

HB

200

# ASSOCIATION OF ALASKA SCHOOL BOARDS

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## HOUSE BILL NO. 200

### TEACHER TENURE

#### AASB Position

AASB strongly supports the passage of H.B. 200, relating to the acquisition of tenure rights, effectively changing the length of time for those rights to be granted from two to five years.

Under the current law, which basically grants tenure rights to a teacher after two years of service, school boards are faced with the dilemma of:

- 1) granting tenure rights to teachers who have questionable potential, but who, because of a short time line have not been adequately evaluated to determine they should not have it, or

- 2) non-retaining teachers who may, with more extensive evaluation and professional development assistance, become outstanding teachers.

The quality of education our schools offer relies to a great degree on the quality of teachers in our schools. Therefore, it is of critical importance that school boards are not forced into making the important decision of granting tenure based on inadequate evaluation information forced by unrealistic timelines.

Extending the time required to acquire tenure to five years gives school boards reasonable assurance that there has been sufficient on-going evaluation and accompanying professional development, and the teachers acquiring it will enhance the overall quality of education in their school district.



## TENURE ON ALL STATES

### TEACHER TENURE/CONTINUING CONTRACT LAWS November 1985

State	Law in Existence		State	Law in Existence	
	Yes	No		Yes	No
Alabama	X		Missouri	X (4)	
Alaska	X		Montana	X	
American Samoa		X	Nebraska	X (5)	
Arizona	X		Nevada	X	
Arkansas		X	New Hampshire	X	
California	X		New Jersey	X	
Colorado	X		New Mexico	X	
Connecticut	X		New York	X	
Delaware	X		North Carolina	X	
Florida	X		North Dakota	X (6)	
Georgia	X		Ohio	X	
Hawaii	X		Oklahoma	X	
Idaho	X		Oregon	X	
Illinois	X (1)		Pennsylvania	X	
Indiana	X		Rhode Island	X	
Iowa	X		South Carolina (7)		X
Kansas	X		South Dakota	X	
Kentucky	X		Tennessee	X	
Louisiana	X		Texas	X	
Maine	X (2)		Utah	X	
Maryland	X		Vermont		X
Massachusetts	X		Virginia	X	
Michigan	X		Washington	X	
Minnesota	X (3)		West Virginia	X	
Mississippi		X	Wisconsin	X	
			Wyoming	X	

- (1) Different law for Chicago
- (2) The law is for continuing contract, not tenure
- (3) Different rules for cities in the first-class designation
- (4) Different rules for different size schools
- (5) Different rules for different size schools
- (6) For continuing contract only; no tenure
- (7) No tenure; continuing contract after successful completion of probationary contract

Compiled by: ECS Clearinghouse



AMERICA

**Teacher Tenure Acts  
in the  
Fifty States**

Survey Conducted by Howard Brown  
Colorado Department of Education  
July 30, 1986



## OVERVIEW OF SURVEY OF TEACHER TENURE ACTS IN THE FIFTY STATES

### INTRODUCTORY NOTE.

The Teacher Tenure or Fair Dismissal Act of each state was reviewed in preparation of the attached survey. All states have either teacher tenure acts or laws which provide specific rights to teachers upon termination of employment. The basic purpose of a tenure act is to assure continued employment to teachers who have been employed in a school district for a probationary period of time and have performed satisfactorily. There has arisen a common misunderstanding that once a teacher achieves "tenure", that he/she cannot be fired or terminated from employment, despite unsatisfactory performance. There is no tenure or "due process" act in any state which assures permanent and continuous employment to a teacher who is performing unsatisfactorily. Rather, the tenured or permanent teacher is assured that he/she will receive a written notice, a statement of causes or reasons for termination, and a hearing before a school board or other panel prior to the board's decision to either dismiss the teacher or non-renew employment for the following year. Generally the tenured teacher has the right to appeal the decision of the school board either in court or before a state agency, such as the State Department of Education or the State Tenure Commission.

The rights and procedures guaranteed to teachers upon termination arise from the United States Constitution which requires that persons who are to be deprived of a "property right" must be afforded due process before the deprivation. The courts have decided that the continuous re-employment of a teacher in a school district for a period of time (probation) creates a property right in continued employment in the district. For that reason, a district or school board cannot terminate the employment without providing "due process" to the teacher. Due process requires notice, reasons, and a hearing. "Tenure" can be provided by law through a state statute or earned through a period of continuous employment ("de facto" tenure). Teachers must be afforded due process upon termination. The advantage of a tenure or due process law is that both the teacher and the school board can read and understand the specific procedure to be followed on non-renewal of or dismissal from employment. The survey is presented in a graph form with one graph pertaining to probationary teacher non-renewals and dismissals, and the other graph covering non-renewal and dismissal of tenured teachers. The following discussion will briefly explain the categories presented on the graphs.

### GRAPH ON PROBATIONARY TEACHER RIGHTS ON NON-RENEWAL OR DISMISSAL:

A. Probationary Non-Renewal. "Non-renewal" refers to the termination of employment at the close of the school year. The probationary teacher generally receives a notice prior to the close of the preceding year that his or her contract of employment will not be renewed for the following year. The employment does not terminate until the end of the current school year as opposed to a "dismissal" which is termination during the contract year.

1. Written Notice by Deadline. All fifty states require that the probationary teacher receive a notice that the contract of employment will not be renewed for the following year, the notice must be received by a certain deadline which varies from between 60 days to the last day of the school year.

2. Reasons Specified. Twelve state statutes including the Arizona School Employees Act require that the written notice contain the reason for non-renewal. Some statutes state that the non-renewal can be for any reason the board deems sufficient.

3. Reasons Supplied on Request of Teacher. Fifteen state statutes allow the teacher to request a written statement of reasons after he or she has received a notice of intent to non-renew and generally the teacher must request the statement of reasons by a certain date.

4. Conference or Hearing Required. Eight state statutes require that the teacher be given a board hearing, or an informal conference with the board, superintendent and teacher present. In Arizona, a probationary teacher does not have a right to a hearing on non-renewal of the employment contract.

5. Conference or Hearing on Request. Twelve states allow the teacher to request either a hearing before the school board or an informal conference between the teacher and superintendent or teacher, superintendent and board after receiving a notice of intent to non-renew the contract. It should be noted regarding both Items #4 and #5 on probationary non-renewals that seven states do not distinguish between probationary and tenured teachers. In all of those states, it is clear that a teacher who has been employed in a school district for a certain number of years must be provided with notice, causes and the right to a hearing prior to the non-renewal of the employment contract. However, in those state statutes in which probationary and tenured teachers are not differentiated, it is not clear that the probationary teacher would be entitled to a board hearing upon the non-renewal of the contract. The reason this is not clear is that courts have determined that only "tenured" teachers have a property right to continued employment and therefore, must be provided with due process before that employment is terminated. It is not clear that probationary teachers have a property right to continued employment. If they do not have that property right, they would not necessarily be required to receive a hearing before the non-renewal of the employment contract. For the purposes of this survey, in those state statutes which do not distinguish between probationary and tenured teachers, Items #4 and #5 on probationary non-renewals were left blank.

6. Probationary Dismissals During the Contract Year. Generally, a teacher although probationary, has a property right to employment for the full contract year. Therefore, the teacher has a right to due process if that year of employment is to be interrupted through a dismissal by the school board. Probationary teachers generally receive the same due process rights upon dismissal that tenured teachers receive upon either dismissal or non-renewal of employment.

1. Hearing Required. Twenty-four states require that a hearing be conducted within a reasonable time after the teacher has received the notice of intent to dismiss. The dismissal is not effective until the hearing has been conducted and the board has subsequently decided to dismiss. Generally, a teacher can be suspended either with or without pay pending the hearing, depending upon the reason for the dismissal.

2. Hearing on Request. The other twenty-six states provide the right to a hearing upon request of the teacher within a certain time period after the notice has been received.

3. Statutory Causes. All states require that there be a cause or reason for dismissal during the contract period. Thirty-eight statutes state the causes for dismissal. The other twelve states do not specify causes but it is clear that there must be a cause or reason for a probationary dismissal. The states which do not specify causes are Arizona, Arkansas, Idaho, Illinois, Iowa, Kansas, Michigan, New Hampshire, New Mexico, Rhode Island, Utah and Washington.

The most frequently listed causes in the state statutes are inadequacy, incompetency, inefficiency, immorality, insubordination, disloyalty, noncompliance with board rules and regulations or state laws, mental/physical disability, neglect of duty, misconduct, felony convictions or convictions of crimes involving moral turpitude. Many states include a "catch all" clause such as "other good and just cause". A few states include less common causes in addition to the more common ones. They are as follows:

- California - alcoholism or drug addiction
- Georgia - encouraging students to violate state laws or board rules
- Florida - drunkenness
- Louisiana - belonging to a group not allowed in state
- Maine - the teacher's services are "unprofitable to the board"
- Mississippi - brutality; intemperance
- North Carolina - alcohol or drug addiction; advocating overthrow of the government; failure to repay money owed to the state
- Missouri - excessive absence
- Nebraska - failure to show professional growth
- Oklahoma - engaging in homosexual activity
- Pennsylvania - cruelty; subversion
- Texas - failure to pay debts

#### TENURED TEACHER RIGHTS ON NON-RENEWAL OR DISMISSAL.

The word "tenured" refers to a teacher who has been employed in a school district for a certain period of time and is rehired as a result of satisfactory service. Many state statutes do not utilize the word "tenured" but refer to such teachers as permanent teachers or continuing teachers. The terms are interchangeable. As stated above, seven states

do not distinguish between probationary and tenured or continuing teachers. Therefore, those state statutes do not specify a probationary period of time. Generally, the statutes provide due process rights to teachers upon termination, but it is not clear whether a teacher with only one or two years of service in the district would receive all of the rights that a teacher with longer service in the district would receive.

X

1. Required for Tenure. Seventeen states require three years continuous service plus the issuance of a fourth year contract for tenure. Twelve states require three years continuous service. Three states require two continuous years of service plus the issuance of a third year contract. Eight states require two years of continuous employment. Three states require either four years of continuous service plus the issuance of the fifth year contract or five years of continuous service before tenure is achieved. Seven states do not specify a probationary period of time.

2. All states require written notice of the dismissal or non-renewal of a tenured teacher's contract by a certain deadline prior to the close of the school year.

3. Cause Specified. All states require that the board provide the cause or reason for the dismissal or non-renewal.

4. Board Hearing Required. Sixteen states require that the board conduct a hearing before the final decision to dismiss or non-renew the contract.

5. Board Hearing on Request of Teacher. Twenty-one states provide the teacher with the right to a hearing on request before the school board.

6. Hearing Before Other Panel. Thirteen states provide that the hearing shall be conducted before a panel or commission. Generally, the panel is comprised of three members, one selected by the teacher, one selected by the school board and the third selected by the other members of the panel. This is the procedure in Arizona and in California, Kansas, New York and Virginia. In other states, a list of attorneys is compiled by a state agency or official and a list with a certain number of names is sent to the teacher and the school board. The two parties can agree to one name on the list or each can strike names from the list until one remains and that individual serves as the hearing officer and conducts the hearing. This procedure is followed in Colorado, Illinois, Nevada and Oklahoma. Massachusetts allows a hearing before a school committee. Montana allows the County Superintendent of Education to conduct the hearing. In New Jersey, the Commissioner of Education conducts the hearing. In Oregon, a panel is appointed by the Superintendent of Public Instruction to conduct the hearing.

7. Court Appeal. The majority of states allow an appeal of the decision of the school board following the hearing in court either explicitly by containing a provision on court appeal or implicitly because the law generally allows a court appeal to the losing party. Twelve states require the appeal to be taken to another tribunal and those tribunals and states are indicated on the graph.



8. Suspension With Pay Pending Hearing. Fifteen states allow the board at its option to suspend the teacher with pay pending the hearing. Four states allow the board to suspend the teacher without pay pending the hearing but provide that if the teacher is reinstated or the charges are unfounded, the pay withheld will be given to the teacher.

9. Preliminary Notice Requirement. Eleven state statutes contain preliminary notice requirements. Generally, the board or a designated representative must give the preliminary notice to the teacher prior to a final notice of intent to non-renew or dismiss and the failure to provide both notices may result in the reinstatement of the teacher to the teaching position with back pay.

In Arizona, if a teacher is to be dismissed or non-renewed for the reason of inadequacy of classroom performance, the board or an authorized representative must provide a written preliminary notice of classroom inadequacy at least 90 days before the final notice of intent to dismiss or non-renew is forwarded to the teacher.

In California, a 90 day preliminary notice is required if the reason for dismissal or non-renewal is incompetency or unprofessional conduct and the notice must specify the conduct.

In Illinois, if the cause is considered "remediable", a reasonable warning notice must be given to the teacher prior to the final notice, in order that the teacher has an opportunity to correct or remedy the problem.

In Minnesota, the teacher must receive a notice specifying deficiencies which could lead to dismissal or non-renewal within a reasonable time prior to the final notice and the board must vote by April 1st to give the final notice.

In Missouri, if the reason given is incompetency, the teacher must receive a 90 day notice prior to the final notice. If the reason given is inefficiency or insubordination, the teacher must receive a 30 day warning notice in writing and an opportunity to confer and try to resolve the problem with the superintendent of the school district.

In New Jersey, if the reason is inefficiency, the teacher is entitled to written notice 90 days prior to a final notice and an opportunity to improve.

In North Dakota, if the reason is inefficiency, the teacher is entitled to a written notice within a reasonable time prior to the final notice to correct the inefficiency.

In South Dakota, the teacher must receive a notice by the third Monday in March of the possible intent to non-renew the contract. The teacher may then have an informal conference before the school board. Within 14-21 days after the first notice, the board must give final notice of intent to non-renew or the contract remains in effect for the following year.

In Utah, at least two months prior to the final notice, the teacher must receive a warning notice and opportunity to correct deficiencies.

Following receipt of the preliminary notice, the teacher has a right to a conference with the school board.

In Washington, if the teacher receives an unsatisfactory evaluation, the teacher is entitled to a notice of deficiency by February 1st and from February 1st to April 15th to improve.

In Wisconsin, the final notice must be given by March 15th and a preliminary notice of the possibility of non-renewal by March 1st. After the March 1st notice, the teacher has the right to a private conference with the board before receiving a final notice.

10. Alternatives to Termination. Ten states contain statutes which provide the board with some alternative to terminating employment for cause. These include suspension for a definite period of time without pay, placing a tenured teacher on probation for a specified period of time, withholding pay for a definite period of time or a reduction in salary.

In New Hampshire, the superintendent may remove the teacher from the classroom for a definite period of time but compensation continues.

In New York, the board has the options of reduction in pay, fine or suspension in lieu of termination.

In North Carolina, the teacher can be demoted. Generally, a demotion is considered an employment position change which results in a lower salary to the employee and/or less status or responsibility.

PROB. NOY-RENEWALS

PROB. DISMISSALS

	Written Notice by Deadline	Reasons Specified	Reasons Supplied on Request of Teacher	Conference or Hearing Required	Conference or Hearing on Request	Hearing Required	Hearing on Request	Statutory Causes
Arizona	X	X					X	X
Alabama	X						X	X
Alaska	X		X			X		X
Arkansas	X						X	X
California	X	X				X		X
Colorado	X						X	X
Connecticut	X		X			X		X
Delaware	X						X	X
Florida	X						X	X
Georgia	X		X			X		X
Hawaii	X						X	X
Idaho	X					X		X
Illinois	X	X					X	X
Indiana	X		X					X
Iowa	X		X	X				X
Kansas	X						X	X
Kentucky	X		X				X	X
Louisiana	X		X				X	X
Maine	X						X	X
Maryland	X						X	X
Massachusetts	X					X		X
Michigan	X						X	X
Minnesota	X		X					X
Mississippi	X		X		X		X	X
Missouri	X						X	X
Montana	X		X				X	X
Nebraska	X						X	X
Nevada	X	X		X		X		X
New Hampshire	X		X				X	X
New Jersey	X						X	X
New Mexico	X					X		X
New York	X		X	X			X	X
North Carolina	X	X					X	X
North Dakota	X	X					X	X
Ohio	X						X	X
Oklahoma	X	X					X	X
Oregon	X		X				X	X
Pennsylvania	X	X					X	X
Rhode Island	X						X	X
South Carolina	X						X	X
South Dakota	X						X	X
Tennessee	X						X	X
Texas	X		X				X	X
Utah	X	X					X	X
Vermont	X	X					X	X
Virginia	X		X				X	X
Washington	X	X		X		X		X
West Virginia	X	X		X			X	X
Wisconsin	X			X			X	X
Wyoming	X						X	X

TEMURED TEACHER RIGHTS ON DISMISSAL AND NON-RENEWAL

	Required for Tenure - Years	Written Notice By Deadline	Cause Specified	Causes Listed In Statute	Board Hearing Required	9d. Hearing On Request of T.	Hearing Before Other Panel	Court Appeal	Appeal to Other Tribunal	Suspension With Pay Pending Hearing	Suspension Without Pay Pending Hearing	Preliminary Notice Required	Alternatives to Termination
Arizona	3+4K	X	X							X	X	90 day	
Alabama	3+4K	X	X	X		X		STC		X			
Alaska	2+3K	X	X	X		X				X			
Arkansas	NS*	X	X			X				X		90 day	
California	3	X	X	X			X			X			Prob.
Colorado	3+4K	X	X	X			X			X			
Connecticut	3+4K	X	X	X		X				X			
Delaware	3	X	X	X		X				X			Prob.
Florida	3+4K	X	X	X		X		SOE SOC		X			
Georgia	3+4K	X	X	X	X					X			
Hawaii	2+3K	X	X	X		X							
Icans	3+4K	X	X		X							RTBF**	
Illinois	2	X	X			X							
Indiana	2+3K	X	X	X				SBPI					
Iowa	2	X	X		X								
Kansas	3	X	X				X						
Kentucky	4+5K	X	X	X	X					X			
Louisiana	3	X	X	X	X								
Maine	2	X	X	X	X			SOE					
Maryland	2	X	X			X							
Massachusetts	3	X	X	X			X	STC		X	X		Susp.
Michigan	2	X	X		X							RTBF**	
Minnesota	3	X	X	X	X								
Mississippi	NS*	X	X	X		X				X		30+90	Hold Pay
Missouri	5	X	X	X			X						
Montana	3+4K	X	X	X		X							
Nebraska	2	X	X	X									
Nevada	3	X	X	X			X						Remove & Reduce
New Hampshire	3+4K	X	X		X			SOE			X	90 day	
New Jersey	3+4K	X	X	X				SBE CE					R, F, S** Demotion
New Mexico	3+4K	X	X	X	X					depend on reas.			
New York	3	X	X	X		X						RTBF**	
North Carol.	3+4K	X	X	X	X								
North Dakota	NS*	X	X	X		X							
Ohio	5	X	X	X			X			X			
Oklahoma	3	X	X	X			X			X			
Oregon	3+4K	X	X	X			X				X		
Pennsylvania	2	X	X	X	X			SPI SOE		X			
Rhode Island	3+4K	X	X			X				X			
South Carol.	NS*	X	X	X									
South Dakota	2	X	X	X		X						3/15	
Tennessee	3+4K	X	X	X		X							
Texas	3	X	X	X	X							30 day	
Utah	NS*	X	X	X		X							
Vermont	NS*	X	X	X		X				X			Prob.
Virginia	3	X	X	X			X					by 2/1	
Washington	NS*	X	X	X	X			SS				14 day	
West Virginia	3	X	X	X		X							Susp.
Wisconsin	3+4K	X	X	X									
Wyoming	3+4K	X	X	X	X								

## NOTES FROM THE TENURED TEACHER GRAPH

- 1) Some state laws do not have provisions for appeal but court appeal would be permissible for losing party.
- 2) Abbreviations for appeal tribunals other than courts:

STC: State Tenure Commission  
SDE: State Department of Education  
SBE: State Board of Education  
SBPI: State Board of Public Instruction  
CE: Commissioner of Education  
SPI: Superintendent of Public Instruction  
SS: Superintendent of Schools

\*: Not specified  
\*\*: Reasonable time before final  
\*\*\*: Reprimand, fine or suspension  
X: Contract

Compiled by the Legal Services Program  
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PART IV  
PERSONNEL

## CHAPTER IV

## FACULTY APPOINTMENT, REVIEW, PROMOTION, TENURE &amp; SABBATICAL LEAVE

Mission

04.04.01

The basic mission of the University of Alaska is to serve the people of Alaska and the nation through teaching, research and other scholarly and creative activity, and public service. Scholarly and creative activity is directed toward the development of new knowledge, teaching to the transfer of existing knowledge, and public service toward the application of teaching, research, and other scholarly and creative activity to constituencies beyond the university system.

Thus, the successful pursuit of the University of Alaska's mission requires strong, stable and effective institutions staffed with dedicated and competent employees in all areas of endeavor. These "Policies of the Board of Regents" are designed to provide a broad framework for the operation of the university system as it seeks to achieve its mission. As such, these Policies are intended for use in conjunction with the policies and procedures of the individual universities and community colleges of the University of Alaska which have been approved by the Board of Regents.

Construction and Application

04.04.02

1. Construction. These Policies shall constitute rules of the Board of Regents for the governance of the university system and the institutions therein, regulating the matters contained herein as authorized by law. Nothing contained in these Policies shall be construed to restrict the power of the Board of Regents to periodically alter, amend, revise or repeal the provisions hereof in whole or in part from time to time.
2. Application. These Policies shall apply to all universities and community colleges of the University of Alaska System and are designed and intended for use with appropriate policies and procedures developed for each university and community college, which the Board of Regents will also approve. These policies and procedures may differ from each other in their provisions, but no provision of these policies and regulations may supersede the application of the "Policies of the Board of Regents."

Definitions

04.04.03

As used in these Policies, unless otherwise specified, the following terms shall mean:

1. "University system, University of Alaska, University of Alaska system". The public universities and community colleges of the State of Alaska referenced collectively as a system of higher education.

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2. "University". Any one of the three universities within the University of Alaska.
3. "Community College". A program of education, including both academic degree and non-degree programs, established by the University of Alaska in cooperation with qualified school districts or qualified political subdivisions of the state, and sponsored and funded by the school district or political subdivision and the University of Alaska.
4. "Board of Regents". The Board of Regents of the University of Alaska system.
5. "President". The chief executive officer of the University of Alaska system.
6. "Chancellor". The chief executive officer of one of the universities within the University of Alaska system.
7. "Campus President". The chief executive officer of one of the community colleges within the University of Alaska system.
8. "Faculty". Those persons who have accepted and hold appointment to academic rank or special academic rank.
9. "Academic ranks". Ranks held by persons having the title of professor, associate professor, and assistant professor. These titles denote academic rank exclusively. The title of instructor may also be a title of academic rank at the discretion of the policies and procedures approved for each university; see "Note" for section 10 below.
10. "Special academic ranks". Ranks held by persons having the following title and the qualification specified:

Lecturer: employed to teach full- or part-time;

or titles of academic rank preceded by:

Adjunct:	employed to teach part-time;
Affiliate:	voluntary faculty service, not employed by the university;
Visiting:	employed to perform the faculty functions expected of academic rank for a specific period;
Research:	supported primarily by grant funding;
Clinical:	special category reserved for practitioners in the health care delivery professions.

These titles denote special academic rank exclusively. The title of instructor may also be a title of special academic rank at the discretion of the policies and procedures approved for each university; see "Note" below.

Note: The term "instructor" is to be used for those faculty employed to teach and perform other faculty functions as assigned. A university may use the title of instructor as a title of academic rank or special academic rank, but not both.

11. "Policies and procedures approved for each university". Policies and procedures designed by each university for its own use and approved by the Board of Regents.
12. "Tenure". The status of holding a faculty appointment on a continuing basis following evaluation and award according to the terms of Policy 04.04.04(B).
13. "Tenure track position". A tenure track position is one which may lead to consideration for appointment to tenure as described in the policies and procedures approved for each university. A tenure track position will require the performance of faculty function at least 50% of full-time. For exceptional cases, and when in the judgment of the Chancellor the best interests of the university will be served, a faculty member may be appointed to a tenure track position at less than 100% but more than 50% of a full-time appointment.
14. "Non-tenure track position". A non-tenure track position is one which does not provide a faculty member any rights to consideration for appointment to tenure.

Appointment of Faculty

04.04.04

## A. Categories of, Obligations of and Method of Appointment

1. Appointment Categories. The following categories of appointment shall be used to fully specify the type of appointment and associated rights:
  - a. Type of position
    - (1) Tenure track position. Faculty appointed to tenure track positions either hold tenure or may become eligible for consideration for appointment to tenure under the conditions stated in Policy 04.04.04(B). Time spent in these positions shall be counted towards the maximum time by which a tenure track appointee must be considered for tenure for continuation of employment. Faculty appointed to tenure track positions shall have titles of academic rank. (See also Policy 04.04.03-13).
    - (2) Non-tenure track position. Faculty appointed to non-tenure track positions have no rights to consideration for appointment to tenure, nor does time spent in these positions count towards tenure. Faculty appointed to these positions shall have titles of special academic rank.
  - b. Tenure status. A faculty member appointed to a tenure track position may receive tenure only under the conditions of Policies 04.04.04(B) and 04.04.05(B).
  - c. Faculty rank and title.
    - (1) Academic rank. Titles of academic rank shall be the same throughout the university system with the exception of the use of the title



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04.04.04

"instructor" (see subsection (3) below). Titles designating academic rank exclusively are: assistant professor, associate professor, and professor.

- (2) Special academic rank. Titles of special academic rank shall be the same throughout the university system with the exception of the use of the title "instructor" (see subsection (3) below). Titles designating special academic rank exclusively are: lecturer and titles of academic rank preceded by the terms adjunct, affiliate, visiting, research, or clinical. (See also Policy 04.04.03-10)
- (3) Instructor. The title "instructor" is to be used for those faculty employed to teach and perform other faculty functions as assigned. A university may, in accordance with the policies and procedures approved for that university, use the title of instructor as a title of academic rank or special academic rank, but not both.

d. Continuing and fixed term appointments

- (1) Continuing appointment. A continuing appointment is one which is expected to continue unless a faculty member is terminated in accordance with Policy 04.04.04(C). Continuing appointments shall be given with appointment to academic rank and tenure track positions, with or without tenure. A continuing appointment may be appropriate for an appointment to special academic rank. Continuing appointments may be made for up to three years in duration. Appointment may be renewed subject to limitations imposed by Policy 04.04.04(B)-b.(1-4).
- (2) Fixed term appointment. A fixed term appointment is one which is expected to expire at the end of a specified period of up to three years unless renewed or terminated early in accordance with Policy 04.04.04(C). Such appointments may not be made for periods longer than three years, but may be renewed. Fixed term appointments may be given to a faculty member appointed to special academic rank.
- (3) Terminal appointment. A terminal appointment is a non-tenure track fixed term appointment used when a decision has been made to terminate a faculty member at the end of the next appointment.

c. Appointments of distinction for faculty.

- (1) Distinguished and University Professors. Tenured appointment as Distinguished Teaching Professor, Distinguished Research Professor, Distinguished Service Professor or University Professor may be given by action of the Board of Regents on recommendation of the faculty and concurrence of the Chancellor and the President.
- (2) Distinguished Visiting Professors. Appointment as Distinguished Visiting Professor shall be made by the Chancellor, following

consideration of recommendations of the faculty. Such appointment shall be reported to the President and shall be a non-tenure track appointment for a period of time not to exceed three years. These appointments are renewable indefinitely.

(3) Professor Emeritus or Emerita. Appointment as Professor Emeritus or Emerita is an honor conferred by the Chancellor, following consideration of recommendations by the faculty, upon an outstanding retiree of the university as described in Regents' Policy 04.09.03 and related University Regulation pertaining to retirement.

2. Appointment year and appointment obligation. Unless the terms of appointment otherwise provide, the normal appointment year shall be from July 1 to June 30 or a portion thereof, regardless of payroll mode. The duration of appointment obligation may be for a full year or less as follows:

- a. Fiscal year obligation. An obligation of service for the full fiscal year, i.e., twelve months;
- b. Academic year obligation. An obligation of service for the academic year as set by each university or community college;
- c. Institutional year obligation. An obligation of service for any period less than a full year, other than the academic year.

Academic year and institutional year faculty may be required to serve at dates necessitated by a unit's operating requirements.

3. Faculty obligation.

- a. Duties. Faculty obligation may include teaching, research or other scholarly and creative activity, public service, university service and other duties and responsibilities required of a faculty member during the appointment year, and shall be consistent with academic rank and professional or disciplinary field.
- b. Non-university activities. A faculty member shall not engage in outside activities which interfere with or are inconsistent with the performance of faculty obligation or are determined to run counter to the provisions of the Alaska Executive Branch Ethics Act or Board of Regents Policy 04.10.07 or University Regulation 04.10.07 governing conflict of interest.

4. Method of appointment. All appointments shall be made by the Chancellor or the Chancellor's designee in accordance with Regents' Policy and policy and procedures approved for each university.

B. Tenure

1. Purpose. Tenure assures the academic community an environment that will nurture academic freedom by providing employment security.

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2. Responsibilities, rights and privileges of tenure.
  - a. Performance. A tenured faculty member has a responsibility to maintain high standards of professional performance and conduct.
  - b. Appointment. An appointment with tenure shall be an appointment to academic rank which shall not be affected by changes in such rank and shall be continued until resignation, retirement, or termination. The award of tenure guarantees continuing appointment for at least nine months per year. Any change in fraction of full-time appointment as a tenured faculty member must be by mutual consent of the university and the faculty member. The award of tenure does not exempt a faculty member from changes in policies and procedures approved for each university.
  - c. Locus of tenure. Faculty are tenured within an academic unit or units of a university of the University of Alaska system.
3. Method of appointment to tenure. Tenure is not received automatically. It is awarded only following careful consideration of an applicant faculty member in accordance with the methods described in this title, Policy 04.04.05(B) and the policies and procedures approved for each university. Following consideration of the recommendations of the faculty the Chancellor may grant tenure to faculty who are qualified.
4. Eligibility for consideration for award of tenure.
  - a. Criteria. Tenure may be awarded to faculty appointed to a tenure track position and any academic rank. Tenure is not awarded to faculty members holding special academic rank.
  - b. Conditions. A faculty member may request an evaluation for award of tenure during any year of service. However, a faculty member must be reviewed for tenure in accordance with the following:
    - (1) Initial appointment to full or associate professor. An initial appointment to the rank of professor may be made with or without tenure. However, faculty receiving such appointments without tenure must be reviewed for tenure no later than the second consecutive year of service. Appointments to full professor may continue beyond the third year only with tenure. Initial appointment to the rank of associate professor also may be made with or without tenure. Likewise, faculty receiving such appointments without tenure must be reviewed for tenure no later than the fourth consecutive year of service. Appointments to associate professor may continue beyond the fifth year only with tenure.
    - (2) Promotion to associate professor. Non-tenured faculty undergoing review for promotion to associate professor must also be reviewed for tenure. Promotion to associate professor cannot be made without prior or simultaneous award of tenure.

- (3) Review of assistant professor. All non-tenured faculty appointed at the rank of assistant professor must be reviewed for tenure no later than the seventh consecutive year of service in this rank. Service in this rank or in a combination of this rank and a tenure track appointment as instructor may continue beyond the eighth year only with tenure.
- (4) Review of instructor. Faculty with the title of instructor may be reviewed for tenure only if the title is one of academic rank according to policies and procedures of an individual university. In this case faculty must be reviewed for tenure no later than the seventh consecutive year of service in this rank. Service in this rank may continue beyond the eighth year only with tenure if the title is one of academic rank.

c. Years of service.

- (1) Towards mandatory review. In computing total consecutive years of service for determining the time of mandatory tenure review, periods of leave at full salary and sabbatical leave will be included. Periods of leave of absence at partial or no salary shall not be included unless requested by the faculty member and approved at the time the leave is granted. However, regardless of inclusion in the computation of total years, leave of absence shall not be deemed an interruption of otherwise consecutive service. Years of service preceding a break in consecutive years of university employment may be counted only upon agreement between the faculty member and the university at the time of re-employment.
  - (2) Partial year of service. A partial year of service which includes at least one semester of full-time faculty service (e.g., as in a mid-year appointment) will be included as a full year of service in computing the time of mandatory tenure review only if this year has been included in determining eligibility for any sabbatical leave.
5. Failure to receive tenure. A faculty member must stand for tenure in the mandatory review year as defined in section 4.b.(1-4) above. If tenure is not awarded, the faculty member shall be offered a terminal appointment for one additional year of service. A faculty member may stand for tenure prior to the mandatory year of review. In so doing, the candidate may withdraw at any step in the process prior to review by the Chancellor. If the decision of the Chancellor is to deny tenure, the faculty member shall be offered a terminal appointment.
  6. Rejection of tenure. A faculty member who is offered tenure by a university pursuant to this policy but who declines to accept it may continue to be employed in a manner to be determined by the Chancellor of each university.

## C. Termination of Faculty Appointment

Termination is the severance of the employment relationship of a faculty member which is based on a decision to discontinue an existing employment relationship. Faculty may be terminated under any of the following conditions:

1. Non-retention. Non-retention follows a decision not to continue the employment of a non-tenured faculty member in a tenure track position or of a faculty member holding special academic rank and a continuing appointment. The Chancellor or the Chancellor's designee will notify the faculty member of this decision in writing not less than:
  - a. Three months prior to the end of an appointment expiring at the end of a faculty member's first year of uninterrupted service within the university system, but not later than March 1 for appointments ending in May, June, July or August;
  - b. Six months prior to the end of an appointment expiring after the completion of one, but not more than two, years of service within the university system, but not later than December 15 for appointments ending in May, June, July or August;
  - c. Twelve months prior to the expiration of an appointment after two or more years of uninterrupted service within the university system.
2. Failure to receive tenure. Following a decision not to award tenure in the mandatory year for tenure review, the faculty member will receive notice at least twelve months prior to the end of the academic or fiscal year of final service.
3. Retirement. Retirement eligibility is determined by the Teachers Retirement System or the Public Employees Retirement System of the State of Alaska. Faculty planning to retire shall notify their supervisor as soon as possible prior to the anticipated retirement date.
4. Resignation. A faculty member intending to resign from employment with the university system shall file with the appointing authority a written resignation stating the effective date. Faculty are expected to provide notice adequate to allow for their orderly replacement.
5. Discontinuance of program. When a decision is made to discontinue a program (following program review as specified in Regulation 10.02.07), a good faith effort must be made to place tenured faculty in another program where appropriate. The Chancellor or the Chancellor's designee will notify faculty members of the decision to terminate employment in writing not less than:
  - a. Three months prior to the end of the academic or fiscal year of a faculty member's first year of uninterrupted service within the university system, but not later than March 1 for appointments ending in May, June, July or August.

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- b. Six months prior to the end of the academic or fiscal year after the completion by a faculty member of one, but not more than two, years of service within the university system, but not later than December 15 for appointments ending in May, June, July or August.
  - c. Twelve months prior to the end of the academic or fiscal year after two or more years of uninterrupted service within the university system.
  - d. Should the program be reactivated within two years, tenured faculty members shall be invited to return to the program faculty. The faculty member must notify the university of the decision to decline or accept within thirty days of receipt of this invitation.
- 6. Reduction in program. When a decision is made to reduce a program (following program review as specified in Regulation 10.02.07), a good faith effort must be made to retain tenured faculty in preference to non-tenured faculty, or to place tenured faculty in another program where appropriate. The Chancellor or the Chancellor's designee will notify faculty members of the decision to terminate employment in writing not less than:
  - a. Three months prior to the end of the academic or fiscal year of a faculty member's first year of uninterrupted service within the university system, but not later than March 1 for appointments ending in May, June, July or August.
  - b. Six months prior to the end of the academic or fiscal year after the completion by a faculty member of one, but not more than two, years of service within the university system, but not later than December 15 for appointments ending in May, June, July or August.
  - c. Twelve months prior to the end of the academic or fiscal year after two or more years of uninterrupted service within the university system.
  - d. Should the program be expanded within two years, tenured faculty members shall be invited to return to the program faculty. The faculty member must notify the university of the decision to decline or accept within thirty days of receipt of this invitation.
- 7. Financial exigency. Following a declaration of financial exigency (as described in Regents' Policy 04.09.06 and related University regulations), faculty members are entitled to a minimum of sixty calendar days notice in advance of the cessation of their employment.
- 8. Cause. Cause shall mean some substantial shortcoming which renders continuance in employment detrimental to appropriate discipline and efficiency of service. Cause shall include, but not be limited to: incompetency, neglect of duty, unprofessional conduct or other conduct which interferes substantially with the continued performance of duties. Cause may also include physical or mental incapacity. Faculty may be dismissed immediately for cause.

COURT CASE: State of Alaska vs. Colleen Redman

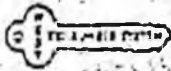
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proper statements made by the bailiff to the jury during the course of their deliberations. We find that the record furnished us does not permit intelligent review of this question. As far as we can discern, Howard's counsel never explicitly moved for an evidentiary hearing or bottomed his motion for new trial on the grounds of misconduct on the bailiff's part. Thus we find that the issue is not properly before this court and therefore decline to pass on the question.<sup>4</sup>

The judgment and commitment entered below is affirmed.



STATE of Alaska, Appellant,

v.

Colleen REDMAN, Appellee.

No. 1451.

Supreme Court of Alaska.

Nov. 30, 1977.

Declaratory judgment action by teacher in which she also sought compensatory damages from State. The Superior Court, Fourth Judicial District, Fairbanks, Warren Wm. Taylor, J., entered partial summary judgment that teacher was a tenured teacher who had been improperly dismissed, and State appealed. The Supreme Court, Rabinowitz, J., held that fact that teacher, who was home-school coordinator and who worked continuously throughout particular school year, was employed half-time basis during such year did not make year's employment incompetent for purpose of acquisition of tenure rights, and that such teacher, who worked as home-school coordinator on half-time basis for

full 1967-68 school year and on full-time basis during 1968-69 school year, attained tenure rights, and thus attempt by Department of Education to dismiss her in June of 1970 was ineffectual.

Declaratory judgment affirmed, and case remanded for determination of damage issues.

Diamond, J., did not participate.

1. Schools and School Districts 193.11

Fact that teacher, who was home-school coordinator and who worked continuously throughout particular school year, was employed on half-time basis during such year did not make year's employment incompetent for purpose of acquisition of tenure rights. AS 14.20.150.

2. Schools and School Districts 193.8

Tenure laws are intended to give job security to experienced teachers and to insure that they will not be discharged for inadequate reasons; a system of tenure has as its objective the retention of able personnel after they have undergone an adequate period of probation with concomitant result that more talented personnel will be attracted to enter the teaching profession.

2. Schools and School Districts 193.11

Teacher, who worked as home-school coordinator on half-time basis for full 1967-68 school year and on full-time basis during 1968-69 school year, attained tenure rights, and thus attempt by Department of Education to dismiss her in June of 1970 was ineffectual. AS 14.20.140(a), 14.20.145, 14.20.150.

John E. Havelock, Atty. Gen., Juneau, Stephen Cooper, Dist. Atty., Lyle R. Carlson and William Christian, Asst. Dist. Attys., Fairbanks, for appellant.

<sup>4</sup> Howard is not precluded from raising this issue in future proceedings. Under Crim.R. 33 and 53, it is possible that Howard's objections of the bailiff's misconduct

could provide the basis for a motion for new trial. Additionally, Howard can advance this ground as a basis for post-conviction relief under Crim.R. 35(b).

Joseph W. Sheehan, Rice, Hopper, Blair & Associates, Fairbanks, for appellee.

Before BONEY, C. J., and RABINOWITZ, WITZ, CONNOR and ERWIN, JJ.

### OPINION

RABINOWITZ, Justice.

Colleen Redman brought a declaratory judgment action in which she also sought compensatory damages from the State of Alaska. Redman prevailed below where a partial summary judgment was entered in which the trial court held that Redman was a tenured teacher who had been improperly dismissed. We affirm.

Alaska's Education Code provides that a teacher acquires tenure rights when he:

(a) (1) possesses a standard teaching certificate;

(2) has been employed as a teacher in the same district continuously for two full school years and is re-employed for the school year immediately following the two full school years.

(b) The tenure rights acquired under (a) of this section become effective on the first day the teacher performs teaching services in the district during the school year immediately following the two full school years.<sup>1</sup>

In July of 1967 Colleen Redman was hired by Alaska's Department of Education as a Home-School Coordinator under the Boarding Home Program in Fairbanks. Memoranda of Agreements were initially used to hire Redman for the period covering August 1, 1967, to October 31, 1967, on a half-time basis. Then on November 1, 1967, the Department of Education and Redman entered into a contract in which it was agreed that she would work the

remainder of the school year on a half-time basis. Pursuant to this latter contract, Redman was considered a teacher and was given a provisional teaching certificate retroactively dated to September 1, 1967.<sup>2</sup> Subsequently Redman was hired on a full-time basis as a Home-School Coordinator for the 1968-69 and 1969-70 school years. During this period Redman obtained a standard teaching certificate. The state concedes that Redman's employment during the 1968-69 and 1969-70 school years qualifies towards attainment of tenure rights, but disputes Redman's contention that her employment for the 1967-68 school year can be counted towards fulfillment of the two full school years prerequisite established by AS 14.20.150(a) (2). The crux of the position of the state Board of Education is that Colleen Redman was not continuously employed for two full years as required by subsection 2 of AS 14.20.150(a) because she only worked half days during the school year 1967-68.<sup>3</sup> We fail to find any provision of our statutes concerning education which requires, or to perceive of any persuasive policy reasons why, a teacher must work full days throughout the school year in order to attain tenure rights. No legislative intent to exclude a teacher who works less than full days is manifest from our study of the applicable statutes.

We think the reasoning of the court in *Sherrill v. Lawrenceburg School City*, 213 Ind. 392, 12 N.E.2d 944 (1935), is persuasive and dispositive of the state's argument that a teacher must be a full-time teacher in order to attain tenure under AS 14.20.150(a) (2). In that case it was contended that tenure was not achieved because the teacher was a part-time teacher who did not teach classes every day, but only taught

1. AS 14.20.150.

2. The Department of Education required that anyone holding the position of Home-

3. AS 14.20.207 broadly defines the term "teacher" as

a person acting in a teaching, instructing, or administrative capacity and who is to be certified in order to hold



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twelve school days each month. In rejecting this position, the court in *Sherrod* said:

There can be no merit in this contention. She was not an occasional teacher, who taught intermittently as a substitute or otherwise. She was a regular teacher. The law does not require that teachers shall teach every day, or every hour of every day. Such subjects as art or music may require fewer hours of teaching. This is in the discretion of the school authorities. Our appellee was undoubtedly regularly employed, teaching the same subject a given number of days per month, over a period of years, and must be considered a regular teacher.<sup>4</sup>

[1,2] Since Colleen Redman worked continuously throughout the full 1967-68 school year, we hold that the fact that she was employed half time did not make that year's employment incompetent for purposes of acquisition of tenure rights. Tenure laws are intended to give job security to experienced teachers and to ensure that they will not be discharged for inadequate reasons. A system of tenure has as its objective the retention of able personnel after they have undergone an adequate period of probation with the concomitant result

that more talented personnel will be attracted to enter the teaching profession. *McSherry v. City of St. Paul*, 292 Minn. 102, 277 N.W. 541 (1954). In the case at bar Redman fulfilled her duties during the 1967-68 school year on a regular basis. Her employment during this first school year and her full-time employment during the ensuing full 1968-69 school year afforded the Board of Education an adequate opportunity to observe the quality of her performance. Redman's situation is analogous to that of a music or art teacher who, because of the specialized nature of his skills, may teach less than a full school day. When such a teacher's duties are regular and substantial enough to afford intelligent evaluation, we perceive little in the way of persuasive policy considerations for excluding such service from the ambit of our tenure laws.

[3] We therefore hold that by virtue of her employment during the full school years 1967-68, 1968-69, Colleen Redman attained tenure rights, and that the Department of Education's attempt to dismiss her in June of 1970 was ineffectual under our statutes.<sup>5</sup>

The declaratory judgment of the superior court is affirmed and the case remanded for determination of the damages issue.<sup>6</sup>

4. 12 N.S.2d 12 641-645. See also *State v. Nl. Shastank v. District Court, Fairbanks County*, 123 Mead. 333, 275 P.2d 248, 249-250 (1954).

5. AS 24.20.340(a) provides: "If a teacher who has acquired tenure rights is not to be retained for the following school year, the employer shall notify the teacher of the nonretention by writing, delivered before March 30, or by registered mail postmarked before March 30.

Regarding the failure to give notice in accord with the foregoing, AS 24.20.347 provides:

If notification of nonretention is not given according to § 24.20 of this chapter a teacher is entitled to be reemployed

in the same district for the following school year on the contract terms the teacher and the employer may agree upon, or if no terms are agreed upon, the provisions of the previous contract are continued for the following school year, subject to § 24 of this chapter. The right to be reemployed according to this section expires if the teacher has not sought reemployment within 30 days after the date on which the teacher receives the contract of nonemployment.

6. This appeal is not final until after judgment. We have decided to resolve the matter under the authority of *Harrell, Inc. v. Wilts*, 190 P.2d 24, 25 (Alaska 1948).

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Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H. HESS 3-27-70

H. HESS 3-27-80