of an inferior court or administrative agency” (Black, 1979, p. 88).

Briefs: A written statement setting out the legal contentions of a party in litigation, esp. an appeal; a document prepared by counsel as a basis for arguing a case, consisting of legal and factual arguments and the authorities in support of them (Black, 2005, p. 159).

Case brief: “to identify the essential components of an opinion” (Statsky & Wernet, 1995, p. 39).

Case law: “The law to be found in the collection of reported cases that form all or part of the body of law within a given jurisdiction” (Black, 2005, p. 177).

Certiorari: An extraordinary writ issued by an appellate court, at its discretion, directing a lower court to deliver the record in the case for review. The U. S. Supreme court uses certiorari to review most of the cases it decides to hear (Black, 2005, 187).

Circuit Court: “A court usually having jurisdiction over several counties, districts or states, and holding sessions in all those areas” (Black, 2005, p. 302)

Citation: “A reference to a legal precedent or authority, such as a case, statute, or treatise that either substantiates or contradicts a given a position” (Black, 2005, p. 2201).

Civil rights act of 1964: The provisions of the civil rights act forbade discrimination based on sex as well as race in hiring promoting and firing (Public Law 88 352 (78 Stat. 241)).

Code: A systematic collection, compendium, or revision of laws, rules, or regulations (Black, 1995, p. 176).

Court of Appeals: In those states with courts of appeals, such courts are usually intermediate appellate courts (with the highest appellate court being state Supreme Court) (Black, 1995, p. 249).

Contributory negligence: “A plaintiff’s own negligence that played part in causing the plaintiff’s injury and that is significant enough (in a few jurisdictions) to bar the plaintiff from recovering damages” (Black, 1990, p. 1056).

Decision: A determination arrived at after consideration of facts, and, in legal context, law (Black, 1995, p. 282).

Declaratory judgment: Statutory remedy for the determination of justiciable controversy whether plaintiff is in doubt as to his legal rights (Black, 1995, p. 283).

Decree: The judgment of a court of equity or chancery, answering for most purposes to the judgment of a court of law (Black, 1995, p. 284).

De facto: “Actual: existing in fact; having effect even though not formally or legally recognized” (Black, 2005, p. 352).

Defendant: “A person sued in a civil proceeding or accused in a criminal proceeding” (Black, 2005, p. 356).

Digest: a collection or compilation, embodying the chief matter of numerous books, articles, court decisions, etc. in one, disposed under proper heads or titles, and usually by alphabetical arrangement, full facility in reference (Black, 1995, p. 313).

Discretionary immunity: “A qualified immunity for a public official’s acts, granted when the act in question required the exercise of judgment in carrying out official duties (such as planning and policy-making)” (Black, 1999, p. 753).

Disparate treatment: Differential treatment of employees or applicants on the basis of their race, color, religion, sex, national origin, handicap, or veteran status (Black, 1995, p. 326).

Disposition: “A final settlement or determination” (Black, 2005, p. 389).

Due process: “The conduct of legal proceedings according to the established rules and principles for the protection and enforcement of private rights, including notice and the right to a fair hearing before a tribunal with the power to decide the case” (Black, 2005, p. 424).

Equal protection clause: That provision in the 14th Amendment of the United States Constitution, which prohibits the state from denying any person within its jurisdiction the equal protection of the laws (Black, 1995, p. 371).

Equity: Justice administered according to fairness as contrasted with the strictly formulated rules of common law (Black, 1995, p. 374).

Express: Clear; definite; explicit; plain; direct; unmistakable; not dubious or ambiguous (Black, 1995, p. 402).

Federal Court: “A court having federal jurisdiction, including the U. S. Supreme Court, circuit court of appeals, districts courts, bankruptcy courts, and tax courts” (Black, 2005, p. 304).

Finding: The result of the deliberations of a jury or a court (Black, 1995, p. 437).

Government function: A government agency’s conduct is expressly or impliedly mandated or authorized by constitution, statute, or other law that is carried out for the benefit of the general public. Generally, a governmental entity is immune from tort liability for governmental acts (Black, 1999, p. 704).

Gross negligence: “A lack of slight negligence or care. A conscious, voluntary act, or omission in the reckless disregard of a legal duty and of the consequences to another party, who may typically recover exemplary damages” (Black, 1999, p. 1057).

Holding: “A court’s determination of a matter of law pivotal to its decision; a principle drawn from such a decision; a ruling on evidence or other questions presented at trial” (Black, 2005, p. 608).

Immunity: “Any exemption from a duty, liability, or service of process; esp., such an exemption granted to a public official” (Black, 1999, p. 752).

Implied: This word is used in law in contrast to “express;” i. e., where the intention in regard to the subject-matter is not manifested by explicit and direct words, but is gathered by implication or necessary deduction from the circumstances, the general language, or the conduct of parties” (Black, 1995, p. 517).

In loco parentis: “In place of a parent; instead of a parent; with a parent’s rights, duties, and responsibilities” (Black, 1979, p. 708).

Injunction: A court order prohibiting someone from doing some specified act or commanding someone to undo some wrong or injury (Black, 1995, p. 540).

Issue: “A point in dispute between two or more parties” Black, 2005, p. 690).

Judgment: The official and authentic decision of the court of justice upon the respective rights and claims of the parties to an action or suit therein litigated and submitted to its determination (Black, 1995, p. 586).

Judicial review: Power of courts to review decisions of another department or level of government (Black, 1995, p. 593).

Just cause (good cause): “A legally sufficient reason. The term is often used in employment--termination cases” (Black, 2005, p. 182).

Key-Number System: “ A legal research indexing system developed by West Publishing Company (now the West Group) to catalogue American case law with head notes” (Black, 2005, p. 721).

Law: That which is laid down, ordained, or established (Black, 1995, p. 612).

Majority opinion: The opinion of an appellate court in which the majority of its members join (Black, 1995, p. 658).

Mandamus: We command. This is the name of the writ (formerly a higher prerogative writ in) which issues from a court of superior jurisdiction. A writ issuing from a court of competent jurisdiction, commanding an inferior tribunal, board, Corporation, or person to perform a purely ministerial duty imposed by law (Black, 1995, p. 663).

Neglect: “The omission of proper attention to a person or thing, whether inadvertent, negligent, or willful: the act or condition of disregarding” (Black, 2005, p. 871).

Opinion: “A court’s written statement explaining its decision in a given case, including the statement of facts, points of law, rationale” (Black, 2005, p. 922).

Per curium opinion: “An opinion handed down by an appellate court without identifying the individual judge who wrote the opinion” (Black, 2005, p. 1119).

Plaintiff: “The party who brings a civil suit in a court of law” (Black, 2005, p. 966).

Precedent: “A decided case that furnishes a basis for determining later cases” (Black, 2005, p. 986).

Proviso: “A limitation, condition, or stipulation upon whose compliance a legal or formal document’s validity or application may depend” (Black, 1999, p. 1241).

Punitive damages: “Damages awarded in addition to actual damages when the defendant acted with recklessness, malice, or deceit” (Black, 1999, p. 396).

Qualified immunity: “Immunity from civil liability for a public official who is performing a discretionary function, as long as the conduct does not violate clearly established constitutional or statutory rights” (Black, 1999, p. 753).

Quid pro quo: What for what; something for something (Black, 1995, p. 867).

Relief: The public or private assistance or support, to an area or otherwise, granted to indigent persons (Black, 1995, p. 895).

Remand: “The act or an instance of sending something (such as a case, claim, or person) back for further action” (Black, 1999, p. 753).

Section 42 U.S.C. Sec. 1983:

Every person who, under color of any statute, ordinance, custom, or usage of any state . . . subjects or causes to be subjected, any citizen of the United States . . . to the deprivation

of any right, privileges, or immunities secured by the constitution and laws, shall be liable to the party injured in an action at law, suit at equity or other proper proceeding for redress. (Miles, 2001, p. 18)

Standard of care: “In the law of negligence, the degree of care should that a reasonable person should exercise” (Black, 1999, p. 1413).

State court: “A court of the state judicial system, as opposed to a federal court” (Black, 2005, p. 306).

Statue: “A law passed by a legislative body” (Black, 1996, p. 675).

Statute of limitations: “A statute establishing a time for suing in a civil case, based on the date when the claim accrued (as when the injury occurred or was discovered)” (Black, 1999, p. 1422).

Summary judgment: Procedural device available for prompt and expeditious disposition of controversy without trial when there is no dispute as to either material fact or inferences to be drawn from undisputed facts, or if only question of law is involved (Black, 1995, p. 1001).

Supreme Court: An appellate court existing in most of the states. In the federal court system, and in most states, it is the highest appellate court or court of last resort (Black, 1995, p. 1004).

Trial: A judicial examination and determination of issues between parties to action, whether they be issues of law or of fact, before a court that has jurisdiction (Black, 1995, p. 1045).

Writ: A written judicial order to perform a specified act, or giving authority to have it done, as in a writ of mandamus or certiorari, or as in an “original writ” for instituting an action at common law (Black, 1995, p. 1108).

Organization of the Study

Chapter I of the research study serves as an introduction to the study. A statement of the problem, the significance of the problem, the purpose of the study, the research questions, the definitions of operational terms, the limitations faced in the search, and the assumptions are included in the chapter.

Chapter II contains a review of the literature in the research area, which includes employment discrimination in public schools. In addition, it contains a historical overview of the legislation concerned with employment discrimination.

Chapter III describes the methodology and procedures utilized in the study. It provides rationale and details specific to the qualitative study.

Chapter IV includes the case briefs as a source of data, as well as the qualitative analysis of the data derived from the case briefs.

Chapter V includes the summary and conclusions related to the research questions for this study, guidelines and principles for school administrators regarding employment discrimination, and recommendations for further study.

CHAPTER II

LITERATURE REVIEW

The Civil Rights Act of 1964 prohibits employment discrimination. These laws have been enacted to ensure that a fair standard of living is available to all deserving individuals with credentials, desire, and motivation in contributing to the orderly educational process, but are denied the opportunity to do so. Adverse employment actions taken against school administrators, namely, principals and assistant principals included a form of demotions, reassignments, suspensions and terminations of employees belonging to racial minorities (Flatt, 2012).

One of the key limitations for this research is that many cases are not reported due to settlements between the parties determined out of court and, therefore undocumented. Furthermore, there has been little research regarding adverse employment actions against public school principals (Harris, 2011). The following information may not directly list schools or school districts; however, the basic principles of employment discrimination, occupational segregation, disparate treatment or disparate impact apply to similar issues.

The term “employment discrimination” describes claims where an employee is treated unfavorably because of his or her race, skin color, national origin, gender, disability, religion, or age. Discrimination in any facet of employment is illegal, so workplace discrimination extends beyond hiring and firing. For example, employment discrimination could occur in any number of situations, including the following:

- * Stating or suggesting preferred candidates in a job advertisement
- * Excluding potential employees during recruitment
- * Denying certain employees compensation or benefits
- * Paying disparately for similar work performance--qualified employees in the same

position different salaries

- * Enforcing policies when granting disability leave, maternity leave, or retirement options in a discriminatory manner

- * Denying or disrupting the use of company facilities in a discriminatory manner

- * Issuing promotions or layoffs in a discriminatory manner

It is important to note that discriminatory practices can occur in any aspect of employment. It is illegal for an employer to make assumptions based on race, gender, or age related stereotypes, and is unlawful for an employer to assume that an employee may be incapable because he or she is disabled.

Employment discrimination laws seek to prevent discrimination based on race, sex, religion, national origin, physical disability, and age by employers. Increasingly, there are more laws seeking to prevent employment discrimination based on sexual orientation. Discriminatory practices include basis in hiring, promotion, job assignment, termination, compensation, retaliation, and various types of harassment. The main body of employment discrimination laws consists of federal and state statutes (Cornell University, 2013). However, applying these laws to facts provide guidance as to which employment practices will be deemed discriminatory.

Bielby and Baron (1986) and Tomaskovic-Devey et al. (2006) are the only known studies to document occupational segregation in the workplace. Both studies employed analyses to

explain segregation (treating it as a dependent variable), whereas the study was to examine the consequences of segregation (treating it as an independent variable).

In addition, prior research cannot fully address this question because it typically relies on one dimension of discrimination estimates of wage gaps. A small segment of this study extends the literature by analyzing 11,528 legally verified cases of race and sex discrimination from the Ohio Civil Rights Commission (1986-2003). Quantitative analysis demonstrates aggregate rates of public-sector promotion discrimination and elevated rates of private sector firing discrimination. In-depth qualitative analysis shows that specific sectorial processes contribute to these aggregate patterns (Byron, 2010).

In addition, the intent of this paper was to bring better understanding of how school districts and school boards make decisions. Much improvement has been made but there is still much to do in providing better services for fair hiring and promotional practices.

Occupational segregation is a result of hiring and promotion processes. Previous studies have found evidence of race and gender bias in the form of stereotyping employees for “labeled” as race/gender appropriate. Workers are assigned to jobs largely on these ascribed characteristics regardless of skills, qualifications, or experience (Kaufman, 2002).

Subjectivity in hiring and in assigning duties is one of the key mechanisms for occupational segregation (Baron et al., 2007). One researcher noted the importance of public education for the individual as well as for the common good. The maturation of judicial reasoning in the area of employment discrimination remaining responsive to that of the needs of the greater society; the protection of fundamental rights of all concerned these factors beginning with the review of literature and extending throughout the analysis of cases (Davies, 2005).

Specifically, this research explored, Title VII of the Civil Rights Act of 1964, Section 1981, 42 United State Code (42 U.S.C.), as it pertains to employment in education from 1980 to 2012. The research help to reemphasize the importance of fair employment practices throughout this nation’s school districts.

The scope of this topic includes state appellate cases, United States federal district and appellate cases, state supreme courts, state and federal appellate cases, and United States Supreme Court cases.

This study examined cases involving prohibited hiring, promotion, termination and retaliation practices, and recurring issues. The conclusion for this study is to provide guiding principles to school boards, school districts, and schools to use fair hiring practices by following the letter of the law while not subjecting themselves to unnecessary litigation and undue media attention. The ultimate goal is providing equality to employees as well as employers, to recruit and retain the best-qualified employees, to allow fairly for the removal of effective employees, and to avoid or limit the expense of litigation for school districts. The mutual benefits to employers and employees will be contributing to a better quality of education for students.

Civil Rights Act of 1964 Title VII

The Civil Rights Act of 1964 (Public Law 88-352, 78 statute, 241, enacted July 2, 1964) was a landmark piece of legislation in the United States that outlawed major forms of discrimination against racial, ethnic, national, and religious minorities and women. It ended unequal application of voter registration requirements and racial segregation in schools, at the workplace, and by facilities that serve the general public (“public accommodations”) (Civil Rights Act of 1964).

Minorities in employment, specifically Black men, have high unemployment, remaining twice as likely, when compared to their White counterparts, to experience long bouts of joblessness (Cohn & Fossett, 1995). Significant inequities exist in income, wages (Bound & Freeman, 1992; Grodsky & Pager, 2001; Smith & Rubin, 1997; Tomaskovic-Devey, 1993), promotion, and authority attainment (Baldi & McBrier, 1997; Smith, 2002; Wilson 1997; Wilson et al., 1999).

Some explanation to these barriers can be helpful in defining what is occurring in the labor market. Social closure, a term utilized by Weber to denote the process or processes by which more powerful actors seek to maximize advantage by restricting access and privileges to others, often occurs through institutional exclusion and dominant group positioning. Tomaskovic-Devey (1993) suggested that the inequalities about which we are speaking are primarily due to social class processes, whereby Blacks are often queued into jobs that require lower credentials, offer less on-the-job training, or that may be “radicalized” personnel jobs intended to serve other minorities (Kaufman, 2002; Reskin & Roos, 1990). Such jobs can hinder the further development of human capital and often offer little in the way of mobility (Collins, 1993, 1997).

Statistical discrimination occurs when employers use attributes (such as race or gender) of prospective employees as “signals” of their productivity. Analysis using experimental designs, such as racial “testing” audits, have generally shown that Blacks are less likely to be hired (Bendick et al., 1994; Fix & Struyk, 1993; Pager, 2003). There are some studies designed to detect racial discrimination and promotional practices, rather than capturing discrimination directly, and tend to rely on aggregated data sets with promotion occupation as the variable.

Generally, these studies revealed that Blacks are less likely to be promoted, or are promoted at slower rates than Whites, even after controlling for individual and firm characteristics (Baldi & McBrier, 1997; James, 2000; Maume, 1999; Smith, 2005). Several studies have demonstrated that Blacks received lower job evaluations to Whites (Elvira & Zatzick 2002; Greenhaus et al., 1990; Sackett et al., 1991).

Moreover, additional studies explain employment discrimination including Kluegel's (1978) concept of particularistic manipulation, in which employers promotion decisions are subjective. Research generally supports a "particularistic mobility thesis." Here, African Americans must follow more narrow and restricted mobility paths compared to Whites (Mueller et al., 1989; Wilson, 1997; Wilson et al., 1999). Alternatively, Wilson and McBrier (2005) support a "minority vulnerability thesis"; the flipside to the particularistic mobility argument, where downward mobility for minorities is more general, less prescribed, and less predicted by traditional protective factors.

Whether queued into positions for which they are overqualified, struggling to push through glass ceilings (Maume, 1999), or riding the escalator "down" the occupational ladder (McBrier & Wilson, 2004), there is clear evidence that race matters for the employment experiences of Black men. Moss and Tilly (2001) found that employers often hold negative views of both the "hard" and "soft" skills of Black men in entry-level jobs, Black men who are described as "defensive," "overly sensitive," "violent," and "difficult to control."

In short, although they may become "honorary Whites" through the sharing of male common interests (Vallas, 2003), there is a long history of African American male subordination based on perceived threat and broader cultural stereotypes (Lynn & Mau, 2002). Discrimination in employment is subtle in many different forms including racial/ethnic hierarchy maintenance,

such as informal, day-to-day harassment, and may very well be overlooked (Blau, 1964; Young, 1990).

For the purpose of research, West Law Reporter listed under SCHOOLS 133.1(1), list the first case reviewed is *Samuel Brewer v. Muscle Shoals Board of Education*, 790 F.2d 1515 1986.

In *Brewer* (1986), a Black applicant sued the school board and its individual members alleging a violation of the predetermination settlement agreement and racial discrimination violating Title VII. Brewer had been a mathematics teacher for over 12 years. The Court of Appeals held that the school board breached the predetermination settlement agreement requiring it to appoint Brewer to the next available administrative position for which he was qualified. The board's violation occurred when it transferred principals to vacant positions instead of appointing Brewer to the position. Additionally, the court held that the school board and superintendent's selection of Whites over Brewer to fill three principal positions was a result of intentional racial discrimination. Finally, the district court did not abuse its discretion in ordering the school board to appoint the applicant principal to some school within the district.

We hold that the district court did not abuse its discretion. Having determined that the District Court's findings with respect to liability are not clearly erroneous and dated actor within the bounds of its discretion in order relief for the contract and Section 1983 violations we affirm the decision of the District Court. (p. 482)

The Board and Brewer entered into a valid and binding contract. Brewer was to be appointed to the next position for which he was qualified. The contract was breached. The court-determined relief for Brewer was both legal and proper (p. 491).

Other examples of employment discrimination include the case of the *United States v. State of Mississippi* (Simpson County School District) where a 1983 Consent Decree specifically governed employment procedures. The United States Department of Education learned in March

2003 that the district was not following the specific hiring procedures mandated in the 1983 Consent Decree.

To address allegations of racial discrimination in employment, the Consent Decree required the District to actively recruit Black applicants for faculty and administrative positions and to do so by advertising all such vacancies outside the district in regional newspapers and with various universities in the state.

The Department of Education learned that the District sought to fill three vacancies in principal positions this past winter following that practice rather than the procedures mandated by the Consent Decree. Because the District employed no Black personnel with the administrative certification necessary for the positions, the District made the positions available only to White persons and considered no Black applicants for the job. The practice therefore contravened the purpose of the 1983 Consent Decree (U.S. Department of Justice, 2013). Additionally, several cases throughout this research project produced a common link, which was the noncompliance to desegregation orders. In the case of the *United States v. Port Arthur Independent School District* (2001), in a 2001 settlement agreement, the division filed an opposition to the motion on grounds of noncompliance.

Under the agreement, the district agreed to establish a magnet program at a historically Black school, strictly enforce its student transfer policies, and assign faculty and staff in a way that did not perpetuate the historical racial identifiability of the district's school. In 2007, the district again moved for unitary status. The Division filed in opposition and a motion for further relief on the grounds that the district had failed to comply with the portions of the 2003 agreement pertaining to transfer policies and faculty assignment (U.S. Department of Justice, 2013).

An additional employment discrimination case including *Cowan and United States v Bolivar County Board of Education* (Cleveland City School District) is pending litigation. On March 28, 2012, The Federal District Court for the Northern District of Mississippi in order and opinion required the Cleveland, Mississippi school district to end the racial segregation of students in schools and to eliminate racial disparities in the composition of faculty at schools across the District. The Department of Justice, on May 2, 2011, found that students and faculty members remained segregated at schools throughout the school district.

The United States further asserted that the ratio of Black and White faculty at numerous District schools reinforced reputation of those schools and the community as “White” or “Black” schools. In a decision on March 28, 2012, the court determined that two schools, a middle school and high school, that were formerly de jure Black schools, had never been desegregated.

The court also found that the ratio of Black and White faculty at every school in the district deviated from the district-wide faculty ratio. The court ordered the district to submit a proposed decent patient plan addressing these issues (U.S. Department of Justice, 2013).

Pamela Sherburne v. School Board of Suwanee County (1984) filed with the District Court of Appeals of Florida, First District No.AP-288 claiming discrimination. The teacher appealed from an order of the school board terminating her employment on the ground that she lacked good moral character.

The school board decided to terminate teacher based on the definition of “good cause” due to her alleged relationship with a member of the opposite sex. The Majority Decision in the absence of specific, valid, statutory directives, and off-campus conduct ostensibly involving a consensual sexual relationship between a teacher and adult of the opposite sex cannot in and of itself, provide “good cause” for a school board’s rejection.

The Majority Reasoning: Section 231-02, Florida statutes, requires that a person shall be of “good moral character” in order to be eligible for appointment to the position in the district school system. Concurring Reasoning: we have emphasized that here there is no evidence of illicit sexual conduct on or about the premises, or doing any school activities.

Furthermore, “further proceedings” in this cause, as ordered by the court, means that fit talent is entitled to reinstatement to her teaching position on a continuing contract status. Teacher to be reimbursed for any economic loss sustained because of the boards wrong amount of such contract, including expenses incurred in these proceedings (*Gainey v. School Board of Liberty County*, 387 So.2d 1023, Fla. 1st DCA (1980)).

Title VII of the Civil Rights Act of 1964

Title VII of the Act, codified as subchapter VI of chapter 21 of title 42 of the United States Code, prohibits discrimination by covered employees on the basis of race, color, religion, sex, or national origin (see 42.S.C.section 2000e-2).

Title VII applies to and covers an employer “who has fifteen (15) or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year” as written in the definitions section under 42 U. S. C. Section 2000e(b).

The act does not apply to employers with 14 employees or less. Title VII also prohibits discrimination against an individual because of his or her association with another individual or particular race, color, religion, sex, or national origin. Bielby and Baron (1986) found that women and men were segregated within firms and more likely to work with those of their own gender than with each other. These and other findings offer evidence that allocated discrimination, or the racial and gender typing of jobs in which some jobs are designated as

minority all-female jobs, and others are reserved for Whites or males, operates in the labor market (Huffman & Cohen, 2004). Kmec (2003) found that wages are low for workers in mostly Black and Latino jobs compared with White jobs. An employer cannot discriminate against a person because of his interracial association with another, such as by an interracial marriage, according to the United States Courts of Appeals, Fifth Circuit; *Price v. Denison Independent School District* (DISD) 694 F.2d 334. On June 10, 1981, the district court entered an order and memorandum opinion which (1) reiterated its findings and orders for the junior high schools, (2) found the 1979-1980 elementary school student assignment plan to leave some schools racially identifiable and in violation of the Constitution, and, (3) found that the failure of the DISD to currently have a Black principal in any of its schools presented a constitutional violation. The school board was required to submit to the court, within 30 days, an elementary assignment plan that would “assure that the population of each elementary school will be at least 6% Black by the beginning of the 1981-1982 school year” (p. 2), and, to employ a Black individual in the next available principalship vacancy. On July 6, 1981, the DISD filed notice of appeal from the June 10 order.

Moreover,

No Black teachers have been advanced to the positions of principal or vice principal in any of the elementary or junior high schools of DISD. No minority instructor has been granted the opportunity to qualify for emergency certificates for administration have been requested and granted White teachers. . . . The DISD has not had an effective minority recruitment program to hire Black teachers, and some of the Black teachers are under-utilized. (p. 22)

Of the 10 principals who served the Denison schools, all were White. This zero percentage, combined with the history of discrimination and volunteer, makes out a prima facie case in support of the plaintiff’s contention. . . . Yet, DISD has come forward with no evidence to rebut the prima facie showing, and no demonstration has been made that the all-White principalships are the result of something other than past or present racial discrimination. (p. 23)

In *Castaneda*, we hailed in reference to a claim of discrimination in hiring and promotion to administratively, that where a promotion from-within policy was followed; the relevant comparison was between the respective minority percentages at the administrative level and at the faculty level. This is an assumption that there was not discriminatory hiring at the faculty level (p. 24). Even so, as there were only 10 principalships, and Blacks were but 1/12 of the teaching staff, this is of potential significance.

The Supreme Court of AL 85503, *Cleburne County Board of Education v. Lynn Payne* (1987), ruled the plaintiffs were both individuals and members of the elementary school board. The trustees file complaint against County Board of Education and County superintendent. Why did the Board of Education refuse to accept an appointed candidate? The majority decision of the Supreme Court held that (1) Mandamus was the appropriate remedy; (2) trustees had standing to maintain action; and (3) statute permitting trustees to refuse to accept appointment of “Teacher” included both teacher and principals, and trustees had a right to reject appointment. In addition, the Majority Reasoning stated, “According to the State of Public Law; Title 52, Chapter 7, if this does not meet your approval, the Trustees, by unanimous consent may refuse to accept name.” The concurring reasoning was that the board shall consult and advise through its executive officer and his professional assistance to promote the interests of the schools under its jurisdiction.

Equal Employment Opportunity Commission (EEOC)

The Equal Employment Opportunity Commission (EEOC) as well as certain state Fair Employment Practices Agencies (FEPAs) enforces Title VII (42 U. S. C.; Section 2000e-4). The EEOC and state FEPAs investigate, mediate, and may file a lawsuit on behalf of employees.

Where federal law contradicts a state law, it is overridden. Every state, except Arkansas and Mississippi, maintains a state FEPA (see EEOC and state if FEPA directory). Title VII also provides that an individual can bring a private lawsuit. An individual must file a complaint of discrimination with the EEOC within 180 days of learning of discrimination or the individual may lose the right to file a lawsuit. Title VII only applies to employers who employ 15 or more employees for 20 or more weeks in the current or preceding calendar (42 U. S. C. Section 2000e(b)).

Court of Civil Appeals of Alabama 7828, *James Michael Floyd v. Cullman County Board of Education* (1991), was an unsuccessful case for the plaintiff. The plaintiff applying for the position of school principal brought action against the County commission and the question remains, did the school board breach the contract and was dismissal proper?

While it is sometimes difficult to obtain employment when the economy is sluggish, the use of improper dismissal procedures can cause adverse effects on employment in public schools and other segments of the job market.

In the Court of Civil Appeals of Alabama 7184, *Michael Purnell v. Covington County Board of Education* (1989), teachers sought declaratory judgment against the Covington County Board of Education alleging the board failed to follow a nonracial objective criteria-hiring policy. Did Purnell have sufficient evidence claiming he was denied a principalship instead of another applicant? The majority decision of the court of circuit appeals held that evidence supported the trial court's finding that board policies were not violated in making appointments to administrative positions in school system.

Wilson (2005) posited that employment discrimination was a casual mechanism and the tendency of minority women to receive unfavorable performance evaluations, relative to White

women, constitute a form of disadvantage and of the mobility process. Specifically, it identifies the employment practices that reinforce negative race-based stereotypes you need to minority women that, ultimately, render promotion difficult relative to White women. Accordingly, this literature documents that an element of “modern racism” Pettigrew (1985) permeates the mobility process within a disadvantaged gender status.

Fourteenth Amendment of the United States Constitution

According to Section 1 of the Fourteenth Amendment, all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of United States and of the state where he and they reside. No State shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States. Nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws (www.eeoc.gov/laws/statutes).

During the discourse of this research, we will address issues including school safety, sexual assault, discipline, teacher employment, disclosure of information, building or ground maintenance, search and seizure, assault, medical and transportation (Dowdy, 2009), and other issues relevant to the Fourteenth Amendment.

In *Roy C. Castaneda, Plaintiffs v. Raymondville, Texas Independent School District (RISD)* (1981) filed on behalf of their Mexican American children. Specifically, the plaintiffs charged that the school district unlawfully discriminated against them by using an ability grouping system for classroom assignments. This was based on racially and ethnically discriminatory criteria having resulted in impermissible classroom segregation, by discriminating against Mexican-Americans in the hiring and promotion of faculty and administrators, and by

failing to implement adequate bilingual education to overcome the linguistic barriers that impede the plaintiff's equal protection in the educational program of the district (p. 2).

Willacy County is in the Rio Grande Valley. By conservative estimates based on census data, 77% of the population of the county is Mexican American and almost all of the remaining 23% is "Anglo." The student population of RISD is about 85% Mexican American. Willacy County ranks 248th out of the 254 Texas counties earning average family income. Three quarters of the students in the Raymondville schools qualify for federally funded free school lunch program.

In a similar case involving a school district's pattern and a history of discrimination, the defendant must rebut the plaintiff's prima facie case by clear and convincing evidence that the challenged employment decisions were motivated by legitimate nondiscriminatory reasons (*Lee v. Conecuh County Board of Education*, 634 F.2d 959 (1981)).

Many persons in the community apparently believed that the disparity between the percentages of teachers in the district who are Mexican American, 27%, and the percentage of students who are Mexican American, 88%, is one of the major reasons for the underachievement and high dropout rate of Mexican American students in Raymondville (p. 10).

The plaintiff's premised their claim on the 14th amendment, and 42 U.S.C. Section 1983, Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 2000d and Equal Educational Opportunity Act, 20 U.S.C. Section 1701 et seq. The Equal Educational Opportunities Act (EEOA) explicitly provides in Section 1703(d) that "discrimination by an educational agency on the basis of race, color, or national origin in the employment of faculty or staff" constitutes a denial of equal educational opportunity.

The statute also expressly provides a private right of action for persons denied such an “equal educational opportunity” in Section 1706. Thus the classes of students here clearly have standing to complain of, and a private cause of action for relief from, alleged discrimination by RISD in the hiring and promotion of teachers and staff under this statute (p. 11).

Therefore, in the opinion of the court, we think that the class of plaintiffs here may also assert a cause of action based upon unconstitutional racial discrimination and employment of teachers and administrators under 42 U.S.C. Section 1983.

Equal Protection Clause

The equal protection clause grants all people equal protection of the laws, which means that the states must apply the law equally. The Equal Protection Clause is part of the Fourteenth Amendment of United States Constitution. According to Reskin (2003), an organization whose overall sex and race composition reflects the labor pool may be highly segregated if groups are distributed unequally among jobs (Reskin, McBrier, & Kmec, 1999).

Minority groups may be spatially segregated and have less access to informal training and influential social networks, making it difficult to move into high status positions (Vallas, 2003). Firms that discriminate less in hiring may increase their percentages of minority employees, but as this representation increases, promotional opportunities for minorities relative to Whites may become limited (Baldi & McBrier, 1997). Additional research is needed to continue investigating employment discrimination and inequality among school districts and other organizations.

In the Court of Civil Appeals of Alabama 6429, *Elizabeth R. Branch v. Greene County Board of Education* (1988) a former teacher brought action against the board of education for

breach of contract when the board refused to reemploy her after a previous signed resignation agreement. Was the former teacher within her rights to be re-employed by the school superintendent without the concurrence of the board? The majority decision reason when the teacher resigned and the board accepted it, the school would no longer require her to carry out any responsibilities. There are no reversible errors as to any raised issue (Code of Alabama 1975, 12-18-10(E)).

The research indicates previous employment discrimination prior to the stated timeline of 1980-2012 and desegregation plans were, and in some cases remain, the order of the day in providing equality in employment.

The Supreme Court of AL 1910063, in the matter of *C. Robert Mitchell v. Frank S. Skinner, Jr.* (1992), a former city school superintendent brought action against city officials after his employment was terminated. Did the statutory Teacher Tenure Protection apply to the school superintendent and the statute governing appointment and removal superintendents? The instructor, who had acquired tenure pursuant to the limited and technical definition as a principal, did not forfeit the incidence of tenure by resigning that position and assuming another.

In the opinion of the court, we expressly declared that our holding regarding the superintendent's status did not solely rest on the conclusion that Weaver fit the general drift definition of supervisor (see *Ex parte Weaver*, 559 So. 2d.178 (Ala. 1989). Ala. Code 1975, Sections 16-24-1 and 16-24-2(a)). The concurring reasoning, we hold that Dr. Mitchell did not obtain continuous service status and that his rights were limited by his contract with the board.

Recorded in United States District Court, S. D. Georgia, Brunswick Division 206099, 457 F. Supp. 2d. 1378; *Heather Chang and Lorna Johnson, Plaintiffs, v. Glynn County school District* (2006) both teachers brought action against the school board alleging that their

dismissals on the ground that they were not United States citizens violated the Equal Protection Clause. At what point does a person obtain citizenship/rights when born in another country?

Were two Jamaican-born teachers dismissed unfairly according to Georgia's statute banning aliens from public employment? The Majority of Reasoning is that resident aliens, like citizens, pay taxes, support the economy, serve in the Armed Forces and contribute in a myriad other ways to our society. The Concurring Reasoning was based upon the foregoing finding of facts and conclusions of law, the court will enter a permanent injunction. The vote on this issue was the plaintiff's motion for partial Summary Judgment, asking the Court to declare Georgia Code Section 45-2-7 null and void as contrary to the Fourteenth Amendment is hereby granted.

Section 1981

Section 1981(a), which was originally enacted as the first section of the Civil Rights Act of 1866, 42.S.C.1981, provides that all persons within the jurisdiction of the United States still have the same right in every State and Territory to make and enforce contracts, to sue the parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by White citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every man and to no other.

Section 1981 permits victims of race-based employment discrimination to obtain a jury trial at which both equitable and legal relief, including compensatory and, under certain circumstances, punitive damages may be awarded.

Lastly, Section 1981 does not of itself use the word race and the Supreme Court has construed this Section to be filled with definitions of racial discrimination in the making of

private as well as public contracts over the years. Racial discrimination has expanded to cover ethnic groups such as Hispanics, Asians, and Arabs, just to name a few.

Equal Pay Act

The Equal Pay Act amended the Fair Labor Standards Act in 1963. The Equal Pay Act prohibits employers and unions from paying different wages based on the employee's sex. It does not prohibit discriminatory hiring practices. It provides that if workers perform equal work in jobs requiring "equal skill, effort, and responsibility . . . performed under similar working conditions," the workers must receive equal pay. The Fair Labor Standards Act Applies to employees engaged in some aspect of interstate commerce or all of the employer's workers if the enterprise engages as a whole in a significant amount of interstate commerce

(www.law.cornell.edu).

In addition, the Equal Pay Act requires that men and women in the same workplace to be given equal pay for equal work. The jobs need not be identical, but they must be substantially equal. Job content (not job titles) determines whether jobs are substantially equal. This law, including salary, overtime, bonuses, stock options, profit sharing and bonus plans, life insurance, vacation and holiday pay, cleaning or gasoline allowances, hotel accommodations, reimbursement for travel expenses, and benefits, covers all forms of pay. If there is any equality in wages between men and women, employers may not reduce the wages of either sex to equalize their pay (www.law.cornell.edu).

According to Wilson (2010), overall, among women, we know that African Americans and Latinos, relative to Whites, received lower earnings and social economic status returns from human capital investments, such as educational attainment and work force experience (Farley,

2004). Upper tier slots offer material (e.g., income, benefits, and retirement packages) and symbolic rewards (e.g., prestige, honor) that create and enhance one's life chances for increased opportunities on an intergenerational basis. The majority populations have better economic resources to assist in the intergenerational transmission of status and power (Leicht & Fennell, 2001; Wilson et al., 1999). Many upper tier slots are transmitted to one's children, thereby enhancing their quality of life and that of future generations (Kohn 1969).

Many employment decisions regarding promotions are based on employees demonstrating the range of informal, requisite criteria (e.g., perceived loyalty, sound judgment, and trust). According to Wilson (2005), minorities often lack opportunities to demonstrate certain qualities, and therefore are restricted to attain mobility through a relatively formal and structured career path. What is significant is the earlier the mobility takes place in one's career; the greater the time spent enjoying the material and symbolic rewards of incumbency and an upper tier slot Maume (1999).

In the District Court of Appeal of Florida, First District BL-268, *Fred D Greene v. School Board of Hamilton County Florida* (501 So. 2d. 50 (1987)), the teacher sought a review of determination of school board that he was not entitled to appointment as principal or director, to pay adjustment, all attorney fees. The majority decision stated that the teacher's continuing contract as administrator did not obligate the school board to hire him for an administrative level position for which he was not qualified.

On his final day as superintendent, Greene nominated himself to fill the recently vacated position of principal of North Hamilton elementary school. The Commission on ethics concluded that Greene's actions probably were a misuse of public position, and recommended an attorney general's opinion. Based on Scaff's salary of \$31,050 for the director's position, the salary for

the director's position would have been the higher amount of the two and the appellant should have been paid that amount.

In the final vote by the Court, Greene was the prevailing party and awarded for unpaid wages, appellant is entitled to attorney's fees and costs pursuant to Section 448.08, Florida Statutes (1985).

Title IX of the Education Amendments of 1972

Title IX prohibits sex discrimination in educational institutions that receive federal financial grants. Violations of this law may include such issues as treatment of pregnant students, equal opportunity to participate in athletic programs, and sexual harassment, among others.

As with Title VI, the introduction of Title IX appears to have a positive effect on eradicating sex discrimination in education. According to the National Federation of State High School Associations, the number of females participating in high school sports programs increased from 294,000 students in 1971 to over 2.4 million in the 1996-1997 school years (Office for Civil Rights, 2012).

The Census Bureau reported that by 1997, 29% of young women had earned at least a bachelor's degree. In 1970, only 13% of young women had reached that educational goal. According to this same source, when Title IX was enacted in 1972, 9% of the professional degrees awarded in medicine were given to women. In 1996, 41% of the medical degree recipients were women (Office for Civil Rights, 2012).

According to several prominent researchers, the low number of women in key educational administrative positions compared to men was dismal. Women have made great gains yet are still underrepresented nationwide. It is estimated that approximately that 13.2% of

female superintendents (Glass, Bjork, & Brunner, 2000) run school districts in the United States. According to the report written by Skrla (1999), estimates predicted in the year 2000, there were approximately 1,964 female and 12,919 male superintendents of schools in the United States.

Other examples written by Ortiz and Marshall (1998) found that women do not have the same opportunities as men in administration. They attributed this problem primarily to the stereotypes attached to women and leadership. According to Charters and Jovick (1981), society conditions men and women to believe that women are not as capable as men of holding leadership positions. Furthermore, the odds of a male teacher-becoming superintendent are 1 out of 43, while the odds for a female teacher are 1 in 825. In other words, men are approximately 20 times more likely than women to advance to the superintendent position from a teaching position (Skrla, 1999).

Greater emphasis needs to be placed on recruitment, selection, evaluation, and a reward system to encourage women to leadership positions if there is to be significant change. In most instances, studies revealed that on average women had 10 more years of teaching experience than their male counterparts had, were better prepared, and were older when they entered into administration (Lunenberg & Orienstin, 1991; Riel & Byrd, 1997; Shakeshaft, 1987).

The women in the study tend to have somewhat higher levels of professional preparation than their counterparts (Spencer & Kochan, 2000), they often are paid less (Pounder, 1988), have fewer opportunities to serve on important committees (Marshall, 1985), lack mentoring, and experience feelings of isolation (Blackmore & Kenway, 1997; Reisser & Zurfluh, 1987).

Research shows that gender does not matter in certain cases and a variety of other factors can prevent individuals from obtaining their professional goals. Furthermore, there are factors

that contribute to the exclusion of women thereby causing serious consideration and thinking before employing them as administrators.

Examination of court documents for insubordination of teachers that warranted determination revealed there were 125 cases, according to the research, and most predominantly in favor of the school board. For example, 89 cases were ruled in favor of the board and 36 cases were ruled in favor of the teacher. Sixty cases dealt with the teacher or principal and their ability to follow board policy, direct orders, or directives from superiors (Not in ref list).

Office for Civil Rights

Nondiscrimination in Employment Practices in Education

The Office of Civil Rights (OCR), Department of Education (ED), have programs or activities that receive Federal financial assistance. Among the education recipients of Federal funds are approximately 16,000 local education systems; 3,200 colleges and universities; and 50 state education agencies, their sub-recipients, and vocational rehabilitation agencies, and the education and vocational rehabilitation agencies of the District of Columbia of all American territories and possessions (Office for Civil Rights, 2012).

Provided is information summarizing the requirements pertaining to employment practices contained in Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and Section 504 Rehabilitation Act of 1973.

Title VI protects people from discrimination based on race, color, or national origin in any program or activity receiving Federal financial assistance; Title IX prohibits discrimination on the basis of sex in education programs or activities receiving Federal financial assistance; and

Section 504 prohibits discrimination on the basis of handicap in programs or activities receiving Federal financial assistance.

The Department of Education (ED), Office for Civil Rights (OCR), is responsible for enforcing federal civil rights requirements and programs or activities that receive assistance from ED; however, with certain exceptions, OCR refers individual complaints of employment discrimination under the Title VI and Title IX to the Equal Employment Opportunity Commission (U.S. Department of Education, 2005).

Nondiscrimination in Employment under Title VI

Title VI of the Civil Rights Act of 1964 protects people from discrimination based on race, color, or national origin in employment and employment practices in programs or activities receiving Federal financial assistance, where the primary purpose of the Federal assistance is employment or the discriminatory practice has an impact on program beneficiaries (U.S. Department of Education, 2005).

The ED regulation for Title VI forbids employment discrimination in two distinct situations. First, where the primary purpose of the Federal assistance is to provide employment, the recipient may not discriminate based on race, color, or national origin against applicants for employment or employees in that program. Second, the primary purpose of federal assistance is not for employment. Title VI prohibits the discrimination against employees or applicants for employment when the discriminatory practices result in discrimination against the program beneficiaries, usually students (U.S. Department of Education, 2005).

The ED regulation for Title VI encompasses, but is not limited to, recruitment, advertising, employment, layoffs, firing, upgrading, demotions, transfers, rates of pay and other

forms of compensation, and uses of facilities. The regulation applies to all employment decisions and actions made directly by ED recipients, as well as those made indirectly through contractual agreements or other relationships with organizations such as employment agencies, labor unions, organizations providing or administering fringe benefits, and organizations providing training and apprenticeship programs (U.S. Department of Education, 2005).

Nondiscrimination in Employment under Title IX

Title IX of the Education Amendments of 1972 protects people from discrimination based on sex in employment and employment practices in education programs or activities receiving Federal financial assistance.

The prohibition on discrimination in employment in the ED regulation for Title IX income passes, but is not limited to, recruitment, advertising, hiring, upgrading, tenure, firing, rates of pay, fringe benefits, pregnancy and childbirth, and participation in employment-sponsored activities. The regulation applies to all employment decisions by ED recipients, whether made directly or indirectly through contractual agreements with referral agencies, labor unions, organizations providing all administering fringe benefits, or others (U.S. Department of Education, 2005).

Under Title IX, recipients of Federal financial assistance cannot establish or enforce policies that result in an equal compensation to employees based on sex in jobs that require equal skill, effort, and responsibility, and that are performed under similar conditions (U.S. Department of Education, 2005).

Age Discrimination in Employment Act of 1967

The Age Discrimination in Employment Act of 1967 (ADEA) (Public Law 90- 202), as amended, as it appears in volume 29 of the United States code, prohibits employment discrimination against persons 40 years of age or older. The Age Discrimination Act of 1975 protects students of all age groups from discrimination based upon their age. If there is a valid reason for requiring students to be of a particular age, an educational institution may be absolved from complying with the act (U.S. Equal Employment Opportunity Commission, 2009).

In the current economic climate, the pressure is on both public and private employers in the education sector to reduce costs. One of the main ways to achieve this goal is by shedding certain jobs, particularly those of older, usually higher paid, employees and replacing them with younger teachers who are required to carry out similar job duties but who are often appointed to low points on the relevant salary scale (Benny, 2000). Older employees are less likely to reenter into the labor market.

American with Disabilities Act of 1990

Title I and Title V of the Americans with Disabilities Act of 1990 (Public Law 101 – 336) (ADA), the intent by Congress was, “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” Title I of the ADA, became effective for employers with 25 or more employees on July 26, 1992, and prohibits employment discrimination against qualified individuals with disabilities. Title V contains miscellaneous provisions, which apply to EEOC’s enforcement of Title 1.

Congress enacted the American with Disabilities Act to eliminate discrimination against those with handicaps. It prohibits discrimination based on a physical or mental handicap by

employers engaged in interstate commerce and state governments. ADA prohibits discrimination more broadly than that explicitly outlined by title VII (U.S. Equal Employment Opportunity Commission, 2009).

Section 504

The Department of Education Section 504 regulation prohibits discrimination against qualified handicapped persons in all employment-related decisions and actions in federally assisted programs. The prohibition of discrimination in employment in the Section 504 regulation includes, but is not limited to, recruitment, hiring, promotion, award of tenure, layoffs and rehiring, rates of pay, fringe benefits, leave, job assignment, training, and participation in employment-sponsored activities (U.S. Equal Employment Opportunity Commission, 2006).

A qualified handicapped person is any individual with a handicap who, with reasonable accommodation, can perform the essential functions of a job. The employment prohibitions of the Section 504 regulation apply to decisions and actions made directly by recipients, as well as those made indirectly through contractual agreements or other relationships with organizations such as employment agencies, labor unions, organizations providing or administering fringe benefits, and organizations providing training and apprenticeship programs (U.S. Equal Employment Opportunity Commission, 2006).

Under the Section 504 regulation:

- Reasonable accommodations may include making facilities used by employees accessible to and usable by individuals with handicaps, job restructuring, modifying work schedules, acquiring new or modifying existing equipment, or providing a reader for a blind person or an interpreter for a deaf person.
- If a recipient can demonstrate that an accommodation would impose undue hardship on the operation of its program, it is not obligated to provide the accommodation.

- A recipient excuse from providing an accommodation may not discriminate against a handicap applicant or employee who is able and willing to make is our own arrangements to provide the accommodation.

Recipients are obligated to make a reasonable accommodation only to the known mental and physical limitations of an otherwise qualified handicapped person (U.S. Equal Employment Opportunity Commission, 2006).

Genetic Information Discrimination

Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), which prohibits genetic information discrimination in employment, took effect on November 21, 2009. Under Title II of GINA, it is illegal to discriminate against employees or applicants because of genetic information. Title II of GINA prohibits the use of genetic information in making employment decisions, restrict employers and other entities covered by title II (employment agencies, labor organizations and joint labor-management training and apprenticeship programs--referred to as "covered entities") from requesting, requiring on purchasing genetic information, and strictly limits the disclosure of genetic information (U.S. Equal Employment Opportunity Commission, 2013).

According to Wilson (2005), the route to mobility for African Americans is relatively narrow and structured by traditional stratification casual factors, including human capital, background status, and jobs/labor market characteristics. In contrast, the route to mobility for Whites is relatively broad and unstructured by the stratification-based casual factors, and they experience mobility the quickest.

Ohio Civil Rights Commission (1986-2003)

The research discovered a unique data set of employment discrimination cases filed from 1988 to 2003 in the state of Ohio, a relatively representative state, and one wherein state Civil Rights guidelines and enforcement practices parallel those at the federal level. Moreover, two distinct cases specifically identified employment discrimination in schools.

First, a boys' head basketball coach for a state school filed suit because his contract was not renewed, despite positive recommendations by the (White) school principal and (White) superintendent. He was the only Black teacher in his district and noted that the school renewed the contract of the (White) track coach, "despite conduct and procedural problems." He stated, "I was not advised of any shortcomings on my part nor was I given an opportunity to correct any problems of which I was not aware." Although the school board claims that it had received complaints regarding the coach's demeanor and treatment of players, several witnesses, including one of school board members, praised his performance. This school board member claimed that other board members offered only "vague accounts" of who had complained. According to a local sports editor, although the coach "demands a lot from his players and asks that they work hard . . . he does not yell at players or officials any more than most coaches, and other coaches are not criticized" (p. 12). This case speaks to the strong role of subjective, particularistic criteria in decision-making (Mong & Roscigno 2009).

Secondly, in many cases, racial harassment occurs prior to the firing, although the charging party did not necessarily file on harassment. Vince Barton, a shop teacher in a public school system, charged that his supervisor constantly reprimanded him in front of students.

Barton was laid off after 4 years of employment:

The senior teacher, who was Caucasian, made my work difficult for me by locking up my tools I need for teaching. I complained to my supervisor and superintendent about this

adverse treatment but they did not correct the situation. The State regulation requires eight students in order for me to get funding. At the time in question, I had only seven. However, as more students became interested and attempted to sign up for the class, the counselors discouraged some and denied others. This action had the result of limiting me to seven students, which was below minimum enrollment. The Vocational Director informed me that I needed 15 students instead of 8. I believe this was an arbitrary decision to include me in a reduction of force. I was aware that similarly, situated Caucasian teachers have not met the 15 students figure yet they were reemployed. My supervisor allowed a note to remain on the bulletin board, which was further meant to advise me. The note said, "Hope to see 99% of you guys next year Have a great summer." (Mong & Roscigno 2009, p. 13)

Summary

The Civil Rights Act of 1964 has been the foundation for reducing major forms of discrimination in the United States. The statute and laws discussed in the literature review revealed key reasons why schools districts operate in the manner they do.

Court cases are decided when the appropriate procedures are followed and both parties seek resolutions. Certain jurisdictions are influenced by either conservative or liberal views and might produce different outcomes. School districts may have certain resource advantages such as in-depth legal assistance and financial resources while teachers may have to work closely with Teacher Unions or Teacher Associations.

The 13 appellate courts nationwide, along with other federal, district courts, and advocacy agencies, ensure proper administration of the law while waiting for a determination.

The Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1964, Equal Employment Opportunity Commission, the Fourteenth Amendment of United States Constitution, Equal Protection Clause, Section 1981, Equal Pay Act, Age Discrimination Act of 1967, Americans with Disabilities Act of 1990, and Ohio Civil Rights Commission have contributed to this section of the report.

The conclusion for this study is to provide guiding principles to school boards, school districts, and schools to use fair hiring practices by following the letter of the law while not subjecting themselves to unnecessary litigation and undue media attention.

The ultimate goal is providing equality to potential employees as well as employers. The mutual benefits to both parties will be creating a better quality of education to each student while developing lifelong learners resulting in a nation of more responsible citizens.

CHAPTER III

RESEARCH METHODS

Introduction

This study was a document-based, qualitative study conducted through an historical perspective. The purpose of this research project was to qualitatively analyze court cases occurring in the federal courts between 1981 and 2011, in which an applicant or employee had alleged employment discrimination by a public school district. According to Creswell (2007), qualitative research begins with assumptions, a worldview, the possible use of theoretical lands, and the study of research problems inquiring into the meaning individuals or groups described to a social or human problem. Qualitative research is a situated activity that locates the observer in the world. Qualitative researchers study things in their natural settings, attempting to make sense of, or interpret, phenomena in terms of the meanings people bring to them (Denzin & Lincoln, 2005).

One of the virtues of qualitative research is that there are many alternative sources of data. The researcher can use interviews, observations, documents, historical documents and court records, and other sources. The researcher can use one or several of these sources alone or in combination depending upon the problem being investigated (Corbin & Strauss, 2008). For this study, the court cases gathered as a data source are documents and historical records, in which a judge has (or group of judges have) provided key information about a dispute. In this study, all of the cases are about allegations of employment discrimination, brought by employees of public schools or applicants for employment with public schools, against public school employers. The

Court records became a source of data, which could then be subjected to qualitative analysis, for the purpose of answering the study's research questions.

Research Questions

The following research questions guided this study:

1. What are the issues in court cases involving public K-12 schools, in which a plaintiff has alleged employment discrimination?
2. What are the outcomes in court cases involving public K-12 schools, in which a plaintiff has alleged employment discrimination?
3. What are the trends in court cases involving public K-12 schools, in which a plaintiff has alleged employment discrimination?
4. What legal principles for school administrators can be discerned from court cases involving public K-12 schools, in which a plaintiff has alleged employment discrimination?

Data Sources

According to Cohen and Olsen (2002), the West Law National Reporter System, a proprietary offering of the West Publishing Company, provides the most comprehensive reporting for legal research. The West Publishing Company also produces *West's Education Law Reporter*, containing the same education-related cases that are published in the National Reporter System, and *West's Education Law Digest*, which contains abstracts of the court cases found in the Reporter. West also publishes every 10 years a *West System Decennial Digest*. These multivolume digests are published in abstract form and have limitations due to outdated information or the problems presented by different stages of the litigation process. Legal

information obtained through the West Law National Reporter System can also be obtained, usually for a fee, through electronic databases.

West's Education Law Digest served as a primary source of legal information for this research. *West's Education Law Digest* was available to the researcher at the Bounds Law Library at The University of Alabama and the Mervyn H. Sterne Library at the University of Alabama in Birmingham. Both institutions provided valuable assistance in the completion of this research project.

Within *West's Education Law Digest*, court cases involving allegations of employment discrimination were located by looking under the abstract sections described as Key Number Schools 133.1 Selection and Appointment, and Key Number Schools 133.1(1) In General. Cases abstracted under these key numbers were identified in West Education Law Reporter and copied for further review. Cases for study and analysis were limited to those beginning in 1980 and ending in 2012. The study included (133) cases relevant to the research topic.

Case brief methodology described by Statsky and Wernet (1995) was used to brief and analyze all cases. These briefs served as a fact-finding process, determining relevant issues, and dispositions based on the information contained in the case. Statsky and Wernet (1995) used two distinct functions of briefing the case. First, the brief is to clarify to the reader the decision of the court. Second, the brief should provide the reader with all essential information.

The following method was used to study each case:

1. Citation--A cite or citation is the identifying information that enables you to find a law of other documents in the law library (p. 450).
2. Key facts--A key factor when the holding of the court would have been different if that fact had been different or had not been in the opinion (p. 453).
3. Issue--A vital question or problem; a matter of dispute between two or more parties (p. 452).
4. Holding--Is the court's answer to the question of how law applies to the particular case and facts (p. 452).

5. Reasoning--is the explanation of why a court reached a particular holding for a particular issue (p. 455).
6. Disposition--Is the final determination of a matter by a court. (p. 128)

The researcher was consistent in following the procedures outlined by Statsky and Wernet (1995) using the standards of citation, key facts, issue, holding, reasoning, and disposition. The information provided through the case briefing methodology was reviewed for facts, concepts, or themes that were comparable, and coded for those ideas. The cases and coded information were then entered into a Microsoft Excel spreadsheet in preparation for further qualitative analysis.

Data Analysis

Denzin and Lincoln (2005) posited, “Researchers study things in their natural settings, attempting to make sense of, or interpret phenomena in terms of the meanings people bring to them.” The court cases found in *West’s Education Law Digest* and copied from West’s Education Law Reporter provided data that the researcher must interpret and determine the relevancy for the study. Qualitative analysis was used to concentrate the information provided from the case briefs into patterns, themes, and categories, and then synthesized into the data into useful information (Berg, 2004; Gall, Borg, & Gall, 1996; Merriam, 1998). For the purposes of this study, analysis meant organizing and interrogating data in a way that allowed the researcher to find patterns, identify themes, discover relationships, develop explanations, make interpretations, or generate theories (Creswell, 2007).

Case law about alleged employment discrimination in the public schools was reviewed for similarities in fact patterns in the situations precipitating in the court case. Outcomes and rationales for the outcomes were examined for similarities and differences among them, and the data were examined for trends. As an holistic approach, the researcher described each case,

provided a description of each case, extracted themes from the data, and presented interpretations or assertions that can apply to the whole (Creswell, 2007). In this manner, recommendations for school administrators in thwarting employment discrimination were constructed as the ultimate outcome for the study.

CHAPTER IV

DATA AND ANALYSIS

Introduction

This chapter describes through case brief analysis 115 court cases in which there were allegations of employment discrimination arising in the public schools. These cases were found by way of the West Law database under the Key Number SCHOOLS 133.1(1), and then the text of these cases were obtained through LexisNexis Academic. The cases were organized utilizing the standard briefing process established by Statsky and Wernet (1995). The cases are presented in the order in which they appeared in West's Educational Law Digest. Each case brief contains the following elements; citation, key facts, issues, holdings, reasoning and the disposition of the case. Following the description of the case briefs, the information within those case briefs were reduced to data, which was subjected to qualitative analysis.

Case Briefs

Citation: *Brewer v. Muscle Shoals Board of Education*, 790.2d 1515 (1986).

Key Facts: Samuel Brewer a Black applicant filed a lawsuit against school board in violation of Title VII of the Civil Rights Act of 1964. Brewer was employed for over 12 years in school system before applying for principal position at Webster Elementary School. When a white applicant was selected, Brewer filed a grievance with Equal Employment Opportunity Commission (EEOC) within the school system alleging race discrimination. A predetermination settlement agreement between the Board and Muscle Shoals teacher Samuel Brewer and that the

Board and Donald R. Heidorn, Superintendent of the Muscle Shoals School System, violated Title VII of the Civil Rights Act, 42 U. S. C. Section 2000e- 1 to17, by rejecting Brewer's application for position of principal because of his race. Three vacant principal positions arose after the agreement was signed before initiation of this lawsuit.

The District Court found a contract breach occurred when another applicant was appointed principal of Avalon Middle School. The court also determined that all defendants except Maudine Smith had intentionally discriminated against Brewer because of his race in violation of Title VII. The court entered judgment against all defendants except Maudine Smith in the amount of \$43,000.

Issues: On appeal, the Board raises the following questions pertaining to the breach of contract claim: (1) whether the District Court erred in construing the settlement agreement to require that Brewer be appointed to the next available administrative position; (2) whether the District Court erred in finding that the Board breached the settlement agreement. The Board and Heidorn raised the following issues pertaining to the Title VII racial discrimination claim and the remedy ordered: (1) whether the district court erred in finding that the Board and Heidorn intentionally discriminated against Brewer; (2) whether the district court abused its discretion in ordering back pay calculated from more than 2 years before the filing of Brewer's EEOC charge; (3) whether the district court abused its discretion in ordering Brewer's immediate reinstatement as principal.

Holdings: The court held that the Board and Brewer entered into a valid and binding contract. Brewer was to be appointed to the next position for which he was qualified; the contract was breached and the relief afforded is both legal and proper.

Reasoning: Pertaining to, breach of contract, a predetermined settlement agreement is a contract between a complaining employee and the allegedly discriminatory employer that is reached with the aid of the EEOC prior to an EEOC determination of the merits of the complaining employee's charge of discrimination. An employee need not file an EEOC charge alleging breach of the agreement to invoke the jurisdiction of the federal court over an action arising from breach of a settlement agreement (Id. At 1510). (1) Regarding, Construction of the Settlement Agreement; the District Court was therefore free to consider extrinsic evidence in construing the agreement. (2) There is no dispute that the board passed over Brewer for three principal vacancies after signing the settlement agreement. There is also no dispute that Brewer was qualified (although perhaps not the most qualified) to feel the vacancies. (1) Regarding, Intentional Racial Discrimination, the district court found that the defendants' articulated legitimate, nondiscriminatory reason for selecting flights to feel the three principal positions was "transparently pretextual." (2) The district court did not abuse its discretion in ordering back pay as of the 1981 violation. (3) The district court did not abuse its discretion by ordering reinstatement.

Disposition: The court affirmed the ruling of the district court which found that a contractual agreement had been breached and ruled in favor of plaintiff.

Citation: *James Michael Floyd v. Cullman County Board of Education*, 575 So. 2d 577 (1991).

Key Facts: Floyd brought action against county commission on Board of Education and superintendent. Complaint unsuccessful applying for position of school principal at Jones Chapel School which he was certified, a non-certified person was hired. Plaintiff alleged that defendants

breached applicant's contract, violated board of education regulations, and violated applicant's constitutional rights as result of nepotism.

Issues: The dispositive issue is whether dismissal was proper.

Holdings: Yes

Reasoning: The law regarding a motion to dismiss pursuant to Rule 12(b)(6), A. R. Civ. P., is well settled. Alabama Rules of Civil Procedure, Rule 12 (6) (6). (6) Failure to state a claim upon which relief can be granted. (6) (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted.

The court did not consider whether the plaintiff will ultimately prevail, only whether he has stated a claim whereby he may possibly prevail (*Fontenot v. Bramlett*, 470 So. 2d 669 (Ala.1985)). Further, all doubts concerning the sufficiency of the complaint must be resolved in favor of the plaintiff.

Disposition: Reversed and Remanded

Citation: *Elizabeth R. Branch v. Greene County Board of Education*, 533 So. 2d (1988).

Key Facts: Former teacher brought action against board of education, individual members of board, and superintendent for breach of contract and fraud when board refused to reemploy her after she had earlier resigned pursuant to the settlement agreement.

Issues: School superintendent does not have authority to employ teacher without concurrence of board of education. (1) The teacher argues that the trial court erred in granting a direct verdict in favor of the board. (2) Learned counsel for the teacher forcefully contends that, as to the fraud and fraud-related counts, the trial court should not have granted a directed a verdict in favor of the individual board members. (3) The teacher contends that the trial court erred in overruling an objection to a question which was propounded to the teacher's brother-in-

law. (4) It is next argued that the consent settlement and effect permanently barred the teacher from employment by the board and that it is void since a contract which restrains someone from exercising a lawful profession is ordinarily void under Section 8 -1-1 of the Alabama code of 1975. (5) The teacher argues that the settlement agreement violates the Alabama statutes teacher tenure. (6) The attorney who represented the teacher negotiated settlement agreement was called to testify on behalf of the defendants.

Holdings: (1) No (2) No (3) No (4) No (5) No (6) Yes

Reasoning: (1) The court concerned only as to the directed verdict in favor of the board as to the teacher's contract counts. (2) Since there was no evidence before the jury that any individual board member ever made a false representation to the teacher, the trial court did not err in directing a verdict for the individual members of the board upon the fraud and fraud related counts. (3) Since the objection was made after the question was answered by the witness, the ruling of the trial court cannot be considered on appeal (*Thornton v. Pugh*, 492 So. 2d 259). (4) No provision in the settlement agreement prohibits future employment of the teacher about anyone or by any Board of Education. The settlement agreement is not in violation of Section 8-1-1. (5) A teacher is permitted to cancel her contract during the school term when such cancellation is mutually agreed upon (Ala. Code (1975), Section 16-24-11 (1987 Repl. Vol.)). When the teacher resigned and it was accepted by the board, "the school board was no longer required to carry out any of its responsibilities which were imposed by Section 16-24-9 (*Atkins v. Birmingham city Board of Education*, 480 so. 2d 585 (Ala. Civ. Ap. 1985)). (6) The attorney-client privilege extends to the substance of the client's, communication to the attorney, as well as to the attorney's advice in response thereto. There is no privilege when a client's communication to an attorney is made with the intent that it be further communicated to a third party (*Sovereign*

Camp, Woodmen of the World v. Pritchett, 203 Ala. 33, 81 S0. 823 (1919)). Likewise, the privilege does not exist when such client to attorney communications are made in the presence of a third party whose presence is not necessary for the successful communication between the attorney and the client. C. Gamble, *McElroy's Alabama Evidence*, Section 392.01 (3d ed. 1977).

Disposition: Affirmed. The court finding no reversible error as to any raised issue. All of the Judges concur.

Citation: *C. Robert Mitchell v. Frank S. Skinner, Jr.*, 603 So.2d. 1023 (1992).

Key Facts: (1) On October 5, 1987, the Hoover, Alabama, City Council created the Hoover City Board of Education in accord with the provisions of Alabama Code Section 16-11-1. (2) Dr. Mitchell was appointed to the position of superintendent of Hoover, Alabama, school system and assumed the duties of that office on January 16, 1988. (3) The Hoover school system operated its first year beginning in the fall of 1988 and ending in the spring of 1989. (4) On March 5, 1991, Mitchell and the Hoover school board entered into a second contract that superseded and replaced all previous agreements between them. The new contract covered the period March 5, 1991 to March 4, 1996 and was subject to an automatic extension provision.(5) During the period of more than 3 years that Dr. Mitchell served as Hoover school superintendent, there occurred numerous incidents, both public and private, of conflicts between Dr. Mitchell and defendants. (6) On April 29, 1991, the Hoover Board of Education exercised rights under a unilateral termination provision of the March 5, 1991, contract to terminate Dr. Mitchell's employment as a school superintendent.

Issues: (1) If teacher has served as instructor and has attained continuing service status and thereafter is elected or appointed as superintendent in that school system, teacher cannot be

denied job as instructor on sole ground that he or she had neglected duty as instructor by serving as superintendent (Code 1975, Sections 16-24-1, 16-24-2(a)).

Holdings: Mitchell contends that he acquired continuing service status as a supervisor of the Code of Alabama 1975, Sections 16-24-1 and Section 16-24-2(a). The defendants contend that a city school superintendent is not a “supervisor” within the meaning of Section 16-24-1 and, thus, that Dr. Mitchell did not acquire continuing service status under Section 16-24(a).

Section 16-24-1 defines “teacher”: “The term “teacher,” as employed in this chapter, is deemed to mean and include all persons regularly certified by the teacher certifying authority of the state of Alabama may be employed as instructors, principals, or supervisors in the public elementary and high school state of Alabama and persons employed as instructors, principals, or supervisors of the Alabama Institute for deaf and blind, Alabama industrial school for boys, Alabama industrial school for girls, and Alabama endorses at Mount Meigs.”

Section 16-24-2(a) provides: “Any teacher in public schools who shall meet the following requirements shall attained continuing service status; such teacher still have served on the contract as a teacher in the same county or city school system for 3 consecutive school years and she’ll thereafter be reemployed and sets county or city school system the succeeding school year.”

Relying on *Ex parte Oden*, 495 So.2d 664 (Ala. 1986), and *Ex parte Weaver*, 559 So.2d 178 (Ala. 1989). The court noted in *Ex parte Oden*, and later in *Ex parte Weaver*, nowhere in the “Education” title of the Code does the legislature define “supervisor.” The court further hold in *Ex parte Oden* that, for purposes of the teacher tenure law, this general definition fit the job description for Oden’s position of supervisor of transportation.

In *Ex parte Weaver*, the court granted the writ of certiorari to review the holding of the court of Civil Appeals that Weaver, a tenured teacher, had neglected her duty as a teacher by becoming the superintendent of the school system in which she had served as a teacher for more than 20 years, so that her employment contract as a teacher could be canceled. We reversed that holding. Although the result we reached in *ex parte Weaver* was correct, we did not intend to hold that the legislature had extended the protections of the teacher tenure law to a superintendent of the school system, and such a holding was not necessary for resolution of that case.

Reasoning: The court reasoned that if a teacher has served as an instructor and has attained continuing service status and thereafter he or she is elected or appointed as a superintendent in the school system which he or she has attained that status then that teacher cannot be denied a job as an instructor on the sole ground that he or she had neglected his or her duty as instructed by serving as superintendent of the school system. “The court further holds the general definition of teacher in Section 16-24-1 . . . includes a County superintendent of education.”

Disposition: After carefully reviewing the briefs filed in this case, Dr. Mitchell did not attain continuing service status and that his rights were limited by his contract with the board.

Note: Hornsby, C.J., and Shores, Stegall, Kennedy and Ingram, JJ. Concur. Adams, J., dissents.

Citation: *Michael Purnell v. Covington County Board of Education*, 554 So. 2d (1989).

Key Facts: Teacher sought declaratory judgment against County Board of Education, board members, and superintendent of education alleging board failed to follow nonracial objective criteria hiring policy when appointing principal and assistant principal.

Issues: Evidence supported trial court's finding that Board of Education and County superintendent of education had not violated board of education's nonracial objective criteria for employment policy. In appointing principal and assistant principal the board had not acted arbitrarily and capriciously in consideration of teachers application for employment in administration positions, despite teaches contention that he was clearly more qualified than the other persons who employed.

Holdings: No.

Reasoning: In the original appeal, we determined that the trial court erred in similarly dismissing Purnell's petition for failure to state a cause of action. We remanded the case for a hearing on the merits. Following an ore tenus proceeding, the trial court determined that Parnell was not entitled to relief and denied his writ of mandamus. Purnell appeals.

Disposition: Affirmed.

Citation: *Cleburne County Board of Education, et al. v. Lynn Payne, et al.*, 518 So.2d 49 (1987).

Key Facts: A vacancy in the position of principal occurred at the Pleasant Grove elementary school in the spring of 1985. A joint meeting between the Pleasant Grove elementary school board of trustees and Cleburne County Board of Education was held July 1985 beginning the process of hiring a new principal. A list of 21 candidates was submitted to the trustees. The board did not interview the 21 candidates; a recommendation was made by the board but was not accepted by the trustees. "Teacher," as used in statute permitting school trustees to refuse to accept appointment of "teacher," includes both teachers and principals, and thus elementary school board of trustees had a right to reject appointment of elementary school principal recommended by school board. Code 1975, Sections 16-10-4.

Issues: (1) The first issue raised is whether a writ of mandamus would be proper remedy in this case. The board argues that mandamus was not the proper remedy against the board and superintendent. (2) The second issue presented is whether the plaintiffs individually or as the trustees of the school have standing to maintain this action. The board argues that the plaintiffs have no asserted right or interest to be protected that is different from that of the public at large. (3) The third issue presented concerns the scope of the word teacher in Code 1975, Section 16-10-4. The trustees contend that the word “teacher” in this section include “principal.”

Holdings: (1) Yes, (2) Yes, and (3) Yes.

Reasoning: We hold that section 16-10-4 does give the Board of Trustees the right to reject appointment of both teachers and principals, because it is our opinion that the legislature considered a principle to be a teacher.

Disposition: Affirmed. Maddox, J., dissented and filed an opinion, in which Beatty and Steagall, JJ., joined. Adams, J., dissented.

Citation: *Fred D. Green v. The School Board of Hamilton County, Florida*, 501 So. 2d (1987).

Key Facts: Teachers sought review of determination of school board that he was not entitled to appointment as principal or director to pay adjustment or two attorney’s fees. Teacher’s continuing contract as administrative did not obligate school board to hire him for administrative level position for which he was not qualified.

Issues: (1) Appellant contends the board erred in failing to implore him as director or principal; (2) failing to pay him in accordance with his continuing contract as administrative; and (3) employing the same attorney to represent at the administrative hearing and for advice in entering the final order and contends he is entitled to attorney’s fees and costs.

Holdings: On his final day as superintendent, appellant nominated himself to fill the recently vacated position of principal of North Hamilton Elementary School. The school tabled recommendation and sought an advisory opinion from the Commission on Ethics whether the superintendent could recommend himself for position. The Commission on Ethics concluded that the appellant's actions probably were a misuse of public position and recommended the board contact the attorney general's office for an opinion. The attorney general's opinion considered appellant's nomination of himself to be violative of common law prohibitions against a public officer appointing himself to office.

Reasoning: The court finds that the board erred in comparing the 10-month instructor's salary with the current 12-month salary paid the director of vocational, technical and adult education, and a salary to which applicant was entitled a teaching position at a salary of \$31,050 and without consideration of the merits of the appellant's third stated issue.

Disposition: Reversed and remanded. Booth, C.J., and Zehmer, J., concur.

Citation: *Heather Chang and Lorna Johnson, Plaintiffs, v. Glynn County School District, Defendants*, 457 F. Supp.2d 1378 (2006)

Key Facts: Chang and Johnson are Jamaican citizens, and are lawful residents of Glynn County, Georgia. Plaintiffs are certified public school teachers in accordance with state law, as set forth in Georgia Code Sections 20-2-200 through 20 -2-205 (2005&2006 Supp.). Chang and Johnson were employed as public school teachers in the Glynn County School District during the 2005-2006 school year. On April 11, 2006, the Glynn County Board of Education voted unanimously to decline to renew plaintiffs' employment contracts for the 2006-2007 academic year.

Issues: Teachers brought action against school board alleging that their dismissals on the ground that they were not United States citizens violated Equal Protection Clause. Teachers moved for permanent injunction.

Holdings: The District Court, Alaimo, J., held that: (1) statute banning aliens from all public employment violated Equal Protection Clause, and (2) teachers' dismissal violated Equal Protection Clause.

Reasoning: (1) The court has jurisdiction over this matter pursuant to 28 U.S.C. Section 1343(a)(3) (1993) and 42 U.S.C. Section 1983 (2003). (2) To obtain a permanent injunction, plaintiffs must show actual success on the merits and irreparable harm if the injunction is not granted. Threatened injury to plaintiffs outweighs threatened harm to defendants, and that granting injunction is in public interest. The Fourteenth Amendment provides, that "[N]or shall any state . . . deny to any person within jurisdiction the equal protection of the laws." Aliens are protected persons under the Fourteenth Amendment. "Resident aliens, like citizens, pay taxes, support the economy, served in the Armed Forces, and contribute in a myriad other ways to our society."

Disposition: The court finds that an injunction is appropriate, and that unless the relief sought by Chang and Johnson is granted, immediate and irreparable harm will result to plaintiffs; motion for partial summary judgment, asking the court to declare Georgia Code section 45-2-7 null and void as contrary to the 14th amendment, is hereby granted.

Citation: *Pamela Sherburne, Appellant, v. School Board of Suwannee County, Appellee*, 455 So.2d 1057 (1984).

Key Facts: Teacher appealed from an order of the school board terminating her employment on the ground that she lacked good moral character. A school board member

recommended removal of her name from the list of those eligible continuing contract because of her “relationship” with a male acquaintance. Appellant lived with male acquaintance in his trailer during January of 1978 while her trailer was being repaired. As soon as her trailer was habitable should move out of the acquaintance trailer. At the time of the April 1978, School Board meeting at which she was first denied a continuing contract, appellant was living in her own trailer.

Issues: School board did not supply specific information that was valid and no statutory directives. School board declined to issue a continuing contract, but re-issued an annual contract, notifying appellant of its action by mail, but failing to specify any reasons for its action.

Holdings: The court emphasized there is no evidence of illicit sexual conduct on or about the school premises, or doing any school activities or functions away from the school; nor is there evidence of any conduct involving a student, directly or indirectly, or any open lewdness of licentious behavior.

Reasoning: The court concludes in the absence of specific, valid, statutory directives, the appropriate standard to be applied is that private, off-campus conduct ostensibly involving a consensual sexual relationship between a teacher and an adult of the opposite sex cannot, in of itself, provide a “good cause” for a school boards rejection of the teacher nominated for employment by the superintendent unless it is shown that such conduct adversely affects the ability to teach.

Disposition: Reversed and remanded. Joanos, J., concurs. Nimmons, J., dissents without opinion.

Citation: *Fern Scoggins, et al. v. The Board of Education, Nashville, Arkansas Public Schools, et al.*, 853 F.2d 1472 (1988).

Key Facts: Plaintiff filed suit against defendant school board alleging racial discrimination and violations of a state statute. Plaintiff class filed a claim alleging racial discrimination. United States District Court for the Western District of Arkansas entered judgment in favor of the school board on all claims except the classes of allegations that the school board had not complied with the desegregation order. The teacher and the class appeal.

Issues: Plaintiff alleged that the school board's decision to not renew her contract was based upon her race, violating 42 U.S.C.S. Section 2000 (d) and (e) and 42 U.S.C.S Section 1981 and 42 U.S.C.S. 1983, and that the school board failed to comply with the Arkansas teacher Fair Dismissal Act (the Act), formerly Ark. Stat. Ann. 80-1266 to 80-1266.9.

Holdings: The court found that the teacher was released because of unethical conduct, teaching the questions of the state achievement tests, and that a white teacher had been released for the same offense. The court concluded that the school board was not required the exercise strict compliance with the Act and that it substantially comply with the terms of the Act.

Reasoning: The court affirmed the district court's finding that there was insufficient evidence of a racially discriminatory environment that the school did not fulfill a desegregation order to guard hiring faculty and staff.

Disposition: The court affirmed the judgment in favor of the school board and discrimination suit brought by the teacher. The court also affirmed the District Court's decision finding that a racially discriminatory environment did not exist in the public schools but that the school board had not fulfilled its obligation under a desegregation order. The court vacated the order requiring hiring goals and remanded the issue back to the District Court.

Citation: *Michelle Oliver, et al., Plaintiffs-Appellees v. Kalamazoo Education Association, et al., Defendants-Appellant*, 1983.

Key Facts: The key facts is whether the court has the power, 9 years after issuing an injunction desegregating the students, to impose a quota for hiring Black teachers and, concomitantly, to override the contractual seniority rights and state statutory to underwrite white teachers in order to prevent the layoff of a disproportionate number of Black teachers.

Issues: In 1971 the District Court held that students in the Kalamazoo's school system more intensely segregated on the basis of race, in violation of the equal protection clause of the 14th amendment, and issued a preliminary injunction effectively desegregating the students. A history of the proceedings in this prolonged case can be found at 640 F.2d 782 (6th Cir. 1980). The citizen's committee recommendations were divided into three phases. Phase One, to be implemented between September 1969 and September 1970, involved the recruitment and hiring of Black supervisors, administrators, teachers, and counselors in order eventually to obtain a staff in each of these areas which was 20% Black. It is unclear how the citizens committee arrived at the 20% figure, although 20% appears to have been the approximate percentage of Black students in the school system at the time. Phase Two; involved education of all concerned as to the necessity of desegregation. Phase One and Phase Two recommendations specifically resolved, as to staffing, that "20% should be used as a guideline." Phase Three, plan for actual segregation of students, was adopted by the KBE on May 7, 1971 (App. P. 688).

Holdings: The relief granted by the district court, on September 30, 1980, did not totally conformed to the position of any of the parties, though it closely approximated that solved by the NAACP. The threshold issue in this case is whether the district court had the power to address the merits of the relief requested by the KBE and the NAACP.

Reasoning: The district court held that, even if res judicata principles do not apply, a teaching staff 20% Black is now required to remedy the previously determined constitutional

violations in the Kalamazoo school system. The district court further held that, to make sufficient progress towards achieving this requirement, the seniority rights of white teachers could and should be overridden. Fundamental issue raised by the ruling is the proper scope of the district courts remedial powers in a school desegregation case. The district court's ruling has two distinct aspects both of which need to be considered.

Disposition: The district court's nullification of the seniority and tenure rights of white teachers was improper. The court applied a "reasonableness" standard, but nullification of the seniority rights must be "necessary" to vindicate the constitutional rights. Plaintiffs failed to demonstrate the necessity of proposed remedy, or in fact that the proposed remedy would have any effect at all on the constitutional rights of students.

The district court erred in imposing a quota system for the hiring and composition of the teacher staff of the Kalamazoo school system. Nullification of the seniority and tenure rights of our teachers was also an error. The district court's orders are vacated and the case is remanded for dismissal of KBE's motion to override the seniority provision in the collective bargaining contract and the Michigan tenure statute.

Citation: *Robert Earl Quarles, et al., Plaintiffs, v. Oxford Municipal Separate School District, et al. Defendant*, 868 F.2d 750 (1989).

Key Facts: Appellants, the class of Black parents and students of the Oxford, and school community, appeal from the district court's judgment that dissolved all incentive orders entered against the Oxford municipal separate school district ("Oxford") and dismissed the 19-year-old school desegregation suit. They argued on appeal that the district court erred not only in dissolving the existing conjunctive orders, but in also refusing to grant additional injunctive relief.

Issues: Appellants contend that the district court erred in concluding that Oxford had achieved unitary status. They maintained that “state imposed segregation” still exists in four areas of school operation: (1) achievement grouping; (2) discipline; (3) employment; and (4) one- race programs and extracurricular activities. In the years since this order was entered, there has been only one issue raised dealing directly with desegregation. In 1972, appellants requested that the district court order Oxford to provide free bus and students. After a fully lead litigated hearing on the issue, the district court denied applicants request.

Holdings: Since the busing issue was addressed in 1972, Palin’s have filed five complaints against the Oxford school system. The complaints have involved, for the most part, school disciplinary matters; on one was pursued and finally adjudicated in appellants’ favor.

Reasoning: The district court to follow certain procedures before declaring a school system unitary. The court must require school boards to submit reports to the court for at least 3 years. At the end of that period, the court may properly dismiss the action after the plaintiffs are given notice and an opportunity to show cause why continued judicial supervision is necessary.

Disposition: The court affirmed, would vacate the portion of judgment dealing with court costs.

Citation: *George Arthur, et al. Plaintiffs v. Ewald P. Nyquist, et al. Defendants*, 712 F.2d 816 (1983).

Key Facts: This appeal concerns primarily the degree to which a district can and pair the seniority rights of teachers in order to eliminate the vestiges of racial segregation within the faculty of a public school system and vindicate the school children’s rights to a desegregated education.

Issues: The state education commissioner and teachers union, challenge the remedial plan of the district court, arguing that in seeking to eliminate racial discrimination in the hiring of teachers, the plan unnecessarily violated the seniority system established under state law and by collective bargaining.

Holdings: The court held that the district court had authority to set aside state law and collective bargaining agreements if it was necessary to eliminate unconstitutional practices, but agreed the plan needlessly impaired the seniority rights of laid-off teachers to be rehired. The district court should modify its remedial plan along with the following lines; layoffs should still be conducted on a percentage basis for each tenure area, but the layoff teachers should be placed on the preferred eligibility lists as they were laid-off. Laid-off teachers on preferred eligibility lists would then enjoy the same rights to new temporary and permanent positions as previously guaranteed.

Reasoning: The court approved an elaborate remedy designed to achieve a goal of 21% minority teachers in all teaching areas through a race-conscious initiative for hiring and laying off teachers. The district court's plan is sound, but the court concluded, that in one respect the court's remedy is unnecessarily harsh.

Disposition: The judgment of the District Court is affirmed in part and reversed in part; the matter is remanded for the entry of the modified order.

Citation: *Joe L. Lujan, Plaintiff v. Franklin County Board of Education, et al. Defendants*, 766 F.2d 917 (1985).

Key Facts: The plaintiff alleged that the defendant's failure to hire him as head football coach at Franklin County High School violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e et seq. The complaint also alleged a claim under 42 U.S.C. Section 1983.

Issues: The plaintiff, who is of Black and Hispanic heritage, was first employed by the Board of Education in 1949. At that time, Franklin County operated segregated schools and Jan worked at Townsend High School, an all-Black school. From 1949 to 1966, Jan, in addition to his teaching duties, was the head football and basketball coach at Townsend. In 1971 and 1979, the board had openings for a head basketball coach at Franklin County high and not with high, respectively. The board hired Rodney Rogers who is White. The board did not advertise or take formal application for these positions but instead hired Rogers through rather informal procedures. Seventeen people, including Lujan, applied for the job. Superintendent Hanna checked the applicants' references and made a recommendation to the board. The board hired Roberts, who was White.

Holdings: The applicable statute of limitation barred Lujan's Section 1983 claim and that only the Lujan's Title VII claim for the failure to hire him as head coach in 1979 would be considered.

Reasoning: the court found that the defendants had offered a legitimate nondiscriminatory reason for the decision to choose red Roberts opened J and Jan failed to prove that the reasons asserted by the board were pretextual.

Disposition: Affirmed.

Citation: *United States v. LULAC GI NAACP*, 793 F.2d 636 (1986).

Key Facts: This action challenges the Texas requirement that college students pass a Pre-Professional Skills Test (PPST) before scheduling more than 6 hours of professional education courses at any state college or university. To teach in Texas a teacher must successfully complete 18 to 30 hours of professional education courses. A college student who wishes to become a

teacher could not do so without first passing the PPST and then passing the professional education courses.

Issues: The intervener represents to says of minority groups, one composed of elementary and secondary's school students and the other of college students who desire to take education courses. The passing rate for minority group students is much lower than the passing rate for white students. They believe this discrepancy impedes minority students from becoming teachers in violation of the constitutional and statutory rights, and will prevent the Texas school system from hiring a sufficient number of minority teachers to fulfill his obligation under a court desegregation order.

Holdings: The district court, 628 F. Supp. 304, issued a preliminary injunction requiring the Texas education agency to permit students to enroll in education courses who would have been qualified to do so but for their having failed the PPST.

Reasoning: A state is not obligated to educate or certify teachers who cannot pass a fair and valid test of basic skills necessary for professional training, and the record contains considerable evidence tending to show that the PPST is a valid measurement of such skills.

The primary focus of the 1971 school desegregation order is on primary and secondary schools. It is at least open to question whether this 15-year-old litigation should have been expanded to encompass the separate and distinct claims of college students who desire to become teachers.

Whether the test is valid is also at threshold factual inquiry for deciding all of the other issues prerequisite to issuance of a preliminary injunction. If the test is valid, the state suffers harm from being required to educate and, perhaps, certifying teaching candidates who lack basic and necessary skills.

The public interest in teacher competence cannot be gainsaid, and whether the test measures competence determines whether the public interest is served by requiring it. The district court also found that the state had denied the students procedural due process by giving them little notice of, and no materials on, the nature of the tests, other than a pamphlet.

When the legislature enacts a law, or a state agency adopts a regulation, that affects a German class of persons, all of those persons have received procedure due process by the legislative process itself and they have no right to individual attention. The challenges to such laws and regulations must be based on their substantive compatibility with constitutional guarantees. In finding a lack of procedural due process in the board's actions, the court erred as a matter of law.

For the same reasons that we have hailed the record in adequate to warrant a preliminary injunction on the basis of the Fourteenth Amendment claim without determining the validity of the PPS T, we find it in adequate to support the injunction for violation of Title VI. In failing to do so, the district court abused its discretion.

Disposition: For these reasons, we REVERSE the district court's order issuing a preliminary injunction. The case shall proceed to trial on the merits.

Citation: *Elizabeth and Katherine Castaneda, by their father and next friend, Roy C. Castaneda, et al., Plaintiffs-Appellants, v. Mrs. A.M. "Billy" Pickard, President, Raymondville Independent School District, Board of Trustees, et al., Defendants-Appellees*, 781 F.2d 456 (1986).

Key Facts: Class action plaintiffs, Mexican-American children and their parents, filed suit against defendant school district and others, alleging that the district engaged in policies and practices of racial discrimination against Mexican-Americans. Plaintiffs alleged violations of the

14th amendment, 42 U.S.C.S. Section 1983 (1976), Title VII of Civil Rights Act of 1964, 42 U.S.C.S. Section 2000d et seq., and the Equal Educational Opportunities Act of 1974 (EEOA), 20 U.S.C.S Section 1701 et seq.

Issues: (1) Plaintiffs claim that the school district unlawfully discriminated against them by using an ability grouping system for classroom assignment, which was based on racially, and ethnically discriminatory criteria and resulted in impermissible classroom segregation. (2) by discriminating against Mexican-Americans in the hiring and promotion of teachers and administrators; and (3) by failing to implement adequate bilingual education to overcome the linguistic barriers impeding plaintiff equal participation in the educational program of the district.

Holdings: The district court initially ruled in favor of the district, but the appellate court reversed in part. On remand, the district court found that no vestiges of discrimination remained in the district, that the district's ability grouping system and recruiting and employment practices were not discriminatory, and that the district's bilingual education programs survive scrutiny under the EEOA.

Reasoning: The appellate court affirmed the District Court's judgment in favor of the defendant, concluding that the District Court's findings of fact were not clearly erroneous and rejecting plaintiff's contention that the District Court's finding lack support in the record.

Disposition: For the above reasons, the judgment of the district court is affirmed.

Citation: *Donald Price and Melvin Price, Minors, et al., Plaintiffs-Appellees v. The Denison Independent School District, Defendant-Appellant*, 694 F.2d 334 (1982).

Key Facts: Defendant school district adopted a student assignment plan, and plaintiff residents, certain Black residents in the school district, Broadway desegregation action

challenging the plan. The plaintiffs are a group of Black students and parents who are representatives of a class of Black students and parents in the DISD. The plaintiff-interveners include a group of White students, their parents, and a group of adult residents of Denison who are the elected officers of a voluntary organization known as the Save Our Schools Association. Both the plaintiffs and the plaintiff- interveners made the same allegations and seek the same relief. The same counsel represents them.

Issues: The DISD raises diverse questions as to every aspect of the district court's orders. Its principal challenges are to the district court's determinations of constitutional violations in (1) the elementary school student assignments; (2) the Junior high schools; and, (3) the absence of a Black principal. The DISD further contends that the court's findings and conclusions do not support its determination of constitutional violation.

Holdings: The trial court modified the plan and found constitutional violations, and defendant school district appealed, arguing that the trial court erred in finding constitutional violations and school student assignments, and that the trial court's findings and conclusions did not support its determination of constitutional violations.

Reasoning: the court ruled that the old man constitutional violation was not merely racial imbalance in school, but was rather a current condition of segregation resulting from intentional state action. The court held that assessment of whether the prima facie case was rebutted involved a determination whether the current racial composition of the schools did not result from past or present intentionally segregated action by the educational authorities.

Disposition: The court affirmed in part, reversed in part, and remanded the order, concluding that an erroneous view of the law influenced the fact-findings of the trial court.

Citation: *Brenda Sharply, Plaintiff v. Humnoke School District No. 5 of Lonoke, County, Defendant*, 750 F. Supp. 971 (1990).

Key Facts: The plaintiff teacher filed an action against defendant school district under 42 U.S.C.S. Sections 1981, 1983, and 2000e et seq., alleging that the school district discriminated against her because of her race and in retaliation for her participation in a desegregation action against the school district. The teacher was employed by the school district and resigned. Later she was a party to an action against the school district in which it was alleged that the school district's school system was not desegregated. When she applied to be rehired as a teacher, she was not rehired.

Issues: the teacher alleges that the district's decision not to rehire her with motivated by a desire to retaliate against her for participating in the desegregation action. The school district claimed that it was entitled to summary judgment on the retaliation claim. The teacher claimed that a prior ruling by an appellate court that the retaliation claim should go to trial as the law of the case.

Holdings: The court held that the school district was entitled to judgment.

Reasoning: The court ruled that (1) the appellate court's ruling was based on a misreading of the record and was not a law of the case; (2) the school district was entitled to judgment as a matter of law because complaint did not give the school district notice of the retaliation claim; and (3) on the facts of the case, the school district was entitled to judgment because teacher failed to prove her case by a preponderance of the evidence.

Disposition: The court dismissed the teacher's complaint with prejudice.

Citation: *Brenda Sherpell, et al. Plaintiff-Appellees v. Humnoke School District No.5 of Lonoke County, et al. Defendant-Appellants*, 619 F. Supp. 670 (1985).

Key Facts: Plaintiff, parents and students, brought a civil rights action against defendants, school district, school administrators, school board, school board members, seeking a declaratory judgment pertaining to policies and practices of defendants in the operation of the public schools within the district, which purportedly discriminated against plaintiffs because of their race and color.

Issues: Prior to 1968, the public schools in the Humnoke School District operated under the separate, but equal concept in which all White students attended the all-White school in Humnoke, Arkansas, and all Blacks attended the all-Black school in Allport, Arkansas. The accommodations provided by the district to the Black school were less than equal to the accommodations afforded the White school. There was a lower teacher-pupil ratio at the all-White school than the Black school. The White students were afforded a full educational program while Black students beyond the sixth grade at the Allport School were transported out of the district to Stuttgart or England, Arkansas, in adjoining districts. The teaching materials made available to the all-Black school were so deteriorated and mutilated that these materials were virtually without any benefit or usefulness. The Allport School faculty demanded better teaching materials and threatened to resign if no improvements were made for the next school semester. The all-White school board ignored the remedial demands of the Black teachers, construed the letter as a positive and absolute resignation, and accepted the Black teachers' resignation without conducting a hearing.

Holdings: The court found widespread discrimination by the defendants and ordered the establishment of a bi-racial committee representing a cross-section of the patrons of the district. The court found that the racial allocation of the faculty was discriminatory with regard the population of the district. The court found that the district's assertive discipline procedure was

used in a manner which Black students are disciplined certain behavior while similarly situated white students are not.

Reasoning: The court found that the district's at-large election system was unconstitutionally maintained for the discriminatory purpose and with the intent of limiting the opportunity for Blacks to participate effectively in the political process.

Disposition: The court found that plaintiffs had been discriminated against due to their race and ordered the establishment of a bi-racial committee in order to redress the problems identified.

Citation: *Wilfred Keyes, et al., Plaintiffs, v. School District No.1, Denver, Colorado, et al., Defendants* (1985).

Key Facts: In a continuing school desegregation case, plaintiff-intervener board of education sought an order from the court that (1) declared its school district was a unitary school system; (2) dissolved a permanent injunction issued by the court as it related to the assignment of students to specific schools in the district; and (3) declared the remedy previously ordered in the case fully implemented and the constitutional violations remedied.

Issues: The board argued that once the school district had complied with a constitutionally accepted court-ordered remedy that was designed to desegregate the system in the full sense and had maintained substantial compliance with that remedy for a sustained period; it was entitled declared unitary unless there had been intervening acts of discrimination.

Holdings: The court disagreed and held that the board had relied upon the erroneous premise that the final decree and plan adopted by the board was a complete remedy for past segregation of the school district. The court found that despite the board's good intentions to

follow the law, the board did not understand the law. The board allowed people to live where choose and segregation of neighborhood schools was acceptable.

Reasoning: The court found that the school district was not unitary and that it was required under the applicable case law to retain jurisdiction over the school district because it could not be assured that benign neglect, resegregation of various schools in the district would occur.

Disposition: The court denied the board's motion to declare the school district unitary, to terminate jurisdiction, and to vacate to modify the final decree and injunction previously entered in the matter. It is further ordered, that the counsel for all parties shall meet with the court in the court's conference room for discussion of the possibilities of negotiation and settlement on June 28, 1985 at 1:00 p.m.

Citation: *Cynthia Mazurek v. Wolcott Board of Education, et al.*, 849 F. Supp. 154 (1994).

Key Facts: The plaintiff has been a substitute teacher in the Town of Wolcott since 1983. The plaintiff holds both a bachelor's degree and a fifth-year degree in education, and is interested in obtaining full-time teacher position. The plaintiff argues that the board's failure to call her as much as other substitute teachers and failure to hire her as a full-time teacher were the result of an unconstitutional retaliation against her for complaining about the board's hiring procedures.

Issues: A full-time teacher opening had been filled without posting a notice of the vacancy. The plaintiff complained that the lack of posting affected her personally, in that she would have applied for the job had she known about it.

Holdings: (1) Did the plaintiff's complaints amount to constitutionally protected free speech? And, if so, (2) was that speech a substantial factor in the school system's decision to call for work less often?

Reasoning: (1) The judge held that the complaints were speech on a matter of public concern. If the judge had determined that Mazurek's was speaking out merely because of personal concern about how the system for calling substitute was affecting how often she was called. It would then be speech on a matter of personal concern (not rising to the level of constitutionally protected free speech) as opposed to speech on a matter of public concern (which is constitutionally protected). The judge found that the complaints reflected not only Mazurek's personal concern about getting employed but also her concerns as a taxpayer and a school parent that the system hires the best qualified teachers. That made it speech on a matter of public concern. (2) The court ruled that it would be entirely appropriate for a jury to determine that misery complaints was the motivating factor in the reduction in Harris us to opportunities. Therefore granting summary judgment in favor of the defendants would be improper.

Disposition: The court denied the school board's motion for summary Judgment.

Citation: *Joan H. Kastel, Plaintiff, v. The Winnetka Board of Education, District 36, et al.* 975 F. Supp. 1072 (1997).

Key Facts: Plaintiff brought action against defendants, school board and officials, alleging that defendants' failure to rehire her after her retirement constituted age discrimination in violation of the Age Discrimination in Employment Act (ADEA), 29 U.S. C. S. Section 621 et seq., unlawful retaliation, breach of contract, and other claims. The school board and officials filed a motion for summary judgment on all claims.

Issues: school board and officials do not rehire teacher after she retired based on fiscal, educational, and equitable reasons. The court held that there was a genuine issue of fact as to whether factors other than age with the sole motivation for the refusal of the school board and efficient to rehire teacher. There was a genuine issue as to whether there was retaliation against the teacher for filing a charge of discrimination with the Equal Employment Opportunity Commission (EEOC).

Holdings: when determining whether factual issues exist, the court must review all evidence in the light most favorable to the nonmoving party, and draw all inferences in the non-movant's favor. In making this determination, the court's sole function is to determine whether sufficient evidence exists to support a verdict in the non-movant's favor. Credibility determinations and the weighing of evidence a jury function, not those of the judge when deciding a motion for summary judgment. In employment discrimination case the plaintiff the plaintiff offers evidence from which and inference of discrimination may be drawn. In an age discrimination case, the plaintiff must prove that she was subjected to adverse employment treatment, and that age was a determining factor in the decision made by the employer.

Reasoning: The court found that the teacher had presented direct and circumstantial evidence showing that stereotypes regarding older workers' commitment and productivity may have been at least a motivating factor in the rehiring decision. The court held that the breach of contract claim failed because the teacher did not have an employment contract after her retirement. The teacher's equal protection claim also failed because school officials were immune from liability under the Illinois Tort Immunity Act, 745 Ill. Comp. Stat. 10/2-201.

Disposition: The defendants' motion for summary judgment is granted in part and denied in part. The motion is granted as to Counts VI and IX. The motion is denied as to Counts I and II.

A Final Pretrial Order, together with any motions in limited, will be due on September 22, 1997. The court will hold a status hearing on September 24, 1997 at 9:00 a.m. for the express purpose of setting a firm trial date for the remaining claims in this lawsuit.

Citation: *Henrietta K. Thomas, Plaintiff, v. Board of Examiners, Defendants, et al.*, 651 F. Supp. 664 (1986).

Key Facts: The plaintiff claimed that the harshness of her interview, the lack of review, and the lack of a second oral examination combined to deprive her of her 14th Amendment right to due process; and that the right to a second oral examination for teacher candidates without a similar rightful principal candidates was disparate treatment that violated equal protection clause.

Issues: the complaint claims the defendants did not planted a principals certificate violated her constitutional rights to due process and equal protection plaintiff submitted properly completed application along with \$50 examination fee. Plaintiff was one of 1575 principal's certificate candidates who qualified to take the written examination. Plaintiff passed examination "on merit" at the 99th percentile. In July 1983, the plaintiff was one of 218 candidates invited to take the oral examination. The plaintiff's individual interview was held from 9:00 to 9:45 a.m. on August 12, 1983. The plaintiff indicated experiencing several interruptions by members of the interviewing team. On August 26, 1983, a list of 168 "recommended" candidates for Board of Education approval. Plaintiff was not among those recommended for this principal certification.

Holdings: The court held that defendants had the power to refuse to give the teacher a principal's certificate after she failed the examination because, having never passed it, she never had a property interest in a certificate. Even if the examination could be improved, the court could not say this rendered the examination an arbitrary and irrational way to measure principal

competence. The conduct of the oral interview, therefore, did not violate procedural due process. The teacher was also not foreclosed from reentering the process for obtaining a certificate.

Reasoning: Because the differential treatment of teacher and principal applicants bore a rational relation to a legitimate state interest, the teacher's equal protection claim failed. Once a person has been deemed to pass the relevant test, then but only then is she entitled to a principal's certificate. State law gives her no entitlement to the certificate prior to passing the test. Furthermore, an applicant has no legitimate expectation of passing merely because she attends the examination. A state cannot exclude a person from an occupation any manner or for reasons that contrived contravene Due Process or Equal Protection Clause of the 14th Amendment.

Disposition: The defendants' joint motion to dismiss the plaintiff's due process and equal protection claims was granted in its entirety. This action was dismissed. It was so ordered.

Citation: *United States of America, Plaintiff, v. Board Of Education of the City of Chicago, Defendant*, 642 F. Supp. 206 (1986).

Key Facts: The Board seeks the release of \$750,000 of discretionary fund money to support a project it is implementing in 10 schools. The board wants to find a "modified version" of the Chicago Effective School Product ("CESP"), 621 F. Supp. 1296, 1346-50 (N.D. Ill.1985). The Secretary of Education voices two major objections, (1) with respect to the "Developmental Bilingual Education Program" and (2) with respect to the "Newcomer Student Program."

Issues: The Consent Decree called for the parties to work side-by-side in creating, implementing and funding the Desegregation Plan, but the history of the case has seen more battles than cooperation. Virtually all of the money would be devoted to paying salaries assistant principals (who would assume many of the principal normal duties so that the principals would

be forced to coordinate and evaluate the CESP. This includes field trips serve as “cultural enrichment” and create a “model” program of “national significance.” The United States complains that: (1) the project will not make “a contribution of national significance”; (2) it uses no “innovative techniques”; (3) is not “self-contained” and easily replicated. It argues that the money was simply be squandered on field trips and assistant principals, perverting the purposes of the Discretionary Fund.

Holdings: In light of our “pipeline holding,” (e.g. 621 F. Supp. 1317-22), we would be justified with ending here, without considering more than statutory criteria; however, even the regulatory criteria do not appear to forbid funding of the Board’s Plan. The Secretary cites no regulation supporting his argument that the fund can only underwrite a “self-contained” project. Nor do the regulations forbid the Secretary to fund “non-innovative techniques” which are part of a project which is a nationally significant model overall.

Reasoning: It appears to the court that the program is primarily aimed at the Hispanic students; the English-speaking students are included in order to keep the entire class together, probably for both pedagogical and desegregation- related reasons.

Disposition: The court granted the Board’s motion to compel the United States to provide interim funding is granted with respect to the Discretionary Fund; it is granted with respect to the Developmental Bilingual Education Program, provided Board’s project satisfies Section 3223(a)(4)(B); it denied with respect to the Newcomer Student Program, until the board revises project to conform with the relevant statute. The parties shall prepare a draft order reflecting the results of this opinion and submitted by July 25, 1986. We would schedule no status hearing until after the appeal is decided. It is so ordered.

Citation: *Vernon R. Jantz, Plaintiff, v. Cleofas F. Muci, Defendant*, 759 F. Supp. 1543 (1991).

Key facts: The plaintiff, an applicant for a public school teacher position, filed an action against defendant principal under 42 U. S. C. S. Section 1983 and alleged a violation of his right to equal protection. The principal filed a motion for summary judgment.

Issues: The applicant based his Section 1983 claim on the principal's alleged refusal to employ the applicant as a public school teacher based on the principal's perception that the applicant had "homosexual tendencies." The principal sought summary judgment. The court granted the principals motion for summary judgment as to the applicant's privacy and free association claims. Otherwise, the denied motion for summary judgment.

Holdings: The court held that issues of fact existed as to the principal's reasons for denying employment to the applicant. The court held that a governmental classification, based on individual sexual orientation, was inherently suspected. Moreover, the court held that the refusal to hire the applicant because of his perceived sexual orientation was result of an action by the principal, which was arbitrary and capricious in nature.

Reasoning: The court held that the principal was not entitled to the defense of qualified immunity. The court concluded that the applicant was entitled to proceed against principal on the equal protection claims.

Disposition: The court granted the principals motion for summary judgment as to the applicants prior to see and free association claims. Otherwise, the court denied the principals motion for summary judgment.

Citation: *United States of America, Plaintiff and Yonkers Branch, NAACP, et al., Plaintiffs-Intervenors, vs. Yonkers Board of Education, City of Yonkers and Yonkers Community Development Agency, Defendants*, 635 F. Supp. 1538 (1986)

Key facts: On November 20, 1985, the court held that actions taken by the City of Yonkers and the Board of Education, with respect to the housing and public schools, were in whole or in part intentionally segregative (*United States v. Yonkers Board of Education*, 624 F. Supp. 1276 (S.D.N.Y.)). On December 18, 1985, the Court established a schedule for the action's remedy phase. The Yonkers Board of Education and the city of Yonkers were directed to submit remedy proposals on or before February 17, 1986.

Issues: On February 17, 1986, the Yonkers Board of Education submitted to the Court and the parties its proposed remedial plan, entitled "Educational Improvement Plan for the Yonkers Public School System." The United States and Plaintiffs Intervenors, "NAACP" filed their responses to the board's remedial proposal by March 12, 1986. On April 2, 1986 the board file modifications to this original remedial proposal, entitled "Modifications to the educational improvement plan submitted on February 17, 1986" to which the United States and the NAACP filed responses by April 7, 1986.

Holdings: The court conducted a hearing on April 8, 1986 through April 15, 1986 receiving testimony and documentary evidence to assist it in fashioning an appropriate remedy for the unlawful condition of segregation found to exist in the Yonkers Public Schools.

Reasoning: During the board's implementation of the plan, the Court retained jurisdiction of this action to enforce the terms of this Order and for all purposes consistent with attaining the objectives of this Order. The plaintiff or plaintiff/intervenors may file a motion with the Court at any time during the period of implementation requesting enforcement or modification of this

Order if the board has failed to make reasonable progress in achieving the integrative objectives of the plan.

Disposition: In ruling on any such motion, the court shall base its determination on the totality of the circumstances, and shall seek to tailor any modification to remedy specific compliance found to exist.

Citation: *United States of America, Plaintiff, and Yonkers Branch of the NAACP, et al., Plaintiffs-Intervenors, v. Yonkers Board of Education; City Of Yonkers; and Yonkers Community Development Agency, Defendants*, 624 F. Supp. 1276 (1985)

Key facts: Plaintiff United States Attorney General brought an action against defendant City of Yonkers for violations of the Fourteenth Amendment and Titles IV, VI, and VIII of the Civil Rights Act of 1968, for perpetuating and aggravating racial segregation in public and subsidized housing projects, and against defendant Yonkers Board of Education for racial segregation of public schools. A civil rights organization and a minor child intervened.

Issues: The issue in this case is whether the City of Yonkers and Yonkers Board of Education intentionally segregated its housing and schools, since it is clear that all relevant standards, Yonkers and its public school system are, in fact, racially segregated. The City of Yonkers public housing projects located essentially all of the low- income housing in its southwest zone. Any attempts to place a project in other areas were met with great residential resistance and resulted in such projects being built in that zone or bordering that zone. The effect was one of racial segregation.

Holdings: The court examined the historical background of actions, specific sequence of events, any departures from normal procedures, and the legislative history of substantive criteria,

and found that the city had violated the Fair Housing Act of 1968 through a pattern or racial segregation.

Reasoning: The court also found the city liable for the public school racial segregation as the city discriminated in public housing projects that racially segregated the school districts and then appointed, through its mayors, the board, which adhered to a neighborhood school policy that effectively racially segregated the city's public schools.

Disposition: The city was found liable for engaging in a pattern of racial discriminatory segregation in its housing projects. The city and the board were found liable for impermissible segregation of the public school. The court directed the parties to proceed to the remedies phase of the trial.

Citation: *George Arthur, et al., Plaintiffs, v. Ewald P. Nyquist, et al., Defendants*, 680 F. Supp. 536 (1988)

Key Facts: The Buffalo, New York, Board of Education and the Buffalo Teachers Federation (BTF) sought interim modification of a one-for-one hiring order entered in an action concerning minority representation among teacher staff in the Buffalo public schools.

Issues: The one-for-one hiring order was entered to enforce hiring goals established in the action. Although minority hiring did not reach the goal of 21%, the number of minority teachers increased by almost 10%. The Board and the BTF sought to have probationary appointments granted to non-minority teachers under the order's provision for situations in which qualified minority candidates were not available. Plaintiffs and CAB were opposed: CAB sought to have New York State certification replace the allegedly discriminatory Buffalo testing program.

Holdings: The court modified its order to permit use of provision at issue. The court noted that the board had greatly expanded its recruitment program; however, availability of

qualified minority candidates was unpredictable. Some positions in six staffing categories would be reserved for qualified minority applicants, but hiring of probationary teachers could otherwise proceed without regard to the one-for-one hiring requirement.

Reasoning: The court held that no change in testing requirements was warranted, because the board accepted a test used for New York State certification in lieu of the allegedly discriminatory part of the Buffalo test.

Disposition: The court made an interim modification of its previous order so as to afford relief for non-minority teachers who had been waiting for probationary assignments pending attainment of the hiring goals established in the action.

Citation: *Lorraine Kromnick, Lorraine Brancato, Gladys Hirsh, and Regina Katz v. School District of Philadelphia and Board of Education of The School District of Philadelphia*, 555 F. Supp. 249 (1983).

Key Facts: The plaintiff teachers filed an employment discrimination class action seeking injunction and declaratory relief and challenging the validity of a quota system used by defendant school district to maintain racial balance in the faculties of all of the schools within school district.

Issues: The teachers contended that the use of a quota system for the sole purpose of maintaining faculty racial balance violated the Equal Protection Clause of the Fourteenth Amendment and Title VII of the Civil Rights Act of 1964, 42U.S.C.S. Section 2000et seq.

Holdings: In granting the relief, the court held that the school district's use of the quota as applied to the involuntary transfers of school teachers from August, 1982 to the present day to maintain racial balance in the school district school faculties without resort to nondiscriminatory

alternatives violated the teachers' rights under the Equal Protection Clause of the Fourteenth Amendment and Title VII of the civil Rights Act of 1964.

Reasoning: The court found that while the system may have been a permissible means of attaining a given racial balance, it ventured into the impermissible range if it continued to allow Grace to be the sole criterion affecting employment once the desired end was actually met.

Disposition: The court enjoined the school district from further using the quota system as applied to involuntary transfers in selecting teachers to be involuntarily transferred and in restricting rights of teachers required to be involuntarily transferred.

Citation: *Angelica Saquebo, Plaintiff, v. Awilda Aponte Roque, et al., Defendants*, 716 F. Supp. 709 (1989).

Key Facts: The plaintiff, a former teacher, filed an action against the defendant Department of Education and asserted claims of political discrimination in violation of 42 U.S.C.S. Section 1983 28 U.S.C.S. Section 1343. The department of education filed a motion of summary judgment.

Issues: The department of education declined to renew the former teacher's contract of employment and declined to hire former teacher for other positions. The former teacher filed an action against the department of education and alleged political discrimination by the department of education, based on her active membership in the New Progressive Party. The Department of Education sought summary judgment pursuant to Fed. R. Civ. P. 56.

Holdings: In granting the motion for summary judgment filed on behalf of the department of education, the court held that the former teacher failed to establish that the decision of the Department of Education not to renew her contract was a result of political discrimination.

Moreover, the court held that the Department of education's failure to hire her for other positions was a result of political discrimination.

Reasoning: The court considered the former teacher's state law claim for double damages under 29 P.R. Laws Ann. Section 146. The court found that the remedies set forth in the statute was unavailable to the teacher, caused state expressly excluded public corporations, such as department of education, from its scope.

Disposition: The motion for summary judgment is GRANTED. The complaint shall be DISMISSED.

Citation: *Willie Gilyard, Plaintiff, v. South Carolina Department of Youth Services, Defendant*, 667 F. Supp. 266 (1985).

Key Facts: Defendant state agency filed a motion for summary judgment in plaintiff school principal's discrimination action filed under Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C.S Section 2000e et seq. The state also filed a motion for attorney fees.

Issues: Two schools merged into one in order to receive federal funds. The former principal of one of the old school affiliates that he was denied the principal position of the merged school because of his race and filed an action under Title VII. The state file motions for summary judgment and for attorney fees. The court granted both motions. The court treated the case as a "reduction in force" case and held that the principal failed to make a prima facie case of discrimination.

Holdings: The court found that the principal failed to show that another position of principal was available for him to assume and failed to show that there was any causal relationship between his race and the merge of the two schools. The court held that the principal

produce no fax for his belief of racial discrimination, but instead, merely made conclusory allegations.

Reasoning: Because the principal had no basis for filing his action, the Court held that the state was entitled to attorney fees under 42 U.S.C.S. Section 2000e-5(k). The court found the action was frivolous because no evidence was produced to substantiate the discrimination claim.

Disposition: The court granted the state's motions for summary judgment and for attorney fees. The principal's discrimination action was baseless and frivolous.

Citation: *James Mapp, et al. v. Board of Education of the City of Chattanooga, Tennessee, et al. Defendants*, 648 F. Supp. 992 (1986).

Key Facts: The school desegregation case commenced in 1960 and had been pending from the time of that date. The board was ordered to desegregate faculty and staff in accordance with a previously approved plan the board submitted a report showing its progress.

Issues: The board filed a motion to dismiss the case. Plaintiffs objected to the motion citing that the board was required to show that the need for the remedy of the present desegregation plan did not still exist. The court granted the motion. The court found that the board succeeded in desegregating the faculty and staff to each school in approximately the same ratio as Black and white faculty and staff and the total system.

Holdings: The court reasoned the plan was fully implemented. The court concluded that the board had not, since the plan was placed into effect, taken any action which reestablished any vestiges of a dual school system.

Reasoning: Plaintiffs had the opportunity to reopen the case and they did not do so. Plaintiffs are permitted to access the court system at any time in the future if the board failed to adhere to the plan.

Disposition: The court granted the boards motion and dismissed the action.

Citation: *United States of America, Plaintiff; LULAC, GI Forum, and NAACP, et al.*

Plaintiffs-Interveners; Leslie Dugas, Jr., Clevin Giles, Elaine Hudson, Dietrick Mays, Ernestine Randall, William Traylor, and Kimberly Wilson, Nelda Elizalde, Marianela Gonzalez, Aurora Gutierrez, Genoveva Marmodejo, Oralia Martinez, Irene Rael and Linda Reyes, Applicants for Intervention, v. State of Texas, et al., Defendants, 628 F. Supp. 304 (1985).

Key Facts: The plaintiff-interveners and the applicants for intervention (“applicants”) seek a preliminary injunction to restrain the state of Texas, acting by and through the Texas Education Agency (“TEA”), from excluding students who fail the Pre-Professional Skills Test (“PPST”) from enrollment and teacher education courses at colleges and universities in Texas.

Issues: The 14 applicants are Black and Hispanic education students prevented from completing their studies by the implementation of the Pre-Professional Skills Test (PPST). They seek to represent themselves and others similarly situated. In 1981, the Texas Legislature enacted a statute requiring “satisfactory performance on a competency examination on basic skills prescribed by [Texas State Board of Education] as a condition to admission into an approved teacher program.” The examination chosen by the State Board of Education was the PPST, which tests skills in mathematics, reading, and writing. If a student falls below the preclusionary scores set by the Board on any of the three components of the test, a student may not take more than 6 hours of courses in education until such time as he or she has passed all sections of the test.

Holdings: There is no dispute that the requirements relating to the PPST have prevented several thousand students from enrolling in teacher education courses. Nor is it disputed that its requirements have had a massively adverse impact on Black and Hispanic education students. As

of July 1985, after more than 18,000 persons had taken the test, defendants statistics show that 73% of Whites who took the tests one or more times passed; by contrast, Hispanics pass at a rate of 34%, and Blacks pass at a rate of 23%. The public interest in this action is threefold: (1) the interest in having sufficient numbers of teachers, especially in areas which have particularly suffered, in the past, from the burden of the dual school system;(2) the interest in having competent teachers, able to convey knowledge to their pupils and provide positive role models; and (3) the interest in an integrated unitary school free of racial discrimination at any level.

Therefore, the interest of allaying the teacher shortage in Texas, to the extent possible, is served by granting the preliminary injunction. The public interest is not disserved by allowing students to take courses in college and to practice teaching students.

Reasoning: This court takes judicial notice of its own findings regarding the nature of the Texas school system over the years as well. In addition, programs comparable to the remediation programs considered so essential in other areas have not been instituted in Texas. Although it will be necessary that plaintiff- interveners and applicants produce more evidence regarding the duration of the dual system in Texas at the trial on the merits, it is concluded that they have a substantial likelihood of success on the merits of this claim.

Disposition: By reason of the foregoing considerations, the defendants' motion to dismiss for lack of jurisdiction would be denied; and plaintiff- interveners' motion for preliminary injunction will be granted.

Citation: *California Teachers Association et al., Plaintiffs and Appellants, v. Governing Board of Rialto Unified School District et al., Defendants and Respondents*, 927 P.2d 1175 (1997).

Key Facts: Appellants, teachers and teacher employee organizations, filed a petition for a writ of mandate to require respondents, school district, and related parties, to comply with Cal. Educ. Code Section 44919(b); the Legislative Intent was to broaden the circumstances for hiring “temporary employees.” This also intended to give school districts greater flexibility in hiring athletic coaches.

Issues: Teachers already employed should be given preference in hiring and filling the position as a coach. The respondents were trying to fill coaching position with the best possible choice whether full time employee or temporary.

Holdings: the court held that the legislature intended teachers employed in the school district to have some tangible advantage in the hiring process not shared by walk on candidates, and the early notification vacancies was not such an.

Reasoning: The court granted teachers currently employed in school district a right of first refusal for vacant athletic coach position. Additionally, the Supreme Court vacated the judgment of the court of appeals that directed the trial court issue a writ of mandate and transferred matter the court feel direction remand the case to trial court for further proceedings.

Disposition: The court affirmed that the respondents had to offer credentialed district teachers first opportunities in filling the athletic coaching positions as required by state law. The court vacated and remanded part of the order. The teacher and teacher employees organizations were uncertain perhaps to appellant was denied application because he was unqualified.

Citation: *United Teachers of Ukiah et al., Plaintiffs and Respondents, v. Board of Education of Ukiah Unified School District et al., Defendants and Appellants*, 201 Cal. App. 3d 632 (1988).

Key Facts: The school board ordered that public employment relations Board has jurisdiction over the case and not trial court. Because respondents referred to the education code violations and the appellant failed to make a convincing case regarding the Educational Employment Relations Act, Cal. (Gov't Code§ 3540 et Seq.), which provide for collective representation and bargaining which falls somewhere between a meet-and-confer system and full-fledged collective bargaining. The Legislative intent for Ed. Code§ 45028, has the twofold purpose of requiring that teachers be classified the salary purposes and that such classification proceed wholly owned a uniform basis of years of training and experience. The position of the school board was their empowerment to adapt the salary schedule provided it is not arbitrary, discriminatory, or unreasonable, and provided further than any allowance the years of training and experience is uniform and based on reasonable classifications.

Issues: Appellants school board argues the legality of trial court intervening in educational proceedings under The Educational Employees Relations Act (Cal. Gov't Code § 3540 et. Seq.), while Cal. Educ. Code§ 45028.

Holdings: The court found that the appellant's preferential hiring policy was not uniform some teachers receive credit for all experience while others were limited to 5 years maximum was a flagrant violation of Cal. Educ. Code§ 45028.

Reasoning: The court affirmed and concluded it did not have sufficient justification and evidence to order back pay but their respondents should be credited for all their years of teaching experience.

Disposition: The court affirmed the judgment trial court. The court found that the appellant's preferential hiring policy and selection process was not uniform in classification and violated the law.

Citation: *Berkeley Federation of Teachers, Local 1078, AFT, AFL-CIO et al., Plaintiffs and Respondents, v. Berkeley Unified School District et al., Defendants and Appellants*, 224 Cal. Rptr. 44 (1986).

Key Facts: Plaintiff teaching adult school on a temporary basis filed petition for writ of mandate and asked for reclassification as a probationary employee. The trial court issue the writ and the school district appealed.

Issues: A teacher employed to teach adults but not more than 60% of the hours of the week is considered a full-time assignment for permanent employees must be classified as a temporary, not a probationary, employee. The workflow for the entire year must be taken into consideration.

Holdings: The Court of Appeals reversed the decision, holding that in computing the workload of the teacher hired to teach adult school to a full school year contract for purposes of Ed. Code §44887. The legislature has established a comprehensive scheme for the classification of certified individual teachers, which includes teachers employed by school districts. School teachers may be classified as either substitute, temporary, probationary or permanent employees (Ed. Code, §§44917, 44919, 44949, 44920 and 44882.) Education Code § 44887 provides that an adult school teacher who works not more than 60% of a full-time teaching assignment still be classified as temporary and shall not become a probationary employee.

Reasons: The trial court erred in issuing the writ, the court failed since petitioners' workload had exceeded 60% only in the spring semester and it averaged less than 60% for the year.

Disposition: The court ordered the issuance of a peremptory writ of mandate directing both school district and governing board to reclassify splendid teacher as a probationary teaching

employee. The court order was reversed. The court found respondent teacher worked only 58.3% and a full-time workload is computed on the basis of the entire 1982-1983 school year.

Citation: *Christian S. Tuffli, Plaintiff and Appellant, v. Governing Board of the San Diego Unified School District et al. Defendants and Respondents*, 36 Cal. Rptr. 2d 433 (1994)

Key Facts: The plaintiff teacher was convicted of committing a sex offense with a mental handicapped pupil. The plaintiff challenged the Superior Court of San Diego County, California, which denied a petition for writ of mandate to reinstate him as teacher with back pay and violated constitutional protection of his property interest in continued employment. Plaintiff's employment terminated. Cal. Ed. Code §44836(a)(2), If a person's conviction of a sex offense as defined in section 44010 is reversed and the person is acquitted of the offense in a new trial or the charges against him or her are dismissed, this section does not prohibit his or her employment thereafter. If the dismissal was pursuant to Section 1203.4 of the Penal Code and the victim of a sex offense was a minor, this section does prohibit the person's employment.

Issues: Plaintiff seeks petition for reinstatement in continued employment and back pay.

Holdings: The trial court ordered defendant to hold a hearing on called of dismissal and make a determination on the back pay issue because plaintiff's credentials were reassured.

Reasons: The court stated that plaintiff became eligible for continued employment and was entitled to protections of dismissal when the proclamation for his summary dismissal no longer existed.

Disposition: The court reversed the denial of the petition, and granted plaintiff teacher's writ of mandate. The court directed the trial court to order defendant school district to hold a hearing on calls dismissal and to make a determination on the back pay issues because plaintiff's

credentials were reissued after his conviction for a sex offense was reversed and charges dismissed.

Citation: *California Teachers Association et al., Plaintiffs and Appellants, v. Commission on Teacher Credentialing et al., Defendants and Respondents*, 10 Cal. Rptr. 2d 126 (1992).

Key Facts: The plaintiffs filed petition for a writ of mandate naming the respondents and school district unlawfully hired individuals with only emergency credentials issued by the commission.

Issues: Teachers that were regularly credentialed had applied for vacant teaching positions, but that in place of regular credentialed teachers, school district had unlawfully hired individuals with only emergency credentials.

Holdings: The court held that the trial court properly sustained the demurrers, since the credentialed teachers were not necessarily qualify for the positions by virtue of their regular credentials alone.

Reasons: The Court, held that the regulation, in permitting the issuance of the emergency credentials was entirely consistent with Ed. Code, § 80026(b) Efforts to Recruit Certified Personnel. This shall include a brief description of efforts that the employing agency has undertaken to locate and recruit individuals who hold the needed credentials, such as dated copies of written announcements of its vacancy or vacancies which were mailed to the college or university placements.

Disposition: The court affirmed the decision of the trial court, which dismissed appellants' compliant that regularly credential teachers, petition for a writ of mandate challenging school district. The defendants were well within their rights to issue emergency

credentials be the relevant statute escape respondents discretion to issue and hire emergency credential teachers.

Citation: *Mark Lindemuth, Plaintiff-Appellant, v. Jefferson County School District R-land Donald E. Schneider, Defendants-Appellees*, 765 P2d. 1057 (1988).

Key Facts: Plaintiff employed during the 1984-1985 season as an assistant boys basketball coach at the junior high and the high school within the school district. The head coach requested the assistant coach to resign or he would be discharge from both coaching positions after he was confronted with rumors of child molestation.

Issues: The assistant coach brought claims of defamation, outrageous conduct, invasion of privacy, and tortious inference with this contract against the head coach and claims against school board.

Holdings: The court held that the assistant coach's plea of nolo contendere to child molestation some 14 years earlier was evidence of the substantial truth, an absolute defense to a defamation claim; reasonable persons could not characterize the head coach conduct as atrocious and utterly intolerable as to support a claim of intentional or reckless infliction of severe emotional distress.

Reasoning: The trial court properly hailed that an action for public disclosure of private facts could not be maintained when information of a criminal conviction, a public record, was re-publicized 14 years later.

Disposition: The summary judgment dismissing the claims against the school district and the head coach was affirmed.

Citation: *Midwest Central Education Association, IEA-NEA, Petitioner- Appellant, v. Illinois Educational Labor Relations Board and Midwest Central School District No. 191, Respondents-Appellees*, 660 N.E.2d 151(1995).

Key Facts: The plaintiff was notified that she would not be reemployed; the association initiated a grievance procedure, in which an arbitrator sustained the teacher's grievance and ordered that the district reinstate her. The Association filed a complaint against district before the board, alleging that the district committed an unfair labor practice by failing to comply with a labor arbitrator's.

Issues: the board concluded that the award was not binding and dismissed the complaint.

Holdings: the court affirmed the decision, finding that the arbitrator undermined the authority reserved for the district regarding discharge of a non-tenured teacher pursuant to 105 Ill. Comp. Stat. 5/10-22.4 (1992), "Dismissal of teachers." To dismiss a teacher for incompetency, cruelty, negligence, and immorality or other sufficient cause, to dismiss any teacher on the basis of performance and to dismiss any teacher whenever, in its opinion, the interests of the schools require it, subject, however, to the provisions of Sections 24-10 to 24-16.5 [105 ILCS 5/24-10 to 105 ILCS 5/24-16.5], inclusive. The arbitrator had no authority under 105 Ill.Comp.Stat.5/24-11 (1992), which authorized a third probationary year at the discretion of the district.

Reasoning: The court reasoned the remedy was invalid and not binding; the district did not commit an unfair labor practice in refusing to reinstate the teacher.

Disposition: The court affirmed the board's decision finding and arbitrator's award invalid because arbitrator undermined the authority reserved for the district regarding discharge

of the non-tenured teacher. Because the remedy was unenforceable, the district did not commit an unfair labor practice in using to reinstate the teacher.

Citation: *The Board of Education of Rockford School District No. 205, Plaintiff-Appellee, v. Rockford Education Association et al., Defendants-Appellants*, 501 N.E.2d 338 (1986)

Key Facts: The Rockford Education Association filed a grievance against the Board of Education of Rockford School District number 205 relating to the procedures for filling vacancies.

Issues: Did the trial court exceed its subject matter jurisdiction by deciding the arbitrability of the parties' dispute? Has IELRA abolish the long-established rules that discretionary appointment of teachers is a power vested exclusively in the school district and is not delegable?

Holdings: The court hailed that the trial court did not exceed its subject matter jurisdiction by deciding the arbitrability of the parties.' The dispute because the attempt to arbitrate an allegedly inarbitrable matter was not explicitly listed, as an unfair labor practice as defined by the IELRA and, therefore, the IELRA did not abolish the traditional circuit court action to enjoin arbitration.

Reasoning: The court held that the IELRA did not abolish the long-term establish rule that discretionary appointment of teachers was a power vested exclusively in the school district it was not delegable because there was not clear intent to obligate the rule

Disposition: The court affirmed the circuit court's refusal to dissolve an injunction entered against an association and a labor dispute the school board.

Citation: *Bonnie Ballard, Plaintiff-Appellant, v. Board of Rock Island School District No. 41*, 521N.E.2d 153, 1988

Key Facts: Plaintiff maintains her rights to a full time teacher position during the 1983-1984 school term was denied due to honorable dismissal and termination from her position. Plaintiff requests monetary damages and states that Don DeVinney was hired instead because of seniority but fewer semester hours according to State Board of Education credentials.

Issues: Did the board abuse its discretion when it assigned DeVinney to the teaching position when he was less qualified than Ballard in terms of completed coursework requirements mandated by the State Board of Education? Additionally, Ballard maintains that DeVinney's teaching assignment became vacant by operation of law when the State Board determined he was not legally qualified to teach courses and she should have been appointed to this position.

Holdings: The court held that the board, in compliance with Ill. Rev. Stat. ch. 122, para. 24-12 (1985), properly terminated the teacher and assigned a replacement, being aware that the placement was not in complete compliance with the state requirements.

Reasoning: The court also held that the record shows that the board was unaware of both teachers were legally unqualified to teach the position at issue. The court ruled that the board did not abuse its discretion in appointing a replacement teacher who had more seniority to the position from which the teacher was dismissed.

Disposition: The court affirmed the judgment of the trial court that the teacher damages against the board for reducing the teacher's position to a part-time status after determining this he was unqualified to maintain her full-time position.

Citation: *Jean Zink, Petitioner-Appellant, v. the Board of Education of Chrisman Community Unit No. 6, Respondent-Appellee*, 497 N.E.2d 835 (1986).

Key Facts: Petitioner Jean Zink home economic program position was reduced from full-time status to part-time status and was discontinued by the school board. Zink sought a writ of

mandamus ordering the school district reinstate her to a full-time status. She appealed the judgment of the Circuit Court of Edgar County, Illinois, which denied reinstating her as a full-time teacher.

Issues: Zink wanted to use her seniority to bump a full-time physical education teacher with less seniority according to § 24-12 of the School Code, Ill. Rev. Stat. 1983, ch. 122, para. 24-12 (1983) and stated she was entitled to the position held by physical education teacher David Chandler.

Holdings: On the appeal, the trial court denied Zink's petition because the teacher was not legally qualified to teach physical education and her home economic position was properly reduced.

Reasoning: The physical education teachers' responsibilities include supervision of male students in the locker room. Zink is female; the teacher was unable to perform this responsibility along with not being legally qualified to teach physical education according to state standards.

Disposition: The court ruled during the trial court in favor of school board; affirmed.

Citation: *Marion Teachers Association, Plaintiff-Appellant, v. the Grant County Special Education Cooperative, Defendants-Appellees*, 500 N.E.2d 229 (1986)

Key Facts: On July 1, 1984, the following school districts Marion County Schools, Easterbrook Community Schools, Madison-Grant United School Corp., Mississinewa Community School Corp., and Oak Hill United School Corp. entered into an agreement creating the Grant County Special Education Cooperative, hereafter known as the (Cooperative).

Issues: The teachers' association contends the trial court erred in granting the corporative agreement and violating state law.

Holdings: Summary judgment granted to the school districts.

Reasoning: The court reasoned the district had authority form a cooperative and had the right to hire whatever teachers they deem necessary to carry out the purpose of the cooperative agreement. Further, the participating schools mutual decision to develop a joint program was in the best interests for meeting the needs of the community.

Disposition: The court agreed with the decision of the trial court. Affirmed.

Citation: *Leo Rogers, Plaintiff-Appellant v. Avoyelles Parrish School Board, Defendant-Appellee*, 736 So.2d 303 (1999).

Key Facts: The plaintiff, Leo Rogers, is a state certified teacher who applied for a teaching position with the Avoyelles Parish School Board; however, the position was given to another applicant who did not meet state certification.

Issues: Rogers requests the court to state their illegal hiring procedure in filling the teacher position that Rogers sought. The plaintiff seeks a monetary award and orders that certified personal fill teaching positions.

Holdings: The school board did have rights regarding his hiring practices; the discretion for hiring is not limitless and was limited according to state law.

Reasoning: The state prohibits the hiring of an individual that is not certified by the state certification process and teachers should receive priority to teach when certified applicants are available. The permission to hire non-certified teachers had not received prior approval from the state superintendent.

Disposition: The district court reversed the ruling of the trial court on the school board peremptory exception and no cause of action. Rogers' complaint dismissed along with being remanded for further proceedings because the petition stated a cause of action. The school board appeal is charged with court cost to the fullest extent allowable by law.

Citation: *Joyce T. Hosford v. School Committee of Sandwich & Another*, 659 N.E.2d 1178 (1996).

Key Facts: Hosford taught speech and language pathology in the special needs department of Sandwich public schools. A small group of students taught multiple meaning of words. During the last few minutes of class obscene words were being defined which subsequently led to parental complaints, a 2-day suspension without pay, and non-renewal of untenured teacher.

Issues: Hosford filed petition on school board for not reinstating her and giving her back pay because her suspension had violated her right to free speech under the First Amendment and her state's declaration of rights.

Holdings: It is clear, Hosford was responding to the inquiring students' provocative and inappropriate questions, which sometimes led to disruptive outburst. Although obscene language was used, students were instructed not to use this type of language at school or at home.

Reasoning: The court held that the school board disciplinary action on one brief class segment violated the teacher's rights, teacher reinstatement for 1 year of untenured position and damages she may have incurred due to boards' decision not to rehire her.

Disposition: Initially, the Superior Court judge ruled in favor of summary judgment for school board. The case transferred to the Supreme Judicial Court of Massachusetts; reversed with judgment entered for the plaintiff.

Citation: *School Committee of Lowell v. Local 159, Service Employees International Union*, 679 N.E.2d 583 (1997).

Key Facts: David LeTourneau applied for and won a bid for a day shift custodian position at Reilly School. The job announcement was conducted in accordance with Article XIX

of the parties' collective-bargaining agreement. LeTourneau was previously employed at Butler School and the committee advised the union on the successful bid on September 9, 1993.

Issues: LeTourneau was later notified by a representative of the union he would not be awarded the position due to the Education Reform Bill enacted on June 18, 1993. LeTourneau did transfer to Reilly School and the union filed a grievance.

Holdings: The Educational Reform Act changed responsibilities from the school committee to the school principals and school superintendents all hiring and firing of school personnel. Section 59B "Principles employed under this section shall be responsible, consistent with district personnel policies and budgetary restrictions and subject to the approval of the superintendent, for hiring all teachers, instructional or administrative page, and other personnel assigned to the school, and for terminating all search personnel, subject to review them prior approval by the superintendent and subject to the provisions of this chapter."

Reasoning: The provisions of the collective bargaining agreement are invalid. With the Educational Reform Act the process of filling vacancies now rests with the school principal and school superintendent

Disposition: The judgment of the Superior Court is reversed and a new judgment shall enter vacating the arbitrators' award due because he was beyond his power to make agreements.

Citation: *Thomas F. McAndrew v. School Committee & Another*, 480 N.E.2d 327 (1985).

Key Facts: The plaintiff, McAndrew, gave up his teaching position in Georgia and moved to Massachusetts to accept a music teacher position based on information given by the director and assistant director of music for Cambridge public schools. He was assured his name would be submitted to the school committee for "rubber stamped" approval and accepted the position only to be fired 3.5 weeks later.

Issues: McAndrew's name was never submitted to the school committee or superintendent for consideration of employment. McAndrew was not entitled to compensation to recover a year employment.

Holdings: The teacher must first be nominated by the superintendent and voted on by the committee, and those requirements have not been met in order for compensation to be awarded. The estoppel principles were breached in line the public interest and in compliance with statutory requirements of c. 71, § 38. [359-361].

Reasoning: McAndrew would be limited to the damages (\$3,000 moving expenses) he incurred before being discharged after three and one-half weeks. He will not receive damages for the entire year.

Disposition: The trial court reversed its decision, ruled in favor of the teacher, and remanded for further proceedings to show whether directors had "good cause" by not submitting the teacher's name to the superintendent.

Citation: *Virginia Morgan, Plaintiff-Appellant, v. Taylor School District, Defendant-Appellee*, 466 N.W.2d 322 (1991).

Key Facts: Virginia Morgan a substitute teacher appealed to the trial court's summary disposition regarding School Code, Mich. Comp. Laws § 380.1236. Section 1236 states substitute teachers who work at least 120 days in the school year preferential hiring rights to full-time teaching positions. She worked 115 full days and 5 half days in 1985-1986. The school district hired at least two full-time teachers in August of 1986, who lacked preferential hiring rights positions for which Morgan was qualified.

Issues: The issue in this case is the determination of teachers' rights.

Holdings: The court determined the application of law did not address the vested rights acquired under the existing laws. The teacher did not substantiate her case and had no tangible right established, only the potential future employment.

Reasoning: The court determined that the action did not occur until the start of the school year, August 1986, the time-line had lapsed, and the teacher's employment preference had discontinued according to the amendment.

Disposition: The court ruled granting summary disposition in favor of the school district.

Citation: *Poland v. Grand Ledge Public Schools Board of Education*, 402 N.W.2d 70 (1986).

Key Facts: Petitioner Poland brought action against the Grand Ledge Public School Board of Education expressing violation of her rights under Mich. Comp. Laws § 38.71 et seq. Section 38. 105, which provides that any teacher on permanent tenure whose services are terminated because of a necessary reduction in personnel shall be appointed to the first vacancy in the school district for which he is certified and qualified. In August 1973, Poland was hired by the Board of Education as a half-time kindergarten teacher. Poland received tenure in 1975 and remained a half-time teacher until 1980-1981 receiving full-time status 16 days into the school year. The respondent hired a probationary teacher who later became a full-time teacher over Poland.

Issues: Poland claim her rights were violated and that she should have received the full-time position under the teacher tenure act, MCL 38.71 et seq.

Holdings: The petitioner raises three arguments on appeal. First, petitioner argues that the decision by the commission violates the general favored status, which the tenure act accord to tenure teachers. Second, petitioner maintains that by signing the probationary teacher to the full-

time position, respondent violated Art IV, § 5 of the act, MCL 38.105; MSA 15.2005, by failing to “recall” petitioner to fill the “vacancy.” Finally, petitioner maintains that the respondent’s failure to place her in the full-time position violated her rights under Art III, § 1 of the act, MCL 38.91; MSA 15.1991.

The court addressed the plaintiffs’ questions as follow: First, the holding of the commission indicates that Ms. Poland tenure rights were not violated by the school board and the act states “accord to tenured teacher’s rights equal to or greater than those enjoyed by probationary teachers.” The act states: to “maintain an adequate and competent teaching staff, free from political and personal arbitrary interference; to promote “good order and the welfare of the State and of the school system by preventing removal of capable and experienced teachers at the personal Whims of changing office holders”; and “to protect and improve the State education by retaining in their position teachers who are qualified and capable and who have demonstrated their fitness and to prevent the dismissal of such teachers without just cause.”

In Second, Poland contends the school board failed to “recall” her to the “vacancy” (the full-time kindergarten position), which she was interested in and qualified for, in violation of Art IV, § 5 of the act, MCL 38.105; MSA 15.2005. The act read as follow: “any teacher on permanent tenure who services are terminated because of a necessary reduction in personnel shall be appointed to the first vacancy in the school district for which he is certified and qualified.”

Third, Poland contends she was entitled to full-time position according to the statutes of Art III, § 1 of the act, MCL 38.91; MSA 15.199. The act states in part: “After satisfactory completion of the probationary period, the teacher shall be employed continuously by the

controlling board on which the probationary period has been completed, and shall be dismissed or demoted except as specified in this act.”

Reasoning: The court ruled in the affirmative because there were no requirements that specified positions had to first be offered to part-time tenured teachers.

Disposition: The court ruled in the affirmative in the dismissing of the teacher’s petition against the Board of Education.

Citation: *Michael F. Roek, Plaintiff- Appellee, v. Board of Education of the Chippewa Valley School District, Defendant-Appellant*, 329 N.W.2d 539 (1982).

Key Facts: Michael Roek was employed as a substitute teacher for 120 days or more (112 full days and 10 days) during the school year and was not offered a contract for which he was qualified.

Issues: The court ruled this case meets the statutory construction requirements and has all the facts; and plaintiff was employed for the 120-day period as specified in MCL 380.1236(2); MSA 15.41236(2). “A teacher employed as a substitute teacher for 120 days or more during a school year shall be given first opportunity to accept or reject a contract for which the person is certified after all of the teachers of the school district are reemployed in conformance with the terms of the master contract of an authorized bargaining unit and the employer.”

Holdings: The court ruled the substitute teacher’s rights accumulate when he or she has been called in for employment 120 or more days to teach.

Reasoning: The legislature’s purpose was to give substitute teachers who had taught a substantial portion of the year the first right of refusal and the opportunity to become full-time employees after meeting district hiring requirements.

Disposition: The court affirmed the summary judgment in favor of Roek and required the district to offer him every employment contract for the next school year.

Citation: *Rolf Walter Respondent, v. Independent School District No. 457, Trimont, Minnesota, Appellant*, 323 N.W.2d 37 (1982).

Key Facts: Independent School District Number 457 sought a review to determine if Minn. Stat. § 125.12 was violated. Rolf Walter filed suit using the Uniform Declaratory Judgment Act, Minn. Stat. §§ 555.01-.16 (1980). Section 555.01 (2013) states the following: “Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and in fact; and such declarations shall have the force and effect of a final judgment or decree.” The respondent sought declaratory judgment and reinstated to a full-time position claiming the district violated § 125.12, sub d. 6b, which provided for the reinstatement of teachers on unrequested leave.

Issues: The issue is whether Walter being on unrequested leave of absence could accept a part-time position for a designated period time and still be entitled the opportunity to a full-time status position. The school district disputed the validity of a teacher’s license held by Walter.

Holdings: the court determined that the teacher’s license was valid and that Walter had a right to the position. The court recognized wavering of teachers’ tenure rights must be clear and intentional.

Reasoning: The court cited that Section 125.12, subd. 6b© did not permit affirmative action to be used arbitrarily in hiring new teachers.

Disposition: The court affirmed the judgment; with Justice Wahul, dissenting from the holding of the majority opinion. Wahul contends that, “the teacher is therefore entitled to be offered any part-time position that is sufficient to bring him to full-time status and for which he is licensed when that position is one for which, as here, sound educational policy may require special qualifications.” In this particular case, the person awarded the position was a female physical education instructor. The court ordered the school district to reinstate Walter to full-time status and pay damages of \$6,980.00 plus interest.

Citation: *In the Matter of the Placement of Edward Buys on Requested Leave of Absence: State of Minnesota, ex rel. Edward Buys, Relator, v. Independent School District No. 891, Minnesota, Respondent*, 398 N.W.2d 622 (1986).

Key Facts: Edward Buys challenged the decision of the school district regarding administrative realignment that displaced him as a principal to a teacher. Due to financial budget restrictions, school district had to discontinue several administrative positions. Buys was “bumped” from his position as principal and later hired as a teacher in the 1986-1987 school year.

Issues: The issue for this case is,

Did the school district err in maintaining less seniority personnel and displacing the more experienced individuals. Additionally what the Department of Education rules implemented properly. Minn. Stat. 125.12, 6b(e) (1984), provides the following: Teachers placed on unrequested leave of absence shall be reinstated to the positions which they have been given leaves of absence or, if not available, to other available positions in the school district in fields in which they are licensed. Reinstatement shall be in the inverse order of placement on leave of absence.

Mr. Buys stated that the district did err by not following their own rules for realignment of employment positions.

Holdings: The court found that the district had acted properly and did not have to intervene because the school district was well within its jurisdiction regarding the matter. Based on Minn. Stat. § 125.12(6) (b) teachers on requested leave of absences can be reinstated based on seniority and Minn. Stat. § 123.34 (9) (1984) school board to hire whomever they desire as superintendent.

Reasoning: The court ruled that under Minn. Stat. § 125.17 and the Teacher Tenure Act school district can realign assignments as needed.

Disposition: The court ruled in favor of the school district's decision and the Department of Education concurred the ruling was valid.

Citation: *Independent School District, No. 697; Thomas Beste and David Kriska, Relators, v. Independent School District, No. 697, Respondent*, 398 N.W.2d 58 (1986)

Key Facts: Relator Thomas Beste filed for writ of certiorari to review the decision of the school district placing him on unrequested leave of absence (ULA). Beste was one of five teachers placed on ULA requesting a hearing examiner to review the positions scheduled for layoffs.

Issues: Did the school district failed to establish a good reason for placing Beste and Kriska on unrequested leave of absence leading to a discontinuance of an employment position. In addition, did the school district act erroneously by hiring less senior personnel to fulfill assignments? Finally, did the school district err by not listening to the examiner's recommendation and did not make the necessary corrections.

Holdings: The examiner found a substantial amount of reductions in the industrial arts program due to school mergers and budgetary cuts. Minn. Stat. § 125.12, subd. 6b provides the following:

This statute provides that seniority among appropriately licensed teachers determines the order of bumping, realignment or layoff. “Bumping” is the direct exercise of seniority by one about to lose a job on a less senior teacher. In a bump situation, and appropriately licensed more senior teacher director takes a less senior teacher’s position.

“Realignment” involves three assignment of a more senior teacher to accommodate the seniority position of a less senior teacher proposed for termination, at the expense of a least senior teacher. Realignment is distinct from bumping in that it uses at least one of the more senior teacher to eliminate a less senior teacher.

Finally, Beste and Kriska dispute the actions of the school board when they arbitrarily rejected the examiner’s recommendations.

Reasoning: The court reasoned that the board exercised its will by rejecting the specific recommendations of the examiner and by not providing an explanation as to why those recommendations were rejected.

Disposition: The court overruled the school board’s decision to place teacher on unrequested leave of absence. Affirmed for relators.

Citation: *Elsa Dennery, Petitioner-Respondent, v. Board of Education of the Passaic County Regional High School District #1, Passaic, Respondent-Appellant*, 622 A.2d. 858 (1993).

Key Facts: Petitioner Dennery served as a guidance counselor and obtained tenure under the educational services certificate during her 27 years as an educator. Dennery held a second certificate in the “instructional” area but it was not sufficient for the new designation of class supervisor that included teacher evaluations.

Issues: At issue is whether tenure requirements were appropriately applied in this case. A new and different set of certification were implemented in the school district where the teacher had no previous work experience. The class supervisor’s position was listed in two categories as educational services and administrative. The new position required the marketing of student performance evaluating teachers and administering in- school discipline. Dennery later became

qualified earning the administrative certificate, however, the positions were filled and petitioner terminated.

Holdings: The court determined the state Board of Education tenure rights were not transferable to the new position of class supervisor during this case. The Tenure Act, N.J.S.A. 18A: 28-1 to -18. A person who is employed in the public schools most normally “hold [] ... a valid certificate to teach, administer, direct or supervise the teaching, instruction or educational guidance of . . . pupils in such public schools.” The school district sought review of the decision of us. Court because a lower court reversed an order respondent’s reinstatement.

Reasoning: The court recognized the long record of service of Ms. Dennery being a highly qualified guidance counselor; however, the reasonableness of the tenure system is applicable and sound in the authorization regulating public education.

Disposition: The Supreme Court of New Jersey reversed the lower courts’ decision based on the tenure law and held that the dual- certification requirement for the position of class supervisor was sound and required administrative skill levels as a supervisor.

Citation: *Arthur Krupp, Petitioner-Respondent, v. Board of Education of the Union County Regional High School District #1, Union County, Respondent-Appellant*, 650 A. 2d 366 (1994).

Key Facts: Krupp filed a lawsuit disputing the legality of hiring an ex-district teacher and Krupp contends he should have been hired as the girls’ basketball coach.

Issues: Did the school district err in hiring an outside the district coach instead of Krupp.

Holdings: The court reversed a holding in maintaining that the regulation required conclusion that the commissioners and state boards interpretation was wrong is as a matter of law.

Reasoning: According to the Commissioners and State Board of Education's interpretation, the language used along with other prerequisites for hiring since the statute states, anyone can apply to the position after it has been advertised.

Disposition: The State Board of Education's decision was reversed by the court, indicating it had misinterpreted. The school district challenged the ruling although it hired an ex-district teacher instead of Krupp who is seeking damages and relief.

Citation: *Jerome Nelkin, Petitioner-Appellant v. Board of Education of the City of New York, Respondent*, 205 A.D.2d 377 (1994).

Key Facts: Petitioner Nelkin wrote delusional letters to the Chancellor of education.

Issues: The issues are petitioners' mental fitness.

Holdings: Supreme Court of New York County and the New York City Board of Education invalidate the petitioner's file number, suspend his per diem substitute teaching certificate and withhold all application pending psychiatric examinations.

Reasoning: The Board of Education did not err when it suspended Nelkin's certificate.

Disposition: The court ordered a full medical evaluation.

Citation: *Ira Morley, Respondent, v. Frank C. Arricale, II, as Community Superintendent of Community School District No. 19 et al. Appellants*, 104 A.D.2d 207 (1984).

Key Facts: Superintendent Morley appealed the decision from the Supreme Court of New York, seeking an injunction to remove principal from his position. Principal Arricale was a teacher with the state for more than 20 years when he was assigned to P.S.149 as an interim position.

Issues: Court records and personnel board documents indicate that during the time between May 18, 1981 until March 3, 1982 where he was assigned as an administrative assistant,

and he had failed to perform supervisory duties as required by the division personnel of Board of Education. Morley contends the trial court erred when teacher did meet all eligibility requirements and removing his principal's salary. According to N.Y. C.P.L.R. Article 78 " for an injunction against petitioner's removal from his position as a public school principal is not procedurally defective for failure to serve a timely notice of claim in accordance with section 3813 of the Education Law, which requires presentment of the claim to the school district's governing body within three months after accrual, where petitioner brought on the proceeding by order to show cause on the date his removal was to take effect and follow the notice of claim three and one- half weeks later; inasmuch as the proceeding was subsequently withdrawn by stipulation and then restored to the calendar by order to show cause less than five weeks later, respondents were not without notice of pendency of the claim."

Holdings: The principal was given 2 days to vacate the interim position. The principal filed a lawsuit pursuant to N.Y.C.P.L.R. art 78 and a temporary restraining order.

Reasoning: The court ruled that the trial court holding the judgment was vacated because the principal lack the required supervisory experience necessary to satisfy the eligibility standards for an appointment to administrative supervisory position.

Disposition: The Supreme Court New York County, unanimously reversed and the judgment was vacated by enjoining the principals removal indicating that requirements were met, and he be paid a principal's salary. The principals' petition was denied and proceedings were dismissed.

Citation: *John Broderick, Respondent, v. Board of Education, Roosevelt Union Free School District, et al. Appellants*, 253 A.D.2d 370 (1998).

Key Facts: John Broderick filed petition against the Board of Education, Roosevelt Union Free School District claiming breach of contract, unjust enrichment, and failure to appoint him as full time teacher. Broderick seeks injunctive relief.

Issues: Broderick filed a motion for summary judgment.

Holdings: The court held that the case should refer to N.Y.C.P.L.R. art 78, which states the following: “for an injunction against petitioner’s removal from his position as a public school principal is not procedurally defective for failure to serve a timely notice of claim in accordance with section 3813 the Education Law.”

The provisions for N.Y.C.P.L.R. H. 217, declares the following: “unless a shorter time period is provided in the law authorizing the proceeding, a proceeding against a body also must be commenced within four months after the termination to be reviewed becomes final and binding upon the petitioner or the person whom he represents in law or in fact, or actually respondents refusal, upon the demand of the petitioner of the person whom he represents, to perform its duty; or with leave of the court with the petitioner or the person whom he represents, at the time such determination became final and binding upon him or at the time of such refusal, was under a disability specified in section 208, within 2 years after such time.”

Reasoning: The Supreme Court of New York determined the employee failed to file his petition in a timely manner and was outside of the time-barred period of four months.

Disposition: The court ruled because the employee did not follow the four-month time barred period, the case was reversed and the motion for summary motion was denied.

Citation: *Frances DiPiazza et al., Appellants, V. Board of Education of the Comsewogue Union Free School District et al., Respondents*, 214 A.D.2d 729 (1995).

Key Facts: Three physical education teachers retired from the Comsewogue Union Free School District and brought suit against the board alleging the board reassigned teaching duties to the existing elementary school teachers. Substitute teachers were hired during the interim performing the teaching duties while the union negotiated with the board. While the Board of Education can make changes in positions and transfer duties of current employees, they may also enter into negotiations divesting them of certain powers. N.Y. Comp. Codes R. & Regs. Tit. 8, § 80.36(a) defines a substitute teacher as one who is employed in place of a regularly appointed teacher who is absent but is expected to return.

Issues: The arbitrator for the appellants discovered that the reassignment of duties violated the collective bargaining agreement between the union and in the school board since the board failed to notify the union and negotiated the change in policy. The appellants brought suit stating that the board's hiring of substitute teachers was arbitrary and capricious.

Holdings: The teacher's complaint was dismissed by the trial court; however, on appeal the Supreme Court of New York reversed the decision. The board's collective-bargaining agreement with the union had divested its authority of reassigning employee's duties.

Reasoning: The Court found the board could not exercise that power and convert permanent vacancies into a substitute situation simply because they wanted to and was a direct breach of contractual agreements and obligations.

Disposition: The Supreme Court of New York reversed the trial court's decision and denied the board's motion to dismiss the petition. The court later remitted the details of proceedings being handled by the trial court.

Citation: *John Mahony, Appellant, v. Board of Education of the Mahopac Central School District et al., Respondents*, 140 A.D.2d 33 (1988).

Key Facts: John Mahony contends he had more seniority than Jeanne Earle who was appointed to the position of librarian when both employees had been excessed and discharged in 1977. At the time of discharge, Mahony had served 10 years and 6 months in the school district while Earle served only 10 years. After recalculating, the petitioner's service was 11 years and 6 months and Earle's was 11 years. During the next few years, the petitioner did not serve in any other position in any school district. Earle served 1 year in another school district and was appointed an English teacher on August 15, 1978, and taught continuously through June 30, 1982. Earle acquired 4 additional years of service. When a librarian position became vacant in June 1982, Mahony contended he deserved the position based on the years of service at the time of discharge.

Issues: The appellant argued that the position should be awarded to him because he had seniority as librarian with 11 years and 6 months rather than the 11 years produced by Earle.

Holdings: the Board of Education pursuant to N.Y. Educ. Law § 2510(3) which requires it to appoint individuals from the preferred eligible list and also the listing according to length of service in the school system.

Reasoning: The court held that the board's determination was consistent with the education law section 2510 (3).

Disposition: The employee's petition dismissed and the court ruled in the affirmative, with costs.

Citation: *Mount Pleasant Cottage School Union Free School District, Appellant, v. Thomas Sobol, as Commissioner of Education, Respondent*, 163 A.D.2d 715 (1990).

Key Facts: The Mount Pleasant Cottage School Union Free School District brought action against Commissioner Thomas Sobol, in appointing Donald Schwarz as school principal.

Schwarz was previously a tenured worker and later terminated from his administrative assistant position. Schwarz was placed on a preferred eligibility list and when a similar administrative position became vacant Schwarz applied for position and was denied. Schwarz commenced to file the article 78 which focused on placing him as principal.

Issues: The issue is to have annulled the appointment of Donald Schwarz as principal.

Holdings: The court ruled that the principal was an indispensable party under N.Y.C.P.R. 1001(a) and common law. Section (a) defined “Parties who should be joined. Persons who ought to be parties if complete relief is to be accorded between the persons who are parties to the action or who might be inequitably affected by a judgment in the action shall be made plaintiffs or defendants. When a person who should join as a plaintiff refuses to do so he may be made a defendant.”

Reasoning: The court stated that the trial court did not abuse its discretion as respondent and the principal were not united in interest in the proceedings and that due process safeguards outweighed appellant’s desire to have had the controversy litigated.

Disposition: The Supreme Court of New York affirmed the trial court on the grounds that Schwarz was a necessary party with the education commissioner in the claim made by the Mount Pleasant Cottage School Union Free School District.

Citation: *Frank Rossi, Petitioner, v. Board of Education of the City School District of Utica et al., Respondents*, 465 N.Y.S.2d 630 (1983).

Key Facts: Frank Rossi’s K-8 principal position was abolished and he was reassigned to a K-6 school during the 1977-1978 school year. There is different salary structure for K-8 and K-6 principal that did not contain increased salary increments. During the summer of 1978, two K-8 vacancies were open and the petitioner was not offered either of the positions. In January 1980, a

vacancy occurred at the Kemble School and another applicant filled that position. During the summer of 1980, a vacancy developed at the K-8 Roosevelt School. These actions prompted Mr. Rossi to proceed with CPLR Article 78.

Issues: There are two issues to consider. First, whether the appointment to a K-6 school met the statutory requirements to be placed in a similar position as a K-8 principal. Mr. Rossi contends they are not similar and he was entitled to appointment at the Roosevelt School that was given to Philip B. Geraci. The second is determining if the positions are similar. This raises the question whether the statutory mandates for similar positions are valid “without reduction in salary or increment” (Education Law, § 2510, subd 3) requires that petitioner remained in the same salary structure such that he would receive future increments as a K-8 principal even though his assignment was at a K-6 school.

Holdings: The court agreed and held that principal Rossi was entitled to receive future increments as a K-8 principal even though reassigned to a K-6 school. Although more complex problems exist with older students the K-6 and K-8 appointments were similar under § 2510(3).

Reasoning: the court held that appointments to similar positions had to be without reduction in salary or pay increments.

Disposition: The ruled in favor of the petitioner and held he was entitled to his former salary and back pay in accordance with the updated salary matrix for K-8 employees.

Citation: *David Katterhenrick, Plaintiff-Appellant v. Federal Hocking Local School District Board of Education, et al. Defendant-Appellee*, 700 N.E.2d 626 (1997).

Key Facts: Katterhenrick was a certified teacher and challenged the grant summary of the Court of Common Pleas of Athens County, Ohio by claiming he should have been the assistant basketball coach. The school district hired Rocky Brunty, a noncertified person to the position. If

Katterhenrick were hired for the position of coaching, he would be coaching his own son, which brought which numerous complaints by teammates and other parents.

Issues: The appointment of Brunty may have been in violation of the Sunshine Law of Ohio Rev. Code Ann. § 121.22, in violation of Katterhenrick' S constitutional rights, intent to cause emotional distress, and negligent infliction of emotional distress.

Holdings: The court held there was a reasonable method for public announcements, therefore, the school district was in compliance and did not violate the Sunshine Law.

Reasoning: The Ohio Rev. Code Ann. § 3313.53 procedure were followed by the school board in the hiring of noncertified personnel.

Disposition: The summary judgment was awarded to the school district by the court in the affirmative.

Citation: *G. Gordon Brickhouse, Appellee v. Spring-Ford Area School District, Appellant*, 656 A.2d 483 (1995).

Key Facts: Brickhouse applied for a vacant teacher's position and petitions the court on the premise he is certified to teach. Appellee's application was weak and incomplete, yet in the prior 11 years, Brickhouse taught one year of social studies. His experiences included working as a bookkeeper, paralegal, managing a trailer park, a hunting lodge manager and working in reform schools for children. Brickhouse had a grade point average of 2.78 with a limited amount of experience in social studies. The successful applicant had a grade point average of 3.80 and had several academic achievement awards.

Issues: Veterans who seek to take advantage of the Veterans' Preference Act (Act), 51 Pa. Cons. Stat. § 7104, must be able to accomplish proper performance of public duties. That is, a veteran seeking to take advantage of the preference mandated by the Act must be able to

demonstrate his ability to perform the job at the level of skill and with the expertise demanded by the employer. Such a demonstration would establish that he will be able to properly perform the job duties.

Holdings: the court found that a veteran implementing the act would have to be able to demonstrate his ability and skill levels that will enable him to perform his job duties properly.

Reasoning: The court reasoned that the school district was entitled to set the standards level of expectation to be performed to ensure that the person hired was skilled and competent.

Disposition: The appellate court's decision reversed although the Veteran's Preference Act was applicable. Appellee had to be qualified and perform at some level of expertise in order to be hired as a competent employee fulfilling essential job duties.

Citation: *G. Gordon Brickhouse, Appellant, v. Spring Ford Area School District, Appellee*, 625 A.2d 711 (1993).

Key Facts: The appellant appeals the order of the Court of Common Pleas of Montgomery County, to make a determination of the Spring-Ford School District School Boards' decision not to hire appellant for an open secondary social studies teaching position in violation of the "Veterans' Preference Act" (Act), 51 Pa. C.S. §§ 7101 through 7109. School District hired another person to fill the social studies position.

Issues: The appellant educational background was different in that he is a Vietnam Veteran "soldier" and according to Section 7101 of the Act, 51 Pa. C.S. § 7101; and possesses a bachelor's degree and a Pennsylvania teaching certificate in social studies.

Holdings: On appeal, the court ruled the act applied to the school: Andy employment for public school teacher was sufficient. The court held that a teaching certificate issued by the state indicated the state regarded the folder as being reasonably qualified.

Reasoning: The court held that even though no civil service test was involved a valid teacher certificate was comparable to a civil service test the applicant was reasonably fitted for the position.

Disposition: The Commonwealth Court of Pennsylvania reversed a decision and gave instructions to remand appellee's school district and determine the amount of back pay and other benefits. The court ruled appellee was within his rights under the Veterans' Preference Act to apply for public school teachers' position. By obtaining a teaching certification, which was equivalent to passing the civil service test, the applicant was reasonably qualified for the teacher's position.

Citation: *Anthony L. Ginocchi, Appellant v. Burrell School District, Appellee*, 522 A.2d 707 (1987).

Key Facts: The appellant held several administrative positions in the school district from 1958 thru 1980, including Upper Burrell Elementary School principal. A placement was demoted on September 4, 1982 elementary school teacher due to a substantial decrease in pupil population. Palin did not have a secondary principal's certificate but did obtain certification in 1981.

Issues: The appellant applied for the junior high school principal position but the school district promoted the school's assistant principal to the position. Dr. Anthony Berger was hired in 1978 as junior high assistant principal. The position required a secondary school principal certification which appellant did not have at the time. On June 29, 1982 Dr. Berger assumed the duties as Junior High School principal. Appellant asserts that he was entitled to the position because of his seniority.

Holdings: The court ruled promotion to principal position was not realignment within the meaning of school code of 1949, 24 P.S. § 11-1125.1 (c) and appellant was not entitled promotion based on seniority. The School Code of 1949, 24 P.S. § 11- 1125. 1(c) entitled “persons to be suspended” and contained the procedure by which professional employees allowed to be suspended under 24 P. S. § 1124 are selected and the rights to which they are entitled; the court has extended its application to the motion that is called by realignment of the professional staff within a school district.

Reasoning: The court found that the safeguards of the tenure provisions were for the protection of professional employees from unjust or improper suspension, dismissal, and a motion from their duties by the school district, but did not apply to promotions. Section 1125.1(c) depends on there being realignment and no realignment has taken place here according to the court.

Disposition: The Commonwealth Court of Pennsylvania affirmed the court’s decision that held the appellant was not entitled to the junior high school principal position based on seniority. The subject of realignment was not promotion but protected the safeguards for tenured professional school district employees.

Citation: *Point Isabel Independent School District, Appellant, v. Rafael Hinojosa, Jr., Appellee*, 797 S.W.2d 176 (1990).

Key Facts: Point Isabel Independent School District sought review of the judgment of the 138 District Court of Cameron County, Texas, which boarded the hiring of certain school district employees. Rafael Hinojosa’s application was rejected for the high school principal and sought declaratory judgment voiding all hiring decisions made during the school board meeting held on July 12, 1988.

Issues: The trial court ruled the required notice was not sufficient under § 3(A)(a). Under the Open Meetings Act, Tex. Rev. Civ. Stat. Ann. Art, 6252-17, § 3A(a) requires highly specific subject matter notice of meetings in which important governmental actions taken because of the high degree of public interest in such actions. Meetings in which unimportant actions are taken require only general motors of the subject.

Holdings: the court affirmed the trial court's decision as to attorney's fees in the hiring of three principles, holding that the evidence was sufficient to support it. The court concluded that section 3A(a) require highly specific subject matter notice of meetings in which important governmental actions were taken because of high degree of public interest in such actions.

Reasoning: The school board meeting did not provide enough information to the public on the subject matter of the meeting with respect to personnel changes including principal positions. The court reversed the decision to void of the hiring made during the July 12 board meeting.

Disposition: The court affirmed the judgment of the trial court that voided appellant school district's hiring of three principles and awarded rejected applicant attorney's fees. The court ruled the appellant provided in adequate notice to the public on specific subject matters of personnel hiring decisions. The court REVERSED and RENDERED to the extent that it voids the hiring of the other employees.

Citation: *William S. Johnson, Appellant, v. Central Valley School District No. 356, Respondent*, 645 P.2d 1088 (1982).

Key Facts: William S. Johnson brought suit seeking damages for denial of a position as tutor-counselor under a federal grant and demanded reinstatement to that position pursuant to the Indian Education Act, 20 U.S.C.S. § 24aa-ff. The act is defined as a grant received under the

Indian Education Act (20 U.S.C. § 24aa-ff (Supp. 2 972)) does not include an Indian hiring preference but require utilization of the best available talent and resources, an Indian who meets the minimum qualifications for a position funded by grant need not be given preference over a better qualified.

Issues: The appellant alleges the school did breach a collective bargaining agreement of violation of the Indian Self- Determination Act, 25 U.S.C.S. §§ 450-450m, and violation of the state law against discrimination. The act states the preference provided for in the Indian self-determination act, 25 U. S. C. S. §§ 450-450m, is accorded not only where a grant is made to Indian organizations, but also where it is made for the benefit of Indians.

Holdings: The court ruled that neither one of petitioners had a preference afforded Indians by federal law nor the law against discrimination, Wash. Rev. Code § 49.60.

Reasoning: The school district was prevented from hiring the best qualified candidate, and the teacher forfeited any right to be offered a job by failing to acquire a counselor's certificate.

Disposition: The court reversed the judgment of the lower court in favor of the teacher's claim under the Indian Self-determination Act. The court ruled as it rejected the claims of the teacher for improper delegation of authority, breach of collective bargaining agreement, and state discrimination.

Citation: *Mingo County Board of Education, Respondent below/Petitioner below, Jada Hunter, Intervener below, Appellees, v. Frank Jones, Grievant below/Respondent below, Appellant*, 512 S.E.2d 597, (1998).

Key Facts: Frank Jones sought a review from a decision from the Mingo County Circuit Court that ruled in favor of Mingo County Board Of Education and Jada Hunter. Jones submitted

an application for a high school principal position and was the only applicant for the position. The board of education expanded the search and reposted the vacancy in hopes of getting additional applicants. Jada Hunter submitted an application and later selected as principal. Jones filed a grievance which was granted and ordered Mingo County Board of Education to place Jones in the position as school principal.

Issues: The appellees contended that the circuit court did err in granting the review which reversed the boards' decision of hiring Hunter.

Holdings: The court ruled against the circuit court and reversed the order stating that the school board was bound to follow the deadline initially posted for the original position. The court held that applicants that had applied for the position prior to the original deadline could only fill the vacant principal position.

Reasoning: The court reasoned that because Ms. Hunter applied during the second posting, she was not considered for the position of principal.

Disposition: There were several reversed decisions on this case due to the nature of administrative law and sustained the awarding of the position of principal to the intervener Hunter. The final ruling held that once the school board established a deadline for applications, it had to follow the procedures to hire the candidate even if it meant a single applicant filed during the application process.

Citation: *Jo Ellen Karr Petitioner Below, Appellant v. Board of Education Jackson County, Respondent Below, Appellee*, 506 S.E. 2d 355, (1998).

Key Facts: Jo Ellen Karr applied for a writ of mandamus ordering the Jackson County Board of Education to provide compensation after improperly discharging her from her duties after 1 year of service. Initially the circuit court refused to grant the writ of mandamus but was

reversed on appeal. Karr had more experience than the candidate, along with special skills including 5.5 years' experience in the teaching profession.

Issues: The issue is to determine why the school board decided the substitute teacher was more qualified than teacher in a placing her in the position.

Holdings: The court ruled the school board arbitrarily ignored the teacher's qualifications and experienced in awarding teacher position to substitute teacher based on evaluations.

Reasoning: The writ of mandamus was granted along with the court ruling that the school board should determine what was reasonable and compensated for lost income for a 1-year period.

Disposition: The court reversed the original judgment denying Karr's applicant for a writ of mandamus and ordered the school board to provide relief for the improper refusal of placing her in teaching position. The board was directed to determine the amount of compensation.

Citation: *Linda Ewing, Petitioner Below, Appellee, v. The Board of Education of The County of Summers and Charles R. Rodes, Superintendent/Secretary, Respondents Below, Appellants*, 503 S.E.2d 541, (1998).

Key Facts: Linda Ewing filed a grievance complaining that the school board failed to hire her for the position of high school business teacher. Teacher filed a petition for a writ of mandamus pursuant § 18A-4-7a. W. Va. Code § 18A-4-7a states, in part: any board failing to comply with the provisions of this article may be compelled to do so by mandamus and shall be liable to any party prevailing against the board for court costs and reasonable attorney fees as determined and established by the court. "A writ of mandamus will not issue unless three elements coexist--(1) a clear legal right in the petition to the relief sought; (2) a legal duty on the

part of the respondent do the thing which the petitioner seeks to compel; and (3) the absence of another adequate remedy.”

Issues: The issue on appeal from the Circuit Court is a question of law or involving the interpretation of the statute. Section 18A-4-7a; Syllabus by the Court: (6) when an individual is adversely affected by the educational employment decision rendered pursuant to W. Va. Code § 18A-4-7a (1993) (Repl. Vol. 1997), he/she may obtain relief from the adverse decision in one of two ways. First, he/she may request relief by amendment mandamus as permitted by W. Va. Code § 18A-4-7a. In the alternative, he/she may seek redress through the educational employees grievance procedure described in W. Va. Code §§ 18-29-1 to 18-29-11 (1992) (Repl. Vol. 1994). Once an employee chooses one of these courses of relief, though, he/she is constrained to follow that course to its finality.

Holdings: “The court held (1) the teacher was not entitled to a writ of mandamus because she was prohibited from embarking upon the alternative course of a § 18A-4-7a mandamus remedy until she had completed her grievance journey, (2) the board’s motion to dismiss the petition for writ of mandamus was improperly denied because the teacher sought mandamus prior to exhausting the previously initiated grievance procedure, and (3) § 18A-4-7a did not require preferential hiring of a permanent employee only former employee and specifically suggests that such a preference was not required.”

Reasoning: The court found that the circuit court erred in construing the statute as requiring a county board of education to prefer in employment decisions permanent employees over non-employees or former employees on the preferred recall list. The court reversed circuit court’s ruling.

Disposition: The court ruled and vacated the writ of mandamus awarded by the Circuit Court of Summers County and decided to reverse the circuit court denial of the school board's decision to dismiss Ms. Ewing's petition for writ of mandamus.

Citation: *State of West Virginia Ex Rel. Judy Monk, Petitioner v. Honorable David W. Knight, Judge of the Circuit Court of Mercer County, The Mercer County Board of Education, and Gregory Dalton, Respondents*, 499 S.E.2d 35 (1997).

Key Facts: Petitioner Judy Monk sought to invoke a writ of prohibition against the Circuit Court of Mercer County and the Mercer County Board of Education to prohibit the circuit court from enforcing the decision of the Administrative Law Judge (ALJ), which was reversed. Monk filed a grievance through the West Virginia Education and State Employees Grievance Board pursuant to W. Va. Code § 18-29-1, et seq., Grievance Procedure. Level I of the grievance process was denied. During the Level II hearing, the examiner determined there was an error made calculating time for Monk's total teaching experience. The corrected calculations resulted in a tie between the two applicants.

Issues: Two applicants were equally qualified as employed instructional personnel and both applied for the position. A selection committee was formed and selected Dalton for the position. The county board of education shall make decisions affecting the filling of such positions on the basis of the following criteria: "Appropriate certification and/ or licensure; total amount of teaching experience; the existence of teaching experience in the required certification area; degree level in the required certification area; specialized training directly related to the performance of the job as stated in the job description; receiving an overall rating of satisfactory in evaluations over the previous 2 years; and seniority."

Holdings: The court held that the board of education had authority to determine which candidate was the most qualified.

Reasoning: The court held that a vacant teaching position could not be filled by random selection or lottery when two or more equally qualified employees applied for a vacant position.

Disposition: The court affirmed the trial court's decision and reversed the selection order of the school board's applicant and case remanded.

Citation: *Billy J. Keatley, Grievant Below, Appellant v. Mercer County Board of Education, Respondent Below, Appellee*, 490 S.E.2d 306 (1997).

Key Facts: Billy Keatley applied for the position of assistant principal with 26 years of education experience with 12 of those years serving as assistant principal in two high schools and one junior high school. Keatley held a Professional Administrative Certificate, which is required for holding the position of an assistant principal. The appellant challenged the order of the Circuit Court of Mercer County (West Virginia), and the decision of the administrative law judge of the West Virginia Educational Employees Grievance Board. Keatley and Ben Disibbio were 2 of 10 applicants seeking the position. The Board had a formalized scoring system in place and Mr. Keatley ranked seventh with 77 points. Mr. Disibbio ranked ninth with 83 points. The individual who ranked the highest took another job and on July 26, 1994, the Board awarded the position to Mr. Disibbio.

Issues: The person hired had only 1 year of experience when hired as an assistant principal with an administrative internship license. The record clearly indicates that at the time Mr. Disibbio interviewed for the position, he did not have a certificate. The record indicates Disibbio had only an administrative internship license. Keatley filed an administrative grievance resulting in awarding the job to the other applicant and the ALJ denied the grievance. The

evidence presented to the ALJ indicates Mr. Disibbio received certification on September 1, 1994. The ALJ revealed Disibbio the Certificate prior to the 1994-1995 school year.

Holdings: Keatley appealed the decision of the ALJ to the circuit court, which affirmed the ALJ's decision. Keatley appealed the case. The court applied the limited review appropriate for administrative appeals and affirmed the circuit court. The ALJ concluded that Mr. Disibbio was qualified to hold the position and the ALJ concluded the board was not arbitrary in its allocation of points for experience.

Reasoning: The ALJ erred in the determination that the board's rule on experience was reasonable and Keatley would not have been offered the position even if the person hired had been disqualified or had a lower score.

Disposition: The court affirmed the decision of the circuit court in denying Keatley the assistant principals' of position and awarding it to another person was correct in accordance with the administrative law judge decision.

Citation: *Sue Cahill, Carolyn Donchatz and Sue Sommer Appellants Below, Appellees v. Mercer County Board of Education, Appellee Below, Appellant*, 465 S.E.2d 910 (1995).

Key Facts: This case is about an appeal by the Mercer County Board of Education and the decision of the Circuit Court of Mercer County in favor of the Appellees, Sue Cahill Carolyn Donchatz, and Sue Sommer, are teachers in Mercer County, West Virginia. The Board alleges that the lower court erroneously required it to employ the Appellees rather than the three individuals originally assigned to the position in question. Each Appellee filed an application for a supervisory position in elementary education, and Carolyn Donchatz applied for the position of Supervisor of Social. The Board awarded positions for Elementary Education Supervisors to

Rick Ball, Anne Krout, and Bill Sherwood. The Social Studies Supervisor position was awarded to Carol Alley. Mr. Sherwood's position was later eliminated.

Issues: The court reversed the decision of the lower court and remanded with directions.

Holdings: The court held several reasons for its decision: (1) the trial court's order failed to explain the reason for this determination, and remanded for additional consideration was necessary; (2) on remand, the determination; and (3) the reevaluation process was not flawed are inadequate.

Reasoning: The reevaluation process was not flawed or inadequate, the selection committee was not prejudiced or biased, and conclusions of that committee were not to be disregarded as unreliable or deficient on remand.

Disposition: The trial court's order was reversed, and the case was remanded with directions.

Citation: *Valerie Cowen, Gwen Cowen, Debra Dodd, and Lisa Demarco, Appellees v. Harrison County Board of Education, Appellant*, 465 S.E.2d 648, (1995).

Key Facts: The Harrison County Board of Education challenged the decision of the Circuit Court of Kanawha County, West Virginia, for entering a final order requiring the board to repost teaching positions for schools that required a higher certification level. The teachers applying for the positions were rejected by the board because they did not have proper certification.

Issues: The court found that, while the board did not act in an arbitrary and capricious manner in reaching a decision pertaining to certain issues of the school curriculum, the refusal to allow teachers a certain amount of time to complete certification was in an arbitrary and capricious manner.

Holdings: The court ruled that the manner in which the positions were posted was not in the best interest of the schools. The court decided that once those procedures were implemented, the board was responsible for informing the teachers in sufficient time whereby they could obtain proper certification.

Reasoning: The court reasoned that the board failed to do everything within its power necessary to meet the needs of the teachers and was misleading which constituted arbitrary and capricious conduct.

Disposition: The judgment concluding that the board acted in an arbitrary and capricious manner by requiring the certification was reversed in part, affirmed in part, and remanded with directions.

Citation: *Deena Surber, Respondent Below, Appellant v. Mingo County Board of Education, Petitioner Below, Appellee*, 465 S.E.2d 38 (1995).

Key Facts: Deena Surber was a substitute teacher's aide applied for a teacher's aide position posted by the board of education. Surber was originally hired to the teacher's aide position and was later replaced by the school cook who had more seniority.

Issues: A grievance board ordered Surber instated into the aide position on the ground that Nelma Estep was better qualified; the circuit court found that the board of education did not abuse its discretion in awarding the position to the cook. Surber took further action by seeking a review of the circuit court's decision.

Holdings: The court reversed the decision holding that the circuit court erred and the grievance board was wrong in awarding the teacher's aide position to the school cook. Under W. Va. Code § 18A-5-8(d) (1988), states as follows: notwithstanding the provisions of West Virginia Code Section 18A-4-8b, an aide shall be employed on the basis of (1) qualifications,

including, but not limited to, education, training and experience, and (2) seniority. Qualifications shall not include additional college credits beyond that currently require. With regard to such qualifications, the County Board shall establish and make available to service personnel a written policy to be used when regular service personnel who are employed in a different category of employment other than a to be employed in an aide position. An aide by transfer to another position of employment one time only during any half of a school term, unless otherwise mutually agreed upon by the aide and the county superintendent, or the superintendent's designee, subject to board approval, provided that during the first year of employment as an aide, an aide shall not transfer to another position of employment during the first one-half school term of employment, unless mutually agreed upon by the aide and the county superintendent, subject to board approval.

Reasoning: W. Va. Code 18a-4-8b (1990) provides, in part, that “[a] County Board of Education shall make decisions affecting promotion and filling of any service personnel positions... on the basis of seniority, qualification and evaluation of past service.” The statute notes that the term qualifications includes, but is not limited to, education, training and experience. If the qualifications are equal, then the employment of the aide should be based on seniority. In this case, the Grievance Board found that Ms. Surber's qualifications were superior to Ms. Estep's qualifications. In particular, the Grievance Board noted that Ms. Surber has a high school diploma, received “in-service aide training for three years . . .[,] holds a valid First Aid and ‘Section D’ card from the American Red Cross,” and work satisfactorily 54.5 days as a substitute aide. Ms. Estep was found to have her G.E.D., to have been regularly employed as a cook for 7 years and lacked experience as an aide. Based on these factual findings, the Grievance

Board found the super to be more qualified and ordered her reinstatement to the teacher's a position.

Disposition: The West Virginia Education and State Employees Grievance Board was wrong and therefore reversed the circuit court's decision and reinstated Ms. Surber to the aide position with compensation for lost wages, less set off, and benefits. The final order of the circuit entered on December 21, 1994 is reversed.

Citation: *Hurford H. Bolyard, Plaintiff Below, Appellant v. Kanawha County Board of Education, Defendant Below, Appellee*, 459 S.E.2d 411, (1995).

Key Facts: Hurford Bolyard filed a grievance and sought a review of the order from the circuit court of Kanawha County, W. Va. after he was not selected for the position of the technology teacher. The advertising for the position stated that the employment would involve "team teaching in a high-tech lab." At the time of the posting, the patent was the industrial arts teacher at Herbert Hoover high school, in Kanawha, County. The appellant had been employed in the Kanawha County school district 25 years and held a masters' degree, plus 30 additional credit hours.

Issues: The appellant contends that the selected candidate had less seniority and less education.

Holdings: The circuit court decision, finding that the school board denial of grievance was not clearly erroneous. The decision for employment was based on the candidate's qualifications, pro-formants appraisals interviews performances, pursuant to W. Va. Code § 18-4-8b (1988). There were concerns that the hearing examiner confused the educational backgrounds of the selected candidate and the teacher but was not a critical error to the decision, the school board new each candidate's credentials when it made the decision.

Reasoning: The court found a significant difference in the fact that the selected candidate has substantially contributed to the technology curriculum, scored higher on performance appraisals when the teacher, and perform better doing the interviewing process.

Disposition: The court affirmed the circuit court's order affirming the school board's denial of the teacher's grievance.

Citation: *Nasia Butcher, Appellant, v. Gilmer County Board of Education, Appellee*, 429 S.E.2d 903, 1993.

Key Facts: Butcher applied for teaching position with the Gilmer County Board of Education. The appellant received her Bachelor's degree in journalism, minoring in economics and marketing and had earned a master's degree in education administration. When this case was filed, Butcher was certified to teach English and language arts, Grades 5 through 12. Appellant had been employed as an administrative assistant at a community college in Logan, West Virginia and had been the director of public relations at Glenville State College. Butcher had been on the substitute teaching list will Gilmer and Calhoun counties during the 1987-1988 and 1988-1989 school years. Butcher had served the Calhoun-Gilmer Vocational Technical Center serving in the capacity of itinerant English teacher. Butcher had applied for other full-time teaching positions and at one was recommended by superintendent and high school principal. The motion was brought to the school board meeting however failed to obtain a second during the voting process. Shortly thereafter, the position was reposted and Ms. Tina Duelley applied and was granted the position. Duelley was certified in language arts, Grades 5 through 8 with certification and developmental reading but had not received her permit. She filed a grievance, stating the board improperly relied on seniority in awarding the position.

Issues: The issue of actual teaching experience had to be acknowledged as relevant although at the beginning of this case it was not considered to be a decisive factor except in limited circumstances.

Holdings: The court reviewed the following components in reaching its decision: (1) that the board did not abuse its discretion by failing to hire the applicant and (2) in reaching its conclusion the board did not illegally rely on the seniority issue.

Reasoning: Duelley had over 5 years teaching experience and the applicant had 100 days of experience.

Disposition: The Supreme Court affirmed the circuit court's order.

Citation: *Joyce Triggs, Appellant v. Berkeley County Board of Education, Appellee*, 425 S.E.2d 111, 1992.

Key Facts: The appellant served as teacher from 1960 to 1971, before she resigned. After a brief period of time, the teacher was employed as a substitute teacher. During 1987 and 1989, the teacher applied for 29 posted vacancies which she did not receive. Triggs filed a grievance and a member of the superintendent's office decided the teacher was entitled to a full-time position. The school board arranged for a level four hearing and the hearing examiner found that the teacher was not entitled to full-time employment.

Issues: The Board's Assistant Superintendent for Personnel, Alan Canonico, testified that his office provided applicants with the appropriate certification for each vacancy. According to his records, the employee was considered a regular employee a substitute teacher, or a prospective employee. W. Va. Code, 18A-4-8b(a) [1983] does not provide clear and unambiguous instruction concerning what happens to the seniority of a person who voluntarily resigns over tires from a public school system and is subsequently reemployed by the school

board of education. When a teacher resigns from the school system, that teacher loses seniority. That teacher, even if reemployed as a substitute teacher, does not regain capacity for 133 days or more in anyone school year. W. Va. Code, 18A-4-7a 1990.

Holdings: The level four decisions were upheld by the Circuit Court. On appeal, the court affirmed. The court held inter alia, that (1) the legislature did not intend seniority rights to be retained by a teacher who voluntarily resigned or retired; (2) the teacher did not acquire any seniority based on her substitute teaching because of “professional employment.” As described in W.Va. Code § 18A-4-8b(a) (1983), the beginning accrual of seniority meant full or substantially full-time employment; and (3) the teacher failed to show that she was the best qualified applicant for a particular position or that the board willfully discriminated against her.

Reasoning: The teacher failed to show that she was the best qualified candidate for each position for which she applied.

Disposition: After the level four hearing examiner’s decisions the court affirmed the circuit court’s that the teacher was not entitled to full-time employment.

Citation: *The Board of Education of the County of Wood, A West Virginia Statutory Corporation, Appellee v. Donald Enoch, Appellant*, 414 S.E.2d 630; 1992.

Key Facts: Donald Enoch contends he was improperly denied employment as special summer program at the Martin School in Parkersburg. Martin School is a special education school devoted primarily to mentally retarded students. After close examination, the hearing examiner’s decision is clearly wrong, contrary to law, and capricious in nature. Mr. Enoch is seeking to reverse the decision by appealing to the West Virginia Education and State Employees’ Grievance Board. Under W. Va. Code § 18A-4-8b (a) 1983, decisions of the County Board of Education affecting teacher promotions and filling of vacant teaching positions must be

based primarily upon the applicant's qualifications for the job, with seniority having a bearing on the selection process and the applicants have otherwise equipment qualifications or when the differences in qualification criteria are insufficient to form the basis for informed and rational decision.

Issues: Under W.Va. Code, 18-5-39 [1931] provides for traditional summer school. The statute was enacted to take advantage of the schools and provide extra instruction for students in need. In the summer of 1989 Martin school was not a traditional summer school and contemplated this statute. The summer school programs the County board may employ any certified teacher.

Holdings: The court contends that the principal was prudent, professional and made a concerted effort to employ the best-qualified teachers available for the summer school program.

Reasoning: The court decided that the Board of Education in making hiring decisions to use its best professional judgment in selecting the best suited applicant that meets the needs of the students by using qualifications and evaluations and considering past employment service.

Disposition: The court ruled in favor of the trial court and the decision of the grievance board which reversed the order of awarding appellee board of education to pay appellant back wages and benefits.

Citation: *Sarah Egan, Appellant v. Board of Education of Taylor County, Appellees*, 406 S.E.2d 733, 1991.

Key Facts: Sarah Egan and another applicant teacher were being considered for a gifted and disabled teaching position. Ms. Egan had taught for 14 years in the Pleasants County School System and had 2.5 years of substitute teaching experience. At the time of the application, she held a master's degree and was certified to teach Grades K through 8. The other applicant, Ms.

Melba Barlow, had been employed as a school board substitute teacher for the past 2 years. She held a bachelor's degree and was certified to teach Grades 1 through 6. The Circuit Court of Taylor County refused to issue a writ of mandamus. At the time of the hiring decision Egan neither Barlow had received a certificate to teach gifted children.

Issues: The principal at Taylor County middle school gave a strong recommendation to Ms. Barlow that had 2 years substitute teaching experience. Ms. Barlow had taught school as a substitute for the last 2 years and had accrual approximately 150 days during each school year. Court records show that both applicants could obtain a permit from the state Department of Education to hold the position that was open. There were initially five other applicants and three were not permitted to apply for the gifted teacher permit.

Holdings: The court ruled that the board of education did not abuse its discretion and did act appropriately in the selection of Melba Barlow being the most qualified applicant for the learning disability gifted position. After reviewing the records, the court believes that the applicant was clearly the most qualified individual in filling the position. The applicant was qualified and certified to teach grades five through eight. Ms. Barlow certified and qualifications were for Grades 5 and 6.

Reasoning: Under the circumstance, the court finds that the Board of Education acted arbitrarily and capriciously and did not fill the position with the best-qualified individual. The court believes the writ of mandamus, which Ms. Egan original sought, should be granted and seeks relief for the individual.

Disposition: The judgment of the circuit court of Taylor County is reversed and is remanded with directions that the circuit court issues a writ of mandamus. The appellant was placed in the gifted learning disability position at the Taylor County middle school and is

awarded back pay with seniority, interests, and benefits and war are the costs of bringing the action including reasonable attorney fees.

Citation: *Patricia Pockl, Appellant v. Ohio County Board of Education, Appellee*, 406 S.E.2d 687,1991.

Key Facts: Appellant appealed order of the Circuit Court of Ohio County (West Virginia), which denied requests for writ of mandamus in posting a vacancy for the position of assistant principal with the Board of Education. Six other individuals apply for the assistant principal at Wheeling junior high school and after the interviewing process to applicants were recommended to the principal. Pockl was not one of the applicants.

The principal interviewed the two applicants and at the conclusion of the interviews, Daniel Coram was recommended for the position. When presented to the Board of Education the recommendation was accepted and Mr. Coram was granted the position.

Issue: The plaintiff filed a grievance in response to the hiring decision and contends that she is entitled to the position because she is more qualified than Mr. Coram. Appellant stated she has her Master's Degree in Education Administration, while Mr. Coram's is in Speech Communication. Appellant notes that she has more seniority in the school system, has held supervisory positions and taught college courses while being involved in committees on the local, state, and national levels. The BOE is aware of her qualifications, but the board's position is that Mr. Coram is the most qualified applicant for the assistant principal position.

Holdings: The principal of Wheeling Junior High School explained doing a level four testimony that Mr. Coram's experience was more appropriate to the position of assistant principal than the plaintiff's was. The court stated that Mr. Coram's principal position did not fall within the definition of "classroom teacher" contained in W. Va. Code § 18A-1-1(c)(1)

(1981). W. Va. Code § 18A-4-8b (a) (1983), which required that personnel decisions affecting teachers be made on the basis of qualifications, was not applicable to the employee.

Reason: Although W.Va. Code § 18A-4-8b (a) was not valid in this particular case, the school board was still required to use discretion in the hiring of employees.

Disposition: The Supreme Court affirmed the trial court order in denying a writ of mandamus for the assistant principal position.

Citation: *William Robert Staton v. The Wyoming County Board of Education*, 400 S.E.2d 613, 1990

Key Facts: William Staton challenges the final order of the Circuit Court of Wyoming County West Virginia and indicates that the court erred in failing to grant his petition for writ of mandamus for his seniority and for not awarding him the principalship of Mullens High School. Staton was one of three applicants when the position became available in 1988. State received his principal certificate on December 20, 1975 and had accrual 31 years in the school system. The applicant also held a “Masters plus 30” certification.

The successful candidate, Don E. Nuckols, had received his principals certificate on August 15, 1970 and had 28 years seniority and had never served as a principal, but has served as an assistant principal at Mullens high school for 4 years prior to him being awarded the principal’s position

Issue: The appellant filed a “Petition for a writ of mandamus and/or Prohibition” in the Circuit Court of Wyoming County on August 7, 1988. William Staton contends he was entitled to the position because he was best qualified, have the greatest seniority, and that the board used and in accurate code in determining who should receive the position did not have greater principal seniority and was not better qualified.

Holdings: The court held that Mr. Nuckols was entitled to the position and the appellant did not have greater principal seniority or better qualifications and did not hit appellant's petition for writ of mandamus.

Reason: The conclusion by the Supreme Court was there cannot be a calculation of seniority that could have been entered into the courts rationale.

Disposition: The Supreme Court affirmed the order of the trial court in denying the writ of mandamus for the principalship of the high school.

Citation: *Garry R. Tenney v. Board of Education of the County of Barbour*, 398 S.E.2d 114; 1990.

Key Facts: Garry R. Tenney brought a petition for writ of mandamus of the Circuit Court of Barbour County compelling the court to hire him as school principal as he contends he is the best qualified person with seniority for the position. Tenney was employed by the Barbour County Board of Education for 8 or 9 years and served as principal prior to the 1988-1989 school year. In February and March, 1987, the Barbour County Schools superintendent reorganized the central office personnel of the Board of Education. Tenney was transferred from his principal position to a new administrative position. On November 23, 1988, a vacancy for the principalship of the Barbour High School posted.

Four individuals applied for the position including Douglas Schiefelbein, who was serving as interim principal. Following the interviews, the superintendent's recommendation, was voted on and approved resulting in Schiefelbein being assigned as principal of the high school effective February 22, 1989. The appellant contended his certification as a principal was for a longer period of time than any of the applicants.

Issue: The appellant filed a petition for a writ of mandamus with the Circuit Court of Barbour County after the superintendent recommended Mr. Schiefelbein as principal. The appellant took the position that the Board of Education failed to hire him because he was less qualified for the position and constituted a violation of the law and was arbitrary.

Holdings: The court determined that Tenney had no clear right to the relief he sought. The court recognized that mandamus will not lie in controlling tribunals or officers exercising their discretionary powers.

Reason: The selection of candidates for educational positions is not mechanical or mathematical. The human experience and qualities of life cannot be quantified, enthusiasm, leadership, and talent can only be subjective through the personal interaction with the anticipation the candidate would do a great job in the new position.

Disposition: The Supreme Court of Appeals of West Virginia denied the petition for a writ of mandamus.

Citation: *Robert Johnson v. Grey M. Cassell, Superintendent and Madeline Blue, President, and Galen Shingleton, Joe Pancake, Members of the Hampshire County Board of Education*, 387 S.E.2d 553, 1989.

Key Facts: Robert Johnson lived in Hampshire County and was employed by the Berkeley County Board of Education as a gifted education teacher. Johnson applied to teach in the county where he lives. When a special education position became vacant, Johnson and one other applicant applied for the position. The other candidate was chosen, and Johnson sought a writ of prohibition. The trial court denied the writ of prohibition.

The qualifications of the two candidates were different in many respects. Robert Johnson obtained his Master's Degree in special education and was qualified to teach in gifted education

programs. Johnson was certified by the state to teach gifted education programs and had 11 years teaching experience specializing in gifted education and 7 years with a state permit and 4 years of certification. Charles Streisel, on the other hand, is certified to teach only in the areas of journal science and mathematics. At the time of the selection process, he did not possess a Masters' degree and was not certified to teach special education or gifted education. He had no experience teaching in a gifted education program.

Under W. Va. Code § 18A-4-8b (a) [1983], decisions of a County Board of Education affecting teacher promotions and filling of vacant teaching positions must be based primarily upon the applicants qualifications for the job, with seniority having a bearing on the selection process when the applicants have otherwise equivalent qualifications or where the differences in qualifications criteria are insufficient to form the basis for an informed and rational decision. (*Dillon v. Bd. of Education of the County of Wyoming*, 177 W. Va. 145, 351 S.E.2d 58 (1986))

Both W. Va. Code § 18A-4-8b and § 18A-4-13 (1988) provide that any board failing to comply with the provisions of this article may be compelled to do so by mandamus. In addition, W. Va. Code § 18A-4-8b provides that the board shall be liable to any party prevailing against the board for court costs and reasonable attorney fees, as determined and established by the court.

Issue: Mr. Johnson protested to the state superintendent of schools and the Circuit Court of Hampshire County on January 14, 1988, seeking to prohibit the board of education from hiring a teacher who was unqualified for the vacant position.

Holdings: The County superintendent arranged for a temporary permit to be issued to Mr. Streisel to allow him to teach gifted education. The court found that the issuance of a temporary permit pursuant to State Board Policy 5113 was unconvincing and unpersuasive evidence that Mr. Streisel was qualified to teach gifted education.

Reason: The court determined the appellant's qualifications were undeniably superior to those of Mr. Streisel.

Disposition: The judgment of the Circuit Court of Hampshire County was reversed, and the case was remanded for directions to award attorneys' fees in accordance with provisions of W. Va. Code § 18A-4-8b.

Citation: *The Board of Education of the County of Harrison v. Alice DeFazio*, 378 S.E.2d 656, 1989.

Key Facts: Alice DeFazio challenged judgment of the Circuit Court of Harrison County (West Virginia), when she wanted to apply for the kindergarten position at one of the reassigned schools and could not do so because the position was not posted. Two elementary schools were closed in the Harrison County Board of Education jurisdiction and without posting a notice of vacancies, teachers were assigned and positions created at other schools. The applicant was interested in one of the additional positions but was unable to apply because it had not been posted. The result of reassigning the schools and the reassigned students, created a need for five additional teachers. Without posting notices of vacancies, five of the senior teachers were assigned to Wilsonburg and Adamston schools.

Issue: the Circuit Court ruled because the schools were closed, additional positions could not be considered openings at established, existing, or newly created positions.

Holdings: The court ruled that teaching vacancies created by the reassignment of additional pupils caused by closing schools warranted posting requirements pursuant to § 18A-4-8b(a). The board argued that these positions were transferred positions but this argument was not accepted by the court. There was a record of a transfer list indicating all closed schools and all terminated professional employees.

Reason: The court determined that the board's objectives of making the transitions easier a valid statement and did not warrant replacing the strong public policy of securing the most qualified persons for the position.

Disposition: The Supreme Court of Appeals of West Virginia reversed the judgment of the circuit court and remanded the case with directions to enter an order consistent with the opinion and to award court cost and attorneys' fees.

Citation: *State of West Virginia ex rel. Robert J. Oser v. Donald A. Haskins, Superintendent, Bd. of Educ. Of the County of Marshall*, 374 S.E.2d 184, 1988.

Key Facts: Robert J. Oser, appellant, challenged a judgment of the Circuit Court of Marshall County (West Virginia), denying his petition for writ of mandamus. Superintendent Haskins posted a notice of vacancy for a learning disabilities teacher at Union Junior High school. There were three other applicants who applied for the position along with Mr. Oser; they were Kimberly Thompson, Gary Chambers, and Richard J. Schoene, who was granted the position. Mr. Oser holds a permanent professional teaching certificate with a certified specialization in learning disabilities. The appellant had completed his Master's degree in speech communication, and had 30 additional graduate hours leading to certification in learning disability and behavior disorders. Mr. Oser had taught full-time for 13 years in special education and learning disabilities. Mr. Schoene had been a substitute teacher for 1 year, had a professional teaching certificate issued provisionally in physical education and safety, a teaching permit in learning disabilities, and only 15 graduate hours completed in special education.

Issue: The court held that a writ of mandamus should have been issued for the applicant to list the position of learning disability teacher at the high school. Superintendent Haskins did

not interview any of the applicants, but believed that Mr. Schoene had been interviewed. The appellant was contacted for the position but was never formally interviewed.

Holdings: The court held that the board acted arbitrarily and capriciously in evaluating all of the applicants and comparing the qualifications. The qualifications of the appellant were superior to those of Mr. Schoene and a major concern regarding the merits of teaching of the appellant and Mr. Schoene. The court determined there were some irregularities in the renewal of Mr. Schoene's permit and held that the permit was issued as a matter of convenience. It was evident that the appellees failed to investigate the applicant's credentials that applied for the learning disabilities position.

Reason: The court concluded, after examining all records, that the appellees acted arbitrarily and capriciously in failing to evaluate the applicant's qualifications and experience.

Disposition: The Supreme Court of Appeals of West Virginia reversed the judgment and remanded the case with directions to enter an order consistent with the opinion and to award the applicant attorneys' fees.

Citation: *State of West Virginia ex rel. Larry Rose v. Raleigh County Board of Education*, 367 S.E.2d 223, 1988.

Key Facts: Larry Rose requested a writ of mandamus, which was later denied by the Circuit Court of Raleigh County (West Virginia). A vacant seat position was created in the ninth grade at Park Junior high school and the school principal assigned a seventh grade teacher to fill the position. The ninth-grade position was never posted and the seventh grade position was posted. Mr. Rose applied for the ninth-grade position but the position was already filled by the seventh grade teacher without ever being posted. The facts indicated that a ninth grade history teacher at Park Junior High School was reassigned to a different high school, creating an opening

that was filled by a seventh grade geography teacher, Mrs. Black. The school principal improperly posted and mishandled these positions. Under W. Va. Code, 18A-4-8b (a) was plain and unambiguous. Where a vacancy occurs in a teaching position at a public school, the County Board of Education must post a notice of such vacancy pursuant to W. Va. Code, 18A-4-8b (a), and the principal of the school in which the vacancy occurs is without authority to assign another teacher to the vacancy. W.Va. Code, 18A-4-8b (b) [1983] states,

Any board failing to comply with the provisions of this article may be compelled to do so by mandamus and shall be liable to any party prevailing against the board for court costs and his reasonable attorney fees as determined and established by the court. Further, employees denied promotion or employment in violation of this section shall be awarded the job, pay, and any applicable benefits retroactively to the date of violation and payable entirely from local funds. Further, the board shall be liable to any party prevailing against the board but any court to order cost including copies of transcripts.

Issue: Mr. Rose was not promoted to the position and there was an improper job posting.

Holdings: The court held that W.Va. Code, 18A-4-8b (a) was plain and unambiguous.

Reason: In public schools, the board of education is required to post any vacancies. The principal does not have the authority to assign another teacher to a vacancy without it being posted through proper protocol.

Disposition: The Supreme Court of Appeals of West Virginia reversed the judgment of the trial court and gave orders to remand with directions in the issuance of a writ of mandamus compelling the Raleigh County Board of Education to post positions and pay reasonable attorney's fees.

Citation: *The Marion County Board of Education v. Leonard Bonfantino*, 366 S.E. 2d 650, 1988.

Key Facts: Leonard Bonfantino sought a review of the judgment of the Circuit Court of Marion County (West Virginia), which reversed a decision by the hearing examiner regarding

the school board posting a vacancy for a school counselor position. Bonfantino was employed by the Marion County Board of Education at East Fairmont high school as a social studies and American history teacher. Additionally, the appellant was certified in the area of school guidance counseling. During the 1985-1986 school years, a school guidance position became available at North Marion High School. The principal assigned a Spanish teacher at the school, Ms. Judith Miller, to the vacant position. The notice of the vacancy was not posted by the board for a period of 5 working days as required by W. Va. Code, 18A-4-8b (a). Once the school guidance counselor position was filled, the Spanish teacher vacancy was posted.

Issue: Mr. Bonfantino expressed an interest in the vacant school guidance counselor's position, but was not aware of the vacancy until after Mrs. Miller had been assigned to the position. The statute, W. Va. Code, 18A-4-8b (a) (1983), placed the responsibility to make decisions affecting promotion and filling of any classroom teachers position and to post notices of vacancies upon the local school board. Under W. Va. Code, 18A-2-7, it is the superintendent, subject only to the approval of the board, who shall have authority to assign, transfer, promote, demote, or suspend school personnel and to recommend their dismissals pursuant to provisions of this chapter. A principal's statutory role is limited to submitting recommendations to the superintendent regarding search personnel decisions (W. Va. Code, 18A-2-9).

Holdings: The court concluded that the poster requirements of W. Va. Code, 18A-4-8b(a), were mandatory for all teacher vacancies, and reversed the judgment of the Circuit Court.

Reason: The court determined it could not accept the board's argument that the principles need for flexibility requires these in-house appointments be made by him. A principal's statutory role is limited to "submit[ing] recommendations to the superintendent" regarding search personnel decisions.

Disposition: The Supreme Court of Appeals of West Virginia reversed the judgment and remanded the case with directions to reinstate the decision of the hearing examiner.

Citation: *Pasty Dillon v. Board of Education of the County of Wyoming* (351 S.E.2d 58, 1986).

Key Facts: Pasty Dillon petitioned for a writ of mandamus to the Wyoming County Board of Education compelling them to employ her as the language arts teacher at Mullen's Middle School. Dillon contended the board's conduct in hiring another individual was arbitrary and capricious or an abuse of discretion and Dillon was entitled to relief.

A writ of mandamus is not issued unless three elements coexist: (1) a clear legal right in the petitioner to the relief sought; (2) a legal duty on the part of respondent to do the thing, which the petitioner seeks to compel; and (3) the absence of another adequate remedy. Superintendent Frank L. Blackwell of the Wyoming County schools posted the position of language arts teacher and specified to be eligible applicants were required to possess a valid West Virginia teaching certificate in language arts. On August 30, 1984, Superintendent Blackwell informed the appellant he intended to hire his sister-in-law Tammy McKinney, to fill the position. Ms. McKinney's certification included specialization in English, Grades 7 through 12 and school library, Grades kindergarten through 12. The superintendent told the appellant over the telephone Ms. McKinney was his recommendation because she had a Master's degree and was therefore more qualified than the appellant.

Issue: The appellant filed a formal grievance with the board alleging she had been denied a teaching position and sought to be assigned to the position filled by Ms. Kinney or to assume the position at another school. Attempts to try to resolve the grievance issues proved unsuccessful. The evidence showed that all of Dillon's graduate work was in the field of

language arts. Ms. McKinney showed 9 graduate hours related to language arts. Neither of the applicants had taught any regular classes in the previous 5 years prior to the posting. The board never considered any other factor other than Kinney had a master's degree prior to the appointment. Superintendent Blackwell did not review the qualifications and experience of the applicants equitably.

Holdings: The court held that under W. Va. Code § 18A-4-8b (a) (1983), decisions of a county board of education affecting teacher promotions and the filling of vacant teaching positions must be based primarily upon the applicants' qualifications for the job, with seniority having a bearing on the selection process and the applicants having otherwise equivalent qualifications forms the basis for an informed and rational decision.

Reason: The court determined that when filling a teaching position and using only the applicant's qualifications, seniority has a bearing on the process when other applicants were equally qualified.

Disposition: The Supreme Court of Appeals of West Virginia reversed the judgment that denied the teacher's writ of mandamus compelling the Wyoming County Board of Education to hire her as the language arts teacher at Mullen's Middle School. The case was remanded with directions issuing a writ of mandamus and the board should repost the position, conduct a proper evaluation, and make an appointment in accordance with the statute and personnel policy.

Citation: *Valerie Bennett, Plaintiff-Appellant v. Mary Roberts, Marshal Aspinall, Timothy Costello, Defendants-Appellees*, 295 F.3d 687, 2002.

Key Facts: Valerie Bennett filed to the United States District Court for the Northern District of Illinois, alleging board members had used racial discrimination in hiring practices in violation of title VII §1981 and §1983 and the United States Constitution amended XIV. Bennett

alleged that board members employed all-White screening committees that turned away African American applicants. Ms. Bennett failed to prove any disparate treatment under Title VII. The board emphasized that the other applicants had better qualifications than Ms. Bennett which did not satisfy requirements of Section 1981.

Issue: The District Court's dismissal and the appeals court found that three White faculty members spoke with the applicant when she first became interested in interviewing in the school district.

Holdings: The court held the verdict representing Ms. Bennett's case was relying on statistical analysis that specifically compared racial composition was unreliable. The expert used racial comparisons of teachers employed in the school district during 1990-1997, according to the Chicago Primary Metropolitan Statistical Area (Chicago PMSA). The information did not suggest that minority applicants were not hired.

Reason: Ms. Benson failed to prove the existence of the policy of custom that violated her constitutional rights and did not support Sections 1981 or 1983.

Disposition: The United States Court of Appeals for the Seventh Circuit rendered the judgment of the District Court granting the defendants motion and was affirmed.

Citation: *William Roberts. Appellant v. Fayette County Board of Education, Appellee*, 173 S.W.3d 918, 2005.

Key Facts: Fayette County Board of Education sought a summary judgment against the appellant William Roberts alleging that Ky. Rev. Stat. Ann. § 161.100 was violated when he was not employed as a special education teacher. Ky. Rev. Stat. § 161.100 provides that a school district may hire individuals with emergency certification when it is impossible to secure qualified teachers for a position. Roberts had worked as a special education teacher for more than

4 years at the Fayette High School in Lexington on a limited contract. The teacher becomes eligible for continuing contract or tenure when he or she has been employed for 4 years in the same district within a 6-year period. After reviewing his summative evaluations, his former supervisor did not recommend him for rehire. Mr. Roberts voluntarily resigned with the understanding that his contract would not be renewed with a teaching position in the school district.

Issue: A special education teacher was hired with an emergency certification rather than Mr. Roberts.

Holdings: After reviewing all of the records, the court determined that this case was filed with incompleteness of the record.

Reason: Mr. Roberts lacked tenure and had no expectations of being employed after his resignation with the school board.

Disposition: The Court of Appeals of Kentucky awarded judgment in the affirmative to the Fayette County Board of Education.

Citation: *United States of America, Plaintiff, Sheanda Bryant, Interveners-Appellants, Cross-Appellees, v. Lawrence County School District, Defendants-Appellees, Cross-Appellants*, 799 F.2d 1031, 1986.

Key Facts: United States of America plaintiff, Sheanda Bryant, challenged the judgment of the United States District Court for the Southern District of Mississippi in violation of 1969 desegregation decree by the school district. A class-action lawsuit filed for Black students and their parents in seeking an injunction in fulfilling the goals of the 1969. In 1984, the Lawrence County school board voted for a \$4,000,000 bond issue for the construction and renovation of

school. Soon after the bond issue passed, a group of citizens complained and charged that the school board never reached unitary status and had violated the 1969 court decree.

Issue: The court ruled and decided that the construction plans did not violate the constitutional requirements and new student assignment plans were not required.

Holdings: The court held that there had been no previous judicial determination regarding the full implementation with the desegregation order. The court reasoned that the school district or steel racial identifiable and remanded for proper reassignment of teachers and redesign of bus routes

Reason: The court determined the district should implement changes in the school attendance zones.

Disposition: Due to the nature of this case the court affirmed in part, reversed in part, and remanded the district court's judgment on the appellant Black students complained alleging violation of the desegregation decree was school district. The court found the school district had failed to desegregate and remanded for reassignment of teachers, students and redesign of school bus routes.

Citation: *James Gikas, Appellant v. Washington School District*, 328 F.3d 731, 2003.

Key Facts: James Gikas a substitute teacher sued the school district due to him working on two separate occasions as a part-time worker; he sought full-time employment in the district as a social studies teacher. Mr. Gikas was a veteran and sought to be hired under 51 Pa. Cons. Stat. Ann. § 71049(a) of the Pennsylvania Veterans' Preference act. Gikas received an honorable discharge from both the Army and the Navy, and on two previous occasions, non-veterans were hired in the social studies department rather than Gikas. He continues that he was more qualified over the non-veterans applicants if the "requisite qualifications" was used. The veterans

preference contained in section 7104 (a) is a property interest subject to procedural due process protection, “not all property interest worthy of procedural due process protection or protected by the concept of substantive due process.”

Issue: The property interest at issue was not in the teaching position itself but in the preference to be awarded to veterans seeking employment.

Holdings: The court ruled that procedural due process did not require the district to decide on definition of “requisite qualifications” in the hiring process.

Reason: The court ruled the district was not required to help any pitcher who applies for the job; but rather it was required to give preference to only those who were independently qualified.

Disposition: the United States Court of Appeals for the Third Circuit affirmed the judgment, which dismissed the claims of James Gikas.

Citation: *Wilfred Keyes, Plaintiffs, Congress of Hispanics Educators, Plaintiff-Intervenors v. School District No.1, Defendants*, 609 F. Supp. 1491; 1985.

Key Facts: In the continuous school desegregation case of Wilfred Keyes v. School District No. 1, the plaintiff alleges the school district claiming a unitary school status when that was not the case. The school board argued that it complied with all of the Constitutional requirements and to remedy any segregation problems.

Issue: The court disagreed and held that the board relied on erroneous information that the final decree and plan that was adopted by the board was complete based past segregation practices in the school district.

Holdings: The court ruled that despite the good intentions of the board and follow the law board did not understand the law. The viewpoints of certain board members concerned the court

in that the board believed, people were allowed to live where they chose, and segregation of neighborhood was acceptable.

Reason: The court determined that the school board was not unitary and the appropriate case law to retain jurisdiction over the school district due to negligence resegregation of certain schools in the district would continue occur.

Disposition: The United States District Court for the District of Colorado denied the boards motion regarding unitary status of the school district terminating all jurisdictions including final decrees and injunctions.

Citation: *Leonard Juniel, Sr. Plaintiff, v. Park Forest- Chicago Heights School District 163, Defendant*, 176 F. Supp. 2d 842, 2001.

Key Facts: Leonard Juniel, Sr. an African American, filed a complaint of employment discrimination with United States District Court for the Northern District of Illinois alleging racial discrimination in violation of 42 U.S.C.S. §§ 1981 and 1983. Juniel was employed in an administrative personnel position as the Director of Technology for Park Forest- Chicago Heights School District 163. Mr. Juniel was not a certified teacher in his role as Director of Technology. The duties included: (1) planning the overall activities of electronic data processing; (2) assisting the superintendent in keeping personnel informed; (3) maintain a cooperative relationship with other districts in the region and around the state; (4) maintaining inventory records software; (5) developing, implementing and enforcing procedures and security standards for software access. Mr. Juniel also assists in obtaining a \$152,888 technology grant as part of the Technology Integration Program Initiative that was vital to the school district.

The position of director of technology was discontinued in steel does not exist in the District. Seventeen other employees, 12 Caucasians and 5 African Americans, lost their jobs in the alleged reduction in force during the 1997 1998 school years.

Issue: The employee failed to develop district-wide technology plans, did not spend 60% of his time with staff and students, and failed to publish the technology newsletter in a timely manner.

Holdings: the court ruled that an employer is free to develop its own criteria in making business decisions and it is not the opinion of the court to evaluate the wisdom of those decisions.

Reason: Juniel failed to establish his prima facie case and did not prove to the district Court that employment termination was pretextual.

Disposition: The United States District Court for the Northern District of Illinois granted the Park Forest- Chicago Heights School District motion for summary judgment on Juniel's Sections 1981 and 1983 on racial discrimination claims.

Citation: *Horace Willie Montgomery, Plaintiffs v. Starkville Municipal Separate School District, Defendant*, 665 F. Supp. 487, 1987.

Key Facts: Horace Willie Montgomery filed a class action with United States District Court for the northern district of Mississippi, on behalf of all Black children attending schools and Starkville municipal school district. Montgomery's complaint is school officials continued to use dual education system and segregating races. In past years, injunctive relief has previously been granted to plaintiff who asserts the school district never was fully desegregated. The plaintiff contends school district failed to file the proper court documents, allowed in the district transfers of students, failed to properly compensate Black staff members, made employment

decisions on the basis of race, and discriminated against Black children in maintaining segregated classes without offering gifted instruction programs.

Issue: Minority students are not afforded the same educational advances and benefits as others.

Holdings: The court ruled Anders judgment for the defendants on all claims with the exception of the discrimination claim involving the gifted program.

Reason: The court ordered the defendants to revise requirements of the gifted program and use a consultant with the Mississippi Department of Education and the biracial advisor committee in providing additional minority eligibility.

Disposition: The United States District Court for the Northern District of Mississippi, ruled for the district on all issues concerning the gifted programs. By order of the court, the entrance requirements for the gifted program were revised.

Citation: *Verdia Jones, Plaintiff v. Robert Birdsong, Defendant*, 530 F. Supp. 221, 1980.

Key Facts: Verdia Jones was initially a high school guidance counselor and former employee of the Clarkdale Municipal Separate School. Ms. Jones is African American and filed suit against defendants in their official capacity as the school district's Board of Trustees and superintendent of education for race discrimination in employment violating title VII of the Civil Rights Act of 1964. Additionally, plaintiff filed under 42 U.S.C.S. § 2000e et seq.; §§ 1981, 1983; the equal protection clause; and a desegregation order. The employee's reassignments included counseling and teaching positions. Jones was transferred to a federally funded Title I program and she rejected the contract due to the provisions of a new funding source. She was not rehired and filed suit.

Issue: Plaintiff believes she was treated differently than white counselors due to availability of Title I funds.

Holdings: The court held that Ms. Jones rights under school desegregation plans were not violated and there was no reduction in the number of school counselor's positions after desegregation commenced. As a result, no employees were terminated and she was not demoted.

Reason: The court found the employee failed to establish a Title 7 violation because both Black and white employees were funded under the federal program; and the employee's decision to resign was her choice.

Disposition: The United States District Court for the Northern District of Mississippi denied Jones all relief in her law suit against defendants for racial discrimination in employment and violating desegregation plans as well as the Fourteenth Amendment of the United States Constitution.

Citation: *David J. Basile, Plaintiff v. The Elizabethtown Area School Board of School Directors, Defendants*, 61 F. Supp. 2d 392, 1999.

Key Facts: David J. Basile, filed for summary judgment against the Elizabethtown Area School Board in their refusal to hire him for teaching position violating 42 U.S.C.S § 1983 and § 1983 7104(a) of the Pennsylvania Veterans Preference Act, 51 Pa. Cons. Stat. § 7104(a). Basile applied for the teacher's position in the Elizabethtown area school district but was rejected. Section 1983 of Title 42 provides full imposition of liability on any person who, acting under color of state law, deprives another of rights, privileges, or immunities secured by the Constitution of the laws of the United States (42 U.S.C.S. § 1983). Section 1983 does not create substantive rights, but provides only remedies deprivations of rights established elsewhere in the Constitution or federal law. The plaintiff seeking to advance a claim under § 1983 must

establish: (1) the deprivation of any right secured by the United States Constitution or federal law and (2) that the latest violation was committed by a person acting under color of state law.

The United States District Court for the Eastern District of Pennsylvania holds that a property interest inheres in § 7104(a) of the Pennsylvania Veterans Preference Act, 51 Pa. Cons. Stat. 7104(a), concerning non-civil service appointments and promotions.

Under Pennsylvania law, a veteran must be given “preference” under § 7104(a) of the Pennsylvania Veteran’s Preference Act, 51 Pa. Cons. Stat. § 7104, only if he possessed the necessary qualifications for a position as determined by the hiring body. The statutory requirement that a veteran possess the requisite qualification means that he must be able to accomplish proper performance of public duties.

Issue: The court held the plaintiff did not meet defendant’s initial qualifications for the position and was not entitled to receive the veteran’s preference.

Holdings: After reviewing the case and analyzing the records and data involved in the case, the court held the hiring criteria was achieved and was reasonably related to the job requirements. The court determined that the defendants did not have an official veteran’s preference policy in place and applied to qualified candidates.

Reason: The court ruled the plaintiff has failed to prove municipal liability and defendants did not establish a policy that violated any of the plaintiff’s legal rights.

Disposition: The United States District Court for the Eastern District Pennsylvania ruled judgment in favor of the Defendants.

Citation: *Rosalie McClelland v. Paris Public Schools*, 742 S.W.2d 907, 1988.

Key Facts: Rosalie McClelland filed action against the Paris Pubic School District requiring all certified personnel to reside within the 10 mile driving distance of the city limits.

The plaintiff moved and was located 17 amounts outside of school district and the city limits. The teacher filed suit against the decision of the district and in the non-renewal of her contract. Under Constitutional Law--Where the appellant's claim that the school district's residency requirement violated her rights and equal protection under article II of the Arkansas Constitution, her right to protection from discrimination under Ark. Code Ann. § 6-17-1510 (1987) of the Teacher Fair Dismissal Act, and her implied rights to travel, reside and teach under article II of the Arkansas Constitution, under any of those theories required review of the appellee school's residency policy based on a reasonableness or rational basis test.

Constitutional Law--Under the rational basis standard of review, the court must presume the legislation is constitutional, that it is rationally related to achieving a legitimate governmental objective. That presumption imposes upon the challenging party the burden of proving the unconstitutionality of the legislation, that is, that the act is not rationally related to achieving any legitimate objective of government under any reasonable conceivable state of facts.

Issue: The school district refused to renew her teaching contract.

Holdings: The decision was affirmed by the trial court. The teacher appealed and argued that the district residency policy was unconstitutional under Arkansas Const. art. II, § 18, and was discriminatory and unreasonable under the Teacher Fair Dismissal Act, Ark. Code Ann. § 6-17-1510. The court reviewed the residency policy on their rational basis test and found that the teacher failed to meet the burden of proof that the residency policy was not valid.

Reason: Additionally the court found that the residency policy did not discriminate even though it did not apply to non-certified personnel or part-time employees.

Disposition: The Supreme Court of Arkansas affirmed the trial court decision; rejects the teacher's constitutionality arguments and affirmed the school district decision on non-renewal of contract due to failure to adhere to the school board's residency policy.

Citation: *Chicago School Reform Board of Trustees, Plaintiff-Appellant v. Beverly Martin, Defendant, Appellee, and Gale Community Academy Local School Council, Defendant, Counter Defendant-Appellee*, 723 N.E.2d 731, 1999.

Key Facts: The Gale Community Academy Local School Council voted Beverly Martin their new principal and presented her with a 4-year performance contract.

After signing the contract, the Chicago school Reform Board of Trustees refused to sign the contract and plaintiff sought declaratory judgment believing the contract was in violation of the School Code (105 ILCS 5/1-1 et. Seq. (West 1996; 105 ILCS 5/34--2.1(a) (West 1996)). Section 34--2.1(a) also provides that, in the case of high schools (Grades 9 through 12), the local school Council "shall consist of 12 voting members--the 11 voting members described above and one full-time student member" (105 ILCS 5/34--2 .1(a) (West 1996)).

Under 105 Ill. Comp. Stat. 5/3--2.3(2), if the general superintendent fails or refuses to select a candidate, the local school Council must select a candidate within 15 days. Additionally, direct selection by the local school Council of a new principal to fill a vacancy under a 4-year performance contract shall be made within 90 days after each day such vacancy occurs. 105 Ill. Comp. Stat. 5/34--2.3. The School Code expressly adopts the Open Meetings Act; counsel shall comply with the Open Meetings Act (105 Ill. Comp. Stat. A- -2.3.)

Issue: Martin counterclaimed for breach of contract and also moved to dismiss the board's complaint, which the circuit court granted. Martin then petitioned for a rule showing

cause and seeking an injunction against (Gale School) from seeking another principal and providing relief.

Holdings: The Appellate Court of Illinois affirmed the school council's vote, which was by majority vote, was sufficient because the superintendent did not exercise the opportunity to select a candidate.

Reason: Appellee failed to show irreparable injury and a suitable remedy for relief.

Disposition: The Appellate Court of Illinois, First District, and Fifth Division affirms the judgment and school council's vote included the majority of the votes for the appellee in the selection for the school's principal. The request for relief was not granted because appellee failed to establish her entitlement for relief.

Citation: *William Roberts, Appellant v. Fayette County Board of Education, Appellee*, 173 S.W.3d 918, 2005.

Key Facts: In the matter of Fayette County Board of Education, the circuit court held there was sufficient evidence supporting a determination that the applicant was not the best choice for a special education teacher at Lafayette High School in Lexington, Kentucky. In November 2001, two students file complaint against Mr. Robert's alleging harassment. One student claims drivers pulled him up by sure I'll in the classroom and pushed him against the wall using a table. The other student states that Mr. Robert squeezed his hand, pulled his hair, and tapped him on the floor head with palm of his hands yelling, "He had five F's." The superintendent of the Fayette County Board of Education suspended Roberts for 30 days with pay while an investigation ensued.

Mr. Robert appeals for summary judgment, alleging that the board violated Kentucky Revised Statutes (KRS) 161.100 because it did not employ him as most qualified special-

education teacher, then hired a teacher through the emergency certification program. Kentucky Revised Statutes. Ann. § 161.100 provides that a school district may hire individuals with “emergency” certification when it is impossible to secure qualified teachers for a position.

Issue: At issue, are the results of the Certified Evaluation Appeals Board investigation concerning his summative evaluation and the recommendation by his former principal not to be rehired.

Holdings: The court found that the Fayette County Board of Education was immune from the appellant’s suit.

Reason: Roberts resigned his position voluntarily with the understanding that the principles recommendation for nonrenewal of contract prevented him from obtaining another teaching position and Fayette County school district.

Disposition: The judgment affirmed by the Court of Appeals of Kentucky for the Fayette County Board of Education.

Citation: *Educational Testing Service v. Elba Hildebrant*, 923 A.2d 34, 2007.

Key Facts: Elba Hildebrant filed an action against Educational Testing Service (ETS him) for breach of contract and other causes pursuant to a teacher certification exam. The plaintiff and each test taker are required to sign the information and registration bulletin prior to testing. The test Proctor alleges misconduct during and including working at the time had been called, and stated service reserve the right to cancel any tests scores involving misconduct. The Praxis test is a standardized licensing examination used by many school districts for the teacher or administrator to become certified. Dana Baker is a college professor at Montgomery College, and administers the test and monitored the test site on behalf of ETS.

Issue: After testing had begun, Baker submitted a Supervise Irregularity Report to ETS citing two issues involving Hildebrandt's performance. Baker reported that Hildebrandt "refused to stop writing sometimes called--one is given, material taken." During the next session Baker reported, that Hildebrandt "had to be instructed twice to stop work and close the test book. (She insisted on completing her thought.)" Hildebrandt was notified that ETS was considering canceling her scores because of the irregularities.

Holdings: The court first has to determine whether Hildebrandt has presented a genuine dispute sufficient to overcome a motion of summary judgment. The facts in this case are not only if Hildebrandt engaged in misconduct, it also involves the classic "he said, she said" situation when the test administrator reported misconduct. Normally in the he said she said case sufficient evidence must be presented to overcome a motion for summary judgment between the two parties. In this case, ETS is involved because of contractual agreements and relying on the report of the agent, in this case Ms. Baker. In order for Hildebrandt to prevail, evidence must be presented indicating that Baker lied when filing her report to ETS. Hildebrandt believes Baker became offended as she sang "Welcome to the Hotel California" and other students may refer to her as "the Test Nazi" as they exit the test area. The trial court ruled a contractual agreement existed between the two parties and ETS reserve the right whether to cancel a test-taker's score.

Reason: The court decided ETS has the right, under the bulletin to counsel test scores with ETS or test center personnel when there is misconduct during testing.

Disposition: The judgment of the Court of Special Appeals is reversed. The case is remanded to that court with instructions to affirm the judgment of the Circuit Court for Montgomery County. Court costs and the Court of Special Appeals to be paid by respondent Hildebrandt.

Citation: *School Committee of Newton v. Newton School Custodians Association, Local 454*, SEIU, 784N.E.2d 598, 2003.

Key Facts: An arbitrator representing the Newton School Custodians Association, found a violation of a collective bargaining agreement (CAB) pertaining to the hiring within “the Nutrition Workers Unit” in Newton South High School. In 1999, there was a vacancy notice posted for the cafeteria management position and five individuals all of whom were members of the union applied for the position. Linda Cloonan was the unsuccessful applicant. Jeannine Sheridan, the director of full services asked for and obtains permission from Michael Pierce of the school committee management of support services who had substantial input in the hiring process. The cafeteria manager position was important to running the school’s cafeteria operation and agreed to give Sheridan an active role in the hiring process, the trade-off included the principal would be actively involved in all decisions.

Issue: The arbitrator did not exceed his authority in asking consideration of the union’s grievance committee to offer Cloonan the cafeteria manager position and to “make her whole” by not hiring her the first time, but to offer her the position, the arbitrator went beyond the boundaries of his jurisdiction. Although he may be empowered with great latitude, he does not have the authority to award or circumvent any existing laws.

Holdings: The court held that the CAB did encroach on the principal’s managerial control of hiring and the Massachusetts Gen. Laws chapter 17, Section 59B, was written about Reform Act, 1993 Massachusetts act 71.

Reason: The court agrees with the trial judge hearing this case, that the arbitrator’s order that the cafeteria manager position be offer to Cloonan contradicting the authority of the school principal in contravening Section 59B.

Disposition: The Supreme Judicial Court of Massachusetts, the judge's order is vacated. The court ruled that the arbitrator usurp the rights of school principal in the Massachusetts German laws chapter 71, Section 59B. On remand, an order is to enter in the Superior Court remanding the case to the arbitrator for further proceedings consistent with the final determination of the court's opinion.

Citation: *Linda Gardner, Petitioner, v. Niskayuna Central School District, Respondents*, 839 N.Y.S. 2d 317, 2007.

Key Facts: Linda Gardner the former school district employee sought review of determination by the Niskayuna Central School District where she employed. The court rejected Gardner's argument that because her husband was not allowed in a psychological examination ordered by the school board, the testimony and report of the psychologist and psychiatrist should have been suppressed.

Under Civil Service Law § 75(2), employees who are potentially subject to disciplinary action have a right to representation at the time of questioning and that a violation of the right will result in the exclusion from a disciplinary proceeding of any and all statements obtained from said questioning as well as any evidence or information obtained as a result of said question. Unlike Civil Service Law § 75(2), Education Law § 913 does not provide that exclusion is required if the right to be accompanied during a medical examination is violated. Linda Gardner served as confidential Executive Secretary II to Celeste Keane in January 2005. Ms. Keane is Administrator for Human Resources and K-12 Counseling. On November 4, 2005, Gardner was transported from work to a hospital and diagnosed with labile hypertension.

Three days after this incident, Gardner's husband met with the Assistant Superintendent of Schools and indicated his wife could not work under Keane's supervision. The husband

wanted a guarantee that if Ms. Gardner returned to work, she would not have to work with Keane. Mr. Gardner's request was denied and he proceeded to remove his wife's possessions from her work area.

The petitioner received doctor's excuses from her general practitioner, Benoit Tonneau, excusing her from work through January 3, 2006, and with additional doctor's excuses uses from the office of the psychiatrist, Kevin George, indicating his patient was under his care through March 31, 2006. The school board ordered a medical examination for the petitioner pursuant to Education Law § 913. Earl Teller, psychologist and Adrian Morris examine petitioner in February and March of 2006.

Ms. Keane left her position on March 17, 2006, indicating that petitioner played a significant role in her decision to leave. Mrs. Gardner testified that when she discovered Ms. Keane was leaving, she became excited and looked forward to returning to work and decided to get a doctor's note permitting her to return to work earlier than March 31, 2006. Dr. George's note permitted petitioner to return to work on March 20, 2006. The school district did not allow her to return to work; instead, they suspended her without pay and issued disciplinary charges against her pursuant to Civil Service Law § 75, alleging misconduct and incompetence based upon her conduct and remaining absent without justification and refusing to work under her supervisor.

Issue: Was the plaintiff justified in being away from work claiming psychological and physical problems causing her to be away from work?

Holdings: The board's determination is supported by substantial evidence. The petitioner was charged with unjustifiable absence beginning on January 3, 2006 when her personal physician permitted her to return to work. Petitioner admitted that she could work for the

supervisor and that she desired to return to work upon hearing Keane was leaving. Petitioner concedes that her reaction to Keane was “irrational,” Ms. Keane testified she was demanding supervisor, but she always spoke in a calm manner to the petition and pointing out errors. The medical experts tell her and Morris concluded petitioner’s problems were more of a personality disorder not a psychological disorder.

Reason: The court ruled the petitioner’s arguments are lacking merit and creditability.

Disposition: The Supreme Court of New York, Appellate Division, Third Department confirmed the board decision of this case and without costs, leading to the dismissal of the petition.

Citation: *Maxine Davis, Appellant, v. Richard P. Mills, as Commissioner of Education of the State of New York, Respondents*, 778 N.E.2d 540, 2002.

Key Facts: Maxine Davis, a school psychologist filed a petition asserting her right to re-employment under N.Y. Education Law § 2510. The right to re-employment under N.Y. Education Law § 2510 is essential to safeguard teacher tenure against administrative circumvention. However, the statutory right to re-employment is not absolute. When seeking employment rights under § 2510, the threshold question must be one of certification to teach in the position sought. Absent such certification, re-employment rights cannot attach.

Educational Law § 2510 (1), which provides that a person who served in an abolished position has a right to reemployment in a newly created position whose duties are similar to those performed in the abolished position, does not give a former school psychiatrist, whose position was abolished, the right to be re-employed in the new position of elementary school counselor.

Ms. Davis served as school psychologist for the Westport Central School District for 5 years before the district reduced from full-time psychologist position to part-time, leading to the abolishment and termination of the psychologist position. The district created a new part-time position for an elementary school counselor that incorporated some of the psychologist duties.

Issue: The district appointed someone else to the new newly created position.

Holdings: The court held, since the psychologist is not certified as an elementary school counselor according to the statutes, the commissioner's decision denying the psychologist re-employment was neither arbitrary nor irrational.

Reason: The court ruled, the school counselors position must be certified and certification process demand specific field experience that would different from that of the school psychologist.

Disposition: The trial court dismissed the petition, and the New York appellate division affirmed. Davis appealed.

Citation: *William Merrell, Appellee v. Chartiers Valley School District, Appellant*, 855 A.2d 713, 2004.

Key Facts: The Chartiers Valley School District appealed the order of the Commonwealth Court (Pennsylvania), which reversed an earlier decision of the Allegheny County Court of Common Pleas (Pennsylvania), dismissing applicant's complaint. William Merrell applied for a teaching position in the school district, but was not selected. Mr. Merrell is a veteran and filed under the Veterans' Preference Act, 51 Pa. Cons. Stat. §§ 7101- 7109. The Veteran's Preference Act, 51 Pa. Cons. Stat. §§ 7101- 7109, confers an interest on those who meet certain established criteria. The applicant must be a veteran, must be honorably discharged, and must possess the minimum qualifications to perform the duties involved (51 Pa. Cons. Stat.

§§ 7101, 7104(a)). Further, there is a constitutional necessity that the qualifications of the veteran be established before the veteran is entitled to the preference. There must be some reasonable relation between the basis of preference and the object to be obtained. No property interest in government employment exists per se. Before the start of the 1997-1998 school year, Merrell applied for a social studies teacher position. Merrell has applied several times and this time advanced to the fourth step of the district's five-step hiring process. In May 1999, Mr. Merrell's attorney wrote to the school district superintendent, asking the district to reconsider hiring Mr. Merrell because he was entitled to preference under the Veterans Preference Act. 8 Section 7104(a) states:

- (a) Non-civil service. -- Whenever any soldier possesses the requisite qualifications and is eligible to appointment to or promotion any public position, where no such civil service examination is required, the appointing power in making an appointment or promotion to the public position shall give preference to such soldier.

Issue: At issue is not the teaching position itself, but in the preference.

Holdings: The court held that the letter sent by Merrell's attorney was considered informatory, not adjudicatory. The applicant was able to advance to level IV of the five step hiring process and not considered one of the final applicants, and the usage of the preference had not matured.

Reason: Although Mr. Merrell desire to teach social studies, he did not have a property interest in the teaching position, the veterans preference position aides in establishing qualifications for the position.

Disposition: The Supreme Court of Pennsylvania in the order of the appellate court was affirmed on different grounds.

Citation: *The Board of Education of the County of Randolph, Petitioner, Appellant v. Charlotte Scott and Judy Chewning, Respondents, Appellees*, 617 S.E.2d 478, 2005.

Key Facts: Charlotte Scott and Judy Chewning filed a grievance charging the school board of hiring classroom aide. Under former W. Va. Code § 18A-4-8(i)(9) (1996), an Aide II must complete an approved training program, hold a high school diploma, or have received a general educational development certificate.

There were three individuals, Charlotte Scott and Judy Chewning and Intervener Melinda White applying for the Aide II position. At the time of the vacancy, Scott and Chewning were on the preferred call list. Ms. White did not work for the Randolph County Board of Education, but was the only applicant licensed as a practical nurse. Ms. White subsequently hired for the Aide II position by the school district.

Issue: The school board added additional requirements for a practical nurse to meet the need of students.

Holdings: The Grievance Board ruled that the school board erred by adding the licensing requirement because on the school nurse required by statute to be a registered nurse could administer the required care. The appellate court disagreed; the board training and intervener to monitor the students' blood sugar levels and administer insulin injections, which only the LPN could perform.

Reason: By adding the licensure requirement for a practical nurse, the board provided students both their educational and medical needs allowing students to fully participate in daily activities and operate in the least restricted area.

Disposition: The Supreme Court of Appeals of West Virginia reversed the judgment. The court held the Randolph County Board of Education did not arbitrarily or capriciously in adding the qualification of Licensure as a practical nurse to an Aide II position pertaining to this case.

Citation: *Diana Bossie, Petitioner v. Boone County Board of Education and Gary Sumpter, Superintendent, Respondents*, 568 S.E.2d 1, 2002.

Key Facts: Diana Bossie filed a grievance alleging violations of W. Va. Code §§ 18A-4-7, 18-29-2(m) after not being hired for the assistant principal with the Boone County Board of Education. The board hired an assistant principal that only lasted 1 day before quitting the job. After this incident, the board reposted the position, and did not hire Ms. Bossie who was the only original applicant in the selection pool. The facts are indisputable, Ms. Bossie is employed as a teacher at Sherman High School. She holds the teaching certificate for Grades 7-12 and a Master's Degree in Educational Leadership for Grades 7-12. The Master's degree qualifies her to work as an administrator in the school system in West Virginia. Ms. Bossie was told during an interviewing process that she would be considered for the assistant principal's position if Mr. Wilson was chosen for the principal's job. The board chose Mr. Wilson to fill the vacant principal's position. Two applicants Ms. Bossie and Tom Bias a teacher at Scott High School applied for the job. After the first day missed, Bias returned to his former teacher job. On August 26, 1999, the board voted to rescind its hiring action and chose Mr. Cummings to fill the vacant assistant principal's position. September 15, 1999 Ms. Bossie filed a grievance alleging violations of W. Va. Code § 18A-4-7a and W.Va. Code § 18-29-2(m).

Issue: If more than one applicant met the qualifications, was the board legally bound to choose a successor from the original list of applicants?

Holdings: the state Supreme Court answered in the affirmative state Supreme Court held that the rescission of the contract abrogated and undid it from the beginning.

Reason: The fact that the hiring was rescinded within the statutory 30-day hiring period. The state Supreme Court found that the board should have hired the applicant the position.

Disposition: The State Supreme Court of West Virginia answered the question in the affirmative and rule that Bossie should have been given the job.

Citation: *Scott Sexton, Plaintiff, Appellant, v. Kipp Reach Academy Charter School, Inc., Defendant/Appellee*, 260 P.3d 435, 2011.

Key Facts: Scott Sexton brought action against Kipp reach Academy charter school in the wrongful termination and breach of contract. Plaintiff is a resident in Indiana and applied for a faculty position with the school located in Oklahoma City Oklahoma. Plaintiff said his professional references and interviewed twice in Oklahoma City and the school requested additional professional references. The school notified Sexton that he had been registered by the school for a national teachers conference in Florida Sexton alleges school sent him every classic this T-shirt size and the school conveyed a promise of employment. On July 13, the school sent him a letter of intent seeking his signature along with consideration in the form of salary requirements. Sexton started moving his home from Indianapolis Indiana Oklahoma City Oklahoma because he believed he had formed a contract for 1 year, which is customary in the teaching profession. On July 17, Sexton alleges the school rescinded its offer of employment upon learning of his sexual orientation.

Issue: Was there breach of contract formed before rescinding its offer of employment with Sexton and it is relief possible under the set of facts and allegations.

Holdings: The trial court enters a judgment wherein it found there is no contract of employment and order that action be dismissed with prejudice. The plaintiff appeals the determination.

Reason: The reviewing of the trial court's dismissal for failure to state a claim for which relief can be granted involves *de novo* consideration as to whether the petition is legally

sufficient. Plaintiff alleges the school issued him faculty only cell phone enrolled in a national teacher's conference he relied in good faith under this contract plaintiff's petition sets forth the existence of an implied contract (*Dixon v. Bhuiyan*, 2000 OK 56, 10 P.3d 888). Plaintiff alleges school breached the contract and because he lives monetary damages and transporting household goods and items, his petition is legally sufficient to state a claim for breach of implied contract.

Disposition: Judgment reversed and remanded for further proceedings.

Citation: *Susan Seraydar, Appellant, v. Three Village Central School District, Respondents*, 935 N.Y.S.2d 125, 2011.

Key Facts: On December 9, 2009, the Three Village Central School District required the petitioner to submit to a psychiatric examination pursuant to the Education Law § 913. A The petitioner appeals from (1) an order of the Supreme Court, Suffolk County (Sweeney, J.), dated April 1, 2010, which denied the petition, and (2) a judgment of the same court entered August 4, 2010, which upon the order is in favor of the respondents and again her dismissing the preceding.

Issue: Pursuant to Education Law § 913 "teachers in the state of generally required to submit to an examination to determine their physical and mental fitness to perform their duties."

Holdings: School districts have an interest in seeing that teachers fit and not unreasonable to require teachers to submit further testing with school authorities have reason to suspect that they are currently unfit for teaching duties.

Reason: there is ample evidence in the record of unprofessional behavior and questionable judgment exhibited by the petition provided the district with reason to suspect that petitioner may be unfit for her teaching duties.

Disposition: The petitioner's remaining contentions are without merit or do not need to be reached in light of the court's determination regarding this matter.

Citation: *Peter Kranz, Plaintiff, v. Vincent Gray, Defendant*, 842 F. Supp.2d 13, 2012.

Key Facts: Peter Kranz has sued the District of Columbia Mayor Vincent Gray, in his official capacity, under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e and the Age Discrimination Act, 29 U.S.C § 621. District of Columbia Schools employed Mr. Kranz as a science and math teacher. He has been employed as a substitute teacher since 2005. On August 30, 2001, Kranz filed a complaint of discrimination because he was not selected for full-time teaching position after submitting three applications to DCPS.

Issue: The plaintiff was not selected to move forward in the application process.

Holdings: DCPS placed significant emphasis on the essay sponsors on an applicant's commitment to teaching in DCPS. DCPS contends it had a legitimate, nondiscriminatory reason for not hiring Kranz: it did not select Kranz to proceed to the interview stage of the competitive selection process "because of his inadequate responses to the survey questions in his application for teaching positions at DCPS."

Reason: plaintiff has not carried his burden of establishing pretext and evidence that the defendants did not give him adequate opportunities for advancement.

Disposition: The motion for summary judgment granted in the United States District Court for the District of Columbia.

Citation: *Stephanie Bucalo, Plaintiff-Appellant v. Shelter Island Union Free School District, Defendant-Appellee*, 691 F.3d 119, 2012.

Key Facts: Stephanie Bucalo alleged that the Shelter Island Union Free School District discriminated against her based on age, under the Age Discrimination in Employment Act (ADEA). In July 1999, the Shelter Island Union Free School District had an opening for a school librarian. Bucalo, at that time 42 years old, applied for the position and was interviewed by

Superintendent Gilbert DeCicco. The successful position went to William Hallman a 35-year-old man. Bucalo filed a charge of age and discrimination against the district with EEOC, which granted her right-to-sue letter but she did not pursue the charge. In 2003, Hallman left the school librarian position and Bucalo, then 46 years old, reapplied for the position. Bucalo was one of 12 applicants for the position. In 2001, Kenneth Lanier replaced DeCicco. Lanier selected candidates for interviews; Bucalo was not one of them. The committee selected 32-year-old Christina Chrabolowski for the position.

Bucalo initiated the present EEOC charge and lawsuit. Bucalo alleged that the district discriminated against her based on her age. Due to his declining health, Mr. Lanier executed an affidavit stating why Bucalo was not selected for interview because of her numerous short-term positions indicating instability and lack of staying power rejecting her application in 1999. He praised Chrabolowski, noting her familiarity with various forms of technology her experience with both elementary and junior high school students, a positive evaluation from a proud supervisor, and her excellent performance in demonstration lesson hailed before the interviewing committee. Lanier died on August 7, 2005.

Issue: In Bucalo's case, there was no age discrimination, but rather, job performance issues and instability while employed by the district.

Holdings: The court held that plaintiff's prima facie case of age discrimination was disputed and no preponderance of the evidence.

Reason: The plaintiff was not entitled to judgment as being a matter of law and by virtue the decision maker's death, do not satisfy the second stage of McDonnell Douglas. The school district produced evidence to satisfy the second stage.

Disposition: The judgment of the district court affirmed in the United States Court of Appeals for the Second Circuit.

Citation: *William Merrell v. Chartiers Valley School District, Appellants*, 51 A.3d 286, 2012.

Key Facts: William Merrell, a U.S. Air Force veteran, sued Chartiers Valley School District alleging it violated § 7104 (a) (51 Pa.C.S. § 7104) of the Pennsylvania Veteran's Preference Act and not giving preference applied for a teaching position.

Section 7104(a) (51 Pa. C.S. § 7104(a)) of the Pennsylvania veterans preference act provides that when every any soldier possesses the requisite qualifications and is eligible to appointment to a promotion in the public position, where no civil service examination is required, the appointing power in making an appointment or promotion to a public position should give preference to such soldier. A "soldier" is defined as a person who served or hereafter serves in the own forces of the United States and who has an honorable discharge from such service (Section 7101 (51 Pa. C.S. § 7101) of the Act). It appears that Merrill was able to advance only to the level four of the five-step process. He was not among the final applicants to receive consideration for the social studies teacher position.

Issue: The school needed to establish a proper procedure in applying the Veterans Preference Act in the hiring process as prescribed by statutes.

Holdings: The court ordered the school district place Merrill in a teaching position and to make him whole for lost wages and benefits. School district determined Merrill was not entitled to veteran's preference because he was not qualified for the position. The district further argues Merrill failed to establish that its hiring process was flawed and antagonistic to the precepts of

the act. The school district also challenges the courts award damages to Merrell. After careful review of the record and relevant case law, the court affirms.

Reason: Merrill received a rating of three plus and the other three non-veterans received a rating of four and referred to the School Board. The School Board hired Matt DeBoer and approved Merrell for a substitute teacher position. In 1999, Merrell applied for three available social study positions and consistently received a three rating. He was again approved for a substitute teacher position.

Disposition: The judgment affirmed in Commonwealth Court of Pennsylvania.

Citation: *Beverly Bolyard, Appellant v. The Board of Education of Grant County, Appellee*, 589 S.E. 2d 523, 2003.

Key facts: Beverly Bolyard challenged the Supreme Court of Appeals of West Virginia in seeking a declaratory and injunctive relief along with a writ of mandamus after the school board refused to accept her resignation. Teacher contends the board acted arbitrarily and capriciously in preventing her from improving her professional career and economic conditions by refusing to release her from her current contract. Bolyard was a school guide counselor serving Dorcas Elementary School and Maysville Elementary School. After two interviews by Robert Sisk, Director of the Vocational School, Ms. Bolyard was notified on August 6, 2002, she would receive recommendation for School Guidance Counselor for the South Branch Vocational Center. W. Va. Code § 18A-2-2(c), (f) establishes certain timeframes during which a teacher must submit a resignation in order for it to become effective. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel.

Issue: The issue consists of the Board of Education of Grant County, West Virginia, will not accept the resignation of Bolyard from her position elementary school guidance counselor and the teacher did not have clear right to terminate her contract.

Holding: The court held, in pursuant to § 18A-2-2- (c), teacher did not have a clear right to terminate her employment contract because it was not submitted before first Monday in April 2002. The statute indicates the board did not have a legal duty to accept any resignation submitted after the specified date. The board stated in Spring of 2001, it adopted a policy establishing July 15 as the last date for school employees before the start of the next school year.

Reason: Pursuant, to writ of mandamus, will not issue unless three elements coexist: (1) a clear legal right in the petitioner to the relief sought, (1) a clear legal right in the petitioner to the relief sought, (2) a legal duty on the part of respondent to do the thing which the petitioner seeks to compel, and (3) the absence of another adequate remedy. Ms. Bolyard did not satisfy the temporal requirements of either § 18A- 2-2(c) or § 18A- 2-2 (f). Bolyard had no legal right to terminate her contract and the board did not have a legal duty to accept her resignation.

Disposition: The Supreme Court of Appeals of West Virginia in its final order affirmed the decision of the circuit court.

DISSENT BY: McGraw

McGraw, Justice, dissenting:

Bolyard was forced to by the Board to keep her job when she wished to leave seeking another for better pay and opportunities. These limitations placed on employees like Ms. Bolyard only offer a narrow window in which to change jobs. This type of practice is not far from the sort of “involuntary servitude” prohibited by our constitution. I believe the balance tips in favor of allowing more freedom of movement for school employees. Therefore, I must respectfully dissent.

Data Analysis

The purpose of this research study was to identify trends, issues, fact patterns, and outcomes in court cases alleging employment discrimination in the public schools. Subsequent to identifying trends, issues, fact patterns, and outcomes in these court cases, guiding principles for school administrators were identified. There were 115 decided court cases from a 30-year period, commencing with *Jones v. Birdsong* (1980) and culminating with *Kranz v. Gray, Mayor of the District of Columbia* (2012).

Information tables and charts are used to present data. The first series of data starts with a compilation of 115 cases listed in Table 1. Table 1 identifies the names of the decided court cases by name of case, official cite, type of case and date and serves as a master file for all 115 cases studied in this research.

Table 1

Court Cases Alleging Employment Discrimination in Public Schools

Name of Cases	Official Cite	Type of Case	Date
<i>Jones v. Birdsong</i>	530 F. Supp. 221	Employ. Discrimination Title VII	1980
<i>Price v. Denison Independent Sch. District</i>	694 F.2d 334	Desegregation/Racial Discrimination	1982
<i>Roek v. Bd. of Ed. of Chippewa Val. Sch. District</i>	329 N.W.2d 539	First Right of refusal By Sub-Teacher	1982
<i>Walter v. Independent School</i>	323 N.W.2d 37	Employer Re-instated /Dissents	1982
<i>Johnson v. Central Valley School District</i>	645 P.2d 1088	Indian Self Determination Act	1982
<i>Oliver v. Kalamazoo</i>	706 F.2d 757	Desegregation	1983
<i>Arthur v. Nyquist</i>	712 F.2d 816	Administration	1983
<i>Kromnick v. School Dist. Of Philadelphia</i>	555 F. Supp. 249	Quota System in Hiring	1983
<i>Rossi v. Bd. of Ed. of City Sch. District Utica</i>	465 N.Y.S.D.2d 630	K-6 Salary Structures Affirmed	1983
<i>Sherburne v. Sch. Bd. of Suwannee</i>	455 So.2d 1057	Lacked Good Moral Character	1984
<i>Morley v. Arricale</i>	104 A.D.2d 207	Removal of Principal/Reversed	1984
<i>Lujan v. Franklin County Bd. of Ed.</i>	766 F.2d 917	Racial Disc./Administration	1985
<i>Keyes v. School District</i>	609 F. Supp. 491	Desegregation	1985
<i>U.S. v. Yonkers Bd. of Ed</i>	624 F. Supp. 1276	Desegregation of Sch./Housing/Employment	1985
<i>Gilyard v. South Carolina, DYS</i>	667 F. Supp. 266	Prin. Discrimination/RIF	1985
<i>U.S. v. State of Texas</i>	628 F. Supp. 304	PPST Blacks-Hispanics Needed	1985
<i>McAndrew v. School Comm. Of Cambridge</i>	480 N.E.2d 327	Reversed For Plaintiff/\$ 3K Move	1985

(table continues)

Name of Cases	Official Cite	Type of Case	Date
<i>Congress Hispanic Education V. School District</i>	609 F. Supp. 1491	School Desegregation Case	1985
<i>Brewer v. Muscle Shoals Bd.</i>	790 F.2d 1515	Racial Disc./Administration	1986
<i>U.S. v. LULAC</i>	793 F.2d 636	Administration/Desegregation	1986
<i>Castaneda by Castaneda v. Pickard</i>	781 F.2d 456	Racial Disc./Mexican American	1986
<i>Thomas v. Board of Examiners, Chicago</i>	651 F. Supp. 664	Prin. Certification/Due Process	1986
<i>U.S. v. Bd. of Ed. City of Chicago</i>	642 F. Supp. 206	Discretionary Funds/ Billing. Program	1986
<i>U.S. v. Yonkers Bd. of Ed</i>	635 F. Supp. 1538	Desegregation of Schools	1986
<i>Mapp v. Bd. of Ed. City of Chattanooga</i>	648 F. Supp. 992	Desegregation to Balance Faculty/Staff	1986
<i>Berkley Federation of Teachers v. Berkley</i>	224 Cal. RPTR 44	Workload Condition /Temp. Not Probation	1986
<i>Bd. Ed Rockford Sch. Dist. v. Rockford Assn. 501 N.E.2d338</i>	501 N.E.2d 338	Labor Dispute Regarding Teacher	1986
<i>Zink v. Bd. of Education of Chrisman</i>	497 N.E.2d 835	Hm. Eco. Teacher/ Unqualified P.E. Instructor	1986
<i>Marion Teachers Assn. v. Grant County SPE</i>	500 N.E.2d 229	Invalid Teacher Co-Op Agreement	1986
<i>Poland v. Grand Ledge Pub. Sch. Bd. of Ed.</i>	402 N.W.2d 70	Affirmed Sch. Bd./No violation	1986
<i>Matter of Buys</i>	398 N.W.2d 622	Realignment of Teacher/Principal	1986
<i>Beste v. Independent School District</i>	398 N.W.2d 58	Bumping and Realigning Teachers	1986
<i>Dillon v. Bd. of Education Wyoming County</i>	351 S.E.2d 58	Improper Hiring/Mandamus	1986
<i>Bryant v. Lawrence County Schools</i>	799 F. 2d 1031	Violation of Desegregation Decree	1986
<i>Cleburne County. Bd. v. Payne</i>	511 So.2d 49	Appointment Rejected	1987
<i>Greene v. Sch. Bd. of Hamilton County.</i>	501 So.2d 50	Teacher/Administrative	1987
<i>Ginocchi v. Burrell School District</i>	522 A.2d 707	Prin. Demoted to Teacher Income less	1987
<i>Montgomery v. Starkville Municipal Sch.</i>	665 F. Supp. 487	Dual Education System/Staffing	1987
<i>Scoggins v. Bd. of Ed. Nashville, Ar.</i>	853 F.2d 1472	Racial Disc./Administration	1988
<i>Arthur v. Nyquist</i>	680 F. Supp. 536	One-For-One Hiring Modification	1988
<i>Branch v. Greene County Bd. of Ed.</i>	322 So.2d 248	Contract Breached/Reemploy	1988
<i>United Teachers of Ukiah v. Bd. of Ed.</i>	251 Cal. RPTR 499	Collective Bargain./Ed. Emp. Relation Act	1988
<i>Lindemuth v. Jefferson County. Sch. District</i>	765 P.2d. 1057	Coach Resigns/Charge Molestation	1988
<i>Ballard v. Bd. of Ed. of Rock Island Sch. District</i>	521 N.E.2d 153	Affirmed Teacher Unqualified	1988
<i>Mahony v. Bd. of Ed. Mahopac Central School District</i>	140 A.D.2d 33	Bd. Decision of Librarian on Sr.	1988
<i>State Ex Rel. Oser v. Haskins</i>	374 S.E.2d 184	Employ. Discrimination/Mandamus	1988
<i>State Ex Rel. Rose v. Raleigh County. Bd. of Ed</i>	367 S.E.2d 223	Employ. Discrimination/Mandamus	1988
<i>Marion County Bd. of Ed. v. Bonfantino</i>	566 S.E.2d 650	Improper Posting of Position	1988
<i>McClelland v. Paris Public Schools</i>	742 S.W.2d 907	Location/Residency Policy	1988
<i>Quales v. Oxford Municipal. Separate Sch.</i>	868 F.2d 750	Administration	1989
<i>Saquebo v. Roque</i>	716 F. Supp. 709	Pol. Disc./Rehiring Teacher	1989
<i>Purnell v. Covington County Bd. of Ed.</i>	554 So.2d 1038	Failed To Follow Hiring Policy	1989
<i>Johnson v. Cassell</i>	387 S.E.2d 553	Employ. Discrim./Mandamus	1989
<i>Bd. of Ed. of County of Harrison v. DeFazio</i>	378 S.E.2d 656	Improper Posting of Position	1989
<i>Sherpell v. Humnoke School District</i>	750 F. Supp. 971	Racial Disc./Teacher	1990
<i>Mt. Pleasant Cottage Sch. Union Sch. Dist.</i>	163 A.D.2d 715	Annulled Prin. Position By Comm.	1990

(table continues)

Name of Cases	Official Cite	Type of Case	Date
<i>Point Isabel Independent Sch. District v. Hinojosa</i>	797 S.W.2d 176	Notice to Public Insufficient	1990
<i>Staton v. Wyoming County Bd. of Education</i>	400 S.E.2d 613	Employ. Discrim./Mandamus	1990
<i>Tenney v. Bd. Ed. of County of Barbour</i>	398 S.E.2d 114	Employ. Discrim./Mandamus	1990
<i>Jantz v. Muci</i>	759 F. Supp. 1543	Homosexual Teacher/Quality Immunity	1991
<i>Floyd v. Cullman County. Bd. of Ed.</i>	575 So.2d 577	Dismissal Improper	1991
<i>Morgan v. Taylor School District</i>	466 N.E.2d 322	Court Ruled For Dist. 120 days Hiring	1991
<i>Egan v. Board of Education of Taylor County</i>	406 S.E.2d 733	Employ. Discrim./Mandamus	1991
Name of Cases	Official Cite	Type of Case	Date
<i>Pockl v. Ohio County Bd. of Education</i>	406 S.E.2d 687	Employ. Discrim./Mandamus	1991
<i>Mitchell v. Skinner</i>	603 So.2d 1023	Supt./Teacher Continued Service	1992
<i>Cal. Teachers Assn. v. Comm. Credentials</i>	10 Cal. RPTR 2d. 126	Emergency Credent./ Regular Teacher	1992
<i>Triggs v. Berkley County Bd. of Education</i>	425 S.E.2d 111	Denied Employment	1992
<i>Board of Ed. of County Wood v. Enoch</i>	414 S.E.2d 630	Denied Employment	1992
<i>Dennery v. Bd. of Ed. of Passaic County</i>	622 A.2d 858	Guidance Counselor/ Not Supervisor	1993
<i>Brickhouse v. Spring-Ford Area Sch. Dist.</i>	625 A.2d 711	Vet. Pref. Act Appealed/Reversed	1993
<i>Butcher v. Gilmer County Bd. of Education</i>	429 S.E.2d 903	Employment Discrimination Teacher	1993
<i>Mazurek v. Wolcott Bd. of Ed</i>	849 F. Supp. 154	Free Speech/Constitutional	1994
<i>Tuffli v. Governing Board</i>	36 Cal. RPTR 2d. 433	Sex Offense/Reinstate/Back Pay	1994
<i>Krupp v. Bd. of Ed. of Union County. H.S. Dist.</i>	650 A.2d 366	Ex-Teacher Hired Out of District	1994
<i>Nelkin v. Bd. of Ed. of City of New York</i>	205 A.D.2d 377	Medical Evaluation Sub-Cert. Revoked	1994
<i>Sherpell v. Humnoke School District</i>	619 F. Supp. 670	Desegregation	1995
<i>Midwest Ed. Assn. v. Illinois .Ed. Lab. Relation. Board</i>	660 N.E. 2d. 151	Invalid Arbitrator's Award	1995
<i>DiPiazza v. Bd. of Comsewogue Union Free</i>	214 A.D.2d 729	Three Retired Teachers Replaced By Subs	1995
<i>Brickhouse v. Spring-Ford Area Sch. Dist.</i>	656 A. 2d 483	Veteran's Preference Act-Teacher	1995
<i>Cahill v. Mercer County Bd. of Education</i>	465 S.E.2d 910	Re-evaluation Of applicant/Remanded Direction	1995
<i>Cowen v. Harrison County Bd. of Education</i>	465 S.E.2d 648	Improper Posting of Position	1995
<i>Mingo County Bd. of Education v. Surber</i>	465 S.E.2d 381	Reinstated Aide Position/Cook	1995
<i>Bolyard v. Kanawha County Bd. of Education</i>	459 S.E.2d 411	Denial of Grievance-Ind. Art Pos.	1995
<i>Hosford v. School Committee of Sandwich</i>	659 N.E.2d 1178	Speech Path. Untenured/Rehired	1996
<i>State Ex Bel Monk v. Knight</i>	499 S.E.2d 35	Two Applicants Selected-Affirmed	1997
<i>Kastel v. Winnetka Board of Education.</i>	975 F. Supp. 1072	Age Discrimination/Rehire	1997
<i>Calif. Teachers Assn. v. Gov. Bd. of Rialto Sch. Comm. Of Lowell v. Local 159 Service</i>	927 P. 2d. 1175	Teacher Qualifications/Credential	1997
<i>Katterhenrich v. Fed. Hoching Loc. Sch. Dist.</i>	679 N.E.2d 583	Custodian/Transfer/Appointed	1997
<i>700 N.E.2d 626</i>		Asst. Basketball Coach Not Hired	1997
<i>Keatley v. Mercer County Bd. of Education</i>	490 S.E.2d 306	Asst. Prin. Denied Position-Affirmed	1997
<i>Broderick v. Bd. of Ed. Roosevelt Union Sch</i>	253 A.D.2d 836	Plaintiff Challenged Supreme Court	1998
<i>Mingo County Bd. of Education v. Jones</i>	512 S.E.2d 597	Application Deadlines/Reposting	1998
<i>Karr v. Board of Ed. of Jackson County</i>	506 S.E.2d 355	Loss of income Due to Sub Hired	1998
<i>Ewing v. Bd. of Ed. of County Summers</i>	503 S.E.2d 541	Bd. Failed to Hire Grievant-Reversed	1998

(table continues)

Name of Cases	Official Cite	Type of Case	Date
<i>Rogers v. Avoyelles Parrish Schools Bd.</i>	736 So.2d 303	Non-Certified Teacher Hired	1999
<i>Basile v. Elizabeth Town Area School Bd.</i>	61 F. Supp. 392	Veteran's Preference Act Violation	1999
<i>Chicago Sch. Reform Bd. v. Beverly Martin</i>	723 N.E. 2d 731	School Code Contract Violation	1999
<i>Juniel v. Park Forest Chicago Heights</i>	176 F. Supp. 2d 842	School Desegregation Case	2001
<i>Bennett v. Roberts</i>	295 F. 3d 687	Racial Discrim./Title VII	2002
<i>Maxine Davis v. Richard P. Mills</i>	778 N.E. 2d 540	Psychologist Not Rehired	2002
<i>Bossie v. Boone County Board of Education</i>	568 S.E. 2d 1	Improper Posting of Position	2002
<i>Bolyard v. Board of Education Grant County</i>	589 S.E.2d 523	School Board Refused Resignation	2003
<i>Gikas v. Washington School District</i>	328 F.3d 731	Veteran's Preference Act Violation	2003
<i>Sch. Com. Newton v. Newton Sch. Custodian</i>	784 N.E.2d 598	Arbitrator Exceed Authority	2003
<i>Merrell v. Chartiers Valley School District</i>	855 A. 2d 713	Veteran's Preference Act Violation	2004
<i>Roberts v. Fayette County Board of Education</i>	173 S.W. 3d 918	Unsuitable Appointment	2005
<i>Randolph v. C. Scott and J. Chewning</i>	617 S.E. 2d 478	Sch. Bd. Hired LPN not Aide II	2005
<i>Chang and Johnson v. Glynn County District School</i>	457 F. Supp.2d 1378	Resident Alien/14th Amendment	2006
<i>Educational Testing Service v. Elba Hildebrant</i>	923 A. 2d 34	ETS Irregularly	2007
<i>Linda Garner v. Niskayuna Central District</i>	839 N.Y.S 2d 317	Unjustifiable Absence	2007
<i>Sexton v. Kipp Reach Academy</i>	260 P.3d 345	Wrongful Termination	2011
<i>Seraydar v. Three Village Central Sch. Dist.</i>	935 N.Y.S.2d 125	Refusal of Examination	2011
<i>Peter Kranz v. Vincent Gray Mayor of D.C.</i>	842 F. Supp. 2d 13	Age Discrimination/Title VII	2012
<i>Bucalo v. Shelter Isle Union Free Sch. Dist.</i>	691 F.3d. 119	Age Discrimination	2012
<i>Merrell v. Chartiers Valley School District</i>	51 A.3d 286	Veteran's Preference Act Violation	2012

During the course of this research, fact patterns emerging from the decided court cases were sorted and organized into five distinct categories: (1) employment discrimination cases, (2) desegregation cases, (3) administrative and procedural cases, (4) financial cases, and (5) education cases. The fact patterns revealed these five categories as the most prevalent throughout the research, and the categories define the issues that could be found within the cases for this research study.

Employment Discrimination

Employment discrimination cases were those where the plaintiff employee alleged that the employer discriminated improperly, or that disparate treatment had been demonstrated by the employer. Title VII of the Civil Rights Act of 1964 prohibits discrimination by covered employees on the basis of race, color, religion, sex or national origin (see 42 S.C. section 2000e-2). In *Jones v. Birdsong* (1980), the plaintiff, a Black former high school guidance counselor, was reassigned duties including teaching in a federally funded program. The employee rejected the contract because it was conditioned on the availability of Title I funds. She was not rehired and there was no reduction in force occurring within the system. Both Black and white employees were subject to the same Title I provisions. The court denied relief for Jones.

In *Johnson v. Central Valley School District No. 356* (1982), the teacher challenged the decision of the Superior Court for Spokane County (Washington). He was denied a teacher-counselor position under a federal grant pursuant to the Indian Education Act, 20 U.S.C.S. § 241aa-ff. The teacher-counselor alleged that denial of his appointment violated the Indian Self-Determination Act, 25 U.S.C.S. §§ 450-450m, and violated a state law against discrimination. The court reversed the judgment of the Superior Court in favor of the teacher-counselor under the Indian Self-Determination Act.

In *Brewer v. Muscle Shoals Board of Education* (1986), the appellee teacher, a Black man, applied for several administrative vacancies over a period of years before filing a grievance alleging racial discrimination. A settlement agreement was entered, but was eventually breached by the school district. The court found that there was intentional discrimination and the school board did not meet the burden to prove its side of the case, which would be to offer evidence of a non-discriminatory reason for its decision.

In *Rose v. Raleigh County Board of Education* (1988), a teacher named Rose sought a writ of mandamus to the county board of education for failure to post an available teaching position prior to assigning it to another teacher. A vacancy occurred in the ninth grade and the school principal assigned a seventh grade teacher to fill the position. There was a posting for the seventh grade position, but the ninth grade position was never posted. Rose had proper certification, a master's degree, and more seniority than the appointed teacher. The court reversed and remanded the judgment of the trial court and ordered the board to post the position. The court also ordered assessment for reasonable attorney's fees.

In the case of *Johnson v. Cassell* (1989), Johnson lived in one county and worked in a neighboring county. A writ of prohibition to prohibit school board officials from placing another applicant in a vacant position was filed. Johnson applied for a special education position, along with another applicant. Johnson was significantly more qualified than the other applicant, but the other applicant received the job. The court reversed the judgment, remanded the case in favor of the teacher, and awarded attorney's fees.

Staton v. The Wyoming County Board of Education (1990) involved a situation where an employee challenged the school board, after it had refused him a principal position for the high school. The applicant argued that he should have been awarded the principal position, based on a miscalculation in comparing his continuous years of service. The court noted that complaints had been received about the teacher regarding his ability to match disciplinary issues with proper consequences. The court affirmed the order of the trial court and the employee did not get the principal's job position.

In *Butcher v. Gilmer County Board of Education* (1993), an applicant applied for a teaching position and was unsuccessful. The applicant had the most education of all who applied

but did not have more classroom experience than the other applicants. The applicant sought relief after the decisions of the hearing examiner and the State Employment Grievance Board went against him. The hearing examiner found the board had not improperly relied on seniority as a basis for the decision. The court affirmed the board did not abuse its discretion in failing to hire the applicant. The court affirmed the circuit court's order, and relief was denied.

Juniel v. Park Forest-Chicago Heights School District 163 (2001) was a case where a plaintiff filed a complaint of employment discrimination because of his race, in violation of 42 U.S.C.S. §§ 1981 and 1983. The court held that the employee failed to make a *prima facie* case of discrimination. The plaintiff's past performance was questionable at the time of his discharge, and had several job duties that he failed to perform to his employer's satisfaction. Among those failures were that the employee had failed to develop a district-wide technology plan, had failed to spend 60% of his time with staff and students, and had failed to publish the school district's regular technology newsletter. The plaintiff employee did not present any evidence that would cause a reasonable fact-finder to question the honesty of the district's reason to terminate the employee.

In *Bennett v. Roberts* (2001), an applicant alleged that school board members had engaged in racially discriminatory hiring practices in violation of title VII, §§ 1981 and 1983, and the Fourteenth Amendment. The applicant contended that school members used an all-White screening committee thus preventing African American applicants from obtaining positions within the school district. The applicant had interviewed with three separate, all-White screening committees during the interview process, but she had expressed no concerns at that time. She contended that she was qualified for 19 positions while her name was in the school district's

database, but she provided no specific hiring criteria from the postings or job descriptions for the 19 vacancies. The court ruled in favor of school district.

In *Bucalo v. Shelter Island Union Free School District* (2012), the plaintiff alleged that the defendant school district discriminated against her based on her age, under the Age Discrimination in Employment Act (ADEA), 29 U.S.C.S §621 et seq., and retaliated against her, under the ADEA and Title VII of the Civil Rights Act of 1964, 42 U.S.C.S. § 2000e et seq. A jury ruled in favor of the district. On appeal, the court found that an element of the applicant's *prima face* case of age discrimination had been properly submitted to the jury to determine whether a preponderance of the evidence established her case. Unfortunately, the decision maker, the person who had decided to pass over the plaintiff, had died. There was no evidence to show that the decision maker knew or remembered the applicant's age at the time of his death to indicate he would have accepted or rejected her application. There would have been a significant discrepancy between the applicant and the actual hired employee. Because the elements of the applicant's *prima face* case for discrimination and retaliation were disputed, the applicant was not entitled to judgment. The applicant was unable to satisfy the second stage of *McDonnell-Douglas*; however, the school district satisfied its burden of production under the second stage. The judgment of the district court was affirmed.

Table 2 contains a summary of the 115 cases studied in this research. The information provided includes the name of the case, the outcome of the case, the category for the case, and the year in which the case occurred.

Table 2

Employment Discrimination in Public Schools Rulings and Type of Case

Name of Cases	Rulings/Decisions	Type of Case	Date
<i>Jones v. Birdsong</i>	Denied relief/no violation	Employ. Discrimination Title VII	1980
<i>Johnson v. Central Valley School District</i>	Reversed ruled for teach	Indian Self Determination Act	1982
<i>Price v. Denison Independent Sch. Dist.</i>	Affirm/Reversed/Rem and	Desegregation/Racial Discrimination	1982
<i>Roek v. Bd. of Ed. of Chippewa Valley .Sch. Dis.</i>	Affirmed for Roek	First Right of refusal By Sub-Teacher	1982
<i>Walter v. Independent School</i>	Reinstated/Walter	Employer Re-instated /Dissents	1982
<i>Arthur v. Nyquist</i>	Affirm/Reversed/Rem and	Administrative	1983
<i>Kromnick v. School Dist. Of Philadelphia</i>	Dist. enjoined/No quota	Quota System in Hiring	1983
<i>Oliver v. Kalamazoo</i>	Remanded/Dismissed	Desegregation	1983
<i>Rossi v. Bd. of Ed. of City Sch. Dist. Utica</i>	Ruled for petitioner	K-6 Salary Structures Affirmed	1983
<i>Morley v. Arricale</i>	Petition denied/Dismiss	Removal of Principal/Reversed	1984
<i>Sherburne v. Sch. Bd. of Suwannee</i>	Reversed/Remanded	Lacked Good Moral Character	1984
<i>Congress Hispanic Education V. School District</i>	Denied motion of unitary	School Desegregation Case	1985
<i>Gilyard v. Sought. Carolina, DYS</i>	Grant sum./No discrimination	Prin. Discrimination/RIF	1985
<i>Keyes v. School District</i>	Negotiations/Settlement	Desegregation	1985
<i>Lujan v. Franklin County Bd of Ed.</i>	Affirm for BOE	Racial Disc./Administration	1985
<i>McAndrew v. School Comm. Of Cambridge</i>	Ruled for teacher/Remand	Reversed For Plaintiff/\$ 3K Move	1985
<i>U.S. v. State of Texas</i>	Injunction granted/U.S.	PPST Blacks-Hispanics Needed	1985
<i>U.S. v. Yonkers Bd. of Ed</i>	City liable/Segreg. area	Desegregation of School/Housing/Employment	1985
<i>Bd. Ed Rockford Sch. Dis. v. Rockford Assn. 501 N.E.2d338</i>	Affirm Circuit Court Court Decision	Labor Dispute Regarding Teacher	1986
<i>Berkley Federation of Teachers v. Berkley</i>	Court reversed mandate	Workload Cond. /Temp. Not Probation	1986
<i>Beste v. Independent School District</i>	Affirm for Relators	Bumping and Realignment Teachers	1986
<i>Brewer v. Muscle Shoals Bd.</i>	Affirm for Plaintiff	Racial Disc./Administration	1986
<i>Bryant v. Lawrence County Schools</i>	Affirm/Reversed/Rem and	Violation of Desegregation Decree	1986
<i>Castaneda by Castaneda v. Pickard</i>	Affirm for school dist.	Racial Disc./Mexican American	1986
<i>Dillon v. Bd. of Education Wyoming County</i>	Denied writ/Remanded	Improper Hiring/Mandamus	1986
<i>Mapp v. Bd. of Ed. City of Chattanooga</i>	Grant Bd./Dismiss action	Desegregation. To Balance Faculty/Staff	1986
<i>Marion Teachers Assn. v. Grant County SPE</i>	Affirm Trial Court Decision	Invalid Teacher Co-Op Agreement	1986
<i>Matter of Buys</i>	Ruled for school District	Realignment of Teacher/Principal	1986

(table continues)

Name of Cases	Rulings/Decisions	Type of Case	Date
<i>Poland v. Grand Ledge Pub. Sch. Bd. of Ed.</i>	Affirm/Dismiss petition	Affirmed Sch. Bd./No violation	1986
<i>Thomas v. Board of Examiners, Chi</i>	Case Dismissed	Prin. Certification/Due Process	1986
<i>U.S. v. Bd. of Ed. City of Chicago</i>	Court grant BOE motion	Discretionary Funds/Billing Program	1986
<i>U.S. v. LULAC</i>	Reverse Dist. Court Order	Administration/Desegregation	1986
<i>U.S. v. Yonkers Bd. of Ed</i>	Modification of remedy	Desegregation of Schools	1986
<i>Zink v. Bd. of Education of Chrisman</i>	Affirm trial court decision	Hm. Eco. Teacher Unequal to P.E.	1986
<i>Cleburne County. Bd. v. Payne</i>	Affirm for BOE	Appointment Rejected	1987
<i>Ginocchi v. Burrell School District</i>	Affirm for school dist.	Prin. Demoted to Teacher Inc. less	1987
<i>Greene v. Sch. Bd. of Hamilton County.</i>	Reverse/Remanded	Teacher/Administrative	1987
<i>Montgomery v. Starkville Municipal Sch.</i>	Affirm dist./Revise program	Dual Education System/Staffing	1987
<i>Arthur v. Nyquist</i>	Modify/Provide relief	One-For-One Hiring Modification	1988
<i>Ballard v. Bd. of Ed. of Rock Island School District</i>	Affirm trial court decision	Affirmed Teacher Unqualified	1988
<i>Branch v. Greene County. Bd. of Ed.</i>	Affirm/No reversible	Contract Breached/Reemploy	1988
<i>Lindemuth v. Jefferson County. Sch. District</i>	Judgment/Dismiss/Affirm	Coach Resigns/Charge Molestation	1988
<i>Mahony v. Bd. of Ed. Mahopac Central Sch. District</i>	Dismissed Petition	Bd. Decision of Librarian on Sr.	1988
<i>Marion County Bd. of Ed. v. Bonfantino</i>	Reversed/Remanded	Improper Posting of Position	1988
<i>McClelland v. Paris Public Schools</i>	Affirm for BOE	Location/Residency Policy	1988
<i>Scoggins v. Bd. of Ed. Nashville, AR</i>	Affirm for BOE	Racial Disc./Administration	1988
<i>State ex rel. Oser v. Haskins, Marshall County</i>	Reverse/Remanded/Fees	Employ. Discrim. Mandamus	1988
<i>State ex rel. Rose v. Raleigh County Board of Education</i>	Reverse/Remand	Employ. Discrim./Mandamus	1988
<i>United Teachers of Ukiah v. Bd. of Ed.</i>	Affirm trial court decision	Collect Barge./Ed. Emp. Relation Act	1988
<i>Bd. of Ed. of County of Harrison v. DeFazio</i>	Reverse/Remand/Fees	Improper Posting of Position	1989
<i>Johnson v. Cassell</i>	Ci .Ct. Reverse/Remand	Employ. Discrim./ Mandamus	1989
<i>Purnell v. Covington County. Bd. of Ed.</i>	Affirm for BOE	Failed To Follow Hiring Policy	1989
<i>Quales v. Oxford Mun. Separate Sch.</i>	Affirm for BOE	Administration	1989
<i>Saquebo v. Roque</i>	Sum. grant/Dismiss com	Pol. Disc./Rehiring Teacher	1989
<i>Mt. Pleasant Cottage Sch. Union Sch. Dist.</i>	Affirm trial court decision	Annulled Prin. Position By Comm.	1990
<i>Point Isabel Independent Sch. District Hinojosa</i>	Court Reversed/Rendered	Notice to Public Insufficient	1990
<i>Sherpell v. Humnoke School District</i>	Complaint dismissed	Racial Disc./Teacher	1990
<i>Staton v. Wyoming County Bd. of Education</i>	Affirm trial court decision	Employ. Discrim. Mandamus	1990
<i>Tenney v. Bd. Ed. of County of Barbour</i>	Denied writ Mandamus	Employ. Discrim. Mandamus	1990
<i>Egan v. Board of Education of Taylor County</i>	Rev/Remand/Issue Mandamus	Employ. Discrim. Mandamus	1991
<i>Floyd v. Cullman Cty. Bd. of Ed.</i>	Reversed/Remanded	Dismissal Improper	1991
<i>Jantz v. Muci</i>	Grant part/Denied part	Homosexual Teacher/Qu. Immunity	1991

(table continues)

Name of Cases	Rulings/Decisions	Type of Case	Date
<i>Morgan v. Taylor School District</i>	Ruled for school district	Court Ruled For Dist. 120 days Hiring	1991
<i>Pockl v. Ohio County Bd. of Education</i>	Affirm trial court decision	Employment Discrim./Mandamus	1991
<i>Board of Ed. of County Wood v. Enoch</i>	Ruled for trial court	Denied Employment	1992
<i>Cal. Teachers Assn. v. Comm. Credentials</i>	Affirm trial court decision	Emergency Credential/ Regular Teacher	1992
<i>Mitchell v. Skinner</i>	Affirm/No service conti	Supt./Teacher Continued Service	1992
<i>Triggs v. Berkley County Bd. of Education</i>	Affirm Cir. Court decision	Denied Employment	1992
<i>Brickhouse v. Spring-Ford Area Sch. Dist.</i>	Reverse/Back pay/Bene	Vet. Pref. Act Appealed/Reversed	1993
<i>Butcher v. Gilmer County Bd. of Education</i>	Supr. Crt. Affirm for BOE	Employment Discrim. Teacher	1993
<i>Denney v. Bd. of Ed. of Passaic County</i>	Reverse on dual certif.	Guidance Counselor Not Suprv	1993
<i>Krupp v. Bd. of Ed. of Union Cty. H.S. Dist.</i>	Reversed/State BOE	Ex-Teacher Hired Out of District	1994
<i>Mazurek v. Wolcott Bd. of Ed</i>	Court denied school Bd.	Free Speech/Constitutional	1994
<i>Nelkin v. Bd. of Ed of City of New York</i>	Court order med. Exam	Med. Eval. Sub-Cert. Revoked	1994
<i>Tuffli v. Governing Board</i>	Reverse/Dismiss charge	Sex Offense/Reinstate/Back Pay	1994
<i>Bolyard v. Kanawha County Bd. of Education</i>	Affirm for BOE	Denial of Grievance-Ind. Art Pos.	1995
<i>Brickhouse v. Spring-Ford Area Sch. Dist.</i>	Reverse/Need qualifications	Veteran's Preference Act-Teacher	1995
<i>Cahill v. Mercer County Bd. of Education</i>	Reverse/Remand/Direction	Re-eval. of application/ Remand Direction	1995
<i>Cowen v. Harrison County Bd. of Education</i>	Reverse/Affirm/Remand	Improper Posting of Position	1995
<i>DiPiazza v. Bd. of Comsewogue Union Free</i>	Reverse/Petition dismiss	Three Retired Teachers Rpl By Subs	1995
<i>Midwest Ed. Assn. v. Illinois Ed. Lab. Rela. Bd.</i>	Affirm Bd. Decision	Invalid Arbitrator's Award	1995
<i>Mingo County Bd. of Education v. Jones v. Surber</i>	Reverse by Circuit Crt.	Reinstated Aide Position/Cook	1995
<i>Sherpell v. Humnoke School Dist</i>	Affirm for school dist.	Desegregation	1995
<i>Hosford v. School Committee of Sandwich</i>	Reverse for Plaintiff	Speech Path. Untenured/Rehired	1996
<i>State Ex Bel Monk v. Knight</i>	Affirm tri.crt/Remand	Two Applicants Selected-Affirmed	1997
<i>Calif. Teachers Assn. v. Gov. Bd. of Rialto</i>	Court vacated/Remand	Teacher Qualifications/Credential	1997
<i>Kastel v. Winnetka Board of Ed.</i>	Grant part/Denied part	Age Discrimination/Rehire	1997
<i>Katterhenrich v. Federal Hoching Loc. Sch. Dist.</i>	Affirm school district	Asst. Basketball Coach Not Hired	1997
<i>Keatley v. Mercer County Bd. of Education</i>	Affirm for BOE	Asst. Prin. Denied Position-Affirmed	1997
<i>Sch. Comm. Of Lowell v. Local 159 Service</i>	Arbitrator usurp authority	Custodian/Transfer/Appointed	1997
<i>Broderick v. Bd. of Ed. Roosevelt Union Sch</i>	Reverse motion	Plaintiff Challenged Supreme Crt.	1998
<i>Ewing v. Bd. of Ed. of County Summers</i>	Rev./Vacate Mandamus	Bd. Failed to Hire Grievant-Reversed	1998

(table continues)

Name of Cases	Rulings/Decisions	Type of Case	Date
<i>Karr v. Board of Ed. of Jackson County</i>	Reverse for Karr	Loss of income Due to Sub Hired	1998
<i>Mingo County Bd. of Education v. Jones</i>	Affirm for Jones	Application Deadlines/Reposting	1998
<i>Basile v. Elizabeth Town Area School Bd.</i>	Ruled for BOE	Veteran's Preference Act Violation	1999
<i>Chicago Sch. Reform Bd. v. Beverly Martin</i>	Ruled for BOE	School Code Contract Violation	1999
<i>Rogers v. Avoyelles Parrish Schools Bd.</i>	Rev./Dismiss complaint	Non-Certified Teacher Hired	1999
<i>Juniel v. Park Forest Chicago Heights</i>	Ruled for school district	School Desegregation Case	2001
<i>Bennett v. Roberts</i>	Affirm/Fail to prove dis	Racial Discrim./Title VII	2002
<i>Bossie v. Boone County Board of Education</i>	Affirm for Bossie	Improper Posting of Position	2002
<i>Maxine Davis v. Richard P. Mills</i>	Dismissed Petition	Psychologist Not Rehired	2002
<i>Bolyard v. Board of Education Grant County</i>	Affirm for BOE	School Board Refused Resignation	2003
<i>Gikas v. Washington School District</i>	Dismissed claims of Gikas	Veteran's Preference Act Violation	2003
<i>Sch. Com. Newton v. Newton Sch. Custodian</i>	Vacate/Remand/usurp	Arbitrator Exceed Authority	2003
<i>Merrell v. Chartiers Valley School District</i>	Affirm for school dist.	Veteran's Preference Act Violation	2004
<i>Randolph v. C. Scott and J. Chewning</i>	Reverse Grievance Bd.	Sch. Bd. Hired LPN not Aide II	2005
<i>Roberts v. Fayette County Board of Education</i>	Affirm for BOE	Unsuitable Appointment	2005
<i>Chang and Johnson v. Glynn County District</i>	Injunction appropriate	Resident Alien/14th Amendment	2006
<i>Educational Testing Service v. Hildebrant</i>	Appeal/Reverse/Remand	Breach of Contract	2007
<i>Linda Garner v. Niskayuna Central District</i>	Dismissed Petition	Unjustifiable Absence	2007
<i>Seraydar v. Three Village Central Sch. Dist.</i>	Dismiss without merit	Refusal of Examination	2011
<i>Sexton v. Kipp Reach Academy</i>	Judgment/reverse/Remand	Wrongful Termination	2011
<i>Bucalo v. Shelter Isle Union Free Sch. Dist.</i>	Affirm for school dist.	Age Discrimination	2012
<i>Merrell v. Chartiers Valley School District</i>	Affirm for school dist.	Veteran's Preference Act Violation	2012
<i>Peter Kranz v. Vincent Gray Mayor of D.C.</i>	Affirm for DCPS	Age Discrimination/Title VII	2012

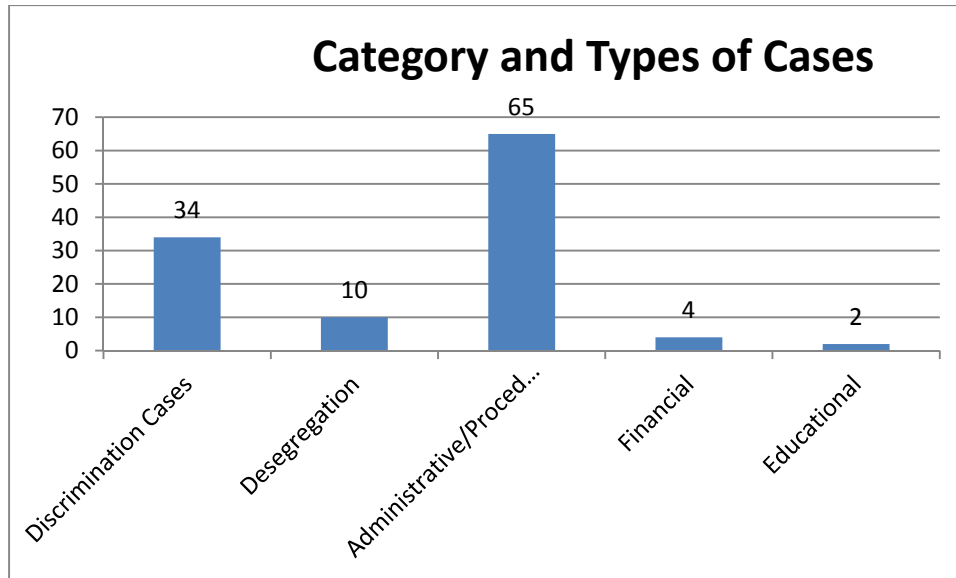


Figure 1. Categories and types of cases.

Table 3 contains a description of the cases in the sample that were identified as being in the category of Employment Discrimination cases. The information includes the outcome of the case. Table 4 contains a frequency distribution of the outcome of the employment discrimination cases.

Table 3

Outcome of Employment Discrimination Cases

Case	Decision
<i>Verdia Jones, v. Robert Birdsong</i> , 530 F. Supp. 221, 1980	Denied
<i>William S. Johnson v. Central Valley School District No. 356</i> , 645 P.2d 1088, 1982	Reversed for Teacher
<i>Samuel Brewer v. Muscle Shoals BOE</i> , 790 F.2d 1515, 1986	Ruled for Plaintiff
<i>Larry Rose v. Raleigh County BOE</i> , 367 S.E.2d 223, 1988	Reversed and Remanded
<i>Robert Johnson v. Grey M. Cassell</i> , 387 S.E.2d 553, 1989	Reversed and Remanded
<i>William Robert Staton v. Wyoming County BOE</i> , 400 S.E.2d 613, 1990	Denied
<i>Nasia Butcher, v. Gilmer County BOE</i> , 429 S.E.2d 903	Denied
<i>Leonard Juniel, Sr. v. Park Forest-Chicago Heights School District 163</i> , 176 F. Supp. 2d 842, 2001	Denied
<i>Valerie Bennett v. Mary Roberts et al.</i> , 295 F.3d 687, 2002	Denied
<i>Stephanie Bucalo v. Shelter Island Union Free School District</i> , 691 F.3d 119, 2012	Denied

Table 4

Summary of Outcome of Employment Discrimination Cases

Summary of Cases	Number of Cases
Denied Cases	6
Reversed and Remanded Cases	3
Ruled for Plaintiff	1
Total of Cases	10

Table 5 identifies the cases in the sample where a writ of mandamus was sought. The following 10 cases of employment discrimination illustrate a variety of dispositions indicating the individualistic characteristic and complexity associated with each outcome. These randomly selected cases illustrate a cross section of cases contained in the research ranging from 1980 through 2012.

Table 5

Employment Discrimination Cases Containing Mandamus

Date	Case	Decision	Type of Case
1986	<i>Dillon v. BOE Wyoming County</i>	Denied Writ/Remanded	Improper Hiring Practices
1988	<i>State ex rel. Oser v. Haskins, Marshall County</i>	Reversed/Remanded Atty. Fees/Issues Write	Employment Discrimination
1988	<i>State ex rel. Rose v. Raleigh County BOE</i>	Reversed Judgment Remanded/Issued Writ	Employment Discrimination
1989	<i>Johnson v. Cassell</i>	Circuit Court Reversed/Remanded/Denied Writ	Employment Discrimination
1990	<i>Staton v. Wyoming County Board of Education</i>	Affirmed Trial Court Denied Writ	Employment Discrimination
1990	<i>Tenney v. BOE of Barbour</i>	Denied Writ	Employment Discrimination
1991	<i>Egan v. BOE of Taylor County</i>	Reversed/Remanded Issued Writ	Employment Discrimination
1991	<i>Pockl v. Ohio County Board of Education</i>	Affirmed Trial Court	Employment Discrimination
1998	<i>Ewing v. BOE of Summers County</i>	Vacated in Part/Reversed in Part/Dismissed Mandamus	Bd. Failed to Hire Teacher

Note. The employment discrimination cases contained in Table 3 originated in the state of West Virginia and included administrative/procedural violations presented in each case.

As indicated earlier, mandamus, or “we command,” is the name of the writ which is issued from a court commanding some action. Mandamus is a writ issued from a court of competent jurisdiction, commanding an inferior tribunal, board, corporation or person to perform a purely ministerial duty imposed by law (Black, 1995).

Desegregation Cases

Desegregation cases involved challenges to plans under existing court orders which were allegedly not in compliance with the court order, as directed by the jurisdiction of the court. Other issues such as employment discrimination and administrative violations may overlap with desegregation cases, requiring a determination of whether the primary issue is the primacy of the order. Desegregation cases may extend over several years or decades. Table 6 describes the desegregation cases identified in this research.

Table 6

Desegregation Cases 1980 through 2012

Year	Case	Disposition
1982	<i>Price v. Denison Independent Sch. Dist.</i>	Affirmed in part/Reversed in part/remanded in part
1983	<i>Oliver v. Kalamazoo</i>	Remanded for dismissal
1985	<i>Congress Hispanic Edu. v. School Dist.</i>	Motion denied on unitary status
1985	<i>Keyes v. School District</i>	Discussed negotiations and settlement
1985	<i>U.S. v. Yonkers Bd. of Education</i>	City liable for impermissible segregation
1986	<i>Bryant v. Lawrence county</i>	Affirmed in part/Reversed in part/remanded in part
1986	<i>Mapp v. Bd. of Ed. City of Chatt. Tn.</i>	Granted in favor of Board and dismissed other actions
1986	<i>U.S. v. Yonkers Bd. of Education</i>	Modification of remedy
1995	<i>Sherpell v. Humnoke School District</i>	Affirmed School District

Note. No desegregation cases reported during the 2000 through 2012-time period.

One trend that became apparent as the years passed, the number of desegregation cases diminished. The decline in number of cases by decade may have been evidence of the school districts compliance with court ordered mandates over time.

Keyes v. Congress of Hispanics Educators (1985) involved a continuing school desegregation case presented by a plaintiff intervener by order of the court. There were three principle factors pertaining to this case. First, the school district wanted the court to declare that the school district had a unitary school system. Second, school districted wanted the court to dissolve a permanent injunction issued by the lower court as it related to the assignment of students to specific schools in the district. Finally, the school district wanted the court to declare the remedy previously ordered in the case fully implemented and the constitutional violations remedied.

The school board's position was once the school district met all the constitutionally-accepted court order remedies designed to desegregate the system, it was entitled to a declaration of unitary status, unless there had been intervening acts of discrimination. The court found that the school board may have had good intentions but had not complied with the full order of the law. The board fully did not understand all of the ramifications involved in desegregating the district. People lived where they chose, thus creating segregated neighborhoods and the re-segregation of schools, and prevented the court from declaring unitary status for the school district. The court denied the school board's motion to declare the school district unitary.

In *Bryant v. Lawrence County School District* (1986), the federal government filed a motion to enforce an order issued by the court in 1969 regarding the desegregation of schools in the Southern District of Mississippi. The class of Black students and their parents sought an injunction against certain practices of the school district, alleged to be contrary to the goals of the

1969 court order. The district court had decided that the construction plans did not violate any constitutional requirements and a new student assignment plan was not required. The district court had also ruled that the busing system was not racially segregated.

Upon appeal, the court affirmed in part and reversed in part. The court held that there had been no previous judicial determination that the school district had fully comply with the desegregation order. The court held that the schools were still racially identifiable and remanded for proper reassignment of teachers and redesign of bus routes. The court further ordered the district court to implement changes in the school attendance zones. The court found that the school district had failed to desegregate and remanded for reassignment of teachers, students and redesign of bus routes in order to establish a racial balance.

In the Matter of *Michelle Oliver, Plaintiffs-Appellees v. Kalamazoo Education Association, Defendants-Appellant* (1983), the plaintiff contended that after 9 years, an injunction imposing a quota for Black teachers and, concomitantly, White teachers in order to prevent the layoff of a disproportionate number of Black teachers, was ineffective.

In 1971, the district held that students in the Kalamazoo school system was more intensely segregated based on race, in violation of the equal protection clause of the 14th Amendment and issued a preliminary injunction effectively desegregating the students. The citizens' committee recommendations were divided into three phases. Phase One, to be implemented between September 1969 and September 1970, involved the recruitment and hiring of Black supervisors, administrators, teachers, and counselors in order to eventually obtain a staff that was 20% Black. It is unclear how the citizens committee arrived at the 20% figure, although 20% appears to have been the approximate percentage of Black students in the school system at the time. Phase Two of the plan involved educating the public and school personnel about the

necessity of desegregation. Phase three of the plan required the Kalamazoo Board of Education to adopt the plan, including achieving the 20% figure by May 7, 1971.

The relief granted by the district court on September 30, 1980, did not totally conform to the position of any of the parties, though it closely approximated that suggested by the NAACP. The threshold issue in this case was whether the district court had the power to address the merits of the relief requested by the school board and the NAACP. The District Court held that a teaching staff that was 20% Black was now required to remedy the previously-determined constitutional violations in the Kalamazoo school system. The district court further held that, to make sufficient progress towards achieving this requirement, the seniority rights of white teachers could and should be overridden. Fundamental issues were raised by the ruling as to proper scope of the district court's remedial powers in a school desegregation case. The district court's ruling had two distinct aspects both of which need to be considered.

The district court's nullification of the seniority and tenure rights of white teachers was proper when it is "necessary" to vindicate the constitutional rights. Plaintiffs failed to demonstrate the necessity of the proposed remedy, or that the proposed remedy would have any effect at all on the constitutional rights of students. The appeals court held that the district court had erred in imposing a quota system for the hiring and composition of the teacher staff for the school system. Nullification of the seniority and tenure rights of our teachers was also an error. The district court's orders were vacated and the case was remanded for dismissal of the school district's motion to override the seniority position in the collective bargaining contract and the Michigan Tenure Statute.

In the Matter of *United States of America, Plaintiff and Yonkers Branch, NAACP, et al. v. Yonkers Board of Education, City of Yonkers and Yonkers Community Development Agency*

(1986) the court held that actions taken by the City of Yonkers and the Board of Education, with respect to the housing and public schools, were in whole or in part intentional in producing segregation. On December 18, 1985, court established a schedule for the action's remedy phase. The Yonkers Board of Education and the City of Yonkers were directed to submit remedy proposals on or before February 17, 1986.

On February 17, 1986, the Yonkers Board of Education submitted to the court and the parties its proposed remedial plan, entitled "Educational Improvement Plan for the Yonkers Public School System." The federal government and the NAACP filed their responses to the board's remedial proposal by March 12, 1986. On April 2, 1986, the board filed modifications to this original remedial proposal, entitled "Modifications to the Educational Improvement Plan" submitted on February 17, 1986, to which the United States and the NAACP filed responses by April 7, 1986.

The court conducted a hearing on April 8, 1986, through April 15, 1986, receiving testimony and documentary evidence to assist in fashioning an appropriate remedy for the unlawful condition of segregation found to exist in the Yonkers Public Schools. During the board's implementation of the plan, the court retained jurisdiction. The court allowed the plaintiffs to file a motion at any time to request enforcement or modification of the order, indicating a willingness to maintain continuous jurisdiction over the case, using a "totality of the circumstances" standard in ordering any further remedies.

In the Matter of *James Mapp v. Board of Education of the City of Chattanooga, Tennessee* (1986), the school district's desegregation case commenced in 1960, and had been pending since that date. The board was ordered to desegregate faculty and staff in accordance with a previously-approved plan, and the board submitted a report showing its progress. The

board filed a motion to dismiss the case. Plaintiffs objected to the motion citing that the board was required to show that the need for the remedy of the present desegregation plan did still exist. The court granted the motion. The court found the board had succeeded in desegregating the faculty and staff to each school in approximately the same ratio as Black and white faculty and staff in the total system.

Table 7 provides a listing of Desegregation cases occurring in this research study and their outcomes, and Table 8 provides a frequency distribution of the outcomes.

Table 7

Outcome of Desegregation Cases

Case	Decision
<i>Wilfred Keyes, et al. Congress of Hispanic Educators v. School District No. 1</i> , 609 F. Supp. 1491, 1985	Denied
<i>United States of America, Sheanda Bryant, et al., v. Lawrence County School District, et al.</i> , 799 F.2d 1031,1986	Reversed and Remanded
<i>Michelle Oliver, et al. v. Kalamazoo Education Association</i> , 706 F.2d 757,1983	Vacated and Remanded for Dismissal
<i>United States of America, and Yonkers Branch, NAACP, et al. v. Yonkers BOE and Yonkers Community Development Agency</i> , 635 F. Supp. 1538, 1986	Modification to Remedy
<i>James Mapp, et al. v. BOE City of Chattanooga, Tn. et al.</i> , 648 F. Supp. 992,1986	Court Granted Board's Motion and Dismissed Case

Table 8

Summary of Outcome of Desegregation Cases

Summary of Cases	Number of Cases
Denied Cases	1
Reversed and Remanded Cases	1
Vacated and remanded	1
Modification to Remedy	1
Dismissed	1
Total of Cases	5

The five desegregation cases yield five different dispositions, indicating a variety of complex issues that must be decided on a case-by-case basis. In many instances, desegregation cases went pending for several years in order to satisfy the orders of the court.

Administrative and Procedural

The research showed administrative and procedural violations occurred, due to misunderstanding of the law, misinterpretation of the law, or mishandling of specific rules and regulations outlined in Title VII, along with other related guidelines and laws.

In the matter of *Board of Education of the County of Harrison v. Alice DeFazio* (1989), the teacher wished to apply for a kindergarten position at one of the reassigned schools, but could not apply because the position was not posted. The board did not post a notice of vacancies and had assigned several teachers from closed schools to the reassigned schools. The circuit court ruled the additional positions were transferred from closed schools and could not be considered openings and established, existing, or newly created positions.

The record indicated that all the positions in the closed schools were terminated and all professional employees were placed upon the transfer list. Certain teachers from the closed schools received notice that they were “transferred and assigned” to teaching positions at the reassigned schools. The court found that the board’s desire to make the transitions easier and provide stability for students did not warrant replacing the strong public policy of securing the most qualified persons for the position.

Point Isabel Independent School District v. Rafael Hinojosa (1990) involved a situation where an applicant was rejected when for the position of principal and sued the school district, seeking a declaratory judgment that would require reversing all the hiring decisions that had been

made at a particular school board meeting. Appellee raises questions regarding the notice for school board meeting was inadequate. The trial court voided the employment of all individuals in that meeting, because the notice of the meeting was not sufficiently specific under the Open Meetings Act, Tex. Rev. Civ. Stat. Ann. Art. A17, § 3A (a). That section requires highly-specific notice of subject matter to be addressed at meetings in which important governmental actions are to be taken because of high degree of public interest in such actions. The school board did not provide full notice of the subject matter.

In *Joyce Triggs v. Berkeley County Board of Education* (1992), the teacher was a full-time employee from 1960 to 1971, when she resigned. The teacher later reapplied between 1987 and 1989 for many posted vacancies and received none. The teacher filed a grievance and the superintendent designee found that the teacher was entitled to a full-time position. The reviewing court affirmed that the legislature did not intend for seniority rights to be retained by a teacher who voluntarily resigns or retired, and that a teacher cannot acquire any seniority based on her substitute teaching. Finally, the teacher failed to show that she was the best qualified applicant for a particular position or that the board willfully discriminated against her. The court affirmed the circuit court's decision that the teacher was not entitled to full-time employment.

In *G. Gordon Brickhouse v. Spring-Ford Area School District* (1995), Brickhouse was denied a teaching position with the school district and challenged the decision of the Commonwealth Court of Pennsylvania. The court determined that simply being a veteran was not enough under the Veterans' Preference Act, 51 Pa. Cons. Stat. § 5104, and that to some degree, the applicant must also be qualified for the desired position. The court found that a veteran seeking to take advantage of the preference mandated by the act had to be able to demonstrate his ability to perform at the job level of skill and with the expertise demanded by the

appellant, because such a demonstration established that he would be able to perform the job duties properly. The court determined that the school district had the right to set hiring requirements at reasonable levels to satisfy job duties. The judgment of the appellee court was reversed. The veteran had to be qualified to perform the job at the level of expertise demanded by the school district.

In *Frances DiPiazza et al. v. Board of Education of the Comsewogue Union Free School District* (1995), three teachers retired and the board reassigned teaching duties to existing elementary school teachers. The teachers union initiated an arbitration proceeding, in which it was determined that the reassignment of duties violated the collective bargaining agreement between the union and the school board. The board failed to notify the union and failed to negotiate the change in policy. During the interim, the board hired substitute teachers to perform the teaching duties while it negotiated with the union. The teachers sued, contending that the board's action in hiring substitute teachers was arbitrary and capricious. The trial court dismissed the teacher's petition. On appeal, the court reversed. The court held that the board could not purport to exercise that power and convert a permanent vacancy into a substitute position by virtue of its own breach of contractual obligation. The court reversed the judgment of the trial court, denied the school board's motion to dismiss the petition, and remitted the matter to the trial court for further proceedings.

In *Mingo County Board of Education, Jada Hunter Appellees v. Frank Jones, Appellant* (1998), the appellant submitted an application for position of high school principal and was the only applicant for the position. The Board of Education reposted the vacancy, leaving it open in hope of obtaining additional applicants. Another person, Jada Hunter, was later hired as

principal. The appellant filed a grievance and it was granted. The school district was ordered to place appellant in the position as principal.

On appeal, the court found that the school district could only consider those candidates who had applied by the initial deadline date. The court ordered the school district to place the first applicant in the position of principal and to compensate for any lost wages and benefits. The court held that once the school district had established a deadline for applications, it was bound to adhere to that deadline and hire the single qualified applicant who had filed during the application period.

In *School Committee of Newton v. Newton School Custodians Association* (2003), an arbitrator determined that the school committee had violated the collective bargaining agreement. Under the collective bargaining agreement (CAB), the agreement entered into by the union and the committee, seniority prevailed in hiring when other qualifications were equal among candidates. The arbitrator ordered the principal to offer the position of cafeteria manager to an unsuccessful candidate. The arbitrator ruled that the principal failed to apply hiring criteria set out in the CAB when she hired a rival as cafeteria manager. The intrusion on the principal's hiring discretion was minimal and was within the committee's authority, under Mass. Gen. Laws Ch. 71, § 59B, over personnel policies. The arbitrator exceeded his authority in ordering the principal and the school committee to hire the grievant as cafeteria manager, as in doing so he substituted his discretion to that of the school principal in contravention of § 59B. The Superior Court's order was vacated.

In the matter of *Educational Testing Service v. Elba Hildebrant* (2007), the plaintiff filed action against the defendant testing service, alleging breach of contract and other causes of action. The testing service administered a teacher certification exam, and during the exam, the

plaintiff allegedly was involved with some misconduct. The plaintiff signed a bulletin prior to taking the exam, which detailed the testing service's rules and regulations. The testing service cancelled plaintiff's score, based upon a report of impropriety made by the test proctor. The state supreme court held that the plaintiff's claim was not sufficient to overcome the testing services' summary judgment motion, because in the terms of the contract, the service had a right to rely on the report of its agent, the proctor.

In the matter of *William Merrell v. Chartiers Valley School District* (2012), a U. S. Air Force veteran sued the school district, alleging that it had violated §7104 (a) (51) Pa. C.S. § 7104(a)) of the Pennsylvania Veteran's Preference Act, by failing to give him veteran's preference when he applied for a teaching position. The trial court held that applicant was qualified for the teaching position for which he applied, that the district failed to give him the veteran's preference mandated by the act, and that the hiring process was antagonistic to the act. The district argued on appeal that the applicant was not qualified because other the applicants rated higher. The district would have been able to hire him, as the only veteran among the final three applicants, had he reached the final step in the hiring process. The trial court did not abuse its discretion in computing his back pay under a year-by-year rather than a quarterly basis. The trial court properly calculated the salary that he would receive at a master's degree level. He met his obligation to mitigate damages by working in the occupational safety industry and keeping his teaching certificate act. The trial court did not abuse its discretion in ordering the district to enroll him in the Public School Employee Retirement System (PSERS) and to pay its share of contributions to that account.

Table 9 details the cases in this sample which are designated to be in the category of Administrative and Procedural cases. Table 10 provides a frequency distribution of the outcome of these cases.

Table 9

Outcome of Administrative and Procedural Cases

Case	Decision
<i>BOE of the County of Harrison v. Alice DeFazio</i> , 378 S.E.2d 656, 1989	Reversed and Remanded
<i>Point Isabel Independent School District v. Rafael Hinojosa</i> , 797 S.W.2d 176, 1990	Affirmed for Appellee
<i>Joyce Triggs, v. Berkeley County BOE</i> , 425 S.E.2d 111, 1992	Denied
<i>G. Gordon Brickhouse, v. Spring-Ford Area School District</i> , 656 A.2d 483, 1995	Reversed
<i>Frances DiPiazza, v. BOE of the Comsewogue Union Free School District</i> , 214 A.D.2d 729, 1995	Reversed and Remitted to Trial Court
<i>Mingo County BOE, Jada Hunter et al. v. Frank Jones</i> , 512 S.E.2d 597, 1998	Reversed
<i>School committee of Newton v. Newton School Custodians Association, Local 454</i> , 784N.E.2d 598,2003	Remand
<i>Educational Testing Service v. Elba Hildebrant</i> , 923 A.2d 34, 2007	Reversed and Remanded
<i>Susan Seraydar v. Three Village Central School District, et al.</i> , 935 N.Y.S.2d 125	Dismissed
<i>William Merrell v. Chartiers Valley School District</i> , 51A.3d 286, 2012	Affirmed

Table 10

Summary of Outcome of Administrative and Procedural Cases

Summary of Cases	Number of Cases
Affirmed	2
Reversed and Remanded	2
Dismissed	1
Remand	1
Denied	1
Reversed and Remanded	2
Reversed and Remitted	1
Total of Cases	10

The 10 cases representing the category of Administration and Procedural cases illustrate a variety of different outcomes indicating the complexity of each individual case.

Financial Cases

Financial cases were commonly found to be a violation of specific financial agreements such as misappropriation of funds and resources including grants or earmarked allocations. There are two cases included in the study and both addressed the salary structure and financial arrangements for each case.

In *Frank Rossi, Petitioner, v. Board of Education of the City School District of Utica et al. Respondents* (1983), the petitioner filed an N.Y.C.P.L.R. art. 78 proceeding against the school district and an individual that had been appointed to the position of principal. The principal's K-8 school was abolished and he was reassigned to a series of K-6 schools. There was a different salary structure for K-8 and K-6 principals. Once reassigned, he received the same salary but did not receive the step increments which he was entitled to as a K-8 principal. Following a grievance and arbitration, he was to be given first consideration for the next K-8 principal vacancy. The principal alleged that his appointment to a K-6 school did not comply with the requirement of N.Y. Educ. Law § 2510 (3), that he be placed in a "position similar to" his position as a K-8 principal and that he was entitled to the appointment. The court agreed and held that the principal was entitled to receive future increments as a K-8 principal, even though he was assigned to a K-6 school. The court entered judgment in favor of the principal and held that he was entitled to reinstatement to his former salary structure with back pay and re-computation of his current salary in accordance with the K-8 salary structure.

In the matter of *Jo Ellen Karr, Appellant v. Board of Education of Jackson County, Appellee* (1998), the teacher sought review of the judgment that refused to issue a writ of mandamus and to provide relief for an improper refusal to place her in a teaching position. On appeal, the court reversed. The teacher had more education than the candidate who had been awarded the position. Karr had a specialization in business education, and she had 5.5 years' experience in teaching in the field of business education. It was arbitrary for the board to ignore the teacher's education, specialization, and experience and to determine this she was less qualified than the candidate selected, based on the substitute teacher's evaluation. The court reversed the judgment that denied the teacher's application for a writ of mandamus, and directed the school board to provide her with relief for its improper refusal to place her in teaching position. The circuit court was instructed to determine the amount of compensation and to issue the writ.

Table 11 describes the outcome of for the two cases in this study which were designated to be in the category of financial cases. Table 12 provides a frequency distribution for the outcome of those cases.

Table 11

Outcome of Financial Cases

Case	Decision
<i>Frank Rossi v. Board of Education of the City School District of Utica</i> , 465 N.Y.S.2d 630, 1983	Ruled for Principal
<i>Jo Ellen Karr v. Board of Education of Jackson County</i> , 506 S.E.2d 355, 1988	Reversed and Remanded with directions

Table 12

Summary of Outcome of Financial Cases

Summary of Cases	Number of Cases
Ruled for Principal	1
Reversed and Remand	1
Total Cases	2

The following information is representative of two cases where plaintiffs prevailed with some type of compensation or relief.

Education Cases

Educational cases were cases in which the school district wrongly used race, economic, ethnicity or demographics of an area not in compliance with the law, but argued an educational necessity for the action. In these cases, certain rights and privileges were being withheld from one group to benefit another group or community through services, benefits or employment.

Table 13 illustrates the outcomes for the two education cases.

Table 13

Outcome of Education Cases

Cases	Outcome
United States of America v. State of Texas, 628 F.Supp.304, 1985	Plaintiff Granted Preliminary Injunction
Horace Willie Montgomery v. Starkville Municipal Separate School District, 665 F. Supp. 487, 1987	Affirmed for School District

In *United States of America, Plaintiff; and Linda Reyes, Applicants for Intervention, v. State of Texas, ET AL., Defendants* (1985), the applicants for intervention sought a preliminary injunction to restrain the State of Texas, acting by and through the Texas Education Agency (“TEA”), from excluding students who failed the Pre-Professional Skills Test (“PPST”) from enrollment and teacher education courses at colleges and universities in Texas.

In 1981, the Texas legislature enacted a statute requiring “satisfactory performance on a competency examination on basic skills prescribed by (Texas State Board of Education) as a condition to admission into an approved teacher education program.” The State Board of Education chose the PPST, which tests skills in mathematics, reading, and writing. If a student fails on any of the three components of the test, a student may not take more than 6 hours of courses in education until such time as he or she has passed all sections of the test.

As of July 1985, after more than 18,000 persons had taken the test, defendants’ statistics showed that 73% of Whites who took the test one or more times passed. In contrast, Hispanics passed at a rate of 34%, and Blacks passed at a rate of 23%. *United States v. Texas* was one of numerous actions of its kind involving desegregation of elementary and high schools in Texas. The action was filed on March 6, 1970. In late 1970, the court found that “the policies and practices of TDA have frequently, whether inadvertently or by design, encouraged or resulted in the continuation of racially segregated public education within the state,” *United States v. Texas*, 321 F. Supp. 1043, 1057 (1970). The educational cases further illustrated disparity for students, staff members and community stakeholders. In particular, they counted an adjustment regarding (PPST) testing requirements, to accommodate the hiring of more Blacks and Hispanics. There was a need to hire more minority teacher administrators to achieve unitary status for school districts across the state.

Horace Willie Montgomery, et al., Plaintiffs, v. Starkville Municipal Separate School District, Defendant (1987) was a case where a plaintiff filed an action alleging that the school district maintained a dual education system in contravention of the Fourteenth Amendment. A class action was filed on behalf of all Black children attending school in the city. The plaintiffs alleged that school officials were guilty of maintaining a dual educational system segregated because of race. The court had previously granted the original plaintiffs permanent injunctive relief. A number of years later, plaintiff interveners brought the suit back, alleging that the school district had failed to completely desegregate their school system.

The school district failed to prepare and file reports with the court as required, allowed inter-district transfer of students, resulting in reduced desegregation, failed to properly compensate Black staff members and made employment decisions based on race. The district had discriminated against Black children by maintaining segregated classes, and had discriminated against Black children by developing and implementing separate programs of remedial and gifted instruction.

The court found in favor of the school district on all issues with the exception of the gifted program. The statistical evidence show that white students were placed in the gifted program at a substantially higher rate than Black students were. The school district was ordered to revise entrance requirements for the gifted program.

The previous information illustrates two education cases and produces contrasting results. In one case, the United States Department of Education is involved to ensure that college students, teachers and minorities are equally represented in the State of Texas. The PPST was viewed as an instrument that hampered the progress of minority students and teachers from achieving their very best and becoming gainfully employed. The other case represented a school

district that needed to provide for all staff and students; not just a select few. While the State of Texas is gigantic to most states, promoting fairness and equality is a characteristic that is paramount and is always in demand.

Location of Court Cases

Table 14 provides information about the states in which cases in the sample occurred, while Table 15 provides a rank ordering of the five top states having court cases.

Table 14

Court Cases by States

State	Number of Court Cases	State	Number of Court Cases
Alabama	7	Minnesota	4
Arkansas	4	Mississippi	5
California	5	Missouri	1
Colorado	3	New Jersey	2
Connecticut	1	New Mexico	1
Dist. Col.	1	New York	17
Florida	2	Ohio	2
Georgia	1	Pennsylvania	8
Illinois	11	Puerto Rico	1
Indiana	1	South Carolina	3
Kansas	1	Tennessee	2
Kentucky	1	Texas	5
Louisiana	1	Washington	1
Maine	1	West Virginia	33
Massachusetts	5	Wisconsin	1
Michigan	4	Wyoming	1

Note. Table 14 depicts a frequency distribution of court case by state of origin beginning with Alabama and ending with Wyoming. There were 32 states represented during the years 1980-2012. There were 137 cases filed during this time period and this number 115 were identified as court cases with some type of variation related to employment discrimination in public schools during the time line of the research. The selection of the 115 cases were determine by using the West’s Law Educational Digest notation system (§) indicated the 22 discarded cases do not merit national recognition.

Table 15

Top Five States Ranked According to Number of Court Cases

State	Rank
West Virginia	1
New York	2
Illinois	3
Pennsylvania	4
Alabama	5

Note. In table 15, the research indicated the top five states

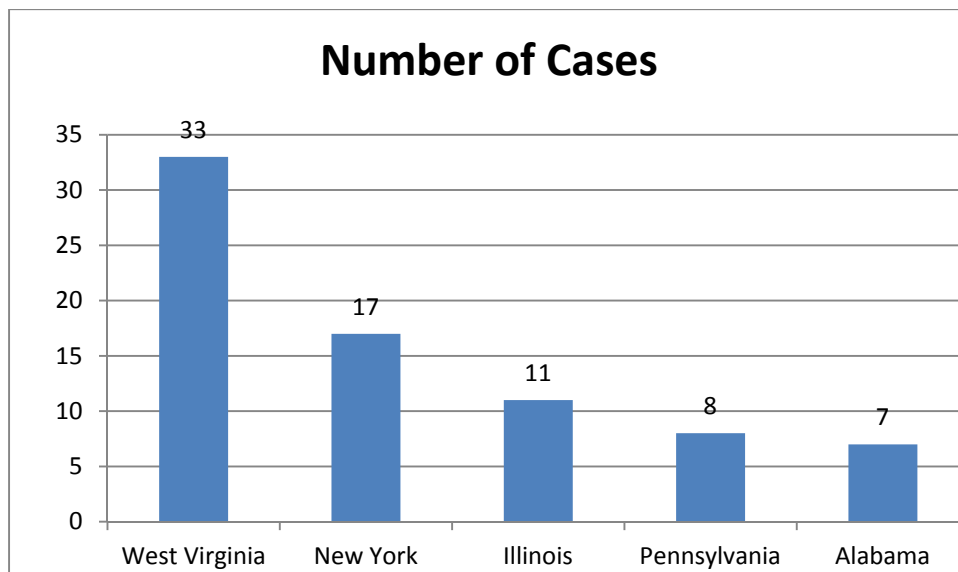


Figure 2. Top five states ranked according to number of court cases.

Figure 2 above represents the top five states' court cases. Based on the information presented, West Virginia reported 33 court cases, followed by New York with 17 cases. Illinois reported 11 cases, Pennsylvania reported 8 cases, and Alabama reported 7 cases. The remaining 27 states each reported fewer than 5 cases during the time period referenced during the research project.

Table 16 illustrates, by state, the regional reporter system for West Publishing Company. West's National Reporter System (NRS) is a set of all reports of federal and appellate state courts in the United States. The (NRS) records cases in the 50 states and the District of Columbia and are divided into seven regions. Figure 3 shows the number of cases in the category of Employment Discrimination by region.

Table 16

Employment Discrimination in Public Schools: Court Case Venues

Title	Region	States Covered
Atlantic Reporter	1	CT, DE, DC, ME, MD, NH, NJ, PA, RI, VT
North Eastern Reporter	2	IL, IN, MA, NY, OH
North Western Reporter	3	IA, MI, MN, NE, ND, SD, WI
South Eastern Reporter	4	GA, NC, SC, VA, WV
Southern Reporter	5	AL, FL, LA, MS
South Western Reporter	6	AR, KY, MO, TN, TX
Pacific Reporter	7	AK, AZ, CA, CO, HI, ID, KS, MT, NV, NM, OK, OR, UT, WA, WY
Federal Reporter		
Federal Supplement		

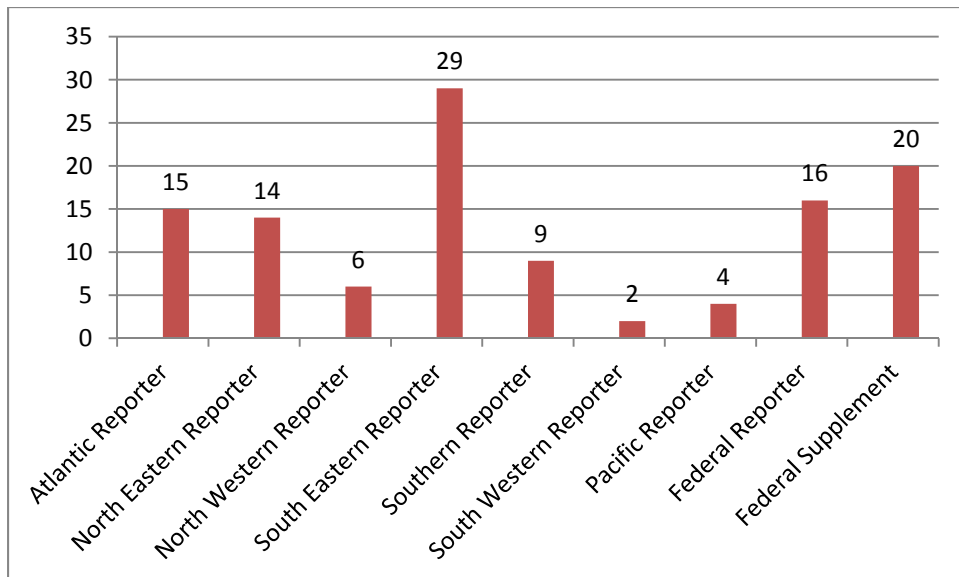


Figure 3. Employment discrimination in public schools: Court case venues.

McDonnell-Douglas

The literature review indicated that the principles set in a landmark case, *McDonnell-Douglas Corporation v. Percy Green* (1973), must be followed by the lower courts in dealing with allegations of discrimination in the employment setting. Table 17 reflects the citation by a court of McDonnell-Douglas within the published opinion.

Table 17

Court Cases in Sample Citing McDonnell Douglas Corporation v. Green, 1980-2012

Case	Type of Case	Decision	Date
<i>Jones v. Birdson</i>	Employment Discrimination	Court Denied Relief	1980
<i>Ginocchi v. Burrell Sch. District</i>	Principal Demoted to Teacher	Affirmed Trial Court	1987
<i>Rose v. Raleigh County BOE</i>	Employment Discrimination	Reversed/Remanded	1988
<i>Oser v. Marshall County BOE</i>	Employment Discrimination	Reversed/Remanded	1988
<i>Johnson v. Cassell</i>	Employment Discrimination	Reversed/Remanded	1989
<i>Tenney v. Barbour County BOE</i>	Employment Discrimination	Judgment Denied	1990
<i>Staton v. Wyoming County BOE</i>	Employment Discrimination	Affirmed Trial Court	1990
<i>Pockl v. Ohio County BOE</i>	Employment Discrimination	Affirmed Trial Court	1991
<i>Egan v. Taylor County COE</i>	Employment Discrimination	Reversed/Remanded	1991
<i>Butcher v. Gilmer County BOE</i>	Employment Discrimination	Affirmed Circuit Court	1993
<i>Juniel v. Park Forest Chicago Ht.</i>	Employment Discrimination	Judgment for District	2001
<i>Bennett v. Roberts</i>	Racial Discrimination	Affirmed District Court	2002
<i>Kranz v. Gray, Mayor of DC</i>	Title VII/Age Discrimination	Judgment for DC	2012
<i>Bucalo v. Shelter Isle District</i>	Age Discrimination	Affirmed District Court	2012

Note. The 14 cases listed above were cross referenced using lexis nexis.com.Lib data.lib.ua.edu and contained information related to the McDonnell Douglas Case.

At the heart of *McDonnell-Douglas*, a unanimous Supreme Court coined the term “because of” in proving employment discrimination under Title VII. While “because of” may be understood in everyday conversations, in the *McDonnell-Douglas* case, it was the first case to define this phrase. Significantly, *McDonnell-Douglas* teaches that to prove that an aggrieved employee has been disadvantaged in an employment decision “because of” discrimination, there must be a shifting of burdens between the plaintiff and defendant in these types of cases. (These types of cases are often identified as “mixed-motive” cases, in which the employer may have

several motives for its actions, and only one of the motives may be discriminatory.) The information below details the steps of burden-switching that is required by *McDonnell-Douglas*, in proving or defending an employment discrimination case:

1) The plaintiff employee must first establish a prima facie case of discrimination.

2) If the plaintiff employee survives the first step, the burden then shifts to the defendant employer, who must produce evidence of a legitimate, nondiscriminatory reason for its actions. If the defendant employer is successful at producing such evidence, then the presumption of discrimination dissipates.

3) If the plaintiff employee survives the last step, the burden then shifts back to the plaintiff employee, who is then afforded an opportunity to present facts to show an inference of discrimination. The plaintiff may do so by either showing that the defendant's explanation is insufficient or only a pretext for discrimination, or otherwise proving that the defendant actions used one of the listed unlawful discrimination parameters.

This study demonstrated in Table 18 that only 14 cases explicitly used the burden-shifting framework, from beginning to end, as described in *McDonnell Douglas Corporation v. Green* (1973). The lower courts are obligated to use McDonnell-Douglas in every one of the cases in the study. Most plaintiffs were not able to bear the burden of production of evidence of discrimination sufficient to prove a prima facie case of discrimination, and this failure made summary judgment in favor of the defendant school district. Thus, the outcome becomes so automatic that it becomes unnecessary for the court to even cite *McDonnell-Douglas* in its ruling. In only a few cases were the plaintiffs able to survive the first step of *McDonnell-Douglas*, only to then find their claim denied by the court, when the defendant employer is able

to produce any non-discriminatory explanation for its employment decision. At that point the evidence brought by the plaintiff employee at the first stage becomes generally discounted.

Table 18

Court Cases Using Burden-Shifting Framework Set Forth By McDonnell Douglas Corp. v. Green

Case	Year	Decision
Juniel v. Park Forest Chicago Heights School District Plaintiff's Petition: Plaintiff Filed employment discrimination alleging discrimination due to race. The court held employee failed to prove prima facie case and his job performance satisfactory at discharge. District's RIF employee; (1) failed to develop tech plan (2) failed to spend 60% of his time with staff and students, (3) failed to publish regular technology newsletter. Employ did not show pretext for discrimination.	2001	Judgment for School District
Case	Year	Decision
Valerie Bennett v. Mary Roberts Plaintiff Petition: Plaintiff appealed from district court and alleged board members engaged in racially discriminatory hiring practices violating Title VII § 1981, §1983. Applicant is African American and board members all white screening committee. Under McDonnell Douglas, the plaintiff must establish that: (1) he/she is a member of a protected class; (2) he applied for and was qualified for open position; (3) the employer rejected him for the position; (4) the employer filled the position with an individual outside of the plaintiff's protected class, or job remained available. Once the plaintiff establishes his prima facie case, the burden of production shifts to employer and reason for its hiring decision. If employer satisfies this obligation, the burden of production returns to plaintiff for demonstration of pretextual reasoning. Ms. Bennett was unable to prove her allegations of disparate treatment under Title VII and §1981 claim as well.	2002	Affirmed District Court
Case	Year	Decision
Peter Kranz v. Vincent Gray, Mayor of the District of Columbia Plaintiff Petition: Plaintiff has sued D.C. Mayor, Vincent Gray in official capacity, under Title VII of the civil Rights Act of 1964, 42 U.S.C §2000 e and the Age Discrimination in Employment ACT (ADEA). "A suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office." See <i>Will v. Mich. Dept. of State Police</i> , 491 U.S. 58. In Kranz, the court found that the teacher had not carried his burden of establishing pretext. Teacher had not provided evidence that the decision not to give him an interview was motivated by his inadequate responses to an important part of the selection process.	2012	Summary Judgment for D.C.

(table continues)

Case	Year	Decision
Stephanie Bucalo V. Shelter Island Free Union School District	2012	Affirmed District Court

Plaintiff Petition: Plaintiff alleged that defendant school district discriminated against her based on her age, under the Age Discrimination in Employment Act (ADEA), 29 U.S.C.S. § 621 et seq., and retaliated against her. The district court denied the plaintiff's motion for judgment as a matter of law. On appeal, plaintiff argues that because of the death of the sole decision maker with direct knowledge regarding defendant's refusal to hire her, and the failure to preserve his testimony, she is entitled to judgment as a matter of law under the burden-shifting framework set forth in *McDonnell Douglas Corporation v. Green*, 411 U.S. 92. Because elements of the plaintiff's prima facie case for both age discrimination and retaliation were disputed, the plaintiff was not entitled to judgment as a matter of law even if the district was unable, by virtue of the decision maker's death, to satisfy its burden under the second stage of *McDonnell Douglas*. The district satisfied its burden of production under the second stage.

Table 18 depicts court cases using a burden-shifting framework set forth by *McDonnell Douglas Corporation v. Green*. There were several cases during the course of this research made reference to the *McDonnell Douglas* case and four cases specifically referenced *McDonnell Douglas*. Two cases specifically used the burden-shifting framework fully during litigations and two other cases did not have sufficient evidence or did not survive the balance test of prima facie to present a viable case.

Table 19 describes a sorting of the cases, to display the prevailing parties, the rulings by the court, and the type of case.

Table 19

Prevailing Parties during 1980-2012

Prevailing Party	Name of Cases	Rulings/Decisions	Type of Case
S	<i>Jones v. Birdsong</i>	Denied relief/no violation	Employ. Discrimination Title VII
E	<i>Johnson v. Central Valley School District</i>	Reversed ruled for teacher	Indian Self Determination Act
R	<i>Price v. Denison Independent Sch. Dist.</i>	Affirm/Reversed/Remanded	Desegregation/Racial Disc.
S	<i>Roek v. Bd. of Ed. of Chippewa Val. Sch. Dis.</i>	Affirmed for Roek	First Right of refusal By Sub-Teacher
E	<i>Walter v. Independent School</i>	Reinstated/Walter	Employer Re-instated /Dissents
R	<i>Arthur v. Nyquist</i>	Affirm/Reversed/Remanded	Administration
S	<i>Kromnick v. Sch. Dist. Of Philadelphia</i>	Dist. enjoined/No quota	Quota System in Hiring
R	<i>Oliver v. Kalamazoo</i>	Remanded/Dismissed	Desegregation
E	<i>Rossi v. Bd. of Ed. of City Sch. Dist. Utica</i>	Ruled for petitioner	K-6 Salary Structures Affirmed
S	<i>Morley v. Arricale</i>	Petition denied/Dismiss	Removal of Principal/Reversed
R	<i>Sherburne v. Sch. Bd. of Suwannee</i>	Reversed/Remanded	Lacked Good Moral Character
S	<i>Congress Hispanic Edu. V. School District</i>	Denied motion of unitary	School Desegregation Case
S	<i>Gilyard v. So. Carolina, DYS</i>	Grant summary/No discrimination	Prin. Discrimination/RIF
E	<i>Keyes v. School District</i>	Negotiations/Settlement	Desegregation
S	<i>Lujan v. Franklin County Bd of Ed.</i>	Affirm for BOE	Racial Disc./Administration
E	<i>McAndrew v. Sch. Comm. Of Cambridge</i>	Ruled for teacher/Remanded	Reversed For Plaintiff/\$ 3K Move
E	<i>U.S. v. State of Texas</i>	Injunction granted/U.S.	PPST Blacks-Hispanics Needed
E	<i>U.S. v. Yonkers Bd. of Ed</i>	City liable/Segregation	Desegregation of Sch/Hsg/Emp

(table continues)

Prevailing Party	Name of Cases	Rulings/Decisions	Type of Case
S	<i>Bd. Ed Rockford Sch. Dis. v. Rockford Assn. 501 N.E.2d338</i>	Affirm Circuit Court Decision	Labor Dispute Regarding Teacher
R	<i>Berkley Federation of Teachers v. Berkley</i>	Court reversed mandate	Workload/Temp. Not Probation
S	<i>Beste v. Independent School District</i>	Affirm for Relators	Bumping and Realigning Teachers
S	<i>Brewer v. Muscle Shoals Bd.</i>	Affirm for Plaintiff	Racial Disc./Administration
R	<i>Bryant v. Lawrence County Schools</i>	Affirm/Reversed/ Remand	Violation of Desegregation Decree
S	<i>Castaneda by Castaneda v. Pickard</i>	Affirm for school dist.	Racial Disc./Mexican American
R	<i>Dillon v. Bd. of Education Wyoming County</i>	Denied writ/Remanded	Improper Hiring/Mandamus
S	<i>Mapp v. Bd. of Ed. City of Chattanooga</i>	Grant Bd./Dismiss action	Desegregation To Balance Faculty/Staff
S	<i>Marion Teachers Assn. v. Grant County SPE</i>	Affirm trial court decision	Invalid Teacher Co-Op Agreement
S	<i>Matter of Buys</i>	Ruled for school district	Realignment of Teacher/Principal
S	<i>Poland v. Grand Ledge Pub. Sch. Bd. of Ed.</i>	Affirm/Dismiss petition	Affirmed Sch. Bd./No violation
S	<i>Thomas v. Board of Examiners, Chi</i>	Case Dismissed	Prin. Certification/Due Process
S	<i>U.S. v. Bd. of Ed. City of Chicago</i>	Court grant BOE motion	Discretionary Funds/Billing Program
R	<i>U.S. v. LULAC</i>	Reverse District Court Order	Administration/Desegregation
R	<i>U.S. v. Yonkers Bd. of Ed</i>	Modification of remedy	Desegregation of Schools
S	<i>Country ink v. Bd. of Education of Chrisman</i>	Affirm trial court decision	Hm. Eco. Teacher/ Unequal. P.E.
S	<i>Cleburne County. Bd. v. Payne</i>	Affirm for BOE	Appointment Rejected

(table continues)

Prevailing Party	Name of Cases	Rulings/Decisions	Type of Case
S	<i>Ginocchi v. Burrell School District</i>	Affirm for school dist.	Prin. Demoted to Teacher Income less
R	<i>Greene v. Sch. Bd. of Hamilton County</i>	Reverse/Remanded	Teacher/Administrative
R	<i>Montgomery v. Starkville Municipal Sch.</i>	Affirm dist./Revise program	Dual Education System/Staffing
E	<i>Arthur v. Nyquist</i>	Modify/Provide relief	One-For-One Hiring Modification
S	<i>Ballard v. Bd. of Ed. of Rock Island Sch. District</i>	Affirm trial court decision	Affirmed Teacher Unqualified
S	<i>Branch v. Greene County Bd. of Ed.</i>	Affirm/No reversible	Contract Breached/Reemploy
S	<i>Lindemuth v. Jefferson County School District</i>	Judgment/Dismiss/ Affirm	Coach Resigns/Charge. Molestation
S	<i>Mahony v. Bd. of Ed. Mahopac County School District</i>	Dismissed Petition	Bd. Decision of Librarian on Sr.
R	<i>Marion County Bd. of Ed. v. Bonfantino</i>	Reversed/Remanded	Improper Posting of Position
S	<i>McClelland v. Paris Public Schools</i>	Affirm for BOE	Location/Residency Policy
S	<i>Scoggins v. Bd. of Ed. Nashville, AR</i>	Affirm for BOE	Racial Disc./Administration
R	<i>State ex rel. Oser v. Haskins, Marshall County</i>	Reverse/Remanded/Fees	Employ. Discrimination Mandamus
R	<i>State ex rel. Rose v. Raleigh Cty. Bd. of Ed.</i>	Reverse/Remand	Employ. Discrimination/Mandamus
S	<i>United Teachers of Ukiah v. Bd. of Ed.</i>	Affirm trial court decision	Collect Bargain /Emp. Relation Act
R	<i>Bd. of Ed. of County of Harrison v. DeFazio</i>	Reverse/Remand/Fees	Improper Posting of Position
R	<i>Johnson v. Cassell</i>	Circuit Court Reverse/Remand	Employ. Discrimination/ Mandamus

(table continues)

Prevailing Party	Name of Cases	Rulings/Decisions	Type of Case
S	<i>Purnell v. Covington County Bd. of Ed.</i>	Affirm for BOE	Failed To Follow Hiring Policy
S	<i>Quales v. Oxford Municipal Separate Sch.</i>	Affirm for BOE	Administration
S	<i>Saquebo v. Roque</i>	Summary grant/Dismiss com	Pol. Disc./Rehiring Teacher
S	<i>Mt. Pleasant Cottage Sch. Union Sch. Dist.</i>	Affirm trial court decision	Annulled Prin. Position By Comm.
R	<i>Point Isabel Independent Sch. District v. Hinojosa</i>	Court Reversed/Rendered	Notice to Public Insufficient
S	<i>Sherpell v. Humnoke School District</i>	Complaint dismissed	Racial Disc./Teacher
S	<i>Staton v. Wyoming County Bd. of Education</i>	Affirm trial court decision	Employ. Discrimination Mandamus
S	<i>Tenney v. Bd. Ed. of County of Barbour</i>	Denied writ Mandamus	Employ. Discrimination Mandamus
R	<i>Egan v. Board of Education of Taylor County</i>	Rev/Remand/Issue Mandamus	Employ. Discrimination/Mandamus
R	<i>Floyd v. Cullman County Bd. of Ed.</i>	Reversed/Remanded	Dismissal Improper
S	<i>Jantz v. Muci</i>	Grant part/Denied part	Homosexual Teacher/Qualified Immunity
S	<i>Morgan v. Taylor School District</i>	Ruled for school district	Court. Ruled For Dist. 120 days Hiring
S	<i>Pockl v. Ohio County Bd. of Education</i>	Affirm trial court decision	Employment Discrimination /Mandamus
S	<i>Board of Ed. of County Wood v. Enoch</i>	Ruled for trial court	Denied Employment
S	<i>Cal. Teachers Assn. v. Comm. Credentials</i>	Affirm trial court decision	Emerg. Credential Regular Teacher
S	<i>Mitchell v. Skinner</i>	Affirm/No service continued	Supt./Teacher Continued Service
S	<i>Triggs v. Berkley County Bd. of Education</i>	Affirm Circuit Court Decision	Denied Employment
R	<i>Brickhouse v. Spring-Ford Area Sch. Dist.</i>	Reverse/Back pay/Benefits	Vet. Pref. Act Appealed/Reversed

(table continues)

Prevailing Party	Name of Cases	Rulings/Decisions	Type of Case
S	<i>Butcher v. Gilmer County Bd. of Education</i>	Supreme Court Affirm for BOE	Employment Discrimination of Teacher
R	<i>Dennery v. Bd. of Ed. of Passaic County</i>	Reverse on dual certif.	Guidance Counselor Not Supervisor
R	<i>Krupp v. Bd. of Ed. of Union County H.S. District</i>	Reversed/State BOE	Ex-Teacher Hired Out of District
S	<i>Mazurek v. Wolcott Bd. of Ed</i>	Court denied School Bd	Free Speech/Constitutional
S	<i>Nelkin v. Bd. of Ed of City of New York</i>	Court order med. Exam	Med. Eval. Sub-Cert. Revoked
R	<i>Tuffli v. Governing Board</i>	Reverse/Dismiss charge	Sex Offense/Reinstate/Back Pay
S	<i>Bolyard v. Kanawha County Bd. of Education</i>	Affirm for BOE	Denial of Grievance-Ind. Art Pos.
R	<i>Brickhouse v. Spring-Ford Area Sch. Dist.</i>	Reverse/Need qualification	Veteran's Preference Act-Teacher
R	<i>Cahill v. Mercer County Bd. of Education</i>	Reverse/Remand w directions	Re-eval. Of application/Remanded
R	<i>Cowen v. Harrison County Bd. of Education</i>	Reverse/Affirm/Remand	Improper Posting of Position
R	<i>Dipiazza v. Bd. of Comsewogue Union Free</i>	Reverse/Petition dismiss	Three Teachers Replaced By Subs
S	<i>Midwest Ed. Assn. v. IL. Ed. Labor Relation Board</i>	Affirm Bd. Decision	Invalid Arbitrator's Award
R	<i>Mingo County Bd. of Education v. Jones</i>	Reverse by Circuit Court	Reinstated Aide Position/Cook
S	<i>Sherpell v. Humnoke School District</i>	Affirm for school dist.	Desegregation
R	<i>Hosford v. School Committee of Sandwich</i>	Reverse for Plaintiff	Speech Path. Untenured/Rehired
R	<i>State Ex Bel Monk v. Knight</i>	Affirm tri.crt/Remand	Two Applicants Selected-Affirmed
R	<i>Calif. Teachers Assn. v. Gov. Bd. of Rialto</i>	Court vacated/Remand	Teacher Qualifications/Credential

(table continues)

Prevailing Party	Name of Cases	Rulings/Decisions	Type of Case
S	<i>Kastel v. Winnetka Board of Education</i>	Grant part/Denied part	Age Discrimination/Rehire
S	<i>Katterhenrich v. Fed. Hoching Loc. Sch. Dist.</i>	Affirm school district	Asst. Basketball Coach Not Hired
S	<i>Keatley v. Mercer County Bd. of Education</i>	Affirm for BOE	Asst. Prin. Denied Pos. Affirmed
S	<i>Sch. Comm. Of Lowell v. Local 159 Service</i>	Arbitrator usurp authority	Custodian/Transfer/Appointed
R	<i>Broderick v. Bd. of Ed. Roosevelt Union School</i>	Reverse motion	Plaintiff Challenged Supreme Court
R	<i>Ewing v. Bd. of Ed. of County Summers</i>	Reverse/Vacate Mandamus	Bd. Failed To Hire Grievant
E	<i>Karr v. Board of Ed. of Jackson County</i>	Reverse for Karr	Loss of income Due to Sub Hired
E	<i>Mingo County Bd. of Education v. Jones</i>	Affirm for Jones	Application Deadlines/Reposting
S	<i>Basile v. Elizabeth Town Area School Bd.</i>	Ruled for BOE	Veteran's Preference Act Violation
S	<i>Chicago Sch. Reform Bd. v. Beverly Martin</i>	Ruled for BOE	School Code Contract Violation
R	<i>Rogers v. Avoyelles Parrish Schools Bd.</i>	Reverse/Dismiss complaint	Non-Certified Teacher Hired
S	<i>Juniel v. Park Forest Chicago Heights</i>	Ruled for school district	Employment Discrimination
S	<i>Bennett v. Roberts</i>	Affirm/Fail to prove dis	Racial Discrimination/Title VII
E	<i>Bossie v. Boone County Board of Education</i>	Affirm for Bossie	Improper Posting of Position
S	<i>Maxine Davis v. Richard P. Mills</i>	Dismissed Petition	Psychologist Not Rehired
S	<i>Bolyard v. Board of Education Grant County</i>	Affirm for BOE	School Board Refused Resignation
S	<i>Gikas v. Washington School District</i>	Dismissed claims of Gikas	Veteran's Preference Act Violation

(table continues)

Prevailing Party	Name of Cases	Rulings/Decisions	Type of Case
R	<i>Sch. Com. Newton v. Newton Sch. Custodian</i>	Vacate/Remand/usurp	Arbitrator Exceed Authority
S	<i>Merrell v. Chartiers Valley School District</i>	Affirm for school dist.	Veteran's Preference Act Violation
R	<i>Randolph v. C. Scott and J. Chewning</i>	Reverse Grievance Bd.	Sch. Bd. Hired LPN not Aide II
S	<i>Roberts v. Fayette County Board of Education</i>	Affirm for BOE	Unsuitable Appointment
E	<i>Chang and Johnson v. Glynn County District</i>	Injunction appropriate	Resident Alien/14th Amendment
R	<i>Educational Testing Service v. Hildebrant</i>	Appeal/Reverse/ Remand	Breach of Contract
S	<i>Linda Garner v. Niskayuna Central District</i>	Dismissed Petition	Unjustifiable Absence
S	<i>Seraydar v. Three Village Central Sch. Dist.</i>	Dismiss without merit	Refusal of Examination
R	<i>Sexton v. Kipp Reach Academy</i>	Judgment/reverse/ Remand	Wrongful Termination
S	<i>Bucalo v. Shelter Isle Union Free Sch. Dist.</i>	Affirm for school dist.	Age Discrimination
S	<i>Merrell v. Chartiers Valley School District</i>	Affirm for school dist.	Veteran's Preference Act Violation
S	<i>Peter Kranz v. Vincent Gray Mayor of D.C.</i>	Affirm for DCPS	Age Discrimination/Title VII

Note. The information above illustrates the percentage of prevailing parties. School systems have an overwhelming majority of victories of the court cases followed by court cases being Remanded or reversed. As indicated, the Employee or individual filing a court case generally has an uphill battle in presenting any with success. For this reason, as noted earlier, many cases are not filed due to the odds of winning is not in their favor.

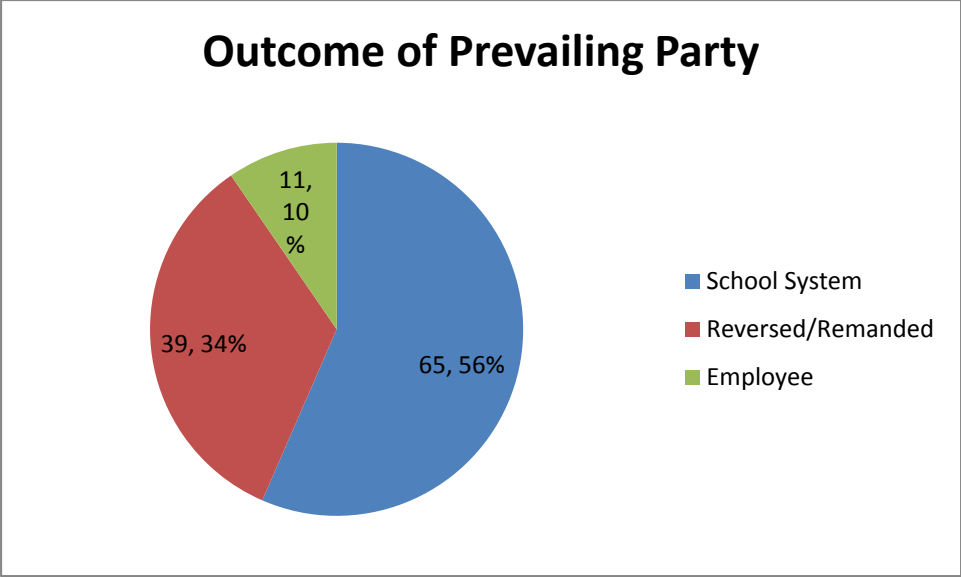


Figure 4. Outcome of prevailing party.

CHAPTER V

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

Introduction

The purpose of this qualitative study was to analyze court cases alleging employment discrimination in public schools. The study commenced with *Jones v. Birdsong* (1980) and culminated with *Kranz v. Gray, Mayor of the District of Columbia* (2012). Using the research procedures described in the methodology section, 115 cases were identified in the timeframe of 1980 through 2012.

This chapter includes a summary of the research based upon the analysis of the court cases, for the purpose of answering the research questions for the study. It provides conclusions for the research, as well as recommendations for future research.

Research Summary

The study was guided by four research questions. Findings for each of the four research questions are disclosed after repetition of each research question.

Research Question 1

What are the issues in court cases involving public K-12 schools, in which a plaintiff has alleged employment discrimination?

The five main categories of cases identified through this research project were: (1) Employment Discrimination Cases; (2) Desegregation Cases; (3) Administrative and Procedural

Violation Cases; (4) Financial Cases; and (5) Educational Cases. The categories of the cases in this study serve as proxy for the types of issues appearing within the cases.

Employment discrimination cases were defined as cases in which the plaintiff alleged improper use of race discrimination by the employing school board, or disparate treatment demonstrated by the employer. Desegregation Cases involved plans under existing court orders which were not followed in compliance with the order, or as directed by the jurisdiction of the court. Many employment and administrative violations occurred in the body of cases identified as desegregation cases.

Administrative and Procedural Violation Cases occurred when the employer misunderstood the law, misinterpreted the law, or failed to follow specific rules and regulations outlined in Title VII. Financial Cases were cases in which the employer was commonly found to be in violation of specific financial agreements, or were found to misappropriate funds and resources, including grants or earmarked allocations.

Educational Cases were cases which occurred when the employing school board misused race, economic status, ethnicity or demographic information in the course of misrepresenting the truth, in order to obtain a benefit by one group over another group. A specific example of this final category can be found in *Jones v. Birdsong* (1980), where the plaintiff, a Black former employee and high school guidance counselor, was reassigned duties including teaching in a federally funded program. The employee rejected the contract because it was conditioned on the availability of Title I funds. She was not rehired and there was no reduction in force occurring within the system. Both Black and white employees were subject to the same Title I provisions. The court denied relief for the plaintiff, Jones.

Research Question 2

What are the outcomes in court cases involving public K-12 schools, in which a plaintiff has alleged employment discrimination?

An important outcome for this research is that the school district was the prevailing party in 64 cases (56%) in the sample. For 39 cases (34%), the plaintiff employee received at least a partial victory, with an appeals reversing or remanding a decision by the trial court. In only 12 cases (10%) in this research project did the plaintiff employee successfully show employment discrimination on the basis of race at the less-expensive level of the trial court. This helps to illustrate that aggrieved employees who allege that discrimination has occurred in employment decisions made by school district leadership have a decidedly uphill struggle in obtaining relief. Perhaps school systems are generally successful due to the amount of resources, compared to the employee, which can be marshaled to help win the case.

A distribution of court cases by state of origin, beginning with Alabama and ending with Wyoming, is displayed in Table 14. There were 32 states represented during the years 1980-2012. There were 137 cases filed during this time period and of this number 115 were identified as court cases with some type of variation related to employment discrimination in public schools during the time line of the research. Twenty-two cases of the original 137 were discarded, because the editors for West's Educational Law Digest deployed in their notation system a symbol (§) which indicated the 22 discarded cases do not merit national recognition.

The research indicated that 27 states listed decided court cases between 1980 through 2012, and of that number, five states emerged as those having the highest number of cases, as follows: West Virginia (33); New York (17); Illinois (11); Pennsylvania (8); and Alabama (7). An important outcome from this study is the recognition that in the years of 1980 through 2012,

race-based employment discrimination was not concentrated in the southern states, which was suggested in the review of the literature. Rather, the information illustrated that there was no dominate region of the United States in which race-based employment discrimination was being alleged.

Research Question 3

What are the trends in court cases involving public K-12 schools, in which a plaintiff has alleged employment discrimination?

The literature review indicated that the principles set in a landmark case, *McDonnell-Douglas Corporation v. Percy Green* (1973), must be followed by the lower courts in dealing with allegations of discrimination in the employment setting. At the heart of this case, a unanimous Supreme Court coined the term “because of” in proving employment discrimination under Title VII. While “because of” may be understood in everyday conversations, in the *McDonnell-Douglas* case, it was the first case to define this phrase. Significantly, *McDonnell-Douglas* teaches that to prove that an aggrieved employee has been disadvantaged in an employment decision “because of” discrimination there must be a shifting of burdens between the plaintiff and defendant in these types of cases. (These types of cases are often identified as “mixed-motive” cases, in which the employer may have several motives for its actions, and only one of the motives may be discriminatory.) The information below details the steps of burden-switching that is required by *McDonnell-Douglas*, in proving or defending an employment discrimination case:

1) The plaintiff employee must first establish a *prima facie* case of discrimination.

2) If the plaintiff employee survives the first step, the burden then shifts to the defendant employer, who must produce evidence of a legitimate, nondiscriminatory reason for its actions. If the defendant employer is successful at producing such evidence, then the presumption of discrimination dissipates.

3) If the plaintiff employee survives the last step, the burden then shifts back to the plaintiff employee, who is then afforded an opportunity to present facts to show an inference of discrimination. The plaintiff may do so by either showing that the defendant's explanation is insufficient or only a pretext for discrimination, or otherwise proving that the defendant actions used one of the listed unlawful discrimination parameters.

This study demonstrated in Table 18 that only 14 cases explicitly used the burden-shifting framework, from beginning to end, as described in *McDonnell Douglas Corporation v. Green* (1973). The lower courts are obligated to use *McDonnell-Douglas* in every one of the cases in the study. Most plaintiffs were not able to bear the burden of production of evidence of discrimination sufficient to prove a *prima facie* case of discrimination, and this failure made summary judgment in favor of the defendant school district the result. Thus, the outcome becomes so automatic that it becomes unnecessary for the court to even cite *McDonnell-Douglas* in its ruling. In only a few cases were the plaintiffs able to survive the first step of *McDonnell-Douglas*, only to then find their claim tossed out of court, when the defendant employer could produce *any* non-discriminatory explanation for its employment decision. At that point the evidence brought by the plaintiff employee at the first stage becomes generally discounted, even when there was evidence of discrimination.

The research suggests that plaintiff employees face an uphill struggle, due to the application of the *McDonnell-Douglas* framework. Defendant school districts prevailed by production of evidence, which requires greater financial commitment for expensive legal representation. For the most part, many individuals would not have access to legal representation like that enjoyed by school districts. Further, the evidence that the plaintiff employee needs is usually hidden within the defendant school district office. The *McDonnell-Douglas* framework is often described as a “balance test,” as though there is equivalency in the burdens borne by the parties to the litigation. This research suggests that the presumed equivalency is false.

Research Question 4

What legal principles for school administrators can be discerned from court cases involving K-12 public schools, in which a plaintiff has alleged employment discrimination?

Guiding Principles

The following principles for court cases alleging employment discrimination in schools were derived from the analysis of this study. These guiding principles serve as a foundation to bring awareness to school districts and school administrators, for reducing the amount of litigation and negative media attention.

1. School district officials must properly post positions for employment, or face successful claims against them for employment discrimination. In the case of *Bossie v. Boone County Board of Education* (2002), the court ruled there was sufficient evidence of improper posting.

2. School district officials must insure that application deadlines and reposting issues are consistent with school board policy and that school board members are informed of updated policies and procedures. The case of *Mingo County Board of Education v. Jones* (1998) illustrates the complexities and disparities when favoritism is involved or when rules are bent to benefit certain individuals.

3. School district officials must adhere to all federal, state and local laws and must not violate any constitutional provisions while administering daily operations. Not only does the Civil Rights Act of 1964 protect an individual's employment perspective, but such protections are buttressed by the 14th Amendment, which protects individuals based upon being located within the United States and not upon their legal status, and guarantees that a state shall not violate individual rights. In the case of *Chang and Johnson v. Glynn County School District* 2006, an injunction filed by the plaintiffs against the school board was affirmed by the court because both teachers were born in Jamaica, but were considered legal residents and not aliens in the State of Georgia.

4. School district officials cannot take shortcuts in their hiring procedures, such as the use of substitute teachers, then argue that economic savings justify discriminatory treatment. In the matter of *Karr v. Board of Education of Jackson* (1998), initially the court ruled against the plaintiff but on appeal and a review of the evidence, the court reversed the decision and order Karr to be compensated for back wages and benefits. It was determined that Karr sustained a loss of income due to improperly hiring a substitute teacher instead of Karr.

5. School district officials must be sensitive to multicultural and ethnic issues particularly when they relate to federal financial grants and assistance. In the case of *Johnson v. Central Valley School District* (1982), the court reversed the lower court's decision and ruled in favor of

the plaintiff. The teacher was of Native American descent and according to the Indian Self Determination Act, when qualified individuals are available they should be given consideration for employment.

6. School district officials must honor contractual agreements and provide a salary structure so that employees or potential employees may gauge the income for the employment position they seek. In *Rossi v. Board of Education of City School District for Utica* (1983), the petitioner was transferred to a new principal position that resulted in preventing him from participating in the salary step incentive program because of an unspecified transfer rule.

7. School district officials must enter into negotiations and contractual agreements in good faith and not harbor ulterior motives. In *Brewer v. Muscle Shoals Board of Education* (1986) Brewer and the school board reached a mutual agreement to place Brewer in the next available principal position, only to be passed over on three separate occasions after the terms of the suit were breached. In this case, racial discrimination along with administrative violations continued to occur. A settlement agreement in favor of Brewer was enforced by the court.

8. When terminating or reassigning individuals to certain positions, school district officials should be certain to follow procedural requirements adopted by the school district. In *Walter v. Independent School* (1982), the plaintiff was reinstated due to procedural violations.

9. School district officials may be held accountable for the enforcement or the lack of enforcement relative to desegregation orders. In *United States v. Yonkers Board of Education* (1986), the school district had not desegregated the school system as ordered by the court and the City of Yonkers was liable due to housing and employment practices of the city. The city did not desegregate housing areas, which meant that old established practices were still in place.

10. School district officials and the state in which the school district is located must work together to provide fair and equitable employment for all citizens. For instance, in *United States v. State of Texas* (1985) an injunction was granted due to the manner in which the State of Texas Educational Department had implemented an achievement test, the PPST. The findings showed that Blacks and Hispanics scored low on tests results, which prevented them from participating or applying for certified teacher positions. There was an extreme shortage of minority teachers for the State of Texas. An injunction was sought and granted, resulting in changes in the policies at the post-secondary level throughout the state.

11. School district officials should work together to reach settlements or negotiate for mutual relief. In the case of *Keyes v. School District* (1985), negotiated settlements prove to be effective in desegregating the school district.

12. School districts officials cannot officially hire, promote, or dismiss any individual without due process of law. Jobs should not be promised to certain individuals that have access to influential members on the school board or in the schools. In fact, no decision on hiring or firing should commence without an official school board meeting, including board minutes as a matter of record. In *McAndrew v. School Commission of Cambridge* (1985), a teacher relocated to another state based on information from a friend with close ties to the school district administration. Upon arrival, the plaintiff did not receive the position as promised, nor did the person authorizing him to relocate have the authority to do so without proper board approval. The teacher was awarded a \$3,000 allowance for moving expenses.

13. School district officials should make a deliberate effort to ensure that reduction in force is necessary before releasing an individual due to budget restraints or the need for other cost-saving measures. The following cases reflect the need to ensure that shifts in positions are

necessary to prevent the school boards and courts from reversing their decision. In *Mingo County Board of Education v. Jones* (1998) the teacher's allegations of discrimination were proven, due to evidence of administrative failures to properly post changes in teaching positions arising from the reduction in force.

Recommendations for Further Study

The following recommendations are made regarding future study of employment discrimination within K-12 public schools.

1. Additional research is needed for a better understanding of existing practices regarding employment procedures, fair hiring practices and tenure policies.
2. Additional research is needed to replicate this study for years prior to 1980.
3. Additional research is needed to more deeply study the impact of *McDonnell-Douglas*, to address its fairness as a means of proving employment discrimination.

Additional Comments

Title VII of the Civil Rights Act of 1964 prohibits discrimination by covered employees based on race, color, religion, sex or national origin (see 42 S.C. section 2000e-2). Employment discrimination in public schools should not exist in public schools and other places of employment throughout the United States. While race-based employment discrimination does not present a problem for many people, the existence of the cases in this study illustrate that for the working population of Afro American, Hispanics, other minorities and women, discrimination based upon race is a continuing challenge to school employers.

While most Americans would never admit to having discriminatory ideas against an entire race of human beings, they endorse a system that accepts this color-blind racism. They participate in this structured system, and unless we, as a society, work to end this mentality, racism will remain a staple in our country (Bonilla-Silva 2004).

Employers often claimed they were acting equitably when hiring minorities, yet research points out there is significant separation between what employers say and what they do (Pager & Quillian, 2005). The appearance of employment discrimination in public schools is not a positive perception and must be corrected whenever discovered. The recruitment and sustainability of a school system is essential in securing a good career choices filled by talented individuals that desire to make a positive difference by ensuring that student achievement and expectations are obtainable while preparing them as life learners in a global society.

When court cases are highly publicized, public opinion and influences may determine the outcome of some cases. The validity of the case depends upon the ability of the employee to meet the twin burdens of production and proof to support the claim, and the employee is usually not the one holding the documentation for the adverse employment decision made by the employer.

There are some other outcomes to consider in exploring employment discrimination in public schools such as:

- What are the charges and the nature of the employment discrimination?
- What individual or group is eligible to file a case and is there a time issue?
- Will this decision influence the outcome of the case, and if so, how?
- Are legislative and legal ramifications necessary in correcting employment discrimination issues in public school?

- Is there a need for new school reforms methods in order to achieve equality in public schools?

-What does this mean to future employers and employment agencies?

It appears more awareness and training is needed in the areas of administrative and procedural understanding to prevent employment discrimination litigation in the future in public schools and school districts.

Conclusion

The Civil Rights Act of 1964 brought sweeping changes to help eradicate employment discrimination in public schools and other public accommodations. The Act allowed many individuals across this land to be gainfully employed without fear and retribution because of their belief in seeking a better way of life for themselves and their families fulfilling the American Dream.

Administrators can improve the daily operations and prevent employment discrimination in their school are following hiring procedures and of the law. Employment discrimination cases can be minimized when administrators and school districts follow proper hiring practices and follow the prescribed protocol used for employment decisions. Administrators must remain objective as well as being vigilant in following school boards policies and procedurals while also being sensitive to the needs of others whom they supervise.

Recruiting a diverse number of talented employees with a multi-cultural background will strengthen any organization that seeks to meet global expectation and opportunities of the 21st century.

School boards should have a standardized process that is user-friendly yet rewards individual the best qualifications and skills necessary to perform the tasks and responsibilities associated with working in the school system. During the course of this research study, the timeline between 1980 through 2012 reveals desegregation issues have diminished considerably due to school boards and school districts are complying with federal court orders.

Although desegregation claims may be diminishing, employment discrimination in public schools probably still exists. Employment discrimination may not be obvious. It is more subtle and covert in nature and can be reflected in the behavior and attitudes of existing employees using unspoken rules and certain practices, which help to foster disparities in representation by any group of employees.

There were several interesting topics revealed doing the study such as the topic of Mandamus, defined as “We Command” and emerged during the late 1980s and a portion of the early 1990s. As depicted in Table 5, Mandamus cases primarily dealt with employment discrimination cases (7), improper hiring practices (1), and school board failed to hire teacher (1), totaling (9) cases associated with the study.

From this study, it can be seen that the outcome of each case varies. Each case is not the same as other cases, and each case must stand on its own merits.

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