

Regular Session, 2014

HOUSE BILL NO. 1277 (Substitute for House Bill No. 987 by Representative Thompson)

BY REPRESENTATIVES THOMPSON AND GAINES

TEACHERS: Provides relative to teacher tenure and the removal of teachers

1 AN ACT

2 To amend and reenact R.S. 17:441, 442(C), 443, and 444(B)(4)(c)(iii), relative to teachers;
3 to provide relative to tenure; to provide relative to removal of a teacher, disciplinary
4 action against a teacher, and right to review and hearing procedures; to provide for
5 disciplinary hearing officers; to provide for definitions; and to provide for related
6 matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 17:441, 442(C), 443, and 444(B)(4)(c)(iii) are hereby amended and
9 reenacted to read as follows:

10 §441. Definitions

11 ~~As used in~~ For purposes of this Subpart, the word "teacher" means:

12 (1) ~~Any~~ "Teacher" means:

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

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

(2) "Discipline" and "disciplinary action" shall include only suspension without pay, reduction in pay, or involuntary demotion or dismissal.

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

§442. Tenure

* * *

C.(1) ~~Beginning with the 2013-2014 school year, a~~ A tenured teacher who receives a summative performance rating of "ineffective" pursuant to the performance evaluation program as provided in R.S. 17:3881 through 3905 shall ~~immediately~~ lose his tenure and all rights related thereto immediately upon exhaustion of the grievance procedure established pursuant to R.S. 17:3883(A)(5), unless the "ineffective" performance rating is reversed, and such rating shall constitute sufficient grounds for disciplinary action pursuant to R.S. 17:443(A). If a teacher is ~~rated~~ found "highly effective" based on the evidence of the growth portion of the evaluation but is ~~rated~~ 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 local superintendent, which shall not include the principal.

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

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

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

§443. ~~Removal~~ Discipline of teachers; procedure; right to ~~appeal~~ of review

A. The school superintendent may ~~terminate the employment of~~ take disciplinary action against any nontenured teacher after providing such teacher with

1 the written reasons therefor and providing the teacher the opportunity to respond.

2 The teacher shall have seven days to respond, and such response shall be included

3 in the teacher's personnel file. The superintendent shall notify the teacher in writing

4 of his final decision. Within sixty days of such notice, the teacher may seek

5 summary review in a district court pursuant to Code of Civil Procedure Article 2592.

6 The district court's review shall be limited to determining whether the action taken

7 by the superintendent was arbitrary or capricious.

8 B.(1) A teacher with tenure shall not be ~~removed from office~~ disciplined

9 except upon written and signed charges by the superintendent or his designee of

10 poor performance, willful neglect of duty, incompetency, dishonesty, immorality,

11 or of being a member of or contributing to any group, organization, movement, or

12 corporation that is by law or injunction prohibited from operating in the state of

13 Louisiana, and then only if furnished with a copy of such written charges and given

14 the opportunity to respond. ~~The teacher shall have seven days to respond, and such~~

15 ~~response shall be included in the teacher's personnel file. At the end of this seven-~~

16 ~~day time period, the superintendent may terminate the teacher's employment. A~~

17 ~~teacher shall not be terminated for an "ineffective" performance rating until~~

18 ~~completion of the grievance procedure established pursuant to R.S. 17:3883(A)(5)~~

19 ~~if a grievance was timely filed. Within seven days after dismissal, a teacher may~~

20 ~~request and upon request shall be granted a hearing by a panel composed of a~~

21 ~~designee of the superintendent, a designee of the principal or the administrative~~

22 ~~head of the state special school in which the teacher was employed, and a designee~~

23 ~~of the teacher. In no case shall the superintendent, the principal or state special~~

24 ~~school administrative head, or teacher designate an immediate family member or~~

25 ~~any full-time employee of the school system by which the teacher was employed~~

26 ~~who is under the supervision of the person making the designation. Such hearing~~

27 ~~may be private or public, at the option of the teacher, and shall begin within seven~~

28 ~~business days after receipt of the teacher's request for such hearing. The teacher~~

29 ~~shall have the right to appear before the tenure hearing panel with witnesses on his~~

1 ~~behalf and with counsel of his selection, all of whom shall be heard by the panel at~~
2 ~~the hearing. For the purpose of conducting hearings hereunder, the panel shall have~~
3 ~~the power to issue subpoenas to compel the attendance of all witnesses. Nothing~~
4 ~~herein contained shall impair the right to seek supervisory review from a court of~~
5 ~~competent jurisdiction.~~ The teacher shall have ten calendar days from written
6 notice of the charges to respond, in person or in writing. Following review of the
7 teacher's response, the superintendent may take interim disciplinary action, which
8 may include placing the teacher on administrative leave. The teacher shall not be
9 placed on administrative leave without pay unless the teacher has been arrested for
10 a violation of any of the following: R.S. 14:42 through 43.5, 80 through 81.5, any
11 other sexual offense affecting minors, any of the crimes provided in R.S. 15:587.1,
12 or any justified complaint of child abuse or neglect on file in the central registry
13 pursuant to Children's Code Article 615. Within ten calendar days after written
14 notice of the interim disciplinary action or within ten calendar days after receipt of
15 the teacher's response if no interim disciplinary action is taken, a teacher may
16 request a hearing before a disciplinary hearing officer. If the teacher fails to timely
17 request a hearing, the disciplinary action becomes final.

18 (2)(a) ~~The tenure hearing panel shall submit its recommendation to the~~
19 ~~superintendent, and the superintendent may choose to reinstate the teacher. If the~~
20 ~~superintendent does not reinstate the teacher, the superintendent shall notify the~~
21 ~~teacher of his final determination, in writing, and such teacher may, not more than~~
22 Upon request for a review hearing, the superintendent shall randomly appoint a
23 hearing officer from a list of persons previously approved by the school board to
24 serve as "disciplinary hearing officers" for the school board. The school board shall
25 maintain a list of at least five hearing officers for districts of fewer than twenty
26 thousand students and a list of at least ten hearing officers for districts with more
27 than twenty thousand students according to the February first student membership
28 count. If a school board fails to maintain such a list, a superintendent may
29 randomly appoint a hearing officer from a list of persons previously approved by

1 the State Board of Elementary and Secondary Education. Only the following
2 persons may serve as a disciplinary hearing officer: a mediator qualified under R.S.
3 9:4106, an arbitrator approved by the American Arbitration Association or the
4 Federal Mediation and Conciliation Service, an attorney, or a retired member of the
5 judiciary.

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

24 (3) Within sixty days from the postmarked date of such written notification;
25 of the decision of the disciplinary hearing officer, the school board or the teacher
26 may petition a court of competent jurisdiction to review whether the action of the
27 superintendent was arbitrary or capricious the matter as a summary proceeding
28 pursuant to Code of Civil Procedure Article 2592. The court shall have jurisdiction
29 to affirm or reverse the action of the superintendent in the matter. The review shall

1 ~~be limited to evidence presented to the tenure hearing panel, and the court shall~~
 2 ~~review the matter not later than ten days after the petition has been filed. determine,~~
 3 ~~based on the record of the disciplinary review hearing, whether the disciplinary~~
 4 ~~hearing officer abused his discretion in deciding whether the action of the~~
 5 ~~superintendent was arbitrary or capricious.~~ If the action of the superintendent is
 6 reversed by the court and the teacher is ordered reinstated and restored to duty, the
 7 teacher shall be entitled to full pay for any loss of time or salary he may have
 8 sustained by reason of the action of the superintendent.

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

12 D. ~~For purposes of this Section, the results of a teacher's evaluation~~
 13 ~~performed pursuant R.S. 17:3881 through 3905 evaluating the teacher's~~
 14 ~~performance as "ineffective" shall constitute sufficient proof of poor performance,~~
 15 ~~incompetence, or willful neglect of duty and no additional documentation shall be~~
 16 ~~required to substantiate such charges. The time periods contained in this Section~~
 17 ~~may be extended by mutual agreement of the parties. However, paid administrative~~
 18 ~~leave as provided in Paragraph (B)(1) of this Section shall not exceed fifty days~~
 19 ~~from notice of the superintendent's interim decision.~~

20 §444. Promotions to and employment into positions of higher salary and tenure

21 B.

22 * * *

23 (4)

24 * * *

25 (c)

26 * * *

27 (iii) The employee shall be retained during the term of a contract unless the
 28 employee is found incompetent or inefficient or is found to have failed to fulfill the
 29 terms and performance objectives of his contract. However, before an employee

1 can be removed during the contract period, he shall have the right to written charges
2 and a fair hearing before ~~the board after reasonable written notice~~ a disciplinary
3 hearing officer in the manner provided in R.S. 17:443.

4 * * *

5 Section 2. This Act shall become effective upon signature by the governor or, if not
6 signed by the governor, upon expiration of the time for bills to become law without
7 signature by the governor, as provided by Article III, Section 18 of the Constitution of
8 Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act
9 shall become effective on the day following such approval.

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)]

Thompson

HB No. 1277

Abstract: Provides relative to teacher tenure and the discipline of teachers.

Present law provides for the requirements and procedures for awarding tenure to a teacher and provides that the term "teacher" includes any school employee who holds a teaching certificate and whose legal employment requires a teaching certificate.

Present law provides that a tenured teacher who receives an "ineffective" performance rating immediately loses tenure and all related rights. Further provides that if a teacher is rated "highly effective" on the growth portion of the evaluation but is rated "ineffective" on the observation portion, the teacher shall be entitled to a second observation. Provides that a teacher shall reacquire tenure (immediately) if the teacher's "ineffective" rating is reversed pursuant to the grievance procedure or the teacher receives a "highly effective" rating for five out of six years after receiving an "ineffective" rating.

Proposed law provides instead that a teacher who receives a summative performance rating of "ineffective" shall immediately lose tenure upon exhaustion of the grievance procedure established pursuant to present law, unless the "ineffective" rating is reversed and provides that such rating shall constitute sufficient grounds for disciplinary action. Proposed law otherwise retains present law.

Present law authorizes termination of a nontenured teacher by a school superintendent with written notice of the reasons for termination. Requires that the teacher is given seven days to respond. Proposed law instead authorizes a school superintendent to take disciplinary action against a nontenured teacher. Requires the superintendent to notify the teacher in writing of his final decision and provides that within 60 days of such notice, the teacher may seek summary review in a district court pursuant to present law. Provides that the court's review shall be limited to determining whether the action taken by the superintendent was arbitrary or capricious.

Present law provides for removal of a tenured teacher upon written charges of willful neglect of duty, incompetency, dishonesty, immorality, poor performance or of being a

member of an entity prohibited from operating in the state. Provides that a teacher has seven days to respond to written charges, after which time the superintendent may remove the teacher. Requires that the removed teacher be given a hearing if requested within seven days of removal. Provides for appointment of a panel to conduct such a hearing. Prohibits an immediate family member or any full-time employee of the school system by which the teacher was employed who is under the supervision of the person making the designation from being designated to serve on the panel. Requires the hearing panel to submit its recommendation to the superintendent who may reinstate the teacher. Requires that if he does not reinstate the teacher, he shall notify the teacher in writing. Grants the teacher 60 days to petition a court to review the superintendent's action and to determine whether it was arbitrary or capricious. Requires that the record on review be limited to evidence presented to the tenure hearing panel.

Proposed law provides instead for the disciplining of a tenured teacher for the grounds as provided in present law and specifies that such action shall be by the superintendent or his designee. Provides that the teacher has 10 calendar days from written notice of the charges to respond, in person or in writing. Authorizes the superintendent to take interim disciplinary action including placing the teacher on administrative leave. Prohibits the teacher from being placed on administrative leave without pay except if the teacher has been arrested for a violation of certain crimes as specified in proposed law. Provides that within 10 calendar days after written notice of the interim disciplinary action, a teacher may request a hearing before a disciplinary hearing officer. Further provides that if the teacher fails to timely request a hearing, the interim disciplinary action becomes final.

Proposed law adds that upon request for a review hearing, the superintendent shall randomly appoint a hearing officer from a list of persons previously approved by the school board to serve as "disciplinary hearing officers" for the school board. Requires school boards to maintain lists of hearing officers and specifies how many officers are to be on the lists depending on the number of students in the school district. Authorizes the superintendent to appoint a hearing officer from a list approved by the State Board of Elementary and Secondary Education (BESE) if the school board fails to maintain a list. Provides that a disciplinary hearing officer is a mediator qualified under present law, an arbitrator approved by the American Arbitration Association or the Federal Mediation and Conciliation Service, an attorney, or a retired member of the judiciary. Provides that such hearing may be private or public, at the option of the teacher and shall commence no sooner than 10 calendar days nor later than 30 calendar days after receipt of the teacher's request for such hearing. Provides that the disciplinary hearing officer shall have the power to issue subpoenas. Requires the school board to adopt and maintain procedures to govern the conduct of the hearing including a method for the examination of witnesses and the introduction of evidence and for the presence of a court reporter and maintenance of the court reporter's record. Provides that the teacher has the right to appear before the disciplinary hearing officer with witnesses and counsel of his selection. Requires the disciplinary hearing officer to hold a hearing and review whether the interim decision of the superintendent was arbitrary or capricious, and to either affirm or reverse the action of the superintendent. Further requires the disciplinary hearing officer to notify the superintendent and the teacher of his final determination, with written reasons, within 10 days from the date of the hearing. Provides that if the superintendent's disciplinary action is affirmed it is effective upon the teacher's receipt of the decision of the disciplinary hearing officer and if the superintendent's disciplinary action is reversed, the teacher shall be restored to duty and the disciplinary hearing officer shall issue written reasons.

Proposed law provides that the school board or the teacher may petition a court of competent jurisdiction to review the matter as a summary proceeding pursuant to present law. Provides that the court shall determine whether the disciplinary hearing officer abused his discretion in deciding whether the action of the superintendent was arbitrary or capricious based on the record of the disciplinary review hearing. Retains present law that provides that if the action of the superintendent is reversed by the court and the teacher is

ordered reinstated and restored to duty, the teacher shall be entitled to full pay for any loss of time or salary he may have sustained by reason of the action of the superintendent.

Proposed law provides that the time periods contained in proposed law may be extended by mutual agreement of the parties and prohibits paid administrative leave as provided in proposed law from exceeding 50 days from notice of the superintendent's interim decision.

Present law provides that the results of a teacher's evaluation evaluating the teacher's performance as "ineffective" shall constitute sufficient proof of poor performance, incompetence, or willful neglect of duty and no additional documentation shall be required to substantiate such charges. Proposed law deletes present law.

Present law provides that a teacher shall be retained during the term of a contract unless found incompetent or inefficient or found to have failed to fulfill the terms and performance objectives of his contract. Provides that before he can be removed during the contract period, he shall have the right to written charges and a fair hearing before the board after reasonable written notice. Proposed law instead provides that before he can be removed he shall have the right to a hearing before a disciplinary hearing officer in the manner provided in proposed law. Proposed law otherwise retains present law.

Proposed law provides for definitions.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 17:441, 442(C), 443, and 444(B)(4)(c)(iii))

Summary of Amendments Adopted by House

House Floor Amendments to the engrossed bill.

1. In addition to upon hand delivery, provides that written notice is considered given on the day it is delivered to the teacher by registered mail, certified mail, or a commercial courier rather than on the 7th calendar day after it was mailed.
2. Adds to requirement that the procedures that govern the conduct of the hearing include a method for the presence of a court reporter and maintenance of the court reporter's record.