

Continuing Contract Status (a/k/a Teacher Tenure) and Breach of Contract*

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1.Tenure

It depends upon whether the teacher works at least seven (7) months with a minimum of 140 full-time days in each school year, then commence work in the 5th year.

In general, continuing contract status, a/k/a “tenure,” is achieved only when the certified employee meets all the statutory requirements under the teacher tenure statutes, not by agreement nor by local decision. Teacher tenure is a function of statute, not discretion.

KRS 158.060(1) – “Twenty (20) school days, or days in which teachers are actually employed in the schoolroom, shall constitute a school month in the common schools.”

KRS 161.720(2) defines a “year” for tenure purposes as not less than seven (7) school months within a single school year.

KRS 161.720(5) – “The term “continuing status” means employment of a teacher under a continuing contract.”

KRS 161.740(1)(b) requires a “currently employed” teacher work four (4) consecutive years in the same district or four (4) full years within six (6) years in the same district and then also work at least one (1) day into the 5th school year.

KRS 161.740(1)(c) permits a local school board to enact a policy which requires a one (1) year probationary period in the second district before the transferring teacher is granted tenure in the second district.

For school boards adopting a one (1) year probationary period for a teacher who transfers into a second school district to gain tenure under KRS 161.740(1)(c) and who uses the Kentucky School Board Association Policy service will have a policy usually located around Policy 03.115.

OAG 76-278 - neither a teacher who taught three (3) hours per day for 185 in one (1) school year nor a teacher who taught who taught six (6) hours a day for one-half of a school year were entitled to receive a year’s credit toward tenure.

OAG 78-831 - until a teacher meets all the statutory requirements for tenure, a tenured contract cannot be issued and if a tenured contract is issued prior to the teacher meeting all the statutory requirements, the tenured contract would not be “... binding and is void.”

OAG 79-28 - a tenured contract cannot be issued until a teacher meets all the statutory requirements.

OAG 81-68 - if a school board has a one (1) probationary period requirement for teachers transferring who had gained tenure in their previous school district, the superintendent can nonrenew that teacher and not reemploy them for the next school year.

OAG 82-614 - a "... teacher must have taught at least one hundred and forty, six-hour days in the one hundred eighty-five-day school term in order to be given credit for a year under the tenure law." When a continuing service contract is issued prior to a teacher meeting the statutory requirements, that continuing contract is not binding and is void and would not have any legal effect. If a continuing contract was issued by mistake prior to meeting the statutory requirements, the local school cannot waive that mistake and must issue a limited contract until the tenure statutory requirements are met.

OAG 91-189 - "... KRS 161.720(2) requires that the school year during which a teacher works must include seven (7) months of service in order to qualify as a "year" when determining eligibility for a "continuing service contract." If a teacher works less than the seven (7) school month minimum and less than the 140 full school day minimum in each school year, then each such year of service would not meet the statutory requirement and any tenure granted would be void.

Carpenter v. Owsley County, 582 SW2d 645 (Ky. 1979) - "The only manner in which [a teacher] can obtain tenure is to comply with KRS 161.740(1)(b)..."

Board of Education of Bellevue v. Rothfuss, 639 SW2d 545 (Ky. 1982) - "... because the teacher's part-time contract for his first school year could not be used in computing tenure, he was not eligible for a continuing contract."

Young v. Board of Education of Graves County, 661 SW2d 787 (Ky. Ct. App. 1983) - the transfer of tenure statute "... requires the continuity of employment from one school district to another..." and "... the break between a teacher's service in one county school system and his acceptance of employment in another county school system prevented the transfer of the teacher's tenure to second county school system." The break in service in this case was from a public school system to a private school system and then to a second public school system.

Jones v. Board of Education of Laurel County, 295 SW3d 120 (Ky. Ct. App. 2008) - "The Opinion of the Attorney General stated that [a] superintendent cannot decide which teachers he wants to have a continuing contract and which teachers he wants to deny such a contract." OAG 72-664. The superintendent cannot grant tenure; tenure is granted when a teacher meets all the statutory requirements.

Compton v. Jenkins Independent Schools, et. al., No. 2021-CA-0295-MR (Ky. Ct. App. 2022) - (*not to be published*), nontenured teacher, after being timely nonrenewed in her fourth (4th) year pursuant to KRS 161.750(1), was later rehired that calendar year, but was denied tenure because she was not a "currently employed" teacher as of the beginning of the following school year as required by KRS 161.740(1)(b).

Roger Smith v. Board of Education of Laurel County, et. al., 644 SW3d 516 (Ky. Ct. App. 2021) - Orders Denying Petitions for Rehearing (Ky. App. 2022), - The *portability* of tenure is determined by KRS 161.740(1)(c), not the *attainment* of tenure status of KRS 161.720(2).

2. FMLA Provisions

29 USC 2601-2654, Section (5) - Employment benefits – The term “employment benefits” means all benefits provided or made available to employees by employers, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions...”

29 CFR Sec. 825.604 - “Special rules for school employees, restoration to an equivalent position.” “The determination of how an employee is to be restored to an equivalent position upon return from FMLA leave will be made on the basis of “established school board policies and practices, private school policies and practices, and collective bargaining agreements.”

U.S. DOL, Wage and Hour Division, FMLA-80 (April 24, 1996) - [T]he taking of FMLA leave shall not result in the loss of any employment benefit accrued prior to the date the leave began. FMLA “... prevents the loss of those benefits already earned.” (Letter to unknown from Howard B. Ostmann, Office of Enforcement Policy, FMLA Team.) (emphasis added)

Sample Board Policy 03.12322 (adopted 7/9/15) - “While on family and medical leave, employees shall be entitled to all employment benefits accrued prior to the date on which the leave commenced. Health insurance for an employee on family and medical leave shall continue to be provided by the state on the same basis had the employee not taken leave. Other employment benefits and seniority shall not accrue during unpaid family and medical leave.” (emphasis added)

3. Superintendents and Teacher Tenure

1. The Superintendent is excepted by statute from the “teacher tenure” definition of “teacher”. KRS 161.720(1).

2. Even though KRS 161.721 states that the Superintendent shall be eligible for tenure, it appears that he/she may lose any tenure status he/she brings to a second Kentucky school district (if he/she had teacher tenure in his/her prior Kentucky school district).

In OAG 80-147, it was opined that once a teacher gains tenure in one Kentucky school district and then accepts the position of Superintendent in a second Kentucky school district, teacher tenure does not transfer and, as Superintendent, he/she would have to earn tenure all over again in the second Kentucky school district.

See also, Floyd v. Greenup County Board of Education, 598 SW2d 460, 461 (Ky. Ct. App. 1979) which held that from the actual wording of KRS 161.720(1) “...it is clear the

office of superintendent is outside the scope of these provisions of the Teacher Tenure Act."

3. Assuming he/she did not transfer teacher tenure to a second Kentucky school district where he/she became superintendent and assuming he/she only worked four (4) years in the second Kentucky school district, tenure may not attach because KRS 161.740(1)(b) requires a teacher to work one (1) day in the fifth (5th) year to earn tenure.

4. Even if we assume he/she had 4 years of certified service in the previous Kentucky school district, he/she would not be eligible for tenure because as of the beginning of a 5th year in the second Kentucky school district, his/her contract ended on the last day of his 4th year (June 30) and he/she would not a "currently employed" teacher as of July 1. KRS 161.740(1)(b). See also, Jones v. Laurel County Bd. of Ed., 295 SW3d 120, 122 (Ky. Ct. App. 2008), (cert. denied by Supreme Court dated October 21, 2009).

See also:

94 A.L.R. 3d 141, Dale A. Linden, LL.B., (1979)

67B Am. Jur. 2d Schools, Section 196, VII. Teachers and Other Employees, G. Tenure Statutes, 2. Applicability to Particular Persons (August 2022 Update)

Atencio v. Board of Education of Penasco Independent School District, 99 N. M. 168, 170 (N. M. S. Ct. 1982)

Gardner v. School District No. 55, 108 Idaho 434, 439 (Idaho S. Ct. 1985)

Wicker v. Board of Education of Knott County, Kentucky, 826 F.2d 442, footnote 3, (6th Cir. 1987)

4. Breach of Contract

KRS 161.780 Termination of contract by teacher or superintendent – Resignation binding as of date of acceptance.

(1) No teacher shall be permitted to terminate his or her contract within fifteen (15) days prior to the first instructional day of the school term at a school to which the teacher is assigned or during the school term without the consent of the superintendent. No superintendent shall be permitted to terminate his or her contract within thirty (30) days prior to the beginning of the school term or during the school term without the consent of the employing board of education. A teacher shall be permitted to terminate his or her contract at any other time when schools are not in session by giving two (2) weeks written notice to the employing superintendent. A superintendent shall be permitted to terminate his or her contract at any other time when schools are not in session by giving two (2) weeks written notice to the employing board of education. Upon complaint by the employing board or superintendent to the Education Professional Standards Board, the certificate of a teacher or superintendent terminating his contract in any manner

other than provided in this section may be suspended for not more than one (1) year, pursuant to the hearing procedures set forth in KRS 161.120.

(2) If a teacher voluntarily resigns his contract during the school term, the resignation shall be in writing and shall become binding on the date the resignation is accepted by the superintendent. No further action by the employing board is necessary. The resignation is effective on the date specified in the letter of resignation. A resignation, once accepted, may be withdrawn only with the approval of the employing board of education. Nothing in this subsection shall release the teacher from liability to the local board of education for breach of contract. Effective: April 14, 2008”

Commonwealth ex rel. Funk v. Robinson, 235 S.W.2d 780 (1950)

Dec. 12, 1950 · Kentucky Court of Appeals
235 S.W.2d 780

“In April, 1948, Robinson announced his candidacy for membership on the Wolfe County Board of Education. On May 25th, he mailed his application to the Board for a teaching position in the Wolfe County schools. On June 7th, on recommendation of the county superintendent, the Board employed Robinson as a teacher for the school year 1948-49. On August 6th, Robinson was notified of his employment and that he was to teach in the Laurel School. He admits he received the notice of August 6th; however, he did not begin teaching when the term began on August 9th. He did not teach any during the 1948-49 term. On August 26th, Robinson notified the Board that he would be unable to teach during the 1948-49 school year and that he desired to withdraw his application and, in the event he had been employed, he thereby resigned. On September 2nd, he wrote a second letter stating that he had not entered into a contract to teach in the Wolfe County schools; that he had rendered no services as a teacher; and that he did not expect any compensation for that year. The county superintendent advised Robinson by letter that his resignation would not be accepted. He was further advised that a substitute teacher had been employed and that his position was being held open for him. On September 17th, the county superintendent again wrote Robinson stating that he would be unable to recommend to the Board acceptance of his attempted resignation. Robinson was urged in that letter to comply with the terms of his contract.”

In OAG 64-576 - the AG opined that the statutory timeframe within which a teacher may resign without receiving permission from their current employer was, in fact, enacted by the Legislature as a separate statutory provision.

In OAG 80-120 - the AG opined that a teacher who resigns within the statutory timeframe and without permission is subject to being disciplined as provided in the statute by the appropriate state agency (which is now the Education Professional Standards Board (“EPSB”)).

In OAG 80-120 - the AG further opined: “The board of education in such a situation may have a case for specific performance, although it is questionable whether the school system would benefit by continuing to require the teacher or superintendent to

honor a contract he or she wants out of. The board could, in the alternative, seek damages for the wrongful termination of contract which would be measured by the additional market cost of obtaining a replacement for the unexpired contract term. [.....] Once the contract status with one school system has been terminated, then, and only then, should another school system attempt to enter into a contract with the teacher.”

Finally, in OAG 80-120 - the AG opined that “... a local board of education [now superintendent] should present the matter to the Superintendent of Public Education [now EPSB] ...” when a teacher or superintendent attempts to resign within the statutory timeframe without permission.

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