

Regular Session, 2014

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

BY REPRESENTATIVES THOMPSON AND GAINES

AN ACT

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

Be it enacted by the Legislature of Louisiana:

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

§441. Definitions

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

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

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

~~(2)(b)~~ Any school lunch supervisor employed by a local public school board who holds a special parish school lunch supervisor's certificate issued by the state Department of Education ~~of the state of Louisiana~~ and whose employment requires such certificate. No employee as defined in this ~~Paragraph~~ Subparagraph hired on 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

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C.(1) ~~Beginning with the 2013-2014 school year, a~~ A tenured teacher who receives a final 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 the written reasons therefor and providing the teacher the opportunity to respond. The teacher shall have seven days to respond, and such response shall be included in the teacher's personnel file. The superintendent shall notify the teacher in writing of his final decision. Within sixty days of such notice, the teacher may seek summary review in a district court pursuant to Code of Civil Procedure Article 2592.

1 The district court's review shall be limited to determining whether the action taken
2 by the superintendent was arbitrary or capricious.

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

1 notice of the charges to respond, in person or in writing. Following review of
2 the teacher's response, the superintendent may take interim disciplinary action,
3 which may include placing the teacher on administrative leave. The teacher
4 shall not be placed on administrative leave without pay unless the teacher has
5 been arrested for a violation of any of the following: R.S. 14:42 through 43.5,
6 80 through 81.5, any other sexual offense affecting minors, any of the crimes
7 provided in R.S. 15:587.1, or any justified complaint of child abuse or neglect
8 on file in the central registry pursuant to Children's Code Article 615. Within
9 ten calendar days after written notice of the interim disciplinary action or within
10 ten calendar days after receipt of the teacher's response if no interim disciplinary
11 action is taken, a teacher may request a hearing before a disciplinary hearing
12 officer. If the teacher fails to timely request a hearing, the disciplinary action
13 becomes final.

14 ~~(2)(a) The tenure hearing panel shall submit its recommendation to the~~
15 ~~superintendent, and the superintendent may choose to reinstate the teacher. If~~
16 ~~the superintendent does not reinstate the teacher, the superintendent shall notify~~
17 ~~the teacher of his final determination, in writing, and such teacher may, not~~
18 ~~more than~~ Upon request for a review hearing, the superintendent shall
19 randomly appoint a hearing officer from a list of persons previously approved
20 by the school board to serve as "disciplinary hearing officers" for the school
21 board. The school board shall maintain a list of at least five hearing officers for
22 districts of fewer than twenty thousand students and a list of at least ten hearing
23 officers for districts with more than twenty thousand students according to the
24 February first student membership count. If a school board fails to maintain
25 such a list, a superintendent may randomly appoint a hearing officer from a list
26 of persons previously approved by the State Board of Elementary and
27 Secondary Education. Only the following persons may serve as a disciplinary
28 hearing officer: a mediator qualified under R.S. 9:4106, an arbitrator approved
29 by the American Arbitration Association or the Federal Mediation and
30 Conciliation Service, an attorney, or a retired member of the judiciary.

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

19 **(3) Within sixty days from the postmarked date of such written**
20 **notification, of the decision of the disciplinary hearing officer, the school board**
21 **or the teacher may petition a court of competent jurisdiction to review whether**
22 **the action of the superintendent was arbitrary or capricious the matter as a**
23 **summary proceeding pursuant to Code of Civil Procedure Article 2592. The**
24 **court shall have jurisdiction to affirm or reverse the action of the superintendent**
25 **in the matter. The review shall be limited to evidence presented to the tenure**
26 **hearing panel, and the court shall review the matter not later than ten days after**
27 **the petition has been filed. determine, based on the record of the disciplinary**
28 **review hearing, whether the disciplinary hearing officer abused his discretion**
29 **in deciding whether the action of the superintendent was arbitrary or capricious.**
30 **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.

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

~~D. For purposes of this Section, the results of a teacher's evaluation performed pursuant R.S. 17:3881 through 3905 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. The time periods contained in this Section may be extended by mutual agreement of the parties. However, paid administrative leave as provided in Paragraph (B)(1) of this Section shall not exceed fifty days from notice of the superintendent's interim decision.~~

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

B.

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(iii) The employee shall be retained during the term of a contract unless the employee is found incompetent or inefficient or is found to have failed to fulfill the terms and performance objectives of his contract. However, before an employee 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~~ a disciplinary hearing officer in the manner provided in R.S. 17:443.

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____