

LOUISIANA LAWS GOVERNING EDUCATORS WITH AND WITHOUT TENURE

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The Louisiana Teacher Tenure law governs the employment of both tenured and nontenured teachers in traditional school districts. The Law does not apply to teachers employed by charter schools.

This document is intended to answer questions that have arisen concerning the Teacher Tenure Law. The answers are based on amendments to the law through Act 1 of 2012 and Act 570 of 2014.

1. **What does “due process” mean?**

We begin with this question because it is important when discussing rights of persons employed by governmental bodies such as public school boards.

The Fifth and Fourteenth Amendments to the United States Constitution state that no person shall be deprived of life, liberty, or *property* without due process of law...” Court decisions have stated that tenured teachers have a “*property*” right to continued employment. Thus, the a government employer such as a school board may not deprive teachers of their property right to continued employment without first giving the process that’s due, according to laws passed by the legislature and policies adopted by the school board. Under the Louisiana Teacher Tenure Law, that means that the superintendent must have reasons to terminate the employment of both tenured and non-tenured teachers, and the superintendent must also follow certain procedures as listed below. The procedures or “process” that a superintendent must follow prior to dismissing a non-tenured teacher differ from the procedures or “process” that the superintendent must follow prior to dismissing a tenured teacher. Tenured teachers have greater due process rights. Think of it as the “*process due*.”

2. **How do teachers who work in a traditional public school district in Louisiana become tenured?**

Effective beginning July 1, 2012, a teacher rated “highly effective” for five years within a six-year period under the performance evaluation program shall be granted tenure. Source: *La. R.S. 17:442A1(b)*. However, time spent in employment paid with federal funds cannot be counted toward the time required to acquire tenure. Source: *La. R.S. 17:442A(2)*. A teacher who acquired tenure before September 1, 2012, retains tenure. Source: *La. R.S. 17:442A1(a)*.

NON-TENURED TEACHERS

- 3. Do traditional Louisiana public school districts have the right to dismiss a non-tenured teacher for no reason at all, anytime they want?**

No. La. R.S. 17:443A states that the superintendent must have *reasons* to dismiss the non-tenured teacher and must place those reasons in writing. This conflicts with another section of the law (*La. R.S. 17:442B*), which states that a teacher who is not awarded tenure remains an “at-will” employee. Note: a non-tenured teacher may not lawfully be dismissed based on race, gender, age, religion, handicap, or national origin.

- 4. Are traditional Louisiana public school districts required to follow any procedure prior to dismissing, demoting or suspending a non-tenured teacher without pay?**

Yes. The superintendent must first provide the non-tenured teacher with written reasons and give the non-tenured teacher the opportunity to respond. The non-tenured teacher shall have seven calendar days to respond, and the response must be included in the non-tenured teacher's personnel file. The superintendent must then notify the non-tenured teacher in writing of his final decision. *Source: La. R.S. 17:443A.*

- 5. If a school district dismisses or demotes a non-tenured teacher, or suspends without pay, does the teacher have the right to sue?**

Yes. The non-tenured teacher may seek “summary review” by filing suit in district court within 60 days of the superintendent’s notice of dismissal. The court’s review is limited to whether the superintendent’s action was arbitrary or capricious. *Source: La. R.S. 17:443B(1).* The non-tenured teacher also has the right to pursue a claim for discrimination if the termination was based on race, gender, age, religion, handicap, or national origin.

- 6. Do non-tenured teachers have “due process” rights prior to dismissal?**

Yes, but only minimal rights. There must be reasons for dismissal, the Superintendent must state the reasons in writing, the non-tenured teacher has the right to respond, the response must be placed in the non-tenured teacher’s personnel file, and the non-tenured teacher has the right to sue.

TENURED TEACHERS

- 7. Is the school district required to notify teachers when they attain tenure?**

Yes. The superintendent must notify the teacher, in writing, when tenure has been awarded. *Source: La. R.S. 17:442B.*

- 8. Once a teacher becomes tenured, what are the grounds to dismiss, suspend without pay or involuntarily demote a tenured teacher?**

Poor performance, willful neglect of duty, incompetency, dishonesty, immorality. *Source: La. R.S. 17:443B(1).* Immorality is defined as the conviction of a felony offense affecting the public morals as enumerated in Louisiana criminal laws. *Source: La. R.S. 17:443C.*

9. **What is the procedure to dismiss, suspend without pay or involuntarily demote a tenured teacher?**
- A. The superintendent or his designee must first provide the tenured teacher with a copy of the written charges. *Source: La. R.S. 17: 443B(1).*
 - B. The tenured teacher must then have the opportunity to respond either in person or in writing. The tenured teacher has 10 calendar days from receiving written notice of the charges to do so. *Source: La. R.S. 17: 443B(1).*
 - C. The superintendent may take interim disciplinary action after receiving the teacher's response. The superintendent may (but is not required to) place the tenured teacher on administrative leave.
 - D. The school district is required to pay full salary to the tenured teacher who is placed on administrative leave. However, if the tenured teacher was arrested for certain criminal offenses involving children, then the school district may place the tenured teacher on administrative leave without pay. *Source: La. R.S. 17: 443B(1).*
 - E. Within 10 calendar days after written notice of the interim disciplinary action (or within 10 calendar days after receipt of the tenured teacher's response if no interim disciplinary action is taken), the tenured teacher may request a hearing before a Disciplinary Hearing Officer (DHO). If the tenured teacher fails to timely request a hearing, the disciplinary action becomes final. *Source: La. R.S. 17: 443B(1).*
 - F. The hearing must begin no sooner than 10 calendar days nor later than 30 calendar days after receipt of the tenured teacher's request for a hearing. *Source: La. R.S. 17:443B(2)(b).*
 - G. The DHO holds the hearing to determine whether the interim decision of the superintendent was arbitrary or capricious. The DHO must either affirm or reverse the action of the superintendent. *Source: La. R.S. 17:443B(2)(b).*
 - H. The DHO must then notify the superintendent and the tenured teacher of his final determination, with written reasons, within 10 days from the date of the hearing. *Source: La. R.S. 17:443B(2)(b).*
 - I. If the DHO affirms the superintendent's disciplinary action, it becomes effective when the tenured teacher receives the DHO's decision. If the DHO reverses the superintendent's disciplinary action, then the teacher must be restored to duty. *Source: La. R.S. 17:443B(2)(b).*
 - J. The tenured teacher and the school board both have the right to petition a court to review the DHO's decision. The deadline is 60 days to do so. The court determines whether the DHO abused his discretion in deciding whether the action of the superintendent was arbitrary or capricious. The court conducts its review based upon the record of the disciplinary review hearing. *Source: La. R.S. 17:443B(3).*
 - K. If the court reverses the superintendent's action and orders that the tenured teacher be reinstated and restored to duty, the teacher is entitled to full pay for any time or salary lost because of the superintendent's action. *Source: La. R.S. 17:443B(3).*

10. Is the tenured teacher entitled to full salary during this process?

Yes, until the DHO rules and affirms the superintendent's disciplinary action. *Source: La. R.S. 17:443B(2)(b).*

11. How is the disciplinary hearing officer selected?

Each school board must approve a list of persons to serve as a DHO. Only the following persons may serve as a DHO: an attorney, or a retired judge, or a mediator or arbitrator through the American Arbitration Association (AAA) or the Federal Mediation and Conciliation Service (FMCS). School boards with fewer than 20,000 students must maintain a list of at least five DHO's. School districts with more than 20,000 students must maintain a list of at least 10 DHO's. If a school board fails to maintain the list, the superintendent may randomly appoint a DHO from a list of persons previously approved by BESE. *Source: La. R.S. 17:443B(2)(a).*

12. What is the hearing procedure? How is the hearing conducted?

The tenured teacher has the right to either a private or public hearing and has the right to appear with witnesses on his behalf and an attorney of his selection. The DHO has the power to issue subpoenas. The school board must adopt procedures to govern the conduct of the hearing which must include a method to examine witnesses and introduce evidence. A court reporter must be present and maintain a record of the hearing. *Source: La. R.S. 17:443B(1).*

13. Several sections of the new tenure law contain several deadlines for teachers and superintendents. How are the deadlines calculated? How do we know when to start counting the days to determine the deadline?

The first day is the day after the teacher receives written notice. "Written notice" means when the notice is hand-delivered to the teacher or on the day that it is delivered to the teacher by registered mail, certified mail, or by a courier. *Source: La. R.S. 17:441(3).* Then begin by counting calendar days.

14. Does a tenured teacher who receives a rating of "ineffective" automatically lose tenure, and is the teacher automatically dismissed?

No and no. A tenured teacher who receives a summative performance rating of "ineffective" has the right to file a grievance. The tenured teacher loses tenure only if the teacher fails to file a grievance or if the tenured teacher files a grievance and the rating of "ineffective" isn't reversed. *Source: La. R.S. 17:442C(1).* If the rating of "ineffective" isn't reversed, then the rating constitutes grounds to dismiss, suspend without pay or involuntarily demote the teacher. *Source: La. R.S. 17:442C(1).* The teacher may reacquire tenure by receiving a performance rating of "highly effective" for five years within a six-year period subsequent to receiving an "ineffective" rating.

15. What happens if the tenured teacher who receives a rating of "highly effective" based on the evidence of the growth portion of the evaluation is found "ineffective" according to the observation portion?

Within 30 days after such finding, the tenured teacher is entitled to a second observation by members of a team of three designees, chosen by the local superintendent, which shall not include the principal. *Source: La. R.S. 17:442C(1).*