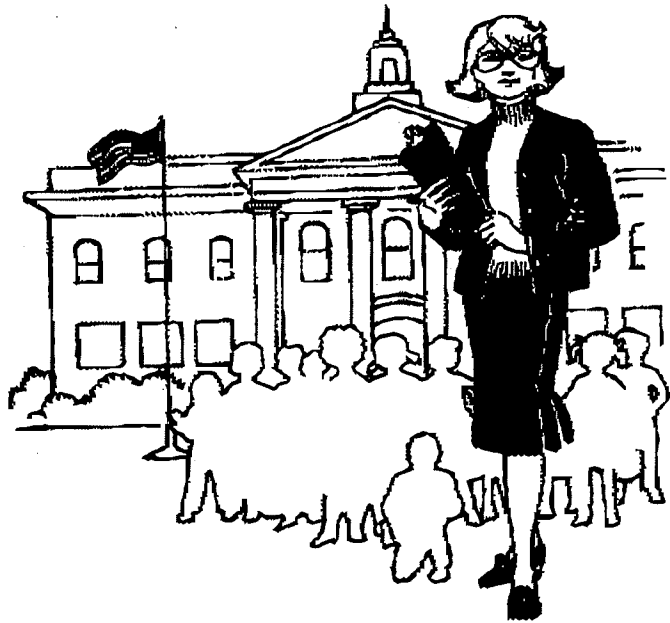


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**Expectations of Teachers and Administrators
by the Community:**

To model appropriate behavior 24/7/365 especially with regard to:

- DRUGS
- ALCOHOL
- WEAPONS and
EXPRESSIONS OF TEMPER AND ANGER
- RELATIONSHIPS
- ADHERING TO THE LAW



Maryland State Board Decisions

Lewis – Lewis was an elementary school music teacher for Prince George's County and was terminated for misconduct related to inappropriate use of force with a student. Specifically, during an afternoon class the appellant was completing instruction and several students were waiting in the hallway for the next class. A student interrupted the conclusion of the class by opening the door and poking his head into the room. Lewis asked the student to close the door, which the student did. However, the student immediately interrupted the class a second time and entered the classroom. Lewis walked over to the student who stood on the tips of his toes and put his face close to the teacher's face. Lewis threatened the student by saying, "Move your face or you won't have a face to do anything with." and then used his left hand to exert undue force against the student's face. The State Board upheld the termination of the teacher "because a teacher's responsibility is to make sure that all students are learning appropriate behavior and **when a teacher uses physical force in order to discipline, correct, or organize a student, they are modeling negative or inappropriate behavior.**"

Resetar – The State Board of Education determined that termination of a junior high school teacher was warranted after the local board concluded that his reference to certain pupils as "jungle bunnies" constituted misconduct in office. **The State Board defined misconduct as deliberate violations or disregard of standards of behavior, which the employer has the right to expect of an employee.** The State Board held that the remarks of the teacher undermined his classroom performance and overall impact to the students."

→
key to
case to
define
"misconduct"

Lough

(HE-17-77-
GH)

Teacher was dismissed on grounds of immorality. Teacher was charged by state police with disorderly conduct after indecently exposing himself to two females working in a donut shop. Evidence exists in the record that indicated that the appellant's role as a teacher in the community had been adversely effected by his blatantly public misconduct. The superintendent estimated receiving 30 letters and 30 phone calls about the teacher and the incident, some demanding the teacher's dismissal and some parents demanding their children be removed from his class. Evidence showed the appellant's continued status as a teacher had been jeopardized within the school community.

see also *Rollins v. Worcester Co*
81-17

Gaither

Termination of a teacher was upheld for immorality, misconduct in office, and incompetence. The teacher was arrested for purchasing, selling, and using illicit drugs over an extended period of time. The State Board upheld the termination. "Gaither is an intelligent, well-educated man. He was entrusted with educating children. He deliberately and repeatedly violated this trust and set the worst of examples for his students. ...while Gaither may not have performed incompetently in the classroom, his demonstrated poor judgment and illegal activities preclude him from serving as an effective teacher and role model in the Baltimore City Schools. He violated the public trust in the most flagrant and reprehensible manner."

QUESTIONS:

1. "Will the behavior or offense tarnish the employee's credibility to the point where acceptance by the community and parents is unlikely?"
2. "Does the misconduct impact the person's fitness to teach?" 7

helpful to
determine
community
response → 7

Examples

• DRUGS

- "Police searched a teacher's house and found evidence that her husband had been growing and selling marijuana. The teacher admitted she was aware of her husband's activities and opposed to them but was afraid to report him to the police. The school district terminated her for immorality and neglect of duty expressing that her conduct was contrary to her duty to serve as a role model for her students and her credibility for teaching the anti-drug program was undermined. The Court held that the teacher's duty to act as good role model existed regardless of the teacher's personal circumstances and was independent of the easier difficulty of complying." (*Jefferson County School District v. Fair Dismissal Appeals Board* 812 P.2b1384(OR.1991))

• WEAPONS and EXPRESSIONS OF TEMPER AND ANGER

- "A tenured teacher was terminated after approaching a local pool hall armed with a shotgun and pistol and telling an officer that he was looking for a friend to show him the bullets. His arrest and subsequent conviction was widely publicized and community member testified that it affected his ability to serve as a role model for his students. The Court upheld the termination indicating that such conduct exercised poor judgment, which directly reflected upon a teacher's fitness to teach. The Court held that a reasonable teacher would not put his professional position in jeopardy."

• ADHERING TO THE LAW

- "A conviction for embezzlement, a crime of moral turpitude, creates a presumption that the teacher is unfit to teach thus granting the school system good cause to terminate him. *Sutterfield v. Grand Rapids Schools* 556 N.W.2d 888(Mich.APP.1996)
- "Discharge and dismissal of the criminal proceedings did not bar a teacher's termination for immoral conduct. The statutory expungment of one's criminal record does not erase the fact that the party committed the act nor does it erase the moral turpitude of the act." *Dubuclet v. Home Insurance Company* 660 So.2d 67(1995).
- "A teacher was arrested for theft and burglary of a furniture store. The teacher was dismissed and his certificate was suspended. The Court affirmed the suspension indicating there is a presumption that felonious conduct has a sufficient relationship to a teacher's fitness to perform his or her job." *Hainline v. Bond* 824 P.2d959(Kan.1992)
- "School district's termination of a teacher on immorality grounds valid when teacher convicted of trafficking in counterfeit goods, a crime based on deceit, untruthfulness, or falsification. The Court reasoned that the inherent dishonesty of such a crime conclusively demonstrates that the teacher is both unfit to teach and a poor role model for students whom he supposed to foster and elevate."

safety-sensitive positions and/or positions subject to Department of Transportation regulations may face constitutional challenge. A Georgia statute requiring all applicants for state employment to undergo drug testing was successfully challenged by a state teacher's organization. The court found the requirement unreasonable, as no "governmental interest that is sufficiently compelling to justify testing *all* applicants" was identified. *Georgia Assoc. of Educators v. Harrie*, 749 F. Supp. 1110, 1114 (N.D. Ga. 1990) (emphasis in original). A generalized interest in maintaining a drug-free workplace was deemed an insufficient basis for testing all applicants.

III. GENERAL GUIDELINES FOR ADDRESSING EMPLOYEE MISCONDUCT NOT INVOLVING PERFORMANCE ISSUES

Contract employees have a protected interest in employment once they are hired. Ending that employment relationship based on cause is often a difficult task, as what constitutes "good" or "just" cause for termination is sometimes difficult to determine. This determination becomes even more complicated when the misconduct occurs off-campus or is otherwise not school-related. The remainder of this discussion will focus on what types of conduct, other than sexual abuse or harassment of students or employees, rise to the level of terminable offenses.

A. **Teachers Are Role Models and May be Terminated for Misconduct that is Not Performance-Related** — Ordinarily, what individuals do in their personal or private time is not subject to scrutiny by their employers. However, "a teacher serves as a role model for his students, exerting a subtle but important influence over their perceptions and values." *Ambach v. Norwick*, 441 U.S. 68, 77, 99 S.Ct. 1589, 1595 (1979). As a result, teachers are "held to a standard of personal conduct which does not permit the commission of immoral or criminal acts because of the harmful impression made on the students." *Board of Education of Hopkins County v. Woods*, 717 S.W.2d 837 (Ky. 1986).

1. **Vagueness Challenges to Terminations Based on "Immorality"** — A common challenge to termination or certificate revocation based on "immorality" is that the term is unconstitutionally vague. Courts have consistently rejected this argument as long as the alleged misconduct is tied to the teacher's fitness to teach. See *Alford v. Ingram*, 931 F.Supp. 768 [111 Ed. Law Rpt. [793]] (M.D. Ala. 1996) (state law

allowing for revocation of teaching certificate for immorality upheld). *Compare Burton v. Cascade School Dist. Union High School No. 5*, 353 F.Supp. 254 (D.C. Or. 1973) (minority view that statute allowing for dismissal of teachers on the grounds of immorality is unconstitutionally vague).

2. **Conduct Must Fall under Policy or Statute** — Statutes and district policies establish the reasons permitting adverse action on a contract. Before terminating, suspending, or nonrenewing an employee, districts should ensure that the reason for taking such action is permitted by policy or statute.
3. **Prohibited Conduct Must Bear a Relationship or "Nexus" to Fitness to Teach** — A school board is not empowered to take adverse action on an employee's contract simply because the employee's personal or private conduct incurred the board's displeasure. *Board of Regents v. Martine*, 607 S.W.2d 638 (Tex.Civ.App.—Austin, 1980). *See also Stoddard v. School District No. 1*, 590 F.2d 829 (10th Cir. 1979) (school district cannot nonrenew a teacher for reasons such as obesity, failure to attend church, living in a trailer park, or playing cards). Instead, the board must "establish a sufficient nexus between such conduct and the board's legitimate interest in protecting the school community from harm." *Lile v. Hancock Place School District*, 701 S.W.2d 500 (Mo.App. 1985).
 - a. **Establishing a nexus** — Recently, courts tend to find a nexus only if:
 - the conduct involved a student or a school-aged individual;
 - the act was widely publicized;
 - the event took place in public, thereby negating the actor's right to privacy; or
 - the conduct was the result of a larger, irremediable problem or condition.

Hooker, Clifford P., *Terminating Teachers and Revoking Their Licenses for Conduct Beyond the Schoolhouse Gate*, [96 Ed. Law Rep. [1]] (1995).

- b. **Due Process guarantees apply** — Teachers are entitled to the same due process regardless of whether the grounds for discipline occurred on campus or off.

IV. SEXUAL MISCONDUCT ISSUES

Although the times are changing and practices which were once considered shocking are now common, school boards may regulate certain types of sexual behavior that rises to the level of immoral conduct. There is little, if any, doubt that off-campus sexual misconduct with a student is grounds for dismissal based on immorality. "By virtue of the nature of the offense—sexual intercourse with a minor student of the district—it may be considered doubtful whether such conduct could ever be too remote in time" (emphasis in original). *Toney v. Fairbanks North Star Borough School District*, 881 P.2d 1112, 95 Ed. Law Rptr. 380 (Alaska 1994). The question that often arises, however, is when can an employee be dismissed for sexual misconduct that does not involve a student?

A. Criminal Sexual Behavior

1. **Sex Crimes Involving Children** — Conviction of a sex crime with a child (indecency with a child, indecent exposure, rape, etc.) renders the teacher unworthy to instruct, and dismissal and revocation of the teacher's certificate is warranted. The conviction does not have to take place during the teacher's employment. For example, a teacher's conviction for indecent exposure that took place prior to his employment made him unsuitable for service as a teacher and coach in the school system. Thus, the district had good cause to terminate teacher during the school year. *C.F.S. v. Mahan*, 934 S.W.2d 615 (Mo. App. E.D. 1996).
2. **Conviction Is Not Required if Evidence Supports Allegations** — Actual conviction of a sex crime is not necessary in order to act upon the teacher's contract as long as the allegations are supported by the evidence and a sufficient nexus is shown.

- V. **Non-Sexual Criminal Conduct** — Felony convictions and other crimes involving moral turpitude constitute good cause for dismissal. For a crime involving moral turpitude, a conviction may not be necessary if the charges are supported by the facts.

A. **Drug Use or Possession**

1. **Acquittal of drug-selling charges did not remove good cause where evidence that teacher engaged in the conduct was admitted at the dismissal hearing.** Although a college professor was acquitted of selling cocaine, facts omitted in the criminal trial but admitted at the dismissal hearing supported a finding that he had aided a friend's intended sale of the drug, an immoral act showing unfitness to teach. The court also indicated that the arrest was known among the students and faculty, thus impairing the teacher's relationships with them. *West-Valley Mission College v. Concepcion*, 21 Cal.Rptr. 2d 5 (Cal.App. 6 Dist. 1993).
2. **Discharge and dismissal of criminal proceedings does not bar termination.** A teacher successfully completed probation after a conviction for drug possession and his record was expunged. However, the discharge and dismissal of the criminal proceedings did not bar his termination for immoral conduct. "The statutory expungement of one's criminal record does not erase the fact that the party committed the act, nor does it erase the moral turpitude of the act." Although the teacher's guilty plea could not be entered into evidence in the hearing, other evidence substantiated the charges. *Dubuclet v. Home Ins. Company*, 660 So.2d 67, 103 Ed. Law. Rptr. 547 (La.App. 4th Cir. 1995).
3. **Role models do not allow marijuana to be grown in their homes, therefore, dismissal is not an excessive sanction.** The police searched a teacher's house and found evidence that her husband had been growing and selling marijuana. The teacher admitted that she was aware of her husband's activities and opposed to them, but was afraid to report him to the police or do anything that might cause the break-up of her family. The district terminated her for immorality and neglect of duties, expressing that her conduct was contrary to her duty to serve as a role model for her students and her credibility for teaching the anti-drug program was

undermined. The court held that the teacher's duty to act as a good role model existed regardless of the teacher's personal circumstances and was independent of the ease or difficulty of complying. Therefore, dismissal in this case was not an excessive sanction. *Jefferson County School District v. Fair Dismissal Appeals Board*, 812 P.2d 1384 (Or. 1991).

B. Theft

1. **Actual impairment of ability to teach need not be shown when teacher commits a felony.** A teacher was arrested for burglary and theft of a furniture store. Following a diversion agreement with the court, he was transferred to a different school. The Secretary to the Professional Practices Commission, upon learning of the arrest, suspended his license. The teacher appealed, claiming that his conduct had not impaired his ability to teach. The court affirmed the suspension, indicating that there is a presumption that felonious conduct has a sufficient relationship or nexus to a teacher's fitness to perform his or her job. *Hainline v. Bond* 824 P.2d 959 (Kan. 1992).
2. **The conviction of a crime involving moral turpitude raises a presumption that the teacher is unfit.** A larceny conviction for diverting electricity supported a teacher's termination as a crime of moral turpitude. This court also indicated that the commission of a crime involving moral turpitude raises at least a presumption that there is a nexus between the act and the teacher's fitness to teach. *Kenai Peninsula Borough Board of Education v. Brown*, 691 P.2d 1034 (Alaska 1984).
3. **A teacher must serve as a role model even on his own personal time.** A tenured special education teacher's conviction for embezzlement of funds from a company has worked for while teacher created good cause for termination. Although an individual's actions on his own personal time is normally not subject to employer's scrutiny, a teacher must serve as a role model for students. A conviction for embezzlement, a crime of moral turpitude, creates a presumption that teacher is unfit to teach, thus granting the school district good cause to terminate him. *Sutterfield v. Grand Rapids Schools*, 556 N.W.2d 888 (Mich. App. 1996).