

MEMORANDUM

TO: Lydia Garcia - NEA-Alaska

FROM: Kim Dunn

DATE: April 10, 2014

Our Client No.: 13271-001

RE: Tenure

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You have asked us to explain the differences in due process protections that are provided to non-tenured versus tenured teachers. Both our state and federal constitution protect against the deprivation of a citizen's property interests without a due process hearing. A public employee's legitimate expectation of continued public employment is a constitutionally protected property interest. Non-probationary public employees have a right to request due process before their employment is terminated.

In Alaska, as elsewhere, no certified education employee or teacher may be terminated during the school year without just cause. AS 14.20.180. This basic right to due process stems from the fact that the teacher and the school entered into an employment contract for a definite period -- the school year. In the case of a mid-year dismissal, all teachers have the right to pre-termination and post-termination due process under state and federal constitutional guarantees. Teaching contracts are regulated by DEED, and are considered to be fully binding on the teacher as well as the school district. State regulations provide that a teacher cannot break her contract without risking her teaching certificate. 20 AAC 10.020 (d)(15).

Tenure grants teachers due process rights *beyond* the current year employment contract. AS 14.20.155, AS 14.20.175(b). Earning tenure means that teachers will be continue to be employed the next school year, barring good cause for dismissal, grounds for non-retention or acute financial shortage. AS 14.20.140, 14.20.155, AS 14.20.175(b), AS 14.20.177. Unless the school district gives timely notice of dismissal or non-retention in the current school year, a tenured teacher has a position for next year. Through years of unprotected "probationary" status, teachers earn the right to expect continuing employment. But tenure does not change the school district's authority to determine teacher pay, or to select the teacher's assignment, duties and location of work. AS 14.20.158.



To compare, non-tenured teachers have no right to a continuing contract, and can be "non-retained" for "any cause that the employer determines to be adequate." AS 14.20.175. Their only protection after non-retention is to ask the district to give the reason for the district's decision. AS 14.20.175(a). In funding shortages, non-tenured teachers must be laid off before tenured teachers. AS 14.20.177.

Tenured staff can still be dismissed during the school year for misconduct, be non-retained for cause for next school year, and laid-off due to funding shortages (AS 14.20.170, 177). As noted, all mid-year dismissals require due process hearings. In sum, tenure grants long-term teachers the right to have valid grounds and a due process hearing before they are denied employment for the next school year.