

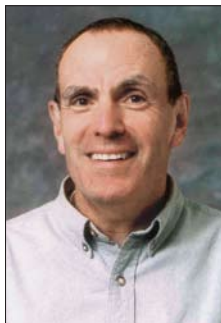
Teacher Insubordination: An Update

Nearly two decades ago, this column addressed the meaning of “insubordination” as one of the grounds for discipline, up to and including dismissal. Summarizing previous court decisions, the 1992 article reported that the terminology for insubordination varies among the states; that judicial outcomes focused primarily on whether the administrative directive was clear and reasonable; and that the most frequent context of insubordination cases was teachers’ failures to comply with school policies prohibiting corporal punishment. The following case and the accompanying question-and-answer discussion illustrate the situations and outcomes of more recent litigation.

The Case

Jeannie Barnes was a tenured elementary school teacher who had worked in a South Dakota school district for 14 years. In Barnes’ ninth year of service, principal Hank Fridell listed her as having met the applicable standards on the annual evaluation form, but added notes in the comments section with which Barnes took issue. Specifically, while concluding that Barnes was “an excellent teacher” and had made “a marked improvement from last year,” Fridell noted that although he had previous concerns with her communication problems with staff, he currently “was not aware of any problems in this area” although she had been “selective in what she chooses to participate in with staff development opportunities.” She refused to sign the form, submitting instead a written response challenging his various comments. Her response concluded: “If Mr. Fridell has concerns regarding my performance, I would appreciate specific measurable criteria by which future performances will be adjudicated.”

A year or two later, Barnes and Fridell had a dispute about a couch in her classroom. The principal considered it to be a fire hazard and requested that it be removed. When Barnes failed to do so, the principal directed the custodian to remove it. However, Barnes had the custodian return it. After further discussions, which included the superintendent, the principal sent her a written directive, including a warning that her refusal to comply or her further involvement of other employees in the matter would be considered



insubordination. She sent him a written response, defending her actions as within her rights under the First Amendment and accusing him of being “unfair, unprofessional, and not keeping with the goals of the school district.”

At the end of the year, Fridell checked “Needs Improvement” under three standards in the annual evaluation form: “Communicates clearly and effectively”; “Commitments to professional growth”; and “Responds to supervision and suggestions for improvement.” While recommending her continued employment, in the comments section he listed specific examples and expected improvements for each of these areas. She again refused to sign the form and disputed each of his criticisms in writing.

In April of the following year, a parent complained to Fridell that Barnes had shown a video from the school library about Native Americans to her third-grade class without

viewing it beforehand. Fridell checked the video, concluding that its “vocabulary, concepts and references” were too complex for third graders. He met with Barnes to discuss his concerns, which she would not concede as being warranted. As a result, he sent her a letter of reprimand, confirming his concerns and instructing her to provide him with a weekly written plan for instruction for the remainder of the school year. She complied, but only with repeated e-mails defending her plans.

In his year-end evaluation, Fridell listed her progress as insufficient in the three areas designated as needing improvement. He also added in the comments section that he was transferring to another building and would suggest to the new principal, Paul Soriano, that he meet with her at the start of the coming school year to develop an improvement plan. Barnes responded with another letter defending her position and accusing Fridell of fabrication and intimidation.

During the following school year, Soriano focused on two of the three areas, concluding in his March 27, 2002, evaluation that Barnes had improved with regard to responding to supervision, but not with regard to communicating clearly and effectively. He supported his negative conclusion with a list of seven specific examples and five recommendations. Barnes again responded in writing, challenging each example. Soriano’s year-end evaluation repeated his recommendations, and Barnes once more challenged each one of them in a written response.

At the start of the following school year, Soriano provided Barnes with an improvement plan and she responded in writing, challenging his expectations, criteria, and weekly moni-

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toring. After more written exchanges during the first month of school, the superintendent joined the principal in issuing a “final” written reprimand, directing her to cease her insubordination and adding to her written improvement plan specific directives about communications with the principal, communications with other staff members, and attending weekly meetings. Once again, she responded in writing, defending her actions and denying any insubordination. At the end of the school year, after two more such documented exchanges, Soriano issued an evaluation that notified her of the continued need for improvement in communications with other staff members and the administration, and recommended continued employment with the improvement plan still in effect.

In February 2004, after conferences with her in September and January, Soriano formally evaluated Barnes, concluding that he would recommend against her continued employment and that her failure to meet repeated performance expectations amounted to insubordination. Subsequently, the superintendent provided Barnes with the requisite notice, and the school board held a four-day hearing, resulting in her dismissal. Barnes filed suit in state court to challenge the board’s decision. When the circuit court affirmed the board’s decision, she appealed to the state’s highest court, arguing that the board’s definition of insubordination as “not submitting to authority; disobedient” was insufficient. She alternatively argued that the evidence amounted to a personality conflict, not disobedience to authority, and that her actions were—as her teacher union representatives advised—within her right to defend herself.

Questions and Answers

What do you think the state supreme court ruled in this case?

In *Barnes v. Spearfish School District No. 40-2* (2006), the Supreme Court of South Dakota affirmed the lower court’s decision in the district’s favor.

First, the court concluded that Barnes’ cited definition of “insubordination,” from the sixth edition of Black’s Law Dictionary, was obsolete because the superseding eighth edition lists “an act of disobedience to proper authority” as one of two definitions, and the court had accepted this definition. Second, applying the deferential standard that generally pertains to the substantive decisions of school boards, the court concluded that the evidence was ample that the defendants were exercising their legitimate authority.

Is this situation, which in effect turned an incompetency case into an insubordination case, typical?

No. Although evaluated teachers in these cases generally consider frequent observations and their negative results to be harassment, failure to satisfactorily fulfill a remediation plan is—as it was in this case—fatal in the vast majority of the pertinent published court decisions. For example, in a Minnesota case (*In re Termination of Johnson*, 1990), the appellate court concluded that the principal’s directives concerning the teacher’s instructional methods were reasonable, and that although the teacher—per the remediation recommendations—had participated in several instructional workshops, he refused to change his methods.

If Barnes had pursued her First Amendment freedom of expression argument, would she likely have prevailed?

No. Previous First Amendment challenges to insubordination-based teacher terminations have largely gone for naught. For example, in *Greenshields v. Independent School District 1-1016* (2006), the 10th Circuit Court of Appeals upheld the nonrenewal of a teacher who failed to follow curricular directives, essentially separating her protesting expression from her refusal conduct. Moreover, the Supreme Court’s relatively recent decision in *Garcetti v. Ceballos* (2006), which held that First Amendment freedom of expression does not protect statements

that public employees make pursuant to their official duties, significantly increases the odds in such cases in favor of defendant districts.

Could a teacher’s attendance problems constitute insubordination?

Very possibly, if combined with other excesses. For example, appellate courts have upheld terminations of teachers for insubordination when excessive attendance problems were combined with other violations of school policy such as failure to submit lesson plans for substitutes or excessive use of the Internet for nonbusiness reasons.

If the alleged insubordination was the teacher’s failure to follow the curriculum, would the odds of a judicial challenge favor the teacher?

No, although the odds are not certain. For example, in *School District No. 1 v. Cornish* (2002), a Colorado appeals court upheld the termination of a teacher for insubordination when she refused to teach the approved math curriculum, which she regarded as not meeting state standards, and to provide lesson plans per the principal’s resulting directive.

Conclusion

Insubordination, and its variants under applicable state employment laws, defies exactitude and uniformity. Nevertheless, the odds tend to favor school districts as long as administrators resist knee-jerk reactions and document repeated efforts to be clear, reasonable, and diligent in their directives, and the teacher’s intentional noncompliance. In addition to checking applicable legal authority—state legislation, court decisions, district policy, and, in collective-bargaining jurisdictions, the labor contract—in consultation with the district’s legal counsel, the principal would be well-advised to consider whether lesser discipline, such as a suspension would be more appropriate as an alternative or antecedent to termination. ■

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