SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE 3/2/89
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER JUD

**FISCAL NOTE(S) MUST BE ATTACHED
IN ACCORDANCE WITH AS 24.08.035
2/27/89

DATE TURNED INTO OFFICE 3/9/89

Mr. President:

HESS Committee considered SB 194

judicial review of school boards' nonretention or dismissal of teachers

and recommended:

[ ] replace with CS _____ [] same title
[] new title

[ ] attached amendment(s) and

[ ] _____ letter of intent adopted

[ ] do pass

[ ] do not pass

[ ] no recommendation

(X) individual recommendations

[ ] further referral to _____

FISCAL NOTE(S) attached (X) zero [ ] fiscal impact
[ ] appropriation no FN attached [ ] Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

Al Adams

OTHER RECOMMENDATIONS

Tim Kelly (No Rec)
Jim Duncan (No Rec)

Chairman signature and recommendation

[ ] Committee backup attached

ASSOCIATION OF ALASKA SCHOOL BOARDS
316 W. 11th St. • Juneau, Alaska 99801-1510 • (907) 586-1083

Position Paper

Senate Bill 194

The Association of Alaska School Boards encourages the support of SB 194 "an act relating to judicial review of School Boards' non-retention or dismissal of teachers."

The proposed legislation is seeking ~~to define~~ the School Board as an administrative agency under AS 22.10.021. As such, "the hearing on appeal from a final ~~order or judgement~~ of a subordinate court or administrative agency shall be on the record unless the superior court, in its discretion, grants a trial de novo, in whole or part."

The hearing process regarding non-retention or dismissal of teachers is necessary for fair protection of teacher rights. However, the process is time consuming and very costly to school districts. A trial de novo allows a teacher to appeal to the superior court for a new trial regardless of the finding of the hearing process. A school district must then repeat the process before the court and incur the financial cost once again thereby delaying the process.

The Association of Alaska School Boards respectfully requests that the Senate Hess Committee pass SB 194 and recognize School Boards as an administrative agency under 22.10.021.

Could not reverse

De Novo Report

NEA-ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

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March 6, 1989

To: Senator Paul Fischer, Chair
Members, Senate HESS Committee

Re: Senate Bill No. 194; "An Act relating to judicial review of school board's nonretention or dismissal of teachers."

NEA-Alaska strongly opposes SB 194.

By placing constraint upon the latitude of the court in what it may consider and the remedy it may grant cuts the very heart out of the fundamental principle of due process and fair treatment under law.

AS 14.20.205 in its present form in providing access to a de novo trial in superior court not only assures due process but discourages arbitrary and capricious treatment of employees.

In far too many instances the school board or some of its members have already been party to discussion and even decisions to dismiss or nonretain employees even before the process reaches the hearing at the school board level.

To suggest that the process is impartial in all instances even under current law is to clearly stretch the imagination beyond reality. The presence of the potential for judicial review of a school board decision through a de novo trial is the one component in law that brings credibility to the school board hearing process.

Facts, as stated by a school board, should be able to withstand the scrutiny of the courts, especially when the employee disagrees with and contests the validity of the facts and any subsequent action by the school board which may lead to termination of employment and the person's source of income.

Section 2 of the proposed legislation has the effect of setting up a dual system of due process for employees in similar circumstances and may very well not stand he test of equal protection under the Alaska Constitution.

The answer to the alleged problem which brings this legislation forward is more thorough and conscientious pre-hire consideration of prospective employees by school district administrators and closer scrutiny of their recommendations for employment by the school boards.

Additionally, a better job in evaluation of employee performance consistent with the regulations of the Department of Education will further serve the best interests of school boards, employees and students.

NEA-Alaska strongly believes that the disruptive and adverse effect that this legislation would have on employees and their expectation of fair and equitable treatment under law is not in the public interest.

Thank you for your consideration of our position.

Respectfully submitted,

Bob Manners
Executive Secretary

cc: Senator Al Adams

m6mar1

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SB 194
PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date:
Title: Judicial Review of School Boards' Nonretention or Dismissal of Teachers
Sponsor: Adams
Requestor: Senate HESS

Agency Affected: Education
BRU: K-12 Support
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Mary Hakala
Division: Commissioner's Office
Phone: 465-2800
Date: 3/3/89

Approved by Commissioner: William G. Demmert
Agency: Education
Date: 3/3/89

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Sec. 22.10.020. Jurisdiction of the superior court. (a) The superior court is the trial court of general jurisdiction, with original jurisdiction in all civil and criminal matters, including probate and guardianship of minors and incompetents. Except for a petition for injunctive relief under AS 25.35.010 or 25.35.020, an action that falls within the concurrent jurisdiction of the superior court and the district court may not be filed in the superior court, except as provided by rules of the supreme court.

(b) The jurisdiction of the superior court extends over the whole of the state.

(c) The superior court and its judges may issue injunctions, writs of review, mandamus, prohibition, habeas corpus, and all other writs necessary or proper to the complete exercise of its jurisdiction. A writ of habeas corpus may be made returnable before any judge of the superior court.

(d) The superior court has jurisdiction in all matters appealed to it from a subordinate court, or administrative agency when appeal is provided by law. The hearings on appeal from a final order or judgment of a subordinate court or administrative agency shall be on the record unless the superior court, in its discretion, grants a trial de novo, in whole or in part.

(e) An appeal to the superior court is a matter of right, but an appeal from a subordinate court may not be taken by the defendant in a criminal case after a plea of guilty, except on the ground that the sentence was excessive. The state has no right to appeal in criminal cases, except to test the sufficiency of an indictment or information or to appeal a sentence on the ground it is too lenient.

(f) An appeal to the superior court may be taken on the ground that a sentence of imprisonment of 90 days or more was excessive and the superior court in the exercise of this jurisdiction has the power to reduce the sentence. When a sentence is appealed by the state on the ground it is too lenient, the court may not increase the sentence but may express its approval or disapproval of the sentence and its reasons in a written opinion.

(g) In case of an actual controversy in the state, the superior court, upon the filing of an appropriate pleading, may declare the rights and legal relations of an interested party seeking the declaration, whether or not further relief is or could be sought. The declaration has the force and effect of a final judgment or decree and is reviewable as such. Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against an adverse party whose rights have been determined by the judgment.

(h) The superior court, in an action for divorce, separation, or child support, affecting inalienable stock in a corporation organized under 43 U.S.C. 1601 — 1628 (Alaska Native Claims Settlement Act), may

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order the stock transferred to the spouse, a child, or a guardian or custodian for a child, but may not order it sold on the open market or transferred to other persons.

(i) The superior court is the court of original jurisdiction over all causes of action arising under the provisions of AS 18.80. A person who is injured or aggrieved by an act, practice, or policy which is prohibited under AS 18.80 may apply to the superior court for relief. The person aggrieved or injured may maintain an action on behalf of that person or on behalf of a class consisting of all persons who are aggrieved or injured by the act, practice, or policy giving rise to the action. In an action brought under this subsection, the court may grant relief as to any act, practice, or policy of the defendant which is prohibited by AS 18.80, regardless of whether each act, practice, or policy, with respect to which relief is granted, directly affects the plaintiff, so long as a class or members of a class of which the plaintiff is a member are or may be aggrieved or injured by the act, practice, or policy. The court may enjoin any act, practice, or policy which is illegal under AS 18.80 and may order any other relief, including the payment of money, that is appropriate. (§ 17(1) (2) ch 50 SLA 1959; am § 2 ch 117 SLA 1969; am § 1 ch 240 SLA 1970; am § 3 ch 70 SLA 1972; am § 8 ch 12 SLA 1980; am § 78 ch 6 SLA 1984; am § 2 ch 17 SLA 1985)

Revisor's notes. — Chapter 50 SLA 1959 implemented the constitution by providing for the establishment of the supreme and superior court system under the constitution. It was designed to accomplish the transfer of judicial functions within the three-year transition period contemplated by the Statehood Act, P.L. 85-508, of July 7, 1958, with provision being made for a more rapid transfer if the President sooner ended the jurisdiction of the territorial courts by executive order.

In November, 1959, eight superior court judges were appointed. On February 20, 1960, the President signed Executive Order No. 10,867, which ended the jurisdiction of the District Court for the Territory of Alaska and proclaimed that the United States District Court for the District of Alaska was prepared to assume the functions imposed upon it. Section 31(1) ch 50 SLA 1959 provided that causes might be commenced, filed, and determined in the state courts in each judicial district from the appointment of one or more judges for the district. Although by the terms of § 31(2) the jurisdiction of the state courts was to be nonexclusive until January 3, 1962, the effect of the executive order was to give them the exclusive jurisdiction which they would in any event receive on that date.

Cross references. — For intervention by the State Commission for Human Rights in an action brought under AS 22.10.020(c), see AS 18.80.145. For appeal of sentences of imprisonment to court of appeals, see AS 22.07.020(b). For appeal from district court to superior court in criminal actions, see AS 22.15.240(b).

Effect of amendments. — The 1984 amendment rewrote this section.

The 1985 amendment added the last sentence of subsection (a).

Editor's notes. — Section 37, ch. 12, SLA 1980 provides: "Sections 8, 15 and 31 of this Act have the effect of changing Rule 21, Rules of Appellate Procedure and Rule 7, District Court Criminal Rules by amending AS 22.10.020(a), AS 22.15.240, and AS 12.55 to provide that a sentence of 90 days or more imposed by the district court may be appealed."

Section 12, ch. 17, SLA 1985 provides that the 1985 amendment to (a) of this section applies only to cases filed on or after July 1, 1985.

AS 14.20.145 is expressly made subject to this section. Redman v. Department of Educ., Sup. Ct. Op. No. 1009 (File Nos. 1802, 1822), 519 P.2d 760 (1974).

Sec. 14.20.160. Loss of tenure rights. Tenure rights are lost when the teacher's employment in the district is interrupted or terminated. (§ 1 ch 92 SLA 1960; am § 1 ch 104 SLA 1965; am § 20 ch 98 SLA 1966; am § 22 ch 37 SLA 1986)

Effect of amendments. — The 1986 amendment deleted "or when the teacher reaches the age of 65" at the end of the section.

Sec. 14.20.165. Restoration of tenure rights. A teacher who held tenure rights and who was retired due to disability under AS 14.25.130, but whose disability (1) has been removed, and the removal of that disability is certified by a competent physician following a physical or mental examination, or (2) has been compensated for by rehabilitation or other appropriate restorative education or training, and that rehabilitation or restoration to health has been certified by the division of vocational rehabilitation of the department, shall be restored to full tenure rights in the district from which the teacher was retired, at such time as an opening for which the teacher is qualified becomes available. (§ 1 ch 71 SLA 1975)

Sec. 14.20.170. Dismissal. (a) A teacher, including a teacher who has acquired tenure rights, may be dismissed at any time only for the following causes:

(1) incompetency, which is defined as the inability or the unintentional or intentional failure to perform the teacher's customary teaching duties in a satisfactory manner;

(2) immorality, which is defined as the commission of an act which, under the laws of the state, constitutes a crime involving moral turpitude; or

(3) substantial noncompliance with the school laws of the state, the regulations or bylaws of the department, the bylaws of the district, or the written rules of the superintendent.

(b) A teacher may be suspended temporarily with regular compensation during a period of investigation to determine whether or not cause exists for the issuance of a notification of dismissal according to AS 14.20.180. (§ 2 ch 92 SLA 1960; am § 21 ch 98 SLA 1966; am §§ 1, 2 ch 104 SLA 1966)

Legislative history reports. — For report on ch. 104, SLA 1966, see 1966 House Journal, p. 988.

In general. — AS 14.20.095. No
Subsection (b) permissive form suspension duri Nichols v. Eckert (File No. 1572), 5
A right of non hearing prior to not to be found i v. Eckert, Sup. Ct 1572), 504 P.2d 1
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NOTES TO DECISIONS

In general. — See annotations under AS 14.20.095, Notes to Decisions.

Subsection (b) of this section is in a permissive form and allows temporary suspension during the investigation. Nichols v. Eckert, Sup. Ct. Op. No. 860 (File No. 1572), 504 P.2d 1359 (1973).

A right of nontenured teachers to a hearing prior to dismissal for cause is not to be found in this section. Nichols v. Eckert, Sup. Ct. Op. No. 860 (File No. 1572), 504 P.2d 1359 (1973).

The express language of subsection (b) of this section clearly lacks any indication that the legislature intended to provide a hearing prior to dismissal for cause of a nontenured teacher. Nichols v. Eckert, Sup. Ct. Op. No. 860 (File No. 1572), 504 P.2d 1359 (1973).

Despite the reference to AS 14.20.180. — The reference to AS 14.20.180 in this section cannot reasonably be interpreted to extend the hearing rights given to tenured teachers under that section to nontenured teachers. Nichols v. Eckert, Sup. Ct. Op. No. 860 (File No. 1572), 504 P.2d 1359 (1973).

The distinction in treatment between tenured and nontenured teachers is quite clear from the express terms of AS 14.20.180. Nichols v. Eckert, Sup. Ct. Op. No. 860 (File No. 1572), 504 P.2d 1359 (1973).

Validity of dismissal proceedings. — When a discharged teacher had not demonstrated any way in which his dismissal was tainted by his temporary suspension with pay under subsection (b), nor any other way in which he was prejudiced by the suspension, his contention that the dismissal proceedings were void as a matter of law was found to be without merit. Renfroe v. Green, Sup. Ct. Op. No. 2233 (File Nos. 4394, 4481), 626 P.2d 1068 (1980).

Dismissal for immorality. — In subsection (a)(2), the act must constitute a crime involving moral turpitude; a criminal conviction is not necessary. Kenai Peninsula Borough Bd. of Educ. v. Brown, Sup. Ct. Op. No. 2886 (File No. 7763), 691 P.2d 1034 (1984).

Although the Board of Education could not dismiss a teacher on an assumption that a violation of AS 42.20.030(7) (wilfully diverting electricity) always constitutes a theft, the board had sufficient evidence to conclude that the teacher had committed theft, and the dismissal for immorality was therefore valid even if the teacher was not convicted under a theft statute. Kenai Peninsula Borough Bd. of Educ. v. Brown, Sup. Ct. Op. No. 2886 (File No. 7763), 691 P.2d 1034 (1984).

Instructions. — There was no error in the court's inclusion of an instruction on provisions of the Professional Teaching Practices Commission Code of Ethics although there had been no determination that a dismissed teacher had violated the code by the commission when fair minded jurors, in the exercise of reasonable judgment, could differ on whether certain actions by the dismissed teacher were unethical or otherwise constituted substantial non-compliance under subsection (a) of this section. Renfroe v. Green, Sup. Ct. Op. No. 2233 (File Nos. 4394, 4481), 626 P.2d 1068 (1980).

Directed verdict. — When there was evidence that a dismissed teacher had verbally and physically abused another member of the teaching profession in front of students; and fair minded jurors, in the exercise of reasonable judgment, could differ on whether those actions violated provisions of the code of ethics of the Professional Teaching Practices Commission or otherwise constituted incompetency or substantial noncompliance under subsection (a) of this section, the superior court did not err in failing to direct a verdict in the dismissed teacher's favor. Renfroe v. Green, Sup. Ct. Op. No. 2233 (File Nos. 4394, 4481), 626 P.2d 1068 (1980).

Cited in Skagway City School Bd. v. Davis, Sup. Ct. Op. No. 1216 (File No. 2265), 543 P.2d 218 (1975).

Collateral references. — Temporary inability of teacher without fault of school authorities to perform duty as justifying termination of contract or removal. 72 ALR 283.

Marriage of teacher as ground of removal or discharge. 81 ALR 1033; 118 ALR 1092.

Candidacy for or incumbency of public office or other political activity by teacher or other school employee as ground for dismissal or compulsory leave of absence. 136 ALR 1154.

Assertion of immunity as ground for discharge of teacher. 44 ALR2d 799.

Notice of intent n to discharge teacher, or not to renew contract, sufficiency under statutes requiring such notice. 92 ALR2d 751.

Right to dismiss public school teacher on ground that services are no longer needed. 100 ALR2d 1141.

What constitutes "incompetency" or "inefficiency" as a ground for dismissal or demotion of public school teacher. 4 ALR3d 1090.

Elements and measure of damages in action by schoolteacher for wrongful discharge. 22 ALR3d 1047.

Use of illegal drugs as ground for dismissal of teacher, or denial or cancelation of teacher's certificate. 47 ALR3d 754.

Dismissal of, or disciplinary action against, public school teachers for violation of regulation as to dress or personal appearances of teachers. 58 ALR3d 1227.

Sexual conduct as ground for dismissal of teacher or denial or revocation of teaching certificate. 78 ALR3d 19.

What constitutes "insubordination" as ground for dismissal of public school teacher. 78 ALR3d 83.

Dismissal of public school teacher because of unauthorized absence or tardiness. 78 ALR3d 117.

Sec. 14.20.175. Nonretention. (a) A teacher who has not acquired tenure rights is subject to nonretention for the school year following the expiration of the teacher's contract for any cause which the employer determines to be adequate. However, at the teacher's request, the teacher is entitled to a written statement of the cause for nonretention. The boards of city and borough school districts and regional educational attendance areas shall provide by regulation or bylaw a procedure under which a nonretained teacher may request and receive an informal hearing by the board.

(b) A teacher who has acquired tenure rights is subject to nonretention for the following school year only for the following causes:

(1) incompetency, which is defined as the inability or the unintentional or intentional failure to perform the teacher's customary teaching duties in a satisfactory manner;

(2) immorality, which is defined as the commission of an act which, under the laws of the state, constitutes a crime involving moral turpitude;

(3) substantial noncompliance with the school laws of the state, the regulations or bylaws of the department, the bylaws of the district, or the written rules of the superintendent; or

(4) a necessary reduction of staff occasioned by a decrease in school attendance. (§ 22 ch 98 SLA 1966; am § 1 ch 11 SLA 1968; am § 13 ch 46 SLA 1970; am § 15 ch 124 SLA 1975)

NOTES TO DECISIONS

Section exceeds federal constitutional requirements. — This section in requiring a statement of cause and an opportunity to be heard, exceeds federal constitutional requirements. Shatting v. Dillingham City School Dist., Sup. Ct. Op. No. 2177 (File No. 4240), 617 P.2d 9 (1980).

Discretion of school boards. — 4 AAC 19.010, which provides that formal evaluations shall serve as a method for gathering data relevant to subsequent employment status decisions pertaining to the person evaluated, cannot operate to limit the broad discretion that was intentionally given to local school boards by the

require in the notification that the hearing be either public or private and that the hearing be under oath or affirmation. The notification may also require that the right of cross-examination be provided and that the tenured teacher be represented by counsel and have the right to subpoena a person who has made allegations which are used as a basis for the decision of the employer.

(c) Upon receipt of the notification requesting a hearing, the employer shall immediately arrange for a hearing, and shall notify the tenured teacher or administrator in writing of the date, time, and place of the hearing. A written transcript, tape, or similar recording of the proceedings shall be kept. Transcribed copies shall be furnished to the tenured teacher for cost upon request of the tenured teacher. A final decision of the school board requires a majority vote of the membership. The vote shall be by roll call. The final decision shall be written and contain specific findings of fact and conclusions of law. A written notification of the decision shall be furnished to the tenured teacher within 10 days of the date of the decision. (§ 3a ch 92 SLA 1960; am § 23 ch 98 SLA 1966; am §§ 2, 3 ch 11 SLA 1968; am § 14 ch 46 SLA 1970; am §§ 16, 17 ch 124 SLA 1975)

NOTES TO DECISIONS

Section describes procedure. — This section describes the administrative procedure, which includes a hearing, when a tenured teacher has been given a notice of dismissal or nonretention. Corso v. Commissioner of Educ., Sup. Ct. Op. No. 1412 (File No. 2870), 563 P.2d 246 (1977).

Reference to section in AS 14.20.170 does not extend hearing rights to nontenured teachers. — The reference to this section in AS 14.20.170 cannot reasonably be interpreted to extend the hearing rights given to tenured teachers under this section to nontenured teachers. Nichols v. Eckert, Sup. Ct. Op. No. 860 (File No. 1572), 504 P.2d 1359 (1973).

But constitutional due process requirements overcome any statutory rule. — Even though a hearing is not accorded to nontenured teachers by statute, the constitutional requirements of due process overcome any statutory rule. Nichols v. Eckert, Sup. Ct. Op. No. 860 (File No. 1572), 504 P.2d 1359 (1973).

And nontenured teachers are entitled to hearing upon dismissal. — Where a mid-year dismissal is at issue, clearly the teachers have been deprived of an interest in property, namely, their present teaching post. This is an interest protected by the 14th amendment to the United States Constitution and by the first article of the Alaska Constitution, and thus they are entitled to a hearing. Nichols v. Eckert, Sup. Ct. Op. No. 860 (File No. 1572), 504 P.2d 1359 (1973).

When dismissal effective. — The "notification of dismissal" is a notice that the board has voted in favor of dismissal, but the dismissal cannot be effective until the teacher has had an opportunity to request a hearing if one is desired. Kenai Peninsula Borough Bd. of Educ. v. Brown, Sup. Ct. Op. No. 2886 (File No. 7763), 691 P.2d 1034 (1984).

Since this section gives the teacher 15 days in which to request a hearing, the termination is not effective until at least 15 days following the notification of dismissal. Kenai Peninsula Borough Bd. of Educ. v. Brown, Sup. Ct. Op. No. 2886 (File No. 7763), 691 P.2d 1034 (1984).

If the teacher does not request a hearing, the dismissal becomes effective immediately following the expiration of the 15 day period; if the teacher does request a hearing, the dismissal can only be effective after a final majority vote following the hearing. Kenai Peninsula Borough Bd. of Educ. v. Brown, Sup. Ct. Op. No. 2886 (File No. 7763), 691 P.2d 1034 (1984).

Meeting resulted in a dismissal prior to a hearing in violation of teacher's due pro-

cess rights where the teacher was notified that the Board of Education had approved a recommendation for his immediate dismissal and that his pay was terminated effective the day of the meeting, and he was told that he could request a hearing, but the dismissal was nonetheless effective prior to the hearing. Kenai Peninsula Borough Bd. of Educ. v. Brown, Sup. Ct. Op. No. 2886 (File No. 7763), 691 P.2d 1034 (1984).

A hearing is the procedure most likely to lead to a fair determination regarding the dismissal of a nontenured teacher. The stigma which attaches to a discharge for incompetence is sufficiently injurious to call for this type of safeguard. Nichols v. Eckert, Sup. Ct. Op. No. 860 (File No. 1572), 504 P.2d 1359 (1973).

A full judicial hearing is not necessary, but a hearing that allows the administrative authority to examine both sides of the controversy will protect the interests and rights of all who are involved. Nichols v. Eckert, Sup. Ct. Op. No. 860 (File No. 1572), 504 P.2d 1359 (1973).

But nontenured teachers must be given opportunity to present defense by testimony. Nichols v. Eckert, Sup. Ct. Op. No. 860 (File No. 1572), 504 P.2d 1359 (1973).

Hearing complied with section and teacher's due process rights. — See Kenai Peninsula Borough Bd. of Educ. v. Brown, Sup. Ct. Op. No. 2886 (File No. 7763), 691 P.2d 1034 (1984).

When time for appeal begins to run. — In light of the provision in subsection (c) of this section that the final decision of the school board must be "written and contain specific findings of fact and conclusions of law," the time for appeal from the board's determination did not begin to run until the written decision was mailed or delivered to the teacher. Jerrel v. Kenai Peninsula Borough School Dist., Sup. Ct. Op. No. 1458 (File No. 2901), 567 P.2d 760 (1977).

Applied in Renfroe v. Green, Sup. Ct. Op. No. 2233 (File Nos. 4394, 4481), 626 P.2d 1068 (1980).

Collateral references. — Request for hearing, sufficiency under statute requiring hearing on request before discharge. 89 ALR2d 1018.

Sufficiency of notice of intention to discharge teacher or not to renew contract under statutes requiring such notice. 92 ALR2d 751.

Elements and measure of damages in action by schoolteacher for wrongful discharge. 22 ALR3d 1047.

Secs. 14.20.185 — 14.20.200. Procedure and hearing; appeals. [Repealed, § 59 ch 98 SLA 1966.]

Sec. 14.20.205. Judicial review. If a school board reaches a decision unfavorable to a teacher, the teacher is entitled to a de novo trial in the superior court. However, a teacher who has not attained tenure rights is not entitled to judicial review according to this section. (§ 24 ch 98 SLA 1966; am § 1 ch 148 SLA 1966; am § 4 ch 11 SLA 1968; am § 18 ch 124 SLA 1975)

NOTES TO DECISIONS

This section, granting a trial de novo to teachers, does not violate the separation of powers. Matanuska-Susitna Borough v. Lum, Sup. Ct. Op. No. 1179 (File Nos. 2241, 2250), 538 P.2d 994 (1975).

On its face, this section bears no relation to the general provisions governing judicial appeals, which is covered by Title 22. Matanuska-Susitna Borough v. Lum, Sup. Ct. Op. No. 1179 (File Nos. 2241, 2250), 538 P.2d 994 (1975).

AS 22.10.020 does not supersede this section. — AS 22.10.020, which provided in § 17(1), ch. 50, SLA 1959, that "All hearings on appeal from any final order or judgment of a subordinate court or administrative agency shall be on the record unless the superior court, in its discretion, shall grant a trial de novo, in whole or in

part," does not supersede this section, which expressly mandates de novo reviews for tenured teachers. Matanuska-Susitna Borough v. Lum, Sup. Ct. Op. No. 1179 (File Nos. 2241, 2250), 538 P.2d 994 (1975).

In reenacting AS 22.10.020 in 1970 the legislature has not unequivocally expressed any intent to deny tenured teachers de novo review nor was the reenactment part of a comprehensive revision. Matanuska-Susitna Borough v. Lum, Sup. Ct. Op. No. 1179 (File Nos. 2241, 2250), 538 P.2d 994 (1975).

Since this section and AS 22.10.020 are not irreconcilably conflicting, but can be intelligently read as conterminous expressions of a general rule and an exception to it, nothing in the edicts of statutory construction requires us to find that this section has been rendered inoperative by the reenactment of AS 22.10.020. Matanuska-Susitna Borough v. Lum, Sup. Ct. Op. No. 1179 (File Nos. 2241, 2250), 538 P.2d 994 (1975).

A policy factor militating in favor of a full application of this section is that a tenured teacher against whose favor a decision has been reached is faced with the loss of a very important right: his source of income. In this connection, it is not necessary to indulge in such classificatory labels as "vested right" or "property right," for it is enough that the right be recognized as important for it to act as a guide to decision in the interpretation of this section Matanuska-Susitna Borough v. Lum, Sup. Ct. Op. No. 1179 (File Nos. 2241, 2250), 538 P.2d 994 (1975).

Rights of nonretained, nontenured teachers are limited. — The rights of a nontenured teacher who is simply not retained at the end of his period of employment are relatively limited because such a teacher has no constitutionally protected interest in public employment. Gorder v. Matanuska-Susitna Borough School Dist., Sup. Ct. Op. No. 929 (File No. 1754), 513 P.2d 1094 (1973).

Probationary employees who are otherwise lawfully discharged cannot obtain permanent status through grievance procedures which do not purport to modify the statutory provisions concerning tenure and termination of employees. Gorder v. Matanuska-Susitna Borough School Dist., Sup. Ct. Op. No. 929 (File No. 1754), 513 P.2d 1094 (1973).

The grievance procedure may be of value to a nontenured teacher in attempting to persuade the hiring authority that he should be retained. The process might on occasion bring forth evidence and argument by which the termination of the nontenured teacher might be reconsidered. Gorder v. Matanuska-Susitna Borough School Dist., Sup. Ct. Op. No. 929 (File No. 1754), 513 P.2d 1094 (1973).

But any such results and action would be a matter within the discretion of the hiring authority, and thereby a matter of grace rather than legal right. Gorder v. Matanuska-Susitna Borough School Dist., Sup. Ct. Op. No. 929 (File No. 1754), 513 P.2d 1094 (1973).

Right of nontenured teacher to judicial review. — While this section does not extend the tenured teacher's right to a trial de novo to a nontenured teacher, neither does it preclude a more limited form of judicial review of the school board decision; therefore a nontenured teacher has a right to judicial review, on the record, of a school board's nonretention, and although a review on the record is all that is required, in its discretion the superior court may grant a trial de novo. Shatting v. Dillingham City School Dist., Sup. Ct. Op. No. 2177 (File No. 4240), 617 P.2d 9 (1980).

Courts granted fact-finding role. — While courts normally feel constrained to defer to the fact-finding role which the legislature has given to a particular agency, no such constraint logically should exist where the legislature itself has granted the courts a fact-finding role in their review of administrative action. This section seemingly does just that, for it expressly grants a tenured teacher a "trial de novo" following an unfavorable school board decision. Matanuska-Susitna Borough v. Lum, Sup. Ct. Op. No. 1179 (File Nos. 2241, 2250), 538 P.2d 994 (1975).

When time for appeal begins to run. — In light of the provision in AS 14.20.180(c) that the final decision of the school board must be "written and contain specific findings of fact and conclusions of law," the time for appeal from the board's determination did not begin to run until the written decision was mailed or delivered to the teacher. Jerrel v. Kenai Peninsula Borough School Dist., Sup. Ct. Op. No. 1458 (File No. 2901), 567 P.2d 760 (1977).

Applied in Renfroe v. Green, Sup. Ct. Op. No. 2233 (File Nos. 4394, 4481), 626 P.2d 1068 (1980); Jones v. Wrangell

School Dist., Sup. Ct. Op. No. 2917 (File Nos. S-223/S-224), 696 P.2d 677 (1985).

Quoted in Sjong v. State, Dep't of Revenue, Sup. Ct. Op. No. 2269 (File No. 4255), 622 P.2d 967 (1981); Fedpac Int'l, Inc. v. State, Sup. Ct. Op. No. 2520 (File No. 6034), 646 P.2d 240 (1982); Fisher v. Fairbanks N. Star Borough School Dist., Sup. Ct. Op. No. 2960 (File No. 7446), 704 P.2d 213 (1985).

Sec. 14.20.207. [Renumbered as AS 14.20.215.]

Sec. 14.20.210. Authority of school board or department to adopt bylaws. A school board or the department may adopt teacher tenure bylaws not in conflict with the regulations of the department or state law. (§ 4 ch 92 SLA 1960; am § 26 ch 98 SLA 1966)

Sec. 14.20.215. Definitions. In AS 14.20.010 — 14.20.215

(1) "continuous employment" means employment which is without interruption except for temporary absences approved by the employer or its designee; or except for the interval between consecutive school terms if the teacher is employed only for the months of the school term;

(2) "dismissal" means termination by the employer of the contract services of the teacher during the time a teacher's contract is in force, and termination of the right to the balance of the compensation due the teacher under the contract;

(3) "employer" means the school board or superintendent which appoints the teacher;

(4) "nonretention" means the election by an employer not to re-employ a teacher for the school year or school term immediately following the expiration of the teacher's current contract;

(5) "school year" includes "school term" if the teacher is employed only for the period of the school term; and

(6) "teacher" means a person serving in a teaching, counseling, or administrative capacity and required to be certificated in order to hold the position. (§ 25 ch 98 SLA 1966; am § 15 ch 46 SLA 1970; am § 19, ch 124 SLA 1975)

Revisor's notes. — Formerly AS 14.20.207. Renumbered and reorganized to alphabetize the defined terms in 1987.

NOTES TO DECISIONS

Applied in Griffin v. Galena City School Dist., Sup. Ct. Op. No. 2469 (File No. 5388), 640 P.2d 829 (1982).

Quoted in Begich v. Jefferson, Sup. Ct. Op. No. 481 (File No. 894), 441 P.2d 27 (1968); State v. Redman, Sup. Ct. Op. No. 755 (File No. 1431), 491 P.2d 157 (1971); Shatting v. Dillingham City School Dist., Sup. Ct. Op. No. 2177 (File No. 4240), 617 P.2d 9 (1980).

Cited in Alaska State-Operated School Sys. v. Mueller, Sup. Ct. Op. No. 1157 (File No. 2138), 536 P.2d 99 (1975); Skagway City School Bd. v. Davis, Sup. Ct. Op. No. 1216 (File No. 2265), 543 P.2d 218 (1975); Northwest Arctic Regional