Americans are a litigious people. They have been for a long time; in fact, over a hundred years ago, a French visitor, Alexis de Tocqueville, observed that in the United States all issues become “sooner or later a subject of judicial debate.”

Today’s schools function in a complex legal environment, and a wide range of legal issues influence the lives of teachers, students, parents, and administrators. In fact, educators ignore the law at their peril, since the U.S. Supreme Court has ruled that teachers and administrators may be held personally liable in money damages for violating students’ clearly established constitutional rights.

This book is about teachers and the law that affects them—law established by state and federal statutes, constitutions, and court decisions. The law has little significance unless educators know about it and make the effort to see that it is carried out.

Our purpose in writing this book is not to encourage teachers to litigate. Going to court is expensive—emotionally and financially. Litigation tends to intensify conflict and polarize participants. Our goal is to help resolve educational conflicts without lawyers or courts. How? By helping educators become legally literate—by providing them with information about the law that affects them, how the legal system works, and how that system can work for them in the public schools. With this information, educators can practice “preventive law.” This does not mean that they will be their own lawyers, but rather that they will know their legal rights and responsibilities and will be able to educate other members of the school community about the law. Underlying this premise is our belief that unlawful school practices are generally not intentional but result from a misunderstanding about the law. Most school officials are anxious to avoid lawsuits; when teachers can show that a certain policy is illegal, administrators usually prefer to change the policy voluntarily rather than by a court order. We believe also that students’ educational experiences improve when all members of the school community behave in a manner consistent with basic constitutional principles, such as due process of law.
Too many teachers view the law with anxiety and fear, as a trap to ensnare any educator who makes an innocent mistake, who disciplines a disruptive student, or who challenges an unreasonable parent. They see themselves as potential victims of a legal system that seems out of control. And they are excessively fearful about being sued. Much of this fear and anxiety is unfounded. It is often based on half-truths, misunderstanding, and misinformation about education law.

For example, teachers are unaware that in most states they are usually immune from personal liability when they have acted within the scope of their job duties, even if their actions (or inactions) result in injury to students or others. In addition, the federal No Child Left Behind Act of 2001 protects educators from being held liable for harm to students when they exercise their authority to maintain order and discipline or to break up a fight. Furthermore, many teachers do not know that recent court rulings have expanded their rights to be free from harassment and retaliation and to engage in “whistleblowing” when they see law violations in the workplace or unequal treatment given to students based on gender, and to exercise their First Amendment freedoms of speech, religion, and association. Equally important, teachers should be aware of recent court rulings that have limited their rights.

Why are so many teachers poorly informed about the law that affects them? One reason is that the vast majority of them learned almost nothing about this subject during their education, and they get most of their legal information from the “law school” of the teachers’ lounge—that is, from colleagues who are similarly uninformed and misinformed. As a result, teachers tend to make two types of legal mistakes. First, some fail to discipline students when they should because of unfounded fear of being sued. Second, others unintentionally violate students’ rights because they are unaware of how the Bill of Rights protects students in the public schools. We believe that this book can help prevent these frequent mistakes by demystifying the law and making it accessible for teachers and by translating professional jargon and legalese into everyday English.

In short, the purpose of this book is to empower educators to take the law constructively into their own hands, in order to be able to use law as a source of guidance and protection, and to provide them with the knowledge necessary to improve school and classroom rules, to assert their rights, and to bring violations of the law to the attention of administrators and colleagues. It is hoped that this book will serve as a resource in professional libraries, teachers’ rooms, and school offices, and that it will assist educators to make well-informed, legally sound decisions without fear of being sued.

No single volume can address all the issues involving school law; this book covers only issues most central in the daily lives of teachers. It does not, for example, address issues related to school property, school boundaries, school board procedures, and teacher retirement. School law is a broad and burgeoning field, and only some portions of it are directly relevant to the professional roles of most educators; we focus on those portions.

Much of the law examined in these pages is neither simple nor unchanging. Many of the cases are as difficult to resolve for lawyers and judges as they are for educators. This is because cases involving school law often do not address simple conflicts or right against wrong, but rather complex issues encompassing the conflicting interests of teachers, parents, administrators, and students. Moreover, education law is constantly changing. New legislation is passed, regulations are amended, school boards revise their practices, and the Supreme Court denies or supports the constitutionality of particular policies. Because of this diversity and change, our discussion, while as current as we can make it, is intended to be illustrative, not exhaustive. In adding and deleting case references, we have highlighted major decisions and legislation of general interest to teachers rather than focus on legal details. Citations to cases are in a form designed to be useful to teachers, rather than in the form used in legal treatises and law review articles. All the cases and legal references have been updated for this edition to provide the most important recent decisions.

Specific new features include:

- New controversial issues highlighted in Chapter 21 such as virtual or cyber schools, arming educators, and the rights of transgender students
- Summary of new proposed revisions of the No Child Left Behind law, plus discussion of the rights of homeless students, and teacher evaluation based on student achievement
- Major revision of the Instructor’s Manual that features links to relevant YouTube video clips to initiate discussion about each chapter plus summaries of new appeals of court decisions as well as revised multiple-choice questions and answers
- New cases about Internet controversies such as sexting and cyberbullying, and unofficial communications between teachers and students
- Updates on cases about student appearance concerning controversial and provocative T-shirts and bracelets, body piercing, and gang clothing and jewelry
- Content updates to reflect the latest cases and trends in each chapter, including special education, sexual harassment, teachers’ personal lives, search and seizure, student discipline, and new limits on teachers’ freedom of expression

Instructor’s Manual

The Instructor’s Manual accompanying this text includes the following features:

- In each chapter, objectives and suggested teaching activities, multiple-choice questions, alternative assessment devices, and a reference section that includes recent, relevant articles
- In each chapter, a scenario to initiate discussion and a link to a relevant YouTube or other video clip related to the issues in the chapter
- In each chapter, a section titled “Recent Cases on the Topic”
How This Book Is Organized

This book is divided into two parts. Part One, “The Legal Aspects of Teaching,” addresses questions related to teacher contracts, dismissals, tenure, collective bargaining, liability, child abuse, defamation, and copyright laws. Part Two, “Teachers’ and Students’ Rights,” explores legal issues related to the scope and limits of personal freedom of expression, religion, conscience, and association; personal appearance; due process; and privacy. This part also includes material on the right to be free from racial and sexual discrimination and rights related to school records, compulsory schooling, bilingual students, and students with disabilities. Part Two concludes with a look at important current and future controversies.

The book follows a question-and-answer format. Most of the questions and answers are based on reported court cases. By introducing educators to the law through the use of real conflicts, we provide material to which classroom teachers may personally relate. We find that this type of format offers a more lively and effective way for prospective teachers and administrators to relate to the law than does a focus on theoretical issues or legal abstractions. At the same time, each chapter—especially in the Summary—goes beyond the outcome of specific cases and identifies the underlying principles that are likely to apply in similar cases in the future.

Books about law typically begin with a description of the legal system and court structure. Since such discussions are often hard to understand in the abstract, we introduce these concepts in the context of an actual case in which a teacher sued his school board for violating his statutory rights. Thus, Chapter 1 examines such questions as what rights of the teacher were violated, what laws were involved, and how he would pursue an appropriate remedy for a violation of those rights. That case was one of the few lawsuits that went all the way to the U.S. Supreme Court. The chapter includes a summary of the facts and legal history of the lawsuit, plus the reasoning and decision of the High Court, which ultimately ruled in his favor.

Caution

The law is constantly changing and, although the answers provided here are accurate as of the time of publication, educators should be aware that they cannot assume the current accuracy of all this information. If you contemplate legal action, you should first consult with your professional association and/or a knowledgeable lawyer.

Bringing suit should be a last resort; judicial resolution of an educational dispute is often an unhappy, expensive, difficult, and time-consuming process. We hope this book will help you settle conflicts through discussion and negotiation rather than through litigation.
Preface

Request to Students and Instructors

We want this book to work for you. By sending us your comments, you can help us improve the next edition. What did you like and find useful? What should be added or eliminated? What was confusing or unclear?

Please send your reactions and suggestions to Louis Fischer or David Schimmel, 265 Hills South, University of Massachusetts, Amherst, MA 01003 (email: schimmel@educ.umass.edu), to Leslie Stellman, 901 Dulaney Valley Rd., Suite 400, Towson, MD 21204 (email: lstellman@hpklegal.com), or to Cynthia Kelly Conlon, N1545 Willowbrook Drive, Lake Geneva, WI 53147 (email: CindyKConlon@gmail.com).

Thanks from each of us.

Acknowledgments

We wish to acknowledge and thank Barbara Morgan, who provided invaluable research assistance helping us find relevant cases, statutes, and articles. In addition, we thank the following reviewers for their insightful comments: Fumie Hashimoto, Saint Martin’s University; Patricia McCollum, Piedmont College; Terry McDaniel, Indiana State University; and Jacqueline A. Stefkovich, The Pennsylvania State University.

D.S.
L.R.S.
L.F.
C.K.C.
Chapter 1

Teachers and the Legal System

Overview

Jackson v. Birmingham Board of Education

Roderick Jackson taught physical education for ten years and served as a girls’ basketball coach in his most recent assignment at Ensley High School in Birmingham, Alabama. In December 2000 he began complaining to his supervisors about the unequal treatment of the girls’ basketball team, but his complaints were ignored. Instead, he began to receive negative work evaluations and in May 2001 was removed as the basketball coach, although he remained a teacher. With the loss of his coaching assignment, he no longer earned the extra-pay stipend for coaching.

After the board terminated his coaching assignment, Jackson filed a lawsuit in the United States District Court for the Northern District of Alabama against the Birmingham Board of Education, alleging that the board violated Title IX of the Education Amendments of 1972 by retaliating against him for protesting the discrimination against the girls’ basketball team.

A federal judge found for the board of education prior to trial, concluding that Title IX did not prohibit retaliation. The Court of Appeals for the Eleventh Circuit in Atlanta, Georgia, agreed with the lower court’s decision throwing out the case. Jackson asked the United States Supreme Court to hear the case, a process known as filing a petition for writ of certiorari. The Supreme Court agreed to decide Jackson’s appeal, and in an opinion issued March 29, 2005, reversed the lower court’s decision and reinstated Jackson’s retaliation claim. In so ruling, the Supreme Court interpreted Title IX as containing an implied prohibition against retaliation against teachers who voiced complaints about unequal treatment based upon gender, even if the complaining person is neither a student nor of the same gender as the students about whom the complaint was made. In reaching this decision, Justice Sandra Day O’Connor, writing for a five-to-four majority of the Court,
observed that “[r]eporting incidents of discrimination is integral to Title IX enforcement and would be discouraged if retaliation against those who report went unpunished.”

Justice O’Connor further expressed a concern that “Title IX’s enforcement scheme also depends on individual reporting because individuals and agencies may not bring suit under the statute unless the recipient [of federal funds] has received ‘actual notice’ of the discrimination. . . . Moreover, teachers and coaches such as Jackson are often in the best position to vindicate the rights of their students because they are better able to identify discrimination and bring it to the attention of administrators.”

What Kinds of Laws Govern Jackson’s Situation?
Jackson and all teachers are governed by three main types of laws: statutory law, constitutional law, and common law. Statutory law is the law created by legislatures such as Congress; constitutional law is law established by court decisions based on the U.S. or state constitution; and common law is the law established by other court decisions. In Jackson’s case, the Supreme Court ruled that there was a statutory (Title IX) basis for legal action against the school board. Because Jackson’s right to protest gender inequality in basketball team facilities, equipment, and even schedules, which the Court concluded is guaranteed by Title IX of Congress’ 1972 education funding reauthorization law, may have been violated by the board of education, he can sue in federal court alleging a violation of Title IX. In addition, he can charge violations of the common law, such as defamation or breach of contract, by virtue of the action taken against him.

How Would Jackson Decide Whether to Sue in State or Federal Court?
The answer depends on which court has jurisdiction, or authority, to consider the dispute. The federal trial courts (called U.S. district courts) were created under Article III of the U.S. Constitution, and given the power to hear only certain types of cases: (1) those disputes arising under the U.S. Constitution and/or federal laws, which are called “federal question” cases; (2) cases between citizens of different states where the matter in controversy exceeds $75,000, which are called “diversity” jurisdiction cases; and (3) cases in which the United States is a party. Disputes involving public schools may be “federal question” cases, for they frequently invoke federal law (such as Title IX or the IDEA, which contains federal special education laws) or constitutional claims. Students or teachers might claim violations of any provision of the U.S. Constitution listed in Appendix A, such as the due process clause of the Fourteenth Amendment, or violation of any of the civil rights laws listed in Appendix B.

More commonly, education cases involve allegations that a state law, such as a teacher tenure statute or student discipline law, was violated. Students or teachers may also sue alleging violations of state common law, such as defamation, breach of contract, or the intentional infliction of emotional distress. For instance, students who are the victims of a sexual assault by a teacher may sue the board of education under Title IX while suing the teacher individually for state common law claims of assault, battery, and infliction of emotional distress. State lawsuits often involve alleged violations of provisions of that state’s
Chapter 1 / Teachers and the Legal System

constitution, many of which parallel the rights guaranteed in the U.S. Constitution, such as the right to due process and to free speech.

Jackson could have sued in either state or federal court. Had he filed his lawsuit in an Alabama court, that court could have decided all of his claims, even those involving federal law and the U.S. Constitution. However, he chose to file his case in federal court because he raised federal questions about his rights under a federal law (Title IX). The federal court had discretion to exercise jurisdiction over any state law claims also alleged in the lawsuit, as long as the state and federal claims arose from the same facts. If a federal court decides to rule on the state law claims, it must interpret and apply the appropriate state law. In Jackson’s case, the laws of Alabama concerning “whistle-blowing” by public employees might apply.

Regardless of which court (state or federal) a plaintiff chooses for a lawsuit, if federal questions are raised in the case, the board of education may, and generally does, transfer (or “remove”) the case to the federal courts—where it is believed judges are more eager to dismiss them on pretrial motions rather than send them to juries, and where the jury pools tend to be more diverse, since they are more of a cross-section of the demographics of the entire state or region rather than a cross-section of the local county from which state court juries tend to be drawn.

How Does Jackson Obtain Legal Assistance in His Dispute against the Board?

While Jackson is not required to have a lawyer, he retained one because his case was complicated and required competent legal assistance. An individual has the right to pro se representation—that is, to represent one’s self—but any person who wishes to file a serious lawsuit in state or federal court should have a lawyer.

An effective attorney will represent Jackson’s interests in the lawsuit, consult frequently with him, and if a settlement is offered, discuss it with him. Jackson, however, would make the final decision as to whether to settle his case or proceed to trial. Frequently, teachers seeking legal representation turn to their bargaining representative for assistance. In many states the teachers’ union employs staff attorneys who will assist those teachers who require legal representation, including in criminal matters where, for instance, teachers are accused of sexual offenses or child abuse.

Are There Other Agencies besides the Courts That Can Address the Rights of Teachers?

Besides the courts, teachers can turn to a variety of federal and local agencies should they feel that their rights have been violated. Jackson could have filed a complaint with the United States Department of Education’s Office of Civil Rights (OCR), which would have the power to investigate and, if a violation of law is found, compel the school system to correct that violation or risk losing federal funds. The Civil Rights Act of 1964 created a federal agency known as the Equal Employment Opportunity Commission (EEOC), which has the power to investigate and conciliate charges of employment discrimination based upon race, color, sex, age, national origin, religion, and disability.
Many of the states and local governments have their own version of the EEOC with similar authority, and often the authority to address claims of discrimination based on sexual orientation, which is not covered by federal law. In fact, under federal and most state laws, no discrimination lawsuit may be filed in court unless an employee has first filed a sworn charge with one of these agencies and has received a “right to sue” letter from the EEOC. Besides antidiscrimination agencies, teachers can seek redress for most school-related claims by filing an appeal with their superintendent and, if dissatisfied with the result, with their local board of education. Local boards frequently conduct hearings in order to make decisions regarding the validity of the superintendent’s ruling. In most states, decisions of the local boards are appealable by right to the state education authority (often a state board of education or state superintendent), and from there into the courts. In some states, Jackson could have been given a hearing before being removed from his coaching position, although in most states extra-duty positions are on renewable year-to-year contracts which may be non-renewed without cause and without the right to a hearing.

Local education laws tend to provide for certain rights of teachers: whether they can appeal decisions of their superintendents and school boards and what kinds of matters they can appeal, and state education boards promulgate and supervise regulations and procedures for taking action to protest decisions with which teachers disagree, such as the denial of tenure or an involuntary assignment. As we will discuss later in this book, teachers’ rights are also embodied in the provisions of union contracts with their boards of education, violations of which may be addressed through a contractual grievance procedure. In some cases, that procedure culminates in final and binding arbitration.

How Did Jackson’s Case Proceed?
Jackson’s lawyers first filed a complaint with the federal court. The complaint contained a statement of the basis for the court’s jurisdiction (i.e., what law or constitutional provision was violated), the facts upon which he relied to state his claim of such a violation, and what the plaintiff sought (in his case, money damages for the lost salary he would have earned had he been allowed to continue coaching). The defendant, or person or entity sued, has a certain period (usually twenty to thirty days) within which to file an answer; the answer admits to or denies the allegations contained in the complaint and sets out the defendant’s views about why the plaintiff’s claims are legally unfounded. The defendant will often file a motion to dismiss with the court, arguing that even if the facts as alleged in the complaint are true, they do not state a valid basis—also known as a cause of action—for a lawsuit. This is what the Birmingham School Board did in Coach Jackson’s lawsuit, and the case was initially thrown out by a federal judge before anything further occurred in the case.

After these initial pleadings are filed, discovery begins—a process whereby each side finds out information about the other side’s case. Discovery is usually prescribed for a limited period set by the court in a scheduling order and consists largely of interrogatories (written questions answered under oath), depositions (sworn testimony taken of the parties
and witnesses), and document requests. In Jackson’s case, his lawyer would have sent interrogatories to the school board and taken depositions of the principal of Ensley High School as well as the superintendent of schools to determine the basis for the decision to terminate his coaching contract. Documents requested would include his evaluations, his contract, complaints he made about unequal treatment of the girls’ basketball team, and evidence of the reasons his coaching position was terminated.

Prior to trial, there is very often a settlement conference in which the judge or a professional mediator works with the parties to try to reach an agreement on some or all of the issues in the lawsuit. If the parties agree to settle the case (as happens in over 90 percent of all lawsuits filed), the matter would be resolved. If there was no settlement, the case would go to trial or, as in the Jackson case, would be dismissed by the trial judge if he or she felt that the facts as alleged in the complaint did not support a valid legal “cause of action.”

In many cases, once discovery has been completed, one or both parties request that the judge find in their favor without going to trial, based upon undisputed facts developed during discovery. This is known as summary judgment, and in the federal courts, it is used frequently to end lawsuits that the courts deem lacking in any legal or factual basis. Federal courts tend to grant summary judgment more frequently than the state courts, which is why boards of education tend to “remove” cases from the state courts into federal courts once they are filed.

When Jackson’s Lawsuit Was Thrown Out, Where Did He Appeal?

When the Birmingham Board of Education won in federal district court even before the case went to trial, Jackson appealed to the next level of federal court, which in this case was the U.S. Court of Appeals for the Eleventh Circuit. There are thirteen such appeals courts (see Figure 1.1), each required to hear appeals from the district courts within that geographical circuit (Figure 1.2). The appeals court decides issues of law and not fact; therefore, it will not retry the case but merely review the trial court record to determine whether the court below made any legal errors in its rulings, or whether the judge’s or jury’s decision is supported by the evidence. To reach its decision, the appeals court will require both parties to submit written briefs putting forth their legal positions regarding each issue being appealed, and it will often hear oral arguments from the attorneys before ruling. The court will then issue a written opinion explaining its decision and reasoning.

If Jackson’s lawsuit had been filed in a state trial court, he would also be able to appeal within the Alabama state court system. Since each state has the power to create its own court system, the systems vary considerably in how they are organized (Figure 1.3). Most states have trial courts that hear only certain types of cases (e.g., family or probate courts), as well as trial courts that hear all other civil and criminal cases. Most states also have an intermediate appellate court as well as a final appellate court, which in Alabama would have been the Alabama Supreme Court. Like the U.S. Supreme Court, most states’ highest appeals courts only hear cases they choose to hear by granting petitions for a writ of certiorari.
FIGURE 1.1 Geographical Boundaries of U.S. Courts of Appeals and U.S. District Courts
How Did Jackson’s Case End Up Being Heard by the U.S. Supreme Court?

The fact that Jackson’s case was eventually heard by the U.S. Supreme Court is a remarkable event. Under the U.S. Constitution, the U.S. Supreme Court has the power to consider and decide only limited kinds of cases under its original jurisdiction, such as where a state has sued another state, as in the case of boundary disputes or disagreements over water rights. The Constitution gives the Supreme Court discretionary appellate jurisdiction over decisions issued by the federal courts of appeals, which means that the Court can pick and choose those cases it wishes to hear, a process known as a writ of certiorari.

The Supreme Court also has discretion to review decisions of the highest appeals court of each state, but generally does so only where the issues in controversy involve federal statutory or constitutional questions. For the U.S. Supreme Court to hear a case, four of its nine members must vote to do so, a process known as granting certiorari. If, for instance, there is a difference of opinion among the various federal appeals courts, the Supreme Court will often step in and decide such a case. The Supreme Court declines to review far more cases than it hears; if it refuses a petition for certiorari (which occurs in all but a little over 1 percent of petitions), the lower court’s decision is final.

Could Jackson Have Avoided Going to Court?

Most lawsuits are settled before going to trial. Jackson might have avoided even filing a lawsuit if he had chosen to resolve his dispute through an alternative dispute resolution (ADR) program. One such ADR option is mediation, a process in which adversaries such as Jackson and the school board sit down with a neutral third person to negotiate an agreement that both sides find acceptable. Mediation hearings are informal, and the mediator serves as a facilitator to help the parties clarify the issues and find common ground for agreement. Mediators may make suggestions, but they do not impose a solution. Mediation
is commonly used in family disputes, but the EEOC has launched a pilot program in a number of states where mediation is being used to resolve discrimination claims, and it is mandated by law in special education cases. Mediators include educators, lawyers, retired judges, and social workers who are specially trained.

The other basic type of ADR is arbitration, which is commonly used to resolve labor–management disputes, including those in school settings. An arbitration hearing is more formal than a mediation hearing. A trained arbitrator, acting as a neutral third party, hears the case, allowing each side to present evidence and witnesses; then the arbitrator rules for one side or the other. This decision may be either binding or nonbinding (as determined by state law). If the decision is binding, either party can appeal only where the arbitrator exceeded the authority granted to him or her under the arbitration agreement between the parties or where there is a challenge to the arbitrator’s neutrality.

The U.S. Supreme Court held that an individual who signed an arbitration agreement with his or her employer could not sue that employer for employment discrimination when the individual lost his or her job, but instead was required to submit the matter to arbitration under the terms of that agreement. More recently, the Supreme Court expanded this concept to allow unions to negotiate the arbitration of employment discrimination claims made by employees under their union contract with the employer. Thus, arbitration is taking on a greater role as an alternative means of resolving workplace disputes.

If Jackson had filed a Title IX complaint with the U.S. Department of Education, that agency’s Office of Civil Rights could launch an investigation into his dismissal as a coach and, as part of a remedy enforceable by threatening to take away the school district’s federal funding, demand that the Birmingham Public Schools reinstate Jackson to his former coaching position.

**How Could Jackson Find the Law Concerning Teachers and Schools?**

Every county has a courthouse that contains a law library, and most colleges and universities have legal collections as well. For most teachers, however, online sites will be the most convenient source of information. Cases from federal appellate courts and the Supreme Court of the United States are published and available online. Sites such as www.findlaw.com and www.law.cornell.edu have general information organized by topic as well as the text of court opinions that can be accessed by court, topic, or party name. These sites also include the text of federal laws, bills that are pending in Congress, and state laws. The Oyez Project includes the text of Supreme Court opinions as well as audio from the oral arguments of many cases (www.oyez.org). For extensive and in-depth material on the Supreme Court, including links to other news and academic sites, go to www.scotusblog.com. Other sources of free access to court decisions and current information about education law are: the National School Boards Association website (www.nsba.org/legalclips) and Education Week’s school law blog (http://blogs.edweek.org/edweek/school_law). Searching on Google or Yahoo will locate many sites with law-related information, but of course this material may not be current or correct.

Teachers who have access to LEXIS or WESTLAW through law firms or through a college subscription can also find the text of court opinions as well as a wide range of
related information published in academic journals and the popular press. In addition, many libraries subscribe to other computerized systems such as LawDesk or the Educational Resources Information Center (ERIC) that identifies and locates over one million resources which are relevant to education (www.eric.ed.gov).

What Do the Legal Citations Mean?
Legal citations include the name of the case as well as the publication in which it can be found. For example, Supreme Court decisions are found in the official reporter, the United States Reports. There, the citation to Brown v. Board of Education of Topeka, Kansas, 349 U.S. 294 (1955), indicates that the case, decided in 1955, can be found in volume 349 of the United States Reports on page 294.

Cases decided by the U.S. courts of appeals are reported in the Federal Reporter. For example, the cite to the 11th Circuit Court of Appeals ruling in the Jackson case, which was later overturned by the United States Supreme Court, is Jackson v. Birmingham Board of Education, 309 F.3d 1333 (11th Cir. 2004). This citation indicates that the case was decided by the court of appeals for the Eleventh Circuit in 2004, and is reported in volume 309 of the Federal Reporter, Third Series, on page 1333. Decisions of the federal district courts are reported in the Federal Supplement and are similarly cited. For example, Pyle v. South Hadley School Committee, 824 F. Supp. 7 (D. Mass. 1993), a case involving the First Amendment right of students to wear controversial T-shirts to school, indicates that this case was decided by the federal district court for the District of Massachusetts in 1993, and is reported in volume 824 of the Federal Supplement on page 7.

Like decisions of the Supreme Court, state supreme court and state appellate court decisions are often published in more than one publication, only one of which will be designated as the “official” reporter. In New Jersey, for example, the official reporter is New Jersey Reports, and the unofficial reporter is a regional volume known as the Atlantic Reporter. Table 1.1 presents a summary of this reporter system.

Federal laws are published in the United States Code (U.S.C.), which organizes the laws by topic. For example, the laws governing education are grouped as a “title” (or subject), specifically Title 20. The United States Code Annotated (U.S.C.A.) follows the same organizational structure as the U.S. Code, but includes “annotations,” or summaries, of cases that have interpreted the law. The No Child Left Behind Act of 2001 appears at Title 20, Sections 6301 through 7916 of the U.S.C.A.

State laws are compiled in a similar fashion. For example, in Illinois the public laws are published in order of the General Assembly Session in the Laws of Illinois. The laws are organized by subject in both the Illinois Revised Statutes and West’s Smith-Hurd Illinois Annotated Statutes. A summary of the state and federal court reporter system appears as Table 1.1.

Teachers who do not have citations to any specific cases but who wish to find decisions relevant to a particular legal topic must use other legal research tools. First, teachers may wish to gain an overview of a topic by consulting one of the two national legal encyclopedias, Corpus Juris Secundum or American Jurisprudence. These sources will summarize the law in an area such as sex discrimination and provide citations to cases.
## TABLE 1.1 Summary of Court Reporter System

<table>
<thead>
<tr>
<th>Court</th>
<th>Official Reporter (Citation)</th>
<th>Commercial Reporters (Unofficial Citation)</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S. Supreme Court</td>
<td>United States Reports (U.S.)</td>
<td>Supreme Court Reporters (S.Ct.), Lawyers’ Edition (L.Ed.), and United States Law Week (U.S.L.W.)</td>
</tr>
<tr>
<td>U.S. Court of Appeals</td>
<td>Slip opinions issued by courts themselves</td>
<td>Federal Reporter (F.3d)</td>
</tr>
<tr>
<td>U.S. District Courts</td>
<td>Slip opinions issued by courts themselves</td>
<td>Federal Supplement (F. Supp.2d)</td>
</tr>
</tbody>
</table>

### State Court Reports

Each state has its own official reporter, such as Ohio State Reports for the state of Ohio. In addition, state appellate court cases are published in West’s National Reporter system as follows:

- **Atlantic Reporter (A.2d):** Cases from Maine, New Hampshire, Vermont, Rhode Island, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, and District of Columbia
- **North Eastern Reporter (N.E.2d):** Cases from Massachusetts, New York, Ohio, Indiana, and Illinois
- **North Western Reporter (N.W.2d):** Cases from Michigan, Wisconsin, Iowa, Minnesota, North Dakota, South Dakota, and Nebraska
- **Pacific Reporter (P.2d):** Cases from Montana, Wyoming, Colorado, Kansas, Oklahoma, New Mexico, Arizona, Utah, Idaho, Washington, Oregon, Nevada, and California
- **South Eastern Reporter (S.E.2d):** Cases from West Virginia, Virginia, North Carolina, South Carolina, and Georgia
- **Southern Reporter (So.2d):** Cases from Alabama, Florida, Louisiana, and Mississippi
- **South Western Reporter (S.W.2d):** Cases from Texas, Missouri, Arkansas, Kentucky, and Tennessee

In addition, West publishes two separate reports for the two most litigious states:
- California: California Reporter (Cal.Rptr.2d)
- New York: New York Supplement (N.Y.S.2d)

Teachers can also consult an annotation, or article, that discusses a certain topic. Annotations are published in the American Law Reports (ALR) and can be found by searching a topical index. Turning to the ALR index, for example, under “school teachers,” one might find an annotation on “Sexual Conduct as Ground for Dismissal or Revocation of Teaching Certificate” (at 78 ALR3d 19).
How did the Jackson Case End?
The board settled the dispute with Jackson in November 2006, paying nearly $400,000 in damages and legal fees, agreeing to comply with Title IX requirements system-wide, and reporting its progress to a court-appointed monitor. Jackson was later hired to coach the girls’ soccer team at Jackson-Olin High School.

The Jackson decision represents one of the very rare cases that, once filed, actually reached the United States Supreme Court. The vast majority of lawsuits filed in the United States end up settling before trial, largely because both sides quickly come to realize the enormous expense in both time and financial resources in order to proceed to trial. Nonetheless, those lawsuits that find their way up to the appellate courts, such as Jackson, often involve significant questions of law or constitutional rights. Those appellate decisions have come to define the basic principles of school law. We have tried to capture and summarize those principles in this book.

Notes

2. 20 U.S.C. § 1681 et seq.
3. 309 F.3d 1333 (11th Cir. 2003).
4. 544 U.S. at 180.
5. 544 U.S. at 181.
PART ONE

The Legal Aspects of Teaching
Do I Have a Contract?

Overview

Local school boards have the legal authority to hire teachers, and most school boards have written contracts with their teachers. Local boards also have considerable discretion in deciding to whom they issue a contract so long as they do not violate an individual’s statutory or constitutional rights. Under most states’ education laws, local boards are supposed to issue contracts only to individuals who have valid teaching certificates. Contracts are often issued on a provisional basis to teachers who have not yet completed all the requirements of certification, such as Teach for America participants, or teachers who have not completed traditional education programs before being placed in the classroom, such as science and math teachers who have come from private industry.

While local boards and superintendents of schools have the responsibility of ensuring teacher competence, state statutes generally set standards for teacher certification. Such criteria typically include educational requirements and, in many districts, successful completion of the National Teacher Examination (NTE). The contracts that school boards issue to certified teachers vary widely from district to district, but typically include provisions guaranteeing at least one year’s employment provided the teacher does not engage in any act of misconduct, immorality, or other cause for discharge, and identify the teacher’s assignment for the year. Many school systems allow these contracts to automatically renew from year to year without being renegotiated, and these basic terms are generally set unilaterally by the state or local boards of education. Under the No Child Left Behind Act of 2001, school systems are supposed to place “highly qualified” teachers—that is, those with adequate education and experience—in each classroom. Schools receiving Title I money from the federal government are obligated to place a highly qualified teacher into each classroom or risk loss of those funds.

In those school districts that have more sophisticated and detailed contracts resulting from collective bargaining negotiations, there is often a provision requiring the school board
to recognize the union as the bargaining agent for the teachers; various terms and conditions of employment including wages, salaries, benefits, and extra-duty pay scales (such as for coaches), planning periods, and negotiated provisions regarding assignment, transfer, and promotion procedures, or even class size and the length of the school calendar.¹

Because the provisions of school contracts vary tremendously, and because contract disputes can also require interpretation of various state laws, this chapter does not answer questions about individual contracts but rather presents the basic legal principles surrounding the creation and termination of teaching contracts.

Creating a Contract

The Sullivan Case²

Donnie Sullivan was hired by the Calistoga Joint Unified School District in California as a part-time resource teacher in the school system’s school improvement and gifted and talented programs for the 1985–1986 school year. Her assignment sheet for that and subsequent school years identified her as temporary part-time, although she was evaluated periodically. By the time she was rehired for the 1988–1989 school year, Ms. Sullivan’s assignment sheet mistakenly described her status as “tenured” instead of “temporary.” Once this was discovered, the school district’s governing board notified Ms. Sullivan that due to questions about the funding of her position, her employment would be terminated at the end of the school year. Ms. Sullivan sued, alleging a breach of contract and insisting that she had never executed any agreement agreeing to serve as anything less than a permanent, tenured teacher.

The lower court dismissed the lawsuit, finding that regardless of the entries on various school records, the action by the board was predicated upon employing Ms. Sullivan only as a “categorical teacher”—one whose services were dependent upon specific funding of the programs in which she was assigned to teach.

On appeal, the California Court of Appeals reversed the decision of the lower court. In so ruling, the Court noted that California law requires that “in order to classify a certificated employee as a categorically funded employee the terms and conditions of employment under which such persons are employed must be mutually agreed upon by the employee and the school district’s governing board, and such agreement must be reduced to writing.” The board admitted to the appellate court that it had “screwed up” and “that the record does not contain evidence of any writing specifically stating that [Ms. Sullivan] was a categorically funded employee.” In other words, the Court held, in the absence of a clear mutual understanding as to Ms. Sullivan’s precise status, she could not be terminated on the basis that she was merely a temporary, categorically funded employee. The Court remanded the case to the lower court for a determination of Ms. Sullivan’s precise status.

On remand, the Court was required to find a written, mutual agreement on the terms and conditions of employment. In the absence of such a written agreement, her status was deemed not categorically funded, and her job was not protected.

When Is a Contract Created?

The court of appeals in Sullivan noted that in order for a valid agreement to exist between the parties, it must reflect a meeting of the minds and be committed to writing.
Neither was the case here, particularly since Ms. Sullivan continued to cross out references on her assignment sheet to an alleged “categorical assignment,” replacing it with her own interpretation as to her permanent employment status. The court thus went on to find the absence of a contract. As Sullivan demonstrates, certain requirements must be met before a contract is legally binding on both the teacher and school officials. Like all contracts, a teacher’s contract must have: (1) a meeting of the minds of both parties, (2) valid consideration, (3) legal subject matter, (4) competent parties, and (5) definite terms. In California and most other states, it should also be committed to writing.

In contract law, a meeting of the minds usually refers to mutual assent to the terms of the contract. In Sullivan the court concluded that assignment sheets failed to reflect both parties’ intent to enter into a contract. This mutual agreement is usually reached through the process of offer and acceptance. Consideration refers to the promises bargained for and exchanged between the parties. To have valid consideration to support a contract, each party must give up something of value or, in legal terms, “suffer some legal detriment”; that is, the parties to the contract must promise to do something they are not legally obligated to do or must promise to refrain from doing something they are legally privileged to do. In the case of a teaching contract, consideration consists of the exchange of promises between the teacher and the school; the teacher promises to perform certain teaching services, and school officials promise to pay the teacher a certain salary.

Legal subject matter means that the contract cannot require the parties to commit a crime or act against public policy (e.g., a teacher’s contract may be deemed void if the teacher engages in an illegal strike which is against a particular state’s public policy). Competent parties means that the people contracting must be of legal age (generally eighteen), and must have the mental capacity to understand the terms of the contract. Definite terms means that the contract must be clear enough so that each party knows what is required by it. Like other employment contracts, a teaching contract that does not state either salary or teaching duties is too indefinite to be legally enforced. Thus, an Indiana court ruled that a contract to pay a teacher “good wages” was not valid.

When Does a Contract Become Legally Binding?

A contract is not valid until the school board approves it. Because school boards act as public bodies, they cannot accept (or ratify) a contract without taking official action. Thus one teacher’s contract was not valid when the board of education did not follow the required roll-call procedure in voting on whether to offer her a position.

Express and Implied Contracts

Does a Contract Have to Be in Writing?

No. Unless state law requires that a teacher’s employment contract be in writing, an oral contract that has all the necessary legal requirements is legally binding. However, in order to be enforceable an oral agreement must be capable of being performed in one year or less. Otherwise it is subject to a doctrine known as the Statute of Frauds, which is intended to prevent the recognition of contracts without some written proof.
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Does a Contract Have to Contain All the Relevant Information Regarding the Terms and Conditions of Employment?

Not necessarily. Like other contracts, a teacher’s contract includes the provisions of any relevant state laws, such as those concerning teacher tenure and dismissal procedures. The contract also includes (or makes reference to) any rules and regulations adopted by the school board that are in effect at the time the contract is signed. But most teachers’ contracts lack much detail, other than dates of employment and salary information. Notably, most contracts make no reference to the method or criteria by which teacher performance is to be assessed.

Can School Districts Unilaterally Impose Assessment Mechanisms on Teachers?

In many cases, yes, unless local bargaining laws allow such subjects to be the subject of negotiations between school districts and teachers’ unions. Under the recently enacted Race-to-the-Top financial incentives provided to public school districts by the U.S. Department of Education as part of the federal government’s stimulus funding, school boards were obligated to initiate teacher assessments based, in whole or in part, on student outcomes, including the results of high-stakes testing. This has been followed by some school districts instituting pay-for-performance in lieu of the traditional longevity increases enjoyed by teachers under most collective bargaining agreements.

Can an Employee Handbook Serve as a Basis for Contractual Obligations?

Possibly, provided that the handbook does not contain a disclaimer explicitly denying that it serves as a contract of employment. In such cases, handbooks have been found not to be legally binding contracts. When an employee is working without a formal employment contract, the terms of an employee handbook may be contractually binding. Although some courts reject this idea, the majority of jurisdictions recognize the contract potential of employee handbooks and manuals. An employee handbook creates enforceable contractual rights if the traditional elements of contract formation (offer, acceptance, and consideration) are satisfied. However, courts have consistently held that not every statement made in a personnel handbook or other publication will rise to the level of an enforceable covenant. “General statements of policy are no more than that and do not meet the contractual requirements of an offer.” Accordingly, for handbook provisions to rise to the level of contractual commitments, they must be specific and clear. The employee must be aware of the policies and believe them to be offered as terms of employment; the employee must also continue to work after notification of the handbook terms, thus giving consideration.

How Long Does a Contract Last?

The contract states how long it is to be in effect. Nontenured teachers generally hold their positions under annual contracts. Teachers may also be employed under “continuing
contracts,” which provide that they will be reemployed unless school officials give notice by a certain date that their contracts will not be renewed. Most states also allow school boards to enter into multiyear employment contracts with teachers. In the event of a financial shortfall, however, school districts may choose not to reemploy even tenured teachers, subject of course to collectively bargained provisions governing reductions in force.

Can a Teacher Be Renewed Automatically from Year to Year?

Yes, if the local school board fails to provide timely notice to the teacher of its intent not to renew the teacher’s contract. Most state laws provide that by a certain date (usually in April or May), the school district must inform a first-year or second-year teacher, in writing, of an intent not to renew his or her contract; failure to do so has been found to be grounds for automatic renewal of the contract for another year.12

Can a Teacher Work without a Contract?

Not without inviting complications. A teacher can certainly work without a contract, but by doing so, he or she may have difficulty proving that a certain amount of money is owed as compensation for teaching services. In an Illinois case, for example, the court ruled that tenured teachers did not have to sign contracts.13 Nevertheless, when a group of tenured teachers refused to sign new contracts, the court held that they should be paid on the basis of the preceding year’s salary and should be denied the benefits given to teachers who had signed the new contract. A nontenured teacher who works without a contract may have more difficulty than a tenured teacher in collecting money from school officials, although under the legal theory of quantum meruit, a teacher, like any other worker, is entitled to be compensated for the value he provides to his or her employer.14

Breach of Contract

How Can a Contract Be Broken by School Officials?

A contract is binding on both parties, and either party who fails to meet contractual obligations has breached (broken) the contract. For example, in one Massachusetts case, a teacher sued her archdiocesan school, alleging a breach of contract, when she was not renewed following a refusal by the principal to sign her contract, citing concerns about the teacher’s conduct. The court rejected the teacher’s claim that by its terms, the contract automatically renewed itself for a subsequent year when timely notice of its nonrenewal was not given to the teacher, reasoning:

The contract contains a signature line for the principal, and all previous contracts between the parties contained her signature, in keeping with [the school’s] Directives which designates the principal as “the administrative head of the school.” “Effect is to be given if possible to every word of an instrument and to every signature upon it.”15
School officials can breach a contract if they attempt to change the terms of a contract after it is in effect. In Idaho, for example, three teachers signed regular teachers’ contracts that specifically included both their regular salaries in addition to extra-duty assignments such as summer school and working at a youth ranch. Such assignments added 40 paid days to one teacher’s school year, for an additional $6,225 above her annual salary of $29,570. Every few years teachers were given contracts containing “change orders” that reflected increases in the base salary, while preserving the extra-duty assignment and pay. In 1995, however, the teachers did not receive the same extra-duty assignments and were not warned in advance that their assignments were to be eliminated. They filed suit alleging, among other causes of action, a breach of their contracts. The trial court and, later, the Idaho Supreme Court upheld the teachers’ claims, ordering that their extra-duty salaries be restored. As the court concluded, a change in the contract terms could not be implemented without a statutorily prescribed formal notice and a hearing.

How Can a Teacher Break a Contract?

The same principles that apply to school officials also apply to teachers. A teacher who has signed an employment contract and then refuses to accept the teaching position or abandons the position in midyear has broken, or breached, the contract.

A teacher who does not abide by its terms also breaches a contract. In Texas, for example, a music teacher was employed by the Mission public schools under a contract that stated that she would not teach anywhere else in Texas during the contract period. Because the teacher left this job to teach music and direct the band in the public schools in Cisco, Texas, the court ruled that she had breached her contract. Similarly, an Arkansas court found that a teacher had breached her employment contract when she took a leave of absence without following the procedure outlined in the school board’s regulations.

What Are the Legal Consequences of Breaking a Contract?

When one party breaches a contract, the other party to the contract is entitled to a legal remedy that will compensate for the injury the breaching party has caused. In most situations this remedy will be an award of some amount of money, or damages. The specific amount of money to be awarded is determined by the court according to the particular facts in each case.

In general, when a school board breaks an employment contract the injured teacher is entitled to damages that equal the salary owed under the contract minus an amount of money the teacher actually earned or might have earned had another teaching position been obtained. To understand this rule, it helps to examine a particular case.

In a case in which a teaching contract was breached, the court awarded the teacher, Henry W. Miller, $20,750. To reach this figure the court engaged in the following analysis: First the court turned to “several pay scales” contained in the school district’s contract with the teachers’ union. From the time of his unlawful discharge, the court concluded, he would have been paid ever-increasing amounts for the following six years totaling $39,887.50. However, the court took into account interim earnings, that is, wages earned...
by Mr. Miller since he was wrongfully terminated, which totaled $19,136.56, “so that his net loss through February 1, 1966 was $20,750.904.”

In suing for breach of contract, a teacher can also collect as damages any other expenses incurred as a result of the school board’s action. For example, a Montana teacher collected the value of the living quarters supplied rent-free under her contract after she was wrongfully dismissed. The courts have also held that teachers who are wrongfully discharged can recover expenses that they can show were incurred in seeking another teaching position.

Although teachers are generally not awarded money to cover attorneys’ fees, such expenses may be awarded as damages under civil rights and antidiscrimination federal laws.

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The same principles apply when a teacher breaks a contract: School officials are entitled to collect money damages that will cover the school’s costs in hiring a replacement. (However, in a time of teacher surplus, when it is relatively easy for school boards to replace teachers, money damages are apt to be minimal. It may be harder to replace a teacher, of course, in a shortage area such as math and science.) Thus, if a teacher who is under contract quits in the middle of the school year, school officials can sue the teacher for expenses incurred in finding another teacher and even possibly for the difference between that teacher’s salary and the replacement teacher’s salary.

Some employment contracts include provisions that require teachers who break their contracts to pay a specific amount as damages to the school district. In North Dakota, a teacher’s contract stated that a teacher who asked to be released from her contract within two weeks before she was scheduled to begin teaching was required to pay damages in the amount of 4 percent of her salary under the contract. These contractual provisions are known as liquidated damages clauses, and the courts will enforce them when it is difficult for the parties to a contract to determine the monetary value of a breach of a contract. The courts will not enforce such contractual provisions when they feel that the party who breaks the contract has to pay such a large amount of money that this provision is really a penalty or a punishment for breaching the contract.

In the North Dakota case, six days before she was to begin teaching Marcia Walker notified her district superintendent that her husband was moving from the area and that she would be unable to meet her contractual obligations. The school district found a replacement before school started but maintained that Ms. Walker was still required to pay damages. Ms. Walker argued that the fixed-damages provision of her contract constituted a penalty and therefore was void under North Dakota law. The court disagreed. Although the court explained that an employer could generally recover only the costs of replacing an employee who breaches a contract, it noted that liquidated-damages provisions were valid when it was difficult to ascertain the exact amount of damages. The court found that teacher replacement was such a situation:

Thus, when we consider the damages caused by a teacher’s breach of an employment contract, we cannot ignore the interruption to the school system and the resultant debilitating effect such interruption has upon the learning process of students in the school system.

It would not be possible at the time of contracting to foresee all these elements of damage that may occur. Even if known, it would be extremely difficult to evaluate these damages on a monetary basis. Such damages are not legally compensable but constitute a public injury which the school district was entitled to consider.
In some states, such as Maryland, the standard form for a teacher’s contract which is dictated by regulations promulgated by the state board of education includes language consenting to the district’s right to seek revocation or suspension of a teacher’s license as a penalty for breaching that contract by failing to fulfill its terms. Maryland courts have even upheld the forfeiture of a teacher’s so-called “summer pay”—amounts teachers have reserved from their school-year pay in order to allow for continuing income during the summer months—where they have breached the duty to provide timely notification of resignation. However, as prescribed in the cited Maryland regulation, school districts often have discretion to waive these penalties.

When the School Board Breaches a Contract, Must the Teacher Look for Another Teaching Position to Collect Damages?

Yes. A teacher who is wrongfully discharged generally has the duty to look for a similar teaching position in order to “mitigate the damages.” If the school board can show that other teaching jobs were available, the board can reduce the amount of money owed as damages by the salary the teacher could have earned. Nevertheless, a teacher does not have to accept a job in another locality or a job that is inferior to the denied position. A federal appeals court held, for example, that a principal was not required to mitigate damages by accepting a position as a teacher. Even though the teaching job paid as much as the principalship, the court concluded that the demotion to teacher might cast doubt on the principal’s competence as an administrator and affect later career opportunities.

If the school board breaches a contract sometime before the teacher is to start working, the teacher is not required to look for another teaching position at once. Instead the teacher has the right to wait until the contract was to begin before looking for another job. In Michigan, for example, the court ruled that a teacher whose contract was wrongfully withdrawn over the summer did not have to abandon her vacation to seek other employment but could notify the school district that she was still prepared to teach. She could wait to look for another job until after school started in the fall.

Can the Court Order a School Board to Rehire a Teacher?

Yes. Although the courts generally do not order people to return to work or to perform certain services, they will do so when an award of money will not adequately compensate the party who has been the victim of a breach of contract. Where a teacher has tenure, for example, the courts can order reinstatement if the teacher has been wrongfully discharged. In one instance, a university failed to follow its own regulations when dismissing a professor, and the court ordered that the professor be reinstated. The court explained:

In view of the uncertainty in measuring damages because of the indefinite duration of the contract and the importance of the status of plaintiffs in the milieu of the college teaching profession it is evident that the remedy of damages at law would not be complete or adequate. The relief granted herein is appropriate to achieve equity and justice.
On the other hand, the Colorado Supreme Court refused to order the reinstatement of a professor even after a jury found that his termination was motivated, in part, by his exercise of constitutionally protected speech. In so ruling, the Court upheld the trial judge’s decision that returning Professor Churchill to the classroom would be detrimental to the university’s morale and teaching obligations towards its students. It denied his motion for reinstatement because that remedy would “disregard the jury’s implicit finding that Professor Churchill has suffered no actual damages that an award of reinstatement would prospectively remedy.” Additionally, the trial court had determined that reinstatement was inappropriate because it would undermine the University’s ability to define the standards of scholarship. Finally, the trial court concluded that on the basis of the evidence adduced at trial regarding Churchill’s hostility toward the University, reinstatement was not likely to result in a “productive and amicable working relationship” between the University and Professor Churchill. Thus, the Court ruled that Professor Churchill did not have any right to his job back, or even to monetary damages, based upon the right of the board of regents to assert “judicial immunity,” the same protection from liability from damages as is afforded judges who make controversial rulings.

The situation for teachers without tenure varies according to the circumstances surrounding the dismissal. If school officials failed to follow proper hearing procedures, for example, the court may merely remand (send the case back to the board) for a hearing. In other cases, the court may order reinstatement. For example, a federal court ordered the reinstatement of a nontenured teacher when she was improperly dismissed for exercising her constitutional rights under the First Amendment.

**Are Other Remedies Available When One Party Breaches a Contract?**

Yes. The courts have the power to issue an order, known as a writ of mandamus (a demand that a public body take a specific action) to force school officials to comply with the terms of a contract. When one school board was guilty of racial discrimination in refusing to renew a teacher’s employment contract, the court ordered the board to renew the contract. In addition, courts can issue injunctions (court orders prohibiting a party from acting in a particular way or compelling a party to take specific action) to require the parties to meet their contractual obligations. For example, a court issued an injunction to prevent a teacher from breaching a contractual provision that prohibited her from teaching music in any other school district in the state. In another case, a court issued an injunction preventing the school board from dismissing a superintendent when the school officials had no legal power to do so.

**Are There Other Ways That a Contract Can End?**

Yes. Under the doctrine of impossibility of performance, a party to a contract is excused from meeting the obligations under that contract if it is impossible to do so. In Washington, for example, a teacher was discharged from his contractual obligation because of his deteriorating eyesight. The court explained that when it is impossible for the teacher to meet contractual duties, the contract to teach is said to be discharged (another term for terminated...
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and no longer legally binding) by operation of law. A contract can also be terminated by mutual agreement of the parties. In Kansas, a court held that a teacher’s employment contract had been terminated by mutual agreement with the school board after she submitted a letter of resignation and the board voted to accept her resignation.\(^{39}\) Although there was some question about whether she had in fact resigned, the court noted that “mutual assent to abandon a contract may be inferred from the conduct of the parties and the attendant circumstances.” The court found that there was sufficient evidence to indicate that both the teacher and the school board had intended to end the contract; the court thus concluded that the contract was terminated.

A contract may also be found invalid and unenforceable if it is the product of a mutual mistake of fact when it was entered into. For instance, in a 2005 Maryland decision a teacher who was promised employment in exchange for withdrawing a pending discrimination charge lost a breach of contract lawsuit when the court agreed that at the time the agreement was reached between the teacher and the school board, neither party was aware of the fact that the discrimination charge had already been fully processed and was beyond withdrawal.\(^{40}\)

Some states recognize an “implied obligation of good faith and fair dealing” in the performance of an employment contract. Thus, a community college president who admitted to accepting another position while being paid under her contract by the college was deemed to have breached that duty, thereby entitling the college to discontinue paying her salary.\(^{41}\)

**Summary**

Where teachers are employed under contracts that outline their rights and responsibilities in employment, the contract becomes effective legally when the following conditions are met: the contract has a legal subject matter; there is a meeting of the minds of both parties; there is valid consideration; the parties are competent; and the contract has definite terms. In addition, school officials must act to officially ratify a teacher’s contract.

When a contract is binding on both parties, either the teacher or the school officials will be legally liable if obligations under the contract are not met. A school board that breaks a contract to employ a teacher will be required to pay that teacher monetary damages to compensate for loss of salary. In such a situation, however, the teacher has the duty to mitigate these damages by attempting to secure another teaching position. In breach-of-contract situations, the teacher may be entitled to other legal remedies as well, such as reinstatement or other order requiring the school board to fulfill its obligations under the contract.

A teacher who breaks a contract will also be liable to the school district. Under traditional contract law principles, the teacher may be liable for the school district’s costs in finding a replacement and for any additional salary that might have to be paid. Today, teachers’ contracts may describe the specific amount of damages a teacher will have to pay in this situation. In some instances, the statutory forfeiture of unpaid salary for teachers who breach their obligation to return the following year may be imposed.\(^{42}\)
Chapter 2 / Do I Have a Contract?

While these legal principles apply in general, state statutes vary. Especially in the area of contract termination, teachers who have questions about specific situations must consult their own state law as well as local board policies for more detailed guidance.

Notes

1. Maryland law prohibits negotiating over the school calendar or class size, while many states permit such negotiations.
17. 979 P.2d at 1197.
21. 98 Ill. App. 2d at 309, 240 N.E.2d at 473.
26. 231 N.W.2d at 176.
27. Section 13A.12.05.02 of the Code of Maryland Regulations specifically provides that “[a teaching] certificate may be suspended for not more than 365 days if the certificate holder leaves the employment of a local school system after July 15 without the consent of the local board of education, which may not be unreasonably withheld, and contrary to the provisions of the Regular State Teacher’s Contract. . . .”
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38. Oneal v. Colton Consol. Sch. Dist. No. 306, 557 P.2d 11 (Wash. Ct. App. 1976). Of course, the teacher’s rights are better defined today under the federal Americans with Disabilities Act, which would prevent discrimination based on the teacher’s visual impairment. Before civil rights laws such as the Americans with Disabilities Act were enacted, teachers were compelled to seek relief under contractual theories such as in the Oneal case.