

Employment Termination

Legal Presentation by Dr. Mary Wegner



14th Amendment & Due Process



A Tenured Teacher:

Has constitutionally protected property and liberty rights to employment

Is entitled to Due Process if termination impairs property/liberty interests

Courts have established that tenured teachers have significant property and possibly liberty rights in their jobs, and thus Due Process is required

Property Interest: Tenure is a legitimate claim of entitlement to a job

Liberty Rights: Termination causes a stigma or damages to reputation

Definitions



Dismissal: Termination for cause of any tenured teacher or a non-tenured teacher within the contract period

Due Process: Substantive protections against arbitrary governmental (aka school board) action and procedural protections when the government threatens an individual's life, liberty, or property interests

Non-Renewal/Non-Retention: Not renewing a non-tenured teacher's employment contract - notification before current contract expires

Significant Court Cases



Two 1972 decisions that addressed whether or not the infringement of a liberty or property interest entitled a non-tenured teacher to the same due process that tenured teachers have:

Board of Regents v. Roth: 1- year contract that was not renewed

Right to a statement of reason and a hearing prior to non-retention is not required for non-tenured teachers unless a violation occurs that damages reputation in the community or imposes a stigma that limits other (future) employment options

A valid property right requires a legitimate claim of entitlement and not just an abstract need or desire

Significant Court Cases



Two 1972 decisions that addressed whether or not the infringement of a liberty or property interest entitled a non-tenured teacher to the same due process that tenured teachers have:

Perry v. Sindermann: 4th year non-tenured faculty notified of non-renewal

Fourteenth Amendment Property Right: Lack of a formal tenure system does not mean there cannot be an entitlement of a job through policies

First Amendment Free Speech Right: Lack of tenure does not void a claim that non-renewal was based on protected conduct, and thus procedural Due Process must be offered, and it is up to the teacher to prove that the protected conduct was a motivating factor in the non-renewal decision

Significant Court Cases



Board of Regents v. Roth & *Perry v. Sindermann*: Non-tenured legal precedents

Specifically, the United States Supreme Court held that non-tenured teachers do not have a constitutionally protected property right to employment requiring procedural Due Process, unless a following condition is present:

- Non-renewal decisions damage an individual's reputation and integrity
- Non-renewal decisions foreclose other employment options
- No policies and practices create a valid claim to re-employment
- Non-renewal decisions violate fundamental constitutional guarantees

Significant Court Cases



Supreme Court and Federal Appellate Court Decisions Define Concepts

Property Interest:

Non-tenured teachers do not have property claim to reappointment unless action establishes a right

Longevity is not sufficient – only state law, local policy, or contract

Liberty Interest:

Due process must be afforded if fundamental constitutional guarantees such as freedom of expression and privacy rights are threatened

Up to teacher to prove that the reason for non-renewal is due to violation of liberty interests

Significant Court Cases



Supreme Court and Federal Appellate Court Decisions Define Concepts

Damage to a teacher's reputation:

- Publicly disclosed
- Alleged to be false
- Virtually foreclose opportunities for future employment

Stigma-Plus Test: Charges such as immorality and dishonesty

Hearing needed (threat to liberty interests): Serious drinking problem, emotional instability, mental illness, immoral conduct, child molestation, and extensive professional inadequacies

Hearing not needed (no threat to liberty interests): Personality difference, difficulty in working with others, hostility toward authority, incompetence, aggressive behavior, ineffective leadership, and poor performance

Due Process



- Notification of charges
- Opportunity for a hearing
- Adequate time to prepare a rebuttal to the charges
- Access to evidence and names of witnesses
- Hearing before an impartial tribunal
- Representation by legal counsel
- Opportunity to present evidence and witnesses
- Opportunity to cross-examine adverse witnesses
- Decision based on evidence and findings of the hearing
- Transcript or record of the hearing
- Opportunity to appeal an adverse decision

Definitions for Dismissal Options



Incompetency: Lack of ability, legal qualifications, or fitness to discharge the required duty, as shown in a pattern of behavior

Immorality: Unacceptable conduct that affects a teacher's fitness, with the teacher viewed as an exemplar that influences the lives of young students so that a higher level of discretion is required than general public

Insubordination: Willful disregard of or refusal to obey school regulations and official orders, which does not require a relationship between the conduct and the individual's fitness to teach

Unprofessional Conduct/Unfitness to Teach: Actions directly related to the fitness of educators to perform in their professional capacity

Neglect of Duty: Failure to carry out assigned duties – intentional or not

Personal Liability



Compensatory and punitive damages, reinstatement with back pay, and attorney's fees for the violation of their constitutional rights

42 U.S.C. Section 1983: Public school employees acting under color of state law can be held personally liable for their actions that abridge students' or teachers' federal rights

Acting in good faith may be a claim of immunity from personal liability

Individuals alleging violation bear the burden of proof

Immunity is denied when there is a disregard for Due Process, protected expression, and/or privacy

District Liability



Supreme Court ruled that local governments are considered “persons” under Section 1983 and thus can be assessed damages when actions taken violate federally protected rights

Limited to execution of an official policy by an individual with final authority that impairs a federally protected rights

Districts cannot plead good faith immunity

Compensatory and punitive damages, reinstatement with back pay, and attorney’s fees for the violation of their constitutional rights

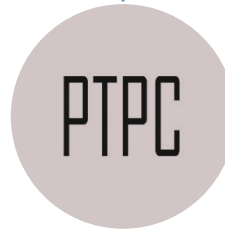
Employment Termination Options



Employment Termination



Non-Retention
[Next Year]



Dismissal
[This Year]



Reduction
in Force



Employment Termination Options



Employment Termination



Non-Retention
[Next Year]

Non-Retention [Alaska Statute 14.20.175]

- District demonstrates that it:
 - Complied with Evaluation [14.20.149]
 - Plan of Improvement
 - Evaluation shows inadequacy of skill
- Immorality: crime of moral turpitude
- Substantial Non-Compliance: written law/rule

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Tenured

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Employment Termination Options



Employment Termination



Non-Retention
[Next Year]



Non-Retention [Alaska Statute 14.20.17]

- Any cause employer deems adequate
- Teacher can request:
 - Written statement of cause
 - Informal School Board hearing

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Non-Tenured

Employment Termination Options



Employment Termination

Dismissal [Alaska Statute 14.20.170]

Incompetency: unintentional or intentional

Immorality: crime of moral turpitude

Substantial Non-Compliance: written law/rule

PTPC

Dismissal
[This Year]



Reduction
in Force

n-Tenured

Employment Termination Options



Employment Termination

Reduction in Force [Alaska Statute 14.20.177]

- Layoff plans are allowable when:
 - School attendance decreases
 - Basic Need [AS 14.17.410(b)(1)] ↓ by 3%
- School Board adopts a layoff plan: IDs academic and other programs district will maintain, and procedures for recall
- All non-tenured teachers non-retained unless specific qualification



Reduction
in Force

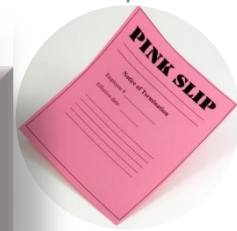
Employment Termination Options



Employment Termination

Layoff/Non-Retention Notice [Alaska Statute 14.20.140]

- Tenured: Written notice delivered/postmarked by May 15th
- Non-Tenured: Written notice delivered/postmarked by last day of the school term



Reduction
in Force

Employment Termination Options



Employment Termination

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Layoff Notice [Alaska Statute 14.20.140]

• La

Automatic Reemployment

[Alaska Statute 14.20.145]

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• All no

- Teacher is entitled to be reemployed unless notification of non-retention or layoff is given according to AK Statute Layoff Notice [14.20.140]

- Expires if not accepted in 30 days even if on family leave



Reduction
in Force

Employment Termination Options



Employment Termination

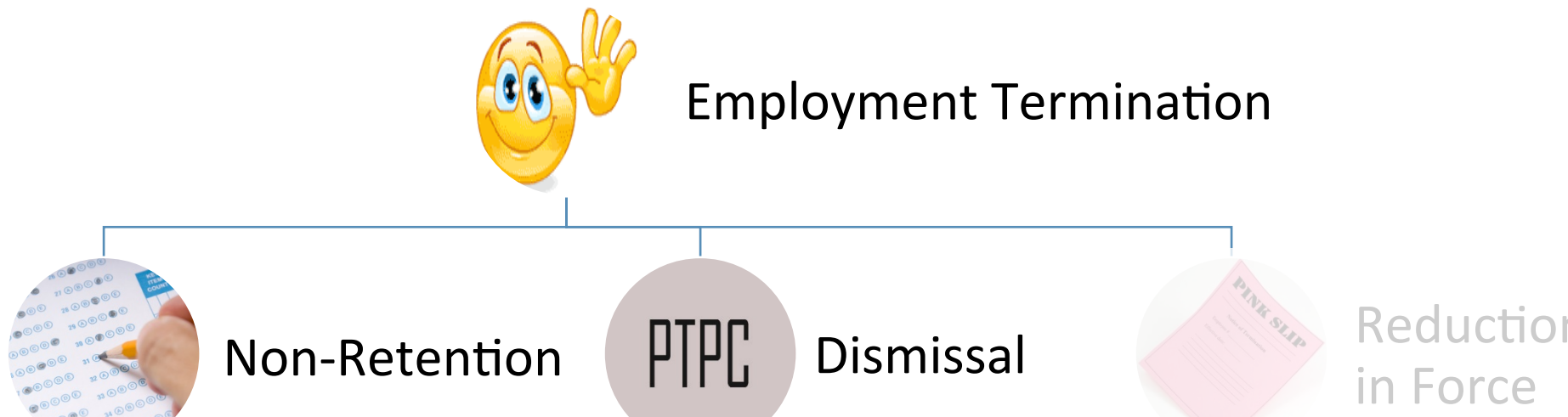
Reduction in Force [Alaska Statute 14.20.177]

- 3 Years = Layoff Status = Hiring Preference:
 - Vacant position
 - Teacher is qualified
 - If declines/30 days then layoff status ends
- Does not accrue leave and is not a break in service



Reduction
in Force

Employment Termination Options



Due Process Procedures for Non-Retention and Dismissal [Alaska Statute 14.20.175]

Dismiss: Written notice of dismissal and predetermination hearing

Dismiss Due Process Hearing: explanation of evidence, basis for dismissal, and opportunity for teacher to respond

Dismiss: Written notice of decision with dismissal effective immediately

Injured Non-Retain: Written notice that includes statement of cause with specific details

Discipline Procedures for Non-Retention and Dismissal [Alaska Statute 14.20.175]

5 days from Dismiss decision/Non-Retain notice to request a School Board hearing or invoking grievance
Hearing: Public or private hearing with or without legal representation, and can cross-examine/subpoena witnesses
Hearing: School Board written decision requires majority roll call vote with specific findings and conclusions of fact
Grievance: Informal School Board public or private hearing to review specifics but no evidence gathering
Grievance: School Board written decision requires majority roll call vote
Appeal Hearing = Superior Court / Appeal Grievance = Arbitration



Non-Retention

PTPC

Dismissal



Reduction
in Force

Discipline Procedures for Non-Retention and Dismissal [Alaska Statute 14.20.175]

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Dismiss: Written notice of decision with dismissal effective immediately
Unrenewed Non-Retain: Written notice that includes statement of cause with specific details

What Did I Learn?

Know the Regs and Follow Due Process!

Document, Document, Document

Constitutional Rights are at Stake

Document, Document, Document

Words different/Intent Equal between
State/Federal Employment Termination



What is Important to My Cohort?

If warranted you can remove a tenured teacher
IF your process/documentation is clean



Continuous improvement and effective
educator evaluation cannot be understated

Make sure to consult with the district's
lawyer throughout the process



New concerns over HB 278's Salary & Benefit
Study/talk of a single state teacher's contract

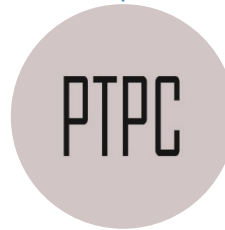
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Non-Retention
[Next Year]



Dismissal
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Reduction
in Force

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