

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8663 HOUSE LABOR & COMMERCE

НВВ

168

HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

STATE CAPITOL, JUNEAU 99801
(907) 465-3759



MEMORANDUM

TO: Representative Pete Kott
House Labor and Commerce Committee Chairman

FR: Representative Cynthia Tooney
Representative Con Bunde
House HESS Committee Chairs

DA: March 17, 1995

RE: Scheduling of HB 168 Permits for Nonresident Optometrists

This is to respectfully request that you schedule HB 168 before the House Labor and Commerce Committee at your earliest convenience.

This bill passed out of the House HESS Committee with all "do pass" votes and has a zero fiscal note.

Thank you for your consideration.

FISCAL NOTE

No. 1
 Bill Version: CSHB 168(HES)
 (H) Publish Date: 3/17/95

**STATE OF ALASKA
 1995 LEGISLATIVE SESSION**

Revision Date: March 3, 1995 Department: Commerce and Economic Development
 Title: An Act relating to temporary permits for BRU: Occupational Licensing
certain optometrists. Component: Operations
 Sponsor: House HES
 Requestor: House HES COMPONENT SERIAL #: 1844

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES						
--------------------	--	--	--	--	--	--

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 95) cost: \$ 0.0

POSITIONS	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

HB 168 authorizes the issuance of a temporary permit to a nonresident optometrist to substitute for an Alaska licensed optometrist with an established practice. The costs associated with issuing 60 consecutive day temporary permits which may be renewed three times within a 12-month period are anticipated to be minimal, therefore, an increased appropriation is not needed at this time. At the start of FY 95, there were 94 optometrists licensed to practice in Alaska. HB 168 requires applicants to pay a fee for the permit. Fees collected will be used to cover any costs associated with this provision.

Prepared by: Jennifer Strickler, Admin. Officer *JS* Phone: 465-2144
 Division: Occupational Licensing *JK* Date: 3/3/95
 Approved by Commissioner: William L. Hensley *W. Hensley* Date: 3/6/95
 Agency: Commerce and Economic Development

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HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

STATE CAPITOL, JUNEAU 99801
(907) 465-3759



CS HB 168 (HES)

An Act relating to temporary permits for certain optometrists.

This bill was introduced by the House HESS Committee at the request of the Alaska Optometric Association.

With the passage of this bill, a locum tenens permit may be issued to a nonresident optometrist for the purpose of assisting or substituting for an optometrist licensed under AS 08.72.

Alaska has a lot of solo practitioners in remote and semi-remote areas of the State. If the practitioner becomes injured, seriously ill or must leave temporarily, he presently must close down his clinic. This can bring a hardship to his patients, especially if the time away extends to several months.

Also, outside specialists in subnormal vision, visual therapy, etc, can be scheduled to assist local doctors where specialty care does not now exist.

I urge your favorable consideration of this legislation.

STATE OF ALASKA
Boards and Commissions

Membership Roster
OPTOMETRY (072)

Member	Appointed	Reappointed	Term Exp.
Randall W. Christiansen Optometrist 725 Darrell Drive Fairbanks, AK 99709	03/12/92		06/15/94 93
Lynn J. Coon Optometrist 418 North Main Wasilla, AK 99687	02/06/89	06/15/92	06/15/96
Steve S. Dobson Optometrist 1000 E. Dimond Blvd., Ste. 101 Anchorage, AK 99515	02/06/89	05/08/92	06/15/95
James Matson Optometrist -- Chair 800 Glacier Avenue Juneau, AK 99801	11/30/89	06/17/93	06/15/97
Marilyn S. Porter Public 1834 Stanford Drive Anchorage, AK 99508	12/14/92		06/15/94 93

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 17, 1995

FURTHER REFERRALS:

Date of Committee Action: 3-29-95

The LABOR AND COMMERCE Committee considered:

HB 168

HOUSE BILL NO. 168

PERMITS FOR NONRESIDENT OPTOMETRISTS

"An Act relating to temporary permits for certain optometrists."

recommends it be replaced with the following committee substitute CS HB 168 (HES) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
 fiscal note(s) _____ fiscal note(s) _____

zero fiscal note(s) _____ zero fiscal note(s) Commerce (3-17-95)

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Pete Foot</i>	✓			
<i>Ann R. ...</i>	✓			
<i>F. S. ...</i>			✓	
<i>Steve ...</i>			✓	
<i>Brian A. Porter</i>	✓			

CHAIR'S SIGNATURE *Pete Foot*

HB

180

Alaska State Legislature

REPRESENTATIVE
JEANNETTE JAMES

P.O. Box 56622
North Pole, Alaska 99705
(907) 488-1546
FAX (907) 488-9006

While in Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-3743
FAX (907) 465-2381

House of Representatives

House District 34

March 7, 1995

Representative Pete Kott, Co-Chair
House Labor and Commerce Committee
ATTN: George

Please schedule House Bill 180, "Liquor Licenses for Remote Lodges," for hearing in your committee as soon as possible. Back-up material and fiscal note are attached.

Also, please schedule a teleconference so that Mr. Patrick Sharrock, Director of the Alcohol Beverage Control Board, can be available to answer questions during the hearing. He may be contacted in Anchorage at 277-8638.



Representative Jeannette James

JJ/bc *bc*

REPRESENTATIVE
JEANNETTE JAMES

P.O. Box 56622
North Pole, Alaska 99705
(907) 488-1546
FAX (907) 488-9006



While in Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-3743
FAX (907) 465-2381

House of Representatives

House District 34

SPONSOR STATEMENT

HOUSE BILL 180

LIQUOR LICENSES FOR REMOTE LODGES

HB180 is a cooperative effort between **remote lodge owners** and the **Alcohol Beverage Control Board** to correct an inequity.

Under current law, some small lodges which happen to be located in a remote corner of large unified population areas cannot get a liquor license. These small remote lodges exemplify the very heart of Alaska and provide a vital service to Alaskan residents as well as visitors from outside our state.

For example, as the law now reads, if a person wants to develop a small lodge or tourist facility in a remote or inaccessible area of the Mat-Su or Kenai Borough, the lodge would be required to have 40 rental rooms to obtain a full-service liquor license. All of us who have enjoyed visiting small remote lodges in Alaska know that this requirement is excessive and unfair.

This is not a "liquor issue." This is an effort to remove a roadblock created by an inequity in our laws. If Alaska is to survive economically, we must allow hard-working Alaskans to develop small businesses in the spirit of Alaskan enterprise.

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 180

Revision Date: _____ Dept. Affected: Revenue
 Title: An Act Relating to Liquor License Issuance BRU: ABC
 Component: ABC
 Sponsor: Representative James
 Requester: (H)ITT COMPONENT SERIAL NO. 100

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ _____

POSITIONS

FULL-TIME					
PART-TIME					
TEMPORARY					

No additional costs or significant revenue is anticipated with the implementation of HB 180. No significant demand for increased licensure is anticipated.

Prepared by: Pat Sharrock, Director Phone: 171277-8638
 Division: ABC Division Date: 2/16/95
 Approved by: _____
 Commissioner: Deborah Voat Date: 2/16/95
 Agency: Revenue

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01/19/95 10:15 AM

TONY KNOWLES, GOVERNOR

DEPARTMENT OF REVENUE

550 W. 7TH AVE.
ANCHORAGE, ALASKA 99501-0698

ALCOHOLIC BEVERAGE CONTROL BOARD

February 16, 1995

The Honorable Jeannette James
Alaska State House of Representatives
Room 102, State Capitol
Juneau, Alaska 99801-1182

RE: HB 180

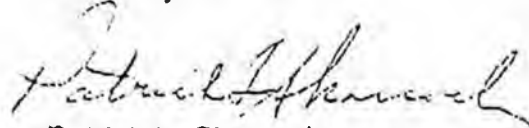
Dear Representative James:

Your HB 180 has specific potential to correct an inequity in current law. For example, a person who would like to develop a tourist facility in a rural or inaccessible area in the Matanuska-Susitna or Kenai Borough has to construct a 40-room facility to obtain a full-service liquor license (or acquire an existing license from another person). In reality, this requirement is excessive.

The Alcoholic Beverage Control Board fully supports the legislation and believes that your amendment will possibly stimulate development of small tourist facilities in certain remote areas.

If I can provide you any additional information or clarification, please do not hesitate to call.

Sincerely,



Patrick L. Sharrock
Director

95-013

Maclaren River Lodge

42 Mi. Denali Hwy.
P.O. Box 7018
Paxson, AK 99757

(907) 822-7105 (at Lodge)
(907) 265-8899 (Outside Service)

JAN 25 1995

January 5, 1995

rep. Jeannette James

All Honorable members,
Alaska State Legislature
Juneau, Alaska

Ladies and Gentlemen of the Legislature:

By way of introduction, my name is Mike Tittle and until her untimely death last November my wife Lynn and I were the only year round residents of the Denali Highway.

Lynn and I (I can't yet believe she is dead nor can I refer to her in the past tense) are 35 year residents of Alaska and prior to buying the Maclaren River Lodge and moving to the Denali Highway we owned a real estate company in Fairbanks.

We had Paxson Lodge and Tangle River Inn listed for sale with our company and in the process of servicing the listings we fell in love with the area and saw a way we could make our dream come true and promote winter tourism as well. Not to mention the Alaskans that can't find a place to ride a snowmachine. We had over 2,000 people come out here by snowmachine our first winter of operation.

We took an old lodge and completely rebuilt it to make it winter ready and comfortable. In order to do this we sold our company and everything we owned to be able to make the lodge something the State of Alaska could be proud of.

However, since we're located a mere 1.5 miles inside the Mat-Su borough we can't get a liquor license and are in very real danger of losing everything we've worked so hard for because of it.

There has been a license at this lodge since Statehood and it's gone only because the prior owner didn't renew it in a timely manner.

The regulation in question is Sec 04.11.400 of Title 4 which says that I must have 40 rooms for rent before I can get a license.


Ladies and Gentlemen, this is the most unfair situation I am aware of in the entire State of Alaska. I pay taxes to the Mat-Su borough and have to haul my trash to Fairbanks. We provide a service to the public that no one else is doing yet we get penalized for it. We promote winter tourism as much or more than anyone in the State yet because the Mat-Su borough decided to annex the earth I can't get the license that would allow me to compete on an even keel with other lodges. We have provided an oasis in the arctic and have given it our lives.

I have talked to hundreds of tourists and the overwhelming consensus is that they would rather spend much more of their time in small rustic lodges where the pace is a little slower and they can experience the "real Alaska" They say they feel they're missing something if they don't experience the bush as well as the cities.

I've outlined a few minor changes to the ABC regulations that I hope you will support as it will help our economy as well as promote tourism.

I beg your indulgence and understanding.

Best Regards,



Mike Tittle, owner

MR GEORGE DOZIER:

SIR: I would like to state for
The committee holding the hearing
ON HB-180 THAT IN GENERAL I AM
IN FAVOR OF THE BILL, AND, IN
PARTICULAR AS IT CONCERNS THE
"M^E-LAREN RIVER LODGE" ON THE
DENARI Hwy. I feel THAT THE
ISSUANCE OF A LIQUOR LICENSE
FOR THIS lodge would be OF
DEFINITE BENEFIT AND WOULD IN
NO WAY - be A DETRIMENT TO
ANY ENTITY WITHIN ALASKA

FAX 465-2819

Gerald N. Hallman
1520 M^E-ADEO WAY
WASILLA, AK 9965
PH (907) 373-0571

03/15/95 15:14:55 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM
MESSAGE FROM: LIOCJEN IN ANCHORAGE

LTN1120
JNU

RE TCN: 50415 SCHEDULED FOR:03/15/95 15:15 TO 17:00
SPONSOR: HOUSE LABOR & COMMERCE PURPOSE: PUBLIC HEARING

MESSAGE TEXT: PAT SHARROCK FOR HB 180 IN CO

(7)

Date Referred: March 8, 1995

FURTHER REFERRALS:

Date of Committee Action: 3-15-95

The LABOR AND COMMERCE Committee considered:

HB 180

HOUSE BILL NO. 180

LIQUOR LICENSES FOR RESORT/LODGES

"An Act relating to liquor licenses issued to a hotel, motel, resort, or similar establishment; and providing for an effective date."

recommends it be replaced with the following committee substitute _____ [] the same title [] a new title

[] additional referral to _____ Committee
[] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
[] fiscal note(s) _____ [] fiscal note(s) _____

[] zero fiscal note(s) _____ [X] zero fiscal note(s) Revenue

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Pete Felt</i>	✓			
<i>Neil J. Kelly</i>			✓	
<i>Blue Kapsine</i>			✓	
<i>Brian S. Porter</i>	✓			
<i>Beverly Masick</i>			✓	

CHAIR'S SIGNATURE *Pete Felt*

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 10, 1995

FURTHER REFERRALS:

Date of Committee Action: 3-1-95

The LABOR AND COMMERCE Committee considered:

HB 17

HOUSE BILL NO. 17

OFFICERS OF UTILITY COOPERATIVES

"An Act relating to the titles that describe the two principal executive officers of electric and telephone cooperatives."

recommends it be replaced with the following committee substitute CS HB 17 (L&C) the same title a new title

additional referral to _____ Committee

attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal note(s) Commerce

fiscal note(s) _____

zero fiscal note(s) _____

zero fiscal note(s) ~~_____~~

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Pete Fort</i>			✓	
<i>John Sanders</i>			✓	
<i>Beverly Mader</i>			✓	
<i>Leslie K. K...</i>			✓	
<i>Nan Foley</i>				✓

CHAIR'S SIGNATURE *Pete Fort*

HOUSE COMMITTEE REPORT

(7)
 Date Referred: February 10, 1995 FURTHER REFERRALS:

Date of Committee Action: 3-1-95

The LABOR AND COMMERCE Committee considered: HB 17

HOUSE BILL NO. 17 OFFICERS OF UTILITY COOPERATIVES

"An Act relating to the titles that describe the two principal executive officers of electric and telephone cooperatives."

recommends it be replaced with the following committee substitute CS HB 17 (L&C) the same title
 a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____

fiscal note(s) Commerce fiscal note(s) _____

zero fiscal note(s) _____ zero fiscal note(s) ~~_____~~

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Pete Fort</i>			✓	
<i>John Sanders</i>			✓	
<i>Robert Masek</i>			✓	
<i>Steve K...</i>			✓	
<i>N...</i>				✓

Revised version

CHAIR'S SIGNATURE *Pete Fort*

03/15/95 15:14:55
MESSAGE FROM: LIOCJEN

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM
IN ANCHORAGE

LTN1120
JNU

RE TCN: 50415 SCHEDULED FOR:03/15/95 15:15 TO 17:00

SPONSOR: HOUSE LABOR & COMMERCE

PURPOSE: PUBLIC HEARING

MESSAGE TEXT: ~~PAT SHARROCK FOR HB 180 IN CO~~

HB

217

DIFFERENCES BETWEEN
HB 217(JUD) version O & HB 217(L&C) version R

Title change to allow for retirement provisions added to section 5.

Sec. 3. in version O - Peer Review Committee deleted - Concern was expressed by both NEA and PTA that the peer review provision would probably pull instructors from class to participate in the review. It would also increase school district need and expense to hire substitute instructors while the assigned instructor is serving on review committee.

Sec. 5 - amended to allow a teacher on lay off to treat the layoff as a termination and receive retirement account refund for employee contribution. Gives an instructor access to additional financial resource.

Sec. 6 - deletes mandatory, advisory arbitration. This allows teacher to take an appeal directly to judicial review. This will probably result in a cost and time savings to all parties.

PG 2 LN 10-11 DELETED

9-LS0821\RV
Cramer
4/25/95

CS FOR HOUSE BILL NO. 217(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE IVAN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to teacher tenure, teacher layoff and rehire rights, and to
2 review of decisions of school boards concerning teachers; and relating to
3 retirement for certain employees of school districts and regional educational
4 attendance areas."

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

6 * Section 1. AS 14.20.147(b) is amended to read:

7 (b) When a school operated by a federal agency is transferred to or absorbed
8 into a new or existing school district, the teachers shall also be transferred if mutually
9 agreed by the teacher or teachers and the school board of the new or existing district.
10 A teacher transferred from a federal agency school that [, WHICH] does not have an
11 official salary schedule or teacher tenure in the same manner as a public school district
12 in the state [,] shall be placed on a position on the salary schedule of the absorbing
13 district; the salary may not be less than the teacher would have received in the federal
14 agency school. If the teacher taught four [TWO] or more years in the federal agency

1 school and, at the time of transfer, had a valid Alaska teaching certificate, that teacher
2 shall be placed on tenure in the absorbing district.

3 * Sec. 2. AS 14.20.150 is amended to read:

4 Sec. 14.20.150. ACQUISITION OF TENURE RIGHTS. (a) A teacher
5 acquires tenure rights in a district when the teacher

6 (1) possesses a standard teaching certificate;

7 (2) has been employed as a teacher in the same district continuously
8 for four [TWO] full school years and is reemployed for the school year immediately
9 following the four [TWO] full school years; and

10 (3) has been evaluated and recommended for tenure under (c) of
11 this section. } *DELETED*

12 (b) The tenure rights acquired under (a) of this section become effective on the
13 first day the teacher performs teaching services in the district during the school year
14 immediately following the four [TWO] full school years.

15 * Sec. 3. AS 14.20.160 is amended to read:

16 Sec. 14.20.160. LOSS OF TENURE RIGHTS. Tenure rights are lost when the
17 teacher's employment in the district is interrupted or terminated. However, a teacher
18 on layoff status does not lose tenure rights during the period of lavoff except as
19 provided under AS 14.20.177.

20 * Sec. 4. AS 14.20.175(b) is amended to read:

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

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

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

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

31 (4) A NECESSARY REDUCTION OF STAFF OCCASIONED BY A

1 DECREASE IN SCHOOL ATTENDANCE].

2 * Sec. 5. AS 14.25 is amended by adding a new section to read:

3 Sec. 14.20.177. LAYOFFS. (a) A school district may place a teacher who has
4 acquired tenure rights or layoff status but only if it is necessary for the district to
5 reduce the number of teachers because of a decrease in school attendance or because
6 the basic need of a school district determined under AS 14.17.021(b) and adjusted
7 under AS 14.17.225(b) decreases by three percent or more from the previous year.
8 This section does not apply to a teacher who has not acquired tenure rights.

9 (b) For a period of three years after layoff, a teacher is on layoff status and
10 is entitled to a hiring preference in the district or regional educational attendance area
11 where the teacher had been employed. The hiring preference applies only to vacant
12 teaching positions for which the teacher is qualified. If a teacher is offered a teaching
13 position under this subsection and the teacher declines the offer, the teacher is no
14 longer considered to be on layoff status and is no longer entitled to a hiring preference
15 under this section.

16 (c) In making layoff and rehire decisions under this section, a school district
17 may give preference to a primary school teacher who has less seniority than a
18 secondary school teacher in order to preserve the primary school program. The district
19 may also give preference to a secondary school teacher over a primary school teacher
20 with more seniority in order to preserve secondary school programs.

21 (d) Notwithstanding any provision of AS 23.40, the terms of a collective
22 bargaining agreement entered into between a school district or regional educational
23 attendance area and a bargaining organization representing teachers on or after the
24 effective date of this section may not be inconsistent with the provisions of this
25 section.

26 (e) A teacher on layoff status is not entitled to be reemployed under
27 AS 14.20.145 and does not accrue leave. However, layoff status does not constitute
28 a break in service for

- 29 (1) retaining acquired tenure rights; or
30 (2) retaining accrued sick leave.

31 (f) A teacher on layoff status may choose whether or not to treat the layoff as

1 a termination for purposes of receiving a refund of the balance of the teacher's member
2 contribution account in the teachers' retirement system under AS 14.25.150.

3 * Sec. 6. AS 14.20.205 is amended to read:

4 Sec. 14.20.205. JUDICIAL REVIEW. If a school board reaches a decision
5 unfavorable to a teacher, the teacher is entitled to judicial review based on the
6 record [A DE NOVO TRIAL] in the superior court. However, a teacher who has not
7 attained tenure rights is not entitled to arbitration or judicial review under
8 [ACCORDING TO] this section.

9 * Sec. 7. The amendments made by secs. 1 and 2 of this Act apply to teachers first hired
10 by a school district on or after the effective date of this Act.

LYC

CS FOR HOUSE BILL NO. 217(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE IVAN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to teacher tenure, teacher layoff and rehire rights, and to
2 review of decisions of school boards concerning teachers."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. AS 14.20.147(b) is amended to read:

5 (b) When a school operated by a federal agency is transferred to or absorbed
6 into a new or existing school district, the teachers shall also be transferred if mutually
7 agreed by the teacher or teachers and the school board of the new or existing district.
8 A teacher transferred from a federal agency school that [, WHICH] does not have an
9 official salary schedule or teacher tenure in the same manner as a public school district
10 in the state [,] shall be placed on a position on the salary schedule of the absorbing
11 district; the salary may not be less than the teacher would have received in the federal
12 agency school. If the teacher taught four [TWO] or more years in the federal agency
13 school and, at the time of transfer, had a valid Alaska teaching certificate, that teacher
14 shall be placed on tenure in the absorbing district.

1 * Sec. 2. AS 14.20.150 is amended to read:

2 Sec. 14.20.150. ACQUISITION OF TENURE RIGHTS. (a) A teacher
3 acquires tenure rights in a district when the teacher

4 (1) possesses a standard teaching certificate;

5 (2) has been employed as a teacher in the same district continuously
6 for four [TWO] full school years and is reemployed for the school year immediately
7 following the four [TWO] full school years; and

8 (3) has been evaluated and recommended for tenure under (c) of
9 this section.

10 (b) The tenure rights acquired under (a) of this section become effective on the
11 first day the teacher performs teaching services in the district during the school year
12 immediately following the four [TWO] full school years.

13 * Sec. 3. AS 14.20.150 is amended by adding a new subsection to read:

14 ~~DELETE~~ (c) The superintendent or the superintendent's designee shall annually evaluate
15 the performance of each teacher in the district who has not earned tenure. In addition,
16 for three of the four years before a tenure decision is made, each untenured teacher
17 shall be evaluated by a peer review committee appointed by the superintendent. The
18 superintendent shall appoint three teachers to a peer review committee unless the
19 superintendent determines that, given the number of untenured teachers compared to
20 the number of teachers available to serve on peer review committees, a committee
21 should be composed of two teachers. A peer review committee shall submit its
22 evaluation in writing to the superintendent and to the nontenured teacher. The
23 evaluation by the peer review committee is advisory only. The superintendent shall
24 recommend whether a teacher should be granted tenure.

25 * Sec. 4. AS 14.20.160 is amended to read:

26 Sec. 14.20.160. LOSS OF TENURE RIGHTS. Tenure rights are lost when the
27 teacher's employment in the district is interrupted or terminated. However, a teacher
28 on layoff status does not lose tenure rights during the period of layoff except as
29 provided under AS 14.20.177.

30 * Sec. 5. AS 14.20.175(b) is amended to read:

31 (b) A teacher who has acquired tenure rights is subject to nonretention for the

1 following school year only for the following causes:

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

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

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

10 (4) A NECESSARY REDUCTION OF STAFF OCCASIONED BY A
11 DECREASE IN SCHOOL ATTENDANCE].

12 * Sec. 6. AS 14.25 is amended by adding a new section to read:

13 Sec. 14.20.177. LAYOFFS. (a) A school district may place a teacher who has
14 acquired tenure rights on layoff status but only if it is necessary for the district to
15 reduce the number of teachers because of a decrease in school attendance or because
16 the basic need of a school district determined under AS 14.17.021(b) and adjusted
17 under AS 14.17.225(b) decreases by three percent or more from the previous year.
18 This section does not apply to a teacher who has not acquired tenure rights.

19 (b) For a period of three years after layoff, a teacher is on layoff status and
20 is entitled to a hiring preference in the district or regional educational attendance area
21 where the teacher had been employed. The hiring preference applies only to vacant
22 teaching positions for which the teacher is qualified. If a teacher is offered a teaching
23 position under this subsection and the teacher declines the offer, the teacher is no
24 longer considered to be on layoff status and is no longer entitled to a hiring preference
25 under this section.

26 (c) In making layoff and rehire decisions under this section, a school district
27 may give preference to a primary school teacher who has less seniority than a
28 secondary school teacher in order to preserve the primary school program. The district
29 may also give preference to a secondary school teacher over a primary school teacher
30 with more seniority in order to preserve secondary school programs.

31 (d) Notwithstanding any provision of AS 23.40, the terms of a collective

1 bargaining agreement entered into between a school district or regional educational
2 attendance area and a bargaining organization representing teachers on or after the
3 effective date of this section may not be inconsistent with the provisions of this
4 section.

5 (e) A teacher on layoff status is not entitled to be reemployed under
6 AS 14.20.145 and does not accrue leave. However, layoff status does not constitute
7 a break in service for

8 (1) retaining acquired tenure rights; or

9 (2) retaining accrued sick leave.

10 * Sec. 7. AS 14.20.205 is amended to read:

11 Sec. 14.20.205. JUDICIAL REVIEW. If a school board reaches a decision
12 unfavorable to a teacher, the teacher is entitled to ~~mandatory advisory arbitration~~
13 ~~conducted by a neutral third party and, if the decision of the school board~~
14 ~~remains unfavorable to the teacher, to judicial review based on the record~~ (A DE
15 NOVO TRIAL] in the superior court. However, a teacher who has not attained tenure
16 rights is not entitled to arbitration or judicial review under [ACCORDING TO] this
17 section.

18 * Sec. 8. The amendments made by secs. 1 - 3 of this Act apply to teachers first hired by
19 a school district on or after the effective date of this Act.

Sec 13 (Consistent)

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 217(JUD)

1 Page 1, line 2, after "teachers":

2 Insert "; and relating to retirement for certain employees of school districts and
3 regional educational attendance areas"

4 Page 4, after line 9:

5 Insert a new subsection to read:

6 "(f) A teacher on layoff status may choose whether or not to treat the layoff
7 as a termination for purposes of receiving a refund of the balance of the teacher's
8 member contribution account in the teachers' retirement system under AS 14.25.150."



NEA-ALASKA

Affiliated with the National Education Association

April 27, 1995

Senator Rick Halford
State Senate
Capitol Building
Juneau, Alaska

Dear Senator:

Confusion seems to center around NEA-Alaska's position on retirement incentive (RIP) legislation. There are two bills in the Senate that address RIP, the Administration's bill, SB 137, and the omnibus teacher tenure bill, SB 132. In testimony before the Senate HESS Committee, the Senate Judiciary Committee and the Senate Finance Committee, NEA-Alaska clearly indicated that we support the Administration's bill, SB 137, and do not support RIP in SB 132. We have not changed that position.

Why RIP is being used by the opponents of teacher rights to lever support for weakening teacher tenure rights is not clear. Why teachers are being singled out for punishment is not clear. Weakening the procedural and substantive rights of teachers will only reward poor management. We will not agree to give away the rights of teachers for a retirement incentive program.

We look forward to working with you.

Sincerely,

Vernon Marshall
Executive Director

Claudia Douglas
President

cc: Representative Pete Kott

April 27-95

TO: Rep. Pete Kott, labor comm.

FROM: John Brandt, 4300 Manytell Ave, Anchorage 99516

Please try to move the teacher retirement incentive bill quickly.

The bill will save money and open jobs for new, lower paid educators.

Thank you,

A handwritten signature in cursive script that reads "John Brandt". The signature is written in dark ink and is positioned below the typed text "Thank you,".

Alaska State House of Representatives
House District 39

Session
Alaska State Capital
Juneau, Alaska 99801-1182
Phone: (907) 465-4942



RECEIVED
APR 23 1995

Interim
P.O. Box 137
Aktak, Alaska 99552
Phone: (907) 765-7526

Ans U.....

Representative Ivan M. Ivan
MEMORANDUM

TO: Representative Pete Kott, Chair
House Labor and Commerce Committee

FROM: Representative Ivan M. Ivan *IMI*

DATE: April 22, 1995

RE: Scheduling of Committee Substitute for House Bill 217 (JUD)

Please consider this request to hear Committee Substitute for House Bill 217 (JUD): An Act relating to teacher tenure, teacher layoff and rehire rights and to review of decisions of school boards concerning teachers.

House Bill 217 would allow school districts to lay off teachers who have acquired tenure rights, but only if the school district finds it necessary to reduce the number of teachers due to declining enrollment or declining revenues. The bill also increases tenure from two to four years and removes the costly trial de novo portion of our statutes which allows a school district employee who, if not satisfied with a district led investigation, to go to the court system to begin an entirely new trial. The district's investigation, most often, must be recreated. It is my intention to eliminate the de novo portion when the district investigation has met standards acceptable to the court.

I appreciate your consideration of my request. Please do not hesitate to contact my legislative assistant, Tom Wright, or myself if you need further information or have any questions in regards to this legislation.

Thank you.

IMI/tw

CS FOR HOUSE BILL NO. 217(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVE IVAN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to teacher tenure, teacher layoff and rehire rights, and to
2 review of decisions of school boards concerning teachers."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. AS 14.20.147(b) is amended to read:

5 (b) When a school operated by a federal agency is transferred to or absorbed
6 into a new or existing school district, the teachers shall also be transferred if mutually
7 agreed by the teacher or teachers and the school board of the new or existing district.
8 A teacher transferred from a federal agency school that [, WHICH] does not have an
9 official salary schedule or teacher tenure in the same manner as a public school district
10 in the state [,] shall be placed on a position on the salary schedule of the absorbing
11 district; the salary may not be less than the teacher would have received in the federal
12 agency school. If the teacher taught four [TWO] or more years in the federal agency
13 school and, at the time of transfer, had a valid Alaska teaching certificate, that teacher
14 shall be placed on tenure in the absorbing district.

1 * Sec. 2. AS 14.20.150 is amended to read:

2 Sec. 14.20.150. ACQUISITION OF TENURE RIGHTS. (a) A teacher
3 acquires tenure rights in a district when the teacher

4 (1) possesses a standard teaching certificate;

5 (2) has been employed as a teacher in the same district continuously
6 for four [TWO] full school years and is reemployed for the school year immediately
7 following the four [TWO] full school years; and

8 (3) has been evaluated and recommended for tenure under (c) of
9 this section.

10 (b) The tenure rights acquired under (a) of this section become effective on the
11 first day the teacher performs teaching services in the district during the school year
12 immediately following the four [TWO] full school years.

13 * Sec. 3. AS 14.20.150 is amended by adding a new subsection to read:

14 (c) The superintendent or the superintendent's designee shall annually evaluate
15 the performance of each teacher in the district who has not earned tenure. In addition,
16 for three of the four years before a tenure decision is made, each untenured teacher
17 shall be evaluated by a peer review committee appointed by the superintendent. The
18 superintendent shall appoint three teachers to a peer review committee unless the
19 superintendent determines that, given the number of untenured teachers compared to
20 the number of teachers available to serve on peer review committees, a committee
21 should be composed of two teachers. A peer review committee shall submit its
22 evaluation in writing to the superintendent and to the nontenured teacher. The
23 evaluation by the peer review committee is advisory only. The superintendent shall
24 recommend whether a teacher should be granted tenure.

25 * Sec. 4. AS 14.20.160 is amended to read:

26 Sec. 14.20.160. LOSS OF TENURE RIGHTS. Tenure rights are lost when the
27 teacher's employment in the district is interrupted or terminated. However, a teacher
28 on layoff status does not lose tenure rights during the period of layoff except as
29 provided under AS 14.20.177.

30 * Sec. 5. AS 14.20.175(b) is amended to read:

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3 or intentional failure to perform the teacher's customary teaching duties in a
4 satisfactory manner;

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

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

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11 DECREASE IN SCHOOL ATTENDANCE].

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23 position under this subsection and the teacher declines the offer, the teacher is no
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26 (c) In making layoff and rehire decisions under this section, a school district
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28 secondary school teacher in order to preserve the primary school program. The district
29 may also give preference to a secondary school teacher over a primary school teacher
30 with more seniority in order to preserve secondary school programs.

31 (d) Notwithstanding any provision of AS 23.40, the terms of a collective

1 bargaining agreement entered into between a school district or regional educational
2 attendance area and a bargaining organization representing teachers on or after the
3 effective date of this section may not be inconsistent with the provisions of this
4 section.

5 (e) A teacher on layoff status is not entitled to be reemployed under
6 AS 14.20.145 and does not accrue leave. However, layoff status does not constitute
7 a break in service for

8 (1) retaining acquired tenure rights; or

9 (2) retaining accrued sick leave.

10 * Sec. 7. AS 14.20.205 is amended to read:

11 Sec. 14.20.205. JUDICIAL REVIEW. If a school board reaches a decision
12 unfavorable to a teacher, the teacher is entitled to mandatory, advisory arbitration
13 conducted by a neutral third party and, if the decision of the school board
14 remains unfavorable to the teacher, to judicial review based on the record [A DE
15 NOVO TRIAL] in the superior court. However, a teacher who has not attained tenure
16 rights is not entitled to arbitration or judicial review under [ACCORDING TO] this
17 section.

18 * Sec. 8. The amendments made by secs. 1 - 3 of this Act apply to teachers first hired by
19 a school district on or after the effective date of this Act.

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 217(JUD)

1 Page 1, line 2, after "teachers":

2 Insert "; and relating to retirement for certain employees of school districts and
3 regional educational attendance areas"

4 Page 4, after line 9:

5 Insert a new subsection to read:

6 "(f) A teacher on layoff status may choose whether or not to treat the layoff
7 as a termination for purposes of receiving a refund of the balance of the teacher's
8 member contribution account in the teachers' retirement system under AS 14.25.150."

Alaska State House of Representatives House District 39



Session
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Juneau, Alaska 99801-1182
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Representative Ivan M. Ivan

SECTIONAL ANALYSIS - CSHB 217 (JUD)

The following is a sectional analysis of Committee Substitute for House Bill 217 (JUD):

Section 1: Amends AS 14.20.147(b), Transfer or absorption of attendance area or federal agency school. Changes tenure from two to four years for those teachers who taught in a school operated by a federal agency and has transferred to or is absorbed into a new or existing school district.

Section 2: Amends AS 14.20.150, Acquisition of tenure rights. Changes tenure from two to four years.

Section 3: Adds a new subsection to AS 14.20.150. Three of the four years prior to a tenure decision, requires that a non tenured teacher be evaluated by a peer review committee appointed by the superintendent.

Section 4: Amends AS 14.20.160, Loss of tenure rights. Clarifies that a teacher on layoff status does not lose tenure rights during the layoff period except as provided by AS 14.20.177 (Section 6 of this bill).

Section 5: Amends AS 14.20.175(b), Non retention. Removes subsection (b)(4) which allows non retention of a teacher due to a decrease in school attendance and places it in Section 6.

Section 6: Amends AS 14.25, Teachers' Retirement by adding a new section. This new section provides for layoff of a tenured teacher when there is a decrease in school attendance or school revenues or to better meet the academic program needs of the district. Procedures under which a district may layoff tenured teachers, the length of time that a teacher retains hire rights after a layoff, the circumstances under which a teacher may lose rehire rights after a layoff and other provisions are provided under this section.

Section 7: Amends AS 14.20.205, Judicial review. Eliminates a de novo trial whenever a school district reaches an unfavorable decision to a teacher. This section adds language which allows judicial review of the decision based on the previously established record. A provision is also added which provides for mandatory, advisory arbitration for a teacher if the school board decision is unfavorable to the teacher.

Section 8: States that the changes made in sections 1 through 3 of this bill apply to teachers first hired on or after the effective date of the bill.

Alaska State House of Representatives
House District 39



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Representative Ivan M. Ivan

SPONSOR STATEMENT - CSHB 217 (JUD)

I introduced House Bill 217 to allow our school districts some flexibility when dealing with rising enrollments and increased costs associated with our educational system.

House Bill 217 would allow school districts to lay off teachers who have acquired tenure rights, but only if the school district finds it necessary to reduce the number of teachers due to declining enrollment or declining revenues. The bill also increases tenure from two to four years and removes the costly trial de novo portion of our statutes which allows a school district employee who, if not satisfied with a district led investigation, to go to the court system to begin an entirely new trial. The district's investigation, most often, must be recreated. The deletion of the trial de novo provides our educators the same protections as provided to other state employees. The bill does allow for mandatory, advisory arbitration if the school board reaches a decision unfavorable to a teacher prior to appealing to Superior Court.

Sections 1-3 of CSHB 217 (JUD) apply only to those teachers who are hired after the bill is signed into law. The remaining sections of the bill dealing with loss of tenure rights, layoffs and elimination of trial de novo go into effect after the bill is signed and will have an effect on all teachers.

FISCAL NOTE

STATE OF ALASKA

BILL NO. CS HB 217 (JUD)

1995 LEGISLATIVE SESSION

Revision Date: April 21, 1995

Department Affected: Education

Title: Employment Rights of Teachers

BRU: Executive Administration

Component: Commissioner's Office

Sponsor: Representative Ivan

Requester: (H) HESS Committee

COMPONENT SERIAL NO. 185

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY95) impact: \$ 0.0

ANALYSIS: (Attach a separate page if necessary.)

This legislation addresses the issue of teacher tenure, teacher layoff and rehire rights, and review of decisions of school boards concerning teachers. As written, this legislation will have no fiscal impact on the department.

The Section 7 of CS HB 217 (JUD) states if a school board reaches a decision unfavorable to a teacher, the teacher is entitled to mandatory, advisory arbitration and, then to judicial review based on the record instead of a de novo trial. This provision may result in savings to the local school districts.

Prepared by: Sheila Peterson, Special Assistant Phone: 465-2803

Division: Commissioner's Office Date: April 21, 1995

Approved by Commissioner:  Date: April 21, 1995

Agency: Education Date: April 21, 1995

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ASSOCIATION OF ALASKA SCHOOL BOARDS

316 W. 11th St. • Juneau, Alaska 99801-1510

(907) 586-1083 • Fax (907) 586-2995

POSITION PAPER

TENURE ACQUISITION

For public school educators

The Association of Alaska School Boards recommends to the Legislature that AS 14.20.150 (a) and (b) be amended to require five years of probation to obtain tenure in the school systems of the State of Alaska.

The quality of teaching is important in the development of strong educational programs for our children. Within a two year time frame, which is in current statute, school districts must evaluate teachers, help improve their skills, and determine whether or not to retain them. Two years is simply insufficient time to comprehensively evaluate teachers and allow for their successful improvement.

With districts under increased pressure to reduce administrative costs, not only will there be fewer administrators to conduct teacher evaluations but with an added workload, administrators will be under greater pressure to evaluate and determine whether or not to retain a teacher, and will have much less time to develop the skills of a potentially good teacher.

Extending tenure acquisition would allow districts time to provide a comprehensive plan for improvement which would help strengthen and develop the employee's teaching skills. With five years, new teachers would have the opportunity to grow in an environment conducive to professional development rather than under the pressure of deadlines of notice of non-retention.

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TENURE ACQUISITION MAJOR ISSUES & KEY POINTS

School districts have shared their concerns about how difficult it is to conduct sound evaluations of their teachers within the current two year period of time in which teachers can be awarded tenure.

INSUFFICIENT TIME FOR EVALUATION

1. FAIRNESS TO TEACHERS

- Two years is too short for meaningful evaluation and improvement.
- Forces the non-retention question of a non-tenured teacher rather than encouraging a district to work with the individual to develop their potential talent.

2. FAIRNESS TO KIDS

- Forces a district to tenure marginal teachers who later may prove unsatisfactory.
- To tenure marginal teachers who can't or won't improve—cheats kids.

3. ADMINISTRATIVE WORKLOAD

- Budget cuts force remaining administrators to take on more responsibilities, and makes less time available for quality teacher evaluations.

FIVE-YEAR TENURE WILL

1. Grant sufficient time to evaluate non-tenured staff by moving from two to five years.
2. Not add increased costs to the districts to implement.
3. Not mandate increased statutory requirements on local school districts.
4. Grant sufficient time for professional improvement.

FIVE YEAR TENURE SERVES THE NEEDS OF SCHOOL DISTRICTS, TEACHERS, AND ULTIMATELY CHILDREN.



1995 CORE RESOLUTION

95-22

ACQUISITION OF TEACHER TENURE

WHEREAS, the quality of teaching is important in the development of strong educational programs in the State; and,

WHEREAS, two years is often insufficient time for a teacher new to a school district to develop professionally and successfully; and

WHEREAS, two years is often not long enough to adequately evaluate the capability of a teacher prior to granting tenure; and

WHEREAS, the two year tenure restricts school boards' abilities to manage for quality education;

NOW THEREFORE BE IT RESOLVED that the Association of Alaska School Boards recommends to the Legislature that AS 14.20.150 (a) and (b) be amended to require five years of probation to obtain tenure in the school systems of the State of Alaska—applicable to teachers hired after the effective date of the act.

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POSITION PAPER

NONRETENTION REVISION

LAYOFF PROVISIONS DUE TO FISCAL CIRCUMSTANCES

The Association of Alaska School Boards supports amending AS 14.20.175 (b) to layoff tenured staff for budgetary and fiscal reasons.

If reductions in the work force are required in Alaska's schools due to fiscal circumstances, layoff provisions must allow the educational program needs of our youth, and not tenure, to be the primary determining factor.

Current law allows nonretention of tenured staff for reasons of: (1) incompetence, (2) immorality, (3) substantial noncompliance, and (4) a decrease in enrollment. Schools may NOT layoff tenured employees due to funding shortfalls (not associated with declining enrollments).

AASB supports legislation for layoff that addresses fiscal circumstances with rehire provisions to accommodate district program needs.

AASB believes program needs of students should drive the staffing patterns of schools. Current law leaves schools in a position of having to make program cuts and fill the remaining positions with teachers who may be less qualified but are guaranteed employment because of tenure. It often places teachers in grade levels or subject areas for which they have insufficient preparation. Legislation should direct the State Board of Education to adopt subject area endorsements to improve the quality of instruction.

ASSOCIATION OF ALASKA SCHOOL BOARDS

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An Educational Perspective Support for Non-retention in the Event of a Reduction in Revenue

Under current law, even if a reduction in revenue to a school district necessitates programmatic cutbacks, including reductions in the number of certificated teaching positions, tenured teachers cannot be non-retained for the following school year unless one of the four categories set forth in A.S. 14.20.175 can be proven. Basically, those categories are incompetency, immorality, substantial non-compliance, and a reduction in force required by a decrease in school attendance.

Apparently, the rationale for protecting tenured teachers—even in the face of funding reductions—appears to be that reductions in the number of certificated teachers can be accomplished by attrition and/or the non-retention of non-tenured teachers.

However, that argument is not logical, reasonable, or appropriate when viewed from an educational perspective. Some examples will prove that point:

1. As a result of decreased funding, a school district is required to reduce some music/art elective high school courses. A third year teacher in the district, hired to teach music, and with no prior experience teaching English, is reassigned to teach high school English while an exceptional first year teacher, heavily recruited because of his or her prior teaching experience in English and/or education background in English, must be non-retained.
2. A disproportionate number of the district's non-tenured (first and second year) teachers are special ed. Because the tenured teacher ranks are protected from non-retention because of decreased funding in the absence of decreased enrollment, non-retentions must come from the non-tenured staff. Cutbacks in the number of special ed teachers jeopardizes the district's ability to comply with the Individualized Educational Plan (IEP) requirements of state and federal law.
3. Because more Alaska Natives are graduating from the University of Alaska, a school district has hired most of its Alaska Native teachers over the past two years. Those Alaska Native teachers will be non-retained.
4. A large influx of non-English speaking students has required a district to hire many English-as-a-Second-Language (ESL) teachers over the past two years. Those teachers must now be non-retained.
5. The district has expended substantial money over the past two years recruiting well-qualified chemistry and physics teachers. Those teachers are non-tenured, and must be non-retained.
6. A ten year physical education teacher who has never taught high school math is reassigned to teach high school math.

In all of these examples, staffing decisions are being made on the basis of whether a teacher is tenured or non-tenured. Those decisions are not being made on what is in the best educational interests of students.

When revenues decline, a school board must ultimately make budgetary decisions regarding the allocation of resources. Unfortunately, under A.S. 14.20.175(b), a school board acts with the proverbial one hand tied behind its back. Decisions regarding the allocation of human resources are not based upon who is the best, brightest, most competent, most energetic, most qualified, and most effective teacher, but rather on whether someone has taught for only one or two years in the district as opposed to having taught for three, four or more years.



1995 CORE RESOLUTION

95-23

TENURED STAFF REDUCTION WHEN REVENUES DECLINE

WHEREAS, school districts are faced with budget reductions not associated with declining enrollments; and,

WHEREAS, certificated staff may be non-retained due to incompetency, immorality, non-compliance with school law, and declining enrollments, but not due to declining revenues; and,

WHEREAS, this often places teachers in grade levels or subject areas for which they have insufficient preparation; and,

WHEREAS, districts, in order to deal with declining revenues, need the authority to reduce staff due to a lack of funds; and

WHEREAS, nonretention provisions in current statute address performance criteria, with the exception of declining enrollment;

NOW THEREFORE BE IT RESOLVED that the Association of Alaska School Boards supports amending AS 14.20.175(b) to separate declining enrollments and fiscal or budgetary circumstances from performance criteria when faced with staff reductions;

BE IT FURTHER RESOLVED that the Association of Alaska School Boards will draft legislation for layoff that addresses fiscal circumstances with rehire provisions to accommodate district program needs.



1995 CORE RESOLUTION

95-24

STAFF REDUCTION DUE TO CHANGING PROGRAM NEEDS

WHEREAS, School Boards are specifically charged with the responsibility for determining the program needs of their particular districts; and,

WHEREAS, existing tenure laws do not allow for staff reduction because of changing program needs; and,

WHEREAS, changing program needs often force districts to place teachers in grade levels or subject areas for which they have insufficient preparation; and,

WHEREAS, school boards need to be able to make the decision to change staffing levels based on the district's program needs;

NOW THEREFORE BE IT RESOLVED that the Association of Alaska School Boards promotes necessary legislation to allow districts to change staffing levels based on the district's program needs.



1995 CORE RESOLUTION

95-25

**SUBJECT AREA ENDORSEMENT IN THE
CERTIFICATION PROCESS**

WHEREAS, subject area endorsements gained through the teacher certification process are indicators of a teacher's potential competency; and,

WHEREAS, the Association of Alaska School Boards desires an optimal educational environment for its students by hiring the best qualified teachers that are available to us; and,

WHEREAS, the Association of Alaska School Boards recognizes that endorsements can demonstrate basic knowledge and skills;

WHEREAS, the public wants assurances that the people in the classroom are qualified and competent;

NOW THEREFORE, BE IT RESOLVED that the Association of Alaska School Boards desires the Alaska Department of Education to require subject area endorsements or multiple endorsements of initial applicants for teacher certification.

BE IT FURTHER RESOLVED that such endorsements be required of all applicants for certificate renewal, unless such requirement was met at the time of initial certification.

ASSOCIATION OF ALASKA SCHOOL BOARDS

316 W. 11th St. • Juneau, Alaska 99801-1510

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POSITION PAPER

DE NOVO TRIALS

JUDICIAL REVIEW OF DECISIONS OF SCHOOL BOARDS
RELATING TO NON-RETENTION OR DISMISSAL OF TEACHERS

Under AS 14.20.205 JUDICIAL REVIEW a school district is obligated to submit to a trial de novo (a new trial) if a decision by the school board is unfavorable to a teacher, and the teacher appeals the decision by the board to non-retain or dismiss them. This is an extraordinary standard that has not been extended to any other group of employees.

When a teacher appeals the findings of a district hearing, the school district must repeat the process again before the court, usually at a much later date, and incur the financial cost once again.

AASB views this requirement to be both duplicative and extremely costly. The history of de novo trials in various school districts has established a pattern of unnecessary legal expenses. In addition, de novo law has a substantial chilling effect on school districts, due to costs, when deciding whether or not to attempt the dismissal of a tenured teacher.

The judicial review of dismissal proceedings should be treated no differently than other State agencies. Review should be "on the record" pursuant to the Administrative Procedures Act. This would provide an opportunity for the superior court to review the established record of the local hearing.

Furthermore, a teacher will still be able to appeal a school board's decision to the superior court.

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DE NOVO TRIALS SAMPLE COSTS

On March 22, 1994 the House HESS Committee took testimony from representatives of five school districts in support of legislation affecting de novo trials. School officials offered testimony on seven recent cases of non-retention—total cost \$721,453.

NORTH SLOPE BOROUGH SCHOOL DISTRICT

Tom Everitt, Director of Personnel

Example 1: A teacher was terminated for striking a child. The board incurred costs of \$126,000 in addition to hearing costs for the "de novo" trial.

Example 2: A tenured teacher was terminated for incompetence. As in the first example, the teacher requested and received a hearing. The legal fees for the district attorney and hearing officer were substantial. The preparation for the trial and settlement negotiations involved another \$29,000 in legal fees. In addition, the district's insurance company paid the ex-teacher \$59,500 as a settlement to avoid the legal expenses of a trial.

Total legal expense to the district: \$217,500.

FAIRBANKS NORTH STAR BOROUGH SCHOOL DISTRICT

Barbara M. Martin, Assistant Superintendent

Example 1: A case is currently being appealed to the Alaska Supreme Court by a terminated employee. Hearing costs in this case were \$44,512 and the trial costs to date are \$38,095, for a total of \$82,607.

Example 2: Another case is scheduled for trial in superior court in January 1995. Hearing costs in this case were \$82,920 and the trial costs to date are \$30,010, for a total of \$112,930.

Total combined costs to the district: \$195,537.

ANCHORAGE SCHOOL DISTRICT

Larry Wiget, Director of Government

In a recent case in Anchorage the district spent roughly \$20,000 to prevail before a hearing officer. It was forced to expend an additional \$100,000 to achieve the same result in the Superior court.

Total cost to the district: \$120,000.

KENAI PENINSULA BOROUGH SCHOOL DISTRICT

Richard Swarner, Executive Director of Business Management

Kenai has recently gone through a trial de novo for the non-retention of a tenured teacher and the district's legal costs were \$74,000. This is an exorbitant, but normal, price to pay for an employee who's performance is not satisfactory.

Total cost to the district: \$74,000.

SITKA SCHOOL DISTRICT

John Holst, Superintendent

In a recent termination case in the Sitka School District the district paid \$39,963. This included the original hearing before the board. At that point an attorney and legal firm was appointed by our insurance carrier and handled the case from that point on. The cost of the de novo trial was \$50,386 and the cost associated with the appeal to the Supreme Court was another \$42,067. Since this case has been remanded to Superior Court, we do not know at this time what the cost will be to process the next step.

Total cost to the district: \$114,416.



**1995 CORE RESOLUTION
95-2
ELIMINATE TRIAL DE NOVO**

WHEREAS, the current system of tenured teacher non-renewal and dismissal in Alaska is inefficient and costly for all parties when compared with similar processes in other states; and

WHEREAS, the current system of tenured teacher non-renewal and dismissal in Alaska requires a school district to complete a trial de novo following a similar hearing process by a hearing officer;

WHEREAS, the school trial de novo doubles the cost to the school district for teacher non-renewal or dismissal; and

WHEREAS, school districts have generally used independent hearing officers who utilize an approved process similar to a courtroom situation; and

WHEREAS, in overturning a Superior Court ruling against trial de novo the Supreme Court of Alaska stated the resolution to the process must be remedied by the Legislature;

NOW THEREFORE BE IT RESOLVED that the Association of Alaska School Boards will promote legislation to adjust the current system of tenured teacher non-renewal and dismissal in order to eliminate the trial de novo when the hearing officer has met standards acceptable to the court.

Sec. 14.17.225

CONSTRUCTION AND IMPLEMENTATION OF CHAPTER.

(a) This chapter does not create a debt of the state. Each district shall establish, maintain, and operate under a balanced budget. The state is not responsible for the debts of a school district.

(b) Money to carry out the provisions of AS 14.17.010 - 14.17.190 may be appropriated annually by the legislature into the public school foundation account. If amounts in the account are insufficient to meet the allocations authorized under AS 14.17.010 - 14.17.190 for a fiscal year, each district's basic need shall be reduced pro rata as necessary to make the funds available sufficient to meet the allocations for that fiscal year.

History -

(Sec. 8 ch 95 SLA 1969; am Sec. 1 ch 79 SLA 1971; am Sec. 12 ch 90 SLA 1977; am Sec. 51 ch 6 SLA 1984; am Sec. 17 ch 91 SLA 1987)

Sec. 14.17.021

STATE FOUNDATION AID.

(a) The amount of state foundation aid for which a school district may qualify in a fiscal year is calculated by subtracting from the basic need defined in (b) of this section the required local contributions under AS 14.17.025(a) and 90 percent of eligible federal impact aid for that fiscal year. The department may make adjustments to a district's state foundation aid for a fiscal year to correct underpayments made in previous fiscal years.

(b) The basic need of a school district is determined by multiplying the area cost differential of the district under AS 14.17.051 by the number of instructional units in the district under AS 14.17.031 and then multiplying that product by the instructional unit value in AS 14.17.056.

History -

(Sec. 4 ch 238 SLA 1970; am Sec. 1, 2 ch 81 SLA 1975; am Sec. 1, 2 ch 173 SLA 1976; am Sec. 2, 3 ch 90 SLA 1977; am Sec. 3, 4 ch 26 SLA 1980; am Sec. 2 ch 75 SLA 1986; am Sec. 2 ch 91 SLA 1987; am Sec. 1 ch 149 SLA 1990)

Amendment Notes -

The 1990 amendment, effective June 22, 1990, added the second sentence in subsection (a).

Decisions -

That the legislature has seen fit to delegate certain educational functions to local boards - in order that Alaska schools might be adapted to meet the varying conditions of different localities does not diminish constitutionally mandated state control over education under Alaska Const., art. VII, Sec. 1. *Macauley v. Hildebrand*, 491 P.2d 120 (Alaska 1971).

Sec. 14.20.150

ACQUISITION OF TENURE RIGHTS.

(a) A teacher acquires tenure rights in a district when the teacher
(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 reemployed 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.

History -

(Sec. 1 ch 92 SLA 1960; am Sec. 17 ch 98 SLA 1966)

Decisions -

Purpose of tenure laws. - Tenure laws are intended to give job security
to experienced teachers and to ensure that they will not be discharged for
inadequate reasons. State v. Redman, 491 P.2d 157 (Alaska 1971).

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. State v. Redman, 491 P.2d 157 (Alaska 1971).

The law does not require that teachers shall teach every day, - or
every hour of every day. State v. Redman, 491 P.2d 157 (Alaska 1971).

The supreme court fails to find any provision of Alaska 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 a study of the applicable
statutes. State v. Redman, 491 P.2d 157 (Alaska 1971).

Duties regular and substantial enough to afford intelligent evaluation
are sufficient. - When a teacher's duties are regular and substantial enough
to afford intelligent evaluation, there is little in the way of persuasive policy
considerations for excluding such service from the ambit of Alaska tenure
laws. State v. Redman, 491 P.2d 157 (Alaska 1971).

"Sequential fractions" regulation, - adopted by the department of
education for the purpose of protecting teachers who had taught in a
particular school district for various fractions of the school year and
entitling teachers who had taught for periods totaling more than the
equivalent of two regular school terms to tenure, conflicted with the
unambiguous language of this section. Fairbanks N. Star Borough Sch. Dist. v.
NEA-Alaska, Inc., 817 P.2d 923 (Alaska 1991).

Use of the word "full" in this section indicates the legislature's intent
to preclude a teacher from counting a portion of a year toward the two-year

probationary period required for tenure. Fairbanks N. Star Borough Sch. Dist. v. NEA-Alaska, Inc., 817 P.2d 923 (Alaska 1991).

Cited in Skagway City Sch. Bd. v. Davis, 543 P.2d 218 (Alaska 1975); Crisp v. Kenai Peninsula Borough Sch. Dist., 587 P.2d 1168 (Alaska 1978).
Collateral Refs -

What amounts to waiver of status or rights under teachers' tenure statute. 145 ALR 1078.

Construction and effect of tenure provisions of contract or statute governing employment of faculty member by college or university. 66 ALR3d 1018.

Who is "teacher" for purposes of tenure statute. 94 ALR3d 141.

Sec. 14.20.147

TRANSFER OR ABSORPTION OF ATTENDANCE AREA OR FEDERAL AGENCY SCHOOL

(a) When an attendance area is transferred from a currently operating district to, or absorbed into, a new or existing school district, the teachers for the attendance area also shall be transferred unless otherwise mutually agreed by the teacher or teachers and the chief school administrator of the new district. Accumulated or earned benefits, including but not limited to, seniority, salary level, tenure, leave, and retirement, accompany the teacher who is transferred.

(b) When a school operated by a federal agency is transferred to or absorbed into a new or existing school district the teachers shall also be transferred if mutually agreed by the teacher or teachers and the school board of the new or existing district. A teacher transferred from a federal agency school, which does not have an official salary schedule or teacher tenure in the same manner as a public school district in the state, shall be placed on a position on the salary schedule of the absorbing district; the salary may not be less than the teacher would have received in the federal agency school. If the teacher taught two or more years in the federal agency school and, at the time of transfer, had a valid Alaska teaching certificate, that teacher shall be placed on tenure in the absorbing district.

(c) On the first day of service in the absorbing school district, a teacher transferred from a federal agency school shall be allowed the actual number of days of accumulated sick leave that the teacher has earned while teaching in the state. Consistent with the established district policy the absorbing district may allow credit for any other type of leave. Credit for retirement shall be allowed in accordance with AS 14.25.060.

History -

(Sec. 1 ch 53 SLA 1972; am Sec. 1 ch 150 SLA 1975)

Decisions -

Back pay is not a benefit for the purpose of subsection (a) of this section. - Aleutian Region R.E.A.A. v. Wolansky, 630 P.2d 529 (Alaska 1981).

Quoted in Northwest Arctic Regional Educ. Attendance Area v. Alaska Pub. Serv. Employees, Local 71, 591 P.2d 1292 (Alaska 1979), overruled on other grounds, Alaska Com. Fishing & Agric. Bank v. O/S Alaska Coast, 715 P.2d 707 (Alaska 1986).

Stated in Parliment v. Yukon Flats Sch. Dist., 760 P.2d 513 (Alaska 1988).

Sec. 14.20.160

LOSS OF TENURE RIGHTS.

Tenure rights are lost when the teacher's employment in the district is interrupted or terminated.

History -

(Sec. 1 ch 92 SLA 1960; am Sec. 1 ch 104 SLA 1965; am Sec. 20 ch 98 SLA 1966; am Sec. 22 ch 37 SLA 1986)

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 that 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 that, 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.

History -

(Sec. 22 ch 98 SLA 1966; am Sec. 1 ch 11 SLA 1968; am Sec. 13 ch 46 SLA 1970; am Sec. 15 ch 124 SLA 1975)

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 Sch. Dist.*, 617 P.2d 9 (Alaska 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 legislature, and a school board's decision not to renew the contract of a nontenured teacher may be "for any cause which the employer determines to be adequate." *Shatting v. Dillingham City Sch. Dist.*, 617 P.2d 9 (Alaska 1980).

Despite the broad language of subsection (a), the board's discretion is subject to certain limitations; for example, a school board may not deny continued employment to a teacher because of the teacher's exercise of first amendment rights, nor may a school board deny continued employment

to a teacher if to do so would deprive the teacher of other rights that are guaranteed by constitution or statute. *Shatting v. Dillingham City Sch. Dist.*, 617 P.2d 9 (Alaska 1980).

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. A non-

retained, nontenured teacher has no constitutionally protected interest in public employment. *Gorder v. Matanuska-Susitna Borough Sch. Dist.*, 513 P.2d 1094 (Alaska 1973); *Shatting v. Dillingham City Sch. Dist.*, 617 P.2d 9 (Alaska 1980).

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 Sch. Dist.*, 513 P.2d 1094 (Alaska 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 Sch. Dist.*, 513 P.2d 1094 (Alaska 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 Sch. Dist.*, 513 P.2d 1094 (Alaska 1973).

Nonretention of tenured teacher for substantial noncompliance with district regulations affirmed. - See *Fisher v. Fairbanks N. Star Borough Sch. Dist.*, 704 P.2d 213 (Alaska 1985).

Submission of alleged breach of collective bargaining agreement to arbitration. - Where procedures concerning the nonretention of teachers are negotiated by a school district and a teachers' union and are included within a collective bargaining agreement, a nontenured teacher who is not retained by the school district can submit an alleged breach of the collective bargaining agreement to arbitration, though the arbitrator's latitude in fashioning an appropriate remedy is restricted by the language of subsection (a). *Jones v. Wrangell Sch. Dist.*, 696 P.2d 677 (Alaska 1985).

Quoted in *Matanuska-Susitna Borough v. Lum*, 538 P.2d 994 (Alaska 1975); *Jerrel v. Kenai Peninsula Borough Sch. Dist.*, 567 P.2d 760 (Alaska 1977).

Collateral Refs -

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

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.

History -

(Sec. 24 ch 98 SLA 1966; am Sec. 1 ch 148 SLA 1966; am Sec. 4 ch 11 SLA 1968; am Sec. 18 ch 124 SLA 1975)

Decisions -

This section, granting a trial de novo to teachers, does not violate the separation of powers. - *Matanuska-Susitna Borough v. Lum*, 538 P.2d 994 (Alaska 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*, 538 P.2d 994 (Alaska 1975).

AS 22.10.020 does not supersede this section. - AS 22.10.020, which provided in Sec. 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, 538 P.2d 994 (Alaska 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, 538 P.2d 994 (Alaska 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*, 538 P.2d 994 (Alaska 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*, 538 P.2d 994 (Alaska 1975).

De novo trial required, not mere appellate review. - The superior court erred in making the teacher choose between a de novo trial and an appellate

review of the record. The statute provides tenured teachers the right to a de novo trial, and makes no mention of other available levels of review. Further, the de novo requirement is not satisfied by a de novo mere review on the evidence presented in the administrative hearing. *Linstad v. Sitka Sch. Dist.*, 863 P.2d 838 (1993).

Bill of particulars requirement. - The bill of particulars provision of AS 14.20.180 operates as a limitation on the scope of the de novo trial guaranteed by this section. Thus, a school district may not deviate from the original bill of particulars and show other grounds during a de novo review. *Linstad v. Sitka Sch. Dist.*, 863 P.2d 838 (1993).

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 Sch. Dist.*, 513 P.2d 1094 (Alaska 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 Sch. Dist.*, 513 P.2d 1094 (Alaska 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 Sch. Dist.*, 513 P.2d 1094 (Alaska 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 Sch. Dist.*, 513 P.2d 1094 (Alaska 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 Sch. Dist.*, 617 P.2d 9 (Alaska 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*, 538 P.2d 994 (Alaska 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 Sch. Dist.*, 567 P.2d 760 (Alaska 1977).

Applied in *Renfroe v. Green*, 626 P.2d 1068 (Alaska 1980); *Jones v. Wrangell Sch. Dist.*, 696 P.2d 677 (Alaska 1985).

Quoted in *Sjong v. State, Dep't of Revenue*, 622 P.2d 967 (Alaska 1981); *Fedpac Int'l, Inc. v. State*, 646 P.2d 240 (Alaska 1982); *Fisher v. Fairbanks N. Star Borough Sch. Dist.*, 704 P.2d 213 (Alaska 1985).



clearinghouse notes

REDUCTION IN FORCE (RIF) PROVISIONS FOR TEACHERS November 1985

State	No. Prov.	Allowed, Procedure Unspecified	RIF Occurs, Based On				Teacher Has Right To Hearing Before a RIF	Reinstatement Occurs by Inverse Order of Seniority
			Tenure Status or Seniority	Classroom Needs Only	Tenure Status & Classroom Needs	Seniority and Need		
Ala. Samoa	X							
Alabama					X			
Alaska ¹		X						
Arizona		X			X ²		X	
California						X	X	
Colorado	X ³		X					
Connecticut					X ³			
Florida	X							
Georgia		X						
Idaho	X							
Illinois			X ⁴			X ⁴	X ⁴	
Indiana		X						
Kansas					X ²			
Kentucky						X	X	
Louisiana		X						
Maryland ⁵				X				
Massachusetts		X						
Maine	X							
Michigan	X							
Minnesota					X		X	
Missouri					X		X	
Montana					X ²			
Nebraska	X							
Nevada	X							
New Hampshire	X							
New Jersey					X ²			
New York	X							
North Carolina	X							
Ohio		X			X	X		
Oklahoma	X							
Oregon						X ²		
Pennsylvania	X				X ²		X ²	
Rhode Island						X		
South Carolina	X							
South Dakota		X ²						
Tennessee		X						
Texas						X		
Utah		X						
Virginia	X							
West Virginia						X	X	
Wisconsin			X					
Wyoming		X						

¹Involves teacher has right to any remaining job in the district. Only probationary teachers are fully subject to RIF.

²By opinion of the attorney general

³Or as determined in a collective bargaining agreement

⁴Or as determined in a collective bargaining agreement; nontenured teachers are dismissed first as long as tenured teacher is legally qualified to hold a position currently held by a teacher who is not on tenure. Whenever the number of dismissals due to RIF exceeds 5 or 15% of the average number of teachers dismissed in the preceding 3 years, the local board must hold a hearing on the question of the dismissals.

⁵By court decision

⁶Determination of who gets laid off also influenced by competence and merit

⁷State statute requires each district to have a written RIF policy

⁸Maryland provisions are by state law, not in education code or teacher contract provisions.

Compiled by: EOS Clearinghouse and EOS Law Center

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States Weigh Plans To Dismantle All or Part of Tenure Laws

States seek to overhaul tenure laws

Senate targets teacher tenure

Action sought by Fuller affects Milwaukee County districts

By RICHARD P. JONES of the Journal Sentinel staff

Madison — The state Senate voted Thursday to repeal teacher tenure in Milwaukee County, one of the reforms sought by Milwaukee School

districts. The bill applies to Milwaukee Public Schools and 17 suburban school districts in the county. It would not affect teachers who already hold tenure in those districts.

After Senate action, Sen. Barbara Darling (R-River Hills) said the tenure law proposed by the state would allow school boards to fire bad teachers. "We hope it doesn't hurt people unduly," Howard added.

Critics Target State Teacher-Tenure Laws
Calif. Governor Seeks To Dismantle System

Who Wants tenure repealed?
You might be surprised!

by Susan K. Maciak, assistant editor

Teachers against tenure? It may surprise you, but some are. Frustrated by having to put up with peers who are not properly preparing students for the next grade level, some Michigan teachers would like to see tenure repealed. Patricia Laite, retired

before tenure hearings begin, won't be enough with this.

"We want to be able to assure the public that qualifications for classroom instruction are the first consideration for employment and not necessarily seniority."

— Carl Rose, Association of Alaska School Boards

"School districts want to help teachers get the experience, supervision and professional development they need to be successful. Extending tenure acquisition will give districts the time they need to do just that."

— Carl Rose, Association of Alaska School Boards

"Tenure reform, a growing sentiment"

— Education Week, American Education's Newspaper of Record

"I think this has been coming for quite a while."

— Education Commission of the States

"If [teachers] are smart, they'll look at this as an opportunity to elevate the profession. I don't know anyone who's more upset about a bad teacher than a good teacher."

— California Secretary of Child Development and Education

The Trend: Tenure Headlines "STATES SEEK TO OVERHAUL TENURE LAWS"

• Alaska

Bills seek to extend tenure acquisition, allow for layoff when revenues decline, streamline a costly nonretention process.

• California

Governor's proposal would specifically eliminate tenure. Says the Governor, "Good teachers don't need tenure, [and] our children can't afford a teacher who is just punching the clock." He also proposes to abolish California's entire education code and start over.

• Connecticut

In 1993 the Connecticut legislature tried to amend teacher tenure laws that would have added new causes for dismissing a tenured teacher: The failure to demonstrate performance that promotes student achievement or the failure to take part in activities that enhance professional growth. Members of the legislature's Joint Education Committee are now proposing that Connecticut require five years of service for tenure instead of three.

• New Jersey

Governor has introduced a proposal requiring teachers to undergo periodic recertification to keep their licenses.

• New York

Legislature has already streamlined its procedures for disciplining teachers, but a new bill has been drafted that would require teachers to be licensed every three years and undergo a tenure review every five years.

• Ohio

Governor's proposal would require teachers to teach at least four of the past six years in the same district to achieve a "continuing contract" status. Also proposes a state education licensing board that would evaluate, remediate, and, if performance is judged unsatisfactory, release teachers.

• South Dakota

Governor is introducing legislation that would give school boards more flexibility to nonretain ineffective teachers.

• Texas

Senate Education Committee proposal would make it easier to dismiss teachers: They could be fired after two consecutive unsatisfactory reviews. Governor has praised the bill for encouraging innovation and increasing local control of schools.

• Wisconsin

Senate lawmakers recently passed a bill repealing tenure. Governor supports the bill, and has previously introduced similar bills. The Republican-led legislature is expected to pass the bill into law soon. Other bills would repeal de novo type laws that recently cost the state \$200,000 to nonretain two school employees.

STATES THAT HAVE AMENDED TENURE LAWS IN THE PAST FEW YEARS

- COLORADO (Repealed tenure)
- MASSACHUSETTS
- NEW YORK
- FLORIDA
- MICHIGAN
- OKLAHOMA

SOURCE: EDUCATION WEEK, MARCH 1, 1995, WSBA APRIL 18, 1995, EDUCATION COMMISSION OF THE STATES, 1995

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Critics Target State Teacher-Tenure Laws

Calif. Governor Seeks To Dismantle System

By Joanna Richardson

In 1985, school officials in La Mesa, Calif., reached the end of their rope.

After documenting more than 400 reasons why the Grossmont Union school district deemed Juliet Ellery unfit to teach high school biology and English—including that she belittled students and ignored their questions—the school board there fired her. The teacher disagreed with the decision and appealed it.

Eight years and more than \$300,000 in fees later, the district finally saw the last of Ms. Ellery: In 1993, the teacher exhausted her last appeal.

That drawn-out scenario to fire a teacher who has tenure could change if Gov. Pete Wilson gets his way.

California is one of several states where school boards, legislators, or governors are hoping to dismantle all or part of their teacher-tenure laws. Opponents say the laws, which were designed to protect teachers from arbitrary firing, drive up districts' costs and require years of complicated legal maneuvers to dismiss incompetent teachers. Some also argue that the current laws require too little of teachers who achieve tenure.

Connecticut, Ohio, South Dakota, and Texas all have proposals in the works. Some would merely tinker with the tenure laws; others, such as California's proposal, would wipe out the concept altogether.

A Growing Sentiment

Some analysts said they expect to see more of that sentiment over the next few years. The political shift to the right in many states has left teachers' unions—the longtime defenders of such job protections—more vulnerable, they said.

Moreover, the movement to make schools more accountable could have an impact.

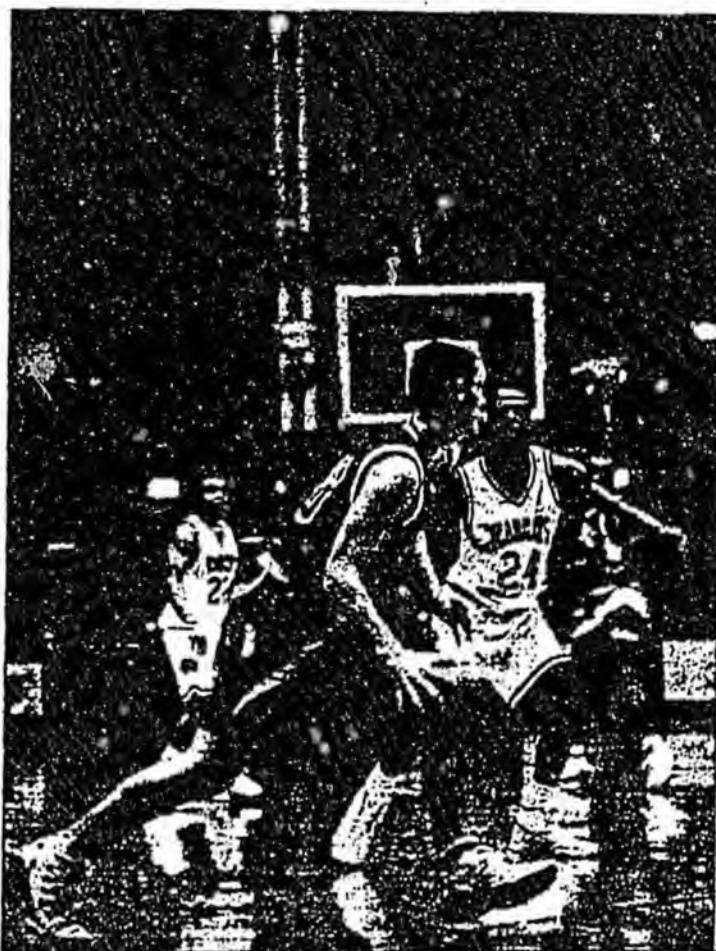
"I think this has been coming for quite a while," said Kathy Christie, the director of the Education Commission of the States' information clearinghouse. The Denver-based group has tracked changes throughout the country in laws providing tenure—sometimes known by terms such

Continued on Page 13

Glory Days

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To Tom Wright	From Carl Rose
Co. of Ivan Brown	Co. AASB
Dept. office	Phone #
Fax # 465-2228	Fax #



For more than a century, Indiana schoolboy basketball has drawn diehard fans, packed gymnasiums, and fierce competition between small-town teams and their big-city neighbors. Above, longtime rivals Muncie Central and Anderson High take to the court for their 126th matches. But as game attendance wanes—and the state considers a break with its one-class tournament tradition—many worry that "Hoosier Hysteria" may become a thing of the past. See Story, Page 24.

Accord Set in Desegregation Case in K.C.

Truce Called 'Historic Turning Point' for Mo.

By Peter Schmidt

A temporary truce has been declared in the long-running, bitterly contested Kansas City, Mo., school-desegregation case now pending before the U.S. Supreme Court.

A U.S. District Court judge approved the settlement last week within days after it was signed by state and district officials and the other parties in the case.

Although the agreement has no immediate impact on the case before the Supreme Court, it nonetheless was hailed by those involved as a critical step toward bringing an end to the dispute.

"This is a landmark agreement that could lead to a long-term and effective solution to the desegregation issue in Kansas City," Gov. Mel Carnahan said in a statement, calling the accord a "historic turning point for the state of Missouri."

Patricia A. Brannan, a lawyer representing the district, said the agreement does not resolve key points of contention, but instead provides an opportunity to negotiate out of court by setting a six-month ceasefire from legal skirmishing over the spring and summer.

Continued on Page 14

Districts Wonder If A.D.A. Efforts Will Satisfy Law

By Drew Lindsay

No one is going to call Fairfax County, Va., a slacker when it comes to providing people with disabilities access to schools.

At least, that is the hope of school officials there who have dedicated a construction fund solely to meeting the needs of the disabled. Should a student in a wheelchair need to use a second-floor laboratory, for example, the officials say they will tap that fund and zap—within 45 days, there will be an elevator.

The Fairfax County school district's "quick response" fund is part of its strategy for meeting its obligations under the Americans With Disabilities Act, the 1990 federal civil-rights law that prohibits discrimination against people with disabilities. Schools nationwide are expected to spend \$6 billion in the next few years increasing accessibility to their programs.

But Fairfax County and thousands of other districts will spend this money knowing little about whether their plans will

Continued on Page 11

Scaling Up

The National Diffusion Network is seeking to remake itself in the hopes that it will gain a more solid footing in the school-improvement movement.

5

Are Schools Up to the Job?

Employers rank a student's school experience last among criteria they consider in hiring new workers, a survey finds.

16

Voucher Battle in Illinois

Lawmakers are set to debate a voucher bill that would make Illinois the first state to steer state funds to religious schools.

16

Welfare Reform Advances

A key House committee has cleared legislation that would replace child-care and school-meals programs with block grants to states.

20

States Weigh Plans To Dismantle All or Part of Tenure Laws

Continued from Page 1

"Continuing contracts"—for here.

Districts got used to just shifting people to another building or another position if they were not doing their job, Ms. Christie said. "Now it's time to see results."

Right to Due Process

In most states, the debate over tenure has focused on giving schools more freedom to remove ineffective teachers.

Some union officials have objected to claims that tenure laws protect incompetent teachers from the district's interventions.

"This is nothing more than the right to due process that's found in any workplace," Jewell Gould, the director of research for the American Federation of Teachers, said.

Going after teacher tenure is "a cheap slap at quality," he added, saying that states should focus instead on better professional support for beginning teachers. School administrators, he said, have to bear some of the burden, by letting teachers know if their performance is not up to par and helping them come up with ways to improve it.

Others have argued that evaluating seasoned teachers more fre-

quently and improving professional-development opportunities would identify teachers who need help earlier—and make tenure changes unnecessary.

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Looking to Change

Now, another wave of states is looking to change teacher-tenure laws.

Most are trying to extend the

tenure laws were intended to protect teachers from being dismissed for arbitrary reasons, such as their religious beliefs or personal differences with employers.

Today, all states have teacher-tenure acts on the books or other laws that give teachers certain rights if they are fired, according to the National Education Association.

Generally, tenured or permanent teachers must receive a written notice and a statement of causes for their dismissal, and they must have the option of a hearing before a school board or other panel before the final decision is made to fire them or not renew their contracts.

Most states also give teachers the right to appeal such decisions in a court or before a state agency.

Over the past few years, however, several states—including Colorado, Florida, Massachusetts, Michigan, New York, and Oklahoma—have amended their tenure laws while keeping some of the foundations intact, according to the N.E.A.

Gov. George W. Bush, who promised education reform in his campaign last fall, has praised the bill for encouraging innovation and increasing local control of schools.

Another new Governor, William J. Jenklow of South Dakota, is introducing legislation that would give school boards more flexibility to fire ineffective teachers.

But the legislation—which would also eliminate portions of the state's education law—would keep intact most of the basic protections in the current law, said Karon Schaak, the deputy secretary of the state education department.

In Ohio, Gov. George V. Voinovich has proposed extending the minimum teaching time required to become eligible for a continuing contract.

Teachers would have to have taught at least four of the past six years in the same district to achieve that status, Paul Paley, an education-policy adviser to Mr. Voinovich, said.

In addition, the Governor wants to create a state education-licensing board made up pri-

arily of teachers. It would oversee, among other tasks, the periodic evaluation of teachers, who would have a remediation period if their performance was judged unsatisfactory.

"We're saying teachers who are not meeting the standards of

we to take part in activities that "enhance professional growth."

The proposal, however, drew heavy fire from both of the state teachers' unions, who argued that they were being asked to bear the burden for school reform. The bill eventually fell flat in the legislature.

Despite that failure, some lawmakers with the legislature's joint education committee are now proposing that Connecticut require five years of service for tenure instead of three.

And in New Jersey and New York, where the state school boards' associations have battled often with the unions over tenure, there is still talk of changing the laws. New York has already streamlined its procedures for disciplining teachers, but a new case involving a Long Island school district has reignited debate there about whether the state should go further.

Mr. Gould of the A.F.T. said he thinks the states are on the wrong track. Raising standards—not scrapping tenure—would do more to make teachers and schools accountable, he said.

But Ms. DiMarco of California said the unions should consider how changes in the laws could, in the end, benefit teachers.

"If they're smart, they'll look at this as an opportunity to elevate the profession," she said. "I don't know anyone who's more upset about a bad teacher than a good teacher."

"We check on the people who cut your hair more than the people who have your children's future in their hands."

Maureen DiMarco

California Secretary of Child Development and Education

their peers can be fired," Mr. Paley said.

Politics of Protection

State officials who support the changes acknowledge that while such proposals may have the backing of governors and lawmakers, the teachers' unions could be a tough sell.

In Connecticut, for example, the legislature tried to amend teacher-tenure laws in a 1993 bill that would have moved the state to a performance-based education system.

The state would have added new causes for dismissing a tenured teacher: the failure to demonstrate performance that promotes student achievement or the fail-

Teacher-tenure laws are "nothing more than the right to due process that's found in any workplace."

Jewell Gould

Director of Research, American Federation of Teachers

quently and improving professional-development opportunities would identify teachers who need help earlier—and make tenure changes unnecessary.

But critics say tenure laws have outlived their purpose.

"Tenure is one of the last dinosaurs in public education, said Maureen DiMarco, Governor Wilson's secretary of child development and education. "We check on the people who cut your hair more than the people who have your children's future in their hands."

Mary Jo McGrath, a lawyer who has represented the Grossmont Union schools and many other school boards in California, said: "These cases are about as tough as they get. They're much harder than anything the private sector ever faces in wrongful-termination suits."

Mr. McGrath said the Juliet Ellery case was not atypical: "Cases can last up to a decade or more."

Most districts also need an average of three years of documentation before dismissing a tenured teacher, she added, and if the termination is appealed, schools may use as many as 40 witnesses and more than 100 documents to support their case.

time it takes a teacher to achieve tenure, strengthen or put in place evaluation procedures for achieving such status, or shorten what is often a long and expensive appeals process when teachers contest a school board's dismissal decision.

"In his State of the State speech earlier this year, Governor Wilson said, 'Good teachers don't need tenure, [and] our children can't afford a teacher who is just punching the clock.'"

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file - SB 37

BILL GOES TO ASSEMBLY

Senate targets teacher tenure

Action sought by Fuller affects Milwaukee County districts

By RICHARD F. JONES
of the Journal Sentinel staff

Madison — The state Senate voted Thursday to repeal teacher tenure in Milwaukee County, one of the reforms sought by Milwaukee School Superintendent Howard Fuller.

Public school teachers in Milwaukee County now gain permanent employment status after three years on the job. Without discussion, the Senate passed a bill to repeal the tenure law and sent the measure to the Assembly.

Repealing the tenure law was on the wish list of reforms that Fuller sent Gov. Tommy G. Thompson and the Legislature earlier this year.

Reacting to the vote, Chuck Howard, president of the Milwaukee Teachers Association, said: "Obviously we're disappointed.

"We believe they (Senate) are mistaken in what they think it is going to do. Tenure is designed to save good teachers. We have methods in

our contracts spelled out how to fire (bad teachers).

"We hope it doesn't hurt people unduly," Howard added.

The bill applies to Milwaukee Public Schools and 17 suburban school districts in the county. It would not affect teachers who already hold tenure in those districts.

After Senate action, Sen. Albert Darling (R-River Hills) said the tenure law protected incompetent teachers in the county districts. She said the tenure in all other districts across the state was repealed nearly 50 years ago.

"It's not fair to teachers throughout this state, it's not really fair to the good teachers in Milwaukee, who work side by side with teachers who are not carrying their load," she said in an interview.

Darling, a former teacher and chairwoman of the Senate Education Committee, cited a recent MPS audit, showing principals would rather give poor teachers a satisfactory rating and a transfer to another school than try to terminate them.

"Right now, it is almost impossible to fire a school employee unless there is evidence of a criminal act," Darling said.

Janesville woman
wins jobless benefit
ruling. Page 3B.

FRIDAY, APRIL 7, 1995

MILWAUKEE

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Whitman Challenges The Teachers

Governor Tells Union She Supports Retesting

By IVER PETERSON

Special to The New York Times

EAST BRUNSWICK, N.J., Feb. 5 — Gov. Christine Todd Whitman challenged the New Jersey public school teachers' union today with a recertification proposal that would attack teacher tenure and with a tuition-voucher plan for a troubled urban school district.

Her challenge to the all but unshakable tenure granted to public school teachers and to the state's support for public school financing is the first major political fight for Mrs. Whitman since she became Governor three weeks ago.

The union leadership immediately made clear that the teachers were prepared to use as much political force against the Whitman proposals as they did in forcing a repeal of Gov. Jim Florio's attempt to shift the cost of teacher pensions from the state budget to local school budgets. That fight led directly to the defeat of the Democratic majority in the State Legislature, and contributed to Mr. Florio's defeat last year.

Members of the New Jersey Education Association's Legislative and Political Action Conference groaned loudly amid a few muted boos when Mrs. Whitman challenged the teachers, who make up one of New Jersey's richest and most politically powerful unions, to support her plan to begin a voucher system in the Jersey City schools as early as this fall.

Fighting Words to Union

"Rather than attacking a very limited test of school vouchers in one city, you should lead the fight for magnet schools and other types of school choice programs," the Governor said during her luncheon speech.

Vincent Testa, the Education Association president, said the politics of the Governor's proposals were unambiguous.

"She pretty much challenged us," Mr. Testa said in an interview after the Governor's speech. "We would have wished that she would approach vouchers and recertification in terms of saying that all of the testimony is not in yet, but she did not."

Mr. Testa said the union was willing to discuss Mrs. Whitman's ideas on requiring teachers to undergo periodic recertification to keep their licenses, a measure that the Governor admitted after her speech would end the teaching careers of teachers who failed the tests. But the union president was unbending on publicly financed vouchers that could be spent at private schools.

"The issue of private-school vouchers is a tough one for us, because it's a 'yes or no' question," he said. "It is as important an issue to this union as the pension shifts were under Florio, and we are prepared to exert the same pressure on vouchers as we were on that issue."

Governor Whitman opened her speech to the union's political action arm with praise for the expanded roles teachers must play, calling teachers not only classroom instructors but also social workers, substitute parents and nutritionists. The Governor balanced each kind word with warnings that she would not be cowed by the union's political reputation. The association's membership, at 144,000, is second-largest in the country, after California's.

"Let me tell you what I often hear said about the N.J.E.A. in the State House," Mrs. Whitman said in a kind of backhanded compliment at one point. "People say the

leader of the New Jersey Education Association, and by extension the members who elect them, are more concerned about pensions, salary issues and fringe benefits than they are about education. I don't believe that."

Members of the audience said after the Governor's speech that there was indeed a hostility to public school teachers, who are among the highest paid in the country, in parts of New Jersey. They said the teachers were often viewed as only interested in preserving a "Nine-to-three and summer's free" system, another disparaging phrase that Mrs. Whitman first used, and then disavowed, in her speech.

It is because of that hostility that the union is opposed to the Governor's program of recertification, said James A. Bisling, a history teacher at Morris County Community College and a delegate to today's conference.

'Tremendous Hostility'

"We oppose recertification because it will be used to punish teachers," Mr. Bisling said. "There is tremendous hostility toward teachers on the part of some policy makers, and they would be very willing to use a recertification system to punish teachers for any reason."

Governor Whitman's speech dwelt on the problems of urban schools, and she made it clear that her initiatives, like the voucher plan for Jersey City, were aimed at restoring urban education, to make "our public schools a beacon of excellence not only in Princeton but in Paterson."

Teachers in New Jersey are initially certified after completing their formal educations, and while school districts have programs to further a teacher's graduate education, teachers are not required to prove periodically that they are still capable of classroom instruction.

Mrs. Whitman said her thinking on a plan for re-examining teaching abil-

ity, and weeding out those who do not pass the procedure, was still incomplete. She said after her speech that teachers who failed recertification would still be eligible for other jobs, in administration and the like.

Legislature Not Needed

A change in teacher licensing could probably be enacted through the State Board of Education and would

not need legislative approval, said Mr. Testa, the union president, who added that the union was willing to consider new ways of keeping teaching standards high that fall short of ending the tenure system.

The New Jersey teachers' union became a major force in the politics of public education in 1991, when it broke with a history of supporting mainly Democratic candidates and policies and backed a Republican counterattack against Governor Florio's \$2.8 billion tax increase. The veto-proof Republican majority that resulted repaid this support by reversing Mr. Florio's plan to make local districts responsible for teacher pensions. Since then the union, with a large political war chest and thousands of well-connected members, has shifted its support back and forth between the two parties.

Teacher Tenure: Rights vs. Discipline

By SAM DILLON

After Jay Dubner, a special education teacher in New York City, was arrested, convicted and sent to prison in 1990 for selling \$7,000 worth of cocaine to undercover police, school officials thought it would be easy to dismiss him.

Not so. While Mr. Dubner served his sentence in Sullivan Correctional Center in upstate New York, he collected his teacher's pay. And, after five years and more than \$185,000 spent by the Board of Education on disciplinary proceedings, Mr. Dubner has prevailed. He still has his job.

The story of New York City's failed effort to dismiss Mr. Dubner underlines how difficult it has become for school boards to get rid of tenured employees, even in extreme cases. As a result, in New York, as elsewhere, the processes supporting tenure have become the focus of a debate about balancing rights of academics against the need to discipline unethical or incompetent teachers or principals.

By and large, teachers' unions argue that the lengthy dismissal process is essential if academics are to get a fair hearing. But many school officials say the process has tipped too far. "There's something wrong when a teacher can be con-

vinced in a court of law for selling drugs, and the school system can't dismiss him," said Lawrence E. Becker, director of the board's Office of Legal Services.

Randi Weingarten, a lawyer for the teachers' union, the United Federation of Teachers, declined to comment on Mr. Dubner's case. The union's legal staff, which often defends teachers facing disciplinary action, did not represent Mr. Dubner. He hired his own lawyer.

Gov. Mario M. Cuomo has introduced legislation that would streamline state procedures by providing for hearings before a single arbitrator, rather than a three-person panel. An aide to the Governor said chances were good that the legislation would pass this year.

Legislators or advocacy groups in other states, including South Dakota, Michigan, Illinois and New Jersey, are also seeking to simplify the procedures for disciplining teachers, said Jay Butler, a spokesman for the National School Boards Association. In many states, regulations are so onerous that school districts often ignore all but the most egregious teacher misconduct, he said.

But in few states is the problem as serious as in New York. It costs school districts across the state an average of \$194,520 — including the cost of the arbitrators and the salary of the accused teacher and a substitute — and takes 476 days to fully prosecute each case, according to a survey by the New York State School Board Association.

"This law isn't designed to protect teachers," said Louis Grumet, the association's executive direc-

tor. "It's designed to drag out, delay and obfuscate."

In New Jersey, by contrast, the average discipline case lasts only a year and costs only about \$100,000 to adjudicate, said Frank Belluscio, a spokesman for the New Jersey School Boards Association.

In New York, the disciplinary process guarantees that tenured educators accused of wrongdoing have the right to a lawyer and the right to cross-examine witnesses in an administrative trial convened by a three-person panel they help choose. This is set out in Section 3020a of state education law.

"Certainly teachers do not want incompetents or perverts in the next classroom," said Susan Amlung, a spokesman for the United Federation of Teachers. "But the 3020a procedures provide a due process that is an American right."

A Range of Charges

The city currently has 158 teachers and 18 other tenured educators facing disciplinary hearings on charges ranging from sex crimes to chronic absence, Mr. Becker said. An arts teacher has been charged with help-

ing an immigrant student run away from home by harboring her in his apartment. A principal has been charged with stealing \$10,000 in school funds. A gym teacher has been charged with having sex with a teenage girl in the school weight room. Though all have been transferred to administrative posts, they continue to draw full salaries.

Since May 1989, when Mr. Dubner was arrested, the board has dismissed 28 tenured teachers for incompetence or wrongdoing, like theft of school property and sexual abuse of a student.

Even Mr. Dubner, speaking in a recent interview, criticized the complexity of the hearings that allowed him to keep his job. But he also criticized school officials whom he said had shown little compassion during his crisis.

"They never considered giving a guy a second chance," he said.

Katie R. Raab, the board lawyer who prosecuted Mr. Dubner, portrayed him as a street-smart cynic who had been given every legal consideration.

"Jay Dubner abused the school system and the taxpayers," she said.

Selling Cocaine on the Side

At the time of his arrest in 1990, Mr. Dubner, then a bearded, 38-year-old teacher, was responsible for explaining special education programs to parents. Assigned to an office in Public School 138, in the Flatbush section of Brooklyn, he earned \$40,000 a year.

More...

TENURE, continued...

But he was augmenting his salary by selling cocaine, sometimes arranging sales from his school office, law enforcement officials said. Although there is no evidence that he ever sold to students, a regular client was Andrew J. Morgan, a teacher at Canarsie High School.

On May 9, 1989, police officers arrested the two teachers in their cars, parked along Ocean Parkway, where moments earlier Mr. Dubner had sold Mr. Morgan half an ounce of cocaine, packaged in a Board of Education envelope. The police documented half a dozen other sales that spring.

The board, ruling that Mr. Morgan was untenured, discharged him. Despite his subsequent conviction on

176 educators face hearings on charges from sex crimes to chronic absence.

felony drug charges, he has since won a civil court decision overturning his dismissal. His lawyer is demanding \$35,000 in back pay for Mr. Morgan.

Because he had tenure, Mr. Dubner was not immediately dismissed. Instead he was reassigned to board headquarters. There, after a five-week drug rehabilitation program, he drew his full salary until he pleaded guilty to felony drug charges in a June 1990 plea bargain.

Teacher's Pay in Prison

Sentenced to serve from two to six years in prison, he was sent to a minimum-security annex of the maximum-security Sullivan Correctional Facility in Fallsburg in July 1990, government records show. While he was in prison, he received his full 1990 summer teacher's pay, school officials said.

When the fall term began in September 1990, Mr. Dubner was still incarcerated and unable to show up for work, he took a leave, losing a few paychecks, though not for long. Because his status as a teacher ensured him employment in a work-release program, he was sent in November 1990 to the Lincoln Correctional Facility at 3133 West 110th Street in Manhattan. The early-release program let him work at his board job and spend weekend nights in jail.

Mr. Dubner returned to his desk at board headquarters in December 1990, and two days later, the seven-member board voted to charge him with "conduct unbecoming a teacher," school records show.

Early in 1991, a three-person hearing panel was formed in the usual

fashion, with the board and Mr. Dubner each picking one member and a chairman selected at random from a state list of arbitrators. The panel, operating at what officials said is about the normal pace, met for the first time five months later.

Then, in eight hearings over 10 months, the panel heard testimony from a dozen witnesses and produced 900 pages of transcripts. Mr. Dubner's lawyer, Neil Rosenberg, argued that his client was forced to sell cocaine to support a \$300-a-day cocaine habit. Mr. Rosenberg also argued that Mr. Dubner's dismissal was unjust because he had been rehabilitated after arrest. The panel found Mr. Dubner guilty. The board discharged him in May 1992.

If Mr. Dubner had been an untenured teacher applying for a job at that time he would have been disqualified because of his recent drug conviction, school officials said. Teachers receive tenure after three years in a licensed appointment.

Shortage of Lawyers

Teachers' union officials said the disciplinary process often moves as slowly as it did in Mr. Dubner's case because the Board of Education has too few staff lawyers. School officials say the board has seven lawyers to handle its 176 disciplinary cases, giving them a higher caseload than lawyers at other city agencies.

Mr. Rosenberg said some defense lawyers intentionally drag cases out

because their clients enjoy administrative reassignment. In one case a Brooklyn teacher reassigned in 1991 for hitting students acknowledged that he preferred his temporary job over classroom duties. After he was cleared on one charge, he struck another student, and a panel concluded that he had engineered the incident in order to return to a desk job.

Teachers' union officials said such cases are rare. Since the 1991 contract talks, when the union agreed to rule changes that allow accused educators to opt for a single arbitrator rather than a three-person panel, three out of four accused teachers are choosing the streamlined procedure, they said.

Mr. Dubner availed himself of every procedural opportunity, including the right to appeal his May 1992 dismissal to the education commissioner, Thomas Sobol.

In a ruling last fall, Mr. Sobol acknowledged that Mr. Dubner's conviction on drug charges had been a public relations disaster for the school system, but said dismissal was too harsh, given Mr. Dubner's rehabilitation. He reduced the penalty to two years' suspension without pay.

After the suspension ended last month, Mr. Dubner regained his status as a tenured board employee. He has begun negotiating with the board over posts that might be available to him in the fall.

"I can return anytime I want," he said.

DIFFERENCES BETWEEN
HB 217(JUD) version O & HB 217(L&C) version R

Title change to allow for retirement provisions added to section 5.

Sec. 3. in version O - Peer Review Committee deleted - Concern was expressed by both NEA and PTA that the peer review provision would probably pull instructors from class to participate in the review. It would also increase school district need and expense to hire substitute instructors while the assigned instructor is serving on review committee.

Sec. 5 - amended to allow a teacher on lay off to treat the layoff as a termination and receive retirement account refund for employee contribution. Gives an instructor access to additional financial resource.

Sec. 6 - deletes mandatory, advisory arbitration. This allows teacher to take an appeal directly to judicial review. This will probably result in a cost and time savings to all parties.

Public Disclosure of Public School Employer-Employee Negotiations

Adopted by the General Membership of the Alaska PTA
April 22, 1995

- Whereas, The National PTA through its mission and the United States Department of Education through Goals 2000, Educate America Act support parents having a meaningful voice in all aspects of school governance; and
- Whereas, The National PTA Position Statement, *Teacher Negotiations, Sanctions, and Strikes*, encourages PTAs to provide, in the negotiation period, "a full public hearing of the issues for the purpose of dispelling confusion and developing intelligent, informed public opinion"; and
- Whereas, several states have enacted legislation to provide for public notification and a reasonable time for public comment prior to the beginning of and during formal negotiations between school districts and bargaining units; and
- Whereas, school boards are the community/public representative in contract negotiations with bargaining units working within the school district; and
- Whereas, ground rules set by the bargaining unit and the school board can preclude public notification of issues prior to the commencement of formal contract negotiations and the negotiated agreement amends school board policy; therefore, be it
- Resolved, that the Alaska Congress of Parents and Teachers support ground rules in collective bargaining that provide for public disclosure and reasonable time for public comment of all issues being considered between the bargaining group and the school board; and, therefore, be it further
- Resolved, that the Alaska Congress of Parents and Teachers actively seek and support changes to state legislation and regulations which allow for public disclosure and a reasonable time for public comment of all issues being considered between the bargaining group and the school board through collective bargaining.

Acquisition of Teacher Tenure

Adopted by the General Membership of the Alaska PTA
April 22, 1995

- Whereas: The Objects of the National PTA include, "to secure adequate laws for the care and protection of children and youth" and "to develop between educators and the general public such united efforts as will secure for all children and youth the highest advantages in physical, mental, social and spiritual education" ; and
- Whereas: The quality of teaching is important in the development of strong educational programs in the State; and
- Whereas: Currently available data indicates 32 states require at least 3 years teaching experience in order to qualify for tenure and 7 states offer no tenure at all; and
- Whereas: Two years is often insufficient time for new teachers to develop professionally and successfully in an environment free of the pressures of non-retention notice deadline; and
- Whereas: Two years is often not long enough to comprehensively evaluate the capability of a teacher prior to granting tenure; and
- Whereas: School districts are under increased pressure to reduce costs resulting in fewer supervisors conducting quality teacher evaluations; and
- Whereas: The Association of Alaska School Boards has passed Core Resolution 95-22 supporting changes to State law requiring five full years probation before obtaining tenure; therefore, be it
- Resolved: That the Alaska Congress of Parents and Teachers recommends to the Legislature that AS 14.20.150 (a) and (b) be amended to require a minimum of five full school years of employment as a teacher to obtain tenure in the school systems of the State of Alaska (applicable to teachers first hired on or after the effective date of the act).

Parameters For Educational Reform

Adopted by the Alaska PTA Convention, April 25, 1992

- Whereas, One of the Objects of the National Congress of Parents and Teachers is "To develop between educators and the general public such united efforts as will secure for ALL children and youth the highest advantages in physical, mental, social, and spiritual education"; and
- Whereas, The Alaska Congress of Parents and Teachers (Alaska PTA) has a long-standing commitment to the integrity of the public school system in the State of Alaska; and
- Whereas, The Alaska PTA has endorsed that state and federal funds for education should be appropriated only for public schools that are publicly controlled and tax-supported; and
- Whereas, The Alaska PTA fully supports equal access to an excellent education for all students; therefore, be it
- Resolved, That the Alaska PTA opposes any educational reform plan which:
- a) uses public funds for private schools;
 - b) fails to guarantee an excellent education for those students who do not, or can not "Choose";
 - c) fails to guarantee equal access;
 - d) causes any public school to become unable to compete as a result of student and financial loss;
 - e) leads to segregation by race, socioeconomic class or disability;
 - f) fails to meet constitutional, as well as federal, state, and local educational mandates;
 - g) fails to provide for meaningful parental involvement; or
 - h) fails to provide for an evaluation process to determine the effectiveness of the program.

04/28/95

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM

LTN1150

15:11:39

PARTICIPANT LIST (TESTIFIERS ONLY)

BY:MAT

TCN:50632

SCHEDULED FOR:04/28/95 15:00 TO 17:00

FOR:MAT

PUBLIC HEARING

HOUSE LABOR & COMMERCE

LOCATION:MATSU

SB 25

MR

ED

KERN

TESTIFY ✓

HB 217

MR

BOB

DOYLE

TESTIFY ✓

HB 217

MR

JOHN

CYR

TESTIFY ✓

HB 217

MS

LUCY

HOPE

TESTIFY

04/28/95

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM

LTN1150

15:15:04

PARTICIPANT LIST (ALL PARTICIPANTS)

BY:ANC

TCN:50632

SCHEDULED FOR:04/28/95 15:00 TO 17:00

FOR:ANC

PUBLIC HEARING

HOUSE LABOR & COMMERCE

LOCATION: ANCHORAGE

HB 263

DICK

CATTANACH

TESTIFY

HB 109

JIM

ROWE

ATA

TESTIFY ✓

HB 217

JOE

JOSEPHSON

TESTIFY ✓

HB 217

MARTI

HUGHES

TESTIFY ✓

HB 217

KATHI

GILLESPIE

TESTIFY ✓

HB 217

JOHN

GILLESPIE

TESTIFY ✓



Official Business

COMMITTEE:

LSC

DATE: 4/24/95

SIGN-IN

Subject of meeting:

HB 217

TEACHERS TENURE

PLEASE PRINT!

NAME ADDRESS (MAILING) & (ZIP) PHONE REPRESENTING DO YOU WANT TO TESTIFY?

Table with 5 columns: NAME, ADDRESS (MAILING) & (ZIP), PHONE, REPRESENTING, DO YOU WANT TO TESTIFY?. Rows include Robert Van Slyke, Claudia Douglas, Ron Gleason, Willie Fischer, and Vernon Marshall.



NEA-ALASKA

Affiliated with the National Education Association

NEA-Alaska Position on Tenure

Some have come to believe that tenure is synonymous with lifetime employment. Nothing could be further from the truth. Competent and effective administrators with leadership and motivational skills have utilized tenure as an ally to develop innovative and challenging teaching staffs.

Over 20 years ago Alaska joined the mainstream of America by extending tenure to its teachers. Today tenure continues to accomplish its purpose by encouraging effective teaching in the various political climates existing in any school district during a person's career. Tenure is to establish employment security and professional responsibilities within the framework of due process. Tenure is granted to protect academic freedom.

Why does NEA-Alaska support tenure?

- Tenure protects the freedom the academic community needs to impart knowledge and critical thinking skills to children.
- Tenure protects schools from becoming systems where the spoils of a bureaucracy are dumped.
- Tenure protects the schools and teachers from assaults by political pressure groups.
- Tenure provides the needed security to enable teachers to be creative and experiment with new methods.
- Tenure enables teachers to maintain discipline in a fair and impartial manner without jeopardizing their jobs.
- Tenure permits teachers to be critical of the policies and tactics of teacher organizations.
- Tenure protects the school system from chaotic and spasmodic change.

The authority to grant tenure is a discretionary power of the local school board which cannot be delegated. State law prescribes how a teacher may acquire tenure. The probationary period allows school boards time to assess a teacher's ability and competencies. During this period there is no guarantee of employment beyond each annual employment contract. During the period an Alaskan probationary teacher may be terminated without citing cause.

Tenure does not give a teacher lifetime appointment. The tenure law provides a competent teacher an assurance of continued employment as long as his/her performance is satisfactory - it does not guarantee permanent employment.

It is clear in Alaska statutes that there are adequate legal means for non-retention of a tenured teacher. Those reasons are (1) incompetency, (2) moral turpitude, (3) substantial noncompliance with the school laws, and (4) reduction in force as a result of a decrease in student enrollment.

Administrators are critical to the success of the process because they are trained to evaluate and develop teachers to accomplish the educational goals and plans of a school district.

Administration is a demanding job. Those who enter it understand that many variables will attack their time, but good administration understands the necessity of developing the skills of the staff. They have the authority to coordinate resources, money, teachers and the instructional day, and to develop staff.

The evaluation process is a positive tool for improving teaching performance and encourages school districts working with the staff to improve the quality of the evaluations. If a district has poor evaluation techniques or believes other tasks are more important and thus does not devote the time necessary to do fair and adequate evaluations, it is not responsible public policy to provide more time to "get the job" done. It is not a matter of time. It is a matter of commitment to the task.

To improve the quality of teaching, the quality of leadership and staff development must be improved. New teachers should have an opportunity to work with mentor teachers and instructional leaders in schools.

Tenure must not be the scapegoat for problems within the public schools. Gaining tenure does not turn a good teacher into a bad one anymore than being re-elected to a political office turns a competent legislator into an incompetent one.

One argument that is particularly frustrating and demoralizing for teachers is that the current tenure law keeps the "old" teachers. One teacher voiced his frustration about this issue in a newspaper article. He stated, "It alarms me that veteran teachers aren't valued for stability and consistency. Research clearly identifies a link between low teacher turnover and high student achievement. Stability is even more paramount to success in bush districts. Instead of respecting these facts, we are regarded as a commodity - with experience discounted. Once we gain experience and added expertise, we're perceived as too expensive for teaching the future leaders of our state!"

It is true that tenure offers job security for a new teachers. It also offers stability and continuity to a school and community. Unfortunately, attacks on tenure come across as "age" discrimination or experience discrimination.

The majority of teachers are not interested in moving from one school or district to another. Teachers become not only involved in their communities, but they often become the cornerstone serving as leaders and volunteers in many community groups and organizations: Girl and Boy Scouts, Big Sister/Big Brother Programs, Special Olympics events, service organizations and church groups.

Before changing the current tenure law, the long-range effects must be considered, for all involved: teachers, administrators, communities, and most importantly the students.

NEA-Alaska strongly opposes any changes to the current tenure law that simply extends the time for teachers to be at-will employees.



NEA-ALASKA

Affiliated with the National Education Association

**Tenure! What is it?
Why do we need it?**

By Mike Bradner
Former Alaska House Speaker, legislator from 1966 to 1976

Alaska's teacher tenure law got its teeth during the second session of 1966 through enactment of HB-526, which added provision for a full superior court hearing, which in legal jargon is simply called *de novo* trial.

The *de novo* trial is simply just that--"a trial." It is nothing out of the ordinary. This process is no different than any other Superior Court trial action involving many kinds of disputes. The Superior Court is simply Alaska's basic trial court, the place where all manner of disputes are resolved, ranging from simple divorce proceedings to complex civil litigation.

What the *de novo* trial does is insure an unbiased hearing, removed from the environment where people cannot help but be parties to the dispute. The Superior Court is also a fact finding body. This means they do more than just review the evidence of a district hearing panel, they must listen to the actual presentation evidence. There is a big difference between a court reviewing the process of an administrative hearing, and the court hearing its own evidence.

During the 1960s and 1970s, when we were building Alaska's basic school law, we were also in the process of building Alaska's actual school systems. It was obvious that most of our districts would be relatively small. School boards and administration would be just a step away from the classroom. Even in larger districts schools are characterized by a relatively shallow, or horizontal, kind of organization that is relatively unique to school structure. School organizations are made up of a whole bunch of classrooms, a relatively small professional management, and then the school board.

Whether districts are large or small, the school board organizationally is not far from the basic level of the classroom. School boards are also elected people, and this means they are very often one of the sources, or at minimum conduits, of complaint. Unlike in other organizations of greater vertical depth, complaints in school systems don't necessarily work their way up from the bottom to some more neutral manager. Rather, the public electoral process invites complaint to often jump the system and go straight to the top.

This means boards, and school management, are often involved in a dispute from the start, and therefore being able to insure an "in house" unbiased hearing process is more speculative than in organizations with more vertical depth of organization.

There is no doubt in my mind that lawmakers in the 1960s and 1970s, questioned whether an in house hearing process could insure sufficient fairness to teachers and academic processes.