

## **Terms and Conditions of Employment: Certification, Contracts, and Dismissal**

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### **ABSTRACT**

Except for limitations imposed by the federal Constitution and civil rights laws, state statutes govern educators' employment. The state prescribes general requirements for certification, contracts, tenure, and dismissal. Local school boards must follow state laws and may impose other requirements. In general, the following terms and conditions govern educators' employment. The state establishes minimum qualifications for certification. Teacher contracts must satisfy the general principles of contract law. Tenure confers on teachers a property interest in continued employment. Dismissal of tenured teachers must be based on sufficient cause and accompanied by procedural due process.

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One of the primary functions of the state is to provide for an efficient system of public schools. The operation of public schools is governed by state statutory and regulatory policy. However, the actual administration of public school systems is delegated to state boards of education, state departments of education, and local school boards. These agencies adopt and enforce reasonable rules and regulations pursuant to state statutes for the operation of public school systems.

Although state statutes and regulatory policy are prominent in defining the employment conditions of public school personnel, they cannot be viewed independently of state and federal constitutional provisions, civil rights laws, and collective bargaining agreements between school boards and employee unions. These provisions may restrict or modify options stipulated in the state school code. In this article, I discuss certification, contracts, and termination of employment.

### **Certification**

The public schools employ several categories of professional personnel, including superintendents, principals, curriculum specialists, business managers, school

psychologists, social workers, counselors, classroom teachers, and the like. To be eligible for employment in a professional position, the individual should possess a valid license or certificate issued according to statutory provisions of a given state. These statutes, varying from state to state, concern requirements and procedures for obtaining the different certificates. Generally, the legislature delegates the legal authority to issue and process certification to state boards and departments of education. In some states, however, the legislature delegates that authority to a local school district as is the case in New York City and more recently in Chicago.

### **Requirements**

The preparation standards for each type of certificate are similar from state to state, with only a few exceptions. For example, every state requires applicants to have a college degree with a minimum number of credit hours in a prescribed curriculum. Besides educational requirements, other prerequisites may include evidence of good moral character, a minimum age, U.S. citizenship, and satisfactory performance on a state-administered examination.

The initial certification is usually issued for a specified period of time, including various designations such as temporary, emergency, conditional, standard, life, or permanent. It is the certificate holder's responsibility to keep it renewed. This may require evidence of additional coursework, professional experience in a public school, or passage of a standardized examination such as the National Teachers Examination (NTE).

The U.S. Supreme Court (*United States v. South Carolina*, 1977, *aff'd sub nom. National Education Association v. South Carolina*, 1978) has upheld its use, even though the exam has been shown to disproportionately disqualify minority candidates. The Supreme Court of Texas (*State v. Project Principle*, 1987) held that teachers possessing life certificates may be required to pass a state examination as a condition of continued employment. Certificates also include specific endorsements (e.g., superintendent, principal, counselor, teacher), subject areas (e.g., English, social studies, mathematics, sciences), and grade levels (e.g., elementary, middle or junior high school, high school). A school board's failure to assign professional personnel to positions for which they are certified can result in loss of state accreditation and federal funding (No Child Left Behind Act of 2002).

### **Revocation**

The state also has the power to revoke certification. Certification revocation is different from dismissal from employment by a local board of education. A local school board can legally dismiss a superintendent, principal, teacher, or other professional employee, but the state is generally the only government body that can revoke a certificate. Moreover, state statutes usually specify the grounds and procedures for certification revocation. For example, under the Kentucky statute, it is provided that "any certification . . . may be revoked by the Education Professional Standards Board for immorality, misconduct in office, incompetency or willful neglect of duty . . . Before the

certification is revoked and defendant shall be given a copy of the charges against him and given an opportunity, upon not less than twenty (20) days' notice, to be heard in person or by counsel (*Kentucky Revised Statutes*, Ch. 161.120, 2002).

### Contracts

A certificate renders the holder eligible for employment in a state; it does not guarantee employment. Statutory law provides that local boards of education have the legal authority to enter into contracts with professional personnel. The relationship between a school board and its professional employees is contractual. The general legal principles governing contracts—offer and acceptance, competent parties, consideration, legal subject matter, and proper form—apply to this contractual relationship (Alexander & Alexander, 2011).

*Offer and acceptance* pertains to the job description, compensation level, and time of performance to which both parties have agreed. In most states, because only the board of education has the power to employ personnel, it must exercise that function itself. It cannot delegate the employment duty to the superintendent of schools or to individual members of the school board. Further, a local board of education is considered to be a legal body only as a corporate unit; therefore, for a board to enter into a valid contract with a teacher or other professional employee, there must be a meeting of the board.

*Competent parties* means that, for a valid contract to exist, the parties must be authorized by law to enter into a contractual relationship. By law the school board possesses the legal authority to enter into contracts. A teacher or other professional employee is legally competent to contract providing she possesses the necessary certification and meets other state requirements. An application of this element of contracts is found in a Kentucky case. A teacher lacked a certificate when she began teaching and was ineligible for one because she was under the state's minimum-age requirement for certification. Consequently, the contract between the parties was void, and the teacher was not entitled to receive a salary for the work she performed while a minor (*Floyd County Bd. of Educ. v. Slone* (1957)).

*Consideration* pertains to the promises bargained for and exchanged between the parties. Consideration is something of value—usually money or the equivalent. Promises to perform services gratuitously are not contracts, because they are not supported by consideration. To have valid consideration, each party must give up something of value. In the case of an employment contract, consideration consists of the exchange of promises between the employee and the school district. The employee promises to perform specified services, and the school board promises to pay a specified salary.

*Legal subject matter* refers to mutual assurance between the parties that the job and its performance would not be a violation of the law. Finally, *proper form* means that all legal requirements, as stipulated in the state's statutes, must be followed in order for a contract to be valid. The precise form for contracts may vary from one state to another, but in most states, the statute requires that contracts with professional personnel be written (*Jones v. Houston Independent School District*, 1991; 1992).

The policies and procedures of the local board of education, provisions of the state constitution and its statutes, and the collective bargaining agreement, if there is one, are considered part of the contract between the school district and the teacher or other professional employee. It is recommended, therefore, that the aforementioned inclusions to an employee's contract be referenced either in the body or on the face of the contract; they then become expressly part of the individual employment contract.

### **Termination of Employment**

Local boards of education possess the legal authority to terminate the employment of school personnel. The U.S. Supreme Court bestowed on school boards this authority when it held that "... school authorities have the right and the duty to screen the officials, teachers, and employees as to their fitness to maintain the integrity of the schools as part of ordered society . . ." (*Adler v. Bd. of Educ.*, 1952). However, despite the legal authority of a board of education to terminate the employment, it cannot arbitrarily discharge personnel at any time. Tenure, defined by state statutes, confers upon teachers a property interest in continued employment; tenured teachers can be dismissed only for sufficient cause specified in state law.

### **Tenure Law**

Tenure statutes protect teachers (and other school district personnel specifically enumerated in state statutes) from arbitrary actions by local boards of education. The courts have sustained the constitutionality of such statutes. Teachers' Tenure Act cases (Teachers' Tenure Act Cases, 1938) have concluded that tenure exists to protect competent teachers and other members of the teaching profession against unlawful and arbitrary board actions and to provide orderly procedures for the dismissal of unsatisfactory teachers and other professional personnel.

Tenure is attained by complying with specific provisions prescribed by state statutes. The nature of these provisions varies from state to state, but certain conditions are included in most legislation. Nearly all statutes require that teachers serve a probationary period before tenure becomes effective. Generally, the probationary period ranges from three to five years, during which time a teacher is employed on a term contract. On completion of the probation period, personnel acquire tenure either automatically or by school board action. Texas law is an exception and permits the local school board to choose between adopting continuing contracts and remaining under term contracts, in which case teachers do not have tenure (*White v. South Park, I.S.D.*, 1983).

Which positions are to be covered under tenure law is within the prerogative of state legislatures. In some jurisdictions, tenure legislation extends to selected administrative positions, but rarely to superintendents. Others afford tenure only to teachers. For example, in South Carolina, South Dakota, and Missouri, a school administrator possessing a teacher's certificate is a "teacher" within the meaning of tenure laws (*Snipes v. McAndrew*, 1984); *Waltz v. Bd. of Educ.* 1983; *Fuller v. N. Kansas City S.D.*, 1982). In Kentucky, "(t)he term ' administrator' for the purpose of (tenure)

shall mean a certified employee, below the rank of superintendent . . .” (Ky. Rev. Stat., Ch. 161.720, § 8, 2002).

Although principals and certain other supervisory personnel can acquire tenure either as teachers or as principals in states having tenure laws, superintendents are not generally covered by tenure in that position unless the statute specifically indicates such inclusions. For example, the Illinois Supreme Court ruled that, because they are district employees who require certification, superintendents are covered by the tenure law, but that the tenure protection extended only to a teaching position and not to an administrative one (*Lester v. Bd. of Educ. of S.D. No. 119*, 1967). On the other hand, tenure can be acquired by superintendents in New Jersey (*N.J. Stat. Ann.*, Sec. 18A:28-5(4) 2004).

**Non-renewal and dismissal.** In discussing the termination of employment of teachers and supervisory personnel, the terms *non-renewal* and *dismissal* are often used interchangeably. There is a substantial difference, however, in the manner in which the termination operates in each case. If not protected by tenure, a school employee may be nonrenewed for no reason or for any reason whatsoever, providing it does not violate an employee’s substantive constitutional rights (e.g., free speech, protection against racial discrimination). Courts have reasoned in these cases that the contract has simply terminated and there is no “expectancy of continued employment.” Dismissal, however, whether under tenure status or during an unexpired contract, is permissible only “for cause.” Consequently, a dismissal of a tenured employee or a nontenured professional during a contract year is entitled to a due process hearing embodying all the statutory and constitutional safeguards.

**Dismissal procedures.** Most tenure laws provide specific procedures for dismissing tenured employees. The procedure typically includes three elements: notice by a specific date, specification of charges against the employee, and a hearing at which the charges are discussed (Alexander & Alexander, 2011). When state law describes a specific procedure for dismissal, it must be followed exactly to make the action legal.

Besides the procedures required under state law, tenure rights qualify for constitutional procedural protections encompassed within the concepts of *property* and *liberty interests* under the due process clause of the Fourteenth Amendment. The holding of a teaching position qualifies as a property right if the employee has an unexpired contract or has acquired tenure. The aforementioned protections of the Fourteenth Amendment do not normally extend to nontenured employees. The Supreme Court in *Bd. of Regents v. Roth*, 1972 has affirmed the view of the courts that nontenured employees have no property or liberty interests in continued employment. In exceptional situations, courts have recognized “de facto tenure” where there was no tenure law, but tenure was acquired by custom and precedent (*Perry v. Sinderman*, 1972). However, de facto tenure is not possible where there is a well-established statewide system.

A liberty interest would be an issue in dismissal, and due process required, when evidence exists that a charge has been made that places a stigma on an employee’s reputation thus foreclosing future employment opportunities or seriously damaging his standing in the community (*Roth*). A liberty interest would not be a constitutional

safeguard when school board members and school administrators refrain from making public statements or releasing information that is derogatory to the employee. Even when statements are made, if they simply describe unsatisfactory performance in general, normally they do not constitute a constitutional violation of the employee's Fourteenth Amendment rights.

Examples of charges against employees not involving stigma include ineffective teaching methods, inability to maintain classroom discipline, and inability to get along with administrators and colleagues. Failure to award tenure does not automatically create a stigma. Examples of stigmas that qualify for constitutional due process protection include the following charges: manifest racism, immoral conduct, serious mental disorder, a drinking or drug problem, willful neglect of duty, and responsibility for the deterioration of a school (Alexander & Alexander, 2011).

When a liberty or *property interest* is involved, the Fourteenth Amendment requires that the employee be notified of charges, provided with an opportunity for a hearing and representation by counsel, examine and cross-examine witnesses, and have an official record of the hearing. (See Figure 1.)

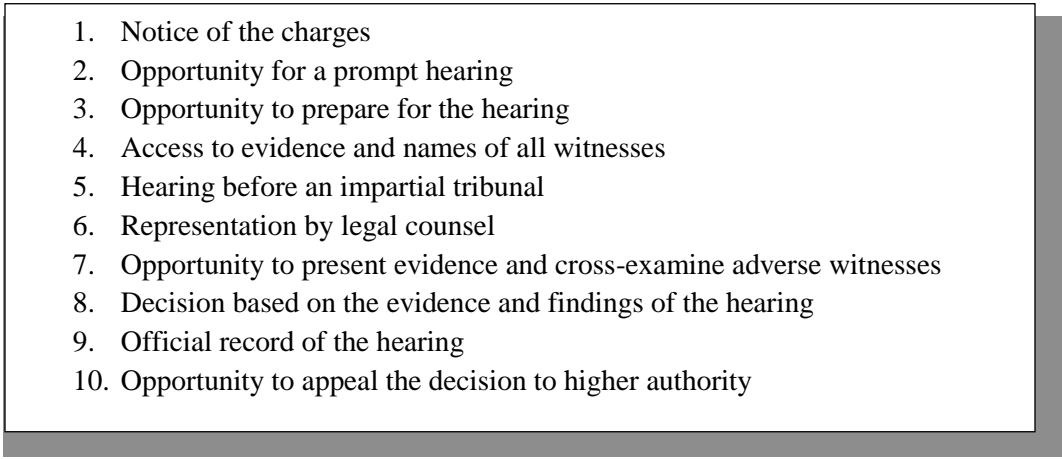
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1. Notice of the charges
  2. Opportunity for a prompt hearing
  3. Opportunity to prepare for the hearing
  4. Access to evidence and names of all witnesses
  5. Hearing before an impartial tribunal
  6. Representation by legal counsel
  7. Opportunity to present evidence and cross-examine adverse witnesses
  8. Decision based on the evidence and findings of the hearing
  9. Official record of the hearing
  10. Opportunity to appeal the decision to higher authority

Figure 1. Procedural due process elements in employee dismissal proceedings.

Causes for dismissal are generally specified in state statutes and differ from one state to another; however, there are similarities. For example, in Kentucky tenured employees can be dismissed for insubordination; immoral character or conduct; physical or mental disability; or inefficiency, incompetency, or neglect of duty (*Ky. Rev. Stat.*, Ch. 161.790, 2002). In Illinois cause for dismissal is specified as incompetency, cruelty, negligence, immorality or other sufficient cause and whenever in the board's opinion a teacher is not qualified to teach or the best interests of the school require it (*Ill. Ann. Stat.*, Ch. 122, Sec 10-22.4, 2002). In Connecticut cause for dismissal is enumerated as inefficiency, incompetency, insubordination, moral misconduct, disability as shown by competent medical evidence, elimination of position, or for other due and sufficient cause (*Conn. Gen. Stat. Ann.*, Tit. 5A, § 10-151, 2003).

## Conclusion

Except for limitations imposed by the federal Constitution and civil rights laws, state statutes govern educators' employment. The state prescribes general requirements for certification, contracts, tenure, and dismissal. Local school boards must follow state laws and may impose other requirements. In general, the following terms and conditions govern educators' employment. The state establishes minimum qualifications for certification. Teacher contracts must satisfy the general principles of contract law. Tenure confers on teachers a property interest in continued employment. Dismissal of tenured teachers must be based on sufficient cause and accompanied by procedural due process.

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