

## **TEACHER DISCIPLINE GUIDE**

This guide is intended to provide an overview of teacher discipline law in Tennessee as it pertains to disciplinary actions by the school district. Misconduct warranting discipline by the school district may also subject a teacher to licensure action by the State Board of Education. For more information, State Board of Education rules and regulations as mentioned briefly herein can be accessed for additional detail on licensure issues.

### ***Employment Actions by the School District***

School districts have complete authority over personnel issues regarding district employees. It is the duty of the local Board to dismiss teachers upon sufficient proof of improper conduct, inefficient service or neglect of duty; a duty the Board shall assign to the Director of Schools.<sup>i</sup> Local Boards employ the Director who oversees all district employees under the direction of the Board.<sup>ii</sup>

All teachers in Tennessee are required to follow the Teacher Code of Ethics.<sup>iii</sup> In codifying the Code of Ethics, the General Assembly recognized the magnitude of the responsibility inherent in the teaching process, and thus, the necessity of high ethical standards.<sup>iv</sup> Failure to comply with the Code of Ethics may constitute “unprofessional conduct” or “improper conduct” that could result in disciplinary action or suspension. However, “conduct unbecoming a member of the teaching profession” is not itself a statutory ground for dismissal of a teacher.<sup>v</sup>

### ***Suspension Pending an Investigation***

The Director of Schools may suspend a teacher at any time that may seem necessary, pending investigation, or final disposition of a case before the Board or an appeal. If the matter under investigation is not the subject of an ongoing criminal investigation or a Department of Children's Services investigation, and if no charges for dismissal have been made, a suspension pending investigation shall not exceed ninety (90) days in duration. Under no circumstances shall the Director of Schools suspend a teacher with pay. If vindicated or reinstated, the teacher shall be paid full salary for the period of suspension.

### ***Short-Term Suspension Procedure***

Short-term suspensions are those of three days or less and require a lesser procedural burden than long term suspensions or dismissals. Short-term suspension procedure is the same for both tenured and non-tenured teachers.

The Director of Schools/designee may suspend a teacher for incompetence, inefficiency, neglect of duty, unprofessional conduct, and insubordination. Before a teacher is suspended, he/she shall be: (1) provided with written notice, including the reasons for the suspension along with an explanation of the evidence; (2) given an opportunity to respond to the Director of Schools at a conference, if requested within five (5) days; and (3) given a written decision of the suspension within ten (10) days. Both parties may be represented by counsel at the conference which shall be recorded.

Under no circumstances shall a Director of Schools suspend a tenured teacher with pay. If reinstated, the tenured teacher shall be paid full salary for the period of suspension unless suspension without pay is deemed to be an appropriate penalty.

### ***Basis for Suspension or Dismissal – Terms Defined***

A teacher may not be dismissed or suspended except for the reasons provided in statute.<sup>vi</sup> The “Big 5” in terms of behavior qualifying dismissal are incompetence, inefficiency, insubordination, improper conduct, or neglect of duty, all of which are expressly defined in statute except for improper conduct.<sup>vii</sup> Tennessee Court rulings provide additional guidance on what specific conduct might constitute one of the “Big 5”.

- “Incompetence” means being incapable, lacking adequate power, capacity, or ability to carry out the duties and responsibilities of the position. This may apply to physical, mental, educational, emotional, or other personal conditions. It may include lack of training or experience, evident unfitness for service, a physical, mental, or emotional condition making the teacher unfit to instruct or associate with children, or the inability to command respect from subordinates or to secure cooperation of those with whom the teacher shall work.<sup>viii</sup>

Failure to control anger or deal with students in a safe and professional manner may rise to the level of incompetence.<sup>ix</sup>

- “Inefficiency” means being below the standards of efficiency maintained by others currently employed by the Board for similar work or habitually tardy, inaccurate, or wanting in effective performance of duties. The definition of inefficiency includes, but is not limited to, having evaluations demonstrating an overall performance effectiveness level that is “below expectations” or “significantly below expectations” as provided in the evaluation guidelines adopted by the State Board of Education pursuant to § 49-1-302.<sup>x</sup>

While the evaluation scores are not always determinative, they are generally the most important factor in a court review of termination based on inefficiency. In *Harrison v. Shelby County Board of Education*, the Court held that insufficient evidence existed to terminate a teacher for inefficiency. The Board claimed that the tenured high school teacher was performing below the standards of efficiency maintained by others currently employed by the county board of education for similar work, as required to support her termination for inefficiency for failure to control her classroom. However, evidence indicated that the teacher, who had taught for approximately 27 years and had a reputation as a “great teacher,” received only one evaluation demonstrating an overall effectiveness level that was below expectations. The statutory definition clearly calls for “evaluations” rather than a singular “evaluation”. Further, the principal never recommended a specific individual professional development plan for the teacher as required by school board policy before seeking termination of her employment.<sup>xi</sup>

- “Insubordination” may consist of:

- Refusal or continued failure to obey the school laws of this state, to comply with the rules and regulations of the Board, or to carry out specific assignments made by the Board, the Director of Schools, or the principal, each acting within its own jurisdiction when the rules, regulations, and assignments are reasonable and not discriminatory;
- Failure to participate in an in-service training program as set up by the local Board of Education and approved by the State Board of Education;
- Treason or any effort to sabotage or overthrow the government of the United States; or
- Refusal by the teacher to disclose to the Board whether or not the teacher is, or has been, a member of the communist or any other party that advocates the overthrow of the government.<sup>xii</sup>

In *Ketchersid v. Rhea County Board of Education*, the Court of Appeals upheld a board decision to terminate a teacher and found that a teacher’s refusal to refrain from striking students constituted insubordination. The teacher in that case would place her hands on students’ faces or pinch their cheeks when she became angry with them. The teacher had been specifically instructed not to do so after the first incident, but the behavior continued, amounting to a refusal to follow specific directive.<sup>xiii</sup> The Court also found the teacher’s inability to maintain an orderly classroom amounted to inefficiency.

In *Elmi v. Cheatham County Board of Education*, a tenured teacher was dismissed for grounds of insubordination for arriving to school late, failing to enter grades promptly, and failing to follow the principal’s instructions regarding a disobedient student.<sup>xiv</sup> The Court found that the evidence did not support the grounds of insubordination and overturned the dismissal. The record in that case only established a single day of tardiness which the Court held did not justify dismissal. One minor act of insubordination does not justify dismissal.<sup>xv</sup> There were reasonable explanations for the failure to enter grades in a timely fashion – the teacher was hospitalized. Finally, the teacher substantially complied with the instructions regarding the disobedient student, and failure to follow “exact instructions” in this instance did not warrant dismissal.

To qualify for insubordination, there shall be specific instruction or orders provided which are not followed, more than simply discouraged behavior.<sup>xvi</sup>

- “Neglect of duty” means gross or repeated failure to perform duties and responsibilities that reasonably can be expected of one in such capacity or continued unexcused or unnecessary absence from duty.<sup>xvii</sup>
- “Improper conduct” is a statutory basis for dismissal but is not specifically defined in statute.

Courts have interpreted this as unprofessional conduct which is to be construed according to its common and approved usage having regard to the context in which it is used.<sup>xviii</sup> Unprofessional conduct means conduct indicating an unfitness to teach.<sup>xix</sup> This is a very fact specific inquiry which may vary from case to case, dependent on the level of

detrimental effect. Statute does identify some examples of conduct unbecoming of the teaching profession. Those include, but are not limited to, immorality, conviction of a felony, dishonesty, unreliability, disregard of the Teacher Code of Ethics, and improper use of narcotics or intoxicants.<sup>xx</sup>

### ***Dismissal Procedure for Non-Tenured Teachers***

The Director of Schools may dismiss any nontenured, licensed employee under the Director's jurisdiction for incompetence, inefficiency, insubordination, improper conduct, or neglect of duty after giving the employee, in writing, due notice of the charge or charges and providing a hearing.<sup>xxi</sup> No such employee may be dismissed without first being given written notice of the charges and an opportunity for a full hearing.<sup>xxii</sup> The hearing shall be before an impartial hearing officer selected by the Board. The teacher has the right to be represented by counsel, to call and subpoena witnesses, to examine all witnesses, and to require testimony be given under oath.<sup>xxiii</sup>

Factual findings and decisions in all dismissal cases shall be reduced to written form and delivered to the affected teacher within ten (10) working days following the close of the hearing. The teacher may appeal the decision to the Board within ten (10) working days of the hearing officer rendering the written decision to the teacher. Written notice of appeal to the Board shall be given to the Director of Schools. Within twenty (20) working days of receipt of notice, the Director of Schools shall prepare a copy of the proceedings, transcript, documentary, and other evidence presented and provide the Board a copy of the same.<sup>xxiv</sup> The Director of Schools also has the right to appeal any adverse ruling by the hearing officer in the same manner as the non-tenured teacher.

The Board shall hear the appeal. No new evidence shall be introduced. The non-tenured teacher may appear in person or be represented by counsel and argue why the decision should be modified or reversed. The Board shall take one of the following actions:

1. Sustain the decision;
2. Send the record back if additional evidence is necessary; or
3. Revise the penalty or reverse the decision.

Before any decision to dismiss is made, a majority of the membership of the Board shall concur in sustaining the charges. The Board shall render a decision on the appeal within ten (10) working days after the conclusion of the hearing. Within twenty (20) working days after receipt of notice of the decision of the Board, either party may appeal to the chancery court in the county where the school district is located. The Board shall provide the entire record of the hearing to the court.

### ***Dismissal Procedures for Tenured Teachers<sup>xxv</sup>***

Tennessee's Teacher Tenure Act governs dismissal and suspension practices for tenured teachers. Teachers who have achieved tenured status receive additional protections in disciplinary actions.

When a tenured teacher is charged with offenses that may justify dismissal or a suspension greater than three (3) days, the charges shall be made in writing, specifically stating the offenses that are charged, and shall be signed by the party or parties making the charges.

If, in the opinion of the Board, the charges are of such nature as to warrant the dismissal or a suspension greater than three (3) days of the teacher, the Director of Schools shall provide the teacher a written notice of this decision, a copy of the charges against the teacher, and a copy of a form provided by the Commissioner of Education advising the teacher of his/her legal duties, rights, and recourse.

A tenured teacher who has been given notice of charges against him/her may within thirty (30) days after receipt of notice give written notice to the Director of Schools of his/her request for a hearing. The Director of Schools shall, within five (5) days after receipt of request, assign a hearing officer from the list maintained by the Board. The Board shall maintain a list of qualified individuals who have indicated a willingness to act as impartial hearing officers as defined under Tennessee law. "Impartial" means that the individual has no history of employment with the Board or the Director of Schools, no relationship with any board member, and no relationship with the teacher or representatives of the teacher.<sup>xxvi</sup>

The hearing officer shall notify the parties, or their attorney, of the officer's assignment and direct the parties or the attorneys for the parties, or both, to appear before the hearing officer for simplification of issues and the scheduling of the hearing. That hearing shall be set no later than thirty (30) days following receipt of the initial request for a hearing. In the discretion of the hearing officer, all or part of any prehearing conference may be conducted by telephone if each participant has an opportunity to participate, be heard, and to address proof and evidentiary concerns. The hearing officer is empowered to issue appropriate orders and to regulate the conduct of the proceedings.

Either party may appeal to the Board an adverse ruling by giving written notice of appeal within ten (10) working days of the hearing officer's delivery of the hearing officer's written findings and conclusions. The Director of Schools shall prepare a copy of the proceedings, including all transcripts and evidence, documentary or otherwise, and transmit the same to the Board within twenty (20) working days of the receipt of the notice of appeal.

The Board shall hear the appeal on the record, and no new evidence may be submitted by either party. The appealing party may appear before the Board to argue why the adverse ruling should be overturned. In no event should such argument last more than fifteen (15) minutes unless the Board votes to extend additional time. At the conclusion of the hearing, any member of the Board may vote to sustain the decision of the hearing officer, send the record back for additional evidence, revise the penalty, or reverse the decision. The Board shall render its decision within ten (10) working days after the conclusion of the hearing. In the event that the decision of the Board is appealed to the chancery court, the Board shall transmit the entire record prepared by the Director of Schools and reviewed by the Board to the chancery court for its review.

## ***Licensure Action by the State Board of Education***

In addition to constituting grounds for employment action by the school district, certain misconduct may be grounds for licensed teachers or administrators to lose their license. It may also be grounds for teacher license applicants to have their application denied. The State Board of Education has the duty and power to adopt policies governing the revocation of licenses and certificates.<sup>xxvii</sup> The State Board of Education has complete jurisdiction over the issuance and administration of licenses.<sup>xxviii</sup>

The general public can see the license status of any individual online.<sup>xxix</sup> If a license application is denied or a current license suspended, revoked, or voluntarily surrendered, that status will appear in that database. Each Director of Schools has access to the “Official Use” database on that page, so he/she can see licenses of individuals who are being investigated for possible action (“flagged” licenses).

Teachers or administrators may have their licenses automatically revoked following conviction of certain violent offenses and felony drug charges. State Board of Education rules and regulations outline other reasons why applicants, teachers, or administrators may have applications denied or certain licenses suspended or revoked.<sup>xxx</sup>

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<sup>i</sup> T.C.A. § 49-2-203(a)(6); T.C.A. § 49-2-301(b)(1)(GG)

<sup>ii</sup> T.C.A. § 49-2-301

<sup>iii</sup> T.C.A. § 49-5-1001 et. seq.

<sup>iv</sup> T.C.A. § 49-5-1002

<sup>v</sup> *Morris v. Clarksville-Montgomery Cty. Consol. Bd. of Educ.*, 867 S.W.2d 324, 328 (Tenn. Ct. App. 1993)

<sup>vi</sup> T.C.A. § 49-5-511(a)(1)

<sup>vii</sup> T.C.A. § 49-5-511(a)(2)

<sup>viii</sup> T.C.A. § 49-5-501(5)

<sup>ix</sup> See generally *Ketchersid v. Rhea Cty. Bd. of Educ.*, 174 S.W.3d 163 (Tenn. Ct. App. 2005).

<sup>x</sup> T.C.A. § 49-5-501(6)

<sup>xi</sup> *Harrison v. Shelby Cty. Bd. of Educ.*, No. W201501543COAR3CV, 2016 WL 1250782, at \*4 (Tenn. Ct. App. Mar. 30, 2016)

<sup>xii</sup> T.C.A. § 49-5-501(7)

<sup>xiii</sup> *Ketchersid v. Rhea Cty. Bd. of Educ.*, 174 S.W.3d 163, 168 (Tenn. Ct. App. 2005).

<sup>xiv</sup> *Elmi v. Cheatham Cty. Bd. of Educ.*, 546 S.W.3d 630, 639 (Tenn. Ct. App. 2017)

<sup>xv</sup> See *Ripley v. Anderson Cty. Bd. of Educ.*, 293 S.W.3d 154, 161 (Tenn. Ct. App. 2008) (stating that a tenured teacher may not be dismissed based on one minor incident of insubordination.)

<sup>xvi</sup> *Morris v. Clarksville-Montgomery Cty. Consol. Bd. of Educ.*, 867 S.W.2d 324, 328 (Tenn. Ct. App. 1993)

<sup>xvii</sup> T.C.A. § 49-5-501(8)

<sup>xviii</sup> *Morris v. Clarksville-Montgomery Cty. Consol. Bd. of Educ.*, 867 S.W.2d 324, 330 (Tenn. Ct. App. 1993)

<sup>xix</sup> *Morrison v. State Board of Education*, 1 Cal.3rd 214, 461 P.2d 375, 82 Cal.Rptr. 175 (1969).

<sup>xx</sup> T.C.A. § 49-5-501(3)

<sup>xxi</sup> T.C.A. § 49-2-301(GG)(i)

<sup>xxii</sup> T.C.A. § 49-2-301(GG)(i)(a)-(b)

<sup>xxiii</sup> T.C.A. § 49-2-301(GG)(i)(c)-(f)

<sup>xxiv</sup> T.C.A. § 49-2-301(GG)(ii)-(iv)

<sup>xxv</sup> T.C.A. § 49-5-511 through 513

<sup>xxvi</sup> T.C.A. § 49-5-512(a)(3)

<sup>xxvii</sup> T.C.A. § 49-1-302(a)(5)(A)(ii)

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<sup>xxviii</sup> T.C.A. § 49-5-108(a)

<sup>xxix</sup> <https://tdoe.tncompass.org/public>

<sup>xxx</sup> T.C.A. § 49-5-417; SBE Rule 0520-02-03-.09