

Recent Teacher Policy Changes in Tennessee: Achieving and Maintaining Tenure

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March 2012

Tenure for primary and secondary school teachers was redefined in Tennessee with the passage of Public Chapter 70 (2011). Tenure is a continuing employment status for teachers who have met the requirements of a probationary period and who cannot be fired without just cause and due process.¹ Exhibit 1 highlights the recent changes.

Exhibit 1: 2011 Changes to Teacher Tenure

Tenure Characteristic	Before the 2011 Change ²	After the 2011 Change ³
Tenure Definition	The statutory requirements, conditions, relations and provisions in this part under which a teacher employed by a board holds a position as a teacher under the jurisdiction of the board.	The employment status other than probation that a teacher may be under while teaching in public schools.
Probationary Period to be Eligible	Three school years, employed in a regular (not interim) position during the last year.	Five school years, employed in a regular (not interim) position during the last two years.
Evaluation Scores to be Eligible	Did not apply.	Must receive high evaluation scores (4 or 5) during the last two years of the probationary period
Rehiring to be Eligible	The teacher must be reemployed by the school board for service after the probationary period.	The teacher must be reemployed by the director of schools for service after the probationary period.
Loss of Tenure	Cannot lose tenure status while employed.	If two consecutive evaluation scores are low (1 or 2), the teacher loses tenure and returns to probationary status
Causes for Dismissal	Inefficiency means being below the standards of efficiency maintained by others currently employed for similar work, habitually tardy, inaccurate or wanting in effective performance of duties.	Inefficiency means the same as before, plus having evaluations scored as below expectations or significantly below expectations (1 or 2)

Background

State law provides certain rights for tenured teachers and sets the criteria to earn and maintain tenure. The original state tenure law was enacted in 1951 and was revised to include vocational teachers in 1977.⁴ The requirements for achieving and maintaining tenure did not change substantially until 2011. All public school teachers in Tennessee work under contract until they receive a dismissal notice or their contract is not renewed.⁵ Under tenure, teachers' contracts are automatically renewed until they resign, retire, are dismissed for cause (fired), or are returned to probationary status.⁶ A tenured teacher who loses a job because the position has been eliminated is placed on a list for reemployment in the first vacancy for which the teacher qualifies.⁷ Teachers can be fired only for certain specified causes, whether they have tenure or not.⁸ If teachers receive a notice of dismissal for cause, they have due process rights, including a full hearing, with right to counsel and to call witnesses, and the right to judicial review.⁹ Causes for dismissal include incompetence, inefficiency, neglect of duty, unprofessional conduct, and insubordination, as defined by law.¹⁰ Conditions under which teachers may lose tenure status are discussed later in this brief.

Once a teacher becomes eligible for tenure, the teacher must be recommended to the local school board for tenure by the director of schools. If no such recommendation is made, the teacher's contract is not renewed. If the school board does not grant tenure, the teacher can no longer continue employment in the district.¹¹

Implications of Changes

Lengthening the probationary period and adding the criterion of high evaluation results are expected to make receiving tenure a more rigorous process; fewer teachers are expected to receive tenure in the future. Previously, most teachers received positive evaluations and approximately 90 percent of those eligible for tenure received it.¹² With the change from a three-year probation period to a five-year period, there is a potential for more teachers to leave a district or to leave the teaching field before receiving tenure. With the more intensive evaluation process for teachers adopted in 2011 and the requirement that only high-scoring teachers be eligible for tenure, it is expected that fewer teachers than in the past will receive tenure.

Exhibit 2 shows a projection from the Department of Education of a possible distribution of teacher evaluation scores. The projections are based on previous data from value-added scores and selected schools that have used the same teacher observation format.¹³ Agency officials expect that statewide results will vary from this projection, depending on the differences in actual student achievement scores and broadly-implemented teacher observation scores from the research-based model.¹⁴

Under the new law, teachers become eligible for tenure if they score a 4 or 5 in the last two years of their probationary period or for two consecutive years after the probationary period. Since a majority of teachers are not expected to earn evaluation scores above 3, they would not initially become eligible for tenure. Those with scores of 3 can continue teaching and remain in probation status indefinitely.

Exhibit 2: Department of Education Predicted Distribution of Teacher Evaluation Scores

Score/Rating	Predicted Distribution	Description
1	3-5%	Significantly below expectations
2	15-25%	Below expectations
3	40-50%	Meets expectations
4	15-25%	Above expectations
5	5-10%	Significantly above expectations

Source: Kevin Huffman, Commissioner of the Tennessee Department of Education, Memorandum to Colleagues, Sept. 22, 2011.

In the past, tenure could not be rescinded until the teacher resigned, retired, or was dismissed for cause.¹⁵ Under the new law, low evaluation scores can cause teachers to lose tenure status during their career and can be considered as a cause for dismissal. The new tenure law provides that any teacher who has acquired tenure, but subsequently receives two consecutive years of evaluation scores indicating performance below or significantly below expectations (scores of 2 or 1) shall be returned to probationary status.¹⁶ Once a teacher earns two consecutive years of high evaluation scores (a score of 4 or 5), he or she is then again eligible for tenure and will either be recommended for tenure or nonrenewed. Teachers who earned tenure prior to July 1, 2011, cannot be returned to probation status, regardless of their evaluation scores.

Causes for which teachers can be dismissed include incompetence, inefficiency, neglect of duty, unprofessional conduct, and insubordination. The new tenure law redefines teacher “inefficiency.” Previously, inefficiency was defined as performance below the standards of efficiency maintained by others for similar work, being habitually tardy, being inaccurate, or wanting in effective performance of duties.¹⁷ The 2011 statute includes receiving evaluation scores of below or significantly below expectations (scores of 2 or 1) as an indicator of inefficiency. The definition does not specify a particular number of low evaluations for which dismissal would be implemented. This change in the definition of “inefficiency” provides a means to dismissing teachers who earned tenure prior to July 2011. Although they cannot lose tenure because of low evaluation scores, they can be dismissed for inefficiency.

The 2011 tenure law left the provisions for due process in the dismissal of a teacher for cause essentially the same. In 2010, the First to the Top Act revised the due process procedures to require dismissal hearings for tenured teachers to be heard by impartial hearing officers selected by the school board, rather than directly by the board. This change made the dismissal hearings for tenured and nontenured teachers more uniform.¹⁸ (Note that the due process provisions for nontenured teachers discussed below apply only to teachers dismissed for cause, and not to teachers who simply have not had their contracts renewed.)

The current statute (*TCA* §49-5-511(a)(1) and (2)) applies to teachers whether or not they have been granted tenure:

No teacher shall be dismissed or suspended except as provided in this part. The causes for which a teacher may be dismissed are as follows: incompetence, inefficiency, neglect of duty, unprofessional conduct and insubordination, as defined in §49-5-501.

Two statutes control teachers’ rights in the event of dismissal for cause: *TCA* §49-2-301(b)(1)(GG) gives the director of schools authority to dismiss nontenured teachers and §§49-5-511(a)(4)-(5) and 49-5-512 give the school board authority to dismiss tenured teachers.¹⁹ Both laws provide the following due process procedures:

- The charges made against the teacher must be given to the teacher in writing;
- The teacher has a right to a full and complete hearing, to be represented by counsel, and to call and subpoena witnesses;
- The teacher or the director of schools may appeal the hearing decision to the school board, and the board shall hear the appeal on the record with no new evidence. Either party may appeal the board’s decision to chancery court.²⁰

The law provides hearings for nontenured teachers to take place before an impartial hearing officer selected by the school board. For tenured teachers, the law previously prescribed dismissal hearings to be held before the school board, with the exception that in Davidson and Shelby counties such hearings would be before an impartial hearing officer selected by the board.²¹ The 2010 First to the Top Act changed the provisions for tenured teachers, requiring teacher dismissal hearings in all counties to be heard by a hearing officer, and to allow either party to appeal the officer’s decision to the school board.²²

Endnotes

- ¹ Compiled from various definitions. See primarily Asenith Dixon, Southern Regional Education Board, “Focus on Teacher Reform Legislation in SREB States: Tenure, Dismissal and Performance Pay Policies,” Nov. 2011, p. 1; U.S. Legal.com, <http://definitions.uslegal.com> (accessed Nov. 29, 2011) and Webster’s Ninth New Collegiate Dictionary (1983).
- ² *Tennessee Code Annotated* §§49-5-501 through 49-5-513, 2009 Replacement version.
- ³ *Tennessee Code Annotated* §§49-5-501 through 49-5-513, 2011 Supplement; Tennessee Department of Education, “How Team Works: Ratings,” <http://team-tn.org> (accessed Jan 31, 2012); State Board of Education, *Teacher and Principal Evaluation, Policy 5.201*, (General Guideline 3), Nov. 4, 2011, p.1, <http://www.state.tn.us/sbe> (accessed Jan 31, 2012).
- ⁴ Public Acts 1951, Chapter 76 and Public Acts 1977, Chapter 33.
- ⁵ *Tennessee Code Annotated* §49-5-409.
- ⁶ *Tennessee Code Annotated* §49-5-501(11); Christy Ballard, General Counsel, Tennessee Department of Education, telephone interview, Dec. 15, 2011.
- ⁷ *Tennessee Code Annotated* §49-5-511(b)(3).
- ⁸ *Tennessee Code Annotated* §49-5-511(a)(1) and (2).
- ⁹ *Tennessee Code Annotated* §§49-5-512 and 49-2-301(b)(1)(GG).
- ¹⁰ *Tennessee Code Annotated* §§49-5-511(a)(1) and (2), §§49-5-501(3), (5), (6), (7), and (8).
- ¹¹ *Tennessee Code Annotated* §49-5-504(b).
- ¹² Kevin Huffman, Commissioner of Tennessee Department of Education, Testimony before the House Committee on Education and Labor, July 27, 2011; Patrick McGuinn, *Ringing the Bell for K-12 Teacher Tenure Reform*, Center for American Progress, Feb. 2010, p.30, <http://www.americanprogress.org> (accessed Dec 5, 2011); Kelli Gauthier, “Jobs for Life?,” *Chattanooga Times Free Press*, April 18, 2010, <http://www.timesfreepress.com> (accessed Oct 31, 2011).
- ¹³ Kevin Huffman, Commissioner of the Tennessee Department of Education, Memorandum to Colleagues, Sept. 22, 2011.
- ¹⁴ Emily Barton, Assistant Commissioner of Curriculum and Instruction, Tennessee Department of Education, e-mail, Dec. 21, 2011.
- ¹⁵ Public Acts 1951, Chapter 76, §1(4)(a). There did exist in law a provision for limited tenure, which applied to teachers who had completed the three-year probationary period but who had not completed their bachelor’s degree. The limited tenure was granted for three years and was renewable if the teacher had acquired at least 12 quarter hours of college credit.
- Limited tenure could become permanent tenure when a teacher had earned a bachelor’s degree. See Public Acts 1951, Chapter 76, §3. Provisions concerning limited tenure were deleted as obsolete by the Code Commission in 2009. See TCA 2009 Replacement, Code Commission Note to §49-5-503.
- ¹⁶ *Tennessee Code Annotated* §49-5-504 (e).
- ¹⁷ *Tennessee Code Annotated* §49-5-501(6), (2009 Replacement edition).
- ¹⁸ Christy Ballard, General Counsel, Tennessee Department of Education, e-mail, Feb. 15, 2012.
- ¹⁹ Office of the Attorney General, Opinion No. 07-117, Aug. 8, 2007.
- ²⁰ *Tennessee Code Annotated* §§ 49-2-301(b)(1)(GG) (i), (iii), (v), (vi), (vii); 49-5-511(a)(5); 49-5-512(a)(4) and (c)(1),(3),(4), (5).
- ²¹ *Tennessee Code Annotated* § 49-5-512(a) and (c), (2009 Replacement edition).
- ²² *Tennessee Code Annotated* § 49-5-512(a) and (c).



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