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THE UNIVERSITY OF OKLAHOMA  
GRADUATE COLLEGE

AN EVALUATION OF SCHOOL BOARD HEARING PROCEDURES  
AND THE TRIAL DE NOVO APPEAL IN CAREER TEACHER  
EMPLOYMENT TERMINATION PROCEEDINGS IN  
OKLAHOMA PUBLIC SCHOOLS

A DISSERTATION  
SUBMITTED TO THE GRADUATE FACULTY  
in partial fulfillment of the requirements for the  
degree of  
DOCTOR OF PHILOSOPHY

by  
JAMES OLIVER TATE

Norman, Oklahoma

1999

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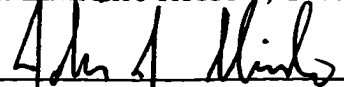
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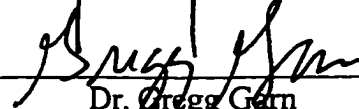
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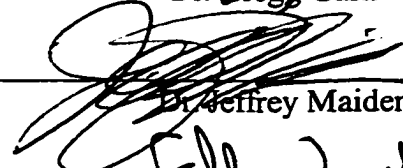
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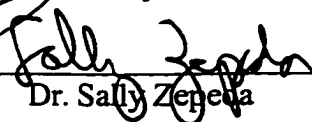
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## ABSTRACT

The purpose of the study was to conduct an evaluation of school board hearing procedures and the trial de novo appeal in career teacher dismissals in Oklahoma. To determine this, the study evaluated the perceptions of fairness of procedures for conducting career teacher dismissal hearings among Oklahoma career teachers, principals, superintendents, school board members, and attorneys who represent educational interests. Surveys were sent to those school personnel in 128 public school districts and 80 attorneys which resulted in a return of 384. The Kruskal-Wallis one-way ANOVA was used to measure independent variables and *Likert* scale preference scores. A bivariate correlational coefficient score statistical calculation determined if there was any relationship between experience and numbers of plans of improvement. Three personal interviews were used in the study. The qualitative data was coded and analyzed. Results show a significant difference in perceptions of fairness for dismissal procedures among the respondents. Respondents also reported a significant difference in perceptions of fairness for dismissal hearing settings and purposes. There was no significant difference among the groups' perceptions of fairness and years of experience or a negotiated labor agreement in their districts. No significance difference was found in the groups' perceptions of fairness and involvement in formal teacher terminations, trials de novo, or plans of improvement.

## CHAPTER 1

### Introduction

"Perhaps the most volatile issue facing the Task Force has been the question of teacher tenure . . . the problem here is one of perception. Therefore, tenure in its present form should be abolished with the essential protections afforded by it recast into a new statutory framework for *Protection of Teacher; Grounds for Dismissal*."<sup>1</sup>

House Bill 1017, the Omnibus Education Reformation and Funding Act of 1990, brought dramatic changes to public education in Oklahoma. The legislation impacted many areas of common education in the state. Funding, negotiations, compulsory school attendance age, board member qualifications, transfer policies, and most other areas pertinent to school governance were changed in some way.

Most changes that occurred as a result of House Bill 1017 have been absorbed into Oklahoma's public education system. The following are examples of changes in Oklahoma school law that resulted from the passage of House Bill 1017:

#### Negotiations

House Bill 1017 criteria for teacher evaluations became an explicit negotiable item for any standards adopted beyond those set by the State Board of Education.

#### School Board Member Qualifications

School board members must hold a high school diploma or certificate of high school equivalency.

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<sup>1</sup> Task Force 2000, "A Blueprint for Excellence" p. 15 (1989).

### Workshop Credit Requirements

School board members must attend 20 workshop hours within a 9 month period instead of the previously required 13 months.

### Compulsory Education

The starting age for students attending public school was reduced from age 7 to age 5 starting with the 1991-1992 school year.

Changes in public education in Oklahoma from House Bill 1017 have been integrated into the day-to-day operations of schools. The Teacher Due Process Act (1990) (TDPA) of House Bill 1017, which sets out the procedures for conducting a teacher dismissal hearing and a trial de novo appeal for career teachers, remains controversial. The reason for the controversy is that proponents for both sides [school districts and teachers] continue to disagree over issues of fairness regarding certain elements of the TDPA. Those disagreements were present prior to passage of House Bill 1017 and the TDPA.

### The History of the TDPA

The TDPA was the product of a political compromise between public school teacher organizations and proponents of public school districts including school board and administrative organizations.<sup>2</sup> The conflict was a classic labor-management standoff that has yet to be resolved to the total satisfaction of either side.

The TDPA fueled controversy that spilled over from public education into the legal arena. The root of the controversy in Oklahoma's tenured teacher termination process was whether or not a local school board should provide a tenured teacher facing employment termination with a hearing before or after the

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<sup>2</sup>Task Force 2000, pp. 15-16.

school board made the final decision. Prior to the passage of House Bill 1017, the procedures for dismissal of a tenured teacher were quite different from the procedures under the current TDPA.

#### Pre-HB 1017 Teacher Termination Procedures

Prior to House Bill 1017, a school board could vote not to reemploy a teacher. The board would then provide the teacher with notification of the right to appeal the decision of the board to a three member panel.

The United States Supreme Court, in *Cleveland Board of Education v. Loudermill*<sup>3</sup>, ruled that an employee with a property right in continued employment was entitled to notice and a pretermination hearing in which to orally or in writing address the employing public agency prior to any initial employment vote. Public school districts were required to have a pretermination hearing before the first board nonreemployment or dismissal vote. This ruling was followed in an earlier decision by the Oklahoma Supreme Court.

#### Oklahoma Supreme Court Ruling

The Oklahoma Supreme Court had already addressed the issue of teacher employment termination with a ruling on pre-House Bill 1017 legislation. The Supreme Court of Oklahoma ruled that pre-House Bill 1017 procedure for tenured teacher dismissals was in violation of a tenured teacher's due process right of notice before deprivation of a teacher's property interest in the teacher's employment.<sup>4</sup>

Two hearings before the school board are no longer required. Prior to the passage of House Bill 1017, the statutes provided two hearings for a tenured teacher facing employment termination. In the first hearing, the local school board would

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<sup>3</sup>470 U.S. 532, 542 (1985).

<sup>4</sup>Short v. Kiamechee Area Vo-Tech, 761 P.2d 472 (1988).



vote not to reemploy the teacher. The school board would then send the teacher notice of the right to a second hearing to contest the board's initial vote.

The Oklahoma Supreme Court held that the previous statutes were unconstitutional because the statutes did not provide a pretermination hearing for the teacher before the board. The court held this to be a constitutional violation of the teacher's due process right to fair notice prior to the deprivation of that teacher's Fourteenth Amendment property interest in the teacher's employment with the school district.<sup>5</sup> The Oklahoma legislature promulgated House Bill 1017 with the intent of following the Court rulings of *Loudermill* and *Short v. Kiamechee* concerning career teachers' constitutional due process rights in dismissal proceedings.

#### Legislative Intent

The legislative intent of the TDPA was to correct the due process deprivation of pre-House Bill 1017 statutes. House Bill 1017 amended the pretermination process to provide a career teacher with one hearing before the school board. At the conclusion of the hearing, the school board then votes on whether or not to dismiss the teacher.

The pretermination hearing in House Bill 1017 is similar to the post-termination hearing under the old legislation. The similarity being that the school board decides whether or not the teacher should be dismissed after both sides have presented their cases.

Under the old law, the pretermination hearing was for the limited purpose of determining whether cause existed to conduct a full employment termination

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<sup>5</sup>Id.

hearing. Under the current law, the only board hearing is a full employment pretermination hearing.

#### Current TDPA Hearing Procedures

The teacher may address the board orally and in writing at the hearing. The teacher may call witnesses, cross-examine the administration witnesses, and present other evidence to support the teacher's cause.<sup>6</sup>

The changes in career teacher due process dismissal hearings that resulted from House Bill 1017 were dramatic. Career teachers gained the statutory right to two dismissal hearings; a formal hearing before the local school board and a de novo hearing in district court to appeal a school board's negative employment decision if the teacher elects to do so.<sup>7</sup> House Bill 1017 set out express appeal rights and procedures for career teachers.

#### Appeal Procedures

A career teacher must appeal the school board's decision to dismiss the teacher to the district court within 10 days of the school board's notice to the teacher of the decision. If the teacher fails to file an appeal within 10 days of the school board's notification of dismissal, the teacher waives the right to an appeal and the decision of the board is final.

The time limits proscribed for the proceedings before the district court in the statute may be extended by mutual consent of the parties with the approval of the district court.<sup>8</sup> As in the school board hearing, the school district again has the

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<sup>6</sup>Standards for Accreditation of Oklahoma Schools 1998. 210:1-5-8.

<sup>7</sup>Okla. Stat. tit. 70, § 6-101.26 (1990).

<sup>8</sup>Okla. Stat. tit. 70, § 6-101.27 (1990).

burden of proving the career teacher should be dismissed in the de novo appeal proceeding.

#### **Burden of Proof**

The burden of proof in a trial de novo is on the school district's superintendent or designee, as the representative of the local school board to prove the career teacher's dismissal is warranted. The standard of proof is by the preponderance of the evidence, which is the normal standard in a civil trial.<sup>9</sup> The TDPA grants express rights to a career teacher who is suspended by the school board pending an appeal.

#### **Period of Suspension**

The school board may immediately suspend a career teacher from teaching in the district if the board votes to dismiss the teacher. However, if the career teacher chooses to appeal the board's decision within 10 days in district court, the teacher is entitled to full compensation and benefits during that suspension period. The entitlement remains in effect until the district court renders a decision on the matter.<sup>10</sup>

If the teacher receives an unfavorable decision at the district court level, the teacher may appeal the court's decision to a higher court. The teacher is not, however, entitled to further compensation during an appeal of the district court's ruling. If the teacher wins on appeal, the teacher may be entitled to receive back pay during the entire appeal time and other costs deemed appropriate by the court.<sup>11</sup>

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<sup>9</sup>Id.

<sup>10</sup>Okla. Stat. tit. 70, § 6-101.26 (1990).

<sup>11</sup>Okla. Stat. tit. 70, § 6-101.27 (1990).

## Background to the Study

Society in general has accepted the notion that public education should be held accountable for the quality of educational services provided to students. Accountability is expressed at the district level through local school board elections, voting for school bond issues and participation in other school governance activities.

This notion of accountability was manifested by the study "A Nation at Risk."<sup>12</sup> In Oklahoma, the work of "Task Force 2000" further reinforced the idea of accountability for public education.

### Public Interest

Accountability to the public in Oklahoma requires that public schools retain quality teachers. Implied in that accountability is the fact that public schools must also retain the ability to remove ineffective teachers from their systems. Statutory safeguards must also protect quality teachers from unfair employment terminations.

Proponents for school districts and teachers posture for leverage in maintaining their own interests on the matter of career teacher employment terminations. School districts want to retain the ability to remove teachers the administration has identified as ineffective. Teachers want to prevent school districts from dismissing teachers for unlawful reasons. The goal of providing a system that retains quality teachers is compromised when the two sides hold their own self-interests above the primary concern of retaining quality teachers and removing ineffective ones.

The public interest is better served when school districts have effective legal recourse for dismissing teachers who have demonstrated ineffective teaching performances. The public interest is also served when quality teachers have

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<sup>12</sup>Tanner, Daniel. "A Nation 'Truly' at Risk." *Phi Delta Kappan*, December 1993, 288-297.

statutory protection from unlawful termination actions by school districts. Since taxpayers ultimately bear the cost of career teacher dismissal proceedings, the legal costs involved are important public issues.

### Legal Costs

Career teacher dismissal hearing procedures may result in significant legal costs for the teacher and the school district. Legal costs may include discovery related costs, subpoenas, subpoenas duces tecum for documents, legal stenographers, and record transcriptions as well as attorney fees.

The average gross receipts for attorney fees per lawyer in the United States were up 13% in 1997 over 1996. Expenses for support staff such as paralegals rose between 16% to 20% for the same period.<sup>13</sup> School districts and teachers involved in employment termination proceedings can expect to incur costs that reflect continuing rises in legal fees.

The school district has the burden of proving the alleged statutory grounds for dismissal. Therefore, the school district must bear the minimum costs of conducting a hearing, making a record of the hearing and other related expenses. Those costs may rise exponentially if the teacher's dismissal is subsequently appealed in a trial de novo at the district court level. Legal costs will continue to rise for both the teacher and the school district if either side appeals the decision of the district court.

The career teacher must bear the cost of preparing for the dismissal hearing and representation at the hearing. While the teacher is not required to have representation at the hearing, an attorney usually represents the teacher.

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<sup>13</sup> Samborn, Hope Viner. Big Firms Keep Up, 84 A.B.A.J. 18 (1998).

The cost to school districts and teachers go beyond the legal expenses incurred in the process. Human resource costs are also significant.

#### Human Resource Costs

Human resource costs are incurred by the school district when administrators commit time and resources in preparation for a dismissal hearing that are normally committed to educational endeavors. Moreover, a termination hearing within the district in general usually affects school climate, morale and effectiveness.

The financial and human resource costs to a school district in a termination proceeding are subsequently passed on to the taxpayers of Oklahoma via the school district's portion of the expense. The public benefits when school resources are used more efficiently for direct educational purposes rather than for secondary purposes such as teacher employment termination hearings. Therefore, the public benefits from a fair and expedient process for career teacher employment terminations.

#### Legal Analysis

The researcher has found, through legal experiences, experience in public school administration and communications with attorneys, school board members, administrators, and teachers, that controversy surrounds many legal issues regarding the procedures for dismissing career teachers in Oklahoma. Those controversial legal issues include the following: legal discovery of information during the proceeding; the standard of review for a career teacher's appeal of a school board's negative employment decision; the common law right of school boards to dismiss a career teacher; the impermissible commingling of the superintendent's roles in the process; conflict of interest issues regarding the designation of the school board as the hearing board in the proceeding; constructive discharge issues; ex parte

communications with the school board during the process; and the issue of fundamental fairness for school districts and career teachers in the dismissal process. These legal issues are presented and discussed in the sections that follow.

#### Discovery

The career teacher may make the tactical procedural decision to use the board hearing as an opportunity to determine the evidence and grounds upon which the school district will base its case in a trial de novo. In that scenario, the board hearing may become a discovery tool for the teacher. The teacher may then avoid or limit expensive discovery methods such as depositions, interrogatories, and subpoenas.

#### Standard of Review

A career teacher's appeal hearing in district court is de novo. The court does not conduct a review of the record of the school board hearing to determine if the teacher's rights were violated. The case is heard anew on its merits rather than reviewed for procedural fairness.

The court does not review whether a board member or the board as a whole were biased. The court may indeed hold that the teacher was terminated for an improper reason such as board bias. However, that determination would be made by the court from the facts presented in the trial de novo and not from a review of the record of the school board hearing.

#### Common Law

The common law right to employ includes the common law right to discharge an employee. That right may be restricted by contractual or constitutional considerations. If no express contractual provision exists indicating the grounds

upon which a teacher may be discharged, the common law permits the dismissals for sufficient cause.<sup>14</sup>

The current TDPA dilutes the common law right of school boards to dismiss a teacher. A school board may only dismiss a career teacher after the teacher has been given an opportunity to correct the teaching deficiency unless the grounds for dismissal are for conviction of a sex offense subject to the Sex Offenders Registration Act or any felony offense.<sup>15</sup> The teacher's principal must also assist the teacher in correcting the deficiency before the school board can dismiss the teacher.

Ultimately, the school district's common law right to discharge a career teacher is subject to an appeal in district court. The statutory right of appeal has a chilling effect on that common law right because the trial de novo appeal takes away the school district's right to discharge a career teacher. The decision to dismiss or not to dismiss a career teacher is made by the district court.

#### Impermissible Commingling

There are two parties to the action in a career teacher dismissal proceeding: 1) the teacher facing dismissal; and 2) the school district attempting to dismiss the teacher. The TDPA commingles the role of the school board as a party to the action with the role of impartial finder of fact on the matter.

Moreover, an employment termination proceeding is the only time a school board in Oklahoma must divorce itself from the counsel and advice of the school's superintendent. The school board is required to make an objective decision independent of the superintendent's recommendation.

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<sup>14</sup>E. Edmund Reutter, Jr., The Law of Public Education, 4<sup>th</sup> ed. (New York: The Foundation Press, Inc., 1994), p. 637.

<sup>15</sup>Okl. Stat. tit. 70, § 6-101.22(C) (1990).



The superintendent takes on the role of prosecutor of the teacher in a teacher dismissal hearing. The board must weigh equally the superintendent's arguments for dismissing the teacher along with the teacher's arguments for retention.

### Conflict of Interest

Finally, a conflict of interest question is raised when the process creates a situation in which the trier of fact [school board] eventually becomes a defendant in subsequent litigation on the matter. That occurs when the terminated teacher sues the school board in a trial de novo. The question is then raised, "Can a school board make a fair and independent termination decision knowing their decision may expose them to a lawsuit by the teacher?"

### Constructive Discharge

The TDPA provides pretermination employment procedures for career teachers. However, actual compliance with those procedures may be a formidable task for the career teacher. So formidable, in fact, that the career teacher may view compliance as constructive discharge.

A career teacher may feel that the pretermination hearing process is not worth going through in order to keep that teacher's job. In that case, the process itself then defeats the very protections it was designed to provide.

If a school board uses the foregoing scenario to their advantage, the proffer of a pretermination hearing by the school board becomes mere pretext for termination. It could then be argued that the superintendent's recommendation for dismissal becomes, in fact, a constructive discharge.

### Ex Parte Communications

Oklahoma law requires a school board member to be a legal resident of the school district for a minimum of six months before taking office.<sup>16</sup> School board members are elected from a ward within the district unless the population of the board members school district is 1,800 or below.<sup>17</sup>

School boards are charged with the governance of their school districts.<sup>18</sup> It is customary for patrons of a school district to discuss matters affecting school operations with board members individually. It is also legal for board members to discuss information not barred by confidentiality laws with patrons of the district. Board members are only barred from assembling in sufficient numbers to create a quorum in violation of Oklahoma's Open Meeting Act.<sup>19</sup>

School board members are not barred from listening to a patron's concern about a teacher's instructional performance. In fact, school board members are authorized, under Oklahoma law, to identify poor teaching performance or conduct of teachers and report those problems to the teacher's principal.<sup>20</sup> Moreover, the principal is required, pursuant to the statute; to address the problem identified by the board member with the teacher.<sup>21</sup>

The statute authorizing a school board member to identify teaching problems, coupled with the custom of discussing teachers' performance with district

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<sup>16</sup>Okla. Stat. tit. 70, § 5-107(B)(2) (1990).

<sup>17</sup>Okla. Stat. tit. 70, § 5-107(B)(1)(b) (1990).

<sup>18</sup>Okla. Stat. tit. 70, § 5-106 (1990).

<sup>19</sup>82 Op. Att'y Gen. No. 212 (Nov. 9, 1982).

<sup>20</sup>Okla. Stat. tit. 70, § 6-101.24(C) (1990).

<sup>21</sup>Id.

patrons, directly contravene the notion of fair play in the adversarial setting of teacher terminations.<sup>22</sup> Unauthorized *ex parte* contacts with a trier of fact directly undermine the adversarial system because they deprive the opposing party of an opportunity to respond.<sup>23</sup>

*Ex parte* communications are a two-edged sword. Parties for and against retention of the teacher may discuss their opinions with board members. Since the district court does not review the manner in which a termination hearing is conducted, the court does not review *ex parte* communications with board members.

*Ex parte* issues in adversarial settings are discussed in more depth in the review of the literature in Chapter 2. *Ex parte* communications are part of the substantive due process issues in controversy regarding fundamental fairness due career teacher and school districts in dismissal proceedings.

#### Fundamental Fairness

Fundamental Fairness is a holistic concept. It is determined by the presence or absence of equality of adversaries before a neutral tribunal.<sup>24</sup>

Fundamental Fairness is also determined by equity of costs [financial and human resource], access to legal representation, ethical conduct by the parties, and common law rights of employers and employees. It is also determined by impermissible commingling of authority, conflicts of interest, neutrality of the trier of fact, constructive discharge, and *ex parte* actions during the process.

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<sup>22</sup>Okla. Stat. tit. 70, § 6-101.24(C) (1990).

<sup>23</sup>Geoffrey C. Hazard & W. William Hale, *The Law of Lawyering: A Handbook on the Model Rules of Professional Conduct* at 658 (2d ed. 1990).

<sup>24</sup>*Id.*

Fundamental Fairness is discussed in more depth in the Chapter 2 Literature review. The issue of Fundamental Fairness to career teachers and school districts underpins the problems to be addressed in the study.

#### Statement of the Problem

Interviews with representatives of school organizations and teacher organizations confirm that differences exist between the two sides regarding career teacher dismissal procedures. The issues are: 1) the statutory designation of the school board as the hearing board in career teacher dismissal proceedings; and 2) the career teachers' right to a de novo appeal of a school board's negative employment decision.

The researcher's experience in public school administration and legal consulting on career teacher dismissal matters confirms that differences exist between public school districts organizations and teacher organizations on the role of school boards in career teacher dismissal proceedings and the trial de novo appeal right of career teachers. It is the researcher's position that the differences held between the two sides [school districts and teachers] regarding career teacher dismissal procedures will continue to exist under the current TDPA unless the Act is amended to resolve the controversies.

#### Purpose of the Study

The purpose of this study was to evaluate the degree of fairness perceived by career teachers, administrators, school board members, and attorneys who represent educational interests, of the designation of the school board as the hearing panel in career teacher dismissal proceedings. The study also evaluated the degree of fairness perceived by those groups regarding a career teachers' statutory right to appeal a school board's dismissal decision in a trial de novo.

The study examined the costs related to career teacher employment terminations under the TDPA. The costs included financial and human resource expense.

The study evaluated statutory teacher dismissal procedures for the states of Oklahoma, Florida, Missouri, and Oregon. The statutes of Florida, Missouri, and Oregon were selected because they were used as models for alternatives to Oklahoma's current career teacher dismissal procedures.

Curative legislation recommendations were made regarding the TDPA of Oklahoma. The researcher's purpose was to recommend changes, based on the research, to better ensure fairness for school districts and career teachers in career teacher dismissal procedures. The study was conducted pursuant to the following limitations.

#### Limitations of the Study

State Department of Education regulations require a school district to notify the State Department of Education when teacher employment terminations are conducted. However, the regulations do not include sanctions for noncompliance with the reporting requirement. Therefore, data from the study was received directly from career teachers, principals, superintendents, school board members, and attorneys who practice or have experience in school law.

#### Assumptions of the Study

The study gathered demographic information about the various subjects in the study. The demographic information provided the positions held by the subjects including career teachers, principals, superintendents, school board members, and attorneys who practice school law. ["Superintendents" includes all positions for

which a superintendent certificate is required.] The information also included the years of experience each subject holds in those positions.

The study was conducted pursuant to the following assumptions:

- 1) The subjects participating in the survey and interviews had experience in or knowledge of career teacher employment termination hearings conducted pursuant to the TDPA.
- 2) The administrators who evaluate career teacher were certified and had the requisite training to conduct teacher evaluations from the Oklahoma State Department of Education.
- 3) The teachers involved in the study were certificated and held career status pursuant to the TDPA.
- 4) The responses of all persons interviewed were truthful and accurate to the best of their knowledge.

#### Significance of the Study

Because of the controversy between school districts and teachers regarding teacher dismissal hearings in Oklahoma, educational policy makers may be helped by this study. The information acquired in this study may be used to aid policy makers in making decisions regarding statutory due process rights of teachers while enabling school districts to better retain quality teachers.

Courts may be more inclined to respect a school district's right to maintain quality education through the dismissal of ineffective teachers if policy makers are diligent in drafting and administering sound policies.

### **Implication for Practice**

The study examined how the changes in the TDPA have impacted the way local boards of education perceive their roles in career teacher employment termination proceedings. Also, how school board members' roles have changed after enactment of the TDPA.

The relationship between the superintendent and the board of education were also examined. The study attempted to determine what changes, if any, occurred in that relationship when the superintendent assumed the role of the advocate for termination of a career teacher's employment and the board, pursuant to the Act, became an objective trier of fact in the proceeding.

Proponents on both sides of the issue may be able to examine the various arguments on the matters. They may then be able to make better-informed recommendations for curative legislation that is less divisive to public education in Oklahoma.

Teachers may benefit by receiving fair, objective hearings by a hearing board with no vested interest in the results. School districts may benefit by having a bona fide opportunity to resolve the matter without having the matter litigated in a court of law. Students may benefit from a hearing process where substandard teachers are removed from teaching in Oklahoma public schools and quality teachers continue in the field.

### **Summary**

The introduction, background to the study, statement of the problem, purpose of the study, research questions, definition of terms, significance of the study, the implications for practice, assumptions, and limitations of the study were

presented in Chapter 1. Chapter 2 contains a review of the selected literature. Chapter 3 contains the methodology used for analyzing the data of the study.

### Definition of Terms

#### Administrative Hearing

A hearing that takes place outside the judicial process, before officials who have been granted judicial authority expressly for the purpose of conducting such hearings.

#### Appeal

A resort to higher court for the purpose of obtaining a review of a lower court decision and reversal of the lower court's judgment on the granting of a new trial.

#### Career Teacher

One who has completed three consecutive school years as a teacher at one district under a teacher's contract.

#### Cause of Action

A claim in law and fact sufficient to demand judicial attention, the composite of facts necessary to give rise to the enforcement of a right. A right of action is the legal right to sue; a cause of action is the facts, which give rise to a right of action.

#### Complaint

In a civil action, the first pleading of the plaintiff setting out the facts on which the claim for relief is based.

#### Constructive Discharge

Not an actual discharge but accepted in law as a substitute for a discharge. Treated by the law as though it were an actual discharge.



### Damages

Monetary compensation, which the law awards to one who has been injured by the action of another.

### Defendant

In civil proceedings, the party responding to the complaint.

### Deposition

A method of pre-trial discovery which consists of a statement of a witness under oath, taken in question and answer form as it would be in court, with opportunity given to the adversary to be present and cross-examine, with all this reported and transcribed stenographically.

### Discovery

Modern pre-trial procedure by which one party gains information held by another party; the disclosure by a party of facts, deeds, documents and other such things.

### Due Process

The requirement that notice and a fair hearing be accorded prior to a deprivation of property of liberty by the government.

### Ex Parte Communication

Communication with a judge, juror or prospective juror or other official prohibited by law concerning a matter pending, except as permitted by law.

### Fundamental Fairness

Constitutional standard as applied to adversarial hearings that requires that equals will meet in fair contest before a neutral tribunal.

### Hearing

A proceeding wherein evidence is taken for the purpose of determining an issue of fact and reaching a decision on the basis of that evidence.

### Interrogatories

A pre-trial discovery tool in which written questions are propounded by one party and served on the adversary, who must answer by written replies made under oath.

### Litigants

The parties involved in a lawsuit; refers to all parties whether plaintiffs or defendants.

### Litigation

A judicial contest through which legal rights are sought to be determined and enforced. The term refers to civil actions.

### Motion

An application to the court requesting an order or rule in favor of the applicant.

### Party

In a judicial proceeding, a litigant [plaintiff or defendant]; a person directly in the subject matter of a case; one, who could assert a claim, make a defense, control proceedings, examine witnesses, or appeal from the judgment.

### Plaintiff

The one who initially brings the suit.

### Pleadings

Statement, in logical and legal form, of the facts that constitute the plaintiff's cause of action and the defendant's ground of defense.

### Pretermination Hearing

A proceeding before a local board of education wherein evidence is taken for the purpose of determining whether or not to adopt findings of fact concerning a career teacher's job performance and reaching an employment termination decision on the basis of that evidence and finding.

### Proffer

To offer.

### Quasi-Judicial Hearing

An adversarial proceeding where certain minimal procedures are required, but the administrative hearing body is not held to the same procedural strictness as in a court of law.

### Redress

Relief or remedy. It may be damages or equitable relief.

### Relief

The redress or assistance awarded to a complainant by a court, especially a court of equity, including such remedies as specific performance, injunction, rescission of a contract, etc.; but the term generally does not comprehend an award of money damages.

### Remedy

The means employed to enforce or redress an injury. The most common remedy at law consists of money damages.

### Subpoena

A writ issued under authority of a court to compel the appearance of a witness at a judicial proceeding, the disobedience of which may be punishable as a contempt of court.

### Subpoena Duces Tecum

Type of subpoena issued by a court at the request of one of the parties to a suit requiring a witness to bring to court or to a deposition any relevant documents that are under the witness's control.

### Summary Judgment

A preverdict judgment rendered by the court on the basis of the pleadings because no material issue of fact exists and one party or the other is entitled to judgment as a matter of law.

### Trial De Novo Hearing

The judgment is suspended and the reviewing court determines the case as though it originated in the reviewing court and the court gives no attention to the findings and judgment of the lower court except as they may be helpful in the reasoning.

## CHAPTER 2

### Review of the literature

#### Due Process

The concept of due process is historically grounded in constitutional law, case law, and statutory law at federal and state levels in the United States. The first express introduction of the phrase “due process” is in the Fifth Amendment of the United States Constitution. The Fifth Amendment provides “. . . nor shall any person be deprived of life, liberty, or property without due process of law.”<sup>25</sup> The provision, as part of the federal Constitution, applies only to actions by the federal government.

The Fourteenth Amendment applies to the states. Section 1 of the amendment states, “. . . nor shall any State deprive any person of life, liberty, or property, without due process of law.”<sup>26</sup> In *Palko v. Connecticut* (1937), the Court held there is no fixed meaning to the phrase, rather it expands to comport with jurisprudential attitudes of fundamental fairness.<sup>27</sup>

#### Procedural Due Process

Procedural due process requires fair notice and an opportunity to be heard if an individual can demonstrate a violation of either a property right or a liberty interest. The purpose of procedural due process is to prevent the state from pursuing

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<sup>25</sup>U.S. Const. Amend. V.

<sup>26</sup>U.S. Const. Amend. XIV, § 1.

<sup>27</sup>302 U.S. 319.

arbitrary acts that infringe upon constitutionally protected rights without first allowing a citizen an opportunity to contest the action as failing to meet the requirements of fundamental fairness. Only through the procedural safeguards of procedural due process can governmental deprivation of constitutional rights be prevented.<sup>28</sup>

Procedural due process is very important to public education. It is the process which protects teachers and other school personnel from arbitrary and capricious acts by the school district. It is not, however, an absolute right. A teacher cannot claim a denial of a property right or liberty interest on demand. Nor does a teacher have an automatic right to receive a pretermination notice and hearing. The burden of proof is on the teacher to show the existence of such a right or interest.<sup>29</sup> That right for career teachers in Oklahoma is provided expressly by statute.<sup>30</sup>

A balancing test has been established by the courts to weigh the state's interest in promoting the efficiency of the public service it performs against the individual employee's interest. Those interests include the teacher's interest in retaining employment, the school district's interest in removing ineffective teachers, and the avoidance of administrative burdens and the risk of unlawful termination.<sup>31</sup>

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<sup>28</sup>Sperry, David J., Daniel, Philip T.K., Huefner, Dixie Snow, Gee, E. Gordon, Education Law and the Public Schools: A Compendium, 2d. ed. (Norwood, MA:Christopher-Gordon Publishers, Inc., 1998), p. 333.

<sup>29</sup>Id.

<sup>30</sup>Okla. Stat. tit. 70, § 6-101.26

<sup>31</sup>Mathews v. Eldridge, 424 U.S. 319, 335 (1976).

The Court has recognized that due process is a flexible standard; the process due depends on the particular situation involved.<sup>32</sup> A school district does not have to provide all of the procedural requirements required in a court of law. The pretermination hearing can be before an administrative body of the district where the teacher is advised of the charges, given an explanation of the evidence and provided an opportunity to give the teacher's side of the matter.<sup>33</sup> If a career teacher's employment is terminated, the state may provide an opportunity for a full adversarial due process posttermination hearing pursuant to statute or in the teacher's contract.<sup>34</sup>

### Substantive Due Process

Substantive due process is the restriction on governmental regulatory power.<sup>35</sup> When the state (or school district) acts to restrict an employee's constitutional right, the question must be asked whether the exercise of authority is "is a fair, reasonable, and appropriate exercise of the police power of the State, or is it an unreasonable, unnecessary, and arbitrary interference with the right of the individual in his personal liberty . . .?"<sup>36</sup>

The constitutionality of the school boards actions and procedures depend on the validity of the relationship those actions and procedures have to the improvement of the educational school system versus the infringement upon

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<sup>32</sup>Morrissey v. Brewer, 408 U.S. 471 (1972)

<sup>33</sup>Cleveland Bd. Of Educ.v Loudermill, 470 U.S. 532 (1985).

<sup>34</sup>*Id.* At 533.

<sup>35</sup>Sperry, David J., Daniel, Philip T.K., Huefner, Dixie Snow, Gee, E. Gordon, Education Law and the Public Schools: A Compendium, 2d ed. (Norwood, MA: Christopher-Gordon Publishers, Inc., 1998), p. 334.

<sup>36</sup>Lochner v. New York, 198 U.S. 45, 46 (1905).

teachers' constitutionally protected interests. Substantive due process requires the school administration to demonstrate that the denial to teachers of their right to a position or their liberty to pursue other positions is a valid, objective, and reasonable means of accomplishing a legitimate objective.<sup>37</sup>

The Court in *Gillett v. Unified Sch. Dist. No.276*, offered the following example of substantive due process that is required for a teacher in a pretermination hearing:

The purpose of due process [protections] granted a teacher by statute is to develop the grounds that have induced the board to give the teacher notice of its desire to discontinue [his or] her services, and to afford the teacher an opportunity to test the good faith and sufficiency of the notice. The hearing must be fair and just, conducted in good faith, and dominated throughout by a sincere effort to ascertain whether good cause exists for the notice given. If it does not, or if the hearing was a mere sham, then justification for the board of education's action is lacking.<sup>38</sup>

#### Fundamental Fairness

The Court in *Gillett* described a proper teacher pretermination hearing as one that is "fair and just."<sup>39</sup> "Fair and just", or fundamental fairness, is a broad phrase encompassing many important procedural and substantive issues in school employment law. Those issues include impermissible commingling of roles in the process, conflict of interest of hearing participants, constructive actions, ex parte communications, and ethical considerations of the process.

Impermissible commingling allegations may be raised by a teacher when the teacher's evaluator [normally the building principal] and superintendent become, in

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<sup>37</sup>Sperry, David J., Daniel, Philip T.K., Huefner, Dixie Snow, Gee, E. Gordon, Education Law and the Public Schools: A Compendium, 2d ed. (Norwood, MA: Christopher-Gordon Publishers, Inc., 1998), p. 334.

<sup>38</sup>605 P.2d 105, 110 (Kan. 1980).

<sup>39</sup>*Id.*



effect, the teacher's prosecutors before the school board. Those important persons to a teacher are generally considered to be supporters of the teacher as an educator. However, the principal and superintendent are compelled to switch roles during dismissal proceedings. Those administrators switch from being supporters of the teacher to become the teacher's adversaries.

The commingling of roles of the administrators are the teacher's loss and the school district's gain. The teacher can no longer rely on administrators to convey the teacher's merits to the school board in a hearing. However, the school district benefits from the administrators' overall familiarity of the teacher's job performance.

The superintendent's role as advisor to the school board and prosecutor in a teacher dismissal hearing also raises an impermissible commingling question. The court in *Gillett* held that the hearing must be "... conducted in good faith, and dominated throughout by a sincere effort to ascertain whether good cause exists for the notice given."<sup>40</sup> The "good faith" element of that decision in *Gillett* may be called into question when the superintendent, charged with arguing in favor of the teacher's dismissal, also holds a special role as advisor to the school board on all other matters of school governance.

The commingling of roles of the superintendent as "prosecutor" for the teacher's dismissal and "advisor" to the board may tip the balance of fundamental fairness in the favor of the school district. This impermissible commingling of roles may also call into question whether or not the hearing is dominated throughout by a

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<sup>40</sup>*Id.*

sincere effort to resolve the matter on its merits, or it [the hearing] is improperly influenced by the roles played by the administrators.

The Court in *Loudermill* ruled that a school district does not have to provide all of the procedural requirements required in a court of law in a teacher termination hearing.<sup>41</sup> However, this type of *quasi-judicial* hearing for teacher dismissals does implicate constitutional due process because liberty or property interests are involved.<sup>42</sup> Limiting the strictness of procedures required in teacher dismissal hearings, as in *Loudermill*, does not mean compromising fundamental fairness.

Objectiveness and impartiality by the school board are the crux for providing a fair teacher dismissal hearing dismissal in Oklahoma. Ethical conduct and constitutional fairness drive the process. A leading legal-ethics text states that a rule prohibiting improper influence “requires little comment” because it involves the simple notion of fair play.<sup>43</sup>

The adversary system is based on the assumption that equals will meet in fair contest before a neutral tribunal” and “unauthorized *ex parte* contacts with a trier of fact . . . directly undermine the system, for they deprive the opposing party of an opportunity to respond.”<sup>44</sup>

Fundamental fairness in teacher dismissal proceedings before a school board require no less than a “fair contest” before a “neutral” board. The impermissible commingling of the administrators’ roles may be compromise the school boards

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<sup>41</sup>Cleveland Bd. Of Educ. v Loudermill, 470 U.S. 532 (1985).

<sup>42</sup>E. Edmund Reutter, Jr., The Law of Public Education, 4<sup>th</sup> ed. (New York: The Foundation Press, Inc., 1994), p. 135.

<sup>43</sup>Geoffrey C. Hazard & W. William Hale, The Law of Lawyering: A Handbook on the Model Rules of Professional Conduct, (2d. Ed. 1990), p. 658.

<sup>44</sup>*Id.*

efforts to remain “neutral” on the matter and therefore call in to questions the “fairness” of the process.

### Property Interests in Career Teacher Employment

The U.S. Supreme Court, in *Cleveland Board of Education v. Loudermill* (1985), held that the existence of state statutes listing specific reasons for which a public employee may be dismissed may be enough to create a property interest in the employee’s employment.<sup>45</sup> The employee of the school district, a school security guard, challenged the board’s action under a due process deprivation cause of action.

The guard was not given a hearing prior to his dismissal for dishonesty in filling out his employment action. The Court held that Ohio statute, which specifically set forth the grounds for dismissal, “plainly created such an interest.”<sup>46</sup>

Another case, from the Supreme Court of Connecticut, acknowledged a protected Fourteenth Amendment property interest, statutorily created, in a teacher’s employment. The Court in *Connecticut Education Association, Inc. v. Tirozzi*<sup>47</sup> held that a teacher’s teaching certificate constituted a property interest because the relevant statute in Connecticut can be revoked only “for cause.”

Conversely, the Oklahoma Court of Appeals held, in *Stern v. University of Oklahoma Board of Regents*<sup>48</sup>, that a probationary university professor did not hold a property interest created in her employment. The teacher argued that the tenure committee had denied tenure because it felt her research was deficient.

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<sup>45</sup>470 U.S. 532 (1985).

<sup>46</sup>*Id.* At 538-39.

<sup>47</sup>554 A.2d 1065 (Conn. 1989).

<sup>48</sup>841 P.2d 1168 (Okla. App. 1992).

The teacher claimed that the tenure committee breached university procedures by performing an independent evaluation of her scholarship. The Court held there was no evidence to suggest that tenure was meant to be granted routinely or that it could be withheld only "for cause."<sup>49</sup>

The issue of tenure continues to be controversial. The Task Force 2000 Report (1989) addressed the issue of tenure for Oklahoma Public school teachers.

#### Task Force 2000 Report

The Task Force 2000 Report, "Blueprint for Excellence" (1989) reported that, "Perhaps the most volatile issue facing the Task Force has been the questions of teacher tenure."<sup>50</sup> Critics of tenure claimed that tenure prevented poor teachers from being dismissed, while proponents of tenure argue that tenure "ensures unfettered exercise of the First Amendment rights of free speech and expression."<sup>51</sup>

The "unfettered exercise" of a teacher's constitutional rights is reference to the enhanced due process protection that is present when grounds for termination are provided according to statute. Unless due process is afforded by statute, a teacher must make a claim that follows the line of two earlier U.S. Supreme Court decisions, *Board of Regents v. Roth*,<sup>52</sup> and *Perry v. Sindermann*.<sup>53</sup> Both cases helped define the due process rights of teachers.

The *Roth* case explained that in order for a teacher to be entitled to due process, the teacher must have a liberty or property interest at state. In *Roth*, the

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<sup>49</sup>*Id.*

<sup>50</sup>Task Force 2000, "A Blueprint for Excellence" (1989) p. 15.

<sup>51</sup>*Id.*

<sup>52</sup>408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972).

<sup>53</sup>408 U.S. 593, 92 S.Ct. 2694, 33 L.Ed.2d 570 (1972).

university teacher was hired on a fixed contract term of one year. The teacher was informed he would not be rehired. No hearing was provided and no reason was given for not rehiring him.

The Court held that, "To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it."<sup>54</sup>

In *Sindermann*, a university teacher was employed under a series of one-year contracts. He was not hired for the fifth year and he brought suit arguing that due process required a dismissal hearing. The Supreme Court held that " . . . a person's interest in a benefit is a property interest for due process purposes if there are such rules and mutually explicit understandings that support his claim of entitlement to the benefit that he may invoke at a hearing."<sup>55</sup> Because the teacher had been employed at the university for four years, the Court felt that he may have acquired a protectible property interest in continued employment.

The balance that Task Force 2000 sought to achieve was to provide teachers with unfettered access to statutorily created due process rights pursuant to the holding in *Loudermill*, rather than requiring teachers to prove the earlier and more challenging burden of proof required in *Roth* or *Sindermann*.

The recommendation of Task Force 2000 was to abolish tenure and recast the essential protections afforded under tenure into a new statutory framework.

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<sup>54</sup>*Roth*, 408 U.S. at 577.

<sup>55</sup>*Sinderman*, 408 U.S. at 601.

That framework was the "Protection for Teachers; Grounds for Dismissal."<sup>56</sup> As a trade-off, the Task Force 2000 recommended the procedures by which a teacher can be dismissed must be supplemented.<sup>57</sup> That supplement to procedure for dismissal recommendation was the catalyst for the provision of the trial de novo in district court that exists in the current statute.

Task Force 2000 further recommended that an appropriate system for protecting the rights of teachers, while also being a reasonable cost and time effective system for eliminating poor quality teachers be promulgated. It was reasoned that such a system was an " . . . essential element of enhancing the teaching profession and the education system in the eyes of the public."<sup>58</sup>

The current procedure, which calls for the local board of education to become the objective trier of fact in a career teacher employment termination hearing came from this recommendation. The procedural appeal safeguard is the statutory right to a de novo trial in district court.

Task Force 2000 further recommended the establishment of a peer review board to conduct a timely hearing of the teacher's alleged education deficiencies and submit its findings along with its recommendation concerning the dismissal to the superintendent and/or board.<sup>59</sup> This recommendation was not included in the promulgation of the current statute. The Task Force 2000, further recommended

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<sup>56</sup>Task Force 2000, p. 15.

<sup>57</sup>*Id.* at pp. 15-16.

<sup>58</sup>*Id.* at 16.

<sup>59</sup>*Id.* at 17.

doing away with the post-termination hearing.<sup>60</sup> That recommendation was accepted.

Task Force 2000 concluded that the problem was " . . . largely one of perception."<sup>61</sup> It recommended that tenure, in its present form, should be abolished. Instead, the protections afforded by tenure were to be recast into a new statutory framework for "Protection of Teachers; Grounds for Dismissal."<sup>62</sup>

Task Force 2000 recommended that a compromise be reached through the trade-off in the process of removing poor career teachers. The trade-off was to make the grounds for dismissal or nonreemployment of a teacher more objective. More objective, and therefore enforceable, criteria in the termination grounds enable a school to more easily remove an ineffective teacher. This was a deference in the law to local school districts. Conversely, the new law also enhanced career teacher due process protection via the statutory provision for a trial de novo in deference to teachers and teacher support organizations.

Task Force 2000 recommended that each local school district establish a peer review panel to conduct a hearing of the teacher's alleged educational deficiencies and submit its findings and recommendations to the superintendent and/or board of education. The panel was to consist of three teachers, two of whom were to be elected annually by the teachers in the school district and the third to be appointed annually by the school principal.<sup>63</sup>

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<sup>60</sup>*Id.*

<sup>61</sup>*Id.* at 15.

<sup>62</sup>*Id.* at 17.

<sup>63</sup>*Id.*

The peer review panel was intended to be another way of changing the emphasis from a "top down" teacher evaluation system to one in which individual schools would have more local control in teacher evaluation and employment matters through increased levels of cooperation. The "power sharing" element of the peer review panel was intended to enhance the process.<sup>64</sup> This recommendation was not included in the final Teacher Due Process Act (1990). The Task Force 200 Report (1989) provided the framework for legislation in House Bill 1017.

#### House Bill 1017

House Bill 1017 (1990) of the Oklahoma legislature promulgated the legislation regarding the dismissal or nonreemployment hearing for a teacher to be held before the board of education, and the trial de novo of career teachers based on the recommendations of the Task Force 2000.

Section 68 of House Bill 1017 defines "career teacher" to mean one who has completed three consecutive years as a teacher at one district under a teachers contract.

Section 77 restates grounds for dismissal or nonreemployment of career teachers, and included instructional ineffectiveness, unsatisfactory teaching performance and repeated negligence of duty.

Section 81 of the bill provides that the teacher is to be notified by certified mail or substitute process of the (nonreemployment or dismissal) recommendation and the right to a hearing before the board and the time and place of the hearing.

Section 82 of the bill provides procedures whereby a teacher may appeal an unfavorable decision by the board of education for at trial de novo in district court. It stipulates that the standard of proof at the hearing shall be the preponderance of

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<sup>64</sup>*Id.* at 19.



the evidence and the burden of proof shall be on the superintendent and school board in a nonjury trial.

Under the guidelines of House Bill 1017, the board of education is called upon to be an objective hearing panel for the career teacher facing dismissal or termination.<sup>65</sup> The board then becomes the defendant in the proceeding if the career teacher appeals an unfavorable decision of the board to the district court.

House Bill 1017 provided the legislation for the Teacher Due Process Act of 1990.

Teacher Due Process Act of 1990

- A. Whenever a board of education receives a superintendent's recommendation for the dismissal or nonreemployment of a teacher, the board shall mail a copy of the recommendation to the teacher by certified mail, restricted delivery, return receipt requested or by substitute process as provided by law. By the same means, the board shall notify the teacher of such teacher's right to a hearing before the board and the date, time and place set by the board for the hearing, which shall be held within the school district not sooner than twenty (20) days or later than sixty (60) days after the teacher's receipt of notice. The notice shall specify the statutory grounds upon which the recommendation is based upon for a career teacher or shall specify the cause upon which recommendation is based upon for a probationary teacher. Said notice shall also specify the underlying facts supporting the recommendation. At such hearing, the teacher shall be entitled to all rights guaranteed under such circumstances by the United States Constitution and the constitution of Oklahoma.
- B. The hearing shall be conducted by the local board according to procedures established State Board of Education.
- C. Only after due consideration of the evidence and testimony at the hearing shall the local board decide whether to dismiss or nonreemploy the teacher. The board's decision shall be voted in open meeting. The board shall also notify the teacher of its decision, including the basis for the decision, by certified mail, restricted delivery, return receipt requested or substitute process as provided by law. If the decision is to dismiss or nonreemploy a career teacher, the board shall include notification of said teacher's right to petition for a trial de novo in the district court within ten (10) days of receipt

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<sup>65</sup>70 O.S. 6-101.26(B).

of notice of said decision. The board's decision regarding a probationary teacher shall be final. At the hearing the burden of proof shall be upon the superintendent or designee and the standard of proof shall be by the preponderance of the evidence. The career teacher shall receive any compensation or benefits to which such teacher is otherwise entitled until such time as the teacher's case is adjudicated at a trial de novo if the career teacher petitions for the trial de novo. Such compensation and benefits shall not be provided during any further appeal process. The probationary teacher shall receive any compensation or benefits to which such teacher is otherwise entitled until such time as the board's decision becomes final.

Provided, however, if the hearing for a probationary teacher is for nonreemployment of the probationary teacher, such compensation and benefits may be continued only until the end of such teacher's current contract.<sup>66</sup>

Other states have statutes which proscribe the due process requirements for public school teachers. As with the Oklahoma's TDPA, the term "tenure" is not used in the statutes. However, the terms "career", or "permanent" signify tenure-like status of the teacher.

That is, the teacher has accrued a proscribed number of complete, consecutive years of employment within the district for the status of "career" or "permanent" teacher to vest.

#### Other States' Teacher Due Process Statutes

Other states have statutory procedures regarding due process for tenured teacher employment terminations. A select review of those states' procedures presents potential alternatives to Oklahoma's Teacher Due Process Act on the matter.

#### Florida

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<sup>66</sup>Okla. Stat. tit. 70, § 6-101.26 (1990).

The state of Florida requires an assessment to be conducted for all instructional personnel at least once a year. The assessment must use data and indicators of improvement in student performance and may consider results of peer reviews in evaluating the employee's performance as well as parents input when appropriate.<sup>67</sup>

The assessment criteria must include, but is not limited to:

1. Ability to maintain appropriate discipline.
2. Knowledge of subject matter.
3. Ability to plan and deliver instruction.
4. Ability to evaluate instructional needs.
5. Ability to communicate with parents.
6. Other professional competencies, responsibilities, and requirements as established by rules of the Stated Board of Education and policies of the district school board.<sup>68</sup>

All personnel are to be fully informed of the criteria and procedures associated with the assessment process before the assessment takes place. The individual responsible for supervising employee must evaluate the employee. The supervisor submits a written report of the assessment to the superintendent for the purpose of reviewing the employee's contract. The supervisor also must submit the written report to the employee no later than 10 days after the assessment takes place.<sup>69</sup>

Under the procedure for assessing instructional personnel in Florida, an unsatisfactory evaluation is both formative and summative in quality. It is formative in that the evaluator must confer with the employee, make recommendations with

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<sup>67</sup>Fla. Stat. § 231.29(2)(b)(c) (1998).

<sup>68</sup>Fla. Stat. § 231.29(3)(a)(1-6) (1998).

<sup>69</sup>Fla. Stat. § 231.29(3)(b)(c) (1998).

respect to specific areas of unsatisfactory performance, and provide assistance in helping to correct deficiencies within a prescribed period of time.<sup>70</sup> It is summative in that a written report of the assessment is submitted to the superintendent for the purpose of reviewing the teacher's employment status with the district.

Florida's requirement of placing responsibility on the evaluator for recommendations on improving the teacher's unsatisfactory teaching performance, providing assistance to the teacher in helping to correct deficiencies within a prescribed period of time is similar to Oklahoma law. Under Oklahoma law an administrator is required to make a reasonable effort to assist the teacher in correcting the ineffective performance of conduct and establish a reasonable time for improvement, not to exceed two months.<sup>71</sup>

The difference in Oklahoma law is the manner in which the evaluator reports an unsatisfactory teaching performance finding. Under Oklahoma law, the evaluator does not make a report of unsatisfactory performance to the superintendent until after the period of remediation has expired. The result being that Oklahoma law provides for a formative evaluation first. A summative evaluation is only given if the teacher fails to correct the ineffective performance.

Florida law requires the superintendent to recommend that the school board continue or terminate a teacher's employment depending on whether or not the identified unsatisfactory teaching performance has been corrected after 90 calendar day probation period. The superintendent has 14 days after the close the probation

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<sup>70</sup>Fla. Stat. § 231.29(3)(d) (1998).

<sup>71</sup>70 O.S. 6-101.24(A)(1)(2).

period in which to make the recommendation to the board. The board may then elect to conduct a hearing in accordance with one of the following procedures:<sup>72</sup>

A direct hearing conducted by the school board within 60 days after receipt of the written appeal by the board; or a hearing conducted by an administrative law judge.<sup>73</sup>

An administrative law judge is assigned by the Division of Administrative Hearings of the Department of Management Systems of Florida. The hearing is also to be conducted within 60 days after receipt of the written appeal. The recommendation of the administrative law judge is then made to the board. As in the hearing before the board, the determination of the school is final as to the sufficiency or insufficiency of the grounds for termination of employment.<sup>74</sup>

The law in Florida requires the superintendent to notify the State Department of Education of any instructional personnel who receive two consecutive unsatisfactory evaluations and who have been given written notice by the district that their employment is being terminated or is not being renewed or that the school board intends to terminate, or not renew, their employment. The department is then required by statute to conduct an investigation to determine whether action is to be taken against the certificate holder.<sup>75</sup>

Florida law is silent as to what, if any, determinations are to be made by the board in electing which one of the aforementioned procedures is to be used for

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<sup>72</sup>Fla. Stat. § 231.29(3)(d)(3) (1998).

<sup>73</sup>Fla. Stat. § 231.29(3)(d)(3)(a)(b) (1998).

<sup>74</sup>Fla. Stat. 231.29(3)(d)(3)(b) (1998).

<sup>75</sup>Fla. Stat. 231.29(3)(d)(4) (1998).

conducting a particular teacher employment termination hearing.

### Oregon

Oregon's provisions for due process in permanent teacher employment termination proceedings bear some resemblance to similar Oklahoma employment termination procedures for career teachers. The statutory grounds for dismissal of a permanent teacher in Oregon include:

- a. Inefficiency;
- b. Immorality;
- c. Insubordination;
- d. Neglect of duty;
- e. Physical or mental incapacity;
- f. Conviction of a felony of a crime;
- g. Inadequate performance;
- h. Failure to comply with such reasonable requirements as the board may prescribe to show normal improvement and evidence of professional training and growth;
- i. Any cause which constitutes grounds for the revocation of such permanent teacher's teaching license.<sup>76</sup>

The determination of whether the professional performance of a permanent teacher is adequate is based upon consideration of regular and special evaluation reports prepared in accordance with the policy of the employing school district and any written standards adopted by the board.<sup>77</sup> In Oregon, the superintendent of the school district makes the decision to recommend the dismissal of a permanent teacher to the school board.

The superintendent also has the authority to suspend a permanent teacher if necessary. The suspension may be invoked without prior notice to the teacher. In that case, the teacher's salary continues for five days after the suspension becomes

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<sup>76</sup>Or. Rev. Stat. § 342.865(1) (1997).

<sup>77</sup>Or. Rev. Stat. § 342.865(2) (1997).

effective. Importantly, the procedure for dismissal of the permanent teacher must be commenced within those same five days, or the teacher must be reinstated.<sup>78</sup>

Oregon law requires the district superintendent to provide at least 20 days written notice to the permanent teacher by certified mail, or delivered in person, of the intention to make a recommendation to dismiss the teacher. The notice must state the statutory grounds upon which the superintendent believes such dismissal is justified and a concise statement of the facts relied upon to support the statutory grounds for dismissal.<sup>79</sup> The district superintendent is required to send notice of the recommendation to dismiss the teacher to the school board and to the Dismissal Appeals Board. A copy of the Oregon statutes 342.815 - 342.934, pertaining to the dismissal procedures and teacher's rights, must be sent to the permanent teacher.<sup>80</sup>

If the board takes action to approve the recommendation of the district superintendent for dismissal of the permanent teacher, the dismissal takes effect on or after the date of the board's action, as specified by the school board. Notice of the board's decision is given to the teacher as soon as practicable by certified mail or in the manner provided by law for the service of summons in a civil action.<sup>81</sup>

As in Oklahoma, Oregon law provides for a statutory right to appeal a negative school board employment decision by the permanent teacher. In Oregon, the permanent teacher may appeal the decision by depositing the notice by certified mail addressed to the Superintendent of Public Instruction, and a copy to the superintendent of the school district within 10 days after receipt of the notice of the

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<sup>78</sup>Or. Rev. Stat. § 342.875 (1997).

<sup>79</sup>Or. Rev. Stat. § 342.895(2) (1997).

<sup>80</sup>*Id.*

<sup>81</sup>Or. Rev. Stat. § 342.895(3) (1997).

board's decision. The teacher's notice must include a brief statement of the reasons for the appeal.<sup>82</sup>

One difference in the Oregon appeals process from the process in Oklahoma is that an appeal in Oregon is made before the Dismissal Appeals Board.<sup>83</sup> In Oklahoma, the appeal must be filed in district court.<sup>84</sup>

Oregon has gone to great lengths to limit bias in the permanent teacher appeal process. Several procedural safeguards have been put in place. The cornerstone of those safeguards is in the composition of the Dismissal Appeals Board.

The Dismissal Appeals Board consists of 20 members appointed by the Governor of Oregon. The appointments are subject to confirmation by the Senate. Five members are by administrators from public high school districts, five members are permanent teachers, five members are members public high school district school boards at the time of their appointment, and five members must not be affiliated with any public high school district.

At least one member from each of the above categories must be a resident of a school district with average daily membership of less than 1,500 students; one member from each category must be a resident of a school district containing from 1,500 to 4,500 students; and one from each category must be a resident of a school district containing over 4,500 students.<sup>85</sup>

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<sup>82</sup>Or. Rev. Stat. § 342.905(1) (1997).

<sup>83</sup>*Id.*

<sup>84</sup>Okla. Stat. tit. 70, § 6-101.27(A) (1990).

<sup>85</sup>Or Rev. Stat. § 342.903(1) (1997).



The term of office of each member of the Dismissal Appeals Board is four years. However, members serve at the pleasure of the Governor. Members are eligible for reappointment. The Governor has the authority to appoint a successor to any member for the unexpired term. The governor also has the authority to appoint a successor to a member prior to the expiration of that member's term. The successor's term begins on the next following July 1.<sup>86</sup>

The Superintendent of Public Instruction is charged with appointing a panel of three members from the Dismissal Appeals Board for the purpose of conducting a hearing. Where practicable, the panel is to be selected from members of the Board serving in positions where the average daily membership approximates that of the involved district.<sup>87</sup> One member of the panel must be of a category representing board members. One member must be of a category representing teachers or administrators. Finally, one member must be of a category not affiliated with common or union high school districts.

If the appeal is from a permanent teacher in a teaching position, the board must include the teacher member. If the teacher member is in an administrative position, the administrative member must sit in place of the teacher member.<sup>88</sup>

The second, and perhaps most important layer of procedural insulation against bias in the process is the stipulation that no panel shall contain a member who is a resident of the district that is bringing the dismissal. In addition, the Attorney General is required to assign an assistant to advise the Dismissal Appeals Board. The assistant is to be present at the formal hearing held by the Board, and to

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<sup>86</sup>Or. Rev. Stat. § 342.930(2) (1997).

<sup>87</sup>Or. Rev. Stat. § 342.905(3) (1997).

<sup>88</sup>*Id.*

perform those tasks at the request of the board that would normally require legal training.<sup>89</sup>

The Dismissal Appeals Board panel is to conduct a contested case hearing pursuant to the Administrative Procedures Act in Oregon statutes 183.310 and 183.550.<sup>90</sup> The similarity between Oregon and Oklahoma law is that the trial de novo appeal in an Oklahoma district court is also contested or adversarial. As with the trial de novo, the hearing before the Dismissal Appeals Board panel in Oregon is a complete hearing of all the evidence on the matter, not a review of the record hearing.

The work of the Oregon Dismissal Appeals Board panel is to determine whether the facts relied upon to support the statutory grounds cited for dismissal are true and substantiated. If the panel finds the facts as such, it then must consider whether the facts, in light of all the circumstances and any additional facts developed at the hearing that are relevant, are adequate to justify the statutory grounds cited in the termination notice.<sup>91</sup>

Pursuant to the Oregon statute, the panel must not reverse the school board's dismissal if it finds the facts relied upon are true and substantiated. However, the hearing board may be excepted from affirming the school board's decision if the hearing board determines that, in light of all the evidence and for reasons stated with specificity in its findings and order, that the dismissal was unreasonable, arbitrary or clearly an excessive remedy.<sup>92</sup>

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<sup>89</sup>*Id.*

<sup>90</sup>Or. Rev. Stat. § 342.905(4) (1997).

<sup>91</sup>Or. Rev. Stat. § 342.905(5) (1997).

<sup>92</sup>*Id.*

If the Dismissal Appeals Board panel finds that the facts relied on to support the recommendation of the district superintendent are untrue or unsubstantiated, or if true and substantiated, are not adequate to justify the statutory grounds cited as reason for the dismissal, the teacher is to be reinstated and receive back pay.<sup>93</sup> The hearing board has 30 days from the final adjournment of the hearing to prepare its' written report. It also has the latitude to go beyond that time because of unusual circumstances when justice requires it. It must notify the teacher and the school district if more time is required to prepare its report.<sup>94</sup>

The state of Oregon offers a significant option for permanent teachers and school district in employment termination matters. That option is arbitration in lieu of a hearing before the Dismissal Appeal Board panel. That option is contingent upon the mutual agreement of the permanent teacher and the school district.<sup>95</sup>

The school district actually has the final say on the matter of arbitration. The teacher must notify the Superintendent of Public Instruction of the request for arbitration included with the request for appeal. The superintendent of the school district has 10 days in which to notify the teacher and the Superintendent of Public Instruction as to whether the district has agreed to use the arbitration procedure.<sup>96</sup>

If the district does not agree to use arbitration, the hearing is conducted according to the abovementioned procedure before the Dismissal Appeal Board

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<sup>93</sup>Or. Rev. Stat. § 342.905(6)(a) (1997).

<sup>94</sup>*Id.*

<sup>95</sup>Or. Rev. Stat. § 342.905(9)(a) (1997).

<sup>96</sup>*Id.*

panel. In the alternative, if arbitration procedure is used, the permanent teacher waives all further rights to a hearing before the Dismissal Appeals Board.<sup>97</sup>

If there is an applicable collective bargaining agreement in the school district which has terminated the employment of a permanent teacher, the procedures for selection the arbitrator are those in the applicable bargaining agreement. If there is no provision or agreement or if the agreement does not contain a procedure for selection, then Oregon law requires a special process.<sup>98</sup>

The permanent teacher and the school district request a list of five arbitrators from the Employment Relations Board of Oregon. The two parties then choose an arbitrator by alternative striking of names until one name is left. That person acts as the arbitrator. The Employment Relations Board compiles the roster of qualified arbitrators from which the lists are to be taken. The arbitrator uses the same reasons, rules and levels of evidence as are required for the Dismissal Appeals Board under Oregon statute.<sup>99</sup>

The hearing rights of a permanent teacher in Oregon are similar to the rights of career teacher in Oklahoma. The teacher has the right to be present at the hearing, to be heard, to be represented by counsel, to call witnesses and present evidence. The statute is silent as to whether an Oregon teacher has the right to cross-examine witnesses in a hearing or the right to raise objection to the introduction of any evidence presented by the school district.

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<sup>97</sup>*Id.*

<sup>98</sup>Or. Rev. Stat. § 342.905(9)(b) (1997).

<sup>99</sup>*Id.*

## Missouri

The state of Missouri has legislation for terminating the employment of a permanent teacher that bears many similarities to Oklahoma's legislation regarding the termination of employment of a career teacher on a continuing contract.

The Missouri legislation is referred to as the "Teacher Tenure Act."<sup>100</sup>

A permanent teacher is one who has been employed for five continuous years as a teacher in the same school district.<sup>101</sup> The Teacher Tenure Act requires that a permanent teacher is entitled to a hearing, if requested by the teacher, before the indefinite contract of the teacher may be terminated by the school board.<sup>102</sup>

The statutory grounds for termination of a permanent teacher in Missouri are similar to the grounds for termination of a career teacher in Oklahoma. Those grounds include:

- (1) Physical or mental condition unfitting him to instruct or associate with children;
- (2) Immoral conduct;
- (3) Incompetency, inefficiency or insubordination in line of duty;
- (4) Willful or persistent violation of, or failure to obey, the school laws of the state or the published regulations of the board of education of the school district employing him;
- (5) Excessive or unreasonable absence from performance of duties; or
- (6) Conviction of a felony or a crime involving moral turpitude.<sup>103</sup>

Consideration is given to regular and special evaluations in determining the professional competency of or efficiency of a permanent teacher. In addition, a permanent teacher must receive at least thirty days notice of charges of

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<sup>100</sup>Mo. Rev. Stat. § 168.102 – 168.130 (1997).

<sup>101</sup>Mo. Rev. Stat. § 168.104(4) (1997).

<sup>102</sup>Mo. Rev. Stat. § 168.116(1) (1997).

<sup>103</sup>Mo. Rev. Stat. § 168.114(1)(1-6) (1997).

incompetency, inefficiency, or insubordination in line of duty from the superintendent or the school board before those charges may be made to the school board regarding employment termination.<sup>104</sup> The notices given to a permanent teacher are warnings in writing, stating the specific causes, which, if not removed, may result in charges toward termination of employment. Moreover, the superintendent or his designee is statutorily required to meet and confer with the teacher in an effort to resolve the matter.<sup>105</sup>

If in the opinion of the superintendent or school board, the causes of concern are not removed by the teacher, notice may be given to the teacher of intent to terminate the teacher's indefinite employment contract. The notice must be served on the permanent teacher at least twenty days prior to the date of the hearing via certified mail.<sup>106</sup>

If the teacher does not request a hearing, the board of education may, by a majority vote, order the contract of the teacher terminated. If, however, a hearing is requested by the teacher of the board of education, it must take place no less than twenty nor more than thirty days after notice of a hearing has been furnished the permanent teacher.<sup>107</sup>

The board may suspend the permanent teacher from active performance of duty upon filing charges pursuant to the statute until a decision is rendered by the board of education. However, the teacher's salary is continued during the suspension. If the teacher appeals the school board's decision to terminate the

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<sup>104</sup>Mo. Rev. Stat. § 168.114(2) (1997).

<sup>105</sup>*Id.*

<sup>106</sup>Mo. Rev. Stat. § 168.116(3) (1997).

<sup>107</sup>*Id.*

teacher's contract, the teacher may only recover salary lost during the appeal if the school board's decision is reversed.<sup>108</sup>

The procedure for a Missouri permanent teacher's appeal of a school board's indefinite employment contract termination is in marked contrast to Oklahoma's appeal procedure. The Missouri statute grants the right of appeal from the board decision to the circuit court of the county where the employing school district is located. If an appeal is not taken within the time proscribed, then the decision of the board of education becomes final.<sup>109</sup>

In contrast to an Oklahoma career teacher's statutory right to an appeal to a trial de novo in district court, a Missouri permanent teacher's appeal is a review of the record in circuit court.<sup>110</sup> Under the Missouri procedure, a permanent teacher must file a notice of appeal with the board of education within fifteen days after service of a copy of the decision of the board of education. The board of education then forwards to the court all documents and papers on file in the matter, together with a transcript of the evidence, the findings and the decision of the board. All of the documents then become the record of the cause of the permanent teachers indefinite contract termination.<sup>111</sup>

If the circuit court finds, after a review of the record, that the causes found by the board of education do not rise to level warranting termination of the teacher's contract, the teacher is restored to permanent teacher status. The teacher is entitled to compensation for the period during which the teacher may have been suspended

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<sup>108</sup>Mo. Rev. Stat. § 168.116(4) (1997).

<sup>109</sup>Mo. Rev. Stat. § 168.120(1) (1997).

<sup>110</sup>Mo. Rev. Stat. § 168.120(2) (1997).

<sup>111</sup>*Id.*

from work. Other relief relating to the teacher's litigation of the matter may be granted by the court as well.<sup>112</sup>

Missouri law goes beyond Oklahoma's statutes in addressing the matter of a permanent teacher's appeal procedure if an appeal is taken beyond the circuit court. Missouri statutes allow for an appeal from the circuit in the same manner as in civil actions. There is an exception carved out in permanent teacher indefinite employment contract termination appeals under Missouri law.<sup>113</sup>

An appeal from the circuit court includes the original transcript prepared and filed in the circuit court by the board of education. The transcript of the proceedings had in the circuit court together with the original transcript from the hearing before the board of education constitutes the transcript on appeal in the appellate court.<sup>114</sup>

The board of education is required to make available, to the parties, copies of any transcript prepared and filed by it in the circuit court. Importantly, the statute provides that the costs of the appeal are to be assessed against the losing party as provided by law in civil cases.<sup>115</sup>

Missouri law requires all permanent teacher employment termination hearings to be public.<sup>116</sup> The teacher has the right to be represented by counsel who may cross-examine witnesses.<sup>117</sup> However, the teacher does not have the statutory

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<sup>112</sup>Mo. Rev. Stat. § 168.120(4) (1997).

<sup>113</sup>Mo. Rev. Stat. § 168.120(3) (1997).

<sup>114</sup>*Id.*

<sup>115</sup>*Id.*

<sup>116</sup>Mo. Rev. Stat. § 168.118(1) (1997).

<sup>117</sup>Mo. Rev. Stat. § 168.118(2) (1997).



right to call witnesses or to present evidence. That right rests with the board of education.<sup>118</sup>

The board of education has been delegated the power to subpoena witnesses and documentary evidence. It may do so on its own motion or at the request of the teacher against whom charges have been made. The school board must hear testimony of all witnesses named by the teacher. However, the school board may limit the number of witnesses to be subpoenaed on behalf of the teacher to not more than ten.<sup>119</sup>

School boards in Missouri have less option than boards in Oklahoma to limit the cost of a local board teacher employment termination hearing. In fact, all of the costs of the hearing must be paid by the board except the cost of counsel for the teacher.<sup>120</sup>

The board of education is required by statute to employ a stenographer who must make a full record of the proceedings. The stenographer must furnish the board and the teacher a copy of the transcript of the record of the proceeding within ten days of the conclusion of the hearing. The transcript must be furnished to the teacher at no cost to the teacher.<sup>121</sup>

Even though the hearing must be public, the transcript is prohibited, pursuant to statute, from becoming public under certain circumstances. The portions of the transcript not held in an open hearing cannot be opened to the public. However, the

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<sup>118</sup>Mo. Rev. Stat. § 168.118(4) (1997).

<sup>119</sup>*Id.*

<sup>120</sup>Mo. Rev. Stat. § (6) (1997).

<sup>121</sup>Mo. Rev. Stat. § (5) (1997).

transcript is required to be open to the public if the teacher takes an appeal from the decision of the board.<sup>122</sup>

### Summary

Chapter 2 presented the legal concept of procedural due process for teacher in which notice and an opportunity respond the allegations are required prior to a school board's decision to dismiss the teacher. Substantive due process is a matter of whether the exercise of the school board's authority is a fair, reasonable and appropriate exercise of that authority.

The issue of Fundamental Fairness, which encompasses many important procedural and substantive issues in school employment law, was presented. The issue of a career teacher's constitutionally protected property interest in the teacher's employment was also discussed.

The Task Force 2000 Report, "A Blueprint for Excellence" (1989) and the legislation it spawned, House Bill 1017 was presented. Those documents addressed, in part, the issues of tenure and teacher due process.

The precedential cases of *Cleveland Board of Education v. Loudermill* and *Board of Regents v. Roth* were discussed. Both cases helped define due process rights of teachers. The rulings from the cases provided the framework for the TDPA.

The state statutes of Oklahoma, Florida, Missouri, and Oregon, which pertain to teacher due process, were presented. The statutes of Florida, Missouri and Oregon were selected because they present various alternatives to teacher dismissal procedures in Oklahoma's TDPA.

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<sup>122</sup>*Id.*

The Missouri statutes more closely resemble Oklahoma's statutes. Missouri, however, requires a longer period for tenure to vest and expressly provides for an appeal from the circuit court.

Oregon's statutes provide a teacher the option to appeal the school board's dismissal decision to a Dismissal Appeals Board panel or to have the matter decided by arbitration. The decision to go to arbitration requires the mutual consent of the teacher and the school district.

Florida statutes require the superintendent to notify the State Department of Education when two consecutive unsatisfactory evaluations have been given to a teacher. The State Department then conducts an investigation and makes a determination as to whether action is to be taken against the teacher.

## CHAPTER 3

### Methodology

#### Overview of the Study

This chapter contains the methods and procedures that were used to answer the research questions presented in the study. The design of the study is presented as well as the development of the instrument, expert panel, and pilot study.

#### Research Questions

This study was guided by two questions:

- 1) How does the statutory designation of the local school board, as the hearing board in a career teacher dismissal hearing, affect the participants' perceptions of due process afforded to school districts and career teachers?
- 2) How does the statutory right to a trial de novo appeal for career teachers affect the participants' perceptions of due process afforded to the school districts and career teachers?

Preliminary data and comments by professionals and lay persons in education have indicated marked differences in opinion as to whether the designation of the school board as the hearing board affects a career teacher's right to due process under law in dismissal proceedings. Those data and comments indicated similar disagreement as to whether the statutory right to a trial de novo appeal for the career teacher affects a school district's right to due process under law in those proceedings.

This study examined the differences presented by supporters of school

districts and supporters of teacher groups on the two issues. The study presented other states' statutes on teacher dismissal procedures as well as Oklahoma law before and after House Bill 1017. The study concluded with curative legislation recommendations for teacher dismissal procedures in Oklahoma.

The researcher's perspective was that marked differences existed between career teachers, principals, superintendents, school board members, and attorneys who practice school law regarding those subjects' perceptions of fairness of the TDPA. It was also the perspective of the researcher that differences existed between those subjects regarding fairness of the TDPA and the following characteristics: 1) whether or not a negotiated agreement exists in the subjects' respective school districts; 2) the subjects' years of employment experience in public education; 3) whether the subjects have been involved in plans of improvement; and, 4) whether the subjects have been involved in career teacher dismissal proceedings.

Through experience as an attorney in the practice of school law and as a public school administrator, the researcher's perspective was that principals, superintendents, school board members, and attorneys who represented school districts perceive the school board hearing as a fair setting for career teacher dismissal proceedings. The subjects also perceived the career teachers' statutory right to appeal a school board's negative dismissal decision as unfair.

The researcher's perspective was that career teachers and attorneys who represent teachers perceived the school board hearing as biased against the career teacher in a dismissal proceeding. Those subjects perceived the hearing as biased because of the commingling of roles of the superintendent. Also, because a school

board must rule against the superintendent's recommendation to dismiss in order for the school board to vote to retain the career teacher.

It was also the researcher's perspective that the subjects perceived the career teachers' right to appeal a school board's negative employment decision as not only fair but also necessary to ensure protection from arbitrary and capricious employment decisions by the school board.

### Hypotheses of the Study

The following null hypotheses were developed for analysis in this study:

1. There is no significant difference between the perceptions of fairness in career teacher dismissal procedures among Oklahoma career teachers, superintendents, school board members, and attorneys who represent educational interests.
2. There is no significant difference between the degree of fairness perceived by Oklahoma career teachers, principals, superintendents, school board members, and attorneys who represent educational interests in career teacher dismissal proceedings and the existence of negotiated labor agreements between teachers and the board of education in a public school district.
3. There is no significant difference between the degree of fairness perceived by Oklahoma career teachers, principals, superintendents, school board members, and attorneys who represent educational interests in career teacher dismissal proceedings and the appearance of a subject on behalf of the career teacher or the school district.
4. There is no significant difference between the degree of fairness

perceived by Oklahoma career teachers, principals, superintendents, school board members, and attorneys who represent educational interests and pre-House Bill 1017 teacher dismissal proceedings and post-House Bill 1017 teacher dismissal proceedings.

5. There is no significant relationship between the years of experience of career teachers, principals, superintendents, school board members, and attorneys who represent educational interests and the degree of fairness perceived by those groups in career teacher dismissal proceedings in Oklahoma.
6. There is no significant relationship between the number of plans of improvement in which an administrator has been involved and the degree of fairness perceived by that administrator in career teacher dismissal proceedings in Oklahoma.
7. There is no significant relationship between the number of plans of improvement in which a career teacher has been involved and the degree of fairness perceived in career teacher dismissal proceedings in Oklahoma.
8. There is no significant difference between the preferences for career teacher dismissal hearing settings of career teachers, principals, superintendents, school board members, and attorneys who represent teachers educational interests.
9. There is no significant difference between the perceptions of career

teachers, principals, superintendents, school board members, and attorneys who represent educational interests as to the purpose of conducting teacher dismissal hearings.

### Description of the Target Population

#### Study Participants

Study participants included career teachers, principals, superintendents, school board members, and attorneys who represent educational interests. Respondents held a variety of assignments and had a variety of experience levels in education.

Career teachers held a minimum of three complete, consecutive years of employment in their present districts. Administrators held, at a minimum, the years of experience required for their respective areas of certification.

#### Geographic Areas

Respondents represented a purposeful stratified sample from the four quadrants of the Oklahoma. The quadrant boundaries were divided by Interstate 35 and Interstate 40. The panhandle of the state was included in the Northwest quadrant.

#### School Population

The schools were selected according to their 1998-99 secondary average daily membership (ADM) for OSSAA classification purposes. The schools were grouped according to their relative sizes of small, medium, and large per their ADM. Those school sizes approximated the classifications of 2A and smaller (small schools), 3A and 4A (medium schools), and 5A and 6A (large schools). The secondary ADM populations were grouped according to the following:



- 1) Large Schools (Largest 64 schools. Secondary ADMs of 720 and above.)
- 2) Medium Schools (Next 128 largest schools. Secondary ADMs of 240 to 694.)
- 3) Small Schools (279 remaining schools. Secondary ADMs of 21 to 239.)

### Sampling

This study used systematic stratified purposeful sampling.

A stratified purposeful sample includes several cases at defined points of variation (e.g., average, above average, and below average) with respect to the phenomena being studied. By including several cases of each type, the researcher can develop insights into the characteristics of each school as well as insights into the variations that exist across types.<sup>122</sup>

### Sample Size

A general rule of thumb in quantitative research is to use the largest sample possible. However, financial and time restrictions limit the number of subjects who can be sampled. Therefore, general rules have been developed by researchers for determining the minimum number of cases needed for different research methods. It was suggested, for survey research, that a each major subgroup contain a minimum of 100 subjects.<sup>123</sup>

### Schools

The defined points of variation in the sampling for stratification representation purposes were the four quadrants of the state of Oklahoma and the

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<sup>122</sup>Gall, Meredith D., Borg, Walter R., Gall, Joyce P., Educational Research: An Introduction, 6<sup>th</sup> ed. (White Plains, NY: Longman Publishers, USA 1996), p. 233.

<sup>123</sup>*Id.* At 229.

three school group ADM sizes of small, medium, and large schools. Stratification sampling included 14 small, 10 medium, and eight large schools in each quadrant of Oklahoma. A total of 32 schools were sampled in each quadrant. A total of 128 schools were sampled in the study.

### Participants

Participant sampling also used purposeful stratified sampling. The defined points of variation among the participants were the positions the respondents hold within their districts.

Regardless of the position held, the teacher respondents shared one common characteristic - they held “career” status for due process purposes pursuant the TDPA. Regardless of the position held, the administrator respondents shared one common characteristic - they held certification required by the Oklahoma State Department of Education to conduct teacher evaluations. Regardless of the position held, the school board member respondents shared one common characteristic - they held current qualifications required to serve on a board of education, and were currently serving on a public school board in Oklahoma. Regardless of the position held, the attorney respondents shared two common characteristics - 1) they were licensed to practice law in the state of Oklahoma; and, 2) they practiced in the area of school law representing educational interests.

### Methods and Procedures

The 1998-99 OSSAA ADM for classification purposes was used to identify schools for group size purposes within the limitations of the study. The 1998-99 Educational Directory of the Oklahoma State Department of Education was used as a basis for identifying school personnel within the limitations of the study.

Organization membership lists of attorneys who represent school district organizations and teacher organizations was used as a basis for identifying attorneys within the limitations of the study. Also, attorneys of whom the researcher had personal knowledge, or referrals from other attorneys, was used as a basis for identifying attorneys within the limitations of the study.

A cover letter, survey questionnaire and stamped, self-addressed envelope for the purpose of returning the survey questionnaire were mailed to each school personnel. The same materials were be mailed to attorneys who practice school law. The survey questionnaire for attorneys contained one question in the *PROFESSIONAL BACKGROUND INFORMATION* section that was different from the survey questionnaire for school personnel. The survey questionnaire for attorneys asked for the number of years of experience in the practice of law rather than the number of years of experience in public education.

The cover letter contained the following information (see Appendix A):

- 1) Purpose and significance of the study.
- 2) The importance of the information to be furnished by the respondent.
- 3) How anonymity will be guaranteed.
- 4) A deadline for return of the information.

In order to ensure an acceptable rate of return as well as enhance the honesty of the study responses, steps taken in guaranteeing the respondent's anonymity were outlined in the cover letter. It was pointed out that neither the respondent's name nor the name of their school/law firm would be referred to in any reports. A summary of the results of the study were promised upon request by the subjects.

## Conceptual Framework

### Quantitative Data

The quantitative data was presented in sections corresponding to the identified areas of concern which may have affected the participants' perceptions of due process afforded to a career teacher and a school district involved in a dismissal hearing proceeding. The participants' perceptions of due process afforded to career teachers and school districts may have been influenced by the following professional background information:

- 1) Number of years of experience in their position.
- 2) Whether or not their district has a negotiated labor agreement.
- 3) Whether or not the subject has experience in teacher dismissal proceedings prior to the Teacher Due Process Act of 1990.
- 4) Whether or not the subject has prior experience in a dismissal proceeding.
- 5) Whether or not the subject has prior experience in a trial de novo appeal.
- 6) Whether or not the subject has been involved in a plan of improvement in the school setting.

The quantitative data was presented in sections corresponding to the participants' perceptions of due process afforded to career teachers and school districts when considering the following non-professional background information:

- 1) Whether or not school boards in general in Oklahoma make impartial teacher dismissal decisions.
- 2) Whether or not the participants' own school boards make

impartial teacher dismissal decisions.

- 3) Whether or not commingling of the superintendent's role as advisor to the board and prosecutor of the teacher in a dismissal hearing affects the impartiality of the board in rendering a decision.
- 4) Whether or not career teachers' statutory right to a trial de novo appeal in district court affects the school districts' due process rights.
- 5) Whether or not the de novo appeal standard of review, rather than a review of the record appeal standard affects the due process rights of career teachers and school districts.
- 6) Whether or not a dismissal proceeding should be conducted before a 3 person panel mutually selected by the teacher and the school district [the process used prior to passage of the present Teacher Due Process Act]; in a court of law; the local school board; an administrative law judge or panel; or, an arbitrator.
- 7) Whether or not the current hearing procedure fulfills the original intent of the legislation of a hearing on whether or not to dismiss retain the career teacher or serves the purposes of:
  - 1) providing the opportunity for the career teacher to present evidence supporting retention; or
  - 2) providing the opportunity for conflict resolution between the teacher and the school board; or
  - 3) provide a public hearing on the matter.

#### Development of the Instrument

The questionnaire which was developed for this study focused on the

respondents' perceptions of due process afforded to career teachers and school districts in career teacher dismissal proceedings. Specifically, the questionnaire focused on the respondents' perception of fairness in regards to the school board being the trier of fact in the proceeding and the perception of fairness regarding the career teacher's right to an automatic appeal to a trial de novo hearing.

The instrument consisted of three sections. Section one provided professional background information. Professional background information included the following:

- 1) Position held.
- 2) School district size according to the school's ADM.
- 3) Years of experience in the respondent's current position.
- 4) Whether or not the respondent's district had a negotiated labor agreement between the teachers and the board of education.
- 5) The number of formal teacher dismissals in which the respondent participated before and after House Bill 1017 was passed in 1990.
- 6) The number of times the respondent had been involved in a trial de novo.
- 7) The number of plans of improvement the respondent had been involved with in Oklahoma public schools.

Section two provided information on the respondents' perception of fairness of the current career teacher dismissal procedures in Oklahoma. The perceptions or attitudes held by the respondents toward the dismissal process were the respondents viewpoint or disposition toward the process.

Attitudes are considered to have three components: (1) an *affective*

component, which consists of the individual's feelings about the attitude of the object; (2) a *cognitive* component, which is the beliefs or knowledge about the attitude object; and (3) a *behavioral* component, which is the individual's predisposition to act toward the attitude object in a particular way.<sup>124</sup>

Several procedures can be used to measure attitudes. This study used the *Likert scale*. The *Likert scale* asks individuals to check their level of agreement with various statements.<sup>125</sup>

The respondents were asked to express their levels of agreement with the statements in the opinion section of the questionnaire. The opinion section statements were based on due process fairness issues in career teacher dismissal proceedings. The respondents were asked to indicate the extent to which they agree with the statement by circling the numbers 1, 2, 3, 4, or 5 with the number 1 being "Strongly Agree" and the number 5 being "Strongly Disagree."

Section three focused on the dismissal hearing setting and purpose. Respondents were asked to select, in order, the dismissal hearing setting they perceive is most fair. The choices include the following settings:

- 1) The hearing setting that was used in Oklahoma tenured teacher dismissals prior to House Bill 1017. A three person hearing board with one member selected by the teacher, one member selected by the school district, and one member selected by mutual agreement of the two parties.
- 2) A court of law.
- 3) School board hearing.

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<sup>124</sup>*Ibid.* at 273 .

<sup>125</sup>*Id.*

- 4) Professional independent hearing board. (Administrative hearing.)
- 5) Arbitration.

The final portion of section three asked the respondents to select what they perceived were the reasons for conducting a career teacher dismissal proceeding under current law. Respondents were asked to indicate their opinions in a range from (1) *most important* to (4) *least important*. The reasons from which the respondents will be asked to select are:

- 1) Hearing in which to decide whether to terminate the career teacher's employment with the district.
- 2) Provide the opportunity for the career teacher to present reasons why the board should not terminate the teacher's employment.
- 3) Provide an opportunity for conflict resolution between the school board and the career teacher.
- 4) Provide a public hearing on the matter.

#### Expert Panel

An expert panel of individuals was consulted to help validate the instrument. Each expert examined the survey instrument and hypothetical questions to determine whether or not the survey question items provided data with which the hypothetical questions may be answered.

To control for researcher bias the panel members represented a variety of individuals from the following three areas: (1) school district groups, (2) teacher groups, and (3) groups neutral on the issues. Personal visits were made to each of the prospective panel members.

After the members agreed to serve on the panel, a packet of materials was



given to each one. The packet contained a cover letter, a questionnaire designed for the panel members, a copy of the questionnaire to be used in the survey, a copy of the cover letter to be used with the survey and a self-addressed stamped envelope in which to return their responses.

The cover letter contained: (1) Directions for completing the validating instrument, (2) Purpose and Significance of the study, (3) Importance of the information to be furnished by the panel member, (4) Guarantee of anonymity, and (5) Appreciation for serving on the panel. Each panel member worked independently of one another. No panel member knew the identity of the other members.

The purposes of the expert panel were: (1) To provide for content validity of the survey instrument and to determine whether the questions were constructed in a way that will provide data with which the hypothetical questions of the study may be answered, and (2) to provide feedback regarding their recommendations for change where appropriate.

### Pilot Study

A pilot study was conducted in order to ensure instrument reliability. Specifically, the purpose of the pilot study was to ensure that respondents interpreted questions within permissible limits of their intended interpretation.<sup>126</sup>

The questionnaire was given an initial inspection by individual's familiar with the area career teacher dismissal proceedings. Unsatisfactory items were eliminated or revised pursuant to the initial criticisms of the reviewers.

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<sup>126</sup> Gall, Meredith, D., Borg, Walter R., Gall, Joyce P., Educational Research: an Introduction, 6<sup>th</sup> ed. (White Plains, NY: Longman Publishers, USA, 1996), p. 298.

Following this initial inspection, the questionnaire was administered to a group similar to the intended respondents of the study. A purposeful stratified sample of twelve public schools in Oklahoma was used for the pilot study. Three schools (small, medium, and large) from each of the four quadrants of the state were selected. So as to avoid mixing the pilot group with the final group, the sample was drawn first. The pilot group was then drawn from members of the population not included in the sample.

Pilot members were mailed a packet of materials. Each packet contained a cover letter and an exact copy of all items to be mailed to the participants (cover letter, questionnaire, and self-addressed stamped envelope). The cover letter to the pilot members contained the following information: (1) Directions to the member for completing the questionnaire, (2) How the member came to be chosen, (3) How anonymity was to be guaranteed, and (4) An invitation to complete freedom in criticizing the contents and design of the instrument.

### Design and Procedures

This study was designed to be descriptive, correlational, and qualitative in nature. Hypothesis questions 1 - 4 were based upon categorical data.

“Categorical data have simple requirements: all the members of a subset are considered the same and all are assigned the same name (nominal) and the same numeral.”<sup>127</sup> The categorical data in this study were the categories of: career teachers, administrators, school board members and attorneys who represented educational interests.

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<sup>127</sup>Kerlinger, Fred N., Foundations of Behavioral Research, 2d ed. (New York, NY: Holt, Rinehart and Winston, Inc., 1973), p. 39.

The purpose of the descriptive design was to systematically describe the perceptions of fairness of the categorical data in career teacher dismissal proceedings in Oklahoma. Descriptive statistics were used in the analysis. Therefore, tests of significance for hypotheses 1, 2, 3, and 4 were presented using the Kruska-Wallis one-way Analysis of Variance [ANOVA] statistical procedure. A one-way ANOVA measured the independent variables [categorical data] and the preference scores reported on a *Likert scale* [ranked, ordinal data] for survey questions 1-4.

A one-way ANOVA was also used to analyze the data for question 15 of the study, *DISMISSAL HEARING SETTING PREFERENCE*, and questions 16, *PURPOSE OF THE HEARING*.

A bivariate correlational coefficient score [*Spearman rho*] statistical calculation was conducted to determine the extent to which data expressed as continuous scores might be significantly related. The data containing continuous variables provided from questions 5, 6, and 7 included: (1) years of experience of the respondents, (2) number of plans of improvement involved in by administrators, and (3) number of plans of improvement involved in by career teachers.

### Qualitative Interview Analysis

#### Sampling

Purposeful, nonstatistical sampling was used for the qualitative part of the study. "The goal in purposeful sampling is to select cases that are "information rich" with respect to the purposes of the study."<sup>128</sup> The participants were selected

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<sup>128</sup>Gall, Meredith, D., Borg, Walter R., Gall, Joyce P., Educational Research: an Introduction, 6<sup>th</sup> ed. (White Plains, NY: Longman Publishers, USA, 1996), p. 218.

because they suited the purposes of the study.

One participant was an experienced professional representing schools' interests on teacher dismissal matters. One participant was an expert representing teachers' interests on teacher dismissal matters. Lastly, one person was an experienced professional representing neutral interests on teacher dismissal matters. Each person was identified only by generic position [i.e. respondent from the attorney pool] held and not by specific title or name.

### Interview Questions

Legal conceptual questions were developed to determine each subjects' perception of fairness in career teacher dismissal proceedings. The questions were worded in non-legal terminology in order to provide for an easier flow of dialogue with the interviewees. The questions were in-depth, unbiased, and open-ended to ensure spontaneous responses.

### Analysis of Data

The subjects were interviewed regarding their perceptions of fairness in career teacher dismissal proceedings. The data was coded and analyzed for themes indicating the subjects' perceptions of fairness in dismissal proceedings of: "for", "against", or combinations of the two. Direct quotes of the subjects supported conclusions drawn from the data.

### Summary

In this chapter research questions, hypotheses of the study, description of the target population, methods, and procedures, conceptual framework, development of the instrument were presented. Since no instrument existed that served the purposes

of this study, a specially designed instrument was developed. The survey contained a total of 16 questions in three sections. In addition, an expert panel validated the instrument and a pilot study was conducted.

## CHAPTER 4

### Analysis of Data

#### Introduction

In the previous chapter, a design for the present study was developed using the *Likert* Scale to measure the respondents' levels of agreement with the statements in the opinion section of the questionnaire. The opinion statements were based on due process fairness issues in career teacher dismissal proceedings in Oklahoma public school districts. The respondents' levels of agreement provided information on the respondents' perceptions of fairness regarding those proceedings.

A review of the literature was presented in which the Teacher Due Process Act of 1990 (TDPA) was discussed. The literature review included discussions of legal issues related to career teacher dismissal proceedings. The literature review also included discussions of statutes concerning similar teacher dismissal proceedings for the states of Florida, Missouri, and Oregon.

The questions posed for this research are: How does the statutory designation of the local school board, as the hearing board in a career teacher dismissal hearing, affect the participants' perceptions of due process afforded to school districts and career teachers? How does the statutory right to a trial de novo appeal for career teachers affect the participants' perceptions of due process afforded to the school districts and career teachers in dismissal proceedings?

This chapter includes the relationships found among the categories of career teacher, principal, superintendent, school board member, and attorney and the

perceptions of fairness in career teacher dismissal proceedings. This chapter also includes the respondents' dismissal hearing settings they perceived as most fair in a descending order of preference. Finally, this chapter includes what the respondents perceived as the reasons for conducting career teacher dismissal proceedings under the TDPA.

### **Demographic Information**

The categorical groups included Oklahoma career teachers, principals, superintendents, school board members, and attorneys who practice school law. The groups were from the following school district sizes: small (secondary ADM of 21 - 239), medium (secondary ADM of 240 - 710), and large (secondary ADM of 720 and above). The groups included respondents from school districts with negotiated labor agreements and schools districts with no negotiated labor agreements. The groups also included respondents involved in teacher terminations before and/or after 1990 on behalf of a school district, and/or a public school teacher; de novo trials on behalf of a school district and/or a career teacher; and plans for improvement in an Oklahoma public school district.

### **Description of Survey Return**

The 1998-99 Educational Directory of Oklahoma public schools lists 547 school districts in Oklahoma. 115 of those school districts do not have secondary enrollments for OSSAA secondary ADM classification purposes. Because the study categorized school sizes according to their secondary ADMs, the 115 districts with no secondary enrollment were eliminated. Therefore, the population for the study consisted of 432 Oklahoma independent school districts.

The sample size of 128 school districts represents 30% of the population.

For survey research, Sudman suggested a minimum of 100 subjects in each major subgroup.<sup>131</sup> Each major subgroup including career teachers, principals, superintendents and board members had 128 subjects. The subgroup of attorneys who practice school law in Oklahoma had 80 subjects.

The salience of the survey questionnaire content to the respondents (i.e., how important or prominent a concern it is for them) affects both the accuracy of the information received and the rate of response. Herberlein and Baumgartner conducted a review of 181 studies using questionnaires judged to be “salient,” “possibly salient” or “nonsalient” to the respondents. The rate of return rate averaged 77 percent for the salient studies, 66 percent for those judged possibly salient, and 42 percent for those judged nonsalient.<sup>132</sup>

Of the 592 survey questionnaires sent out, 358 were returned and 2 were undeliverable. A rate of return was determined for this survey. To calculate the response rate, the following formula was used:<sup>133</sup>

$$RR = [q/(N-U)] \times 100$$

RR = Response Rate

q = Number of returned survey questionnaires.

N = Number of initial survey questionnaires mailed.

U = Number of undeliverable questionnaires.

The needed response rate was calculated as follows:

$$60 = [358/(592-2) \times 100$$

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<sup>131</sup>*Id.* at 229.

<sup>132</sup>*Id.* at 293.

<sup>133</sup>Babbie, 1973, p. 22



Translated, this means that 592 initial surveys were mailed, 2 were determined undeliverable; 358 actual returns; all equaling a response rate of 60%. According to Babbie, 60% was an adequate response rate.<sup>134</sup> The rate of return therefore, was 60 percent of 30 percent of the population. The return rate represents 18 percent of the population. 13 survey questionnaires were not used due to their lack of completeness.

Table 1 shows that a total of 354 survey questionnaires were received. Sorted according to categories, the results show that the greatest percent of responses were from career teachers (81%). The next highest percent of responses were from principals (80%), followed by superintendents (65%), attorneys (35%), and school board members (20%).

Table 2 shows the return rate of the survey questionnaires according to school district secondary ADM sizes of: small (21-239), medium (240-694), and large (720 and above). Sorted according to school district sizes, the results show the greatest percent of responses from medium size schools (84%), followed by large size schools (70%), and small size schools (37%).

#### Preliminary Analysis of Data

This study includes data that is categorical, descriptive, correlational, and qualitative. The statistical techniques were used as part of a computer data analysis program called the Statistical Package for the Social Sciences Information Analysis System (SPSS<sup>®</sup>).

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<sup>134</sup>*Id.*

Categorical data are the categories [positions] of career teacher, principal, superintendent, school board member, and attorney.

Descriptive statistics systematically describe the perceptions of fairness of the categorical data [positions] in career teacher dismissal proceedings in Oklahoma. Perceptions of fairness in career teacher

Table 1. Number of Survey Questionnaires Sent, Received, and Percentage of Returns by Category.

Category	Sent	Received	Undeliverable	% Return
Career Teachers	128	106	0	81%
Principals	128	103	0	80%
Supt.	128	83	0	65%
Board Members	128	26	0	20%
Attorneys	80	27	2	35%
Incomplete	*	13	0	4%
Total	592	354	0	60%

Table 2. Number of Survey Questionnaires Sent, Received, and Percentage of Returns by District Size.

District Size	Sent	Received	Undeliverable	%Return
Small [21-239]	224	106	0	47%
Medium [240-694]	160	103	0	64%

Table 2 - Continued

Large [720-above]	128	83	0	65%
Total	512	325	0	59%

dismissal proceedings by the respondents were determined by their responses on a *Likert* scale to the following survey questions:

7. Most public school boards in Oklahoma make impartial career teacher dismissal decisions.
11. A career teacher's statutory right to appeal a school board's termination decision to a trial de novo is unfair because it takes the final decision making out of the local control of the board.
13. A career teacher's statutory right to appeal a school board's dismissal decision in a trial de novo is unfair because it is a completely new hearing rather than a review of the record of the school board hearing.

The data associated with hypotheses 1-4 were analyzed using the SPSS<sup>+</sup> to perform the Kruskal-Wallis one-way analysis of variance (ANOVA).

The one-way ANOVA was also used to analyze the data for question 15 of the study, DISMISSAL HEARING SETTING PREFERENCE, and question 16, PURPOSE OF THE HEARING. Questions 15 and 16 were analyzed according to category and choice of hearing setting preference and purpose.

A bivariate correlational coefficient score [*Spearman rho*] statistical calculation was conducted for analysis PROFESSIONAL BACKGROUND

*INFORMATION* questions 1, 5, and 6. Those questions include the continuous variables of: (1) years of experience of the respondents, (5) number of plans of improvement involved in by administrators, and (6) number of plans of improvement involved in by career teachers.

The purpose of the correlational calculations is to explore the relationships between the continuous variables in questions 1, 5, and 6, and the scores derived from the sums of the perceptions of fairness scores in questions 7 - 14 of the survey. A statistical association was considered significant if the *probability* equaled or exceeded a statistical significance level of  $p < .05$ . In each hypothesis, the dependent variable is represented by the mean of the *fairness* scores of all respondents. The dependent variable is referred as the level of perception of fairness in career teacher dismissal proceedings. The independent variable in each hypothesis is represented by the category [position].

#### Hypothesis One

*There is no significant difference between the perceptions of fairness of Oklahoma career teachers, school administrators, school board members, and attorneys who represent teachers and/or public school districts.*

For hypothesis one, the data consisted of the respondents' scores of survey questions 7, 11, and 13 as the dependent variable. The independent variable was represented by the categories of career teacher, principal, superintendent, school board member, and attorney. Summary statistics on the independent variable for hypothesis one are provided in Table 3.

Table 3. Summary Statistics for Hypothesis One.

Variable	N	Mean	Std. Dev
Question 7	384	2.648	1.158
Question 11	384	1.409	1.409
Question 13	384	3.086	1.333

The data for hypothesis one compares the perceptions of fairness scores [survey questions 7, 11, and 13] for career teacher dismissal proceedings among the five categories of: career teachers, principals, superintendents, school board members, and attorneys. The perceptions of fairness scores represent the dependent variable. The measures obtained are presented in Table 4.

An ANOVA is a statistical procedure that compares the amount of between-groups variance in individuals' scores with the amount within-groups variance. If the ratios of between-groups variance to within-groups variance is sufficiently high, this indicates that there is more difference between the groups in their scores on a particular variable than there is within each group.

Table 4. Inferential Statistics for Hypothesis One.

Variable	Chi-Square	D.F.	Probability
Question 7	26.8253	4	.0000
Question 11	51.6112	4	.0000
Question 13	38.1670	4	.0000

“The Chi-Square test gives a general answer to a general question: Are the differences among observed group means significant?”<sup>135</sup> For hypothesis one, the probability (.0000) is statistically significant at the .05 level. Therefore, null hypothesis one is rejected.

With the rejection of hypothesis one, it can be said that the measures obtained from the five categories [positions] are greater than would be expected to exist by chance alone. Given that a significant difference was found, an attempt was made to determine whether the significant difference was due to the differences in the perceptions of fairness among the groups regarding on the following issues:

1. Designation of the school board as the hearing board in career teacher dismissal proceedings. [Survey question 7.] Survey question 7.
2. The career teacher’s statutory right to a trial de novo. Survey question 11.
3. The standard of review of the career teacher’s appeal [De novo review rather than a review of the record of the board hearing.]. Survey question 13.

An analysis of the summary of opinions about dismissal opinions is used for that purpose. That data is presented in Table 5.

Career teachers in the study were significantly less inclined to perceive that school boards make impartial dismissal decisions than the other categories of respondents. *Strongly Agree: 9.8% Career Teachers; 11.2% Principals; 27.4% Superintendents; 40.7% School Board Members; and 17.9% Attorneys.* Similarly,

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<sup>135</sup>D. Moore and G. McCabe, *INTRODUCTION to the PRACTICE of STATISTICS*, 2d ed. (New York: W.H. Freeman and Company, 1993), 735.

career teachers were significantly less inclined to perceive that the trial de novo is unfair because it takes the final decision making out of the local control of the board than were the other categories of respondents. *Strongly Agree: 4.5% Career Teachers; 10.3% Principals; 36.9% Superintendents; 48.1% School Board Members; and 41.4% Attorneys.*

Career teachers were also significantly less inclined to perceive the standard of review of the trial do novo, rather than a review of the record of the school board hearing as unfair. *Strongly Agree: 0.0% Career Teachers; 7.0% Principals; 27.4% Superintendents; 37% School Board Superintendents; 40.7% School Board Members; and 17.9% Attorneys.*

Given these observations, it may be likely that career teachers and school district personnel [principals, superintendents, school board members] and attorneys who represent the interests of school districts, protect their interests under the current TDPA. That is, school boards have the statutory right to conduct teacher termination hearings and career teacher have the statutory right to appeal negative school board employment decisions in a trial de novo.

A closer look reveals that school board members, as a group in the study, are the most inclined to perceive that school boards make impartial dismissal decisions [40.7%]. Those school board members also the most inclined to perceive that the trial de novo is unfair because it takes the final decision making out of the local control of the board.

Attorneys, as a group in the study noticeably reflect polarity on these issues concerning perceptions of fairness. *Question 7: 17.9% Strongly Agree vs. 17.9% Strongly Disagree. Question 11: 41.4% Strongly Agree vs. 31.% Strongly Disagree.*

*Question 13: 41.4% Strongly Agree vs. 34.5% Strongly Disagree.*

## Hypothesis Two

*There is no significant difference between the degree of fairness perceived in career teacher termination proceedings in Oklahoma and the existence of negotiated labor agreements between teachers and the board of education in public school districts.*

The data associated with hypothesis two consists of the composite scores for questions 7, 11, and 13 [dependent variable] and school districts with negotiated agreements [independent variable] and school districts without negotiated agreements [independent variable]. Summary statics on the independent variables are provided in Table 6.

Table 5. Summary of Opinion About Dismissal Procedures.

Position	Question Number	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree
Career Teacher	7	9.8%	25.9%	35.7%	18.8%	9.8%
Principal	7	11.2%	31.9%	31.0%	21.6%	4.3%
Superintendent	7	27.4%	40.5%	17.9%	9.5%	4.8%
Board Member	7	40.7%	33.3%	7.4%	11.1%	7.4%
Attorney	7	17.9%	35.7%	14.3%	14.3%	17.9%
Career Teacher	11	4.5%	12.5%	20.5%	33.9%	28.6%
Principal	11	10.3%	25.0%	21.6%	27.6%	15.5%
Superintendent	11	36.9%	23.8%	13.1%	14.3%	11.9%
Board Member	11	48.1%	18.5%	14.8%	7.4%	11.1%
Attorney	11	41.4%	17.2%	10.3%	.0%	31.0%
Career Teacher	13	.0%	18.8%	28.6%	25.0%	27.7%
Principal	13	7.0%	26.1%	27.0%	22.6%	17.4%
Superintendent	13	27.4%	28.6%	20.2%	11.9%	11.9%
Board Member	13	37.0%	25.9%	7.4%	18.5%	11.1%
Attorney	13	41.4%	13.8%	6.9%	3.4%	34.5%



Table 6. Summary Statistics for Hypothesis Two.

Variable	N	Mean	Std. Dev
Question 7	384	2.648	1.158
Negotiated Agreement	377	1.592	.544
Question 11	384	3.018	1.409
Negotiated Agreement	377	1.592	.544
Question 13	384	3.086	1.333
Negotiated Agreement	377	1.592	.544

Inferential statics for hypothesis two are provided in Table 7. For hypothesis two, the Chi-Square is not statistically significant at the .05 level. Therefore, null hypothesis two is accepted.

Table 7. Inferential Statistics for Hypothesis Two.

Variable	Chi-Square	D.F.	Probability
Question 7	2.0671	1	.1505
Question 11	1.7209	1	.1896
Question 13	1.0773	2	.5835

### Hypothesis Three

*There is no significant difference between the degree of fairness perceived in career teacher termination proceedings in Oklahoma and the appearance of a subject on behalf of the career teacher or the school district.*

The data associated with hypothesis three consists of the composite scores for questions 7, 11, and 13 [dependent variable] and appearance(s) in teacher terminations on behalf of a career teacher or school districts [independent variable]. Summary statics on the independent variables are provided in Table 8. Inferential statics for hypothesis two are provided in Table 9.

For hypothesis three, the Chi-Square is not statistically significant at the .05 level. Therefore, null hypothesis three is accepted.

#### Hypothesis Four

*There is no significant difference between the fairness perceived in pre-House Bill teacher termination proceedings and post-House Bill 1017 teacher termination proceedings.*

Table 8. Summary Statistics for Hypothesis Three.

Variable	N	Mean	Std. Dev
Question 7	384	2.648	1.157
Question 11	384	3.018	1.409
Question 13	384	3.086	1.332

Table 9. Inferential Statistics for Hypothesis Three.

Variable	Chi-Square	D.F.	Probability
Question 7	1.3663	1	.2424
Question 11	.3931	1	.5307
Question 13	.0547	1	.8152

The data associated with hypothesis three consists of the composite scores for questions 7, 11, and 13 [dependent variable] and the fact that the respondent was involved in a teacher termination hearing(s) before 1990 and since 1990 [independent variable]. Summary statistics on the independent variables for hypothesis four are presented in Table 10.

Table 10. Summary Statistics for Hypothesis Four.

Variable	N	Mean	Std. Dev
Question 7	384	2.648	1.157
Question 11	384	3.018	1.409
Question 13	384	3.086	1.332

Inferential statics for hypothesis two are provided in Table 11. For hypothesis four the Chi-Square is not statistically significant in regards to Question 7 and Question 13. Therefore, null hypothesis four is accepted as to Question 7 and Question 13. The Chi-Square is statistically significant for question 11, therefore null hypothesis four is rejected as to question 11.

With the rejection of hypothesis four in regards to question 11, it can be said that the measures obtained from the five categories are greater than would be expected to exist by chance alone. Given that a significant difference was found, an attempt was made to determine whether the significant difference was due to the differences in the perceptions of farness among the groups regarding the issue in question 11.

The issue in question 11 was whether a career teacher's right to appeal a school board's termination decision to a trial de novo is unfair because it takes the

final decision making out of the local control of the board.

Table 11. Inferential Statistics for Hypothesis Four.

Variable	Chi-Square	D.F.	Probability
Question 7	26.8912	1	.0891
Question 11	4.8226	1	.0281
Question 13	3.1721	1	.0749

The statutory provision for a trial de novo is the single element of the TDPA that takes the final decision making on career teacher termination decisions out of the local school board's control. Of the three survey questions used to determine perceptions of fairness scores among the categories of positions, responses to question 11 created the greatest disparity in "Strongly Agree" between career teachers and superintendents [32.4%] as well as career teachers and school board members [43.6%].

Given these observations, it may be likely that career superintendents and school board members significantly perceive the career teacher's statutory right to a trial de novo as fundamentally unfair while career teachers perceive the trial de novo as fundamentally fair. This difference of perceptions between the groups reflects the current controversy surrounding the trial de novo element of the TDPA.

Question 15 of the survey questionnaire, *DISMISSAL HEARING SETTING PREFERENCE*, included a choice [choice 1] that represented the teacher dismissal procedures prior to House Bill 1017 [a hearing conducted before a 3 person hearing board selected by the teacher and the school district]. Choice 3 represented the

current career teacher dismissal procedure [a hearing before the teacher's local school board]. Respondents were asked to select, in order of preference, their choices for the hearing setting that is most fair to the teacher and the school district.

Summary statistics on the independent variables for survey question 15 are presented in Table 12. Inferential statistics for survey question 15 are provided in Table 13.

A one-way ANOVA was performed for the five preference of hearing setting choices. Since choice 1 was the pre-House Bill 1017 hearing setting and choice 3 was the post-House Bill 1017 hearing setting, the statistical analysis in this section is limited to those choices.

This data for hypothesis four compares the hearing setting preference [dependent variable] among the categories of career teachers, principals, superintendents, school board members, and attorneys.

For hypothesis four, question 15, choice 1, the Chi-Square (.0002) is statistically significant at the .05 level. Therefore, null hypothesis four is rejected.

Table 12. Summary Statistics for Survey Question 15.

Variable	N	Mean	Std. Dev
First Preference	380	2.761	1.293
Second Preference	379	4.309	1.087
Third Preference	383	1.990	1.346
Fourth Preference	377	2.676	1.170
Fifth Preference	377	3.251	1.035

Table 13. Inferential Statistics for Survey Question 15.

Variable	Chi-Square	D.F.	Probability
First Preference	22.3888	4	.0002
Second Preference	12.3870	4	.0147
Third Preference	14.2497	4	.0065
Fourth Preference	72.0609	4	.0000
Fifth Preference	.0709	1	.7900

For hypothesis four, question 15, choice 3, the Chi-Square (.0147) is statistically significant at the .05 level. Therefore, null hypothesis four is rejected.

Given that a significant difference was found, an attempt was made to determine whether the significant difference was due to the difference in the perceptions of fairness among the groups on the following issues:

1. Pre-House Bill 1017 teacher dismissal procedures.
2. Post-House Bill 1017 teacher dismissal procedures.

Each category [position] produced a statistical mean rank for choices 1-5 in question 15 of the survey questionnaire. That data is presented in Table 14.

Table 14. Categorical Mean Ranks for Survey Question 15  
Pre-HB 1017 hearing settings [Choice 1], and  
Post-HB 1017 hearing settings [Choice 3].

Category	Pre-HB 1017 Mean Rank Choice One	Post-HB 1017 Mean Rank Choice Three
Career Teachers	152.68	252.55

Table 14 - Continued

Category	Pre-HB 1017 Mean Rank Choice One	Post-HB 1017 Mean Rank Choice Three
Principals	190.38	168.25
Superintendents	224.51	133.71
School Board Members	178.20	139.55
Attorneys	171.85	194.47

In question 15, the lowest numerical value indicates the highest degree of preference for a career teacher dismissal hearing setting by the respondents. The lowest mean rank [first preference] for Pre-House Bill 1017 hearing settings [before a 3 person hearing board selected by the teacher and the school board] was reported by career teachers [152.68]. Interestingly, the mean rank for school board members [178.20] and attorneys [171.85] was numerically near the mean ranks for career teachers. The highest mean rank [last preference] was reported by superintendents [224.51].

The lowest mean rank [first preference] for Post-House Bill 1017 hearing settings [the current TDPA procedures] was reported by superintendents [133.71] followed closely by school board members [139.55]. The highest mean rank [last preference] was reported by career teachers.

The data reported from survey question 15, choices 1 and 3 supports the data reported from survey question 11 regarding categorical perceptions of fairness and the hearing setting for career teacher dismissal procedures. Career teachers prefer

the pre-House Bill 1017 hearing setting [3 person hearing board] over the post-House Bill 1017 hearing setting. Career teachers perceive the statutory right to a trial de novo, pursuant to the TDPA as fair.

Principals, superintendents, and school board members prefer the post-House Bill 1017 hearing setting over the pre-House Bill 1017 hearing setting. Those groups also perceive the career teachers' statutory right to a trial de novo as unfair.

#### Hypothesis Five

*There is no significant relationship between the years of experience of school personnel and the degree of fairness perceived in career teacher termination proceedings in Oklahoma.*

For hypothesis five, the data variables consisted of the respondents' [career teachers, principals, and superintendents] scores of survey questions 7, 11, and 13 and the years of experience in their current positions. A bivariate correlational coefficient score [*Spearman rho*] statistical calculation was conducted to determine the extent to which data expressed as continuous scores might be significantly related [i.e. Number of years of experience and the perception of fairness score.]

Inferential statistics for hypothesis five are presented in Table 15.

Table 15. Inferential Statistics for Hypothesis Five.

Variable	N	<i>Spearman rho</i>	Probability
Survey Question 7 [Board Impartiality] Experience	311	-.0416	.465



Table 15 - Continued

Variable	N	<i>Spearman rho</i>	Probability
Survey Question 11 [Trial De Novo] Experience	311	.1438	.011
Survey Question 13 [Standard of Review] Experience	310	.1189	.036

The statistical testing presented in Table 15 confirms a lack of significance between the variables for survey question 7 of hypothesis five. The calculated value of  $P (.465)$  is not significant at the .05 level. Therefore, null hypothesis four is accepted for the survey question 7 variable.

Accepting hypothesis five for the survey question 7 variable does not necessarily represent evidence that there is no significant relationship between the perception of impartiality of school boards in career teacher dismissal proceedings and the years of experience of school personnel. Acceptance of hypothesis five for survey question 7 must be interpreted that evidence for a conclusion concerning the variable in the hypothesis has not been observed.

For hypothesis five, questions 11 and 13, calculated values of probability (question 11 = .011, question 13 = .036) are statistically significant. Therefore, null hypothesis five is rejected for questions 11 and 13. With the rejection of hypothesis five for questions 11 and 13, it can be said that the measures obtained from the groups are greater than would be expected to exist by chance alone. Given that a significant difference was found, an attempt was made to determine whether the

significant difference was due to the differences in the levels of experience among the groups regarding the following issues:

1. Respondents' perceptions of fairness of the career teacher's statutory right to a trial de novo. [Survey question 11.]
2. Respondents' perceptions of fairness of the trial de novo standard of review. [Survey question 13.]

The school personnel [career teachers, principals, and superintendents] of hypothesis five have a minimum of three years experience in public education in Oklahoma. Career teachers receive enhanced due process rights when *career* status vests. Those rights include the statutory right to appeal a school board's negative employment decision in a trial de novo. That right is an important element of gaining *career* status for a teacher.

Principals and superintendents receive training through administrator course work for administrator certification, State Department of Education workshops, and other seminars and meetings on teacher due process rights. In addition, school administrators gain practical experience on teacher due process rights by conducting teacher evaluations, administering plans for improvement, and involvement in other formative and summative personnel matters.

In the 9 years since the passage of House Bill 1017, Oklahoma teachers and administrators have experienced the results of the TDPA including the trial de novo element of the Act. This may explain why their responses to the survey indicated a statistically significant relationship between the years of experience of school personnel and the degree of fairness perceived in career teacher terminations with respect to the trial de novo as found in survey questions 11 and 13.

## Hypothesis Six

*There is no significant relationship between the number of plans of improvement in which an administrator has been involved and the fairness perceived in career teacher termination proceedings in Oklahoma.*

For hypothesis six, the data variables consisted of the respondent administrators [principals and superintendents] scores of survey questions 7, 11, and 13 and the number of plans of improvement in which the administrators have been involved. As in hypothesis five, bivariate correlation coefficient [*Spearman rho*] was computed as both variables are expressed as continuous scores. The inferential statistics for hypothesis six are presented in Table 16.

The statistical testing presented in Table 16 confirms a lack of significance between the variables for principals on survey questions 7, 11, and 13. The calculated values of probability (.200) for question 7; (.749) for question 11; and, (.058) for question 13 are not significant at the .05 level. Therefore, null hypothesis six is accepted for principals.

The statistical testing presented in Table 16 also confirms a lack of significance between the variables for superintendents on survey questions 11 and 13. The calculated values of probability (.966) for question 11 and (.321) for question 13 are not significant at the .05 level. Therefore null hypothesis six is accepted for superintendents for questions 11 and 13.

For hypothesis six, survey question 7 for superintendents, the calculated value of  $P$  (.006) is statistically significant. Therefore, null hypothesis six is rejected for survey question 7. With the rejection of hypothesis six for survey question 7 for

superintendents, it can be said that the measure obtained from the groups are greater than would be expected to exist by chance alone. Given that a significance

Table 16. Inferential Statistics for Hypothesis Six.

Variable	N	<i>Spearman rho</i>	Probability
Survey Question 7 [ <i>Board Impartiality</i> ]/ Plans of Improvement:			
<u>Principal</u>	100	-.1292	.200
<u>Superintendent</u>	80	-.3019	.006
Survey Question 11 [ <i>Trial De Novo</i> ]/ Plans of Improvement:			
<u>Principal</u>	100	.0324	.749
<u>Superintendent</u>	80	-.049	.966
Survey Question 13 [ <i>Standard of Review</i> ] Plans of Improvement			
<u>Principal</u>	100	.1901	.058
<u>Superintendent</u>	80	-.1123	.321

difference was found, an attempt was made to determine whether the significant difference was due to the differences in the number of plans of improvement in which the superintendents were involved and the superintendents' perceptions of whether school boards make impartial career teacher dismissal decisions.

Superintendents may be inclined to have advanced course work and more experience relating to the evaluation process, including plans of improvement.

Moreover, superintendents are distinguished from principals regarding plans of improvement in that superintendents have discretion as whether or not to base employment-related recommendations to the school board based on those plans of improvement. That may explain why there is a significant statistical difference in superintendents' responses to the survey on the variables of superintendents' perceptions of school board impartiality and the number of plans of improvement in which the superintendent has been involved.

#### Hypothesis Seven

*There is no significant relationship between the number of plans of improvement in which a career teacher has been involved and the fairness perceived in career teacher termination proceedings in Oklahoma.*

For hypothesis seven, the data variables consisted of the respondent career teachers' scores of survey questions 7, 11, and 13 and the number of plans of improvement in which career teachers have been involved. As in hypothesis five, the bivariate correlation coefficient [*Spearman rho*] was calculated. The inferential statistics for hypothesis seven are presented in Table 17.

The statistical testing presented in Table 17 confirms a lack of significance between the variables for career teachers on survey questions 7, 11, and 13. The calculated values of probability (.475) for question 7; (.292) for question 11; and, (.742) for question 13 are not significant at the .05 level. Therefore, null hypothesis seven is accepted for career teachers.

Accepting hypothesis seven does not necessarily represent evidence that there is no significant relationship between the perception of fairness in career teacher dismissal proceedings and the number of plans of improvement in which a career

teacher has been involved. Acceptance of hypothesis seven must be interpreted that evidence for a conclusion concerning the variable in the hypothesis has not been observed.

Interpretation of hypothesis seven and acceptance of the null hypothesis six, with regards to the

Table 17. Inferential Statistics for Hypothesis Seven.

Variable	N	<i>Spearman rho</i>	Probability
Survey Question 7 <u>[Board Impartiality]/</u> Plans of Improvement:			
<u>Career Teacher</u>	38	.1196	.475
Survey Question 11 <u>[Trial De Novo]/</u> Plans of Improvement:			
<u>Career Teacher</u>	38	.1755	.292
Survey Question 13 <u>[Standard of Review]/</u> Plans of Improvement			
<u>Career Teacher</u>	38	.0551	.742

questions where a lack statistical significance was found, precipitates this examination of reasons why the retained null hypotheses occurred. Hypotheses six and seven had the common variable of the “number of plans of improvement” in which the respondents’ [career teachers, principals, and superintendents] had been involved.

Of practical significance is the number (or lack thereof) of plans of improvement involvement reported by the respondents. Table 18 presents the number of plans of improvement reported by the survey instrument. Nearly three-fourths [73.2%] of all respondents to the survey reported involvement in 5 plans of improvement or less. More than half [52%] of the respondents were involved in only 2 plans of improvement or less and nearly one-third [31.5%] of the respondents reported never being involved in a plan of improvement.

#### Hypothesis Eight

*There is no significant difference between the preferences for career teacher dismissal hearing settings of career teachers, principals, superintendents, school board members, and attorneys who represent educational interests.*

The one-way ANOVA was used to analyze the data for hypothesis eight. The independent variables were represented by the categories of career teacher, principal, superintendent, school board member, and attorney. Summary statics on the independent variable for hypothesis eight are provided on Table 19. The dependent variables were the five statements regarding hearing settings regarding hearing settings which were described on the survey questionnaire. Those statements included:

Table 18. Plans of Improvement Reported.

Number of Plans for Improvement	Frequency	Percent
0	120	31.1
1	38	9.8
2	40	10.4
3	32	8.3

Table 18 - Continued

Number of Plans for Improvement	Frequency	Percent
4	22	5.7
5	27	7.0
6	19	4.9
7	6	1.6
8	6	1.6
9	4	1.0
10	19	4.9
12	9	2.3
13	2	.5
15	6	1.6
18	2	.5
20	7	1.8
24	1	.3
25	5	1.3
26	1	.3
30	4	1.0
35	3	.8
50	4	1.0
99	4	1.0
.	5	1.3
Total	386	100.0

1. A career teacher dismissal hearing should be conducted before a 3 person hearing board. One member of the hearing board to be selected by the teacher facing termination, one member selected by the school board and one member selected by mutual agreement between the teacher and the board.
2. A career teacher dismissal hearing should be conducted in a court of law.
3. Whether career teacher dismissal hearings should be conducted before



the local school board.

4. Whether career teacher dismissal hearings should be conducted before a professional, independent hearing board trained and certified to conduct employment hearings.
5. Whether career teacher dismissal determinations should be made by and arbitrator mutually agreed upon between the teacher and the school district.

An analysis of the summary of career teacher dismissal hearing preferences by the respondents is used for that purpose. That data is presented in Table 19. A lower numerical mean ranking indicates a higher preference for the career teacher dismissal hearing setting. A higher numerical mean ranking indicates a lower preference for the career teacher dismissal hearing setting. An analysis of the data of the summary of career teacher dismissal hearing preferences in Table 19 is presented in Table 21.

Inferential statistics for hypothesis eight are provided on Table 20. For hypothesis eight, the Chi-Square is statistically significant at the .05 level for all five of the termination hearing setting preferences: Preference 1 (.0002); Preference 2 (.0147); Preference 3 (.0000); and Preference 4 (.0065); and Preference 5 (.0001). Therefore, null hypothesis eight is rejected.

The analysis of the data on career teacher employment termination hearing preferences clearly illustrates the conflicting opinions among the groups regarding which hearing setting is most fair. The first hearing setting preference among career teachers is the pre-House Bill 1017 hearing [3 person board selected by the teacher and the board] and the last preference among that same group is the current local

school board hearing which is required under the TDPA.

Principals, superintendents, and school board members report the opposite opinions regarding their first preference. Those groups' first hearing setting preference is the school board hearing. Interestingly, school board members and attorneys reported their second preferences for the pre-House Bill 1017 hearing setting which was the career teachers' first preference.

Attorneys' first preference was to conduct career teacher employment termination settings in a court of law. This may be because the formal rules of law in a court setting are not required in a quasi-judicial hearing before the local board of education. A formal court hearing provides much greater procedural due process protection for both parties [career teacher and school district] regarding fundamental fairness, *ex parte* communications, impermissible commingling, bias, conflict of interest issues, and rules of evidence [hearsay, relevance, rules of procedure, etc.].

Table 19. Summary Statistics for Hypothesis Eight.

Category	Preference Mean Rank				
	1	2	3	4	5
Career Teacher	152.68	189.81	252.55	161.41	153.74
Principal	190.38	192.75	168.25	188.24	188.26
Supt.	224.51	165.51	133.71	179.69	223.49
Board Member	178.20	219.17	139.55	240.32	155.40
Attorney	171.85	138.83	194.47	195.07	189.73

Table 20. Inferential Statistics for Hypothesis Eight

Variable	N	D.F.	Chi-Square
Hearing Setting Preference 1 <u>Pre-HB 1017</u>	367	4	.0002
Hearing Setting Preference 2 <u>Court of Law</u>	367	4	.0147
Hearing Setting Preference 3 <u>Current TDPA</u>	370	4	.0000
Hearing Setting Preference 4 <u>Independent Hearing Board</u>	365	4	.0065
Hearing Setting Preference 5 <u>Arbitration</u>	373	4	.0001

Table 21. Analysis of Hearing Setting Preferences.

Career Teachers	Principals	Superintendents	Board Members	Attorneys
1. Pre-HB 1017	School Bd.	School Bd.	School Bd.	Court of Law
2. Independent Hearing Bd.	Independent Hearing Bd.	Court of Law	Pre-HB 1017	Pre-HB 1017
3. Court of Law	Pre-HB 1017	Independent Hearing Bd.	Court of Law	School Bd.
4. Arbitration	Court of Law	Arbitration	Independent Hearing Bd.	Independent Hearing Bd.
5. School Bd.	Arbitration	Pre-HB 1017	Arbitration	Arbitration

Rank: 1 = First Preference. 5 = Last Preference.

### Hypothesis Nine

*There is no significant difference between the perceptions of career teachers, principals, superintendents, school board members, and attorneys who represent educational interests as to the purpose of conducting career teacher employment termination hearing settings.*

The one-way ANOVA was used to analyze the data for hypothesis nine. The independent variables were represented by the categories of career teacher, principal, superintendent, school board member, and attorney. Summary statistics on the independent variables for hypothesis 9 are provided on Table 22. Inferential statistics for hypothesis nine are presented in Table 23.

The dependent variables were the four alternative purposes for conducting a career teacher employment termination hearing which were described on the survey questionnaire. Those purposes included:

1. Provide a hearing in which the board decides whether or not to terminate the employment of the career teacher in question. (*Note: This is the purpose under the TDPA.*)
2. Provide the opportunity for the career teacher in question to present the reasons why the board should not terminate the teacher's employment. (*Note: This was the purpose under the pre-House Bill 1017 hearing. The teacher could appeal a negative school board decision to a 3 person panel selected by the teacher and the school board.*)
3. Provide the opportunity for the career teacher, the school administration and the school board to address the problems at issue and resolve their differences. (*Note: This is mediation, a form of conflict resolution.*)
4. Provide the opportunity for a public hearing on the matter of the career teacher's employment termination. (*Note: A school board meetings are required, pursuant to statute to be public.*<sup>136</sup> *However,*

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<sup>136</sup>Okla. Stat. tit. 25, § 303 (1990).

*executive sessions are permitted for (inter alia) certain personnel matters related to employment.)*

The independent variables for hypothesis nine are the categories of career teacher, principal, superintendent, school board members, and attorneys. A one-way ANOVA was performed for the four hearing purposes. This data for hypothesis nine compares the hearing purpose preferences [dependent variables] among the categories.

For hypothesis nine, the chi-square is statistically significant at the .05 level for hearing preferences one and three. Hearing purpose preference one probability = .0000. Hearing purpose preference three probability = .0000. Therefore, null-hypothesis nine is rejected with regards to hearing purposes one and three.

For hypothesis nine, the chi-square is not statistically significant at .05 level for hearing purpose preferences two and four. Hearing purpose preference two probability = .6998. Hearing purpose preference four probability = .5523. Therefore, null hypothesis nine is accepted with regards to hearing purposes two and four.

Accepting hypothesis nine for hearing purpose preferences two and four does not necessarily represent evidence that there is not significant relationship between the preferences for hearing settings among the categories of career teacher, principals, superintendents, school board members, and attorneys. Acceptance of hypothesis four with regards to hearing purpose preferences two and four must be interpreted that evidence for a conclusion concerning those variables in the hypothesis has not been observed. Given that a significant statistical difference was found for purpose of hearing preferences one and three, an attempt was made to

determine whether the significant difference was due to differences in the perceptions of fairness among the groups.

An analysis of the summary of career teacher dismissal hearing purpose preferences by the respondents is used for that purpose. That data is presented in Table 22. A lower numerical mean ranking indicates a higher preference of purpose for conducting the career teacher dismissal hearing setting. A higher numerical mean ranking indicates a lower preference of purpose for conducting the career teacher dismissal hearing setting. An analysis of the data of the summary of career teacher dismissal hearing preferences in Table 22 is presented in Table 24.

The analysis of the data on the respondents' preferences of purpose for conducting a career teacher employment termination hearing again clearly illustrates the conflicting opinions among the groups regarding why an employment termination hearing should be held.

Table 22. Summary Statistics for Hypothesis Nine.

Category	Purpose of Hearing Mean Rank			
	1	2	3	4
Career Teacher	254.64	189.75	128.72	180.89
Principal	180.97	189.56	183.83	189.20
Superintendent	128.58	169.55	238.34	186.29
Board Member	164.03	183.22	194.53	197.87
Attorney	126.13	183.22	236.98	155.82

Table 23. Inferential Statistics for Hypothesis Nine.

Variables	Chi-Square	D.F.	Probability
Hearing Purpose 1	80.5559	4	.0000
Hearing Purpose 2	2.1959	4	.6998
Hearing Purpose 3	59.5412	4	.0000
Hearing Purpose 4	3.0330	4	.5523

Table 24. Analysis of Hearing Setting Purposes.

Career Teachers	Principals	Superintendents	Board Members	Attorneys
1. Resolve Diff.	Current TDPA	Current TDPA	Current TDPA	Current TDPA
2. Public Hearing	Resolve Diff.	Teacher Present Ev.	Teacher Present Ev.	Public Hearing
3. Teacher Present Ev.	Public Hearing	Public Hearing	Resolve Diff.	Teacher Present Ev.
4. Current	Teacher Present Ev.	Resolve Diff.	Public Hearing	Resolve Diff.

Rank: 1 = First Purpose. 4 = Last Purpose.

School Bd. = Local school board hearing. (Current TDPA)

Teacher Present Ev. = Provide the opportunity for the career teacher to present the reasons why the board should not terminate the teacher's employment.

Resolve Diff. = Provide the opportunity for the career teacher, administration and the board to address the problems at hand and resolve their differences.

Public Hearing = Provide the opportunity for a public hearing on the matter of the career teacher's employment termination.

Career teachers perceive a termination hearing as an opportunity for the teacher, administrators, and school board members to address the problem(s) and resolve their differences. Notably, purpose is the second preference (in importance)

for principals. Principals are charged with the duty of administering a formative plan of improvement with a career teacher in order to assist the teacher to correct identified deficiencies before the teacher can be recommended for dismissal or nonreemployment. Therefore, principals are the ones who must attempt to resolve the differences with the teacher before the process goes to the next level - the superintendent's recommendation of employment termination.

All of the remaining categories in the study [principals, superintendents, school board members, and attorneys] were unanimous in their selections of the current TDPA procedure as the purpose for conducting the dismissal hearing. That is, to provide a hearing in which the school board decides whether or not to terminate the employment of the career teacher. That was the last preference [number 4] selected by the career teachers.

The categories of superintendents, school board members, and attorneys selected the career teachers' first choice [to resolve differences] as last or next-to-the-last choices. This may be because those groups regard the dismissal hearing as the final step in the process. Attempts to "resolve the differences" (i.e. admonishments, plans for improvement, make a reasonable effort to assist, etc.) between the career teacher and the school district are statutorily required prior to the recommendation for dismissal or nonreemployment.<sup>137</sup>

Interestingly, school board members selected the purpose of conducting a public hearing on the matter as their last choice. This may be because teacher employment termination hearings are normally adversarial and may be potentially divisive in the school and community. The office of school board member is

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<sup>137</sup>Okla. Stat. tit. 70, § 6-101.24.



political. School board members are immune from legal liability for exercising their discretion in voting on whether or not to terminate the employment of a career teacher. However, school board members are not immune from political liability [i.e. public opinion, votes, etc.] on the matter.

### Qualitative Interview Analysis

There are two sides regarding the issues of fairness of career teacher dismissal hearings before the local board and education and fairness of the trial de novo appeal. Generally, teachers and teacher support groups perceive the designation of the local board of education as the hearing board in teacher dismissal proceedings as being biased against the teacher facing dismissal. Conversely, school districts and school district support groups perceive the career teacher's statutory right to appeal the school board's decision in a trial de novo is unfair because it takes the matter out of the local control of the district.

Two of the persons selected for interviews for the study were chosen because each represented one of the sides - school district and teachers. One of those persons was selected from the pool of attorney respondents who represent school districts. The other person was selected from the pool of school personnel respondents who represent teachers. Finally, a third person was selected for the study because that person has a neutral interest on the issues. Those three persons were chosen because they suited the purposes of the study for their knowledge of, and experience in, career teacher employment dismissal proceedings.

Each respondent was interviewed separately on different dates in different locations. Each interviewee was assured the interviewee's name, employment affiliation, and any other information pertinent to the respondent's identity would

remain confidential. Each interviewee was assured their responses would remain anonymous in the study and any subsequent publications, presentations or other dissemination of the study. No interviewee knew the identity of the other interviewees in study.

Each interviewee gave their consent for their interview to be taped. The interviews were taped on a portable cassette tape recorder. Each interviewee was informed that a written transcription would be made from the taped recording.

Data from the qualitative interviews was coded pursuant to the legal concepts [items 1-4 below] addressed in the study as well as issues relating to financial and human resources costs involved in the process. Finally, each respondent was asked to give their recommendations on how to improve dismissal procedures for career teachers. Each respondent was interviewed for their responses and opinions on the following:

1. The role of the school board in career teacher employment termination proceedings.
2. The role of the superintendent in career teacher employment termination proceedings.
3. The trial de novo appeal in career teacher employment termination proceedings.
4. Constructive discharge issues in career teacher employment termination proceedings.
5. Financial costs involved in career teacher employment termination proceedings.
6. Human resource costs involved in career teacher employment termination proceedings.
7. Recommendations for change in the career teacher employment termination process.

The interviewees were asked questions regarding their perceptions of fairness in career teacher dismissal proceeding. The questions were open ended intended to elicit spontaneous responses on the issues. Follow-up questions were asked when necessary in order to allow the interviewee to clarify a point or gain additional information not elicited from the original questions. The following is a report of the data from those interviews.

The data is divided into sections which represent the topics discussed in the interviews. The data from all three interviewees is presented under each topic heading. Direct quotes of the subjects are given where necessary to support conclusions drawn from the data.

*The role of the school board in career teacher employment dismissal proceedings.*

Respondent from the attorney pool referred to the Oklahoma Constitution and statutes in making the point that each local board is in charge of their respective school districts. Following that reasoning, the respondent referred to the “rule of necessity” in support of the local school board’s authority to conduct teacher termination hearings. The “rule of necessity” was used to support the notion that “somebody has to hear it” [employment termination proceeding]. The respondent’s reasoning supports the common law view that the right to hire includes the right to fire.

The respondent made note of the fact that, in a teacher dismissal proceeding, the school board is the only participant in the proceeding without a direct financial interest in the outcome. The respondent reasoned that school board members have the ability to be more objective in the proceedings due to the fact that board membership is not their livelihood.

Respondent from the teacher pool stated that the current teacher employment termination process is inherently biased because of the role the school board as the hearing board. The respondent felt that school boards also bias the process due to the fact that school boards have the power to “tell you if you’re good or bad.” This, again, relates to the common law reasoning that the right to hire includes the right fire.

The higher education respondent expressed concern about potential board bias if the respondent were to have to represent a teacher facing termination in a board hearing. However, the respondent felt that boards could successfully hear teacher termination cases if the board “. . . do the job they are supposed to do, stay out of the day-to-day evaluation of teacher, allow the administrators to bring recommendations, and are inclined to listen to a complaint from the teacher, or from a supporter of the teacher . . .” The respondent further said that the school board hearing is the “perfect example” of how to keeping education in a “local control format.” In addition to the role of the school board in dismissal matter, the interviewees responded to questions regarding the superintendent’s role in the proceedings.

*The role of the superintendent in career teacher employment dismissal proceedings.*

The respondent from the attorney pool had strong feelings on the matter. The respondent felt that superintendents and school boards successfully perform their roles in teacher dismissal proceedings.

The respondent noted, “Not only have I found it successful, but I’ve basically found that every superintendent who recommends a teacher dismissal is essentially putting his own employment on the line. Because if, for instance, if the board votes

not to dismiss someone, the superintendent has essentially lost his power and the staff is now uncertain as to his [superintendent's] authority and may now begin to deal with the board members directly . . . after all, the last time he [superintendent] recommended something to the board [teacher dismissal] the board didn't follow it."

This analysis by the respondent contradicts the respondent's earlier statement that the superintendent and school board successfully execute their roles in teacher dismissal proceedings under the current TDPA. Under the respondent's analysis, the superintendent "is putting his employment on the line." when the superintendent recommends for dismissal of a teacher [or other school employee].

This raises the question of impermissible commingling of the superintendent's role in the matter. The board must weigh not only the issues surrounding the career teacher's job performance, but what effect the school board's decision will have on its relationship with the superintendent as well. The argument may be made that this places undue burden on the teacher by requiring the teacher to not only prove the teacher's case for retention of the teacher's job, but that retaining the teacher's job is important enough for the school to compromise their relationship with the superintendent in the process.

The respondent from the pool of teachers expressed similar concerns regarding the role of the superintendent in the process. The respondent noted, "They [school board] are the superintendent's employer and he has been hired to do the job he does - and that is to make those recommendations. If they [school board] didn't trust him to make the right decisions, then they wouldn't have hired that person. So, I think it is very tough to disassociate. I do think, amazingly enough, that sometimes they do."

The higher education respondent agreed with the opinions of the other interviewees. The respondent stated, “. . . if they’re happy with the performances of the superintendent and principal, are they [school board] willing to go against their [superintendent] recommendations?”

The three interviewees then responded to questions concerning issues of fundamental fairness in the career teacher’s statutory right to appeal a negative school board employment decision in a trial de novo at the district court level.

*Trial De Novo Appeal in career teacher employment dismissal proceedings.*

The respondent from the pool of attorneys expressed that “I think the trial de novo is the same as having the teacher sign her contract with the state district judges instead of with the school board.” The respondent felt that the school board’s local control over career teacher termination matters is “nonexistent” because of the trial de novo.

The respondent from the teacher pool felt that the trial de novo does work. The respondent noted that “You don’t have to pay a judge when it goes to trial de novo.” and therefore the current process is less expense to the school districts. The respondent also felt that the judge in a trial de novo is “totally fair . . . doesn’t have preconceived notions . . . doesn’t live in the town . . . “ in comparison to school board members who may have to conduct career teacher termination proceedings. The respondent further expressed that the trial de novo “. . . was a compromise . . . as all legislation is.”

The respondent felt that the trial de novo served as a “balance of power” mechanism that “stops people, superintendents and/or principals who may just be really good and mad at someone or may have a personality conflict maybe over

something outside of the school in small towns in particular.”

The higher education respondent perceived the trial de novo a final level of due process protection for career teacher. The respondent noted that career teachers have had “two or three opportunities to make their case” prior to a trial de novo. The teacher may appeal first to the principal, then to the superintendent, school board, and finally to district court.

The respondent disagreed with the standard of review in a de novo appeal. The respondent said, “It’s never made sense to me that that hearing [trial de novo] is not just a review of the transcript of the board and decide if it [the hearing] was appropriate. I don’t like the idea of the whole thing opening up again.” The respondent further stated that “. . . at that level the court’s decision should be based on ‘Was the teacher’s due process rights available to them?’” The only interviewee to express an opinion on the issue of *constructive discharge* in career teacher dismissal proceedings was the respondent from the teacher pool.

### Constructive Discharge

The respondent expressed concern over the current career teacher employment dismissal process by stating, “What I see, and especially in elementary school, is that when it gets out in a small town that a teacher is being fired, the kids are just devastated. Is she good or bad? She has children who love her. There are few people who don’t have some of their kids love them and that’s very traumatic for children, I think.”

The respondent further replied, “. . . teachers don’t want to go through with all of that and you see more resignations and moving on than you see the big fight at the board hearing.” The respondent also felt that “. . . there are few hearing in

comparison to the number of teachers who are employed in this state.” The interviewees were questioned about their opinions on the financial costs to school districts and teachers in employment termination proceedings.

*Financial Costs in Career Teacher Employment Dismissal Proceedings.*

The respondent from the pool of attorneys felt that the financial costs to a school district in career teacher employment proceedings depended on the complexity of the issue behind the dismissal efforts. Non-remedial grounds for dismissal [i.e. “criminal sexual act”] may be less expensive to deal with than “. . . trying to prove ineffective teacher performance.” The respondent estimated that the cost to the district “. . . runs between \$3,500 and \$10,000.”

The respondent from the pool of teachers gave no dollar amount opinion regarding the financial costs of a dismissal proceeding. However, the respondent noted that “it takes a long time to gather up the information to plot the case.” The respondent inferred what the first respondent stated that costs accrue in proportion to the complexity of the case.

The respondent from higher education assessed the financial cost in terms of salary paid to the teacher until a dismissal decision has been made. The respondent noted that, prior to House Bill 1017, “The next board meeting you had to have the hearing and a dismissal decision.” Since House Bill 1017, “. . . you can terminate a teacher one Spring, and depending on when the trial is held, you could be well into the fall still paying that teacher.” The three participants also responded to questions about the human resource costs involved in career teacher employment dismissal proceedings.

*Human Resource Costs in Career Teacher Employment Dismissal Proceedings.*



The respondent from the attorney pool noted the human resource costs involved in career teacher employment dismissal proceedings in terms of administrative costs. “. . . you’re going to have a much more longer, harder row to hoe and it’s going to require a lot more hours in interviews on the part of the district . . . when dismissals are predicated on a career teacher’s unsatisfactory teaching performance.”

That same respondent expressed that teacher dismissal hearings can strain relations within the school district and community. The respondent described what can happen during a hearing. “The hearings are almost like an exorcism. They start at 7:00 p.m., let’s say, and I’ve seen them go ‘till 6:00 a.m. It’s not a pretty process. It’s tremendous cost in terms of emotional turmoil in the district.”

The respondent from the teacher pool noted emotional costs incurred in the process. “I think there is a cost to school districts as in the emotional side, the intangible side. Especially with a long term teach that’s been in the community for a very long time that has different camps . . . those factions may start ‘warring’ and I think that may start problems.”

The higher education respondent expressed a view similar to the respondent from the attorney pool regarding human resource costs on the matter. The respondent said, “. . . a really good teacher evaluation is going to take three to five hours, and that’s just for career teachers . . . if you add twice a year for probationary teachers, that’s a big expense for schools. As for teachers, they can have additional expense because of the trial de novo in particular, uh, but that’s their choice.”

The interviewees were asked what recommendations they had for improving the current career teacher employment dismissal process. They presented their

recommendations for resolving some of the areas of controversy in the process.

*Recommendations for change in the career teacher employment dismissal process.*

The respondent from the pool of attorneys felt that the primary problem in the dismissal process of career teachers lay in the trial de novo appeal. Specifically, the standard of review. The respondent said, “My solution is to bifurcate the appeal to district court so that the appeal of the subsequent issues of the teacher’s performance would be reviewed only for arbitrary and capriciousness or abusive discretion - but the review of the procedural aspects [of the school board hearing] would be de novo.

The respondent from the teacher had no recommendations for improving the current procedures on the matter. “I’m happy with the status quo in that I don’t believe it’s totally an even playing field. But I don’t believe that it ever will be. The playing field is tilted more toward the [school] board because they are the employer. I’m not even sure if that’s wrong.”, commented the respondent. The respondent concluded, “I believe that, at least at this point in time, it’s as good as it gets.”

The higher education respondent expressed misgivings about a party outside of education making employment decisions regarding teachers. The respondent recommended some form of professional hearing review board to make those dismissal decisions. The respondent stated as an example, that members of a professional hearing review board may come from appointments by the representative groups involved including, teacher associations, school district associations, appointments by the governor of Oklahoma, the state superintendent of instruction and the Oklahoma Secretary of Education.

The recommendation presented by the higher education respondent is similar

to the provision under Oregon law where 20 member Dismissal Appeals Board is appointed by the Governor. The superintendent of instruction then appoints a panel of three members from that board for the purpose of conducting a teacher dismissal hearing.

### Summary

In this chapter, the quantitative data was analyzed by the use of the Kruskal-Wallis one-way analysis of variance, bivariate correlational statistics, and qualitative analysis. Nine hypotheses guided the study with each representing an attempt to determine whether one of a variety of categorical [career teacher, principals, superintendents, school board members, and attorneys who represent educational interests] characteristics might explain each category's perception of fundamental fairness with regards to the TDPA employment dismissals procedures for career teachers in Oklahoma.

A one-way ANOVA was used in hypotheses one where a significant difference was found in the relationship of perceptions of fundamental fairness among the categories of career teachers, principals, superintendents, school board members, and attorneys concerning career teacher dismissal procedures in Oklahoma. Hypothesis one was rejected.

In hypothesis two, the existence of negotiated labor agreements between teachers and the boards of education was not found to be significantly related to perceptions of fundamental fairness in career teacher dismissal proceedings in public school districts. Hypothesis two was accepted.

No significant relationship was found between the degree of fairness perceived in career teacher dismissal proceedings in Oklahoma and the appearance

of a subject on behalf of the career teacher or school district. Hypothesis three was accepted.

In hypothesis four, no significant relationship was found between the degree of fairness perceived in pre and post House Bill 1017 teacher dismissal proceedings with regard to the impartiality of school boards [survey question 7], and the standard of review in a trial de novo [survey question 13]. Hypothesis four was accepted with regards to questions 7 and 13 of the survey questionnaire.

With regards to question 11, a significant difference was found in the relationship between the fairness perceived in pre and post House Bill 1017 teacher dismissals and whether the trial de novo takes the final decision making on teacher dismissals out of the local control of the school board. Hypothesis four was rejected with regards to question 11 of the survey questionnaire.

The relationship between the years of experience of school personnel and degree of fairness perceived in career teacher dismissals was examined through the use of bivariate correlational statistics in hypotheses five, six, and seven.

The number of years of experience were found to have a statistically significant to the perceptions of fairness regarding a school board's impartiality in making career teacher dismissal decisions [survey question 7]. Therefore, null hypothesis five was rejected with regards to question 7.

Statistical significance was found between the relationship of the number of years of experience of school personnel and the degree of fairness perceived in career teacher dismissal proceedings with regards to: (1) whether the trial de novo takes the decision making on career teacher dismissals out of the control of the local school board [survey question 11]; and (2) the trial de novo standard of review [survey

question 13]. Therefore, null hypothesis five was rejected with regards to survey questions 11 and 13.

Hypothesis six revealed no statistical significance in the relationship between the number of plans for improvement in which a principal had been involved and principals' perceptions of fairness in career teacher employment dismissals. Therefore, null hypothesis six was accepted with regards to principals.

A statistical significance was found in the relationship between the number of plans for improvement in which a superintendent has been involved and the superintendents' perceptions impartiality of school boards in career teacher dismissals. Therefore, null hypothesis six was rejected with regards to survey question 7 [school board impartiality] for superintendents.

No statistical significance was found in the relationship between the number of plans for improvement in which a superintendent has been involved and the superintendent's perception of fairness of the trial de novo [survey questions 7 and 13] in career teacher dismissals. Therefore, null hypothesis six was accepted for superintendents with regards to survey questions 11 and 13.

In hypothesis seven, no statistical significance was found in the relationship between the number of plans of improvement in which a career teacher has been involved and the fairness perceived in career teacher dismissals. Therefore, null hypothesis seven was accepted.

Hypothesis eight, the one-way ANOVA found a high level of statistical significance between the preferences for career teacher dismissal hearing settings among career teachers, principals, superintendents, school board members, and attorneys. Therefore, null hypothesis eight was rejected.

The one-way ANOVA also found a high level of statistical significance among career teachers, principals, superintendents, school board members and attorneys for hearing purpose numbers one [current TDPA hearing setting] and three [mediation/conflict resolution setting]. Therefore, null hypothesis nine was rejected with regards to hearing purpose numbers one and three.

There was no statistical significance found in hypothesis nine for hearing settings two [pre-House Bill 1017 hearing setting] and four [public hearing]. Therefore, null hypothesis nine was accepted for hearing settings two and four.

In summation, hypotheses one and eight were rejected. Hypotheses two, three, and seven were accepted. Hypothesis four was accepted for survey questions seven and thirteen and rejected for survey questions eleven. Hypothesis five was accepted for survey question seven and rejected for survey questions eleven and thirteen. Hypothesis was accepted for principals; accepted for superintendents for survey questions eleven and thirteen; and, rejected for superintendents for question seven. Hypothesis nine was accepted for hearing purposes two and four, and rejected for hearing purposes one and three.

The one-way ANOVA analysis revealed that there is a statistically significant relationship among perceptions of fairness in career teacher dismissal procedures and the independent variables. That statistical analysis also revealed a statistically significant relationship among the independent variables and career teacher dismissal hearing setting preferences.

Interviews with three subjects, one from the attorney pool of respondents [pro-school district], one from the teacher pool of respondents [pro-teacher group], and one from higher education [neutral] revealed marked differences of opinions

regarding the trial de novo. Differences were also found concerning the school board's statutory designation as the hearing board in teacher dismissal proceedings and recommendations for procedural improvements on the issues. The subjects revealed degrees of similarity of opinions regarding the commingling of roles of the superintendent and financial and human resource costs in the proceedings.

## CHAPTER 5

### Summary, Findings, and Recommendations

#### Summary

The purpose of this study was to evaluate the fairness perceived by career teachers, principals, superintendents, school board members, and attorneys who represent educational interests in career teacher termination procedures pursuant to the Teacher Due Process Act of 1990 in Oklahoma. The study examined those groups' perceptions of fairness regarding, (1) the statutory designation of the local school board as the hearing board in career teacher termination proceedings; and (2) the trial de novo appeal.

Along with the two areas mentioned above, the study analyzed whether or not the perceptions of fairness of those groups were related to the following characteristics of the groups:

1. Years of experience.
2. Existence of a negotiated labor agreement between teachers of the district and the board of education.
3. The number of formal teacher terminations the respondents were involved in on behalf of a school district or a career teacher before and after enactment of the Teacher Due Process Act of 1990.
4. The number of times the respondents were involved in a trial de novo on behalf of a school district or a career teacher.
5. The number of plans for improvement the respondents were involved in on behalf of a teacher or a school district.
6. Preference of hearing procedure for a career teacher termination hearing.



7. Purpose for conducting a career teacher termination proceeding.

Public school administrators and school boards are accountable to the school district's patrons for maintaining an effective teaching staff. School boards are charged with the governance of the school district.

The methods and procedures that school districts use to evaluate teachers must acknowledge and support effective teaching. Those same methods and procedures must also identify areas of concern and include reasonable efforts by the supervising administrator to help the teacher meet the goals of that teacher's plan for improvement. After that, school districts are responsible for the dismissal of teachers who fail to satisfactorily reach the goals of the plan of improvement in which the area(s) of concern were identified.

One perception among educators is that problems with an evaluation system can be resolved by developing a better observation instrument or rating form. In fact, what is usually needed is agreement among those who have a stake in performance evaluation regarding its purpose and uses.<sup>140</sup> This study examined the purpose and use of the final element in the career teacher summative evaluation process - the dismissal hearing. The study found significant statistical and practical differences in perceptions of the purpose and use of career teacher dismissal procedures in Oklahoma.

This study was conducted in the spring of 1999 in an effort to evaluate the current TDPA procedures for career teacher dismissal hearings. The evaluation was based on the perceptions of fairness of the groups involved which, in turn,

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<sup>140</sup>John T. Seyfarth, *PERSONNEL MANAGEMENT FOR EFFECTIVE SCHOOLS*, 2d ed.(Needham Heights: Allyn & Bacon, (1996), 160 .

determines how effectively the procedures achieve their purpose of ensuring protection of career teachers' due process rights while enabling school districts to dismiss ineffective teachers.

Career teachers, principals, superintendents, school board members, and attorneys who represent educational interests participated in the study. A survey questionnaire was mailed to fourteen public school districts with secondary average daily memberships (ADMs) of 21-239 [small]; 12 public schools with secondary ADMS of 240-710 [medium]; and 8 public schools with secondary ADMs of 720 and above [large] in each quadrant Oklahoma. The boundary for each quadrant of Oklahoma was the intersection of Interstate 35 and Interstate 40.

Since no instrument existed that could serve the objectives of the study, one was specially designed. The instrument consisted of four parts. Part one asked for asked for each subject's position and size of school district. Part two asked for professional background information of the subject. The first item in part one and the six items in part two became the independent variables for the study.

Part three presented eight statements concerned with perceptions of fairness of elements in career teacher dismissal procedures. Respondents were required to select a score on a *Likert* scale that reflected their level of agreement with the statement. [Strongly agree (1) - Strongly Disagree (5).] Those responses were ranked and quantified to produce dependent variables for the study.

Part four presented five dismissal hearing settings. The respondents were asked to select, in order of preference, the career teacher employment dismissal

hearing setting that perceived as most fair to the teacher and the school district.

Each number was to be used only once. Those responses were ranked and quantified to produce dependent variables for the study.

Part five presented four purposes for conducting a career teacher employment dismissal hearing. Each respondent was asked to select, in order of preference, the purpose for conducting a teacher dismissal hearing. Those selections were ranked and quantified to produce dependent variables for the study.

A one-way ANOVA was conducted to determine the extent to which any of the categorical characteristics might be significantly related to the *Likert* scale ranks on survey questions 7-13 and the *Dismissal Hearing Setting Preference* scores as well as the *Purpose of the Hearing* section scores.

A bivariate correlational coefficient score (*Spearman rho*) was conducted to determine the extent to which data expressed as continuous scores might be significantly related [i.e. Years of experience and degrees of agreement (hypothesis five); and number of plans of improvement involved in and degrees of agreement (hypothesis six)].

A high level of significance was shown between the perceptions of fairness of the different categories regarding career teacher dismissal procedures. A high level of significance was also shown between perceptions of fairness of those categories and the subjects' *Dismissal Hearing Setting Preference* as well as their *Purpose of the Hearings* preferences.

Dependent variables that do not seem to be significantly related to perceptions of fairness of the categories and career teacher dismissal of procedures include the existence of a negotiated labor agreement between the teachers of the

district and the board of education. No significant relationship was found regarding the appearance of a respondent in a career teacher dismissal proceeding on behalf of a teacher or school district or experience in career teacher dismissals before or after House Bill 1017 (1990). Finally, no significant relationship was found regarding the number of plans of improvement in which a respondent was involved and perceptions of fairness in career teacher dismissal proceedings.

The best predictor, among the six variables considered that was statistically confirmed, was the position held by the subject. The remaining five variables cannot be considered to be dependable predictors.

### Findings

The conclusions that the research findings indicate are as follows:

1. There is a significant difference between the perceptions of fairness in career teacher dismissal hearings of Oklahoma school career teachers, principals, superintendents, school board members, and attorneys who represent educational interests.
2. There is no significant difference between the degrees of fairness perceived in career teacher dismissal proceedings in Oklahoma and the existence of negotiated labor agreements between teachers and the board of education in a public school district.
3. There is no significant difference between the degree of fairness perceived in career teacher dismissal proceedings in Oklahoma and the appearance of a subject on behalf of the career teacher of the school district.

4. There is no significant difference between the fairness perceived in pre-House Bill 1017 teacher dismissal proceedings and post-House Bill 1017 teacher dismissal hearings.
5. There is no significant relationship between the years of experience of school personnel and the degree of fairness perceived in career teacher dismissal proceedings in Oklahoma.
6. There is a significant relationship between the years of experience of school personnel and the degree of fairness perceived in the trial de novo appeal in career teacher dismissal proceedings.
7. There is no significant relationship between the number of plans of improvement in which a principal has been involved and the fairness perceived in career teacher dismissal hearings in Oklahoma.
8. There is a significant relationship between the number of plans of improvement in which a superintendent has been involved and the fairness perceived of a school board's impartiality in career teacher dismissal proceedings in Oklahoma.
9. There is no significant relationship between the number of plans of improvement in which a superintendent has been involved and the fairness perceived in the trial de novo in career teacher dismissal proceedings in Oklahoma.
10. There is no significant relationship between the number of plans of improvement in which a career teacher has been involved and the fairness perceived in career teacher dismissal hearings in Oklahoma.

11. There is a significant difference between preferences for career teacher dismissal hearing settings among career teachers, principals, superintendents, school board members, and attorneys who represent educational interests.
12. There is a significant difference between preferences for career teacher dismissal hearing purposes among career teachers, principals, superintendents, school board members, and attorneys who represent educational interests.
13. Respondents reported infrequent involvement in plans of improvement. [See Table 18.] More than half [52%] of the respondents reported involvement of two or less plans of improvement. This finding is of practical significance and supports Seyfarth's contention that disagreement exists regarding the purpose and use of evaluations among those who have a stake in the process. A plan of improvement [which only results from an unsatisfactory evaluation] must occur before any further steps may be taken in the dismissal process. It may be said that the infrequent use of plans of improvement, as reported in the data, is an indication of the marked disagreement among teachers and administrators as to its purpose and use.

#### Recommendations for Practice

It is the writer's experience as a career teacher, school administrator [elementary and secondary principal], and attorney who represents educational interests, that significant disagreement exists between teacher groups and school

districts regarding career teacher dismissal and appeal procedures. The current dismissal and appeal procedures are "all or nothing" situations. That is, a career teacher has no choice in a dismissal proceeding except whether or not that teacher chooses the formidable task of facing the district's superintendent as the prosecutor against the teacher, and the school board as the trier of fact in the hearing.

In the alternative, the school board must conduct a hearing knowing that their efforts may be rendered moot if the career teacher files an appeal of the board's decision in a trial de novo. The issue of "local control" then becomes moot. That is guaranteed by statute.

The current legislation regarding career teacher dismissal and appeal procedures should be amended in a manner that provides constitutional due process protection for teachers while preserving the school districts right to dismiss ineffective teachers with identified poor teaching performances. Mutual agreement between school districts and the teachers in the district concerning the purposes and uses of career teacher dismissal and appeal procedures will help to resolve the current divisiveness that exists between the two groups. Recommendations for changes in career teacher dismissal and appeal procedures are presented.

The following recommendations are based upon the above findings and research data:

1. School districts and teachers should concentrate on reaching agreement in career teacher evaluations, plans of improvement, and employment dismissal hearings and appeals regarding the purposes and uses of those procedures.
2. Administrators in school districts should initiate discussion with staff

regarding agreement of the purposes and uses of evaluations, plans of improvement, and employment dismissal hearings and appeal procedures.

3. Boards of Education, particularly in smaller school districts, should be made aware of the need to reach agreement of the purposes and uses of evaluations, plans of improvement, and dismissal hearings and appeal procedures.
4. The Oklahoma State legislature should promulgate legislation that amends the current career teacher employment dismissal appeal procedure in a manner that will increase agreement between school districts and teachers regarding the purpose and standard of review of the appeal. The Oklahoma legislature may look to the Oregon statute, OR Rev. Stat. 342.903 et seq. as a model for the curative legislation.

Following that model, the governor, subject to confirmation would appoint a Dismissal Appeals Board of 20 members by the Senate. Five members would be administrators from public school districts, five members would be career teachers, five members from public school boards, and five members not affiliated with any public school district.

At least one member from each of the above categories must be a resident of a school district with average daily membership of less than 1,000 students; one member from each category must a resident of a school district containing from 1,000 to 3,000 students;



and one member from each category must be a resident of a school district containing over 3,000 students. [Note: The district populations have been adjusted to reflect public school district average daily memberships in Oklahoma.]

The school district and the career teacher making the appeal would mutually select a 3-member appeal panel. The mutual selection process would be done by alternatively striking names from the Dismissal Appeals Board member list until the sides mutually agree upon 3 members for the panel. The Dismissal Appeals Board panel would conduct a contested case hearing pursuant to Oklahoma administrative law.

5. Professional administrator and teacher organizations should explore ways to improve the use of evaluations, plans of improvement, and employment dismissal hearing procedures in a manner that increases agreement of those sides in those processes regarding their purposes and uses.
6. Graduate schools of administration should develop courses giving more emphasis and instruction on the development and implementation of evaluations, plans of improvement, and employment dismissal hearing procedures by which school districts and teacher can agree as to their purposes and uses.
7. The State Department of Education should develop a systematic

approach for the development of teacher dismissal hearing procedures by which stakeholders can agree regarding its purpose and uses.

#### Recommendations for Further Study

1. Replicate the study comparing career teacher, principals, superintendents, school board members, and attorneys who represent education interests.
2. The State Department of Education should collect data, for research purposes, on the number of summative evaluations, plans of improvement, teacher dismissal hearings, and resignations that occur annually in Oklahoma public schools.
3. A study should be conducted to determine what career teacher employment dismissal procedures would produce better agreement among the stakeholders in the process as to the purpose and uses of the procedures.
4. A comparison should be made of employee evaluation and dismissal procedures in Oklahoma public schools and other non-school governmental [municipal, county, and state] agencies.

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## APPENDIX A



## **TEACHER DUE PROCESS ACT SURVEY**

Your title: *(Circle all that apply.)*

Career Teacher

Counselor

Principal/Assistant Principal

Superintendent/Assistant Superintendent

Board Member

Attorney

School District Secondary Student Average Daily Membership (ADM) for  
OSSAA 1998-99 Classification Purposes: *(Circle only one.)*

21 - 239

240 - 710

720 and Above

### ***PROFESSIONAL BACKGROUND INFORMATION***

**Directions: Put your answer on the blank at the end of each question.**

1. How many years (career total) have you served at your present position in a public school in Oklahoma? \_\_\_\_\_
2. Does your school district have a negotiated labor agreement between the teachers of the district and the board of education? *(circle one)* Yes No
3. How many formal teacher termination hearings were you involved in before 1990 on behalf of a public school district \_\_\_\_\_, on behalf of a public school teacher \_\_\_\_\_, in Oklahoma?
4. How many formal teacher employment termination hearings have you been involved in since 1990 on behalf of a public school district \_\_\_\_\_, on behalf of a public school teacher \_\_\_\_\_, in Oklahoma?
5. How many times have you been involved in a trial de novo on behalf of a public school district \_\_\_\_\_, on behalf of a public school teacher \_\_\_\_\_, in Oklahoma?
6. How many "Plans for Improvement" have you been involved with in a public school in Oklahoma \_\_\_\_\_?

### **OPINION SURVEY**

**Definition:** ***Trial de novo:** Refers to the hearing in district court to which a career teacher may appeal a school board's decision to discharge or nonreemploy the teacher. The court does not review the decision of the board in a trial de novo. Rather, the court conducts an entirely new hearing as if it originated in the district court.*

**Directions: Circle the number of your response.**

7. Most public school boards in Oklahoma make impartial career teacher dismissal decisions.

Strongly Agree

Strongly Disagree

1                      2                      3                      4                      5

8. My local school board makes impartial career teacher dismissal decisions.

Strongly Agree

Strongly Disagree

1                      2                      3                      4                      5

9. A superintendent's relationship with the school board (as advisor to the board), limits the school board's ability to make an impartial decision regarding the superintendent's employment termination recommendations.

Strongly Agree

Strongly Disagree

1                      2                      3                      4                      5

10. A peer review committee should review a career teacher dismissal recommendation before the recommendation is submitted to the school board.

Strongly Agree

Strongly Disagree

1                      2                      3                      4                      5

11. A career teacher's statutory right to appeal a school board's termination decision to a trial de novo is unfair because it takes the final decision making out of the local control of the board.

Strongly Agree

Strongly Disagree

1 2 3 4 5

12. A career teacher's statutory right to appeal a school board's dismissal decision is unfair because it provides the opportunity for the teacher to learn the school's legal strategy at the school board hearing level.

Strongly Agree

Strongly Disagree

1 2 3 4 5

13. A career teacher's statutory right to appeal a school board's dismissal decision in a trial de novo is unfair because it is a completely new hearing rather than a review of the record of the school board hearing.

Strongly Agree

Strongly Disagree

1 2 3 4 5

14. A career teacher would be deprived of due process if the teacher could not appeal the school board's dismissal decision in a trial de novo.

Strongly Agree

Strongly Disagree

1 2 3 4 5

### ***DISMISSAL HEARING SETTING PREFERENCE***

15. Select, in order of preference, the career teacher employment dismissal hearing setting that is most fair to the teacher and the school district. Place the number 1, 2, 3, 4 or 5 indicating your preference on the blank for the corresponding statement.

#### **USE EACH NUMBER ONLY ONCE.**

**1 = First Preference. 5 = Last Preference.**

- \_\_\_ A career teacher dismissal hearing should be conducted before a 3 person hearing board. One member of the hearing board to be selected by the teacher facing termination, one member selected by the school board and one member selected by mutual agreement between the teacher and the board.
- \_\_\_ A career teacher dismissal hearing should be conducted in a court of law.
- \_\_\_ A career teacher dismissal hearing should be conducted before the teacher's local board of education.
- \_\_\_ A career teacher dismissal hearing should be conducted before a professional independent hearing board trained certified to conduct employment hearings.
- \_\_\_ A career teacher dismissal determination should be made by an arbitrator mutually agreed upon between the teacher and the school district.

### ***PURPOSE OF THE HEARING***

16. Select, in order of preference, the purpose for conducting a career teacher dismissal hearing. Place the number 1, 2, 3 or 4 indicating your preference on the blank for each corresponding statement.

#### **USE EACH NUMBER ONLY ONCE.**

**1 = Most important purpose. 4 = Least important purpose.**

- \_\_\_ Provide a hearing in which the board decides whether or not to terminate the employment of the career teacher in question.
- \_\_\_ Provide the opportunity for the career teacher in question to present the reasons why the board should not terminate the teacher's employment.
- \_\_\_ Provide the opportunity for the career teacher, the school administration and the board to address the problems at issue and resolve their differences.
- \_\_\_ Provide the opportunity for a public hearing on the matter of the career teacher's employment termination.

## APPENDIX B

Jim Tate, J.D., Assistant Professor  
Southwestern Oklahoma State University  
100 Campus Drive  
Weatherford, OK 73096

March 9, 1999

Mr. John Doe  
Anytown Public Schools  
111 Elm St.  
Anytown, OK 73777

Dear Mr. Doe:

The attached survey instrument concerned with procedures used in career teacher dismissal proceedings in public schools is part of my dissertation study at the University of Oklahoma. This project is concerned specifically with determining school personnel's perception of fairness in those procedures. The results will help to provide criteria to be used for developing curative legislation and for improving due process procedures for public schools and teachers in Oklahoma.

You were picked to participate in the study because you are representative of the population that deals with career teacher employment matters. I am particularly desirous of obtaining your responses because your experience in teacher employment matters will contribute significantly toward solving some of the problems we face in this important area of education.

The attached survey has been tested with a sampling of school teachers, administrators, and school board members, and I have revised it in order to make it possible for me to obtain all necessary data while requiring a minimum of your time. The average time required for school personnel to complete the survey instrument was 10 minutes.

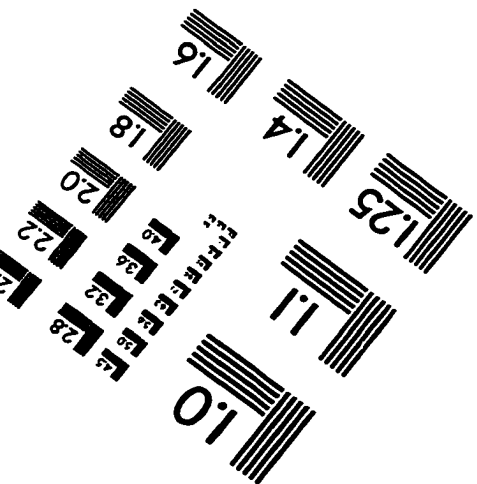
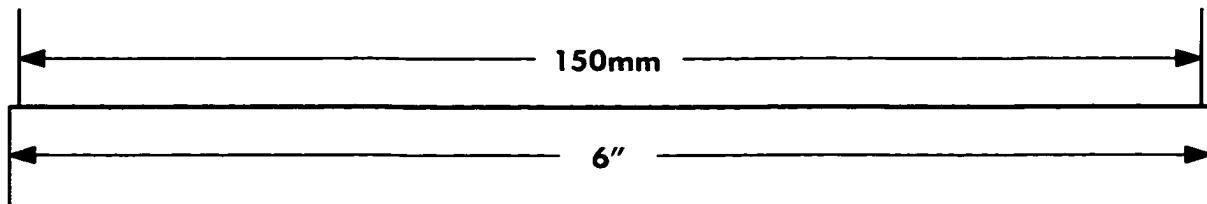
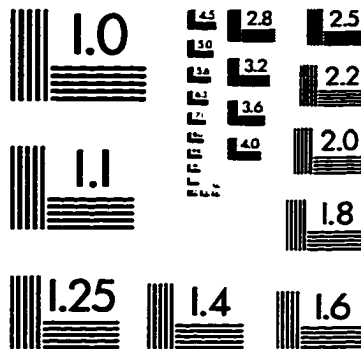
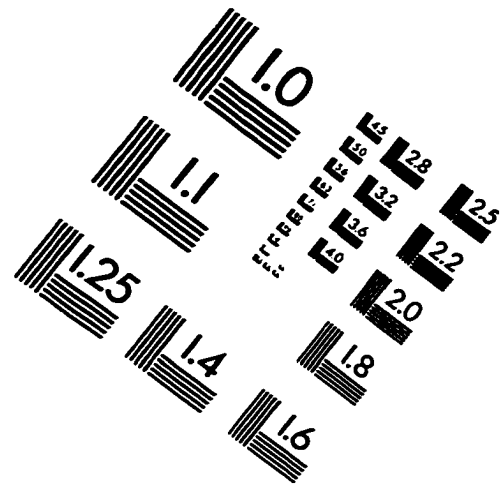
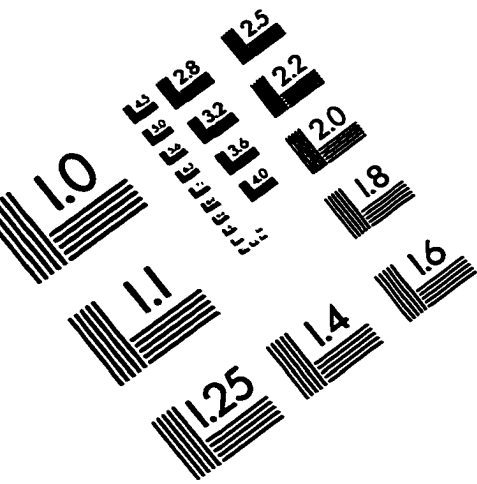
I will appreciate it if you will complete the enclosed form by March 26, 1999 and return it in the stamped, self-addressed envelope enclosed. Other phases of this research cannot be carried out until I complete analysis of the survey data.

**Your responses will be anonymous and held in strictest confidence. Your completion of this survey indicates your consent for voluntary participation in this study.** I will be pleased to send you a summary of the survey results if you desire. Thank you for your cooperation.

Sincerely yours,

Jim Tate, J.D.

# IMAGE EVALUATION TEST TARGET (QA-3)



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