

Marion County Board of Education

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Separation Practices for Non-Tenured Teachers

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SUSPENSION PENDING AN INVESTIGATION¹

The director of schools may suspend a teacher at any time that may seem necessary, pending investigation or final disposition of a case before the board or an appeal. Under no circumstances shall the director of schools suspend a non-tenured teacher with pay. If reinstated, the nontenured teacher shall be paid full salary for the period of suspension, unless suspension without pay is deemed to be an appropriate penalty.

SUSPENSION OF THREE DAYS OR LESS²

A director of schools/designee may suspend a teacher for incompetence, inefficiency, neglect of duty, unprofessional conduct and insubordination. Before an employee is suspended s/he shall be: (1) provided with written notice, including the reasons for the suspension along with an explanation of the evidence; (2) given an opportunity to respond to the director at a recorded conference, if requested within five (5) days; and (3) given a written decision of the suspension within ten (10) days. Both parties may be represented by counsel at the conference, which shall be recorded.

DISMISSAL OR SUSPENSION GREATER THAN THREE DAYS

The director of schools may dismiss or suspend for more than three days any non-tenured teacher during the contract year for incompetence, inefficiency, insubordination, improper conduct or neglect of duty after giving the nontenured teacher, in writing, due notice of the charges.

The director of schools shall give the non-tenured teacher an opportunity for a full and complete hearing before an impartial hearing officer.³

The Board will appoint an impartial hearing officer to conduct such hearings. The hearing officer will hear the case and the employee shall have the right to:

1. be represented by counsel;
2. call and subpoena witnesses;
3. examine all witnesses; and
4. require that all testimony be given under oath.

Factual findings and decisions in all dismissal cases shall be reduced to written form and delivered to the affected employee within ten (10) working days following the close of the hearing. The employee may appeal the decision to the Board within ten (10) working days of the hearing officer rendering the written decision to the employee. Written notice of appeal to the Board shall be given to the director of schools. Within twenty (20) days on receipt of notice, the director shall prepare a copy of the proceedings, transcript, documentary and other evidence presented and provide the Board a copy of the same.

The Board shall hear the appeal. No new evidence shall be introduced. The non-tenured teacher may appear in person or be represented by counsel and argue why the decision should be modified or reversed.

The Board shall take one of the following actions:

1. sustain the decision;
2. send the record back if additional evidence is necessary; or
3. revise the penalty or reverse the decision.

Before any decision to dismiss is made, a majority of the membership of the Board shall concur in sustaining the charges. The Board shall render a decision on the appeal within ten (10) working days after the conclusion of the hearing.

The director of schools shall also have the right to appeal any adverse ruling by the Personnel Hearing Officer in same manner as the non-tenured teacher.

Within twenty (20) days after receipt of notice of the decision of the Board, either party may appeal to the chancery court in the county where the school system is located. The Board shall provide the entire record of the hearing to the court.

NONRENEWAL

Non-tenured teachers are subject to the same rules and regulations and are entitled to the privileges of employment enjoyed by tenured teachers except that they have no claim upon continuing employment or tenure protections.

The principal is responsible for discussing deficiencies as part of the evaluation process with the nontenured teacher and providing assistance for overcoming these deficiencies.

The director of schools is under no obligation to re-employ nontenured teachers at the end of their contract period. If the director of schools determines not to renew the contract of a non-tenured teacher,¹ the following action shall be taken:

1. The Board shall be notified at the next regular board meeting; and
2. Written notice of non-renewal shall be hand delivered or sent to the employee by registered mail so that it will be received by the employee **prior to June 15.**⁴

RESIGNATION

A teacher shall give the director of schools notice of resignation at least thirty (30) days before the effective date of the resignation. A teacher, who fails to give such notice, in the absence of justifiable extenuating circumstances, shall forfeit all tenure status. The Board may waive the thirty (30) days notice requirement and permit a teacher to resign in good standing.

The conditions under which it is permissible to break a contract with the Board are as follows:

1. The incapacity on the part of the teacher to perform the contract as evidenced by the certified statement of a physician approved by the Board;
2. The release by the Board of the teacher from the contract which the teacher has entered into with the Board.⁵

Any teacher on leave shall notify the director of schools in writing at least thirty (30) days prior to the date of return if the teacher does not intend to return to the position from which he/she has taken leave. Failure to render such notice may be considered a breach of contract.⁶

Upon a breach of contract, the Board, upon a motion recorded in its minutes, may file a complaint with the Commissioner and request the suspension of a teacher's certificate. After the Commissioner has provided the teacher an opportunity for defense during a hearing, the Commissioner may suspend the certificate for no less than thirty (30) and no more than three hundred sixty-five (365) days.⁷

RETIREMENT

Retirement shall mean a termination of services under conditions which will allow the employee to draw benefits from retirement plans and/or social security benefits.

Employees eligible for retirement benefits may elect to retire at any age according to the provisions of the retirement system.

Central office personnel shall assist employees in securing retirement benefits; however, it shall be the responsibility of the retiring employee to provide verification of eligibility in writing from TCRS to the central office. It shall be the responsibility of the retiring employee to file for benefits.

Employees who retire under TCRS may be employed up to one hundred twenty (120) days per year without loss of retirement benefits. Retired teachers may substitute teach for an additional ninety (90) days if the director of schools certifies in writing to the Board that no other qualified personnel are available to substitute teach.⁸

The director of schools may employ teachers retired for at least one year for full-time employment as a kindergarten through twelfth grade teacher on a year-to-year basis. Retirement benefits will not be lost or suspended under certain conditions, which include but are not limited to the following:⁹

1. The director of schools of the employing system must certify in writing that no other qualified individuals are available to fill the position;
2. The Commissioner of Education must certify that the employing school system serves an area that lacks qualified teachers to serve in the position to be filled;
3. The retired teacher must hold a valid license and shall not be entitled to tenure status;
4. The retired teacher shall not be eligible to accrue additional retirement benefits, accrue leave or receive medical insurance coverage; and
5. The salary paid to the retired member shall not be less than the rate of compensation set by the Board for teachers with no experience filling similar positions, nor more than eighty-five percent (85%) of the rate of compensation set by Board for teachers with comparable training and years of experience filling similar positions.

(Note: Nonrenewal of non-tenured teachers after the contract year is not suspension or dismissal and does NOT follow the suspension/dismissal procedures outlined in this policy. Rather, nonrenewal of nontenured teachers after the contract year follows the nonrenewal procedures outlined in this policy.)

Legal References:

1. TCA 49-5-511(a)(3)
2. TCA 49-2-301 (b)(1)(EE), Tenn. Code Ann. § 49-5-512(d)
3. TCA 49-2-301 (b)(1)(GG)
4. TCA 49-5-409(a); OP Tenn. Atty. Gen. 97-123 (September 2, 1997);
OP Tenn. Atty. Gen. 99-091 (April 12, 1999)
5. TCA 49-5-508
6. TCA 49-5-706
7. TCA 49-5-411
8. TCA 8-36-805
9. TCA 8-36-821