

tests have not been job related or test scores have been used arbitrarily or used to create unreasonable or arbitrary classifications, the courts have disallowed their use.

The major issue litigated in adverse employment decisions is the extent to which adequate due process was provided. The more severe the action and the more serious the individual interests involved, the more extensive and more formal is the due process required. The procedures to be followed in the dismissal of a tenured employee are more extensive than those required for the dismissal of a nontenured employee. However, employees who are RIFed are generally not entitled to a hearing, because the courts consider their dismissals to be impersonal, in no way impugning the teacher personally and therefore outside the scope of teacher termination statutes.

Although the specific laws related to personnel administration vary somewhat from state to state, the basic legal concepts, especially those designed to protect individual rights and ensure fairness and reasonableness, are common to all jurisdictions. A failure by the school district to adhere to these concepts leaves it vulnerable to a charge of arbitrary and capricious conduct.

Discussion Questions

1. What are the provisions of your state constitution regarding education? What, if any, legal challenges have there been to the authority of the state?
2. List the terms and conditions of employment that are most often affected by state statutory and regulatory provisions. For each area, discuss the basis and/or the purpose for the requirement.
3. There are two elements of due process. Define each element and discuss what protection it affords school district employees.
4. All states have some statutory provisions regarding teacher dismissal or revocation of a certificate. What are the statutory provisions in your state? How do these compare with those most frequently cited in other states' statutes?
5. What policies has your district adopted regarding RIFing of teachers and administrators?

CASE STUDIES

CASE 10.1

I Prefer Whiterock, but . . .

The Whiterock School District has had a great deal of trouble securing a permanent, certified teacher of the severely mentally disabled. The district advertised in the major educational publications in circulation in the state and attended the recruitment "round-ups" at the six institutions in the state that prepare special

educators. Nonetheless, only two people applied for the position. Of the two, by far the most attractive was Mark Thompson, a graduating senior at State University. His grades were excellent, as were his references. Mark had not passed the state certification exam but was scheduled to take the exam in late May.

An invitation to interview was extended to both Mark and Susan Lewis, the other applicant. Susan interviewed on May 3 and Mark on