

Chapter 21

Suspensions under the Teacher Tenure Act

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Chapter 21

Suspensions under the Teacher Tenure Act

There are three distinct, and easy to confuse, possibilities for suspensions of public school employees protected by the Teacher Tenure Act—that is, teachers as the act defines them,¹ contract administrators during their contract term, and tenured administrators (all of whom will be referred to in this chapter, for convenience, as “teachers”). The first of the three is used very rarely. It is suspension without pay as discipline or punishment for misconduct.² The second is used much more frequently. It is suspension with pay while the superintendent considers whether to go forward with dismissal procedures.³ The third, and perhaps the most common, is suspension without pay in contemplation of immediate dismissal procedures.⁴

Section 2100 Suspension without Pay as Punishment

It may occasionally happen that a teacher engages in conduct that falls into a disciplinary middle ground. The conduct is sufficiently unacceptable that a warning or reprimand is insufficient. However, it is not so egregious as to merit dismissal. In that instance, the Teacher Tenure Act provides for a middle ground response—a disciplinary suspension without pay for a limited period of time. The statute defines “disciplinary suspension” as “a final decision to

1. *See* section 1801 of this book. See section 402 for a discussion of special provisions for suspensions of principals assigned to schools identified as low performing under the School-Based Management and Accountability Program.

2. Chapter 115C, Section 325(f)(2), of the North Carolina General Statutes (hereinafter G.S.).

3. G.S. 115C-325(f1).

4. G.S. 115C-325(f)(1).

suspend a teacher or school administrator without pay for no more than 60 days.”⁵

Grounds for the Suspension

The grounds upon which a disciplinary suspension without pay may be administered are apparently limited to the fifteen grounds upon which a teacher may be dismissed, as discussed in chapter 19 of this book. There are no court opinions or administrative rules to this effect. It is a conclusion drawn in the following way. First, the Teacher Tenure Act says that teachers may be “demoted” only on the fifteen grounds, just as they may be dismissed only on the fifteen grounds. Second, the definition of “demote” is to reduce the salary paid to a teacher. Therefore, because a disciplinary suspension without pay necessarily reduces a teacher’s salary, it is a demotion and can be accomplished only on the fifteen grounds. This conclusion is buttressed by the fact that the definition of “demotion” specifically excludes a suspension without pay in contemplation of dismissal (a different kind of suspension discussed below) but does not exclude disciplinary suspensions.

Maximum Length of the Suspension

The maximum length of the suspension is sixty days. The statute so provides.

Three Kinds of Disciplinary Suspensions

Under the statute, there are three kinds of disciplinary suspension without pay, and the kind of suspension determines the hearing rights of the teacher who is being suspended.

Suspension for ten days or less. The first kind of disciplinary suspension without pay is one that lasts no more than ten days. If the superintendent believes that a disciplinary suspension is necessary, he or she may recommend a suspension of such duration. In that case, if the teacher requests a hearing before the board of education, as is the teacher’s right, the hearing is to be a limited-evidence hearing, as described fully in chapter 20. That is, in general, the board hears the following matters:

- Any documentary evidence the superintendent intends to use to support the recommendation; the superintendent must provide the documentary evidence to the teacher seven days before the hearing.

5. G.S. 115C-325(a)(4a).

- Any documentary evidence the teacher intends to use to rebut the superintendent's recommendation; the teacher must provide the documentary evidence to the superintendent three days before the hearing.
- A written statement by the superintendent, which must be submitted at least three days before the hearing.
- A written statement by the teacher, which must be submitted at least three days before the hearing.
- Oral arguments to the board by the superintendent, based on the record before the board; presumably, the argument may be made by the attorney for the superintendent.
- Oral arguments to the board by the teacher, based on the record before the board; presumably, the argument may be made by the attorney for the teacher.

There is no provision for receiving further evidence.

Suspension for more than ten days. The second kind of disciplinary suspension without pay is one that lasts more than ten days. If the superintendent believes that a disciplinary suspension is necessary, he or she may recommend a suspension of such duration. In that case, if the teacher requests a hearing before the board of education, as is the teacher's right, the hearing is to be a full-evidence hearing of the same nature that applies in the case of dismissals in a reduction in force, as discussed in detail in section 2007 of this book.

In general, the full-evidence hearing before the board is very similar to the full-evidence hearing conducted before a case manager in teacher dismissal proceedings. The hearing is to be private, it is to be conducted according to rules adopted by the State Board of Education, the rules of evidence are not to apply but the board (like a case manager) is to "give probative effect to evidence that is of a kind commonly relied on by reasonably prudent persons in the conduct of serious affairs."⁶ The board may itself subpoena and swear witnesses and compel them to give testimony and produce documents and records. The board decides all procedure issues necessary for a fair and efficient hearing.

The rules for exchange of information before the hearing are a little different than with a case manager hearing. At least eight days before the hearing, the superintendent is to provide to the teacher a list of witnesses the superintendent intends to present, together with a brief statement of the nature of the testimony of each witness and a copy of all documentary evidence the superintendent intends to present. At least six days before the hearing, the teacher must make the corresponding material available to the superintendent.

6. G.S. 115C-325(j3)(4).

At the hearing, both the superintendent and the teacher have the right to be present and to be heard, to be represented by counsel, and to present through witnesses any competent testimony relevant to the issue of “whether the grounds for a dismissal or demotion due to a reduction in force is [sic] justified.”⁷ No evidence that is not on the exchange list between the superintendent and the teacher may be introduced at the hearing unless the board finds that the new evidence is critical to the matter at issue and the party making the request could not, with reasonable diligence, have discovered and produced the evidence in a timely way.

Suspension for certain conduct. The third kind of disciplinary suspension without pay is defined by the conduct that underlies it, not by its length. If the suspension is based on any of the kinds of listed conduct, the teacher is entitled to the full-evidence hearing, just as for suspensions of greater than ten days, no matter how short the proposed suspension is to be. The statute applies this provision to “intentional misconduct, such as inappropriate sexual or physical conduct, immorality, insubordination, habitual or excessive alcohol use or nonmedical use of a controlled substance as defined in Article 5 of Chapter 90 of the General Statutes, any cause that constitutes grounds for the revocation of the teacher’s or school administrator’s certificate, or providing false information.”⁸

Procedure for the Suspension

Any of the three kinds of disciplinary suspensions without pay begin with the recommendation of the superintendent. The superintendent should meet face-to-face with the teacher, explain the reasons that the superintendent is contemplating recommending disciplinary suspension, and give the teacher an opportunity to respond. If the superintendent continues to believe that suspension is proper, he or she should give the teacher a written notice of intent to make the recommendation. The written notice should specify which of the three kinds of disciplinary suspension is involved and should notify the teacher of the teacher’s right to request a hearing before the board within fifteen days of receipt of the notice. This procedure is not fully spelled out in the statute, but it represents good practice.

The teacher then decides whether to ask for a hearing. If the teacher does request a hearing, the type of hearing depends on which of the three kinds of disciplinary suspension is involved. If the teacher does not request a hearing, the superintendent may file his or her recommendation with the board.

7. G.S. 115C-325(j3)(3).

8. G.S. 115C-325(f)(2)a.2.

If, after considering the recommendation of the superintendent and the evidence at the hearing—if there is one—the board makes a determination as to whether “the grounds for the recommendation are true and substantiated by a preponderance of the evidence.”⁹ If so, the board may vote to suspend the teacher.

Return to Duty following the Suspension

The statute makes no provision regarding the suspended teacher’s return to duty at the end of the suspension period. Presumably, he or she is available for assignment at the end of the suspension just as he or she would have been before the suspension. That is, the teacher has no right to insist on returning to the same duties he or she was engaged in before.

Section 2101 Suspension with Pay in Anticipation of Dismissal

The Teacher Tenure Act provides that the superintendent may suspend a teacher with pay in instances in which grounds for dismissal may exist, not as discipline, but in anticipation of dismissal.¹⁰

Grounds for the Suspension

The superintendent may suspend a teacher with pay if the superintendent believes three things. First, the superintendent must believe that one or more of the grounds for dismissal of the teacher exist. Second, the superintendent must believe that additional investigation of the facts is necessary. And, third, the superintendent must believe that circumstances are such that the teacher should be removed immediately from his or her duties. There is no court case concerning a challenge to the superintendent’s determination, but clearly his or her belief must be rational and must be made in good faith.

9. G.S. 115C-325(f)(2). This is the statutory standard that applied to teacher dismissals under the Teacher Tenure Act before the 1997 amendments changed it, as discussed in chapter 20 of this book. The 1997 changes simply did not affect the standard as stated here for suspensions.

10. G.S. 115C-325(f1).

Maximum Length of the Suspension

The statute provides that the suspension with pay in anticipation of dismissal may be for “a reasonable period of time, not to exceed 90 days.”¹¹ The superintendent and the teacher may agree to extend the period.

Procedure for the Suspension

The statute grants the superintendent the power to initiate the suspension with pay in anticipation of dismissal on his or her own initiative. The superintendent is required only to notify the teacher and the board of education of his or her action—within two days—and to notify the teacher of the reasons for it. The suspension statute does not provide the teacher a right to an appeal to the board of education to challenge the superintendent’s decision to begin a suspension with pay. No court cases address the question of whether that decision could be appealed under G.S. 115C-45(c) or G.S. 115C-305. (See chapter 15.)

First Way for the Suspension to End

The suspension with pay in anticipation of dismissal may end with a recommendation by the superintendent to the board that the teacher be dismissed. At that point, the suspension may be changed by the superintendent to a suspension without pay. Or, the suspension may be continued as a suspension with pay during the dismissal procedures.

Second Way for the Suspension to End

The maximum length for a suspension with pay is ninety days, unless extended by agreement of the superintendent and the teacher.¹² If the superintendent has not initiated dismissal procedures against the teacher within the ninety-day maximum suspension period, the teacher must be reinstated to his or her duties immediately and all records of the suspension with pay in anticipation of dismissal must be removed from the teacher’s personnel file if the teacher so requests. The records of the suspension itself are what must be removed, not documents related to the underlying misconduct.

11. G.S. 115C-325(f1).

12. G.S. 115C-325(f1).

Dismissal Even after the End of the Suspension

Two opinions of the North Carolina Court of Appeals make clear that, despite the statutory provision discussed in the paragraph immediately above, even if the ninety-day period has been exhausted and the teacher has been returned to duties, the superintendent may still, after that time, initiate dismissal proceedings.¹³

Section 2102 Suspension without Pay in Anticipation of Dismissal

The Teacher Tenure Act provides that the superintendent may suspend a teacher without pay in instances in which grounds for dismissal may exist, not as discipline but in anticipation of dismissal.¹⁴

Grounds for the Suspension

The superintendent may suspend a teacher without pay if the superintendent believes two things. First, the superintendent must believe that one or more of the grounds for dismissal of the teacher exist. Second, the superintendent must believe that immediate suspension of the teacher is necessary.

Maximum Length of the Suspension

Within five days of the beginning of the suspension without pay, the superintendent must begin dismissal proceedings.¹⁵ If the superintendent does begin dismissal proceedings, the suspension without pay continues indefinitely, until it is finally determined that no grounds for dismissal exist; that is, until the superintendent determines not to pursue the dismissal or until the final vote of the board of education in the teacher's favor. At that point the teacher is to be reinstated immediately and paid for the period of the suspension. The statute does not explicitly set out what is to happen if the superintendent does not begin the dismissal procedure within five days of the beginning of the suspension

13. *Evers v. Pender County Bd. of Educ.*, 104 N.C. App. 1, 407 S.E.2d 879 (1991), *aff'd*, 331 N.C. 380, 416 S.E.2d 3 (1992); *Davis v. Public Sch. of Robeson County*, 115 N.C. App. 98, 443 S.E.2d 781, *disc. review denied*, 337 N.C. 690, 448 S.E.2d 519 (1994).

14. G.S. 115C-325(f1).

15. Alternatively, the superintendent may decide to recommend demotion or disciplinary suspension without pay rather than dismissal. G.S. 115C-325(f)(1).

without pay. Presumably the teacher is to be immediately reinstated at the end of the five days and paid for the five days. Also, presumably, the superintendent could, after that time, initiate another suspension without pay or go directly to dismissal proceedings.

Procedure for the Suspension

Before suspending a teacher without pay, the superintendent must meet with the teacher and give the teacher written notice of the charges against him or her, an explanation of the basis of the charges, and an opportunity to respond. This procedure need not be elaborate, but the written statement of charges and the explanation must be clear, meaningful, and reasonably complete. This statutory provision is designed to meet the due process requirement for pretermination hearings described in section 202.

As discussed immediately above, the superintendent must decide within five days whether to go forward with dismissal proceedings. The teacher is not entitled to appeal to the board of education the imposition of the suspension without pay, but must wait to see whether dismissal proceedings are begun, at which time the teacher may begin the appeal proceedings. Presumably, if the superintendent begins the suspension without pay and then decides not to go forward with the dismissal—so that the teacher is reinstated to duties and pay—at that point the teacher could demand a hearing under G.S. 115C-45(c) or G.S. 115C-305 on the superintendent's original decision to begin the suspension. (See chapter 15.)