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Opinion No. 09-144

Teacher Tenure Requirements Under Tenn. Code Ann. § 49-5-504 (Supp. 2008)

QUESTIONS

1. If a teacher, who has been hired three consecutive years, is hired a fourth time for an interim position (six weeks), is the teacher awarded tenure with the system?

2. In the event the teacher is not tenured in the above scenario, may the three years be applied later if the teacher is ultimately hired?

OPINIONS

1. No. In order to be awarded tenure, the procedures set forth in Tenn. Code Ann. § 49-5-504 (Supp. 2008) must be followed. Following the three-year probationary period set forth in Tenn. Code Ann. § 49-5-504(a), "any teacher eligible for tenure status shall either be recommended by the director of schools for tenure or non-renewed; provided, however, that the teacher cannot be continued in employment if tenure is not granted by the board of education." Tenn. Code Ann. § 49-5-504(b). Under the statute, the teacher cannot be continued in employment in the school district if tenure is not granted by the board of education; therefore, the teacher in the above scenario could not be hired to an interim position within the school district where he or she was denied tenure. In the above scenario, the teacher may be hired to a full-time or interim position in another school district.

2. Yes. The teacher in the above scenario may apply for a tenured position at a later date, provided that the teacher applies for the tenured position within the five-year period set forth in Tenn. Code Ann. § 49-5-504(a). Upon the timely application by the teacher, the director of schools shall either recommend the applicant for tenure or reject the application. In the event the director of schools recommended the applicant for tenure, the school board would then vote to either grant or deny tenure.

ANALYSIS

1. The question asks whether a teacher who has completed his or her probationary period set forth in Tenn. Code Ann. § 49-5-504(a) and has been denied tenure may attain tenure

by being hired to an interim position within the school district. Under this scenario, the teacher cannot be hired to an interim position within the school district nor attain tenure. There have been several prior opinions of this office that addressed the teacher tenure requirements in Tenn. Code Ann. §§ 49-5-503, -504. In particular, Op. Tenn. Att'y Gen. Nos. 01-013 (Jan. 30, 2001) and 98-009 (Jan. 9, 1998) (copies attached) addressed the state tenure laws as they existed through 2001 and explained the requirements for public school teachers to acquire tenure. In Op. Tenn. Att'y Gen. No. 98-009, we opined:

> Subject to certain exceptions under local or private acts, [Tenn. Code Ann. § 49-5-502], a public school teacher acquires tenure status under the state tenure law in the following manner: First, a teacher must serve 3 years or not less than 27 months within a 5-year period as a probationary teacher. Upon completion of the probationary period, teachers are eligible for "permanent" or "limited" tenure, depending upon the teacher's college training and licensing. [Tenn. Code Ann. § 49-5-504(a)] In order to become tenured, an eligible teacher who has completed the probationary period must be reemployed or retained in the system by the local board of education. In order for an eligible teacher to acquire tenure status by virtue of reelection by the board after the expiration of the probationary period, the superintendent must notify the board prior to reelection by the board that the teacher, if reelected, will attain tenure status. [Tenn. Code Ann. § 49-5-504(b)].

These requirements changed in 2006, when the legislature rewrote Tenn. Code Ann. § 49-5-504(b) to provide as follows:

> Notwithstanding any other provision to the contrary, upon completion of the statutory probationary period, any teacher eligible for tenure status shall be either recommended by the director of schools for tenure or non-renewed; provided, however, that the teacher cannot be continued in employment if tenure is not granted by the board of education.

Following the three-year probationary period set forth in Tenn. Code Ann. § 49-5-504(a), "the teacher cannot be continued in employment if tenure is not granted by the board of education." Tenn. Code Ann. § 49-5-504(b). The language is clear that if tenure is not granted by the board, the teacher cannot be employed in the school district. Therefore, the teacher in the above scenario could not be hired to an interim position within the school district where he or she was denied tenure. However, the teacher in the above scenario may be hired to a full-time or interim position in another school district.

2. The next question asks whether the teacher in the above scenario can attain tenure at a later date within the school district using his or her completed probationary period from before. There is no language in Tenn. Code Ann. §§ 49-5-503, -504 that prohibits a teacher from

applying for tenure for the next school year after being denied tenure for the current school year in the same school district. The teacher in the above scenario may apply for a tenured position at a later date, provided that the teacher applies for the tenured position within the five-year period set forth in Tenn. Code Ann. § 49-5-504(a). For instance, if the teacher served three consecutive years as a probationary teacher, then he or she would have to apply for a tenured position within two years of his or her final probationary year. If the teacher did not apply for a position until three years after his or her final probationary year, then he or she would have to serve another year as a probationary teacher before becoming eligible for tenure. Upon the timely application by the teacher, the director of schools shall either recommend the applicant for tenure or reject the application. In the event the director of schools recommended the applicant for tenure, the school board would then vote to either grant or deny tenure. Again, "the teacher cannot be continued in employment if tenure is not granted by the board of education." Tenn. Code Ann. § 49-5-504(b).

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