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**HOUSE COMMITTEE AMENDMENTS**

Substitute for Original House Bill No. 982 by Representative Gaines as proposed by the House Committee on Education

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**This document reflects the content of a substitute bill but is not in a bill form; page numbers in this document DO NOT correspond to page numbers in the substitute bill itself.**

To amend and reenact R.S. 17:441, 442(C), 443(A), (B), and (D) and 444(B)(4)(c)(iii), relative to teachers; to provide relative to tenure; to provide relative to removal of a teacher, disciplinary action against a teacher, and right to review and hearing procedures; to provide for hearing officers; to provides for rules and definitions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 17:441, 442(C), 443(A), (B), and (D), and 444(B)(4)(c)(iii) are hereby amended and reenacted to read as follows:

§441. Definitions

~~As used in~~ For purposes of this Subpart, the word "teacher" means:

(1) ~~Any~~ "Teacher" means:

(a) Any employee of a local public school board, state special school, or a school or program administered by the special school district who holds a teacher's certificate and whose legal employment requires such teacher's certificate;

~~(2)~~ (b) Any school lunch supervisor employed by a local public school board who holds a special parish school lunch supervisor's certificate issued by the state Department of Education ~~of the state of Louisiana~~ and whose employment requires such certificate. No employee as defined in this ~~Paragraph~~ Subparagraph hired on or after July 1, 2012, shall be eligible to acquire tenure.

(2) "Discipline" and "disciplinary action" shall include only suspension without pay, reduction in pay, or involuntary demotion or dismissal.

(3) "Written notice" is considered given when the notice is hand delivered to the teacher or on the day it is delivered to the teacher by registered mail, certified mail, or a commercial courier as defined in R.S. 13:3204(D).

## §442. Tenure

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C.(1) ~~Beginning with the 2013-2014 school year, a tenured teacher who receives a performance rating of "ineffective" pursuant to the performance evaluation program as provided in R.S. 17:3881 through 3905 shall immediately lose his tenure and all rights related thereto. A superintendent may bring charges of incompetence pursuant to R.S. 17:443(B) against any tenured teacher who receives a final summative performance rating of "ineffective" pursuant to the performance evaluation program as provided in R.S. 17:3881 through 3905. However, no such charges shall be brought by a superintendent until the exhaustion of the grievance procedure established pursuant to R.S. 17:3883(A)(5) and no such charges shall be brought by a superintendent if the "ineffective" rating is reversed through the grievance procedure.~~ If a teacher is rated "highly effective" based on the evidence of the growth portion of the evaluation but is rated "ineffective" according to the observation portion, within thirty days after such finding, the teacher shall be entitled to a second observation by members of a team of three designees, chosen by the local superintendent, which shall not include the principal.

(2) Such teacher shall reacquire tenure if ~~any of the following applies:~~

(a) ~~The teacher's "ineffective" performance rating is reversed pursuant to the grievance procedure established pursuant to R.S. 17:3883(A)(5). In such case, the teacher's tenure shall be immediately reinstated.~~

(b) ~~The teacher receives a performance rating of "highly effective" for five years within a six-year period subsequent to receiving an "ineffective" rating as provided in Subsection A of this Section.~~

§443. ~~Removal~~ Discipline and dismissal of teachers; procedure; right to ~~appeal of~~ review

A. The school superintendent may ~~terminate the employment of~~ take disciplinary action against any nontenured teacher after providing such teacher with the written reasons therefor and providing the teacher the opportunity to respond. The teacher shall have ~~seven~~ ten calendar days from receipt of written notice of the

reasons to respond, in person or in writing, and such any written response shall be included in the teacher's personnel file. The superintendent shall notify the teacher in writing of his final decision. Within sixty days of such notice, the teacher may seek summary review in a district court pursuant to Louisiana Code of Civil Procedure Article 2592. The district court's review shall be limited to determining whether the action taken by the superintendent was arbitrary or capricious.

B. (1) A teacher with tenure shall not be ~~removed from office~~ disciplined except upon written ~~and signed~~ charges signed by the local superintendent or his designee of poor performance, willful neglect of duty, incompetency, dishonesty, immorality, or of being a member of or contributing to any group, organization, movement, or corporation that is by law or injunction prohibited from operating in the state of Louisiana, and then only if furnished with a copy of such written charges and given the opportunity to respond. The teacher shall have ~~seven~~ ten calendar days from written notice of the charges to respond, and ~~such any written~~ response shall be included in the teacher's personnel file. ~~At the end of this seven-day time period, the superintendent may terminate the teacher's employment. A teacher shall not be terminated for an "ineffective" performance rating until completion of the grievance procedure established pursuant to R.S. 17:3883(A)(5) if a grievance was timely filed. Within seven days after dismissal, a teacher may request and upon request shall be granted a hearing by a panel composed of a designee of the superintendent, a designee of the principal or the administrative head of the state special school in which the teacher was employed, and a designee of the teacher. In no case shall the superintendent, the principal or state special school administrative head, or teacher designate an immediate family member or any full-time employee of the school system by which the teacher was employed who is under the supervision of the person making the designation. Such hearing may be private or public, at the option of the teacher, and shall begin within seven business days after receipt of the teacher's request for such hearing. The teacher shall have the right to appear before the tenure hearing panel with witnesses on his behalf and with counsel of his selection, all of whom shall be heard by the panel at the hearing. For the purpose of~~

conducting hearings hereunder, the panel shall have the power to issue subpoenas to compel the attendance of all witnesses. ~~Nothing herein contained shall impair the right to seek supervisory review from a court of competent jurisdiction. Following review of the teacher's response, the superintendent may take interim disciplinary action, which may include placing the teacher on administrative leave. The teacher shall not be placed on administrative leave without pay, unless the teacher has been arrested for and charged with a violation of R.S. 14:42 through 43.5, 80 through 81.5, any other sexual offense affecting minors, any of the crimes provided in R.S. 15:587.1, or any justified complaint of child abuse or neglect on file in the central registry pursuant to Children's Code Article 615. Within ten calendar days after written notice of the interim disciplinary action, a teacher may request a hearing before a hearing officer. If the teacher fails to timely request a hearing, the interim disciplinary action becomes final.~~

(2) ~~The tenure hearing panel shall submit its recommendation to the superintendent, and the superintendent may choose to reinstate the teacher. If the superintendent does not reinstate the teacher, the superintendent shall notify the teacher of his final determination, in writing, and such teacher may, not more than sixty days from the postmarked date of such written notification, petition a court of competent jurisdiction to review whether the action of the superintendent was arbitrary or capricious. The court shall have jurisdiction to affirm or reverse the action of the superintendent in the matter. The record on review shall be limited to evidence presented to the tenure hearing panel, and the court shall review the matter not later than ten days after the petition has been filed.~~ (a) Not later than January 1, 2015, each public school governing authority shall develop and adopt rules and policies that shall be used in hearings conducted pursuant to this Section and shall permit any employee whose discipline or dismissal is governed by this Section to participate in their development. The rules and policies shall be made available for public inspection within ten days after they are adopted and shall, at a minimum, provide for the following:

(i) The process for solicitation of the services of hearing officers and payment for those services by the public school governing authority and the process for the approval of hearing officers by the public school governing authority. Only the following persons may serve as hearing officers: a mediator qualified under R.S. 9:4106, an arbitrator approved by the American Arbitration Association or Federal Mediation and Conciliation Service, an attorney, or a retired member of the judiciary.

(ii) The granting of authority to hearing officers to administer oaths and affirmations, regulate the course of hearings, set the time and place for continued hearings, fix the time for filing of briefs and other documents, direct the parties to appear and confer to consider the simplification of the issues, and sign and issue subpoenas requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence.

(iii) Recognition of the right of all parties to respond and present evidence on all issues of fact involved and argument on all issues of law and policy involved and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(iv) Recognition that the principles underlying the Code of Evidence shall serve as guides to the admissibility of evidence and that the specific exclusionary rules and other provisions shall be applied only to the extent that they tend to promote the purposes of the proceeding.

(v) Provisions governing the transcription of testimony and safeguarding of evidence.

(b) Upon request for a hearing, the superintendent shall randomly appoint a hearing officer from the list of persons approved by the public school governing authority. Such hearing may be private or public, at the option of the teacher, and shall commence no sooner than ten calendar days nor later than thirty calendar days after receipt of the teacher's request for such hearing. The teacher shall have the right to appear before the hearing officer with witnesses on his behalf and with counsel of his selection. The hearing officer shall conduct a hearing in accordance with the rules

and policies adopted pursuant to Subparagraph (a) of this Paragraph, review whether the action of the superintendent was arbitrary or capricious, and either affirm or reverse the action of the superintendent. The hearing officer shall notify the superintendent and the teacher of his final determination in writing within ten days from the date of the hearing. If the superintendent's disciplinary action is affirmed, it shall become effective upon the teacher's receipt of the decision of the hearing officer. If the superintendent's disciplinary action is reversed, the teacher shall be restored to duty. The hearing officer shall issue written reasons for his decision.

(3) Within sixty days from written notice of the decision of the hearing officer, the public school governing authority or the teacher may petition a court of competent jurisdiction to review the matter as a summary proceeding pursuant to Code of Civil Procedure Article 2592. The court shall determine whether the hearing officer abused his discretion in deciding whether the action of the superintendent was arbitrary or capricious based on the record of the disciplinary review hearing.

(4) If the action of the superintendent is reversed by the court and the teacher is ordered reinstated and restored to duty, the teacher shall be entitled to full pay for any loss of time or salary he may have sustained by reason of the action of the superintendent.

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~~D. For purposes of this Section, the results of a teacher's evaluation performed pursuant R.S. 17:3881 through 3905 evaluating the teacher's performance as "ineffective" shall constitute sufficient proof of poor performance, incompetence, or willful neglect of duty and no additional documentation shall be required to substantiate such charges. The time periods contained in this Section may be extended by mutual agreement of the parties.~~

§444. Promotions to and employment into positions of higher salary and tenure

B.

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(4)

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(c)

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(iii) The employee shall be retained during the term of a contract unless the employee is found incompetent or inefficient or is found to have failed to fulfill the terms and performance objectives of his contract. However, before an employee can be removed during the contract period, he shall have the right to written charges and a fair hearing before ~~the board after reasonable written notice~~ a hearing officer in the manner provided in R.S. 17:443.

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Section 2. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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**Abstract:** Provides a process for the discipline and dismissal of teachers and provides relative to teacher tenure.

Definitions

Present law defines a "teacher" as any employee of a local public school board, state special school, or a school or program administered by the special school district who holds a teacher's certificate and whose legal employment requires such teacher's certificate. Proposed law retains present law and adds that "discipline" or "disciplinary action" shall include only suspension without pay, reduction in pay, or involuntary demotion or dismissal and that "written notice" is considered given when the notice is hand delivered to a teacher or on the day it is delivered to a teacher by registered mail, certified mail, or a commercial courier as defined in present law.

Tenure

Present law provides that a teacher who acquired tenure before Sept. 1, 2012, retains tenure and provides that as of July 1, 2012, a teacher rated "highly effective" for five years within a six-year period pursuant to the present law performance evaluation program shall be granted tenure. Requires the superintendent to notify a teacher, in writing, when tenure has

been awarded and provides that the teacher is deemed to have acquired tenure on the date specified therein. Provides that a teacher who is not awarded tenure remains an at-will employee but shall acquire tenure upon meeting the required criteria. Proposed law retains present law.

Present law further provides that beginning with the 2013-14 school year, a tenured teacher who receives a performance rating of "ineffective" shall immediately lose tenure. Proposed law deletes present law and authorizes a superintendent to bring charges of incompetence against any tenured teacher who receives a final summative performance rating of "ineffective"; prohibits a superintendent from bringing such charges until the exhaustion of the present law grievance procedure and prohibits such charges if the "ineffective" rating is reversed through the grievance procedure.

Present law provides that a teacher who loses tenure for receiving an "ineffective" performance rating shall reacquire tenure if any one of the following conditions applies:

- (1) The "ineffective" rating is reversed pursuant to the present law grievance procedure.
- (2) The teacher receives a "highly effective" rating for five years in a six-year period.

Proposed law deletes condition (1) and retains condition (2).

#### Discipline and dismissal of teachers

##### Nontenured teachers:

Present law authorizes a superintendent to terminate employment upon providing the teacher with written charges therefor and the opportunity to respond. Proposed law replaces the superintendent's authority to terminate employment with the authority to take disciplinary action and otherwise retains present law.

Present law grants the teacher seven days to respond and requires the response to be included in his personnel file. Proposed law instead grants the teacher 10 calendar days from written notice of the reasons to respond, in person or in writing. Requires the superintendent to notify the teacher in writing of his final decision. Authorizes the teacher, within 60 days of such notice, to seek summary review in a district court, and limits the court's review to determining if the superintendent's action was arbitrary or capricious.

##### Tenured teachers:

Present law prohibits a teacher with tenure from being removed from office except upon written and signed charges of poor performance, willful neglect of duty, incompetency, dishonesty, immorality, or of being a member of or contributing to any group, organization, movement, or corporation that is by law or injunction prohibited from operating the state, and then only if furnished with a copy of such written charges and given the opportunity to respond. Proposed law, instead of prohibiting removal except upon such charges, prohibits discipline except upon such charges and specifically requires that charges be signed by the superintendent or his designee.

Present law grants a teacher seven days to respond to charges and requires the response to be included in his personnel file. Grants the superintendent the authority terminate the teacher's employment at the end of such time period. Proposed law extends this response deadline to 10 calendar days from written notice of charges to respond, in person or in writing, and instead of authorizing the superintendent to terminate the teacher, following his review of the teacher's response, proposed law authorizes him to take interim disciplinary action, which may include placing the teacher on administrative leave. Prohibits the placing of a teacher on administrative leave without pay, except in circumstances where the teacher has been arrested for and charged with specific crimes. Authorizes a teacher, within 10 calendar days written notice of the disciplinary action, to request a hearing before a hearing



officer and provides that if a teacher fails to timely request a hearing, the disciplinary action becomes final.

Present law prohibits the termination of a teacher for an "ineffective" performance rating until completion of the grievance procedure established in present law. Requires that the removed teacher be given a hearing if he requests one within seven days of removal. Provides for appointment of a panel to conduct such a hearing; the panel is composed of a designee of the superintendent, a designee of the principal or the administrative head of the state special school, and a designee of the teacher; prohibits the designation of an immediate family member or any full-time employee of the school system by which the teacher was employed who is under the supervision of the person making the designation. Requires the hearing panel to submit its recommendation to the superintendent, who may reinstate the teacher. If he does not reinstate the teacher, he shall notify the teacher in writing. Grants the teacher 60 days to petition a court to review the superintendent's action and to determine whether it was arbitrary or capricious. Requires that the record on review be limited to evidence presented to the tenure hearing panel and requires the court to review the matter not later than 10 days after the petition's filing. Proposed law deletes present law and instead requires public school governing authorities, by Jan. 1, 2015, to adopt rules and policies for hearings conducted pursuant to proposed law. Provides that rules and policies shall contain certain specific components and provides the following procedures:

- (1) Requires the superintendent, upon request for a hearing, to randomly appoint a hearing officer from a list of persons approved by the school governing authority. Requires that the hearing commence between 10-30 calendar days after receipt of the request.
- (2) Grants the teacher the right to appear before the hearing officer with witnesses on his behalf and with counsel of his selection. Requires the hearing officer to conduct a hearing in accordance with rules and policies required by proposed law, review whether the superintendent's action was arbitrary or capricious, and either affirm or reverse the action.
- (3) Requires the hearing officer to notify the superintendent and the teacher of his final determination in writing within 10 days of the hearing date. If the superintendent's action is affirmed, it shall become effective upon the teacher's receipt of the hearing officer's decision, and, if reversed, the teacher shall be restored to duty.
- (4) Authorizes the governing authority or the teacher, within 60 days from written notice of the hearing officer's decision, to petition a court of competent jurisdiction to review the matter as a summary proceeding pursuant to present law. Requires the court to determine whether the hearing officer abused his discretion in deciding if the superintendent's action was arbitrary or capricious based on the record of the disciplinary review hearing.

Present law provides that if the superintendent's action is reversed by the court and the teacher is ordered reinstated and restored to duty, the teacher shall be entitled to full pay for any loss of time or salary he may have sustained by reason of the superintendent's action. Proposed law retains present law and also provides that the time periods provided in proposed law may be extended by mutual agreement of the parties.

Present law provides a performance rating of "ineffective" shall constitute sufficient proof of poor performance, incompetence, or willful neglect of duty and no additional documentation shall be required to substantiate such charges. Proposed law deletes present law.

Present law requires, relative to employment contracts for teachers promoted to higher positions, that an employee be retained during his contract's term unless found incompetent or inefficient or found to have failed to fulfill his contract's terms and performance objectives; however, before he can be removed during the contract period, present law grants

him the right to written charges and a fair hearing before the school board after reasonable written notice. Proposed law grants the right of a fair hearing before a hearing officer as provided in proposed law instead before the school board and otherwise retains present law.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 17:441, 442(C), 443(A), (B), and (C), and 444(B)(4)(c)(iii))