

STATE OF TENNESSEE
OFFICE OF THE
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Opinion No. 07-117

Local School Board's Authority to Dismiss Employees

QUESTION

Does a local school board have the authority to terminate an employee for neglect of duties or illegal actions?

OPINION

A local school board has the authority to dismiss tenured employees such as teachers and principals for neglect of duties or illegal conduct.

ANALYSIS¹

Determining the answer to your question requires an examination of a number of overlapping Tennessee education statutes regarding the duties of both local school boards and directors of schools, as well as statutes concerning grounds for dismissal of various types of school employees. Tennessee statutes divide local education employees into two major groups: certificated and non-certificated. Certificated employees (also referred to as "licensed" personnel) are those with a Tennessee teacher's professional license or certificate,² and include teachers, principals, supervisors, and directors of schools. This group of employees is comprised of two sub-groups: tenured and non-tenured. Non-certificated employees, in turn, comprise all other school employees such as food service workers, teaching assistants, custodial staff, etc.

Tenn. Code Ann. § 49-2-203(a)(6) provides, in pertinent part:

¹This Office has issued a number of previous opinions regarding the authority of school boards and directors or superintendents of schools to dismiss employees. *See, e.g.*, the following attached opinions: Op. Tenn. Atty. Gen. No. 01-013 (January 30, 2001); Op. Tenn. Atty. Gen. No. 00-168 (October 31, 2000); Op. Tenn. Atty. Gen. No. 93-66 (November 29, 1993). Because the applicable statutes have occasionally been amended from year to year, some previous opinions may cite statutes that have been altered since the opinions were issued. The legal conclusions reached in the three opinions cited above, however, are still valid under current Tennessee law.

²*See Lyons v. Rasar*, 872 S.W.2d 895, 897 (Tenn. 1994); Tenn. Code Ann. § 49-5-501(10) ("Teacher" includes teachers, supervisors, principals, directors of schools and all other certificated personnel employed by any local board of education . . ."); *see also* Tenn. Code Ann. § 49-5-101.

(a) It is the duty of the local board of education to:

(6) Except as otherwise provided in this title, **dismiss teachers, principals, supervisors, and other employees, upon sufficient proof of improper conduct, inefficient service, or neglect of duty;** provided, that no one shall be dismissed without first having been given in writing due notice of the charge or charges and an opportunity for defense;

(Emphasis added). This provision must be read in harmony with Tenn. Code Ann. § 49-2-301(b)(1)(EE):

(a) It is the duty of the board of education to assign to its director of schools the duty to:

(EE) Within the approved budget and consistent with existing state laws, board policies and locally negotiated agreements covering licensed personnel, to employ, transfer, suspend, non-renew and **dismiss all personnel, licensed or otherwise, except as provided in § 49-2-203(a)(1)** [which pertains to election of tenured teachers] **and in chapter 5, part 5 of this title** [which pertains to teachers' tenure]
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(Emphasis added). From these statutes we conclude that, with regard to tenured employees, only the local school board itself has the authority to dismiss.³

With regard to the grounds upon which a local school board may dismiss a tenured employee, as well as the grounds upon which a director of schools may dismiss a non-tenured certificated employee, Tenn. Code Ann. § 49-5-511(a)(2) states that, “[t]he causes for which a teacher⁴ may be dismissed are as follows: incompetence, inefficiency, neglect of duty, unprofessional conduct and insubordination as defined in § 49-5-501.” Subsection (c)(1) of the same statute states: “[n]otwithstanding the provisions of subsection (a), . . . any teacher convicted of a felony listed in § 40-35-501(i)(2), or convicted of an offense listed in § 39-17-417 shall be

³See also the previously-cited Op. Tenn. Atty. Gen. No. 00-168 (October 31, 2000), reaching the same conclusion.

⁴Tenn. Code Ann. § 49-5-501, the “Definitions” portion of the “Teacher Tenure Act,” defines “Teacher” as that term is employed in Tenn. Code Ann. §§ 49-5-501 through 515, as “. . . teachers, supervisors, principals, directors of schools and all other certificated personnel employed by any local board of education, for service in public, elementary and secondary schools in Tennessee, supported in whole or in part by state or federal funds.” Tenn. Code Ann. § 49-5-501(10). This definition employed in the statutes relating to teacher tenure therefore includes both tenured and non-tenured personnel, provided they are certificated.

immediately suspended, and dismissed subject to the provisions of subdivision (c)(2).”⁵

Tenn. Code Ann. § 49-5-501 includes the following definitions applicable to discipline of tenured employees:

(3) “Conduct unbecoming to a member of the teaching profession” may consist of, but not be limited to, one (1) or more of the following:

(A) Immorality;

(B) Conviction of a felony or a crime involving moral turpitude;

(C) Dishonesty, unreliability, continued willful failure or refusal to pay one’s just and honest debts;

(D) Disregard of the code of ethics of the Tennessee Education Association in such manner as to make one obnoxious as a member of the profession; or

(E) Improper use of narcotics or intoxicants;

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(8) “Neglect of duty” means gross or repeated failure to perform duties and responsibilities which reasonably can be expected of one in such capacity, or continued unexcused or unnecessary absences from duty;

(Emphasis added). It is therefore clear that, under Tennessee law, a local school board is authorized to dismiss a tenured employee for a number of grounds that include neglect of duties and certain illegal acts. It should be noted, however, that before a school board dismisses a tenured employee, the director of schools must first make written charges against the employee, triggering the board’s authority to consider the charges.⁶

⁵Tenn. Code Ann. § 40-35-501(i)(2) lists criminal offenses for which no release eligibility is permitted and includes first and second degree murder, aggravated and especially aggravated kidnapping, rape and aggravated rape, rape of a child and aggravated rape of a child, aggravated sexual battery, aggravated arson, aggravated child abuse, and especially aggravated robbery. Tenn. Code Ann. § 39-17-417 addresses and defines numerous drug offenses, including manufacture, delivery, sale, and possession of various controlled substances.

⁶Tenn. Code Ann. § 49-5-511(a)(3) and (4).

With regard to directors of schools' authority to dismiss local education employees, we previously quoted Tenn. Code Ann. § 49-2-301(b)(1)(EE), permitting directors to "dismiss all personnel, licensed or otherwise," with the exception of tenured employees. This group of employees includes both certificated employees who do not have tenure, and non-certificated employees.⁷ The certificated, non-tenured employees among this group have due process rights that include a hearing and the right to appeal to the school board itself. Therefore, as a practical matter, dismissal of non-tenured employees by a director will often result in the matter being considered by the school board upon appeal.⁸

Under Tenn. Code Ann. § 49-2-301(b)(1)(GG)(i), grounds for dismissal of non-tenured employees by the director of schools explicitly include "neglect of duties," and "improper conduct." These grounds apply to both non-tenured certificated personnel and non-certificated employees. With regard to teachers, this statute overlaps with the same grounds for dismissal as defined in Tenn. Code Ann. § 49-5-501, which is applicable to both tenured and non-tenured teachers. With regard to non-certificated employees, while Tenn. Code Ann. § 49-2-301(b)(1)(GG)(i) does not include definitions of these grounds for dismissal, certain types of illegal conduct could be deemed "improper conduct." It is further likely that a court would look to the definitions of these grounds for termination of certificated employees, as provided in the previously-quoted portions of Tenn. Code Ann. §§ 49-5-501 and 511, in determining the contours of these same grounds for dismissal of non-certificated employees.⁹

⁷And, as noted in footnote 4 above, the same grounds for dismissal of tenured employees are applicable to non-tenured, but certificated employees.

⁸Non-tenured employees who are employed in positions for which a teacher's license is required have the right to, *inter alia*, a hearing before an impartial hearing officer, and, if unsuccessful, further appeals to the school board and to chancery court. Tenn. Code Ann. § 49-2-301(b)(1)(GG)(i) through (vii).

⁹ Statutory language must be "read in the context of the entire statute, without any forced or subtle construction which would extend or limit its meaning." *National Gas Distribs. v. State*, 804 S.W.2d 66, 67 (Tenn. 1991). Statutes that are related to the same subject matter are supposed to be read *in pari materia*. *In re C.K.G.*, 173 S.W.3d 714, 722 (Tenn. 2005). And, courts will "construe the statute so that no part will be inoperative, superfluous, void or insignificant." *State v. Northcutt*, 568 S.W.2d 636, 637-38 (Tenn. 1978). Courts can therefore be expected to strive to interpret the various provisions of the education statutes of Title 49 in a consistent, harmonious manner whenever possible.

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