

## **Renewal, Suspension and Dismissal of Teachers**

There are statutory provisions governing the nonrenewal of a teacher for the ensuing year.<sup>1</sup> In the case of a probationary teacher, a teacher who has been employed in Vermont public schools for less than two years, the standard for nonrenewal generally is any reason other than those prohibited by law. The standard of nonrenewal for a nonprobationary teacher is “just and sufficient cause”. The school board has the burden of establishing just and sufficient cause for the nonrenewal of a teacher.<sup>2</sup>

The Vermont Supreme Court has held that teachers who have a protected property interest in their positions are entitled to oral or written notice of the charges against them resulting in the nonrenewal of their teaching contracts, an explanation of the employer’s evidence, and an opportunity to present his or her side of the story.<sup>3</sup>

There also are specific statutory provisions which are required to be followed before a teacher is suspended or dismissed.<sup>4</sup> It provides that a “superintendent may suspend a teacher under contract on the grounds of incompetence, conduct unbecoming a teacher, failure to attend to duties or failure to carry out reasonable orders and directions of the superintendent and school board.”<sup>5</sup> It then specifies the procedures for hearing, decision and review of the superintendent’s action by the school board.<sup>6</sup> The school board “shall affirm or reverse the suspension or take such other action, including dismissal, as may appear just”.<sup>7</sup>

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<sup>1</sup> 16 V.S.A. §1752.(b)

<sup>2</sup> Burroughs v. West Windsor Board of School Directors, 138 Vt. 575, 579 (1980).

<sup>3</sup> Rich and Montpelier Education Association v. Montpelier School District, 167 Vt. 415, 420,421 (1998).

<sup>4</sup> 16 V.S.A. §1752(b) through (k).

<sup>5</sup> 16 V.S.A. §1752(c).

<sup>6</sup> 16 V.S.A. §1752(d) through (g).

<sup>7</sup> 16 V.S.A. §1752(h).

The Vermont Supreme Court has held that teachers were not deprived of a fair hearing under these statutory provisions where the school board before which an appeal hearing was held on the suspension of teachers was the body which had directed their suspension.<sup>8</sup> In a case where the dismissal of a teacher was primarily for involving herself in a student petition to a school board requesting time off from school to hold a symposium or discussions concerning American involvement in Southeast Asia, the Court concluded that the dismissal related inextricably to the teacher's exercise of her constitutional right to petition, and the school board was without authority to direct her dismissal. The Court ordered that the teacher's dismissal be vacated.<sup>9</sup>

The Court concluded to the contrary in the same case that the dismissals of two teachers who participated in a student walkout from school and a rally on school grounds, and refused to return to class when ordered to do so by the principal, were proper on the statutory grounds of "failure to attend to duties" and "failure to carry out reasonable orders." The Court held that the dismissals did not violate the teachers' rights under the First and Fourteenth Amendments of the U.S. Constitution.<sup>10</sup>

The Court subsequently held that these statutory provisions constituted no barrier to a teacher's ability to proceed to arbitration under a collective bargaining agreement on her suspension. The Court concluded that arbitration was available to the teacher on her claim of breach of contract because of the suspension.<sup>11</sup> In another case, the Court held that a dismissed teacher was obligated to pursue a grievance under the collective bargaining contract concerning whether "just and sufficient

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<sup>8</sup> In re Davenport, 129 Vt. 546, 555-556 (1971).

<sup>9</sup> Id. at 559-560

<sup>10</sup> Id. at 560-564.

<sup>11</sup> Brattleboro Union High School Board v. Windham Southeast Education Association, et al., 137 Vt. 1 (1979).

cause” existed for his dismissal rather than filing a suit in superior court challenging the validity of his dismissal.<sup>12</sup>

The Court further held in a 2019 decision that a teacher must exhaust the remedies as required by these statutory provisions contained in 16 V.S.A. § 1752 before using the grievance and arbitration procedures contained in the collective bargaining agreement. The Court stated:

Compliance with the pre-termination appeal procedures is a condition that must be met in order to be eligible to bring any post-termination review action, whether that review is by judicial action or by action utilizing a CBA’s grievance process. We believe that the Legislature intended to create a statutory scheme that requires a teacher who is under consideration for dismissal to take advantage of their right to a pre-termination hearing before the school board if they wish to have their case reviewed thereafter. The statutory requirement that a teacher participate in a pre-termination hearing is intended to ensure that the teacher has proper due-process protections and the school board has complete information, including facts and arguments offered by the teacher, before making such an important, and possibly career-ending, decision.<sup>13</sup>

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<sup>12</sup> Morton v. Essex Town School District, 140 Vt. 345 (1982).

<sup>13</sup> Northfield School Board v. Washington South Education Association and Clayton, 2019 VT 26, ¶24 (2019).