

SECOND REGULAR SESSION

HOUSE BILL NO. 2315

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE LAMPE.

Read 1st time February 28, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

4742L.02I

AN ACT

To repeal sections 168.104, 168.114, 168.116, 168.118, 168.120, and 168.221, RSMo, and to enact in lieu thereof six new sections relating to public school teachers.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 168.104, 168.114, 168.116, 168.118, 168.120, and 168.221, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 168.104, 168.114, 168.116, 168.117, 168.118, and 168.120, to read as follows:

168.104. The following words and phrases when used in sections 168.102 to 168.130, except in those instances where the context indicates otherwise, mean:

(1) "Board of education", the school board or board of directors of a school district[, except a metropolitan school district,] having general control of the affairs of the district;

(2) "Demotion", any reduction in salary or transfer to a position carrying a lower salary, except on request of a teacher, other than any change in salary applicable to all teachers or all teachers in a classification;

(3) "Indefinite contract", every contract heretofore or hereafter entered into between a school district and a permanent teacher;

(4) "Permanent teacher", any teacher who has been employed or who is hereafter employed as a teacher in the same school district for five successive years and who has continued or who thereafter continues to be employed as a teacher by the school district or any supervisor of teachers who was employed as a teacher in the same school district for at least five successive years prior to becoming a supervisor of teachers and who continues thereafter to be employed

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 as a certificated employee by the school district; except that, when a permanent teacher resigns
16 or is permanently separated from employment by a school district, and is afterwards reemployed
17 by the same school district, reemployment for the first school year does not constitute an
18 indefinite contract but if he is employed for the succeeding year, the employment constitutes an
19 indefinite contract; and except that any teacher employed under a part-time contract by a school
20 district shall accrue credit toward permanent status on a prorated basis. Any permanent teacher
21 who is promoted with his consent to a supervisory position including principal or assistant
22 principal, or is first employed by a district in a supervisory position including principal or
23 assistant principal, shall not have permanent status in such position but shall retain tenure in the
24 position previously held within the district, or, after serving two years as principal or assistant
25 principal, shall have tenure as a permanent teacher of that system;

26 (5) "Probationary teacher", any teacher as herein defined who has been employed in the
27 same school district for five successive years or less. In the case of any probationary teacher who
28 has been employed in any other school system as a teacher for two or more years, the board of
29 education shall waive one year of his probationary period;

30 (6) "School district", every school district in this state, except metropolitan school
31 district as defined in section 162.571, RSMo;

32 (7) "Teacher", any employee of a school district, except a metropolitan school district,
33 regularly required to be certified under laws relating to the certification of teachers, except
34 superintendents and assistant superintendents but including certified teachers who teach at the
35 prekindergarten level in a nonmetropolitan public school within a prekindergarten program in
36 which no fees are charged to parents or guardians.

168.114. 1. An indefinite contract with a permanent teacher shall not be terminated by
2 the board of education of a school district except for one or more of the following causes:

3 (1) Physical or mental condition [unfitting him] **making such teacher unfit** to instruct
4 or associate with children;

5 (2) Immoral conduct;

6 (3) Incompetency, inefficiency or insubordination in line of duty;

7 (4) Willful or persistent violation of, or failure to obey, the school laws of the state or
8 the published regulations of the board of education of the school district employing [him] **such**
9 **teacher;**

10 (5) Excessive or unreasonable absence from performance of duties; or

11 (6) Conviction of a felony or a crime involving moral turpitude.

12 2. In determining the professional competency of or efficiency of a permanent teacher,
13 consideration should be given to regular and special evaluation reports prepared in accordance

14 with the policy of the employing school district and to any written standards of performance
15 which may have been adopted by the school board.

168.116. 1. The indefinite contract of a permanent teacher may not be terminated by the
2 board of education until after service upon the teacher of written charges specifying with
3 particularity the grounds alleged to exist for termination of such contract, **notice of the option**
4 **of the teacher to request a preliminary hearing before an impartial hearing officer under**
5 **section 168.117**, notice of a hearing **before the board** on charges [and] **under section 168.118**,
6 a hearing by the board of education on charges if requested by the teacher, **and a final decision**
7 **by the school board.**

8 2. At least [thirty] **sixty** days before service of notice of charges of incompetency,
9 inefficiency, or insubordination in line of duty, the teacher shall be given by the school board or
10 the superintendent of schools warning in writing, stating specifically the causes which, if not
11 removed, may result in charges. Thereafter, both the superintendent, or [his] **the**
12 **superintendent's** designated representative, and the teacher shall meet and confer in an effort
13 to resolve the matter.

14 3. Notice of **right to request a preliminary** hearing upon charges **before an impartial**
15 **hearing officer under section 168.117 or before the school board**, together with a copy of
16 charges, shall be served on the permanent teacher at least twenty days prior to the **proposed** date
17 of the hearing. The notice and copy of the charges may be served upon the teacher by certified
18 mail with personal delivery addressed to [him] **the teacher** at [his] **the teacher's** last known
19 address. If the teacher or [his] **the teacher's** agent does not within ten days after receipt of the
20 notice request a **preliminary** hearing **before an impartial hearing officer or a hearing before**
21 **the school board** on the charges, the board of education **of the school district** may, by a
22 majority vote, order the contract of the teacher terminated. If a **preliminary** hearing is requested
23 by either the teacher or the board of education, [it shall take place not less than twenty nor more
24 than thirty days after notice of a hearing has been furnished the permanent teacher] **the**
25 **superintendent shall forward a copy of the notice to the labor and industrial relations**
26 **commission. Within five days after receiving this notice of hearing, the labor and**
27 **industrial relations commission shall provide a list of five prospective, impartial hearing**
28 **officers. Each person on the list shall be accredited by a national arbitration organization.**
29 **No one on the list shall be a resident of the school district. Within seven days of receipt of**
30 **the list, the board of education of the school district and the teacher, or their legal**
31 **representatives, shall alternately strike one name from the list until only one name remains.**
32 **The board of education of the school district shall proceed first with the striking. The**
33 **labor and industrial relations commission shall promulgate uniform standards and rules**

34 of procedure for such hearings. Such rules and regulations shall, at a minimum, provide
35 for:

36 (1) Discovery of names and addresses of persons who may be called as expert
37 witnesses at the hearing. The omission of any such name shall result in a preclusion of the
38 testimony of such witness in the absence of the showing of good cause and the express
39 permission of the hearing officer;

40 (2) Written interrogatories; and

41 (3) The production of relevant documents.

42 4. Costs of the hearing shall include the reasonable and customary per diem
43 allowance for the hearing officer and the reasonable and necessary expenses of the hearing
44 officer.

45 [4.] 5. On the filing of charges in accordance with this section, the board of education
46 of the school district may suspend the teacher from active performance of duty until a final
47 decision is rendered by the board of education but the teacher's salary and benefits shall be
48 continued during such suspension, provided that the teacher's salary and benefits may be
49 suspended following the board's receipt of an advisory opinion from the impartial hearing
50 officer finding in favor of dismissal of the teacher. If [a] an advisory opinion to terminate
51 a teacher's employment is reversed by the board of education or a final decision to terminate
52 a teacher's employment by the board of education is appealed, and the decision is reversed, the
53 teacher shall be paid [his] the teacher's salary lost during the pending of the [appeal] suspension
54 of salary.

55 6. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,
56 that is created under the authority delegated in this section shall become effective only if
57 it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if
58 applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
59 and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo,
60 to review, to delay the effective date, or to disapprove and annul a rule are subsequently
61 held unconstitutional, then the grant of rulemaking authority and any rule proposed or
62 adopted after August 28, 2008, shall be invalid and void.

168.117. If a preliminary hearing is requested on the termination of an indefinite
2 contract by either the teacher or the school board, it shall be conducted by the hearing
3 officer in accordance with the following provisions:

4 (1) The hearing shall be public unless closed at the request of the teacher and shall
5 be scheduled not less than thirty nor more than forty-five days from the date of selection
6 of the hearing officer, unless the period is shortened or extended by mutual agreement of
7 the teacher and the board of education of the school district;

8 (2) Both the teacher and the person filing charges may be represented by counsel,
9 who may cross-examine witnesses;

10 (3) Testimony at hearings shall be on oath or affirmation administered by the
11 hearing officer, who for the purpose of hearings held pursuant to this section shall have the
12 authority to administer oaths;

13 (4) The hearing officer shall have the power to subpoena witnesses and
14 documentary evidence as provided in section 536.077, RSMo, and shall do so on the motion
15 or at the request of the administration or the teacher against whom charges have been
16 made. The hearing officer shall hear testimony of all witnesses named by the
17 administration and the teacher; however, the hearing officer may limit the number of
18 witnesses to be subpoenaed on behalf of the administration or the teacher to not more than
19 ten;

20 (5) The board of education of the school district shall employ a stenographer who
21 shall make a full record of the proceedings of the hearings and who shall, within ten days
22 after the conclusion thereof, furnish the hearing officer, the board of education of the
23 school district, and the teacher, at no cost to the hearing officer or the teacher, with a copy
24 of the transcript of the record, which shall be certified by the stenographer to be complete
25 and correct. The transcript shall not be open to public inspection, unless the hearing on
26 the termination of the contract was an open hearing or if an appeal from the advisory
27 opinion of the hearing officer is taken by the teacher;

28 (6) All costs of the hearing shall be paid by the school board of education of the
29 school district except the cost of counsel for the teacher, except that if the teacher requests
30 the preliminary hearing without the concurrence of the board, and the hearing officer's
31 opinion recommends immediate dismissal of the teacher, then the teacher shall pay the
32 reasonable and necessary costs of the hearing other than the cost of counsel for the school
33 board;

34 (7) No later than thirty days after the conclusion of the hearing, the hearing officer
35 shall provide an advisory opinion as to whether or not the teacher shall be dismissed and
36 shall deliver copies of the decision to both the teacher and the board of education of the
37 school district. The hearing officer shall also have the authority to make an advisory
38 opinion that a teacher shall be given appropriate discipline, but not be dismissed. In the
39 case of a charge of incompetency, inefficiency, or insubordination in the line of duty, the
40 hearing officer also shall have the option of recommending an extension of the period in
41 which the superintendent and the teacher shall meet and confer in an effort to resolve the
42 matter as provided in subsection 2 of section 168.116.

168.118. **1. The board of education shall, in the same manner as provided in section 168.116 and within thirty days of receipt of any advisory opinion or recommendation from a hearing officer pursuant to section 168.117, provide notice to the teacher of the board's intention to accept or reject each relevant provision of such advisory opinion or recommendation and of the opportunity for the teacher to request and receive a hearing thereon before the board of education before a final decision is made by the board.**

2. If a board hearing is requested on the termination of an indefinite contract it shall be conducted by the board of education and shall be conducted in accordance with the following provisions:

(1) The hearing shall be public **unless closed at the request of the teacher, and shall be scheduled not less than thirty nor more than forty-five days from the date the teacher requests a board hearing, unless the period is shortened or extended by mutual agreement of the teacher and the board of education of the school district;**

(2) Both the teacher and the person filing charges may be represented by counsel who may cross-examine witnesses;

(3) Testimony at hearings shall be on oath or affirmation administered by the president of the board of education, who for the purpose of hearings held under sections 168.102 to 168.130 shall have the authority to administer oaths;

(4) The school board shall have the power to subpoena witnesses and documentary evidence as provided in section 536.077, RSMo, and shall do so on its own motion or at the request of the teacher against whom charges have been made. **The complete record of the preliminary hearing and advisory opinion or recommendation of the hearing officer, if a preliminary hearing was conducted, shall be a part of the record of the board hearing.** The school board shall hear testimony of all witnesses named by the teacher; however, the school board may limit the number of witnesses to be subpoenaed on behalf of the teacher to not more than ten;

(5) The board of education shall employ a stenographer who shall make a full record of the proceedings of the hearings and who shall, within ten days after the conclusion thereof, furnish the board of education and the teacher, at no cost to the teacher, with a copy of the transcript of the record, which shall be certified by the stenographer to be complete and correct. The transcript shall not be open to public inspection, unless the hearing on the termination of the contract was an open hearing or if an appeal from the decision of the board is taken by the teacher;

(6) All costs of the hearing shall be paid by the school board except the cost of counsel for the teacher;

36 (7) The decision of the board of education resulting in the demotion of a permanent
37 teacher or the termination of an indefinite contract shall be by a majority vote of the members
38 of the board of education and the decision shall be made within seven days after the transcript
39 is furnished them. A written copy of the decision shall be furnished the teacher within three days
40 thereafter.

168.120. 1. The teacher shall have the right to appeal from the **final** decision of the
2 board of education to the circuit court of the county where the employing school district is
3 located. The appeal shall be taken within fifteen days after service of a copy of the **final** decision
4 of the board of education upon the teacher, and if an appeal is not taken within the time, then the
5 **final** decision of the board of education shall become final.

6 2. The appeal may be taken by filing notice of appeal with the board of education,
7 whereupon the board of education, under its certificate, shall forward to the court all documents
8 and papers on file in the matter, together with a transcript of the evidence, the findings and the
9 **final** decision of the board of education, which shall thereupon become the record of the cause.
10 Such appeal shall be heard as provided in chapter 536, RSMo.

11 3. Appeals from the circuit court shall be allowed in the same manner as in civil actions,
12 except that the original transcript prepared and filed in the circuit court by the board of
13 education, together with a transcript of the proceedings had in the circuit court, shall constitute
14 the transcript on appeal in the appellate court. The board of education shall make available, to
15 the parties, copies of any transcript prepared and filed by it in the circuit court and upon final
16 determination of the cause in the appellate court the original record of the board of education
17 filed as a part of the transcript on appeal shall be certified back to the board of education by the
18 appellate court. In all appeals from the board of education or circuit court the costs thereof shall
19 be assessed against the losing party as provided by law in civil cases. All appeals to the circuit
20 court and appellate courts shall have precedence over all cases except election contests.

21 4. If the circuit court finds for the teacher, [he] **the teacher** shall be restored to
22 permanent teacher status and shall receive compensation for the period during which [he] **the**
23 **teacher** may have been suspended from work, and such other relief as may be granted by the
24 court.

2 [168.221. 1. The first five years of employment of all teachers entering
3 the employment of the metropolitan school district shall be deemed a period of
4 probation during which period all appointments of teachers shall expire at the end
5 of each school year. During the probationary period any probationary teacher
6 whose work is unsatisfactory shall be furnished by the superintendent of schools
7 with a written statement setting forth the nature of his incompetency. If
8 improvement satisfactory to the superintendent is not made within one semester
9 after the receipt of the statement, the probationary teacher shall be dismissed.
The semester granted the probationary teacher in which to improve shall not in

10 any case be a means of prolonging the probationary period beyond five years and
11 six months from the date on which the teacher entered the employ of the board
12 of education. The superintendent of schools on or before the fifteenth day of
13 April in each year shall notify probationary teachers who will not be retained by
14 the school district of the termination of their services. Any probationary teacher
15 who is not so notified shall be deemed to have been appointed for the next school
16 year. Any principal who prior to becoming a principal had attained permanent
17 employee status as a teacher shall upon ceasing to be a principal have a right to
18 resume his or her permanent teacher position with the time served as a principal
19 being treated as if such time had been served as a teacher for the purpose of
20 calculating seniority and pay scale. The rights and duties and remuneration of a
21 teacher who was formerly a principal shall be the same as any other teacher with
22 the same level of qualifications and time of service.

23 2. After completion of satisfactory probationary services, appointments
24 of teachers shall become permanent, subject to removal for any one or more
25 causes herein described and to the right of the board to terminate the services of
26 all who attain the age of compulsory retirement fixed by the retirement system.
27 In determining the duration of the probationary period of employment in this
28 section specified, the time of service rendered as a substitute teacher shall not be
29 included.

30 3. No teacher whose appointment has become permanent may be
31 removed except for one or more of the following causes: immorality, inefficiency
32 in line of duty, violation of the published regulations of the school district,
33 violation of the laws of Missouri governing the public schools of the state, or
34 physical or mental condition which incapacitates him for instructing or
35 associating with children, and then only by a vote of not less than a majority of
36 all the members of the board, upon written charges presented by the
37 superintendent of schools, to be heard by the board after thirty days' notice, with
38 copy of the charges served upon the person against whom they are preferred, who
39 shall have the privilege of being present, together with counsel, offering evidence
40 and making defense thereto. Notifications received by an employee during a
41 vacation period shall be considered as received on the first day of the school term
42 following. At the request of any person so charged the hearing shall be public.
43 The action and decision of the board upon the charges shall be final. Pending the
44 hearing of the charges, the person charged may be suspended if the rules of the
45 board so prescribe, but in the event the board does not by a majority vote of all
46 the members remove the teacher upon charges presented by the superintendent,
47 the person shall not suffer any loss of salary by reason of the suspension.
48 Inefficiency in line of duty is cause for dismissal only after the teacher has been
49 notified in writing at least one semester prior to the presentment of charges
50 against him by the superintendent. The notification shall specify the nature of the
51 inefficiency with such particularity as to enable the teacher to be informed of the
52 nature of his inefficiency.

53 4. No teacher whose appointment has become permanent shall be
54 demoted nor shall his salary be reduced unless the same procedure is followed as
55 herein stated for the removal of the teacher because of inefficiency in line of duty,
56 and any teacher whose salary is reduced or who is demoted may waive the
57 presentment of charges against him by the superintendent and a hearing thereon
58 by the board. The foregoing provision shall apply only to permanent teachers
59 prior to the compulsory retirement age under the retirement system. Nothing
60 herein contained shall in any way restrict or limit the power of the board of
61 education to make reductions in the number of teachers or principals, or both,
62 because of insufficient funds, decrease in pupil enrollment, or abolition of
63 particular subjects or courses of instruction, except that the abolition of particular
64 subjects or courses of instruction shall not cause those teachers who have been
65 teaching the subjects or giving the courses of instruction to be placed on leave of
66 absence as herein provided who are qualified to teach other subjects or courses
67 of instruction, if positions are available for the teachers in the other subjects or
68 courses of instruction.

69 5. Whenever it is necessary to decrease the number of teachers because
70 of insufficient funds or a substantial decrease of pupil population within the
71 school district, the board of education upon recommendation of the
72 superintendent of schools may cause the necessary number of teachers beginning
73 with those serving probationary periods to be placed on leave of absence without
74 pay, but only in the inverse order of their appointment. Nothing herein stated
75 shall prevent a readjustment by the board of education of existing salary
76 schedules. No teacher placed on a leave of absence shall be precluded from
77 securing other employment during the period of the leave of absence. Each
78 teacher placed on leave of absence shall be reinstated in inverse order of his
79 placement on leave of absence. Such reemployment shall not result in a loss of
80 status or credit for previous years of service. No new appointments shall be made
81 while there are available teachers on leave of absence who are seventy years of
82 age or less and who are adequately qualified to fill the vacancy unless the
83 teachers fail to advise the superintendent of schools within thirty days from the
84 date of notification by the superintendent of schools that positions are available
85 to them that they will return to employment and will assume the duties of the
86 position to which appointed not later than the beginning of the school year next
87 following the date of the notice by the superintendent of schools.

88 6. If any regulation which deals with the promotion of either teachers is
89 amended by increasing the qualifications necessary to be met before a teacher is
90 eligible for promotion, the amendment shall fix an effective date which shall
91 allow a reasonable length of time within which teachers may become qualified
92 for promotion under the regulations.]

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