



**House  
Legislative  
Analysis  
Section**

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**TEACHER DEMOTION/DISMISSAL**

**House Bill 4209**

**Sponsor: Rep. Richard Bandstra**

**Committee: Education**

**Complete to 2-12-93**

**A SUMMARY OF HOUSE BILL 4209 AS INTRODUCED 2-10-93**

The bill would amend the teachers' tenure act to provide a new procedure for deciding whether a tenured teacher could be demoted or dismissed. The bill would require that the initial hearing be conducted by an administrative law judge in accordance with the Administrative Procedures Act, with subsequent appeals to the state teacher tenure commission, which would be limited to a review of the record of the hearing and exceptions to the record, and then to the state court of appeals. Currently, the act requires the local board to provide a hearing and render a decision on charges. That decision can be appealed to the tenure commission, which holds a new hearing of its own. (The commission uses administrative law judges as part of this process.) The appeal of the commission's decision currently is to the circuit court.

Under the bill, the required written charges against a teacher would have to specify a proposed outcome of either discharge or a specific demotion. The school board would have to decide whether or not to proceed on the charges, or to proceed on modified charges, no later than 10 days after the charges were filed. A decision to proceed would have to be made by majority vote and reduced to writing. No later than 5 days after a decision to proceed, the board would have to notify the teacher of the decision and furnish the teacher a written statement of the charges, along with a statement of the teacher's rights. The board could then suspend the accused teacher until one of the following occurred: the teacher failed to contest the board's decision to proceed; the administrative law judge issued a preliminary decision to discharge or demote the teacher; or a final decision was issued by the teacher tenure commission to reinstate the teacher. The teacher's salary would continue during the suspension. If the tenure commission reversed an administrative law judge's preliminary decision to discharge a teacher, it could order an award of all salary lost.

A teacher could contest the school board's decision to proceed on charges by filing a claim of appeal with the tenure commission and serving a copy on the school board not later than 20 days after the board's decision to proceed. The board would file its answer with the tenure commission and serve a copy on the teacher not later than 10 days after service of the claim of appeal. If a teacher did not contest the board's decision in the time and manner specified, he or she would be considered to have waived any right to contest the discharge or demotion.

The administrative law judge would furnish each party without delay a notice of the date and place of the hearing. The date of the hearing would have to be at least 10 days after the notice was furnished. The hearing would be conducted in accordance with Chapter 4 of the Administrative Procedures Act (which deals with contested cases) and rules

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promulgated by the tenure commission. The hearing could be public or private at the option of the teacher. It would have to be held at a convenient place in the appropriate county or, if the parties agreed, at the tenure commission offices in Lansing. The law judge's travel expenses outside of Lansing would be borne equally by the local school board and the tenure commission.

Both the teacher and school board could be represented by counsel, and testimony at the hearing would be on oath or affirmation. A stenographer would make a full record of the hearing, with the cost borne by the school board and tenure commission. The administrative law judge could subpoena witnesses and documentary evidence on his or her own motion and would have to do so at the request of the school board or teacher.

The hearing would have to be concluded not later than 90 days after the teacher's claim of appeal had been filed with the tenure commission. The law judge would have to make the necessary orders to ensure that the case was submitted for decision not later than 50 days after the hearing was concluded. Not later than 60 days after submission of the case for decision, the judge would have to serve a preliminary decision and order in writing upon each party or the party's attorney and the tenure commission.

Not later than 20 days after the preliminary decision and order, a party could file with the tenure commission a statement of exceptions to the preliminary decision and order or to any part of the record or proceedings, along with a written brief in support of the exceptions. If no exceptions were filed in time, the preliminary decision would become the tenure commission's final decision and order. If exceptions had been filed, a party could file a statement of cross-exceptions or a statement in support of the preliminary decision with the tenure commission not later than 10 days after being served with the other party's exceptions and briefs. A matter that was not included in a statement of exceptions or cross-exceptions would be considered waived and could not be heard before the tenured commission or on appeal to the court of appeals.

If exceptions were filed, the tenure commission, after review of the record and the exceptions, could adopt, modify, or reverse the preliminary decision and order. The tenure commission could not hear any additional evidence and its review would be limited to consideration of the issues raised in the exceptions based solely on the evidence contained in the record from the hearing. The tenure commission would have to issue its final decision and order not later than 60 days after the exceptions were filed. After giving the teacher notice and an opportunity to comply, the tenure commission could dismiss a teacher's appeal for lack of progress or for repeated failure to comply with the required procedures or rules. A party aggrieved by a final decision and order of the tenure commission could appeal to the court of appeals within 20 days of the commission's decision.

The bill would, accordingly, remove language regarding school board hearings on charges against teachers, and would repeal the provision that permits appeals of school board decisions to the tenure commission.

MCL 38.74 et al.