

Separation

Due Process Flow Chart

DUE PROCESS IN TEACHER TERMINATION CASES

What is the teacher's tenure status?

PROBATIONARY

PERMANENT

When is termination to become effective?

IN MID-CONTRACT

Written notice of the teacher's alleged incompetency or other deficiency.

Incompetency – Inability of probationary teacher to perform professional duties in the manner acceptable to the Board. Birdwell v. Hazelwood, 352 F. Supp. 613 (E.D. MO 1972)

Ninety (90) days within which to overcome areas of incompetency (Sec. 168.126(2)).

Entitled to due process hearing prior to Board vote to terminate. Valter v. Orchard Farm Sch. Dist., 541 S.W. 2d 550 (MO.1976)

Board may:
• Reinstate
• Terminate immediately
• Terminate at end of current school year

AT THE END OF THE TEACHER'S CONTRACT
Board vote on motion to terminate. The vote – termination.

Notify in writing of termination on or by April 15 (Sec. 168.126(2)).

Any lawful reason is sufficient. White v. Scott County Sch. Dist., 503 S.W.2d 35 (Mo. App. 1973)

Upon request, terminated teacher entitled to Statement of Reasons for termination. If given in "bad faith",

Statement of Reasons can be basis of legal action (Sec. 168.126(2)).

If for incompetency, inefficiency or insubordination:

Thirty (30) or more days prior to service of Notice of Charges, Board or Superintendent must serve teacher with written warning notice.

REASONS

- 1. Physical or mental condition unfitting to instruct or associate with children.
2. Immoral conduct.
3. Incompetency, inefficiency or insubordination in line of duty.
4. Willful or persistent violation of, or failure to obey the school laws of the State or the published regulations of the Board of Education.
5. Excessive or unreasonable absence from duty.
6. Conviction of a felony or crime of moral turpitude. (Sec. 168.114)

Remaining five reasons: No warning notice required

Warning notice must specifically state reasons which, if not remedied, may result in issuance of charges. (Sec. 168.116(2))

Teacher must be served with . . .

1. Statement of Charges

* States specifically the grounds for termination.

2. Notice of Hearing

* States date, time and place of hearing which will be held upon request of teacher or Board. * States if hearing is not requested within ten (10) days, teacher may be terminated without hearing.

(Sec.168.116(3)). Both documents must be served at least twenty (20) days prior to hearing. (Sec.168.116(3)).

Teacher has ten (10) days, excluding date of service, to request a hearing. (Sec.168.116(3)).



HEARING REQUESTED

Hearing must be held not less than twenty(20) days nor more than thirty (30) days from service of charges and Notice of Hearing.

Upon service of charges, Board may suspend teacher with pay until Board renders its decision (Sec.168,116(4))

HEARING DUE PROCESS RIGHTS

1. Hearing is public at option of teacher.
2. Teacher has right to counsel.
3. Teacher may call witnesses, cross-examine witnesses called against him/her and enter exhibits.
4. Teacher entitled to have Board subpoena documentary evidence.



HEARING NOT REQUESTED

OR

REQUESTED AFTER EXPIRATION OF
TEN (10) DAY PERIOD.

• Board may terminate by majority vote (Sec.168.116(3)) without a hearing.

OR

• Board may vote to conduct a hearing to teacher with pay until Board renders its decision. consider the charges. (Sec. 168.116(3))

5. Witnesses testify under oath, with all testimony recorded stenographically.
6. Hearing costs, except for the teacher's attorney, are borne by the Board.
7. Teacher entitled to copy of transcript.
(Sec. 168.118(7))

Based upon hearing, evidence, Board may vote to:

- Exonerate teacher
- Demote teacher

OR

- Terminate teacher
- Decision of Board by majority vote within seven (7) days after transcript of hearing made available to the Board. (Sec. 168.118(7))

Teacher entitled to written Findings of Fact, Conclusions of Law and Decision within three (3) days of Board's Decision. (Sec. 168.118(7)).

APPEAL

- Teacher may appeal Board's decision to Circuit Court located within the County where District is located.
- Appeal must be filed within fifteen (15) days after service of the Board's written decision.



APPEAL


Court reviews transcript

No new hearing

. ALTHOUGH

* Court may request additional evidence or testimony

Teacher may appeal
Circuit Court's Decision
through Appellate Courts.
(Sec.168.120(3))



NO APPEAL OR
APPEAL AFTER FIFTEEN (15) DAY
APPEAL PERIOD. and decision.
Board's decision is final.
(Sec.168.120(1))