
Coates' Canons Blog: North Carolina Public School Teachers and the Status of Tenure

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Update February 2017: *In April 2016 the North Carolina Supreme Court ruled on the appeal in this case. Its decision focused on the portion of the 2013 legislation that provided that teachers who had already achieved tenure at the time of the enactment of the legislation would lose it in 2018, after which time no teachers would have tenure. The state supreme court held that the legislation's attempt to take the tenure away from teachers who had already earned it amounted to an unconstitutional impairment of contract and could not be enforced.*

Every once in a while, the North Carolina General Assembly makes a major change in some big aspect of teacher employment in our public schools. It did it again in 2013, making changes as sweeping as any in the past. Those changes are now being considered by the appellate courts and the outcome remains to be seen.

In 1955 the General Assembly ended all existing contracts with teachers, saying: "The contracts of all principals and teachers now employed in the public schools of North Carolina are hereby terminated as of the end of the school term 1954-1955." The legislation put all teachers on one-year contracts renewable in the discretion of the county board of education. Starting that year, the board had to consider each teacher individually at the end of each school year and decide whether to renew or not. In effect, each year constituted a new decision on whether to continue to employ each teacher. It's hard to imagine a system further removed from a tenure system than that. Without a new decision "yes" for a specific teacher, the renewal answer for that teacher was "no."

In 1967 the General Assembly removed some of that administrative burden from the local school boards and gave a measure of security to teachers. It provided that a teacher's contract would automatically renew for the next year unless the board specifically decided not to renew the teacher (or dismissed the teacher). In effect, the General Assembly flipped the procedure. Without a new decision "no" for a specific teacher, the renewal answer for that teacher was "yes."

In 1971 the teacher tenure act, as we have known it ever since, came into effect. For a probationary period (originally three years, later lengthened to four), there had to be a specific decision to renew at the end of each year, as in the 1955 system. A teacher in that probationary period was either renewed or not. If not, employment ended. But if the teacher was renewed, and the probationary period was successfully completed, then the teacher gained career status, commonly referred to as "tenure." From that point on, the teacher was no longer subject to annual renewals. Continued employment was guaranteed, unless the teacher gave cause for dismissal under one of the fourteen grounds set out in the statute—including inadequate performance, neglect of duty, immorality, and insubordination.

Then in 1995, the General Assembly stripped out a significant set of employees from the coverage of the teacher tenure act. Before that time, principals and assistant principals had in effect been considered "teachers" for purposes of the tenure act. Assistant principals could attain tenure as teachers and principals could attain a separate status as tenured principals. But in 1995 the General Assembly decided that tenure was not a good idea for those administrative positions. Starting in 1997, principals and assistant principals would be employed on contracts of up to four years duration. At the end of each contract term, the board would make a renewal decision for a new contract term. If the decision was "no," employment as a principal or assistant principal ended, but if the administrator had had tenure as a teacher in the same school unit before moving into the administrative position, he or she had the right to return to a teacher position.

In making these 1995 changes removing principals and assistant principals from the tenure system, the General Assembly softened the blow in two ways—two ways that provide a contrast to the legislative action in 2013.

First, it said that principals and assistant principals who had already earned tenure before the 1995 changes could keep it. They might negotiate it away for a higher salary or some other benefit, but if they did not voluntarily relinquish it, they kept it and its protections. They would not be employed for specific contract terms and would not be subject to renewal

decisions at the end of contract terms, though they would remain subject to the possibility of dismissal for one of the fourteen grounds set out in the statute.

Second, it said that principals and assistant principals who were on their way to tenure—that is, who were still in probationary status—could still achieve tenure. These folks were said to be in the “pipeline” and the pipeline was preserved. Only principals and assistant principals who came into that position starting with the effective date of the new law would be forever barred from earning tenure.

In 2013, the General Assembly enacted the newest set of changes. The new changes have two chief provisions. One, teachers who had not already received tenure by August 1 of 2013 would never be eligible for tenure. And, two, teachers who had already earned tenure would lose it in 2018. After 2018, all teachers would be employed on contracts of up to four years and no teacher would have tenure.

So, unlike the 1995 legislation that removed principals and assistant principals from tenure protection, this 2013 legislation removing teachers from tenure protection did not preserve the tenure of teachers who had already earned it and did not provide that teachers in the tenure pipeline would continue to have the chance to earn it.

In a lawsuit pursued by the North Carolina Association of Educators and others, a superior court judge ruled in May 2014 that the legislature was within its power to provide that tenure would never be available to teachers who had not earned it by August 1, 2013. That is, the judge ruled that those in the pipeline had no legal claim of entitlement to stay in the pipeline. But the judge also ruled that the legislature acted unconstitutionally in taking away (in 2018) tenure that teachers had already earned by August 1, 2013.

Both sides appealed. Those challenging the new law appealed the ruling that the possibility of tenure could be taken away from teachers in the pipeline. Those defending the new law appealed the ruling that tenure could not be taken away from teachers who had already earned it.

The appeal is now before the North Carolina Court of Appeals. The briefs have been filed and the judges have heard the arguments. What will they do with it? Uphold the ruling that tenure cannot be taken away from already-tenured teachers? Overrule that ruling and hold that the General Assembly can do that if it wants to? Who knows? And whatever the Court of Appeals rules, that ruling is sure to be appealed to the state Supreme Court. If you wish to predict what the Supreme Court will do, and when it will do it, you are bolder than I.