

2016 Regular Session

HOUSE BILL NO. 892

BY REPRESENTATIVE JAMES

TEACHERS: Provides relative to due process for teachers

1 AN ACT

2 To amend and reenact R.S. 17:441, 442(A) and (B), 443, 444(B)(1) and (4)(b) and (c)(i) and
3 (v), and 445, to enact R.S. 17:442.1, 443.1, 444(A), 444.1, and 446, and to repeal
4 R.S. 17:442(C) and 444(B)(4)(c)(iii) and (iv) and (d) and (5), relative to due process
5 for teachers; to provide relative to a teacher's status as probationary or permanent;
6 to provide relative to the discipline of probationary and permanent teachers and of
7 school administrators; to provide relative to the effect of evaluations on the status of
8 teachers; to provide relative to employment contracts; to provide for definitions; and
9 to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 17:441, 442(A) and (B), 443, 444(B)(1) and (4)(b) and (c)(i) and (v),
12 and 445 are hereby amended and reenacted and R.S. 17:442.1, 443.1, 444(A), 444.1, and
13 446 are hereby enacted to read as follows:

14 §441. Definitions

15 For purposes of this Subpart:

16 (1) "Teacher" means:

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

20 A "permanent teacher" is a teacher who has met the requirements of R.S. 17:442(B).

1 A "probationary teacher" is a teacher who has not met the requirements of R.S.
2 17:442(B).

3 (b) Any public school lunch supervisor ~~employed by a local public school~~
4 ~~board~~ who holds a special parish school lunch supervisor's certificate issued by the
5 state Department of Education and whose employment requires such certificate. ~~No~~
6 ~~employee as defined in this Subparagraph hired on or after July 1, 2012, shall be~~
7 ~~eligible to acquire tenure.~~

8 (2) "Discipline" and "disciplinary action" shall include only suspension
9 without pay, reduction in pay for disciplinary reasons, or involuntary demotion or
10 dismissal from his position.

11 (3) "Written notice" is considered given when the notice is hand delivered
12 to the teacher or on the day it is delivered to the teacher by registered mail, certified
13 mail, or a commercial courier as defined in R.S. 13:3204(D).

14 (4) An "administrator" is a person who has been employed in or promoted to
15 a position that pays an annual salary higher than that paid to a teacher, requires a
16 teaching certificate, and requires an administrative or supervisory endorsement.

17 (5) An "evaluation" is the process by which a local school board monitors the
18 continuing performance of its teachers and administrators pursuant to the
19 performance evaluation program provided for in R.S. 17:3881 through 3905.

20 §442. Tenure Probation and permanent status of public school teachers

21 A.~~(1)~~(a) A teacher who ~~has acquired tenure~~ attained permanent status as a
22 teacher on or before September 1, 2012, retains tenure that status and is subject to
23 the provisions of this Section.

24 (b) ~~Effective beginning on July 1, 2012, a teacher rated "highly effective"~~
25 ~~for five years within a six-year period pursuant to the performance evaluation~~
26 ~~program as provided in R.S. 17:3881 through 3905 shall be granted tenure.~~

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

1 ~~B. The school superintendent shall notify a teacher, in writing, when tenure~~
 2 ~~has been awarded and the teacher is deemed to have acquired tenure on the date~~
 3 ~~specified therein. A teacher who is not awarded tenure remains an at-will employee~~
 4 ~~of the public school board or the special school district but shall acquire tenure upon~~
 5 ~~meeting the criteria established in Subsection A of this Section. Effective July 1,~~
 6 ~~2012, every teacher whose final evaluation is within the "effective" range for three~~
 7 ~~consecutive years shall automatically become a permanent teacher.~~

8 * * *

9 §442.1. Effect of evaluations on status of public school teachers

10 A. Any teacher whose final evaluation rating is "ineffective" shall be
 11 provided the intensive assistance required by R.S. 17:3902(C)(2) by the employing
 12 school board.

13 B. A school superintendent shall take disciplinary action pursuant to R.S.
 14 17:443 against any teacher who, despite being provided the intensive assistance
 15 required, receives a final evaluation rating of "ineffective" for two consecutive years.

16 C. No disciplinary action shall be taken against a teacher until the teacher
 17 fully exhausts the grievance procedure established pursuant to R.S. 17:3883(A)(5).

18 D. If a teacher is found "highly effective" based on the evidence of the
 19 growth portion of his evaluation but is found "ineffective" according to the
 20 observation portion, within thirty days after such finding, the teacher shall be entitled
 21 to a second observation by members of a team of three designees, chosen by the
 22 school superintendent, which shall not include the teacher's principal.

23 §443. Discipline of probationary public school teachers; procedure; right of review

24 ~~A. The~~ When a school superintendent ~~may~~ proposes to take disciplinary
 25 ~~action against any nontenured probationary teacher after providing such teacher with~~
 26 ~~the written reasons therefor and providing~~ he shall provide the probationary teacher
 27 with written reasons for the proposed disciplinary action and provide the teacher the
 28 opportunity to respond. The probationary teacher shall have ~~seven~~ ten calendar days
 29 to respond in writing, and such response shall be included in the teacher's personnel

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

1 file. ~~The superintendent shall notify the teacher in writing of his final decision.~~
2 ~~Within sixty days of such notice, the teacher may seek summary review in a district~~
3 ~~court pursuant to Code of Civil Procedure Article 2592. The district court's review~~
4 ~~shall be limited to determining whether the action taken by the superintendent was~~
5 ~~arbitrary or capricious.~~

6 B. (1) ~~A teacher with tenure shall not be disciplined except upon written and~~
7 ~~signed charges by the superintendent or his designee of poor performance, willful~~
8 ~~neglect of duty, incompetency, dishonesty, immorality, or of being a member of or~~
9 ~~contributing to any group, organization, movement, or corporation that is by law or~~
10 ~~injunction prohibited from operating in the state of Louisiana, and then only if~~
11 ~~furnished with a copy of such written charges and given the opportunity to respond.~~
12 ~~The teacher shall have ten calendar days from written notice of the charges to~~
13 ~~respond, in person or in writing. Following review of the teacher's response, the~~
14 ~~superintendent may take interim disciplinary action, which may include placing the~~
15 ~~teacher on administrative leave. The teacher shall not be placed on administrative~~
16 ~~leave without pay unless the teacher has been arrested for a violation of any of the~~
17 ~~following: R.S. 14:42 through 43.5, 80 through 81.5, any other sexual offense~~
18 ~~affecting minors, any of the crimes provided in R.S. 15:587.1, or any justified~~
19 ~~complaint of child abuse or neglect on file in the central registry pursuant to~~
20 ~~Children's Code Article 615. Within ten calendar days after written notice of the~~
21 ~~interim disciplinary action or within ten calendar days after receipt of the teacher's~~
22 ~~response if no interim disciplinary action is taken, a teacher may request a hearing~~
23 ~~before a disciplinary hearing officer. If the teacher fails to timely request a hearing,~~
24 ~~the disciplinary action becomes final. After reviewing the probationary teacher's~~
25 ~~response, the superintendent shall determine whether disciplinary action is~~
26 ~~warranted.~~

27 (2)(a) ~~Upon request for a review hearing, the superintendent shall randomly~~
28 ~~appoint a hearing officer from a list of persons previously approved by the school~~
29 ~~board to serve as "disciplinary hearing officers" for the school board. The school~~

1 board shall maintain a list of at least five hearing officers for districts of fewer than
2 twenty thousand students and a list of at least ten hearing officers for districts with
3 more than twenty thousand students according to the February first student
4 membership count. If a school board fails to maintain such a list, a superintendent
5 may randomly appoint a hearing officer from a list of persons previously approved
6 by the State Board of Elementary and Secondary Education. Only the following
7 persons may serve as a disciplinary hearing officer: a mediator qualified under R.S.
8 9:4106, an arbitrator approved by the American Arbitration Association or the
9 Federal Mediation and Conciliation Service, an attorney, or a retired member of the
10 judiciary. If the superintendent determines that disciplinary action is not warranted,
11 he shall notify the teacher in writing of his decision within ten calendar days.

12 (b) ~~Such hearing may be private or public, at the option of the teacher, and~~
13 ~~shall commence no sooner than ten calendar days nor later than thirty calendar days~~
14 ~~after receipt of the teacher's request for such hearing. For purposes of this Section,~~
15 ~~the disciplinary hearing officer shall have the power to issue subpoenas. The school~~
16 ~~board shall adopt and maintain procedures to govern the conduct of the hearing,~~
17 ~~which shall include, at a minimum, a method for the examination of witnesses and~~
18 ~~the introduction of evidence and for the presence of a court reporter and maintenance~~
19 ~~of the court reporter's record. The teacher shall have the right to appear before the~~
20 ~~disciplinary hearing officer with witnesses on his behalf and with counsel of his~~
21 ~~selection. The disciplinary hearing officer shall hold a hearing and review on~~
22 ~~whether the interim decision of the superintendent was arbitrary or capricious and~~
23 ~~shall either affirm or reverse the action of the superintendent. The disciplinary~~
24 ~~hearing officer shall notify the superintendent and the teacher of his final~~
25 ~~determination, with written reasons, within ten days from the date of the hearing. If~~
26 ~~the superintendent's disciplinary action is affirmed, it shall become effective upon~~
27 ~~the teacher's receipt of the decision of the disciplinary hearing officer. If the~~
28 ~~superintendent's disciplinary action is reversed, the teacher shall be restored to duty.~~
29 If the superintendent determines that disciplinary action is warranted, he shall

1 provide the school board with his written reasons for the proposed disciplinary action
2 and the probationary teacher's response and seek the approval of the school board for
3 such disciplinary action at its next regularly scheduled meeting.

4 (3) ~~Within sixty days from the postmarked date of written notification of the~~
5 ~~decision of the disciplinary hearing officer, the school board or the teacher may~~
6 ~~petition a court of competent jurisdiction to review the matter as a summary~~
7 ~~proceeding pursuant to Code of Civil Procedure Article 2592. The court shall~~
8 ~~determine, based on the record of the disciplinary review hearing, whether the~~
9 ~~disciplinary hearing officer abused his discretion in deciding whether the action of~~
10 ~~the superintendent was arbitrary or capricious. If the action of the superintendent is~~
11 ~~reversed by the court and the teacher is ordered reinstated and restored to duty, the~~
12 ~~teacher shall be entitled to full pay for any loss of time or salary he may have~~
13 ~~sustained by reason of the action of the superintendent. If the school board approves~~
14 ~~the disciplinary action proposed by the superintendent, such disciplinary action shall~~
15 ~~be effective immediately.~~

16 C. ~~For the purposes of this Section, immorality shall mean any conviction~~
17 ~~of a felony offense affecting the public morals enumerated in Part V of Chapter 1 of~~
18 ~~Title 14 of the Louisiana Revised Statutes of 1950. If the school board fails to~~
19 ~~approve the disciplinary action proposed by the superintendent, the probationary~~
20 ~~teacher shall immediately be returned to duty.~~

21 D. ~~The time periods contained in this Section may be extended by mutual~~
22 ~~agreement of the parties. However, paid administrative leave as provided in~~
23 ~~Paragraph (B)(1) of this Section shall not exceed fifty days from notice of the~~
24 ~~superintendent's interim decision. The superintendent shall notify the teacher in~~
25 ~~writing of the school board's decision within three calendar days.~~

26 E. Within ninety calendar days of the probationary teacher's receipt of notice
27 of the school board's decision, the teacher may seek summary review in a district
28 court pursuant to Code of Civil Procedure Article 2592.

1 F. The district court shall determine whether the disciplinary action proposed
2 by the superintendent and approved by the school board was arbitrary or capricious
3 and, if so, the district court shall restore the probationary teacher to duty.

4 §443.1. Discipline of permanent public school teachers; procedure; right of review

5 A. When a school superintendent proposes to take interim disciplinary action
6 against a permanent teacher he shall provide the permanent teacher with written and
7 signed charges of poor performance, willful neglect of duty, incompetency,
8 dishonesty, immorality, or of being a member of or contributing to any group,
9 organization, movement, or corporation that is by law or injunction prohibited from
10 operating in the state of Louisiana, and the opportunity to respond.

11 B. The written and signed charges shall include a complete and detailed list
12 of the specific reasons for the charges, including but not limited to the date and place
13 of alleged offense or offenses and the names of individuals involved in or witnessing
14 such offense or offenses.

15 C. The permanent teacher shall have ten calendar days to respond in person
16 or writing and such response shall be included in the teacher's personnel file.

17 D. After reviewing the permanent teacher's response, the superintendent shall
18 determine whether interim disciplinary action is warranted.

19 E. If the superintendent determines that interim disciplinary action is not
20 warranted, he shall notify the teacher in writing of his decision within ten calendar
21 days.

22 F. If the superintendent determines that interim disciplinary action is
23 warranted, he shall provide the school board with his written reasons for the
24 proposed interim disciplinary action and the permanent teacher's response and seek
25 the approval of the school board for such interim disciplinary action at its next
26 regularly scheduled meeting.

27 G. If the school board approves the interim disciplinary action proposed by
28 the superintendent, the permanent teacher shall be placed on paid administrative

1 leave unless the permanent teacher can be placed on unpaid administrative leave
2 pursuant to Subsection C of this Section.

3 H. If the school board fails to approve the interim disciplinary action
4 proposed by the superintendent, the permanent teacher shall immediately be returned
5 to duty.

6 I. The superintendent shall notify the teacher in writing of the school board's
7 decision within three calendar days.

8 J. A permanent teacher may be placed on administrative leave without pay
9 if the teacher has been arrested for a violation of any of the following: R.S. 14:42
10 through 43.5, 80 through 81.5, any other sexual offense affecting minors, or any of
11 the crimes provided in R.S. 15:587.1.

12 K. Within thirty calendar days of the permanent teacher's receipt of notice of
13 the school board's decision, the teacher may request and shall be granted a hearing
14 before an administrative law judge. If the teacher fails to timely request a hearing,
15 the interim disciplinary action becomes final. All hearings shall be conducted by the
16 Division of Administrative Law created in R.S. 49:991. The Division of
17 Administrative Law shall adopt and maintain procedures to govern the conduct of
18 the hearings conducted by administrative law judges pursuant to this Section.

19 L. The hearing may be private or public, at the option of the teacher, and shall
20 commence no sooner than thirty calendar days nor later than sixty calendar days after
21 receipt of the teacher's request for such hearing.

22 M. The teacher shall have the right to appear before the administrative law
23 judge with witnesses on his behalf and with counsel of his selection.

24 N. The administrative law judge shall hold a hearing and shall determine
25 whether the evidence establishes by a preponderance of the evidence that the
26 permanent teacher was guilty of willful neglect of duty, incompetency, dishonesty,
27 immorality, or of being a member of or contributing to any group, organization,
28 movement, or corporation that is by law or injunction prohibited from operating in
29 the state of Louisiana and whether the interim disciplinary action proposed by the

1 superintendent and approved by the school board was commensurate with the
2 offense or offenses established by the evidence.

3 O. After consideration of all of the evidence, the administrative law judge
4 may affirm, reverse or modify the interim disciplinary action proposed by the
5 superintendent and approved by the school board.

6 P. The administrative law judge shall notify the superintendent and teacher
7 of his final determination, with written reasons, within ten calendar days from the
8 conclusion of the hearing.

9 Q. If the interim disciplinary action proposed by the superintendent and
10 approved by the school board is affirmed, it shall become effective upon the teacher's
11 receipt of the decision of the administrative law judge.

12 R. If the interim disciplinary action proposed by the superintendent and
13 approved by the school board is reversed, the teacher shall be restored to duty.

14 S. If the interim disciplinary action proposed by the superintendent and
15 approved by the school board is modified, it shall become effective upon the
16 teacher's receipt of the decision of the administrative law judge.

17 T. Within ninety calendar days of receipt of the decision of the administrative
18 law judge, the school board or the teacher may petition a court of competent
19 jurisdiction to review the matter as a summary proceeding pursuant to Code of Civil
20 Procedure Article 2592. The court shall determine, based on the record of the
21 disciplinary review hearing, whether the administrative law judge abused his
22 discretion in making the determinations required by Paragraph (N) of this Section
23 and has strictly complied with all of the requirements of this Section. If the action
24 of the administrative law judge is reversed by the court and the teacher is ordered
25 reinstated and restored to duty, the teacher shall be entitled to full pay for any loss
26 of time or salary he may have sustained by reason of the interim disciplinary action
27 proposed by the superintendent and approved by the school board.

1 U. For purposes of this Section, immorality shall mean any conviction of a
2 felony offense affecting the public morals enumerated in Part V of Chapter 1 of Title
3 14 of the Louisiana Revised Statutes of 1950.

4 V. The time periods contained in this Section may be extended by mutual
5 agreement of the parties.

6 §444. ~~Promotions to and employment into positions of higher salary and tenure~~
7 Probation and permanent status of public school administrators

8 A. No public school administrator may earn permanent status in an
9 administrative position.

10 B.(1) ~~Whenever a permanent teacher who has acquired tenure, as set forth in~~
11 ~~R.S. 17:442, in a local public school system or the special school district is promoted~~
12 ~~by the superintendent by moving such teacher from a position of lower salary to one~~
13 ~~of higher salary, such teacher shall not be eligible to earn tenure in the position to~~
14 ~~which he is promoted, but shall retain any tenure acquired as a teacher, pursuant to~~
15 ~~R.S. 17:442~~ to a position as an administrator, he shall retain his status as a permanent
16 teacher. Whenever a probationary teacher is promoted to a position as an
17 administrator, his probationary period shall continue to run and if his final evaluation
18 is within the effective range for three consecutive years he shall automatically attain
19 the status of a permanent teacher. Whenever a person is employed as an
20 administrator, he shall attain the status of a permanent teacher if his final evaluation
21 is within the effective range for three consecutive years.

22 (4)

23 * * *

24 (b) Except as otherwise provided in this Subsection, any person promoted
25 to a ~~higher~~ administrative position pursuant to this Section shall possess a standard
26 Louisiana teaching certificate as well as appropriate administrative/supervisory
27 endorsement when a teaching certificate is a qualification requirement for the post
28 to which the person is being promoted. Any person holding a provisional teaching
29 certificate shall not be promoted to a higher position, except when a person meeting

1 the requirements of this Subsection is not available for employment within the parish
2 or city school system subject to all other requirements as provided by law.

3 (c)(i) The board and the ~~employee~~ administrator may enter into subsequent
4 contracts of employment. Not less than one hundred and twenty days prior to the
5 termination of ~~such a~~ each contract, the superintendent shall notify the employee of
6 termination of employment under such contract, or in lieu thereof the board and the
7 ~~employer~~ administrator may negotiate and enter into a contract for subsequent
8 employment. The board shall negotiate and offer a new contract at the expiration of
9 each existing contract unless the superintendent recommends against a new contract
10 based on an evaluation of the administrator, or unless failure to offer a new contract
11 is based on a cause sufficient to support a mid-contract termination as provided in
12 R.S. 17:444.1, or unless the position has been discontinued, or unless the position has
13 been eliminated as a result of district reorganization, provided that should the
14 position be re-created, the employee, if still employed by the board, shall have first
15 right of refusal to the re-created position. However, no disciplinary action shall be
16 taken against an administrator based upon an evaluation of the administrator until he
17 fully exhausts the grievance procedure established pursuant to R.S. 17:3883(A)(5).

18 * * *

19 (v) If the ~~contracted~~ ~~employee~~ administrator is removed or not renewed and
20 had previously acquired ~~permanent~~ status as a permanent teacher, he shall be
21 returned to his former position as a permanent teacher or to a position paying the
22 same salary as his former position as a permanent teacher unless he chooses to
23 terminate his employment.

24 * * *

25 §444.1. Discipline of public school administrators; procedure; right of review

26 The administrator shall be retained during the term of his contract unless he
27 is found incompetent or ineffective or is found to have failed to fulfill the terms and
28 performance objectives of his contract. However, before an administrator can be
29 removed during the contract period, he shall have the right to written charges and a

1 hearing before an administrative law judge in the manner provided in R.S. 17:443
2 for permanent teachers.

3 §445. Rules and regulations impairing provisions prohibited

4 Nothing contained in the Revised Statutes of Louisiana shall be construed as
5 conferring upon the State Board of Elementary and Secondary Education or any
6 parish or city school board employer of a public school teacher the authority to enter
7 into agreements or make or adopt rules, and regulations, policies or procedures
8 which ~~may~~ impair or nullify the provisions of this Subpart.

9 §446. Teachers and other certified personnel paid with federal funds; probation and
10 permanent status

11 No probationary teacher paid with federal funds shall be eligible to acquire
12 status as a permanent teacher nor shall time spent by a probationary teacher in
13 employment paid with federal funds be counted toward the time required to acquire
14 status as a permanent teacher.

15 Section 2. R.S. 17:442(C) and 444(B)(4)(c)(iii) and (iv) and (d) and (5) are hereby
16 repealed in their entirety.

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)]

HB 892 Original

2016 Regular Session

James

Abstract: Provides relative to due process for teachers.

Present law provides that a teacher who acquired "tenure" before Sept. 1, 2012, retains tenure. Proposed law provides a teacher who has acquired "permanent status" before such date retains that status.

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 as such date, a teacher whose final evaluation is within the "effective" range for three consecutive years shall automatically become a "permanent" teacher.

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 deletes present law.

Proposed law provides the following relative to the effect of evaluations on the status of teachers:

- (1) A teacher whose final evaluation rating is "ineffective" shall be provided the intensive assistance required by present law by the employing school board.
- (2) A superintendent shall take disciplinary action against any teacher who, despite being provided the intensive assistance, receives a final evaluation rating of "ineffective" for two consecutive years.
- (3) No disciplinary action shall be taken against a teacher until the teacher fully exhausts the grievance procedure established pursuant to present law.
- (4) If a teacher is found "highly effective" based on the evidence of the growth portion of his evaluation but is found "ineffective" according to the observation portion, within thirty days after such finding, the teacher shall be entitled to a second observation by members of a team of three designees, chosen by the school superintendent, which shall not include the teacher's principal.

Present law authorizes a school superintendent to take disciplinary action against any nontenured teacher after providing such teacher with the written reasons therefor and the opportunity to respond. Proposed law instead requires a superintendent, when proposing to take disciplinary action against a probationary teacher, to provide the teacher with the written reasons therefor and the opportunity to respond.

Present law grants the teacher seven days to respond and provides that such response shall be included in the teacher's personnel file. Proposed law increases this time period from seven days to 10 days and adds a process relative for disciplinary action.

Proposed law deletes present law provisions relative to the removal of teachers with tenure and adds a new disciplinary process for permanent teachers.

Present law provides that when a tenured teacher is promoted from a position of lower salary to one of higher salary, he shall not be eligible to earn tenure in the position to which he is promoted, but shall retain any tenure acquired as a teacher.

Proposed law instead provides that when a permanent teacher is promoted to a position as an administrator, he shall retain his status as a permanent teacher and that when a probationary teacher is promoted to a position as an administrator, his probationary period shall continue to run; if his final evaluation is within the "effective" range for three consecutive years he shall automatically attain the status of a permanent teacher. When a person is employed as an administrator, he shall attain the status of a permanent teacher if his final evaluation is within the "effective" range for three consecutive years. Proposed law also provides relative to the contracts of administrators.

(Amends R.S. 17:441, 442(A) and (B), 443, 444(B)(1) and (4)(b) and (c)(i) and (v), and 445; Adds R.S. 17:442.1, 443.1, 444(A), 444.1, and 446; Repeals R.S. 17:442(C) and 444(B)(4)(c)(iii) and (iv) and (d) and (5))