

PITFALLS OF TEACHER DISMISSALS


PRESENTED BY
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Due Process

- A teacher is entitled to due process before his/her contract can be terminated.

- The nature of the due process depends on:
 - ▣ The tenure or probationary status of the teacher
 - ▣ The nature of the reason for dismissal


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Two Main Questions

- When does a teacher become tenured?

- What rights (*due process*) are afforded a tenured teacher compared to a probationary teacher?

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Two Main Questions

- When does a teacher become tenured?
- **ANSWER:** A teacher becomes tenured in Missouri once he/she has been employed as a teacher for 5 successive years in the same school district and thereafter remains employed in the same school district.

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Two Main Questions

- But...there are exceptions to the rule.

Exception #1 – Carry Over Rule

The 5-year period is shortened by 1 year if the teacher has 2 or more years of teaching experience in another “school system.”

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Two Main Questions

Exception #2 – Return Rule

If a teacher gains tenure in a school district and then is separated from employment with the district, the teacher, if ever re-employed with the same district can regain tenure after 1 full year of employment.

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Can a teacher ever gain tenure teaching part-time?

YES

Teacher can gain tenure on prorated basis

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Do extra duty contracts gain tenure?

NO

Teacher Tenure Act does not apply to extra duty contracts

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Are administrative positions tenured?

NO

Teacher Tenure Act does not apply to administrators

But...

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Are administrative positions tenured?

- Non-superintendent administrators can earn heightened due process
- Non-superintendent administrators can keep their tenured teacher status
- Non-superintendent administrators can regain their tenured teacher status while working as an administrator

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Teacher Tenure for Administrators

- If a non-superintendent administrator gained tenure as a teacher at a district, and is promoted to an administrator position at that same district, the administrator is considered a tenured teacher at the start of their administrative position.

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Teacher Tenure for Administrators

- If a non-superintendent administrator gains tenure as a teacher at a district, and then accepts a position as an administrator at a different district, the administrator regains tenured teacher status after working as an administrator for 2 years.

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Teacher Tenure for Administrators

- What does teacher tenure mean for an administrator?
 - If you non-renew or terminate them as an administrator, you have to:
 - Place them in a teaching position; OR
 - Also terminate them as a tenured teacher

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Missouri Teacher Tenure Law

An indefinite contract with a permanent teacher shall not be terminated by the board of education of a school district except for one of six reasons:

- 1) Physical or mental condition unfitting him/her to instruct or associate with children;
- 2) Immoral conduct;
- 3) Incompetency, inefficiency or insubordination in line of duty (aka "the 3 I's");

Section 168.114 RSMo

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Missouri Teacher Tenure Law

- 4) Willful or persistent violation of, or failure to obey, the school laws of the state or the published regulations of the board of education of the school district employing him/her;
- 5) Excessive or unreasonable absence from performance of duties; or
- 6) Conviction of a felony or a crime involving moral turpitude.

Section 168.114 RSMo

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Everything Other Than 3 I's

- Can go straight to issuing a Statement of Charges
- BUT.....
 - Need enough evidence
 - Legal document

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Incompetency, Inefficiency, or Insubordination

- Terms not statutorily defined, but case law has defined the scope of these terms:
 - Incompetency and Inefficiency:
 - The inability "to perform...professional teaching duties in a manner acceptable to the Board."
See e.g., *Artherton v. Bd. OF Educ., of Sch. Dist. of St. Joseph*, 744 S.W.2d 518,522(Mo. App. 1988)
 - Insubordination:
 - A "willful disregard of express or implied direction or a defiant attitude."
See e.g., *McClellan v. Gage*, 770 S.W.2d 466, 469 (Mo. App. 1998)

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Incompetency, Inefficiency, or Insubordination

Tenured Teachers:

- At least thirty days before service of notice of charges of incompetency, inefficiency, or insubordination in line of duty, the teacher shall be given by the school board or the superintendent of schools warning in writing, stating specifically the causes which, if not removed, may result in charges.
- Thereafter, both the superintendent, or his/her designated representative, and the teacher shall meet and confer in an effort to resolve the matter.

Section 168.116 RSMo

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Incompetency, Inefficiency, or Insubordination

Probationary Teachers:

- If in the opinion of the board of education any probationary teacher has been doing unsatisfactory work, the board of education shall provide the teacher with a written statement setting forth his/her alleged incompetency and specifying the nature thereof, in order to furnish the teacher an opportunity to correct his fault and overcome his incompetency.
- If improvement has not been made within ninety days of receipt of the notification, the board of education may terminate the employment of the probationary teacher immediately or at the end of the school year.

Section 168.126 RSMo

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Incompetency, Inefficiency, or Insubordination

Considerations:

- Notice of Deficiency
 - Legal document
 - NOT a PIP or Job Target
- Length of Probationary Period
- Frequency of Meet and Confers
- Format of Meet and Confers
- Performance Observations

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Remediation Plan

- Goal is to help teacher improve
- 2 – 3 observations per week
- Bi-weekly conferences with teacher (*meet and confer*)
- Affirmative steps to improve performance
 - Released time for observation
 - Seminar attendance
 - Written materials
 - Observation

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Remediation Plan

- Document observations
 - ▣ 2-3 times per week
 - ▣ Can use additional evaluators
 - ▣ Focus on deficiencies
 - ▣ Do not use formative observation form
 - ▣ Observations should include each class
 - ▣ Observations need not all be of an entire class

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Remediation Plan

- ▣ Observe beginning, transition of activities and ending of instructional activity
- ▣ Focus on students
- ▣ Document and share documentation
- Not covered by District's evaluation policy

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Which Charges Get What Due Process?

Required for Incompetence, Insubordination or Inefficiency	Required for All Other Charges
▣ Notice of Deficiency	▣ Not Required
▣ Probation Period	▣ Not Required
▣ "Meet and Confer"	▣ Not Required
▣ On-Going Observations	▣ Not Required
▣ Remediation Efforts	▣ Not Required

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Which Charges Get What Due Process?

Required for Incompetence, Insubordination or Inefficiency	Required for All Other Charges
▪ Statement of Charges	▪ Also Required
▪ Notice of Hearing	▪ Also Required
▪ Public Hearing	▪ Also Required
▪ Written Decision	▪ Also Required
▪ Judicial Appeal	▪ Also Required

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Statement of Charges

- Statement of Charges include:
 1. Specific instances of incompetence
(e.g., date, place, time, individuals)
 2. Tied back to deficiencies
 3. Accompanied by Notice of Hearing
 4. If for incompetency, provide no earlier than 90 days after probationary teacher received notice of deficiency, 30 days for tenured teacher
 5. If for any other reason, can issue immediately upon enough evidence

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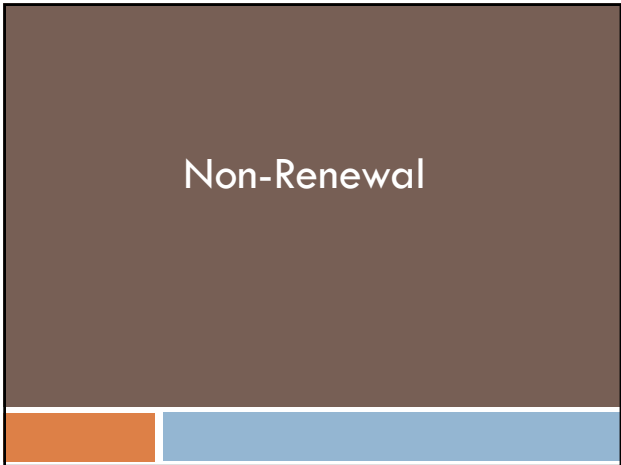
Public Board Hearing

- 10 days from receipt of charges to request Board hearing
- Hearing must take place during a window period of between 20 and 30 days from receipt of charges

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Probationary Separation Options

- Non-renewal
 - ▣ Any non-discriminatory reason
 - ▣ Notice deadlines
- Mid-year terminations
 - ▣ Due process
- Resignations


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Importance of Evidence

If District cannot articulate a reason for non-renewal, it exposes District to a claim that nonrenewal decision was based on an illegal reason:


- MHRA
- Wrongful Discharge Violation of Public Policy
- Whistleblower Statute
- FMLA & ADA
- Free Speech
- Retaliation

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Statement of Reasons for Non-Renewal

- Statement of Reasons for non-renewal must be given if:
 - Requested by employee
 - Non-renewal is because of:
 - Decrease in enrollment
 - School district reorganization
 - Financial condition of the District
- Legal document

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The Board's Role

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Educating Board on Its Role

Termination Hearing

- Act as judge and jury
- Once at the hearing, cannot view evidence outside of hearing
- Cannot talk about case during hearing/appeal

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Educating Board on Its Role

Termination Hearing Cont.

- Cannot converse with administration during deliberations
- Need quorum for decision and vote
- Need to be present for hearing or review evidence prior to vote
- Findings of Fact and Conclusions of Law

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Educating Board on Its Role

Probationary Non-Renewal

- One nonrenewal per vote
- Vote in affirmative (i.e., *motion to re-employ*)
- Failure of a second = Re-employed; there HAS to be a vote to non-renew
- Written notice of Board's decision to nonrenew no later than April 15th

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Documentation

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Document, Document, Document

- All significant employment decisions require evidentiary support
- Document PIP, job target, memo to teacher, evaluation, conference, refusal of teacher meet and confer

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Best Practice to Document Deficiencies & Misconduct

But what does good documentation look like?

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Good documentation means...

- Knowing who your audience is
 - Teacher, staff, administrator, board of education
 - Judge, jury, lawyer, newspaper reporter

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Good documentation means...

- Writing well
 - ▣ Using correct grammar
 - ▣ Using correct spelling
 - ▣ Using correct syntax
 - ▣ Avoiding pronouns
 - ▣ Avoiding emotion
- A well written document affects credibility of the documentation and the person creating the document

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Good documentation means...

- Doing your homework when documenting an act of misconduct
 - ▣ Investigate the misconduct
 - ▣ Review the appropriate board policy
 - ▣ Personnel file
 - ▣ Student records
 - ▣ Video
 - ▣ Background documents

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Witness Interviews

- ▣ Remember who, what, when and where
- ▣ Protect confidentiality
- ▣ Document allegations/statements in detail
- ▣ Take legible notes
- ▣ Quote exact language used by witness
- ▣ Do not add personal commentary
- ▣ Include date and start/stop time of interview
- ▣ Read notes back to witness
- ▣ Ask witness to provide written statement

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Employment Discrimination

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Discrimination Laws (Federal)

Title VII : Title VII of the Civil Rights Act

- Prohibits discrimination on the basis of sex, religion, race, color, or national origin

PDA : Pregnancy Discrimination Act

- Protects women before, during and after pregnancy

ADA : Americans with Disabilities Act

- Prohibits discrimination on the basis of disability

ADEA : Age Discrimination in Employment Act

- Prohibits age discrimination in employment


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Discrimination Laws (State)

MHRA : Missouri Human Rights Act

- Prohibits discrimination based on sex, race, color, religion, age, national origin, ancestry or disability
- Covers employment practices for both private and public employers in Missouri (employ 6 or more)

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Retaliation

- Federal and Missouri law prohibit retaliation against an employee who engages in a protective activity
 - ▣ File internal grievance
 - ▣ File external complaint with EEOC / MCHR / OCR
 - ▣ Testifies, assists, or participates in investigation proceeding, or hearing regarding discrimination
 - ▣ Takes protected leave or requests accommodation

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Who Can Be Sued

- School Districts and Colleges
- Individual School Board Members
- Central Office Administrators
- Building Administrators
- Teachers
- Support Staff Employees

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Summary of Common Mistakes

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Mistake 1

Failure to Timely Identify
Non-Performing
Probationary Teachers

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Mistake 2

Not Preparing an Effective
Notice of Deficiency

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Mistake 3

Misunderstanding of the
Remediation Process

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Mistake 4

Not Abiding by Timelines

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Mistake 5

Falsely Believing Can
Non-renew for No Reason

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Mistake 6

Failing to Document

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Mistake 7

Misunderstanding of Board's Role

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QUESTIONS?

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