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## Immoral Conduct: A Fair Standard for Teachers Chalk Talk

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## Chalk Talk—

### “Immoral Conduct”: A Fair Standard for Teachers?

Recent critiques of our educational system have spurred a movement toward improving our nation’s schools. One branch of this movement is to raise standards for teachers. As common sense dictates, school boards look not only at credentials but also the character of teachers. Every parent’s wish is to have her children taught by a person who is not only intelligent, but also a role model in the classroom. A consequence of the movement is an increased likelihood school boards will terminate a teacher’s contract for conduct reflecting on her character.

Virtually every state statute allowing for the termination of a teacher’s contract has some provision relating to character. These provisions fall under several headings. Some allow for the termination of a contract if the teacher is “unfit to teach.”<sup>1</sup> Other statutes list “immoral conduct” as a valid cause for termination.<sup>2</sup> Ohio’s statute includes “immorality” as well as “good cause” as proper reasons for termination.<sup>3</sup> Colorado’s statute allows for termination of a contract if the school board finds the teacher neglected her duties.<sup>4</sup> These are a few examples of the language used in termination statutes. The terminology used in these statutes is broad and vague. The statutes do not further define “immorality” or “good cause.” They do not specify what constitutes “neglect of duty” or “unfitness to teach.” Typically, the statutes do not even require the conduct to be directly related to the teacher’s ability to teach.

For these reasons, teachers challenge these statutes, claiming they are too vague to be constitutional. For example, a Kansas school board terminated the contract of one of its teachers after he was arrested for burglary.<sup>5</sup> The teacher argued the statute allowing his termination for immorality was unconstitutionally vague.<sup>6</sup> The court found against the teacher, stating the term meant “such

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1. *See, e.g.*, ME. REV. STAT. ANN. tit. 20-A, § 13202 (West 1993).

2. *See, e.g.*, MO. REV. STAT. § 168.114(1)(2) (1991).

3. OHIO REV. CODE ANN. § 3319.16 (Banks-Baldwin 1995).

4. COLO. REV. STAT. § 22-63-301 (1997).

5. *See Hainline v. Bond*, 824 P.2d 959, 962 (Kan. 1992).

6. *See id.* at 965-66.

conduct that by common judgment reflects on a teacher's fitness to engage in his or her profession."<sup>7</sup> The court then summarily concluded the terminology in the statute was not vague as applied to the teacher in this case.<sup>8</sup>

Although most parents would not want a burglar teaching their students, the court sidestepped an important issue in its decision. This issue was whether a teacher's immoral conduct must affect his duty to teach. The court defined "immorality" in the context of the teacher's fitness to teach, but the court did not discuss how the teacher's attempted burglary, entirely unrelated to the school, actually affected his teaching ability. The court's only attempt to make this connection was to find that teachers should teach their students to respect the law and that members of the community had heard of the teacher's arrest for burglary. The court then concluded "[t]here is at least a presumption that the felonious conduct has a sufficient relationship or nexus to [the teacher's] fitness to teach to warrant action."<sup>9</sup> Although all parents want effective and moral people to teach their children, an assumption that particular conduct will affect a teacher's fitness should not be enough to terminate his contract.

Courts rarely find statutes are unconstitutionally vague, but in *Burton v. Cascade School District Union High School No. 5*,<sup>10</sup> the court did rule for the teacher. In this case, a student's mother informed the school principal that the teacher was a lesbian.<sup>11</sup> When questioned by the principal, the teacher admitted that she was.<sup>12</sup> She was promptly dismissed on the grounds she had engaged in immoral conduct.<sup>13</sup> The court found the school wrongfully terminated her contract, stating, "Immorality means different things to different people, and its definition depends on the idiosyncracies of the individual school board members. It may be applied so broadly that every teacher in the state could be subject to discipline."<sup>14</sup> The court pointed out that broad terms such as "immorality" do not give teachers adequate notice of behavior for which they could be fired.

These two cases illustrate the major problems with termination statutes. First, courts find general phrases such as "immoral" or "just cause" constitutional because the court imposes its own additional requirement that the behavior be related to the teacher's fitness to teach. The problem occurs when the court then fails to show how the behavior actually and directly affects the instructor's teaching ability. Second, these types of phrases are so broad they

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7. *Id.* at 967.

8. *See id.*

9. *Id.* at 965.

10. 353 F. Supp. 254 (D. Or. 1973), *aff'd* 512 F.2d 850 (9th Cir. 1975).

11. *See id.* at 254-55.

12. *See id.*

13. *See id.*

14. *Id.* at 255.

could encompass a wide spectrum of behavior and allow for abuse of discretion by the school board. The statutes do not serve to inform teachers of conduct that may lead to their termination. These problems should be addressed in the interest of protecting teachers from unfair treatment. The interest in solving these conflicts, however, must be weighed against the interest in hiring what reasonable people believe are moral, upstanding teachers.

One way to solve these problems would be to clarify the statutes authorizing the termination of teachers' contracts. This approach would minimize the disparate results courts reach in their decisions to uphold or overturn a school board's choice to fire a teacher. The results are often surprising. For instance, the Maine Supreme Court overturned a school board's decision to terminate a teacher's contract when he brought a revolver and ammunition with him to school.<sup>15</sup> In Missouri, the Court of Appeals reinstated a teacher who hugged and kissed a student while at school.<sup>16</sup> The Supreme Court of West Virginia overturned the termination of a sixth-grade teacher who failed to take substantial steps to disarm a student who brought a loaded revolver to class.<sup>17</sup> These acts would seem to fall under the broad terminology in termination statutes discussed above, but the court in each of these cases reinstated the teacher to his position.

In contrast, courts also uphold terminations that seem unfair. The Missouri Court of Appeals affirmed a termination for immoral conduct when the school accused the teacher of stealing on three separate occasions.<sup>18</sup> The concurrence points out, however, that the circumstances surrounding the accusations were confusing and inconclusive.<sup>19</sup> The case described no direct proof that the teacher was responsible for taking the missing items. In West Virginia, the Supreme Court upheld the termination of a teacher whom it suspected of drug use.<sup>20</sup> The teacher had been arrested on drug charges, but subsequently acquitted.<sup>21</sup> During the trial, his testimony that he had smoked marijuana prior to this incident was leaked to the press.<sup>22</sup> The community responded negatively, and the school board consequently terminated his employment.<sup>23</sup> A final example occurred in a California district court.<sup>24</sup> The court affirmed a termination for immoral conduct and evident unfitness for service when the

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15. *Wright v. Superintending Sch. Comm.*, 331 A.2d 640 (Me. 1975).

16. *Youngman v. Doerhoff*, 890 S.W.2d 330 (Mo. Ct. App. 1994).

17. *Board of Educ. v. Chaddock*, 398 S.E.2d 120 (W. Va. 1990).

18. *Kimble v. Worth County R-III Bd. of Educ.*, 669 S.W.2d 949 (Mo. Ct. App. 1984).

19. *See id.* at 956-58.

20. *Woo v. Putnam County Bd. of Educ.*, 504 S.E.2d 644 (W. Va. 1998).

21. *See id.* at 645.

22. *See id.*

23. *See id.* at 646.

24. *San Francisco Unified Sch. Dist. v. Weiland*, 4 Cal. Rptr. 286 (Dist. Ct. App. 1960).

teacher falsified attendance records.<sup>25</sup> These instances illustrate courts' decisions when cases are on the borderline. A teacher may reasonably assume he could not be fired for unsubstantiated accusations of theft, for prior instances of drug use outside the school, or for falsifying attendance records. Just like the case involving the teacher/burglar, these cases do not seem so bad when viewed through the perspective of a parent, but they are unfair to teachers who do not know what constitutes "immoral conduct."

The way to give teachers better notice can be found in the cases themselves. Closer inspection of cases, such as the ones above, reveals standards which would give teachers guidance on what types of conduct could lead to their termination. The decisions in these cases appear to be based on tort principles like intent, foreseeability, and knowledge.

### Intent

In cases where the teacher's conduct was intentional, the court is more likely to uphold the termination. In *Wright v. Superintending School Committee*,<sup>26</sup> the teacher brought a gun and ammunition to school with him. The teacher was a licensed gunsmith and repaired guns for a shop.<sup>27</sup> Ordinarily, he would drop off repaired guns and pick up defective ones after school.<sup>28</sup> On the day the incident occurred, the teacher was extremely sick and did not realize the gun was in his jacket pocket until he arrived at school.<sup>29</sup> At the time, he felt he did not have time to return the gun to his house or the shop. Since his car door locks had frozen, he could not place the gun in his car. Therefore, he decided the gun would be safer if it were in the classroom with him.<sup>30</sup> The gun was subsequently stolen from his jacket.<sup>31</sup> The gun, but not the ammunition, was eventually recovered through the offer of a reward.<sup>32</sup> The court found the teacher's action to constitute a serious lack of judgment, but not unfitness to teach.<sup>33</sup> The teacher's action resulted from one instance of extenuating circumstances and was not intended to cause harm to his students or the community.

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25. *See id.* at 287.

26. 331 A.2d 640 (Me. 1975).

27. *See id.* at 642.

28. *See id.*

29. *See id.* at 642-43.

30. *See id.* at 643.

31. *See id.*

32. *See id.*

33. *See id.* at 647.

The concept of intent is also illustrated in *San Francisco Unified School District v. Weiland*,<sup>34</sup> where the teacher falsified attendance records. The teacher taught an adult typing class.<sup>35</sup> Funding for the program was based on students' attendance, so if attendance dropped to fifteen students more than three class sessions in a row, the teacher would lose her position.<sup>36</sup> The teacher admitted to fraudulently signing students' names to the roster so she could keep her job.<sup>37</sup> The court concluded her termination was valid, stating, "Her acts were deliberately designed to defraud the state and the district."<sup>38</sup> The court emphasized that her conduct was deliberate, not accidental or unintentional. A requirement of intent in teacher termination statutes would provide teachers with more guidance as to the basis for their termination.

### Foreseeability

The court is more likely to rule against the teacher when harm to students or the community was a foreseeable result of the teacher's actions. For example, in *Youngman v. Doerhoff*,<sup>39</sup> the teacher was terminated for hugging and kissing a student at school. In this case, the teacher encountered a student of his who appeared to be upset.<sup>40</sup> He inquired whether the student felt okay, and, after a brief exchange, the teacher gave the student a hug and kiss on the neck.<sup>41</sup> The student later complained to the principal and indicated the teacher's behavior made him feel uncomfortable.<sup>42</sup> The teacher was subsequently fired.<sup>43</sup> The court found the teacher often comforted his students this way and he knew of no previous complaints by students about his conduct.<sup>44</sup>

The court, in overturning the termination, specifically noted the teacher's motivations stemmed from caring, not from a need for sexual gratification.<sup>45</sup> In light of the teacher's lack of notice that his behavior might make students feel uncomfortable, the teacher did not foresee that his actions might negatively affect his students.

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34. 4 Cal. Rptr. 286 (Dist. Ct. App. 1960).

35. *See id.* at 287.

36. *See id.*

37. *See id.*

38. *Id.* at 289.

39. 890 S.W.2d 330 (Mo. Ct. App. 1994).

40. *See id.* at 333.

41. *See id.*

42. *See id.*

43. *See id.* at 334.

44. *See id.* at 335.

45. *See id.* at 339.

Compare the *Youngman* decision with that in *Clarke v. Board of Education*.<sup>46</sup> Here, the teacher addressed black students in his class with racial slurs and derogatory language.<sup>47</sup> The court found against the teacher, stating, "It is difficult to imagine how one can argue in this day and age, in view of the efforts made to eliminate discrimination in this country, that statements by a teacher in referring to black students [derogatorily] do not offend the morals of the community."<sup>48</sup> The harm the teacher's statements caused was clearly foreseeable by him. The different results in these two cases can be explained by examining the foreseeability of the effects of the teacher's conduct. Incorporating a requirement of foreseeability into teacher termination statutes would allow teachers to better determine what could lead to their termination.

### Knowledge

Lastly, courts are more likely to affirm a termination when the teacher knew or should have known her conduct would negatively affect her class. This concept is illustrated in *Everett Area School District v. Ault*.<sup>49</sup> Here, the teacher was suspended, not terminated, but the basis was immoral behavior, as in the termination statutes.<sup>50</sup> The suspension resulted from a water fight between students and teachers.<sup>51</sup> Although the school discouraged this activity, it was a tradition on the last day of school.<sup>52</sup> After students attacked the teacher, she accidentally sprayed them with a bottle of cleaning fluid she thought was a bottle of water.<sup>53</sup> Three students suffered injuries as a result of the chemicals in the cleaning solution.<sup>54</sup> The court overturned her termination, emphasizing that her actions were done in the spirit of play, not done to purposefully injure a student.<sup>55</sup> The teacher was unaware of the bottle's contents and did not knowingly hurt her students.

*Gerig v. Board of Education*<sup>56</sup> reaches a result opposite to that in *Everett*. In this case, the school board terminated the teacher's contract on the basis of immoral conduct after the teacher allowed publication of an inappropriate newspaper in his media class.<sup>57</sup> As a project, the teacher had students submit

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46. 338 N.W.2d 272 (Neb. 1983).

47. *See id.* at 273.

48. *Id.* at 277.

49. 548 A.2d 1341 (Pa. Commw. Ct. 1988).

50. *See id.* at 1342.

51. *See id.*

52. *See id.*

53. *See id.*

54. *See id.*

55. *See id.* at 1342-43.

56. 841 S.W.2d 731 (Mo. Ct. App. 1992).

57. *See id.* at 732.

articles, columns, and advertisements to be included in a single-issue newspaper to be distributed to the members of the class.<sup>58</sup> The final product included inappropriate sexual material and articles which encouraged drug use.<sup>59</sup> After distributing the paper to the class, the teacher expressed reservations about the impropriety of the material and requested the students to return all copies to him at the end of class.<sup>60</sup> The teacher failed to collect all the copies, and some made their way into the community.<sup>61</sup> The court found the teacher had read, edited, and approved the submissions in the paper.<sup>62</sup> In upholding the termination, the court pointed out, “[The t]eacher’s conduct was more than an exercise of bad judgment, it violated ‘even the most relaxed standards of acceptable human behavior.’”<sup>63</sup> The teacher in this case was responsible for the publication of the paper, and, given his reservations about distribution, he should have known the offensive material could have negative effects on students.

These three standards appear to give definition to phrases like “immoral conduct,” “unfitness to teach,” and “neglect of duty.” For these observations to have meaning, however, they must be implemented into termination statutes. A teacher is more likely to know the standards set forth in a termination statute than to sort through the volumes of case law to determine conduct for which his contract may be terminated. By incorporating standards less vague than “immoral conduct” and “unfitness to teach,” legislatures will better inform teachers of the behavior expected of them. If a teacher knows his conduct might be a basis for his termination, he will be less likely to engage in it. This deterrence factor may prompt an overall improvement in the character of those we entrust with the education of our students.

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58. *See id.*

59. *See id.*

60. *See id.*

61. *See id.*

62. *See id.*

63. *Id.* at 735 (citing *Kimble v. Worth County R-III Bd. of Educ.*, 669 S.W.2d 949, 953 (Mo. Ct. App. 1984)).

