WAYNE-FINGER LAKES BOCES

EDUCATORS’ ASSOCIATION

**LOCAL 06-200**

**6/21**

**TENURE**

**History of & why Tenure was developed:**

Tenure. What is it exactly? The legal definition is simple: tenure provides those teachers who have demonstrated competence after a probationary period with due process rights before being fired. It is not, as critics contend, a guaranteed job for life.

Teacher tenure began in New Jersey in 1909. Why was it first adopted? From the critics of tenure, one might imagine teacher tenure being dreamed up by union “hacks” figuring out a way to protect incompetent members. But in fact, tenure rights came out of the progressive good-government movement to improve the quality of teaching and education for children.

Tenure was also designed to protect academic freedom inside the classroom.

In addition, tenure provided a bulwark against sex and race discrimination. During the Great Depression, when jobs were scarce, women teachers were often fired once they were married.  Historically, tenure laws were developed to protect teachers from favoritism and nepotism and to ensure that students received an education subject to neither political whims nor arbitrary administrative decisions.

**Some Facts about Tenure:**

It's been called the holy grail of the teaching profession.

Academic freedom plus job security all rolled nicely into a union contract.

Roughly 2.3 million public school teachers in the U.S. have tenure

Some of the misunderstanding about the meaning of teacher tenure in the K–12 setting may stem from the fact that the term “tenure” is also applied to university professors

**How did Tenure work:**

Tenure was used to protect teachers with high standards from the wrath of parents angry that their children received poor grades or were disciplined for misbehavior.

American public-school teachers were typically awarded tenure after a probationary period of about three years. Once a teacher had earned tenure, also known as due process, he or she had a right to know why a discharge is being sought by the employer and a right to have the issue decided by an impartial body. Tenure also allowed teachers to stand up and openly disagree with a boss pushing a faddish but unproven educational practice, without the fear of being fired.

Typically, tenure guaranteed that teachers were given reason, documentation, and a hearing prior to being fired.” The practice recognizes that in a mass profession like public school teaching, there were some poor performers among the ranks of tenured teachers. Tenure does not prevent their termination, but it does require that employers show “just cause” (a reasonable ground for action) for termination.

**How can I achieve Tenure?**

The process for determining whether you will get tenure is rigorous, and tenure is not automatic at the end of the probationary period. You must:

1) Complete all your state certification and city licensing requirements

2) File an application and receive professional certification

3) Have a record of acceptable service during your probationary period

4) Be recommended for tenure by your principal.

**Q. & A. about Tenure:**

**Q. What happens if a tenured teacher is appointed to a new tenure area in the same school district?**  
**A:**The probationary period is now three years instead of two.

**Q: What happens if a teacher has tenure in one district and obtains employment in another district in NYS?**  
**A:**The probationary period in the new district is now three years instead of two.

**Q: What if a teacher has served in a district for at least two years as a regular substitute classroom teacher?**  
**A:**The new law says that theprobationary period would be two years if the teacher received an APPR rating in each of the two years of substitute service.

**Q: What happens if a teacher receives an ineffective APPR rating in the fourth and final year of probation?**  
**A:**The board of education may extend the probationary period for another (fifth) year. If the teacher successfully appeals the ineffective rating, the teacher would be immediately eligible for tenure.  The law does not prohibit additional years of probation beyond five.

**Q: What is 3020-a and how does it relate to Due Process?**  
**A:** Education Law § 3020-a governs the disciplinary procedures of tenured teachers and administrators (except superintendents) and provides due process. Due process consists of the minimum procedural requirements that each public school district must satisfy when dismissing a teacher who has attained tenure. Due process is one of the core foundations of our judicial system. Similar safeguards are in place to ensure police officers, firefighters and other public servants at the state and local levels cannot be arbitrarily dismissed based on allegations alone, or for politically motivated reasons. Due process and tenure are **NOT** a job protection for life.

**Q. What are the due process requirements concerning charges of incompetence or misconduct under § 3020-a?**

* Charges in writing filed with the school district during the school year.
* Within five days of receipt of charges, the Board of Education determines if there is probable cause to bring disciplinary proceedings.
* If yes, a written notice sent to the employee detailing charges, the penalty imposed if employee waives hearing, and the employee’s rights, sent by certified or registered mail.
* The employee may be suspended with pay (there are exceptions, see below).
* Within 10 days of receipt of charges, the employee will notify the district in writing if they request a hearing.
* The district will notify the Commissioner within 3 (working) days of the need for a hearing.
* If the employee waives the hearing, the employing board determines the outcome in 15 days.
* If the employee demands a hearing, such hearing is held before an impartial hearing officer.  Different rules apply to the hearing itself depending upon the nature of the charges.

**Disciplinary Procedure Changes after 7/1/2015**

Hearings on all charges brought **on or after July 1, 2015** will be heard by single hearing officers.

* At the pre-hearing conference the hearing officer will set a schedule and manner for “full and fair disclosure” of the witnesses and evidence to be offered by the employee as part of the defense (in addition to discovery to be disclosed by the employer as required by current law).
* A child witness under the age of fourteen may be permitted to testify through the use of live two-way closed-circuit television if the hearing officer determines that the witness would suffer serious mental or emotional harm if required to testify in person.
* Hearing officers must give serious consideration to the penalty recommended by the employing Board.  If the penalty is rejected by the hearing officer, the rejection must reflect reasons based upon the record as expressed in a written determination.
* For charges of physical or sexual abuse of a student:
  + A teacher charged with physical or sexual abuse of a student will have an expedited hearing by a single hearing officer commenced within seven days after the pre-hearing conference and completed within 60 days after the pre-hearing conference.
* A teacher may be suspended **without pay** when charged with physical or sexual abuse of a student pending an expedited hearing. (This provision does not apply to New York City which has different rules governing suspension without pay in the NYCDOE/UFT contract.)
  + When a Board of Education decides to suspend a teacher without pay, a probable cause hearing before an impartial hearing officer must be held within ten days to determine whether the decision to suspend without pay should be continued or reversed.  Upon a finding that probable cause does not support the charges or suspension without pay is grossly disproportionate in light of all surrounding circumstances, the employee would receive reimbursement of withheld pay with any applicable interest.
  + Suspension without pay can last no longer than 120 days from the decision of the Board of Education to suspend without pay.
  + If the hearing officer finds in the employee’s favor as a final determination at the conclusion of the expedited hearing, the employee would receive reimbursement of withheld pay with any applicable interest.