

Regular Session, 2014

HOUSE BILL NO. 1172

BY REPRESENTATIVE WESLEY BISHOP

TEACHERS: Provides relative to due process rights for teachers

1 AN ACT

2 To amend and reenact R.S. 17:441, 442, and 443(B)(1), relative to due process for teachers;
3 to provide for various categories of teachers according to their years of service and
4 other criteria; to provide relative to the removal of such teachers; to provide relative
5 to definitions; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 17:441, 442, and 443(B)(1) are hereby amended and reenacted to
8 read as follows:

9 PART II. TENURE AND DUE PROCESS RIGHTS

10 SUBPART A. TEACHERS IN GENERAL

11 §441. Definitions

12 As used in this Subpart, the following terms shall have the following
13 definitions:

14 ~~the~~ (1) The word "teacher" means:

15 ~~(+)~~(a) Any employee of a local public school board, state special school, or
16 a school or program administered by the special school district who holds a teacher's
17 certificate and whose legal employment requires such teacher's certificate;

18 ~~(2)~~(b) Any school lunch supervisor employed by a local public school board
19 who holds a special parish school lunch supervisor's certificate issued by the
20 Department of Education of the state of Louisiana and whose employment requires

1 such certificate. No employee as defined in this ~~Paragraph~~ Subparagraph hired on
2 or after July 1, 2012, shall be eligible to acquire tenure.

3 (2) A "transfer teacher" is a teacher who was previously employed as a
4 teacher by a public school governing authority in the state or as a tenured or
5 permanent teacher in a public school in another state.

6 (3) A "novice teacher" is a teacher who has been employed by the governing
7 authority of a public elementary or secondary school for less than one year and who
8 does not meet the definition of emerging teacher, provisional teacher, professional
9 teacher, or master teacher. The term "novice teacher" also includes a transfer teacher
10 who has not completed a one-year term as a novice teacher.

11 (4) An "emerging teacher" is a teacher who has successfully completed a
12 one-year term as a novice teacher, who has been employed by the governing
13 authority of a public elementary or secondary school for less than three years, and
14 who does not meet the definition of provisional, professional, or master teacher. The
15 term "emerging teacher" shall also include a transfer teacher who has successfully
16 completed a one-year term as a novice teacher and a transfer teacher who was
17 previously employed as a permanent or tenured teacher in a public school in another
18 state.

19 (5) A "provisional teacher" is a teacher who has been employed by a public
20 school governing authority for more than three years but fewer than four years and
21 who has not attained at least the mid-range of effectiveness in all areas evaluated by
22 the public school governing authority by the second semester of his third year of
23 employment with such governing authority. The term "provisional teacher" shall
24 also include a transfer teacher who was previously employed as a teacher by a public
25 school governing authority in the state and attained tenure or due process rights
26 pursuant to R.S. 17:442.

27 (6) A "professional teacher" is a teacher who has acquired tenure or due
28 process rights pursuant to R.S. 17:442. A teacher shall retain his status as a
29 professional teacher as long as he attains at least the mid-range of effectiveness in

1 all areas evaluated by the governing authority of a public elementary or secondary
2 school and when he becomes a master teacher.

3 (7) A "master teacher" is a teacher who has been employed as a classroom
4 teacher for more than seven years, who has earned "effective" to "highly effective"
5 ratings for four of seven years, who has retained "effective accomplished" or "highly
6 effective" ratings while classified as a master teacher, who has earned a master's
7 degree, a doctorate degree, or National Board Certification that is continuous and
8 current, and who has demonstrated service to the teaching profession, professional
9 organizations, and the community in which he is employed.

10 §442. Tenure; due process

11 A.(1)(a) A teacher who ~~has~~ acquired tenure before September 1, 2012,
12 retains tenure, shall be designated as a professional teacher, and is subject to the
13 provisions of this Section.

14 ~~(b) Effective beginning on July 1, 2012, a~~ (2) A teacher rated "~~highly~~
15 ~~effective" for five years within a six-year period~~ who is designated as an emerging
16 teacher, who is not found unsatisfactory by the public school governing authority,
17 and who has attained at least the mid-range of effectiveness pursuant to the
18 performance evaluation program as provided in R.S. 17:3881 through 3905, referred
19 to in this Section as the "performance evaluation program", by the second semester
20 of his third year of employment with such governing authority shall be granted
21 tenure ~~due process rights, shall be designated as a professional teacher, and shall not~~
22 thereafter be discharged, demoted, or otherwise disciplined except in accordance
23 with R.S. 17:443(B). ~~An emerging teacher who has not attained such level of~~
24 effectiveness by such time may either be retained as a provisional teacher for one
25 year or discharged in accordance with R.S. 17:443(A).

26 ~~(2)(3)~~ (3) A teacher paid with federal funds shall not be eligible to acquire
27 tenure ~~or due process rights, nor shall time spent in employment paid with federal~~
28 funds be counted toward the time required for acquisition of tenure ~~or due process~~
29 rights.

1 B. The school superintendent shall notify a teacher, in writing, when tenure
2 ~~has~~ or due process rights have been awarded and the teacher is deemed to have
3 acquired tenure or such rights on the date specified therein. A teacher who is not
4 awarded tenure or due process rights remains an at-will employee of the public
5 school ~~board~~ governing authority or the special school district but shall acquire
6 ~~tenure~~ due process rights upon meeting the criteria established in ~~Subsection A~~
7 Paragraph (A)(2) of this Section.

8 C. A teacher who is designated as a provisional teacher and who has attained
9 at least the mid-range of effectiveness pursuant to the performance evaluation
10 program by the second semester of his fourth year of employment with the public
11 school governing authority shall automatically be designated as a professional
12 teacher and shall not thereafter be discharged, demoted, or otherwise disciplined
13 except in accordance with R.S. 17:443(B). A provisional teacher who has not
14 attained such level of effectiveness by such time shall be discharged in accordance
15 with R.S. 17:443(A).

16 ~~C.(1) Beginning with the 2013-2014 school year, a tenured~~ D. A teacher
17 designated as a professional teacher shall retain his status as a professional teacher
18 as long as he attains at least the mid-range of effectiveness pursuant to the
19 performance evaluation program. A professional teacher who receives a summative
20 performance rating of "ineffective" at the end of his intensive assistance program
21 pursuant to the performance evaluation program as provided in R.S. 17:3881 through
22 3905 shall immediately lose his tenure and all rights related thereto. If a teacher is
23 rated "highly effective" based on the evidence of the growth portion of the evaluation
24 but is rated "ineffective" according to the observation portion, within thirty days after
25 such finding, the teacher shall be entitled to a second observation by members of a
26 team of three designees, chosen by the local superintendent, which shall not include
27 the principal may either be retained by the public school governing authority for a
28 minimum of one year or discharged in accordance with R.S. 17:443(B).

29 ~~(2) Such teacher shall reacquire tenure if any of the following applies:~~

1 (a) ~~The teacher's "ineffective" performance rating is reversed pursuant to the~~
2 ~~grievance procedure established pursuant to R.S. 17:3883(A)(5). In such case, the~~
3 ~~teacher's tenure shall be immediately reinstated.~~

4 (b) ~~The teacher receives a performance rating of "highly effective" for five~~
5 ~~years within a six-year period subsequent to receiving an "ineffective" rating as~~
6 ~~provided in Subsection A of this Section.~~

7 E.(1) The following conditions shall apply to a transfer teacher who was
8 previously employed as a teacher by another public school governing authority in the
9 state:

10 (a) If he has not acquired tenure or due process rights, he shall receive credit
11 for previous service as a novice teacher, shall complete any remaining service as a
12 novice teacher, if applicable, and shall thereafter be considered an emerging teacher.

13 (b)(i) If he has acquired tenure or due process rights, he shall be considered
14 an emerging teacher and be under provisional status for one year.

15 (ii) By the second semester of his first year of employment with the public
16 school governing authority, if he attains at least the mid-range of effectiveness
17 pursuant to the performance evaluation program, he shall automatically become a
18 professional teacher and shall not thereafter be discharged, demoted, or otherwise
19 disciplined except in accordance with R.S. 17:443(B). If he fails to attain such level
20 of effectiveness by such time, he shall be discharged in accordance with R.S.
21 17:443(A).

22 (2) A teacher designated as a transfer teacher who was previously employed
23 as a permanent teacher in the public schools of another state shall be considered an
24 emerging teacher.

25 §443. Removal of teachers; procedure; right to appeal

26 * * *

27 B.(1) A professional teacher ~~with tenure~~ shall not be ~~removed from office~~
28 discharged, demoted, or otherwise disciplined except upon written and signed
29 charges of poor performance, willful neglect of duty, incompetency, dishonesty,

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 immorality, or of being a member of or contributing to any group, organization,
2 movement, or corporation that is by law or injunction prohibited from operating in
3 the state of Louisiana, and then only if furnished with a copy of such written charges
4 and given the opportunity to respond. The teacher shall have seven days to respond,
5 and such response shall be included in the teacher's personnel file. At the end of this
6 seven-day time period, the superintendent may ~~terminate~~ discipline the ~~teacher's~~
7 ~~employment~~ teacher. A teacher shall not be ~~terminated~~ disciplined for an
8 "ineffective" performance rating until completion of the grievance procedure
9 established pursuant to R.S. 17:3883(A)(5) if a grievance was timely filed. Within
10 seven days after ~~dismissal~~ the action, a teacher may request and upon request shall
11 be granted a hearing by a panel composed of a designee of the superintendent, a
12 designee of the principal or the administrative head of the state special school in
13 which the teacher was employed, and a designee of the teacher. In no case shall the
14 superintendent, the principal or state special school administrative head, or teacher
15 designate an immediate family member or any full-time employee of the school
16 system by which the teacher was employed who is under the supervision of the
17 person making the designation. Such hearing may be private or public, at the option
18 of the teacher, and shall begin within seven business days after receipt of the
19 teacher's request for such hearing. The teacher shall have the right to appear before
20 the tenure hearing panel with witnesses on his behalf and with counsel of his
21 selection, all of whom shall be heard by the panel at the hearing. For the purpose of
22 conducting hearings hereunder, the panel shall have the power to issue subpoenas to
23 compel the attendance of all witnesses. Nothing herein contained shall impair the
24 right to seek supervisory review from a court of competent jurisdiction.

25 * * *

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Wesley Bishop

HB No. 1172

Abstract: Provides relative to due process rights for teachers; provides relative to how certain teachers may be removed from office; defines transfer, novice, emerging, provisional, professional, and master teachers.

Types of teachers

Proposed law provides the following terms and definitions:

- (1) Novice teacher: A teacher who has been employed by a public school governing authority for less than one year and does not meet the definition of emerging, provisional, professional, or master teacher. Includes a transfer teacher who has not completed a one-year term as a novice teacher.
- (2) Emerging teacher: A teacher who has successfully completed a one-year term as a novice teacher, has been employed by a public school governing authority for fewer than three years, and does not meet the definition of provisional, professional, or master teacher. Includes a transfer teacher if he has successfully completed a one-year term as a novice teacher and a transfer teacher who was previously employed as a permanent or tenured teacher in a public school in another state.
- (3) Provisional teacher: A teacher who has been employed by a public school governing authority between three and four years and has not attained at least the mid-range of effectiveness in all areas by the second semester of his third year of employment. Includes a transfer teacher if the transfer teacher was previously employed as a teacher by another public school governing authority in the state and attained tenure or due process rights.
- (4) Professional teacher: A teacher who has acquired tenure or due process rights.
- (5) Master teacher: A teacher who has been employed as a classroom teacher for more than seven years, has earned "effective" to "highly effective" ratings for four of those years, has retained "effective accomplished" or "highly effective" ratings while classified as a master teacher, has earned a master's degree, a doctorate degree, or National Board Certification that is continuous and current, and has demonstrated service to the teaching profession, professional organizations, and the community in which he is employed.
- (6) Transfer teacher: A teacher who was previously employed as a teacher by a public school governing authority in the state or as a tenured or permanent teacher in a public school in another state.

Tenure & due process

Present law provides that a teacher who acquired tenure before Sept. 1, 2012, retains tenure. Proposed law provides that such a teacher shall be designated as a professional teacher.

Present law provides that as of July 1, 2012, a teacher rated "highly effective" for five years within a six-year period pursuant to the present law performance evaluation program shall be granted tenure.

Proposed law instead provides that a teacher who is designated as an emerging teacher, who is not found unsatisfactory by the public school governing authority, and who has attained at least the mid-range of effectiveness by the second semester of his third year of employment with the public school governing authority shall be granted due process rights, shall be designated as a professional teacher, and shall not thereafter be discharged, demoted, or otherwise disciplined except in accordance with proposed law. Provides that an emerging teacher who has not attained such level of effectiveness by such time may either be retained as a provisional teacher for one year or discharged in accordance with present law relative to the removal of nontenured teachers.

Present law provides that a teacher paid with federal funds shall not be eligible to acquire tenure, nor shall time spent in employment paid with federal funds be counted toward the time required for acquisition of tenure. Requires the superintendent to notify a teacher, in writing, when tenure has been awarded and provides that the teacher is deemed to have acquired tenure on the date specified therein. Provides that a teacher who is not awarded tenure remains an at-will employee of the public school board or the special school district but shall acquire tenure upon meeting the required criteria. Proposed law retains present law except refers to the attainment of tenure or due process rights.

Proposed law provides the following relative to a provisional teacher, by the second semester of his fourth year of employment with the public school governing authority:

- (1) If he has attained at least the mid-range of effectiveness, he shall automatically be designated as a professional teacher and shall not thereafter be discharged, demoted, or otherwise disciplined except in accordance with proposed law.
- (2) If he has not attained such level of effectiveness by such time, he shall be discharged in accordance with present law relative to the removal of nontenured teachers.

Present law further provides as follows:

- (1) Beginning with the 2013-2014 school year, a tenured teacher who receives a performance rating of "ineffective" shall immediately lose tenure.
- (2) A teacher who loses tenure for receiving an "ineffective" performance rating shall reacquire tenure if any one of the following conditions applies:
 - (a) The "ineffective" rating is reversed pursuant to the present law grievance procedure.
 - (b) The teacher receives a "highly effective" performance rating for five years within a six-year period.

Proposed law deletes present law and instead provides the following:

- (1) A professional teacher is any teacher who has acquired tenure or due process rights.
- (2) A professional teacher shall retain "professional" status as long as he attains at least the mid-range of effectiveness and when he becomes a master teacher.
- (3) A professional teacher who receives a summative performance rating of "ineffective" at the end of his intensive assistance program may either be retained for a minimum of one year or discharged in accordance with proposed law.

Relative to a transfer teacher previously employed as a teacher by a public school governing authority in the state:

- (1) If he has not acquired tenure or due process rights, he shall receive credit for previous service as a novice teacher, complete any remaining service as a novice teacher, if applicable, and thereafter be considered an emerging teacher.
- (2) If he has acquired tenure or due process rights, he shall be considered an emerging teacher and be under provisional status for one year. By the second semester of his first year of employment with the (new) public school governing authority:
 - (a) If he attains at least the mid-range of effectiveness, he shall automatically become a professional teacher and shall not thereafter be discharged, demoted, or otherwise disciplined except in accordance with proposed law.
 - (b) If he fails to attain such level of effectiveness, he shall be discharged in accordance with present law relative to the removal of nontenured teachers.
- (2) Provides that a transfer teacher who was previously employed as a permanent teacher in the public schools of another state shall be considered an emerging teacher.

Removal of teachers

Present law, relative to nontenured teachers: (1) Authorizes a superintendent to terminate employment upon providing the teacher with written charges therefor and the opportunity to respond. (2) Grants the teacher seven days to respond and requires the response to be included in the teacher's personnel file. Proposed law retains present law.

Present law prohibits a teacher with tenure from being removed from office except upon written and signed charges of poor performance, willful neglect of duty, incompetency, dishonesty, immorality, or of being a member of or contributing to any group, organization, movement, or corporation that is prohibited from operating in the state, and then only if furnished with a copy of the charges and given the opportunity to respond. Proposed law changes this terminology from "a teacher with tenure" to "a professional teacher" and otherwise retains present law.

Present law provides the following procedures relative to the removal of such teachers:

- (1) Grants a teacher seven days to respond to charges and requires such response to be included in his personnel file. Grants the superintendent the authority to terminate the teacher's employment at the end of such time period.
- (2) Prohibits the termination of a teacher for an "ineffective" performance rating until completion of the grievance procedure established in present law.
- (3) Requires that the removed teacher be given a hearing if he requests one within seven days of removal. Provides for appointment of a panel to conduct the hearing. Requires the panel to submit its recommendation to the superintendent, who may reinstate the teacher. If he does not reinstate the teacher, he shall notify the teacher in writing.
- (4) Grants the teacher 60 days to petition a court to review the superintendent's action and determine whether it was arbitrary or capricious. Requires that the record on review be limited to evidence presented to the panel and requires the court to review the matter not later than 10 days after the petition's filing. Provides that if the court reverses the superintendent's action and the teacher is ordered reinstated and restored to duty, he shall be entitled to full pay for any loss of time or salary he may have sustained by reason of superintendent's action.

Proposed law retains present law applicable to disciplinary actions affecting professional teachers.

(Amends R.S. 17:441, 442, and 443(B)(1))