

OUTLINE OF RIGHTS & REMEDIES

per the Missouri Teacher Tenure Act

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The Right of Tenure: The most important right granted by the Tenure Act is tenure. Tenured teachers are entitled to certain safeguards against adverse employment actions that are not available to non-tenured employees.

I. **Acquisition of Tenure:** The general rule is that a teacher who is employed in the same school district for five successive years and who continues to be employed in the same system as a full-time teacher for a sixth consecutive year acquires tenure.

A. A part-time contract accrues credit toward tenure on a pro rata basis.

B. Promotion to a non-teaching supervisory position before the sixth year generally interrupts advancement toward tenured status.

II. **Rights Associated with Tenure:** A tenured (or indefinite) contract of employment continues from year to year indefinitely unless terminated by resignation, retirement, death or termination for one of the causes, according to the procedures specifically defined in the Tenure Act.

A. Statutory grounds for terminating tenured teachers:

1. Physical or mental unfitness
 - a. This reason has rarely been used, and its meaning is therefore not clear.
 - b. To establish this reason, a district would probably have to prove, with medical evidence, the existence of a physical or mental disability that substantially interfered with a teacher's performance.
2. Willful or persistent violation of, or failure to obey, the school laws of the state or the published regulations of the board of education
 - a. "Willful" in this context means, "with the intention of violating or failing to obey a regulation." Accordingly, lack of knowledge of a regulation may be a defense to a termination on this ground.
 - b. The reference to a "persistent" violation of rules may mean that a single act of disobedience, particularly if not willful, cannot serve as a basis for termination.
3. Excessive or unreasonable absence from performance of duties
 - a. Missouri tenured teachers have been terminated for absenteeism arising out of illness, participation in an illegal strike, and refusal to accept a particular teaching assignment. One case has even held that a teacher may be terminated for absenteeism that is within the allotted sick leave provided by a district's absenteeism policy. Another decision, however, has questioned the legitimacy of this holding.
 - b. Termination for absenteeism also does not depend upon the existence of a formal absenteeism policy.
4. Conviction of a felony or a crime involving moral turpitude
5. Revocation of teaching license
This grounds for dismissal appears to refer to a teacher's "certificate of license," not a teacher's certificate to teach a particular subject.

6. Management of a campaign for the election or defeat of members of a school board for which the teacher is employed
 - a. The courts have not resolved the precise meaning of this particular provision.
 - b. An Attorney General opinion, however, has expressed the view that this prohibition does not encompass a teacher's membership in an association that is actively involved in such a campaign.
 7. Immoral conduct
 - a. Although this particular reason on its face appears vague and all encompassing, courts have upheld its validity applied to "immoral conduct" that adversely affects a teacher's performance of his or her official role as a teacher.
 - b. A decision of the Missouri Court of Appeals has very broadly interpreted the reach of this provision by upholding a termination for a teacher's off-campus conduct that was not specifically shown to have impaired the teacher's performance.
 8. Incompetency, inefficiency or insubordination in the line of duty
 - a. This is the most frequently used grounds for termination of tenured teachers.
 - b. Termination for these reasons requires special procedures not applicable to termination of tenured teachers on other grounds:
 - (1) At least 30 days before service of termination charges for any of these reasons, a teacher must be given warning in writing "stating specifically the causes that, if not removed, may result in charges (i.e. the 30-day warning letter)."
 - (2) After the issuance of a 30-day (or longer) warning letter, "both the superintendent, or his designated representative, and the teacher shall meet and confer in an effort to resolve the matter." It is impermissible for a school administration to reach a firm decision to terminate at the time the warning letter is issued. The purpose of the "meet and confer" process that follows is to afford the teacher a genuine opportunity to overcome deficiencies in his or her performance. The administration is obligated to assist a teacher during this period. This help might include periodic observations followed by meaningful and constructive evaluations and feedback.
 - c. If either the warning letter or the meet-and-confer requirements are not followed, the teacher cannot be terminated on these grounds. In addition, if the teacher can convince the school board in a termination hearing that he or she has corrected all the deficiencies described in the warning letter, the teacher should not be terminated for these grounds.
- B. Required procedures for all tenured teacher termination cases

continued

1. Notice requirements

- a. Before termination, a tenured teacher must be given a written notice that states the reasons for termination in detail.
- b. In the case of a termination for incompetency, for example, the termination notice must spell out the deficiencies that still exist after the meet-and-confer period and that the administration intends to prove at a termination hearing. Mere reference to the previous warning letter will not satisfy the termination notice requirement.
- c. The notice must also advise the teacher of his or her rights to request a termination hearing within ten days after the receipt of the notice of termination charges.
- d. If a hearing is requested by the teacher, it must be held no earlier than 20 days from the receipt of termination charges.

2. Requirements of the termination hearing

- a. A teacher is entitled to subpoena witnesses to the hearing and to cross-examine witnesses called by the administration.
- b. A teacher has the right to subpoena documents, such as materials from the files of administrators relevant to the termination charges (e.g. classroom observations).
- c. A teacher has a right to be represented by counsel at the hearing.
- d. The termination hearing must be open to the public (unless the teacher and the administration agree to waive this particular right).
- e. The hearing must be transcribed by a court reporter at the school district's expense.
- f. At the hearing, the school administration prosecutes the termination charges against the teacher and has the burden of proving facts, through witnesses and documents, introduced at the hearing, that establish that the termination charges are true.
- g. The role of the school board is to act both as judge and jury.
 - (1) The school board president rules on evidentiary objections raised either by the administration or the teacher.
 - (2) The school board also hears and considers the evidence introduced at the hearing. After the close of the hearing and receipt of the transcript, the school board decides to terminate the teacher, take some action short of termination, or take no action at all. Unless no action is taken against the teacher, the Board must also make written findings of fact and conclusions of law that support its decision. These findings and conclusions must be served on the teacher within three days after they are rendered.
- h. In the event of termination, a teacher may appeal the decision, first to Circuit Court and then to the Court of Appeals.
 - (1) A notice of appeal must be served no later than 15 days after a teacher is served with the termination decision.
 - (2) Appeal to the Circuit Court and Court of Appeals does not entitle a teacher to a new hearing or trial. The Court only reviews the findings of the school board to determine if they are supported by substantial (i.e. some) evidence and to determine if the board followed the procedures required by law.

- (3) If a termination is reversed by a court, the teacher is entitled to reinstatement and back pay.

C. Rights of tenured teachers in the event of a layoff

The Tenure Act permits a district to place teachers on involuntary leaves of absence on the grounds of decreasing enrollment, financial conditions, or school district reorganization. However, no tenured teacher may be "placed on leave of absence while probationary teachers are retained in positions for which a permanent teacher is qualified."

1. In the event there are no probationary teachers remaining in a particular field of specialization, tenured teachers may be laid off "on the basis of performance-based evaluations and seniority within the field of specialization." Seniority, however, shall not be controlling.
2. Certain due process safeguards are available to a tenured teacher in a layoff situation. For example, such a teacher may request a statement of reasons why he or she was chosen for layoff and a description of the manner in which this decision was reached. Additionally, the teacher can request an opportunity to inspect relevant information considered by the district in reaching this decision. The teacher may also request an opportunity to respond to this decision before the school board, but this opportunity need not be the equivalent of a full due process hearing that is required in the event of termination.

III. Limited rights of probationary teachers

- A. Termination during the term of a one-year contract: Only when a district proposes to terminate a probationary teacher during a school year is it necessary for the district to give the teacher written notice of reasons for that action in advance and an opportunity to correct the stated deficiencies.
- B. No notice of hearing required for a non-renewal: In the event of a non-renewal of a probationary teacher's contract for a succeeding school year, no advance notice of charges or reasons for a hearing is required.
 1. The probationary teacher may be non-renewed for any or no reason, except reasons specifically prohibited by federal or state statute (e.g. race or sex discrimination) or for constitutionally impermissible reasons (e.g. for joining a teacher's association).
 2. However, a probationary teacher must be informed that his or her contract has not been renewed for the next year on or before April 15. Failure to afford this notice within this time period results in automatic renewal of the probationary contract.
 3. After notice of non-renewal is given, a probationary teacher may request a written statement of the reasons for non-renewal. However, the teacher has no right under the Tenure Act to challenge the district's response to this request as long as it was given "in good faith without malice."