Baldridge v. Board of Trustees: A Case for Reform of Montana's Tenured Teacher Dismissal Process

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I. INTRODUCTION

Montana's public school system is having a teacher crisis. Largely due to low-salary offerings, numerous school districts are unable to recruit and retain qualified new educators. Moreover, presently employed teachers describe themselves as "underpaid, unappreciated, disenchanted and burning out." Parents meanwhile persist in their demands for more numerous, increasingly qualified teachers. Acknowledging the pandemic teacher deficits and chronic underfunding within Montana's education system, commentators are urging schools to creatively market teaching positions to compensate for low wages.

Central to this statewide hiring push is the concept of teacher tenure. With its promise of job security, tenure can...
serve as a valuable recruitment device in an otherwise low-paying job market. Once a Montana teacher earns tenure, she possesses the right to a perpetual salary and position in her school district. The Montana Supreme Court has long recognized the public policy benefits of tenure, describing it as "a substantial, valuable, and beneficial right." Yet is Montana's tenure substantial enough to attract prospective teachers? Despite tenure's laudable protections, a teacher remains vulnerable to her school board's considerable authority to dismiss her under Montana Code Annotated § 20-4-203(4) (1999), which states: "Upon receiving tenure, the employment of a teacher may be terminated for good cause." Understandably, Montana reposes this managerial discretion in local school boards because of their intimate familiarity with the needs of their particular school system. Unfortunately, neither state statutes nor case law contain guidelines for deciphering what constitutes "good cause" in the

(continuing service teacher); ARK. CODE ANN. § 6-17-1510 (Michie 1997) (nonprobationary teacher); IND. CODE § 20-6.1-4-10 (1999) (permanent teacher); MASS. GEN. LAWS ANN. ch. 71, § 42 (West 1999) (professional teacher); MINN. STAT. ANN. § 122A.40 (West 1998) (continuing contract teacher); N.C. GEN. STAT. § 115C-325 (1998) (career teacher).

7. See MONT. CODE ANN. § 20-4-203(1) (1999) ("[W]henever a teacher has been elected by the offer and acceptance of a contract for the fourth consecutive year of employment by a district in a position requiring teacher certification . . ., the teacher is considered to be reelected from year to year as a tenured teacher at the same salary and in the same or a comparable position of employment as that provided by the last-executed contract with the teacher . . ..") (emphasis added).

8. See Beck v. Board of Trustees, 233 Mont. 319, 322, 760 P.2d 83, 85 (1988) ("Our society has long since determined the desirability of teacher tenure and this state has enacted legislation to implement it as a public policy.") (citing Sibert v. Community College, 179 Mont. 188, 191, 587 P.2d 26, 27 (1979)).


10. Montana law deems the demotion of a tenured teacher the equivalent of a termination. See Smith v. School Dist. No. 18, 115 Mont. 102, 115, 139 P.2d 518, 523 (1943), overruled on other grounds by Massey v. Argenbright, 211 Mont. 331, 337, 683 P.2d 1332, 1335 (1984). This note deals solely with dismissals arising from alleged teacher misconduct and does not touch upon other types of terminations such as school-wide reductions in work force.

11. See Kelsey v. School Dist. No. 25, 84 Mont. 453, 455, 276 P. 26, 27 (1929) ("It is for the board of education, within the reasonable exercise of its power and discretion, to say what is best for the successful management and conduct of the schools . . . .") (quoting Wilson v. Board of Educ., 84 N.E. 697, 700 (Ill. 1908)). The Montana Constitution embodies this tradition in its statement that "[t]he supervision and control of schools in each school district shall be vested in a board of trustees . . . ." MONT. CONST. art. X, § 8 (1972).
context of teacher dismissals. When outrageous teacher misconduct occurs, common sense can be our guide. Yet circumstances are rarely so crystalline. Without articulated guidelines for applying Montana’s good cause statute, teacher dismissals become inconsistent and susceptible to abuses of school board discretion. This lack of guidance has created a legacy of lengthy, expensive litigation between Montana teachers and school districts battling over the propriety of terminations.

Spanning a decade and costing over $500,000, the case of Baldridge v. Board of Trustees (Baldridge II) underscores the
compelling need for articulated guidelines in Montana's tenured teacher dismissal process. This note urges such reform, using Baldridge II as a case study. Part II chronicles the story of high school teacher Elmer Baldridge and his dismissal by Rosebud County School District No. 19. This section further details the procedural meandering of Baldridge II through the state court system and the Montana Supreme Court's ultimate holding in the case. Part III places Baldridge II in context by tracing the legal evolution of tenured teacher dismissals in Montana. Part IV critiques the supreme court's reasoning in Baldridge II, using the decision to highlight the current inadequacies in Montana's teacher dismissal process. Finally, Part V proffers suggestions for mitigating these inadequacies by examining successful extra- and intra-jurisdictional models. The note concludes that Montana has the capacity to reform its tenured teacher dismissal process to better safeguard the interests of both teacher and school district — a step Montana must take to competitively recruit and retain qualified new educators for its school system.

II. THE BALDRIDGE II DECISION

A. Factual Summary

Elmer Baldridge (Baldridge) was a tenured science teacher at Colstrip High School in Colstrip, Montana. Spring of 1988 marked his fifth year of teaching. Both the school and community regarded Baldridge as a dedicated teacher of excellent repute. He was highly involved in student extracurricular activities, including coaching several sports and student plays. During his time at Colstrip High School,
Baldridge consistently earned the highest possible score on his teaching evaluations.\textsuperscript{23}

In addition to his instructional duties, Baldridge chaired the Colstrip Faculty Association, where he served as an outspoken critic of school policies\textsuperscript{24} and brought numerous grievances against District Superintendent Harold Tokerud (Tokerud) and the School District Board of Trustees (Board).\textsuperscript{25} In particular, Baldridge challenged perceived discrimination against Native American students at Colstrip High School.\textsuperscript{26} Because of his activism in school affairs, Baldridge was known to be a "thorn in the side" of the school administration.\textsuperscript{27}

In March of 1988, Baldridge's classroom conduct came under fire. While seeking student assistance in washing dirty laboratory glassware, Baldridge slipped a rubber glove on his hand, held the hand up, and asked, "May I have a female volunteer?"\textsuperscript{28} This "glove incident" prompted one student's parents to write a complaint letter to the high school principal, Eileen Pearce.\textsuperscript{29} Baldridge sent a formal apology to the parents for making inappropriate comments that could be construed as chauvinistic.\textsuperscript{30} Principal Pearce then recommended that

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\textsuperscript{23}See County Superintendent's Order, supra note 21, at 5 (Findings of Fact Nos. 3-4). School administrators conducted these evaluations. Interview with Elmer Baldridge, in Bozeman, Mont. (July 7, 1999).

\textsuperscript{24}See Arbitrator's Opinion, supra note 22, at 9.

\textsuperscript{25}See Appellant's Brief, supra note 19, at 5. Baldridge brought complaints before both the Montana Human Rights Commission and the Montana Department of Labor on behalf of teacher union members. Interview with Elmer Baldridge, in Bozeman, Mont. (July 7, 1999). Baldridge prevailed in all fifteen grievances filed against the school superintendent and the Board. See Arbitrator's Opinion, supra note 22, at 44.

\textsuperscript{26}See County Superintendent's Order, supra note 21, at 6 (Finding of Fact No. 5).

\textsuperscript{27}See id. (Finding of Fact No. 8).

\textsuperscript{28}See Baldridge II, 287 Mont. 53, 56, 951 P.2d 1343, 1345 (1997).

\textsuperscript{29}See id.; see also Letter from Patty and Bud Comer, parents of high school student Tina Comer, to Principal Pearce (Apr. 11, 1988) (contained in the Montana Supreme Court record for Baldridge II).

\textsuperscript{30}See County Superintendent's Order, supra note 21, at 10 (Finding of Fact No. 21). The record is unclear whether the parents objected to Baldridge's glove joke as a chauvinistic stereotype of women being dishwashers or as a reference to gynecological examinations. After a meeting with Principal Pearce, however, Baldridge drafted his written apology for making remarks that stereotyped women. See id. (Findings of Fact Nos. 19-21). Principal Pearce reviewed the apology before its transmittal to the parents. See Elmer Baldridge v. Board of Trustees, Transcript of Proceedings before Acting County Superintendent of Schools, Rosebud County at 128 (May 30, 1989) [hereinafter Transcript] (testimony of Principal Eileen Pearce). As a whole, these circumstances imply that the parties initially perceived the glove joke as a sexist stereotype versus a sexual innuendo.
Tokerud suspend Baldridge with pay pending a formal investigation. The investigation unearthed additional allegations of past misconduct as follows:

1. Baldridge used the expression “stop, drop, and blow” in response to a student who was badgering him for a time extension on a late homework assignment.
2. Baldridge told a student he would give him twenty bucks to make another kid cry.
3. Baldridge told a joke containing the word “testes.”
4. Baldridge used the expression, “You guys might think I’m a little ____,” accompanied by a pricking motion to his finger.
5. Baldridge showed his middle finger to some students.
6. In response to a female student who remarked that she could not “stand the sight of blood,” Baldridge quipped, “[S]he must have had a rough month.”

Upon conclusion of the investigation, Tokerud recommended to the Board that it discharge Baldridge from his teaching position. Following a public hearing on these alleged incidents, the Board unanimously voted to terminate Baldridge for “incompetence, unfitness, and violation of Board policies.” Numerous students and faculty staged a walkout during school hours to protest the Board’s actions. Local media and a Billings television station covered the demonstration. Challenging his dismissal, Baldridge embarked on a “tortured procedural path” that would take a decade to resolve.

31. See Baldridge II, 287 Mont. at 56, 951 P.2d at 1345. The district retained Paul Stengel, a retired school administrator from Miles City, to conduct the investigation. See Arbitrator’s Opinion, supra note 22, at 11.
32. Baldridge II, 287 Mont. at 59-60, 951 P.2d at 1347.
33. See Arbitrator’s Opinion, supra note 22, at 8.
34. Baldridge II, 287 Mont. 53, 56, 951 P.2d 1343, 1345 (1997). The Board did not specify its grounds for dismissal at the hearing, but set them forth in a subsequent letter to Baldridge. Interview with Elmer Baldridge, in Bozeman, Mont. (July 7, 1999). These grounds were three of four express statutory grounds authorized under the then-existing MONT. CODE ANN. § 20-4-207(1) (1987), which empowered school districts to dismiss a teacher for “immorality, unfitness, incompetence, or violation of the adopted policies” of the district. See discussion infra Part III.B (detailing the historical development of this statute).
35. See Transcript, supra note 30, at 135-36 (testimony of Principal Eileen Pearce).
36. See Arbitrator’s Opinion, supra note 22, at 11.
37. Baldridge II, 287 Mont. at 55, 951 P.2d at 1344.
38. Baldridge would argue that his case remains unresolved, since he is presently
B. Procedural Summary

1. Baldridge I – The First Appeal

Baldridge first filed his appeal with the Rosebud County Superintendent of Schools (county superintendent). After a May 1989 hearing, the county superintendent issued an order reinstating Baldridge, concluding that the Board had failed to prove any of the statutory grounds for good cause. The Board appealed this decision to the State Superintendent of Public Instruction (state superintendent), who ultimately reversed the county superintendent for erring in her conclusion "that Baldridge's conduct did not constitute unfitness . . . ." Baldridge next carried his challenge to the Thirteenth Judicial District Court, Yellowstone County, which affirmed the state superintendent. On appeal, the Montana Supreme Court clarified the standards of review applicable to the various appellate levels, and sent the case back to the county superintendent for additional findings of fact.

39. See County Superintendent's Order, supra note 21, at 2-3. For reasons not expressed in the record, the Board disqualified Jean Nolan (Nolan), the Rosebud County Superintendent of Schools from hearing Baldridge's appeal. Nolan then appointed Shirley Barrick, Fergus County Superintendent of Schools, to be the acting county superintendent for these proceedings. See id. at 2.

40. See id. at 28; see also discussion infra Parts III.B-C (articulating the applicable dismissal grounds and requisite burden of proof).

41. Baldridge II, 287 Mont. 53, 61, 951 P.2d 1343, 1348 (1997) (reversing on second review, the first review resulting in a remand for further findings of fact).

42. See id.

43. See discussion infra Part III.E (setting forth the standards of review).

44. See Baldridge I, 264 Mont. 199, 211-12, 870 P.2d 711, 718-19 (1994). Upon clarifying the standards, the supreme court "remanded to the district court with instructions to remand to the State Superintendent for remand to the acting county superintendent of schools . . . ." Baldridge II, 287 Mont. at 55, 951 P.2d at 1344-45.
2. Baldridge II – The Second Appeal

In 1995, the county superintendent issued a second order reinstating Baldridge based on her continued assessment that the Board failed to prove good cause for dismissal. In weighing the evidence, she noted that the students testifying against Baldridge lacked credibility because of their demeanors while testifying, membership in a clique, and status as children of school administrators. Her holding also emphasized the longstanding animosity between Baldridge and school administrators, and the Board’s conspicuous failure to notify Baldridge of his past misconduct at the time it occurred.

In light of these background circumstances, the county superintendent made the following factual findings:

a. The Glove Incident

The Board construed Baldridge’s glove comment as a reference to a gynecological exam. Baldridge, however, did not intend the comment to be sexually derogatory. Rather, he made a joke meant to highlight male chauvinism and the stereotypical notion of dish washing as women’s work. Indeed, the parents’ complaint interpreted the joke as chauvinistic versus sexual in nature. After receiving the complaint, Baldridge immediately wrote a letter of apology. There was no adverse impact on the students due to this incident.

b. Stop, Drop, and Blow Incident

“Stop, drop, and blow” was shorthand for “Stop arguing, drop the subject, and blow this pop stand.” This was a common

45. See County Superintendent’s Order, supra note 21, at 31.
46. See id. at 29 (Conclusion of Law No. 29).
47. See id. at 13, 29 (Finding of Fact No. 27, Conclusion of Law No. 29) (noting that one student “does not have a very good reputation for any truth or veracity at all” and that the students “belonged to a clique”).
48. See id. at 6 (Finding of Fact No. 8).
49. See id. at 28 (Conclusion of Law No. 25).
50. See id. at 10 (Finding of Fact No. 20).
51. See County Superintendent’s Order, supra note 21, at 8 (Finding of Fact No. 15).
52. See id. at 9 (Finding of Fact No. 17).
53. See id. at 10 (Finding of Fact No. 19).
54. See id. at 10 (Findings of Fact No. 21).
55. See id. at 9 (Finding of Fact No. 17).
56. See id. at 11 (Finding of Fact No. 22).
expression Baldridge used to enforce his policy of turning in homework on time.57 There was no offensive meaning attached to these words.58

c. Twenty Bucks Incident

Students viewed the "twenty bucks" statement as a joke.59 Baldridge did not seriously wish physical harm to any student.60

d. Testes Joke

The testes joke involved the story of a teacher who wanted to ease student anxiety over quizzes, so he would call them "little quizzies." Supposedly, a girl then retorted, "If this is a quizzie, I want to see one of your testes."61 The joke was innocuous and did not offend any students.62 In addition to Baldridge, two other teachers told this same joke at school.63 Those teachers received no reprimand.64

e. Finger Pricking Incident

Students did not attach a phallic reference to Baldridge's comments.65 Rather, students interpreted the motion as an "irritation"—like a needle prick.66 No students were offended.67

f. Flipping Off Incident

Baldridge made this gesture without the classic connotation.68 Although such behavior was inappropriate, it was neither intended nor perceived as offensive.69

57. See County Superintendent's Order, supra note 21, at 11 (Finding of Fact No. 23).
58. See id. at 12 (Finding of Fact No. 23).
59. See id. at 12 (Finding of Fact No. 24).
60. See id.
61. Respondent's Brief at 13, Baldridge II (No. 97-230).
62. See County Superintendent's Order, supra note 21, at 13 (Finding of Fact No. 25).
63. See id.
64. See id.
65. See id. at 14 (Finding of Fact No. 28).
66. See id.
67. See id.
68. See County Superintendent's Order, supra note 21, at 15 (Finding of Fact No. 29).
69. See id.
g. Time of Month Incident

Baldridge made an honest slip-of-the-tongue with his comment about a female student having "a rough month."\(^7\) Recognizing the potential for misunderstanding, he immediately apologized to the student.\(^7\) The student was embarrassed, but found his apology sincere.\(^7\) The incident had no lasting adverse impact on Baldridge's relationship with his students.\(^7\)

Based upon these findings, the county superintendent reiterated her conclusion that the Board "failed to establish sufficient evidence . . . to support a dismissal for incompetency, unfitness, [or] violation of board policies, individually or cumulatively."\(^7\) This case again visited the state superintendent and district court, with both levels reversing the county superintendent.\(^7\) In 1997, Baldridge presented his case to the Montana Supreme Court for a second time.

C. The Montana Supreme Court's Holding

1. The Majority Opinion - Unfitness as a Matter of Law

Writing for the majority, Justice Gray first reiterated the Baldridge I holding regarding the standards for reviewing a county superintendent's order: findings of fact are reversible only when clearly erroneous, whereas conclusions of law are reversible if incorrect.\(^7\) Determining that the county superintendent's factual findings were undisputed,\(^7\) the court then turned to the county superintendent's conclusions of law.

The court determined that the county superintendent incorrectly applied the good cause dismissal statute\(^7\) to the

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70. See id. at 16 (Finding of Fact No. 30).
71. See id.
72. See id.
73. See id.
74. See County Superintendent's Order, supra note 21, at 28 (Conclusion of Law No. 26).
75. The state superintendent again held that the county superintendent erred in concluding that Baldridge was fit to teach, and the District Court affirmed that determination. See Baldridge II, 287 Mont. 53, 61, 951 P.2d 1343, 1348 (1997).
76. See id. at 58, 951 P.2d at 1346; see also discussion infra Part III.E (explaining further the applicable standards of review).
77. See id.
78. See discussion infra Part III.B (setting forth the four-factor dismissal statute in place at the time of Baldridge's dismissal).
facts, holding that "[a] teacher who makes jokes about testes and student's menstrual periods, flips off his students . . . and makes gender-based remarks and innuendoes in his classroom is unfit to continue teaching as a matter of law." Additionally, the court reasoned that because of Baldridge's per se unfitness, his benign intentions and the students' lack of offense to his comments were irrelevant to the inquiry of proper dismissal. Deeming Baldridge's behavior "inappropriate on its face," the court ruled that the only correct legal conclusion was to uphold termination.

2. The Dissenting Opinion – Deference to the Fact Finder

Justice Trieweiler, joined by Justice Hunt, issued a strong dissent. The dissent argued that the court should extend greater deference to the county superintendent's judgment, since she was in the best position to assess Baldridge's fitness to teach. Emphasizing the context surrounding Baldridge's conduct, the dissent found the following factors dispositive: the lack of credibility of the students testifying against Baldridge; Baldridge's consistently high ratings on teaching evaluations by school administration; Baldridge's rapport with students and teachers; the school district's failure to apprize Baldridge of his alleged misconduct and allow opportunity for remediation; the

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79. Baldridge II, 287 Mont. at 60, 951 P.2d at 1347-48 (emphasis added); see also discussion infra Part IV.C (explaining how "as a matter of law" is the functional equivalent of unfitness per se).

80. See Baldridge II, 287 Mont. at 61, 951 P.2d at 1348 ("[T]he propriety of a teacher's conduct cannot be evaluated by viewing it through the eyes of the very teenagers the teacher has a duty to educate and to guide.").


82. See id.

83. See id. at 63, 951 P.2d at 1349 (Trieweiler, J., dissenting).

84. See id. at 67, 951 P.2d at 1352 (noting that the county superintendent conducted the actual hearing and was able to "listen[] to the witnesses, including the teacher involved") (Trieweiler, J., dissenting). Contrast this with the supreme court's more distant perspective of the case, which was limited to the record.

85. See id. at 63, 951 P.2d at 1349 ("[T]he witnesses against Baldridge belonged to a clique directly related to a school board member involved in efforts to discharge Baldridge and . . . their credibility was suspect.") (Trieweiler, J., dissenting).

86. See id. at 64, 951 P.2d at 1350 (Trieweiler, J., dissenting).


88. See id. at 67, 951 P.2d at 1352 ("[T]hose incidents could have been prevented by a warning . . . and termination of an admirable career in teaching was unnecessary.") (Trieweiler, J., dissenting).
nonharmful impact upon Baldridge's students;\textsuperscript{89} the school administration's ulterior motive to silence Baldridge's activism;\textsuperscript{90} and the Board's inability to show that Baldridge's alleged misconduct reduced his effectiveness as a teacher.\textsuperscript{91}

In light of all the factual support in the record, the dissent judged the county superintendent's legal conclusions to be correct.\textsuperscript{92} This deferential approach is consistent with the supreme court's historic exercise of judicial restraint from disrupting a county superintendent's determinations.\textsuperscript{93}

\section*{III. BACKGROUND OF TEACHER DISMISSALS IN MONTANA}

In Montana, tenured teacher dismissals have never been simple. Case law tells the stories of judicial struggles to define dismissal grounds and teacher appeals that wandered the courts for years.\textsuperscript{94} Moreover, the lack of statutory and judicial guidelines has rendered the process inherently subjective.\textsuperscript{95} School districts are left to rely on their "wide discretion" and "sound judgment."\textsuperscript{96} The result has been a patchwork of factspecific rulings that fail to articulate uniform guidelines for teacher dismissals.

\subsection*{A. The Public Policy Behind Teacher Tenure}

The Montana Legislature first granted tenure rights to public school teachers in 1913.\textsuperscript{97} This grant was part of a

\begin{itemize}
  \item \textsuperscript{89} See id. at 66-67, 951 P.2d 1351-52 (Trieweiler, J., dissenting).
  \item \textsuperscript{90} See id. at 67, 951 P.2d 1352 ("Baldridge's politics and relationship with the [District] Superintendent were the more likely basis for his termination than any of the incidents complained of.") (Trieweiler, J., dissenting).
  \item \textsuperscript{91} See id. at 65, 951 P.2d at 1350 (Trieweiler, J., dissenting).
  \item \textsuperscript{92} See id. at 67, 951 P.2d at 1352 (Trieweiler, J., dissenting).
  \item \textsuperscript{93} See discussion infra Part III.A (discussing deferential review of the fact finder).
  \item \textsuperscript{95} See Max A. Bailey & Nancy W. Sindelar, Freedom of Speech and the Incompetent/Competent Teacher, 38 WEST'S EDUC. L. REP. 1151, 1151 (1987) (noting that without articulated guidelines, standards of review for teachers are "closely tied to the mores of society").
  \item \textsuperscript{96} Kelsey, 84 Mont. at 458, 276 P. at 26.
  \item \textsuperscript{97} See MONTANA LEGIS. COUNCIL, TEACHER TENURE IN MONTANA: AN INVESTIGATION OF THE LAWS AND ISSUES 7 (1984) (report to the 49th Legislature Joint Interim Subcommittee No. 4) (citing 1913 Mont. Laws 76) [hereinafter TEACHER TENURE

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nationwide effort to provide teachers with "the promise of [job] permanence, income security, and the academic freedom to teach." 98 An Illinois court commenting on tenure observed:

The [tenure statute] was intended to protect . . . teachers whose employment otherwise was at the mercy of school boards . . . . "Its object was to improve the . . . school system by assuring teachers of experience and ability a continuous service and a rehiring based upon merit rather than failure to rehire upon reasons that are political, partisan or capricious." 99

B. "Good Cause" for Dismissal — What Does that Mean?

Counterbalanced against tenurial rights is the historic right of school boards to dismiss teachers for good cause. 100 Until 1997, the Montana Code specified four types of misconduct that constituted good cause: (1) immorality, (2) unfitness, (3) incompetence, and (4) violations of school district policies. 101 The Montana Legislature, however, never supplied concomitant definitions for each dismissal ground. Consequently, dismissals have been highly fact-driven, lacking meaningful precedential value for subsequent termination disputes. In Baldridge II, for example, the supreme court turned to the American Heritage Dictionary to define "unfitness," despite nearly a century of court opinions applying this statutory ground. 102

In 1997, the 55th Montana Legislature replaced these specific dismissal grounds with the blanket authority to terminate for

98. Id.
100. See Kelsey v. School Dist. No. 25, 84 Mont. 453, 458, 276 P. 26, 26 (1929) (holding that if a teacher's "removal was made without good cause, the teacher so removed must be reinstated, and shall be entitled to compensation for the time lost during the pending of the appeal") (citing MONT REV. CODE ANN. § 1085 (Smith 1921)). Even before the adoption of tenure, Montana territorial law required school boards to have "sufficient cause" to dismiss a teacher working under an employment contract. See TEACHER TENURE IN MONTANA, supra note 97, at 7 (citing 1871 Codified Statutes of Mont. 27).
101. See MONT. REV. CODE § 1085 (1921) (ultimately recodified as MONT. CODE ANN. § 20-4-207 (1985)). These four statutory grounds were in effect at the time of Baldridge's 1989 dismissal. See supra note 34 and accompanying text. Ultimately, the Montana Supreme Court that Baldridge's dismissal was founded under unfitness, the second ground. See Baldridge II, 287 Mont. 53, 62, 951 P.2d 1343, 1349 (1997).
102. See 287 Mont. at 59, 951 P.2d at 1347.
"good cause."103 Once again, no guidelines or definition accompanied this provision. Legislators felt none were necessary, since practitioners generally understood good cause to mean "a good, decent reason to terminate employment."104 Essentially, teacher dismissals remain highly speculative and vulnerable to abuse, ensuring future protracted litigation over whether good cause exists in particular teacher firings.

**C. Burden of Proof – Preponderance of the Evidence**

In *Trustees v. Anderson*,105 the Montana Supreme Court recognized a rebuttable presumption that tenured teachers are fit to teach.106 Underlying this rebuttable presumption is the historic notion that "a teacher's tenure is a substantial, valuable, and beneficial right, which cannot be taken away except for good cause."107 Accordingly, a school district bears the burden of proving good cause to dismiss a teacher by a *preponderance of evidence*.108 This preponderance burden requires the school board to supply evidence of good cause that convincingly outweighs all available proof of a teacher's fitness to teach.109 If a board cannot meet its burden, it has violated its statutory obligation to dismiss only for good cause.110

**D. The Appeal Process – An Illustration of the Law's Delays**

At the time of Baldridge's dismissal, teachers appealed termination decisions to their county superintendent of schools.111 The county superintendent would then conduct a *de

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103. See Mont. Code Ann. § 20-4-203(4) ("Upon receiving tenure, the employment of a teacher may be terminated for good cause."). Certainly, this blanket "good cause" provision encompasses the four historic statutory grounds, but now allows for other causes that would not fit neatly within those articulated categories.


106. See id. at 504, 757 P.2d at 1317.


110. See id.

novo hearing, rendering findings of fact and conclusions of law.\textsuperscript{112} The next levels of appeal were the State Superintendent of Public Instruction, followed by the state district court and Montana Supreme Court.\textsuperscript{113}

These multiple decisional tiers, coupled with vague dismissal grounds, have long complicated and protracted the teacher dismissal process.\textsuperscript{114} In 1929, the Montana Supreme Court, remarking on a prolonged teacher dismissal case, commented that the process was "an illustration of 'the law's delays."\textsuperscript{115} Nearly seventy years later, the Baldridge I court echoed that sentiment:

[This case serves as a perfect example of why [the appeal] procedure in Montana should be the subject of future, careful legislative scrutiny. The present process . . . is technical, cumbersome, time-consuming, costly, frustrating and inefficient. . . Simply put, the current procedures serve no one well – neither teachers, school boards and administrations, county and state school authorities, nor the judicial system.\textsuperscript{116}

Answering the Montana Supreme Court's requests for reform, the 55\textsuperscript{th} Montana Legislature removed the state superintendent from the appellate process.\textsuperscript{117} Now appeals of county superintendent decisions land directly in state district court, and those holdings remain appealable to the Montana Supreme Court.\textsuperscript{118}

\textsuperscript{112} See Mont. Code Ann. § 20-4-204 (1987). Although termed an "appeal," the county superintendent was not bound by the determinations of the school board. Instead, the county superintendent was the initial fact finder, conducting her own hearing where the parties put forth supporting evidence, including witness testimony. After the hearing, the county superintendent made her own factual findings and legal conclusions independent of the school board's decision.

\textsuperscript{113} See id.

\textsuperscript{114} Five separate tribunals heard Baldridge's case on thirteen occasions. Interview with Elmer Baldridge, in Bozeman, Mont. (July 7, 1999). This count does not include arbitration proceedings and Montana Board of Labor Appeals hearings concerning related employment issues arising from Baldridge's termination. Id.

\textsuperscript{115} Kelsey v. School Dist. No. 25, 84 Mont. 453, 455, 276 P. 26, 27 (1929).

\textsuperscript{116} Baldridge I, 264 Mont. 199, 211-12, 870 P.2d 711, 718-19 (1994); see also Yanzick v. School Dist. No. 23, 196 Mont. 375, 389, 641 P.2d 431, 439 (1982) ("We suggest that the initial hearings followed by three separate and in part duplicating appeals does not appear to be judicial economy or an appropriate manner of disposing of a contested case . . . [and] is an appropriate area for legislative consideration.").


\textsuperscript{118} See § 20-4-204(5). Not every teacher can take this route, however. Because of
E. Standards of Review

Because of the many appellate levels, the Montana Supreme Court frequently confused the appropriate standards of review. Often, the court reversed a county superintendent's legal conclusions only when there was an abuse of discretion.\(^{119}\) Other times, the court reviewed both factual findings and legal conclusions for clear error.\(^{120}\) In *Baldridge I*, the court set the record straight. The supreme court will reverse a county superintendent's *legal conclusions* if it deems them incorrect.\(^{121}\) With *findings of fact*, however, the court will extend deferential review, reversing only if there is clear error.\(^{122}\)

The *Baldridge I* ruling is consistent with Montana's traditional policy that a distant court should not interfere with the minutia of local school board decisions unless there is an abuse of discretion. As the Montana Supreme Court articulated in *Kelsey v. School District No. 25*:\(^{123}\)

> It is unquestionably the policy of this state, as declared by the Legislative Assembly, that ordinary school controversies shall be adjusted by those who are specially trusted with that duty. It is *not the policy to encourage resort to courts in such matters*. So long as school officers act legally and within the power expressly conferred upon them the courts will not interfere.\(^{124}\)

Despite the 55\(^{th}\) Montana Legislature's affirmative steps to simplify the appeal procedure of tenured teacher terminations,
the lack of guidance for determining good cause persists. Interestingly, these 1997 reforms took effect six months prior to the *Baldridge II* decision. Although the time was ripe for judicial commentary, the *Baldridge II* court sidestepped the opportunity to articulate guidelines for assisting teachers and school districts in the dismissal process.

**IV. ANALYSIS OF THE BALDRIDGE II HOLDING**

**A. Improper Substitution of Judgment**

In *Baldridge II*, the majority held that the county superintendent had not committed clear error and that her extensive findings of fact were undisputed.\(^{125}\) Despite this ruling, the court construed the factual record differently than the county superintendent. For instance, the county superintendent specifically found that Baldridge’s “rough month” remark was a slip-of-the-tongue, and not a reference to menstruation.\(^{126}\) Nevertheless, the court determined that Baldridge made a joke about a student’s menstrual period.\(^{127}\) The county superintendent also found that neither the glove incident, the “stop, drop, and blow” incident, the testes joke, nor the finger pricking incident had sexually derogatory connotations.\(^{128}\) Directly contradicting these factual findings, the court concluded that Baldridge made “gender-based remarks and innuendoes in his classroom.”\(^{129}\)

In *Yanzick v. School District No. 23*,\(^{130}\) the Montana Supreme Court noted that, except in situations of clear error, a reviewing court cannot substitute its judgment for that of a county superintendent concerning factual findings.\(^{131}\) The court explained that:

The County Superintendent was in the position of the trier of fact, and so was able to hear and evaluate the testimony of the various

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\(^{125}\) See 287 Mont. 53, 58, 951 P.2d 1343, 1346 (1997); see also discussion supra Part II.B.2 (setting forth the factual findings).

\(^{126}\) See County Superintendent's Order, supra note 21, at 16 (Finding of Fact No. 30).

\(^{127}\) See *Baldridge II*, 287 Mont. 53, 60, 951 P.2d 1343, 1347 (1997).

\(^{128}\) See County Superintendent's Order, supra note 21, at 9-14 (Finding of Fact Nos. 17-28).

\(^{129}\) *Baldridge II*, 287 Mont. at 60, 951 P.2d at 1348.

\(^{130}\) 196 Mont. 375, 641 P.2d 431 (1982).

\(^{131}\) See id. at 388, 396, 641 P.2d at 439, 443.
witnesses. Some of the evidence definitely is conflicting. Under such circumstances, the conclusions of the trier of fact deserve particular weight.132

Johnson v. Board of Trustees133 reiterated the Montana Supreme Court's position that its role is not to reweigh a county superintendent's findings.134 This precedent is consistent with the dissent's stance in Baldridge II that the county superintendent "was in the best position to analyze the context of [Baldridge's] remarks and judge his fitness to teach."135

To reach the conclusion that Baldridge's conduct was sexually derogatory, the majority had to weigh the evidence differently than the county superintendent. In doing so, the court improperly substituted its judgment for that of the county superintendent and contravened its own precedential mandates.

B. Selective Treatment of the Record

In addition to reweighing the evidentiary record, the Baldridge II majority excised portions of the record as irrelevant to its inquiry.136 Specifically, the court chose not to consider the county superintendent's findings that: Baldridge did not intend his conduct to have a sexually derogatory meaning; the students were not adversely harmed by Baldridge's conduct; Baldridge consistently received high performance evaluations; Baldridge exhibited remorse and took remedial steps to correct his behavior; and Baldridge continued to have a good reputation with both students and fellow teachers.137 The court reasoned that Baldridge's conduct itself was the only relevant factor in assessing the propriety of a teacher's dismissal.138 This reasoning, however, is inconsistent with the supreme court's stance in prior teacher dismissal decisions. In Trustees v. Anderson, the court directed: "When a tenured position is at

132. Id.
134. See id. at 538, 771 P.2d at 141; see also Trustees v. Anderson, 232 Mont. 501, 505, 757 P.2d 1315, 1318 (1988) (admonishing the district court for abusing its discretion "in substituting its judgment" for that of the fact finder).
136. See 287 Mont. at 61, 951 P.2d at 1348.
137. See discussion supra Part II.B.2 (detailing the county superintendent's findings).
138. See 287 Mont. at 61, 951 P.2d at 1348.
stake, the teacher must have the benefit of having all the available evidence properly considered and weighed."\textsuperscript{139} Likewise, \textit{Johnson} requires that a teacher's dismissal must be based upon a review of the entire record.\textsuperscript{140} It is incongruous for the supreme court to charge fact finders with conducting a comprehensive factual review of a teacher's dismissal but preserve for itself the ability to selectively disregard portions of the record as it did in \textit{Baldridge II}.

\textbf{C. The Mysterious Per Se Standard}

By holding that Baldridge was unfit to continue teaching as a matter of law, the Montana Supreme Court radically undermined the nature of review applied in teacher dismissals. Essentially, the court determined that certain types of conduct are \textit{automatically} "good cause" for dismissal, and no factual inquiry into the context surrounding the alleged misconduct is necessary. \textit{Sua sponte}, the court interposed a \textit{per se} standard into the teacher dismissal process. Neither statutes nor case law authorized the court to create such a standard.

From the perspective of an appellate court, the allure of a \textit{per se} standard is understandable. By finding \textit{per se} good cause, the factual findings of the county superintendent concerning the circumstances surrounding Baldridge's conduct became irrelevant. Artfully avoiding the deferential standard of review for these factual findings, the supreme court was able to overrule the county superintendent as being incorrect as a matter of law.\textsuperscript{141} Yet as one California court observed:

\begin{quote}
\textbf{[A]ttempt[s] to escape the application of this principle of [deferential] appellate review by claiming the defendant's conduct in itself proves unfitness to teach must fail, since \textit{neither statute nor decisional authority has applied a rule of per se unfitness \ldots}. The fact that [a teacher] may have committed [misconduct] does not authorize an appellate court to disregard contrary trial court findings and declare him unfit to teach per se.\textsuperscript{142}
\end{quote}

\begin{flushright}
\textsuperscript{139}  232 Mont. 501, 505, 757 P.2d 1315, 1318 (specifically addressing the duration of a teacher's employment and a teacher's good performance over time) (emphasis added); see also Yanzick v. School Dist. No. 23, 196 Mont. 375, 392, 641 P.2d 431, 441 (1982) ("We have already indicated that the record must show good cause for the termination of a teacher's tenure.").

\textsuperscript{140}  236 Mont. 532, 538, 771 P.2d 137, 141.

\textsuperscript{141}  See discussion \textit{supra} Part III.E (explaining the Baldridge I review standards).

\textsuperscript{142}  Board of Educ. v. Jack M., 566 P.2d 602, 603, 607 (Cal. 1977) (emphasis added).
\end{flushright}
The Baldridge II court's per se standard also confounded the already elusive process of determining good cause in teacher dismissals. If another teacher commits conduct similar to Baldridge's, should the school board automatically dismiss this teacher without hearing testimony about the context in which the behavior occurred? Arguably, if a board finds that misconduct occurred and then deems the conduct unfit per se, any factual inquiry into the surrounding circumstances would be superfluous. For this very reason, other appellate courts have strongly admonished lower tribunals for finding good cause as a matter of law, except in the most egregious circumstances such as criminal convictions for sex offenses. 143

By imposing a per se standard, the Baldridge II court placed itself in the awkward position of umpiring good cause on a case-by-case basis. Moreover, the supreme court must make these per se determinations based upon a cold record — unlike the county superintendent who hears direct testimony on the matter. Ultimately, the per se approach usurps a community's ability to assess what constitutes good cause in the unique context of their individual school system. Teachers and school administrators must speculate as to what other behavior (or bundle of behaviors) might constitute per se good cause in the eyes of a distant appellate court.

The Baldridge II court's improper substitution of judgment, failure to consider the full factual record, and creation of a per se standard are all manifestations of the same disorder: a lack of articulated guidelines to assist school administration, county superintendents, and appellate courts in making a consistent inquiry into teacher dismissals. Without clear judicial guidance, the future beyond Baldridge II promises more complexity and expense for all involved. Yet Montana has the capacity to promulgate meaningful guidelines that streamline the teacher dismissal process while affording greater protection to both school districts and teachers. Both extra- and intra-jurisdictional approaches provide valuable models for reforming the teacher dismissal process.

143. See, e.g., Jack M., 566 P.2d at 603; Hoagland v. Mount Vernon Sch. Dist., 623 P.2d 1156, 1159 (Wash. 1983) ("In most cases, because the statutes do not stipulate certain conduct as per se grounds for dismissal, it will be a question of fact whether the complained of acts constitute sufficient cause.").
A. Political or Personal Motive Inquiry

Tenure's primary goal is to protect a teacher from unwarranted administrative reprisal.\textsuperscript{144} Consistent with this public policy against retaliatory firings, courts scrutinize teacher dismissals for potential underlying political or personal motives.\textsuperscript{145} Indeed, evidence of improper motive is often dispositive in a dismissal case, compelling reversal of a termination even where separate, legitimate grounds exist.\textsuperscript{146} Moreover, some courts treat the mere inference of political motive as reason to overrule a dismissal.\textsuperscript{147}

Mirroring this national trend, the Montana Supreme Court has reversed teacher dismissals prompted in part by personal motive. In \textit{Phillips v. Trustees},\textsuperscript{148} the supreme court reviewed a county superintendent's holding that a tenured English teacher was unjustly terminated due to personality conflicts with her school superintendent.\textsuperscript{149} A high school teacher of sixteen years, Phillips received notice that the school district had terminated

\begin{itemize}
  \item \textsuperscript{144} See discussion \textit{supra} Part III.A (summarizing the public policy behind tenure).
  \item \textsuperscript{145} See, e.g., \textit{Ballato v. Board of Educ.}, 633 A.2d 323, 326 (Conn. 1993) (noting that tenure is intended to prevent terminations due to political motivations or “mere whimsy”); \textit{Springgate v. School Comm.} 415 N.E.2d 888, 889 (Mass. 1981) (ruling that the court has the “function of determining whether [a] school committee acted on the evidence rather than out of political motive, bias, or other improper motive”).
  \item \textsuperscript{146} See, e.g., \textit{Simard v. Board of Educ.}, 473 F.2d 988, 995 (2nd Cir. 1973) (“While we have concluded that adequate evidence supported the Board’s action, that does not necessarily defeat a claim of retaliatory nonrenewal.”); \textit{Harlan County Bd. of Educ. v. Stagnolia}, 555 S.W.2d 828, 830 (Ky. 1977) (“If the primary reason for the teacher demotions . . . was to punish the teachers . . . for their political activities, then such action was arbitrary and void. Simply because the superintendent could have been otherwise motivated by some proper purpose does not mean that these other purposes played a real part in his decision . . . .”) (citing \textit{Calhoun v. Cassady}, 534 S.W.2d 806, 808 (Ky. 1976).
  \item \textsuperscript{147} See \textit{Stagnolia}, 555 S.W.2d at 830 (“As a matter of proof, there need be no more than an inference of arbitrariness [to establish a wrongful termination].") (citing \textit{Snapp v. Deskins}, 450 S.W.2d 246, 252 (Ky. 1970). Several states have even enacted express statutory prohibitions against politically driven teacher dismissals. See, e.g., \textit{ALA. CODE § 16-24-8} (1998); \textit{IND. CODE ANN. § 20-6.1-4-10(b)} (West 1999). As a final safeguard, many state courts construe ambiguities in dismissal statutes in favor of tenured teachers to protect “the favored status which they have earned.” See \textit{Miller v. Board of Educ.}, 200 N.E.2d 838, 842 (Ill. App. Ct. 1964); see also, e.g., \textit{Fresno City High Sch. Dist. v. De Caristo}, 92 P.2d 668, 671 (Cal. 1939) (superseded by statute upon separate grounds); \textit{Lea v. Orleans Parish Sch. Bd.}, 84 So. 2d 610, 613 (La. 1955); \textit{Kletzkin v. Board of Educ.}, 642 A.2d 993, 994 (N.J. 1994); \textit{Miller v. Board of Educ.}, 437 S.E.2d 591, 596 (W. Va. 1993).
  \item \textsuperscript{148} 263 Mont. 336, 867 P.2d 1104 (1994).
  \item \textsuperscript{149} See \textit{id.} at 339, 867 P.2d at 1106.
\end{itemize}
her position for economic reasons.\textsuperscript{150} Acknowledging that financial concerns may have been a separate basis for dismissal, the supreme court nonetheless upheld the county superintendent's conclusion that improper motives invalidated the termination.\textsuperscript{151}

Unfortunately, the Montana Supreme Court has been inconsistent in its vigilance against improper motives in teacher dismissals. In Baldridge \textit{II}, for example, the court disregarded the undisputed, longstanding history of animosity between Baldridge and the school administrators who fired him. To truly comport with Montana's public policy mandate of protecting tenured teachers, the Montana Supreme Court must uniformly review dismissal cases for the presence of improper motive.

\textbf{B. Model Criteria}

"Good cause" determinations should flow from sound factual inquiries into the circumstances surrounding a teacher dismissal. As Baldridge \textit{II} demonstrates, if a fact finder lacks articulated guidelines to follow in her inquiry, "good cause" becomes a mere legal abstraction vulnerable to suppositions and mores. Where one county superintendent might find that a teacher's remediability obviates the need for dismissal, another county superintendent could find the same fact irrelevant. At the appellate level, this absence of guidelines invites further judicial speculation when reviewing the cold evidentiary record of a dismissal.\textsuperscript{152} Consequently, both teacher and school district must navigate through local hearings and appellate review relying upon hunches of how a particular tribunal might interpret "good cause."

To mitigate such problems, several state supreme courts have recognized the need for standardized factual inquiries that remain consistent from the initial fact finder up through the highest level of review.\textsuperscript{153} Such standardization ensures that all

\textsuperscript{150} See id. at 337-38, 867 P.2d at 1105.

\textsuperscript{151} See id. at 339, 867 P.2d at 1106.

\textsuperscript{152} In part, this may explain the disparate holdings among tribunals in Baldridge \textit{II}, where the county superintendent reversed Baldridge's dismissal, the state superintendent and district court endorsed the dismissal, and a divided supreme court (5-2) upheld the dismissal.

\textsuperscript{153} See, e.g., Morrison v. California Board of Educ., 461 P.2d 375, 386 (1969); Board of Educ. v. Flaming, 938 P.2d 151, 159 (Colo. 1997); McBrown v. Board of Educ., 494 N.E.2d 1191, 1195 (Ill. 1986); Erb v. Iowa Board of Pub. Instruct., 216 N.W.2d 339, 343 (Iowa 1974) (superseded on other grounds); Wright v. Superintending Sch. Comm., 331 A.2d 640, 646 (Me. 1975); \textit{In re Donna Thomas}, 926 S.W.2d 163, 165 (Mo. 1996);
tenured teachers, regardless of their school district, receive comparable inquiries into the propriety of their dismissals. Moreover, uniform standards supply school boards with a greater degree of certainty in determining what evidence they must provide to support a tenured teacher dismissal. Where a school board supplies sound documentation to support its position on each factual inquiry, it greatly reduces the chance of reversal on appeal.

These standardized inquiries require a fact finder to examine the totality of the circumstances surrounding a teacher dismissal, including:

1. underlying motives of teacher conduct;
2. age and maturity of students affected;
3. degree of adverse effect upon students and fellow teachers;
4. extenuating circumstances surrounding conduct;
5. likelihood of conduct being repeated after reprimand;
6. opportunity for remediation;\(^{154}\)
7. degree of remorse exhibited by teacher;
8. proximity of time between occurrence of conduct and reprimand;
9. overall reputation and record of teacher over time;\(^{155}\) and
10. extent to which disciplinary action will have a chilling effect upon other teachers.\(^{156}\)

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154. Some state courts treat remediability as a threshold inquiry, holding that if a teacher's misconduct is remediable, there should be no dismissal. Rather, a teacher should be allowed a reasonable time to overcome the dismissal grounds. See, e.g., Waller v. Board of Educ., 302 N.E.2d 190, 191-93 (Ill. 1973); Board of Educ. v. Wolff, 361 N.W.2d 750, 753 (Mich. 1984). Some state legislatures have even codified a remedial period into their dismissal statutes. See, e.g., ARIZ. REV. STAT. ANN. § 15-539(C) (West 1998); MINN. STAT. ANN. § 122A.40(9)(d) (West 1998); S.C. CODE ANN. § 59-25-440 (Law. Co-op. 1998).

155. With respect to this particular criterion, the Illinois Supreme Court has even allowed consideration of the positive testimony of former students and supervisors from a dismissed teacher's past employment in another school district. See Board of Educ. v. Sickley, 479 N.E.2d 1142, 1144 (Ill. 1985).

156. Interestingly, these criteria, although tailored for the unique context of teacher dismissals, closely parallel portions of the "just cause" factual inquiries employed in the arbitration of wrongful discharges, which include:

(1) Did the employer give to the employee forewarning or foreknowledge of the possible disciplinary consequences of the employees' conduct? . . .
(4) Was the employer's investigation conducted fairly and objectively? . . .
(7) Was the degree of discipline administered by the employer reasonably related to the seriousness of the employee's proven offense and the record of the employee in his or her service with the employer?
These criteria are such that a teacher who truly does not belong in the classroom cannot hide behind her tenurial protections. At the same time, the criteria require a school district to document and address teacher misconduct and provide the best possible case that dismissal is appropriate. Fact finders within these states must issue detailed findings regarding those criteria relevant to a particular teacher's dismissal. On review, an appellate court can examine the record to ensure that substantial evidence exists to support the fact finder. Without exception, each appellate court reviewing a fact finder's inquiry will reverse only where clear error exists.

Judicially formulated guidelines are not a novel concept, especially regarding issues where the courts have deemed community discretion significant. In obscenity challenges, for example, the United States Supreme Court has recognized that obscenity is not determinable in isolation, but must be assessed in the light of the context of the community within which it arises. At the same time, however, the Court requires uniform guidelines for communities and tribunals to rely upon in order to lend consistency and fairness to obscenity inquiries. Accordingly, the Court established a flexible, standardized inquiry that all triers of fact must make in any obscenity determination.

Interestingly, the Montana Legislature already employs similar processes in the family law arena. Like teacher tenure law, family law is a highly fact-driven field. The creation of parenting plans necessitates a court determination of "the best interest of the child"—a phrase evoking as much subjectivity

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157. See generally supra note 153.
158. See generally supra note 153.
159. See generally supra note 153.
161. Id.
162. Id. at 24 ("The basic guidelines for the trier of fact [in an obscenity inquiry] must be: (a) whether "the average person, applying contemporary community standards" would find that the work, taken as a whole, appeals to the prurient interest; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value."")
163. See MONT. CODE ANN. § 40-4-212 (1999) ("(1) The court shall determine the
as the "good cause" requirement. Recognizing the vagueness of
the "best interest" standard, the Montana Legislature furnished
thirteen criteria for fact finders to apply.\textsuperscript{164} The Montana
Supreme Court in turn requires the fact finder to address each
relevant criterion in her findings of fact, reversing these findings
only if clearly erroneous.\textsuperscript{165}

These statutory criteria ensure a level of consistency among
cases involving children by requiring that every decision
touching upon a child's interests address the identical thirteen
considerations. At the same time, the criteria allow the fact
finder the flexibility necessary in these factually diverse cases.
A reviewing court need only look to the fact finder's discussion of
each criterion to assess whether she is clearly erroneous in light
of the evidence. Without clear error, a reviewing court may not
reverse the fact finder. This process minimizes the degree of
subjectivity involved at each stage of a case.

In a similar manner, standardized guidelines for tenure
dismissals can supply enough flexibility to meet unique school
district needs while also safeguarding a teacher's tenurial
rights. Local fact finders from Glendive to Kalispell, Montana,
would all address the identical criteria, while taking into
consideration the size, ethnic composition, and unique needs of
their particular school and student body.

\textbf{C. Application of Reform Models}

Without political motivation inquiries and standardized
guidelines, there is an ongoing risk that the fact finder and
appellate courts will focus their examinations solely upon the

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\textsuperscript{164} See id. ("(1) . . . The court shall consider all relevant parenting factors, which
may include but are not limited to: (a) the wishes of the child's parent or parents; (b) the
wishes of the child; (c) the interaction and interrelationship of the child with the child's
parent or parents and siblings and with any other person who significantly affects the
child's best interest; (d) the child's adjustment to home, school, and community; (e) the
mental and physical health of all individuals involved; (f) physical abuse or threat of
physical abuse by one parent against the other parent or the child; (g) chemical
dependency, as defined in 53-24-103, or chemical abuse on the part of either parent; (h)
continuity and stability of care; (i) developmental needs of the child; (j) whether a parent
has knowingly failed to pay birth-related costs that the parent is able to pay, which is
considered to be not in the child's best interests; (k) whether a parent has knowingly
failed to financially support a child that the parent is able to support, which is
considered to be not in the child's best interests; (l) whether the child has frequent and
continuing contact with both parents . . . ; (m) adverse effects on the child resulting from
continuous and vexatious parenting plan amendment actions.").

\textsuperscript{165} See Cameron v. Cameron, 197 Mont. 226, 231, 641 P.2d 1057, 1060 (1982).
teacher's conduct to the exclusion of all other evidence. Such narrow inquiries can leave a teacher vulnerable to the "witch hunt" phenomenon, where community members or administrators target a teacher for personal or political reasons and lay in wait for him to make a misstep justifying dismissal.

Picture, if you will, a teacher who fails to show up for her second-grade class for an entire week, leaving her students unattended. At the end of this week, school administration gave her notice of termination. On its face, this teacher's conduct appears clearly improper. But there is more to this teacher's story. In her absence, this teacher has been lawfully striking against unfair wages. Moreover, she notified the school in advance of her intent to strike and return to her duties once the strike was over. An inquiry limited exclusively to the teacher's conduct—neglect of her classroom duties—would likely support dismissal. Alternatively, an inquiry of the conduct and its surrounding circumstances may preclude dismissal.

In contrast, consider a music teacher with an outstanding eighteen-year career who faces dismissal for lightly tapping a student on the head for not paying attention. At first glance, this behavior does not appear to rise to the level of dismissal. But this was the teacher's fourth incident of physical discipline in a school district that prohibits corporal punishment; and, after her third incident, school administration warned her that another violation would result in termination. She had previously yanked a boy's hair for not paying attention; rapped a child's knuckles with a xylophone stick, leaving red marks; and grabbed a boy by the shoulders, pushing him into the blackboard and bumping his head. After these incidents, the school placed her on a strict policy of no physical punishment. Placed within a context of repeated misconduct, this teacher's innocuous act may become a legitimate basis for dismissal.

166. See Board of Educ. v. Jack M., 566 P.2d 602, 608 (Cal. 1977) (admonishing that a dismissal hearing should not "be limited to the single question [of] whether the teacher committed the charged act.").
167. See Yanzick v. School Dist. No. 23, 196 Mont. 375, 404, 641 P.2d 431, 448 (1982) ("[I]n my opinion, the Court is countenancing a 'witch hunt' in this case. The Court is condoning a legal determination based upon rumor and hearsay. In doing so, the security of tenure has been dealt a serious blow. The precedential effect will necessarily diminish academic freedom in Montana.") (Morrison, J., registering a "vigorous" dissent).
169. This hypothetical is patterned after actual facts set forth in Board of Educ. v. Flaming, 938 P.2d 151, 159 (Colo. 1997).
In Baldridge's case, an application of the reform models is instructive. First, let us inquire into any political motivations that may have prompted Baldridge's dismissal. The Board did not set forth any political grounds to support its dismissal. Nonetheless, the undisputed facts on record reveal a longstanding animosity between Baldridge and certain Board members.\textsuperscript{170} In particular, Baldridge was known to be a “thorn in the side” of School Superintendent Tokerud.\textsuperscript{171} He confronted Tokerud and the Board on their treatment of Native American students.\textsuperscript{172} As a union leader, he successfully challenged school administration on numerous grievances.\textsuperscript{173}

Additionally, the students testifying against Baldridge lacked veracity and many were children of Board members.\textsuperscript{174} One student even conceded that his father, who was on the Board, had complained of Baldridge's outspoken criticisms “causing problems with the School Board.”\textsuperscript{175} The record indicated that other teachers committing similar conduct as Baldridge's received no punishment.\textsuperscript{176} Moreover, the record demonstrated that the Board's summary dismissal of Baldridge was disparate from its discipline of other teachers:

Mr. Baldridge is the first teacher to be summarily discharged by the District for a first offense, without the benefit of progressive discipline. . . . [T]he disciplinary action meted out by the District to other teachers under circumstances that are considered far more serious . . . [consisted of] verbal warnings, written reprimands, and a suspension.\textsuperscript{177}

There is enough evidence to suggest that Baldridge's activism may have been a motivating force behind his dismissal.

\textsuperscript{170} See County Superintendent's Order, \textit{supra} note 21, at 6 (Finding of Fact No. 8).
\textsuperscript{171} See id.
\textsuperscript{172} See id. at 6 (Finding of Fact No. 5).
\textsuperscript{173} See Appellant's Brief, \textit{supra} note 19, at 5.
\textsuperscript{174} See County Superintendent's Order, \textit{supra} note 21, at 13, 29 (Finding of Fact No. 27, Conclusion of Law No. 29) (determining that one student “does not have a very good reputation for any truth or veracity at all” and that the students “belonged to a clique”).
\textsuperscript{175} Transcript, \textit{supra} note 30, at 91 (testimony of Chris Novasio, Colstrip High School student).
\textsuperscript{176} See County Superintendent's Order, \textit{supra} note 21, at 12-13 (Finding of Fact No. 25) (noting that two other teachers at Colstrip High School told the identical “testes” joke to their classes without reprimand). Arguably, a key indicia of political motive would be a lack of equanimity in punishment among teachers with similar conduct.
\textsuperscript{177} Arbitrator's Opinion, \textit{supra} note 22, at 31-32.
The county superintendent’s findings are replete with references to the hostility between Baldridge and school administrators, indicating that the presence of improper motives influenced her ultimate conclusion. Despite this strong showing of political taint, the reviewing courts opted not to consider improper motive in assessing Baldridge’s dismissal.

Next, let us apply the standardized judicial guidelines to the circumstances surrounding Baldridge’s dismissal:

1. Underlying Motives of Teacher Conduct

Baldridge’s motivation for his conduct is highly disputed. He testified that he intended his actions to be humorous – not to convey a sexually derogatory message. Indeed, on past performance evaluations, school administration had expressly praised Baldridge on his effective use of humor in the classroom. Those parents and students testifying against Baldridge clearly interpreted his words to have a sexually derogatory motive. The county superintendent found that while Baldridge’s behavior was inappropriate, his intentions were innocuous and not aimed at offending his students.

2. Age and Maturity of Students Affected

Baldridge’s students were junior and senior high school students. The county superintendent found that the students were mature enough not to be offended or adversely affected by Baldridge’s conduct.

3. Adverse Effect Upon Students and Fellow Teachers

The female students testifying against Baldridge indicated that his comments embarrassed them. Male students, on the

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178. See generally Transcript, supra note 30, at 409-39 (testimony of Elmer Baldridge).
179. See Colstrip Public Schools Teacher Evaluation Form for Elmer Baldridge, Attachment at 1 (Dec. 17, 1987) (contained in the Montana Supreme Court record for Baldridge II). Principal Pearce conducted this in-classroom evaluation.
179. See generally County Superintendent’s Order, supra note 21, at 9-16 (Findings of FactNos. 17-30).
181. See generally id.
182. See id. at 14 (Finding of Fact No. 28).
183. See id. at 12-16 (Findings of Fact Nos. 25-30).
184. See Transcript, supra note 30, at 59, 67 (testimonies of Kim Acton and Traci Watson, Colstrip High School students).
other hand, generally found the comments humorous. This evidence tends to indicate that Baldridge’s students did suffer harm from the tenor of his comments. On the other hand, the county superintendent noted that the infamous “glove incident” that ultimately prompted Baldridge’s dismissal led to no complaints until over a month after its occurrence. Indeed, she noted that “[w]hat some would consider as ‘inappropriate’ or ‘loose language’ was used by other faculty members at the school and generally accepted by students.” Ultimately, she found no evidence that any long term adverse impact occurred to any student or fellow teacher.

4. Extenuating Circumstances

When the county superintendent examined the extenuating circumstances surrounding Baldridge’s dismissal, she found that a specific clique of students and their parents, who held administrative positions in the school district, prompted the dismissal. She further found that there was longstanding animosity between Baldridge and the administration arising from his protests against certain employment practices and treatment of Native American students.

5. Likelihood of Conduct Being Repeated After Reprimand

The county superintendent made no specific finding regarding the likelihood that Baldridge might repeat inappropriate conduct after receiving his reprimand. However, when Baldridge made the “bad month” comment, he immediately apologized to the entire class and later spoke individually with the female student whom he offended.
Likewise, when Principal Pearce notified Baldridge of the parental complaint regarding the “glove incident,” he immediately remitted an apology letter to the parents. This behavior suggests that Baldridge was sincere in rectifying his behavior.

6. Opportunity for Remediation

The county superintendent found that:

Baldridge was unaware of the deficiencies alleged by the administrators. There was not a consistent, up-front approach through written evaluation or prior notice about these incidents. There was no evidence concerning Baldridge’s teaching methods or direction to improve his teaching abilities in the classroom which were of concern to the District Superintendent and School Board.

Principal Pearce immediately suspended Baldridge upon receiving the parental complaint regarding the glove incident. After an administrative investigation, the suspension became an official termination by the Board. Baldridge was given no prior notice about the alleged incidents and no opportunity to remediate his behavior before dismissal.

7. Degree of Remorse Exhibited by Teacher

In each circumstance where Baldridge realized his behavior had offended a student, he issued a prompt apology to the injured parties. While Baldridge disagreed with how his comments were construed, he sought to quickly repair any harm caused. His strong interest in his students suggests that Baldridge exhibited sincere remorse for his behavior.

8. Proximity of Time Between Conduct and Reprimand

Baldridge’s termination occurred two months after the “glove incident.” Many of his other alleged misconduct, however, occurred in his preceding five years at Colstrip High School.

193. See id. at 10 (Finding of Fact No. 21).
194. Id. at 26 (Conclusion of Law No. 18).
195. See id.
196. See generally id. at 9-16 (Findings of Fact Nos. 17-30).
197. See id. at 10, 16 (Findings of Fact Nos. 10, 30).
198. Interview with Elmer Baldridge, in Bozeman, Mont. (July 7, 1999).
During this time, Baldridge received exemplary evaluations on his teaching style; the administration neither received nor issued complaints regarding Baldridge's classroom conduct; and Baldridge received no warning that his behavior was potentially offensive in any way.199

9. Overall Reputation and Record of Teacher Over Time

Baldridge enjoyed overwhelming popularity with the Colstrip High School students.200 He was also well respected by his fellow teachers.201 Likewise, school administration consistently gave Baldridge the highest possible rankings for his classroom performance.202 The county superintendent found Baldridge to be “an excellent, conscientious teacher, devoted to Colstrip Public Schools.”203

10. Chilling Effect Upon Other Teachers

The county superintendent did not render any specific findings on the possible chilling effects of Baldridge's dismissal upon his fellow teachers. Certainly, the faculty members testifying on his behalf were disconcerted with the Board's decision. Arguably, Baldridge's peers might be reluctant to oppose school administration with the same fervor Baldridge exhibited. They may also be more cautious about using humor to develop student rapport. Considering the administration's propensity to dredge up past misconduct of which teachers have not been informed, there were legitimate concerns of a chilling effect in this case.

In Florida, a case factually similar to Baldridge's arose in MacMillan v. Nassau County School Board.204 There, high school mathematics teacher Edwin MacMillan allegedly greeted his female students with comments such as, “You're looking hot,” and “You’re looking fine,” as they entered his classroom.205 The school board dismissed MacMillan for making suggestive

198.  See County Superintendent's Order, supra note 21, at 5, 17 (Findings of Fact Nos. 3-4, 32).
199.  See id. at 5 (Finding of Fact No. 3).
200.  See id.
201.  See id. at 5 (Findings of Fact Nos. 3-4).
202.  See id. at 5 (Findings of Fact Nos. 3-4).
203.  See id. at 29 (Conclusion of Law No. 30).
205.  See id. at 228.
sexual innuendoes. On appeal, the district court emphasized that “the context in which MacMillan made the alleged improper statements is critical to our determination.”

The court then examined the factual findings below, observing that: MacMillan never intended his comments to have a sexual connotation; most students thought that MacMillan was joking and did not feel uncomfortable or degraded; MacMillan's comments were only “temporarily embarrassing” to certain students, not causing irreparable harm to the student-teacher relationship; and MacMillan was well-regarded among his peers and a favorite teacher among students. Ultimately, the court reversed MacMillan's dismissal, concluding that “the record was devoid of competent evidence” to support the school board's position.

Both MacMillan and our application of the model guidelines suggest that the Montana Supreme Court's finding of per se "good cause" for Baldridge's dismissal is incorrect. While Baldridge committed acts that lacked taste and judgment, these acts were heavily outweighed by his strong teaching record and student support. Because the Board never timely apprized Baldridge of his past wrongdoings, Baldridge never received the opportunity to rehabilitate his classroom behavior through constructive administrative guidance. When political motivations are added to the mix, the Board's decision becomes even more suspect.

This is not to say that the Board should have condoned Baldridge's remarks. Nonetheless, a more beneficial response may have aimed to correct Baldridge's inappropriate conduct while preserving his established tenurial protections.

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206. See id. at 227.
207. Id. (emphasis added). The court's accent on context is analogous to the "totality of circumstances" approach embraced by the model criteria. See discussion supra Part V.B.
208. The district court accepted the factual findings below because the fact finder supported each one with "detailed explanations" and "competent substantial evidence" from the record. See MacMillan, 629 So. 2d at 229. Compare the Montana Supreme Court's parallel conclusion in Baldridge II that the county superintendent's factual findings were undisputed and therefore (purportedly) accepted in toto. See Baldridge II, 287 Mont. 53, 58, 951 P.2d 1343, 1346 (1997); see also discussion supra Part II.C.1.
209. See MacMillan, 629 So. 2d at 228-30. Note that the court's inquiries are nearly identical to those required by the model criteria. See discussion supra Part V.B.
211. Arbitrator Eric B. Lindauer observed that: "Baldridge's classroom conduct was inappropriate and distasteful." Arbitrator's Opinion, supra note 22, at 28-29.
formal Board reprimand coupled with a rehabilitation period would have provided Baldridge with notice of the need for behavioral reform. If Baldridge then repeated his misconduct in the future, the school district would have had legitimate, documented grounds for dismissal that passed the political motive inquiry and the model guidelines.

VI. CONCLUSION

Teacher dismissals are a grievous process for all parties involved. Teachers suffer community humiliation and the threat of permanent revocation of their ability to teach in Montana. School districts face astronomical liability exposure in the form of suspension pay, back pay, and lost future wages. They can even be forced to reinstate the very teacher they desired to terminate. Communities become divided as students, parents, and fellow teachers testify for or against the terminated teacher. Tribunals navigate the confounding process of determining what constitutes "good cause" for dismissal without the benefit of any meaningful precedent.

Baldridge II stands as a stark reminder of these flaws in Montana's present tenured teacher dismissal process. Without reform, parties will remain vulnerable to unpredictable, protracted litigation over terminations. The erection of political motive inquiries and standardized guidelines represents an important step towards such reform. With these improvements, tenure can truly become a substantial, valuable, and beneficial right that attracts qualified new teachers to Montana.

Nonetheless, the arbitrator found that "the penalty imposed by the school district was unreasonable" and that "Baldridge's conduct did not rise to the level that the progressive discipline policy should have been set aside in favor of summary discharge." Id.

211. The arbitrator further noted: "(T)he District made no effort to apprise Mr. Baldridge of the inappropriateness of his conduct or to employ any corrective disciplinary measures to improve his conduct. It makes no sense to this Arbitrator that the District would summarily terminate an otherwise excellent teacher for remarks, that he now acknowledges were inappropriate, without making some effort to follow the progressive discipline policy . . . .” Id. at 31.

213. Moreover, some states refuse to hire teachers who have suffered certificate revocations in other states. See, e.g., FLA. STAT. ANN. § 231.28 (West 1998).
