

# MISSOURI SCHOOL LAWS GUIDE



MISSOURI STATE TEACHERS ASSOCIATION [we're there for you]

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## What to do if you think you have a legal problem

1. Document all pertinent facts.
2. Don't sign anything before you have read it.
3. If permitted, take a witness with you to meetings.
4. Don't resign your position until you have consulted with MSTA.
5. Contact your MSTA field service coordinator or MSTA headquarters at 800-392-0532.



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## Collective bargaining

On May 29, 2007, the Missouri Supreme Court in the Independence case decided that the Missouri Constitution gives public school teachers the right to organize and bargain collectively. The Court determined it is up to the legislature — and if no action is taken by the legislature, then it is up to the school districts — to provide a bargaining framework. At this time, no laws have been enacted, so under the Independence ruling, each school district may establish the process for teachers to bargain collectively through representatives of the teachers' own choice. MSTA is working closely with its local CTAs to help them achieve the format of bargaining process the local members believe will be most effective.

## FAQs about the Teacher Tenure Act

A number of the more commonly asked questions about the Missouri Teacher Tenure Act, which is found in Chapter 168 of the Revised Statutes of Missouri, are listed below and on the following pages. If you have other questions related to the provisions of this law or any other legal matter related to your employment in Missouri's public schools, don't hesitate to contact MSTA at our toll-free number, 800-392-0532.

### Permanent or tenured teachers

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#### How and when does a teacher acquire tenure?

The most common method by which teachers acquire tenure is when they have been employed full time as teachers in the same school district for five successive years and are offered a contract for the sixth year. Tenure commences when they report to work at the beginning of their sixth successive year. The local school district has no discretion in whether to award or withhold tenure once these conditions are met.

#### Does it always take five years to acquire tenure in a district, or do I receive credit if I've taught elsewhere?

If you were employed full time as a teacher in another school system for at least two successive years, your current school district must waive one year of the five-year probationary teaching requirement. You will acquire tenure after four successive years of full-time employment as a teacher in the latter district.

#### When do part-time teachers acquire tenure?

Part-time teachers accrue credit toward tenure or permanent status on a prorated

<sup>1</sup> *Independence-National Education Association, et al. vs. Independence School District, SC87980.*

basis. This can result in a teacher reaching permanent status in the middle of a school year. For example, a teacher who performs instructional duties four-sevenths time in a district with a 180-day contract period will earn approximately 103 days of credit toward tenure for each school year he or she is employed on the same schedule. Thus, the teacher would acquire tenure in the district on the 132nd day of his or her ninth successive contract with the district.

**Do tenured teachers need to sign a new contract each year?**

It is not required to maintain tenure, although many school districts issue new contracts to all teachers each year for recordkeeping purposes. Once you have acquired tenure in a school district, you have an indefinite contract with the district, which continues in effect until it is modified or terminated in accordance with the statutes.

The board unilaterally may modify the contract prior to May 15 of each year regarding the beginning date and length of the next school year, and the amount of compensation provided by the salary schedule adopted by the board and applicable to all teachers. The district must provide you with written notice of those changes within 30 days after they are adopted by the school board. Any other modifications of the contract must be made by mutual consent of the teacher and the school board.

**If a tenured teacher signs a contract in April or May, may he or she terminate employment for the next year without the board's permission?**

A tenured teacher who wishes to terminate a contract at the end of a school term must give written notice to the district of his or her intention to do so on or before June 1 of

that year. MSTA's Legal Services Department and several respected law firms representing Missouri school districts take the position that even if a tenured teacher has signed a contract earlier in the spring, he or she still may terminate the contract for the next year without board permission or penalty by giving written notice on or before June 1. No Missouri court cases have addressed this question definitively.

**Under what circumstances can a tenured teacher's employment be terminated involuntarily?**

The statutory grounds for termination of an indefinite contract are limited to the following:

- A physical or mental condition that renders him or her unfit to instruct or associate with children;
- Immoral conduct;
- Incompetency, inefficiency or insubordination in the line of duty;
- Willful or persistent violation of or failure to obey Missouri's school laws or the local school district's published policies or regulations;
- Excessive or unreasonable absences; or
- Conviction of a felony or a crime involving moral turpitude.

**Must a school district always give a tenured teacher 30 days to improve before beginning termination proceedings?**

Not always. When a notice of charges for a tenured teacher is based on incompetency, inefficiency or insubordination, the school board or the superintendent first must give the teacher written warning of the causes that may result in charges. The written warning must state the specific causes which, if not removed, may result in termination charges, and it must be given at least 30 days before service of the notice of charges. (This written warning commonly

is known as a “30-day letter.”) After delivery of the warning, the superintendent or a designated representative must meet and confer with the teacher in an effort to resolve the matter.

Under all other statutory grounds for termination, the school board is not required to provide an improvement period of 30 days, and it can proceed immediately with a notice of charges and termination proceedings.

### **What due process is available for tenured teachers before their employment can be terminated involuntarily?**

A school board cannot terminate a teacher’s indefinite contract until after it has served the teacher with written notice of the right to a public hearing and a copy of the charges specifying the grounds it believes exist for termination. A teacher who wants a hearing must request it within 10 days of receiving the notice and charges. If no request for a hearing is made within 10 days, the board may, by majority vote, terminate the contract or conduct a hearing. If either party requests a hearing, it must take place not less than 20 nor more than 30 days after the notice of hearing has been served on the teacher. The school board may suspend a teacher while termination proceedings are pending, but it must continue to pay the teacher’s salary during that suspension.

At a termination hearing, the teacher has the right to be represented by legal counsel, to cross-examine witnesses called by the board against the teacher, and to subpoena witnesses to appear and testify on the teacher’s behalf. By statute, termination hearings are open to the public. The school board must pay all costs of the hearing, including the employ-

ment of a stenographer to make a full record of the proceedings, although the board is not required to pay for the cost of counsel for the teacher. The stenographer must provide a full written record of the proceedings to the parties within 10 days after the conclusion of the hearing. The board has seven days after it receives the hearing transcript to render its decision by majority vote of the board. It must provide a written decision to the teacher within three days after the vote.

### **Can a teacher acquire tenure with respect to extra duties such as being a club sponsor or coach?**

No. Missouri courts have held that a school board unilaterally may modify or terminate extra- or extended-duty contracts and that the protections of the Teacher Tenure Act do not apply. There is no due-process property interest in continued employment under an extra- or extended-duty contract.

## **Probationary teachers**

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### **Are probationary teachers entitled to due process before their contracts can be terminated?**

Yes. Missouri law requires procedural due process before a probationary teacher’s contract can be terminated involuntarily during the term of the contract. A probationary teacher in the midst of a contract term has a property interest in completing the contract term. It is that interest that entitles the teacher to due process before he or she can be terminated.

A probationary teacher who is deemed to be doing “unsatisfactory work,” must receive a written statement definitely setting forth the problem area(s) in order to give the teacher a chance to “correct his fault and overcome his incompetency.”

After 90 days, if the teacher does not make satisfactory improvement, the board can vote to terminate the contract for cause immediately or at the end of the school year without a hearing. The board also may terminate a probationary contract during its term if there are other grounds for cause. The statute does not specify the notice and hearing requirements to be followed to terminate a probationary teacher's employment during the term of the contract, but in practice, most school districts follow a procedure similar to that afforded tenured teachers.

There are important legal and procedural distinctions between the termination for cause of a probationary teacher's contract during its term and the nonrenewal of a probationary teacher's contract for the succeeding year. Unlike permanent teachers who have indefinite contracts, probationary teachers are employed by a series of separate one-year contracts.

The board may decide not to renew a teacher's contract for the next year for any reason as long as it is not an unlawful reason, e.g. it is unlawful to discriminate, therefore it is illegal to nonrenew a teacher, based on gender. The teacher is entitled to request written reason(s) for the nonrenewal, and to receive a concise statement thereof.

If the reason for nonrenewal is due to declining enrollment, school district reorganization or the financial condition of the district, the district automatically must include a statement of the finance-based reason(s) in the written notice of nonrenewal. In this way, the Teacher Tenure Act makes a qualitative distinction between nonrenewals for finance-based reasons and nonrenewals for all other reasons.

There is no entitlement to a due process hearing for any teacher who has been nonrenewed regardless of the reason.

**Is a school district required to notify a probationary teacher if it does not intend to renew his or her contract for the succeeding school year?**

Yes. A school district must notify a probationary teacher in writing on or before April 15 in each school year if the teacher's contract will not be renewed for the next year. Any teacher who is not notified by the school district of nonrenewal is deemed to be rehired for the next year. Keep in mind that the board has the final authority to offer a contract or to decide not to renew it, although the board also must act within the statutory timeframes. Principals and superintendents make recommendations, but they do not have the final authority.

**When must probationary teaching contracts be issued and returned?**

Statute requires school boards to issue contracts to probationary teachers who are being rehired by May 15. A probationary teacher has 15 days to sign and return the contract. Failure to do so constitutes a rejection of the board's offer.

**Provisions applicable to all teachers**

**Can a teacher be demoted without due process?**

The Teacher Tenure Act defines demotion as any reduction in salary or transfer to a lower-salaried position unless requested by the teacher or unless the salary reduction is applicable to all teachers or all teachers in a classification.

Case law interpreting this part of the Teacher Tenure Act has deemed it a demotion if a teacher is retained at the same salary while other teachers in the same

classification are awarded raises. A school district may not take such action unless it first provides the teacher with notice of the action it intends to take, its reasons for proposing the action and an opportunity to be heard by the school board.

**What limitations are there on a school district’s ability to discontinue programs or reduce staff for economic reasons?**

Missouri law permits a school district to place teachers on unrequested unpaid leave of absence because of decreased pupil enrollment, district reorganization or the district’s financial condition. Budget cuts and payment withholdings from the state have triggered wide usage of this authority by Missouri school districts in the past. There are few guidelines in the law governing this area. Both probationary and tenured teachers may be placed on leave, subject to certain limitations:

- (1) A tenured teacher shall not be placed on leave if there are probationary teachers in positions for which the tenured teacher is qualified;
- (2) In determining which tenured teachers to retain, performance-based evaluations and seniority within the field of specialization must be considered, but seniority cannot be controlling;
- (3) Tenured teachers must be reinstated to the positions which they left, or if not available, to positions requiring like training and experience, or to other positions in the school system for which they are qualified by training and experience;
- (4) No new teachers may be hired to fill existing vacancies while qualified teachers remain available on leave;
- (5) Teachers placed on leave may secure interim employment elsewhere without losing the right to reinstatement;

- (6) A tenured teacher’s status is not impaired by being placed on leave; and
- (7) The unrequested leave of absence shall continue for not more than three years, unless extended by the board.

**Besides the Teacher Tenure Act, what other limits are there on a local school board’s authority?**

As it now exists, Missouri law grants local school boards and board members broad powers and discretion in the management of school affairs, including such issues as hiring, firing, and fixing employee compensation and salary schedules. There is a strong presumption of validity in favor of school-board decisions, and courts are reluctant to interfere unless there is clear and convincing evidence the board acted in an arbitrary, capricious or unreasonable manner or abused its discretion. Of course, the board must comply with Missouri’s Sunshine Law in the conduct of all board business, meetings and recordkeeping, and the board is obligated to follow its own published policies. Failure by a school board to follow its own policies can serve as the basis for the filing of a grievance.

**Principal and supervisor contracts**

**Can principals or other supervisors acquire tenure or permanent status?**

No. Principals or other persons in non-teaching supervisory positions cannot acquire tenure in those positions. However, a person who has achieved permanent-teacher status in the district before being promoted to principal or assistant principal retains tenure as a teacher. In addition, any person who was a permanent teacher in another district shall have permanent-teacher status in the district if employed in that system for two or more years as a principal or assistant principal.

**What rights, if any, do principals and supervisory employees have in continued employment with a school district?**

The rights of a principal or other supervisory employee are similar to those of probationary teachers. They must be notified in writing on or before April 15 if the school board does not intend to reemploy them in the same position for the coming school year. Failure to provide the notice constitutes reemployment on the same terms for the next year. The school board must issue contracts to those principals and supervisors whom it intends to reemploy on or before May 15, and the contracts must be signed and returned within 15 days after receipt, or the offer of employment is deemed to be rejected.

**Do long-time principals have any right to a statement of reasons or a hearing if they are notified that their contract will not be renewed?**

Yes. If principals or other supervisors have been re-employed in the same position five times and then are notified that they will not be re-employed in the same position in the coming year, they may, within 10 days after receiving the notice of nonrenewal, request written reasons from the board for the nonrenewal. Within 10 days after receiving the written reasons, they may request a hearing before the board for the purpose of persuading the board to reconsider its decision.

**Noncertified employees:  
At-will and contract employment**

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**What rights or protections do noncertified school-district employees have?**

Certified employees of school districts are required by statute to have contracts of employment. Most noncertified district

employees do not have contracts, have contracts that do not contain a definite term of employment, or have contracts with a term of employment that also state they may be terminated “at will.” These employees all are referred to as “at-will” employees.

At-will employees may be terminated at any time unless there is an agreement requiring a specific notice of termination period such as two weeks. They may be terminated without cause and without being given a hearing. Conversely, at-will employees may quit at any time, subject to any applicable notice period in an agreement, because they are not obligated to fulfill a specific term of employment.

If a district does enter into a contract for a specified term with a noncertified employee who is not at-will — either by formal agreement, board policy or other binding arrangement — the employee is entitled to a hearing before he or she can be discharged during the term of the contract. Under these circumstances, the district must have cause to terminate the employee. Also, under this example, the employee would be obligated to complete the agreed-to duration of employment. As with probationary teachers, there are ordinarily no due-process requirements if the district declines to rehire a noncertified employee for the next school term.

## Due process

Due process as a legal concept has its origin in the 14th Amendment to the United States Constitution. “No State shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law.” Many state constitutions, including Missouri’s, contain similar provisions.

Due process is composed of procedural and substantive elements. Procedural due process imposes restrictions on the legal process used to deprive a person of a protected interest. It requires a fair procedure for determining facts that could adversely affect a person’s ability to keep his or her protected liberty or property. The minimal standards include the rights of a person to be notified that an official agent intends to take away his or her right or interest and of an opportunity to be heard in a meaningful way before he or she can be finally divested of the right or interest.

The concept of substantive due process is amorphous, and the boundaries separating it from procedural due process are hazy and loosely defined. Generally, it restricts the substance or nature of what the law or an official agent may attempt to require or prohibit. The idea that there are certain concepts that may not be enacted into law even if a majority of the citizenry would support them is a form of substantive due process.

Missouri’s Teacher Tenure Act vests public school teachers with a property interest in continued employment for the duration of their contracts and dictates the substantive and procedural requirements that must be met before their employment may be terminated lawfully. The Teacher

Tenure Act specifies six categories of reasons for which a school district may terminate the contract of a permanent teacher, including immoral conduct, willful violation of board policy and excessive or unreasonable absences. These are examples of substantive due-process protections because they limit the reasons for which a teacher can be fired. The act also specifies what procedures a school district must follow before it can terminate a teacher’s employment. These are examples of procedural due-process protections.

### Practical tips to protect yourself

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1. Missouri law generally does not require an employer to give an employee access to his or her employment records. If district policy allows it, it is a good idea to review your personnel file in the district’s central office from time to time. It may be necessary to make an appointment to do so. Make a list of all items in your file and make copies of important documents. Leave one copy of the “inventory” list signed and dated by you (and your witness, if allowed by policy) in the personnel folder. Retain your file inventory list and copies for your private records.
2. Always take notes at or soon after the time of meetings with any supervisor during the year. Include witnesses’ reports and date all materials. (Do not overlook brief visits or observations.)
3. Keep copies of all documentation you give to your evaluator/principal.
4. Keep copies of all documentation given to you by your evaluator during the evaluation cycle.
5. As you receive formative evaluations, memos, professional development plans or

summative evaluations, remember to ask for time to review them and to prepare a written response later if you need to. When you attach statements or comments on a separate sheet (the space provided on the form is usually small), write on the original, “See attached teacher comments.” Always keep copies of what you attach. When you do sign the forms, include the date. If an earlier date has been filled in by the evaluator, ask that it be changed to reflect the correct current date or put the current date next to your signature. Your signature on a professional improvement plan or evaluation indicates only that you have received and read the document, not that you agree with it. Don’t risk making a delicate situation worse by refusing to sign.

**6.** Request permission to bring along a witness for any meeting that might deal with your job security, but understand there is no legal requirement that you be permitted to do so. Phrase your request professionally. Explain that your witness will not participate in the meeting, but is there only to listen and take notes during the conference. If you are not allowed to have a witness, make notes during the meeting or immediately after and sign and date them.

**7.** Keep any notes concerning student or parent conferences in a file where you easily can find and retrieve them, yet in a location that is not accessible to others. Remember that significant privacy rights are extended to many types of student and health records.

**8.** Ask for copies of any parent or student complaint lodged against you, including the names, dates and specifics of the complaint.

**9.** Ask your administrators for copies of any records about you they may have in their files. (You may be refused or have difficulty getting these, but ask anyway. Ask for both positive and negative items.)

**10.** In conversations or meetings, always maintain a calm and professional demeanor. Try not to react defensively or in anger, no matter how justified you may feel. You will not communicate or advocate effectively on your own behalf if you are agitated. If necessary, request a moment to prepare yourself, or make an appointment to come back at a later time when you can better proceed with the meeting.

**11.** If you are asked by an administrator to resign, NEVER do so before you have contacted MSTA. Regardless of attempts to pressure or persuade you to resign immediately or by the end of the day, you cannot be required to do so if you have a contract for a specified term that is not at-will. You are entitled to due process, so don’t let implications, suggestions, or threats influence your decision.

### Reference requests

The prudent school district employer usually will provide prospective employers with a name, rank and serial number-type of reference for an employee or former employee — in other words, it will confirm the fact of employment and the dates of employment, and identify the position(s) held. There potentially are legal risks to the school in providing inaccurate or misleading statements.



## Technology policies

Most Missouri school districts provide Internet access and e-mail services for their employees' use at work. These tools have become invaluable and can enhance work performance regardless of your position in the district. Technology provides quick and efficient access to incredible amounts of information and creates opportunities for collaboration by students and staff across all geographic boundaries. But these tools can be misused, and the consequences of careless or deliberate misuse can be serious. School districts are subject to untold costs in compromised system security and corrupted data and equipment. Offending employees are subject to sanctions ranging from reprimand to termination to, in some cases, criminal culpability.

To protect against these risks, most local school boards have adopted policies or guidelines governing the use of district technology resources. Some districts require employees to sign technology agreements. Regardless of the form such policies take in your district, it is your responsibility to read, understand and abide by the rules. Even if your district has no written policy, don't be lulled into thinking there are no restrictions on your use of these tools. As is the case with other equipment and supplies provided to support your work, the hardware, software and cyberspace provided to you for use at work belong to your employer and should be used only for school district and employment-related approved business.

Although you retain some rights to privacy in the workplace, a public employer may be able to justify access to private information if it has a legitimate need for control and supervision. Employers may monitor

employee communications and, so long as you have been notified that it will occur, there is no requirement that your employer get your consent to do so. Electronic communications can be monitored, stored, retrieved, viewed or listened to by your administrators — even those messages you delete or never send. This includes voice mail, text messages, faxes and your access to Internet sites.

In addition to following required rules and procedures, some simple but effective safeguards can further minimize your risk of violating technology policies. Log off your computer when you're not using it and whenever you leave the room. Don't share your password and, if feasible, arrange to change it periodically. If you receive inappropriate communications or discover other inappropriate uses of district technology, report it to your supervisor or building administrator immediately. If something would be inappropriate to say or share in person, it is probably inappropriate to send via e-mail or another medium. Monitor student use of the Internet or e-mail closely. If students access or send inappropriate information at school, you may be held accountable.

Cell phones have become a handy alternative in some districts where classrooms are not equipped with speakers or telephones, but they, too, can be abused. Take deliberate measures to manage your cell phone use at work to ensure that the ready access does not put you at risk. To prevent theft or unauthorized use of your phone, keep it with you or safely stored at all times. When you have students in your classroom, your paramount responsibilities are to provide appropriate supervision and instruction. A ringing phone begs to be answered. Even when you resist the urge to answer it, it creates an unnecessary and preventable disruption to you and

your students. During those periods, keep your phone turned off or in silent mode. Caller I.D. and voice mail ensure that you won't miss important calls. If there is a true emergency, office or administration staff will let you know. During non-instructional periods, it is still wise to use caller I. D. or voice-mail functions to screen incoming calls. Unless you are expecting a specific and important call, avoid answering incoming calls from unknown or unexpected numbers during school hours.

The electronic workplace poses new challenges and risks. Don't be overwhelmed or frightened by them. The potential benefits for students, staff and the community are huge. School-district employees who use common sense and good judgment should not be unduly burdened by maintaining the security and integrity of electronic communications.

### Staff-student relations

In conjunction with your district's technology policies, you must establish yourself as the professional adult in any situation involving students. Set the appropriate boundary lines, and make sure that neither you nor your students cross them. Do not become involved inappropriately with your students in chat rooms, locker rooms or classrooms. Social networking also has valuable uses, but do not network in or outside of school as "friends" with your students. Know and adhere to your district's staff/student relations policy alone and in conjunction with the technology policies.

## Mandatory reporting of child abuse and neglect

### Key definitions from Missouri's child abuse/neglect law

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**Child** — Any person, regardless of physical or mental condition, under 18 years of age.

**Abuse** — Any physical injury, sexual abuse or emotional abuse inflicted on a child other than by accidental means by those responsible for the child's care, custody and control, except that discipline including spanking, administered in a reasonable manner, shall not be construed to be abuse.

**Neglect** — Failure to provide, by those responsible for the care, custody and control of the child, the proper or necessary support, education as required by law, nutrition or medical, surgical or any other care necessary for the child's well-being.

### Mandatory reporters

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Missouri law requires people in certain occupations, if they have reasonable cause to suspect that a child has been the victim of abuse or neglect as defined above, to report the situation to the Children's Division (CD) of the Department of Social Services (there is no longer a DFS, or Division of Family Services.) Teachers, principals, administrators, counselors and others with responsibility for the care of children are included among those who are required to report their reasonable suspicions. They frequently are called "mandatory reporters." Almost all school-district employees fall within this definition if they have responsibility for students during a part of the school day.

A mandatory reporter is required to notify immediately the person in charge or the person designated by the local board policy to receive the reports of suspected abuse or neglect. As a required reporter, if you are unsure how to proceed, contact your building principal or the superintendent for guidance on how to report the matter. Once the school district's designated agent has been notified, your obligation under the law is met, and that agent becomes responsible for reporting to the CD. Keep in mind that it no longer is sufficient compliance for a mandatory reporter to report suspected abuse by an anonymous hotline. You must follow the procedure described here. However, you may additionally make other reports directly to the hotline or to local law enforcement.

Mandatory reporters may request to receive information concerning the general disposition of their reports.

### **Immunity from civil or criminal liability**

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Any person who makes a report in compliance with the law or cooperates with CD, law enforcement or others in the investigation or adjudication of a report is immune from any civil or criminal liability for his or her actions, so long as the reporter acts in good faith, even if the allegations are ultimately determined to be false. Any reporter who intentionally files a false report, or acts in bad faith, will not have immunity from liability.

### **Child abuse and neglect investigations and review procedures**

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After a report alleging child abuse or neglect is made, it is forwarded by the

CD to the appropriate local office for co-investigation with local law enforcement. Investigations generally are initiated within 24 hours of the report.

Caseworkers ordinarily have 30 days to complete their investigations but may, for good cause, request an extension. Within 90 days after receipt of a report, the investigator must issue a final determination and notify the alleged perpetrator and the child's parents of the determination. Most claims culminate in one of two determinations: there is a preponderance of the evidence that abuse or neglect exists, or there is insufficient evidence to support the allegations and the allegations are unsubstantiated.

An alleged perpetrator who disagrees with a finding of abuse or neglect may request an administrative review of the decision and a hearing before the Child Abuse and Neglect Review Board. The board is an independent review body appointed by the governor to review CD's investigations and findings of preponderance of the evidence. The board's review is very narrow; it is limited to looking at the investigator's determination and seeing if it goes against the weight of the evidence. If the board upholds the division's finding of abuse or neglect, the alleged perpetrator may request de novo review in the circuit court. De novo review is broader. The court effectively starts over, reviewing all the evidence that the investigator(s) had and reaching its own conclusion of whether or not there is a preponderance of the evidence to support a finding that abuse or neglect exists. An unfavorable decision at the circuit-court level may be appealed through the state's appellate court system.





## **Student discipline and the Missouri Safe Schools Act**

Missouri's Safe Schools Act was adopted in 1996 in response to increasing incidents of school violence in Missouri and around the country. The act addresses school-district discipline codes, mandates the adoption of specific policies and minimum standards, and requires certain types of reporting by teachers, principals, superintendents and county juvenile officers. What follows is a general summary of some key provisions of the Safe Schools Act.

### **Local school district discipline policies**

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The Safe Schools Act requires local school boards to establish a written discipline policy setting forth standards of conduct, including a statement of the importance of the standards in maintaining an atmosphere that sustains and encourages orderly learning. The policy must set out consequences for failure to obey those standards and the procedures to be followed in meting out disciplinary sanctions. A written copy of the discipline policy and procedures must be provided to each student and parent at the beginning of the school year.

Missouri law still permits corporal punishment of students, although many school-district attorneys advise the school districts they work with against adoption of policies permitting corporal punishment. Each school district's written discipline policy must state whether or not corporal punishment is authorized by the school board as a means of discipline. Spanking, if authorized, must be admin-

istered by certified personnel of a school district in a "reasonable manner" in accordance with the district's discipline policy. If these criteria are met, spanking is not abuse under Missouri law, but this does not preclude an investigation triggered by a complaint to law enforcement or the child abuse/neglect hotline.

Even if the local school district permits it, MSTA strongly discourages all teachers and other nonadministrative employees from administering corporal punishment to a student, and encourages them instead to refer all such matters to their principal or superintendent.

Missouri school districts are required to instruct all employees annually with respect to their discipline policy, including interpretations to assist in implementing the policy, approved methods of dealing with acts of school violence, disciplining students with disabilities, and instruction regarding confidentiality requirements.

### **Student enrollment requirements and procedures**

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Whenever a student enrolls in a Missouri school district, his or her parents must sign an affidavit stating that the student is not currently under suspension or expulsion from another school district. If the student is currently under suspension or expulsion elsewhere for conduct that would have resulted in a suspension or expulsion in the district in which the student is attempting to enroll, the district may enforce the suspension or expulsion from the other school district. But if the conduct would not have resulted in a suspension or expulsion in this district, the district must permit the student to enroll.

Upon enrolling a student, the school district must make a prompt request for the student's discipline records from any previous schools that he or she attended. Any Missouri school district that receives such a request has five business days within which to respond to send records of a student's serious violations of that district's discipline policy to the requesting school district.

### **Reporting and record-keeping requirements**

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School districts must compile and maintain records of any serious violation of their discipline policies. The records shall be made available to teachers and other employees with a "need to know." School administrators also must report acts of school violence to teachers and district employees with a "need to know." School personnel with a "need to know" include those who are directly responsible for the student's education or who otherwise interact with the student on a professional basis while acting within the scope of their assigned duties.

An "act of school violence" or "violent behavior" is defined as "the exertion of physical force by a student with the intent to do serious physical injury." The act must be done to another person while on school property, including a school bus in service to the district, or while involved in school activities, including off-campus activities.

The Safe Schools Act requires school administrators to report to law enforcement any student conduct that would constitute a felony if committed by an adult. Felonious acts generally are more serious or violent in nature. There is a reciprocal requirement that juvenile or other law enforcement authorities notify local schools if they file a petition claiming that a student has committed

certain acts that would constitute a felony or other crime if committed by an adult. Administrators are required to share this information with employees who fit the "need-to-know" definition.

### **Summary suspension, student due process and readmittance**

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Under Missouri law, school principals are permitted, if authorized by local board policy, to suspend students summarily for disciplinary violations for a period not to exceed 10 school days. Principals must immediately report any such suspension to the superintendent, who may revoke it at any time.

Superintendents are authorized to suspend students for a period not to exceed 180 school days. In the event of a suspension exceeding 10 school days, the student may request a hearing before the board to appeal the decision.

Students are entitled to some level of procedural due process before summary suspension may be imposed against them. They must first be given oral or written notice of the charges. If the student denies the charges, the administrator must provide him or her with an oral or written explanation of the facts. The student also is entitled to present his or her version of what happened. In the case of a suspension of more than 10 school days, if the student or parents appeal to the board, the student is entitled to an automatic stay of the suspension pending appeal to the board. However, if the superintendent determines that the student's presence "poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process," the right to an automatic stay will not apply, and the suspension will not be stayed.

No student properly suspended for more than 10 consecutive school days for an act of school violence shall be readmitted or enrolled until after the school board holds a conference to review the conduct and any remedial actions needed to prevent future occurrences. Any teacher directly involved with the student's past conduct must be given an opportunity to be present at the conference.

Any student who has been charged with or convicted of certain felonies shall not be readmitted to school. The list includes murder, forcible rape or sodomy, distribution of drugs to a minor, and specified types of violent assault, robbery, arson and kidnapping. School districts are required to include in their written policies of discipline a provision prohibiting any student on suspension for any of these offenses, for any act of violence, or for serious drug-related activity from going within 1,000 feet of any public school in the district except under certain conditions. School districts are not required to follow the normal investigative procedures for suspension or expulsion in these circumstances. This exclusion does not apply to students with disabilities, nor does it prohibit enrollment of a suspended student in an alternative education program.

### **Board-imposed removal, suspension or expulsion**

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The school board, after notice to parents and a hearing, may suspend or expel a student "for conduct which is prejudicial to good order and discipline in the schools or which tends to impair the morale or good conduct of the pupils." If the principal, superintendent or board finds that a student poses a threat of harm to himself or herself or others, the board may authorize the student's immediate removal. The board, after notice and a hearing, also may sus-

pend a student upon a finding that he or she has been charged, convicted or pleaded guilty to the commission of a felony.

The Safe Schools Act requires that a minimum one-year suspension be imposed against a student who brings a weapon to school or to any school-sponsored activity. The superintendent or school board may modify such a suspension on an individual basis. Further, the district has the option of providing education services to the suspended student in an alternative setting.

At any hearing occasioned by any of the above circumstances, "appropriate due process" procedures shall be observed. Generally, the more serious the proposed disciplinary sanction, the greater formality of process that must be afforded a student subject to the sanction. The parents or the student, if at least 18 years old, may waive in writing the right to an expulsion hearing only after they have met with the superintendent or designee to discuss the expulsion. The board shall make a good-faith effort to have the parents present at any hearing.

### **Confidentiality**

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Any information received by a school district employee relating to the conduct of a student shall be received in confidence and used for the limited purpose of assuring that good order and discipline are maintained. (Note: The Family Educational Rights and Privacy Act of 1974, 20 U.S.C. §1232g, also known as FERPA, contains confidentiality requirements in regard to sensitive information about students. School employees receiving confidential Safe Schools Act information should be knowledgeable about the requirements and privacy protections of FERPA.)

## **Immunity from civil liability**

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The Safe Schools Act protects teachers and other authorized persons who act in conformity with established board policy or who report acts or threatened acts of school violence by giving them immunity from civil liability for those actions. Therefore, it is incumbent on each school district employee to read and understand the local school board discipline policy and to attend the annual training provided by the district.

## **School district discretion**

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Generally, under the Safe Schools Act, superintendents and school boards have broad discretion in many areas, including establishing the rules for student conduct appropriate to an environment for learning, determining the use of corporal and other punishments, and establishing and applying the procedures to be followed. Discipline policies may and will vary from district to district and perhaps, for very sound reasons, they will vary among schools within a district.

## **Individuals with disabilities**

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The requirements of the Safe Schools Act are subject to the federal and state requirements imposed on school districts with respect to students with disabilities. Eligible special-education students under the reauthorized Individuals with Disabilities Education Act of 2004 may be removed from their current placement only in accordance with state and federal IDEA requirements. Discipline should be imposed as each particular case is assessed under those laws.

## **Family and Medical Leave Act basics**

As school district employees, you are covered by several federal employment laws designed to protect you from undue loss of employment or discrimination on a variety of bases. One of the federal leave laws designed to assist working families is the Family and Medical Leave Act (FMLA).

Among Congress's stated purposes in adopting the FMLA were: "to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity; . . . [and to accomplish these purposes] in a manner that accommodates the legitimate interests of employees."

The FMLA permits qualified employees to take up to 12 weeks of unpaid leave during a 12-month period for one or a combination of the following reasons:

- For the birth of a child and care of a newborn child of the employee;
- For placement with the employee of a child for adoption or foster care;
- To care for a spouse, son, daughter, or parent with a serious health condition;
- When the employee is unable to work due to the employee's own serious health condition; or
- For qualifying exigencies arising out of the fact that the employee's spouse, son, daughter, or parent is on active duty or call to active duty status as a member of the National Guard or Reserves in support of a contingency operation.

A covered employer must also grant an eligible employee who is the spouse,

son, daughter, parent, or next of kin of a current member of the Armed Forces, including a member of the National Guard or Reserves, with a serious injury or illness up to a total of 26 workweeks of unpaid leave during a 12-month period to care for the servicemember.

The employer determines if the reason is an FMLA-qualifying event.

In order to be eligible for leave under the FMLA, an employee:

- must have been employed for at least 12 months by the employer of whom the leave request is made; and
- must have worked at least 1,250 hours for that employer during the previous 12-month period.

Leave for the birth and care of a child or for the placement of an adopted or foster child must be used within 12 months after the child's birth date or an adopted or foster child's placement date. Spouses who work for the same employer are limited to a combined total of 12 weeks during the 12-month period to use leave related to the birth and care or placement of a child. School districts cannot force a qualified employee to use less than 12 weeks unless both parents work for the same employer and are "sharing" the 12-week allotment.

During a 12-month period, an eligible employee under the two servicemember applications is entitled to a combined total of 26 workweeks.

Under FMLA, upon your return from a qualified period of leave, your employer must return you to the same position you held before taking the leave or to an "equivalent position" as it relates to pay, benefits and other terms of employment.

In addition, for employees who have group health-insurance coverage, employers must continue to maintain the coverage on the same terms while an employee is on qualified FMLA leave. However, if at the end of a period of qualified leave, the employee chooses not to return to work, even though he or she is able, the employer is entitled to be repaid for insurance premiums it has paid for the entire leave period.

The Act gives employers some flexibility in how they administer FMLA leave. For instance, although FMLA leave is unpaid leave, an employer may, by published policy, permit or require employees to use or apply any applicable paid leave as part of the 12-week period. In addition, employers may elect one of several methods for determining the 12-month period within which leave may be taken, but that election must be published in the employer's policy or provided in written form to employees.

If not properly published, employees may use the method that is most favorable to them in calculating the amount of leave they may take. Thus, our standard mantra rings true: Check your local school board policy to see how your district's FMLA policy is administered.

For more detailed information regarding the Family and Medical Leave Act, check the U.S. Department of Labor information at [www.dol.gov/dol/topic/benefits-leave/fmla.htm](http://www.dol.gov/dol/topic/benefits-leave/fmla.htm). If you have a specific situation with which you need assistance, please contact MSTA at 800-392-0532.





# Sexual harassment

## State law

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In Missouri, the main statutes proscribing sexual harassment in the workplace are located in the chapter on Human Rights at RSMo §§ 213.010 et seq. The Missouri Human Rights Act makes it an unlawful employment practice for an employer to discriminate against an employee because of race, color, religion, national origin, gender, ancestry, age or disability.

Three categories of sexual harassment involve explicit sexual behavior. Unwelcome sexual advances, requests for sexual favors, and verbal or physical behavior of a sexual nature are sexual harassment when:

- 1) submission to such behavior is explicitly or implicitly made a term or condition of your employment;
- 2) submission to or rejection of such behavior is used as the basis of employment decisions that affect you; or
- 3) the behavior has the purpose or effect of substantially interfering with your work performance or creating an intimidating, hostile or offensive work environment.

Another type of sexual harassment does not involve sexually explicit conduct but may include negative stereotyping of men or women and the use of epithets and other abusive language. This is gender-based harassment, and if it is severe or pervasive, it may violate the law.

Sexual harassment is discrimination when you are treated worse than others under similar circumstances or when you

are denied the same rights and privileges given to others based on your gender. It is not a Human Rights Act violation for a boss to criticize or yell at you, or treat you differently than other employees if it is not directed at your status as a protected class.

The Missouri Commission on Human Rights enforces these anti-discrimination laws. If you believe you have been discriminated against at work for any of the reasons identified above, you must file a complaint with the commission within 180 days of the last act of discrimination. For more detailed information about the Missouri Human Rights Act, frequently asked questions and fact sheets, and instructions on how to file a charge of discrimination, go to the Missouri Department of Labor and Industrial Relations Web site at [www.dolir.mo.gov](http://www.dolir.mo.gov).

## Federal law

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Sexual harassment is a form of gender discrimination that also may violate Title VII of the Civil Rights Act of 1964. It is enforced by the Equal Employment Opportunity Commission. For further information on the law in this area and “How to File a Charge of Employment Discrimination,” check the Web site at [www.eeoc.gov](http://www.eeoc.gov) and click on “Sexual Harassment.”



## Resources from the Missouri Bar

[www.mobar.org](http://www.mobar.org)

### Public information brochures online

The following online series of topics explains Missouri's laws and legal system. The series contains practical information, written by lawyers who have knowledge and experience in different aspects of the law. Main areas include:

- **The Client Resource Guide**  
*How to find a lawyer and work with one*
- **Probate Law Resource Guide**  
*All about wills, living trusts and the probate system*
- **Business Law Resource Guide**  
*Covers bankruptcy and other business issues*
- **Family Law Resource Guide**  
*Explains laws affecting children, parents, marriage, divorce, etc.*
- **Law and the Courts Resource Guide**  
*Small Claims Court, Traffic Court, etc.*
- **Consumer Law Resource Guide**  
*Your rights as a consumer*

### Booklets

#### **Domestic violence**

- **Domestic Violence and the Law: A Practical Guide for Survivors**  
*This 56-page booklet explores survival and legal options for domestic violence victims.*
- **La Violencia Domestica y la Ley — Guia Práctica para Sobrevivientes — en Español**  
*Spanish translation of booklet explores survival and legal options for domestic violence victims.*

- **You Can Stop Child Abuse**  
*Eight-page booklet explains Missouri's Child Protection Orders Act*

#### **Senior Citizens**

- **Senior Citizens Handbook**  
*Booklet on laws and programs affecting senior citizens in Missouri*

#### **Legal forms**

- **Durable Power of Attorney for Health Care and Health Care Directive**  
*Instructions and Sample Form (.pdf format)*

#### **Adoption**

- **Adoption Guide**  
*This 12-page booklet explains different types of adoption in the State of Missouri.*

#### **Courts/judicial elections**

- **Missouri Small Claims Handbook**  
*This booklet describes in greater detail the procedures of the small-claims court. Single copies are available at no charge, with additional copies costing 25 cents each.*
- **Voting for Missouri's Judges**  
*Explains Missouri's judicial selection/retention system*
- **Trial Jurors Information**  
*This brochure explains the manner in which lawsuits are tried and the part a juror plays in seeing that justice is done.*

#### **Of interest to educators**

- **Stepping Out — Your Rights When You Become an Adult**

## Missouri Open Meetings (Sunshine) Law

The Missouri open meetings law, popularly called the “Sunshine Law,” demonstrates a commitment to openness in state and local government proceedings. The law limits the circumstances in which a meeting, record or vote may be closed to the public to a narrow list of exceptions.

The Missouri Attorney General’s office Web site is comprehensive and helpful on this topic. It publishes a free booklet that can be downloaded or ordered directly from the AG’s office. The site and booklet both summarize the law, provide answers to FAQs, and cite references to the formal opinions of the attorney general regarding interpretation of Sunshine Law provisions. The attorney general’s Web address is [www.ago.mo.gov/sunshinelaw](http://www.ago.mo.gov/sunshinelaw). You also may call the MSTA Member Care Center at 800-392-0532 to request a copy of the booklet. The following information is provided with permission.

### Frequently asked questions about the Sunshine Law

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#### What statutes form the basis of Missouri Sunshine Law?

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#### Are there any laws other than Chapter 610, RSMo, to be aware of when determining whether a record is open or closed?

Yes. These other laws are generally referenced in Section 610.021 (14) of the Sunshine Law. Closed records not described in Section 610.021 include, but are not limited to:

- HIV testing records, Section 191.656
- Tax returns, Section 32.057

- Qualification to carry a concealed weapon, Section 571.101.9
- Many juvenile records, Section 211.321
- Mental health treatment records, Section 630.140
- Genetic information, Section 375.1309
- Adoption records, Section 453.120 and Section 453.121

Records also may be closed under federal law. For example, educational agencies or institutions may lose federal funding if they release education records or personally identifiable information of students without their parents’ written consent (Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g).

### Who must obey the Sunshine Law?

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#### Does the Sunshine Law apply to private, nonprofit corporations or civic organizations?

In some instances, yes. Section 610.010(4) includes “quasi-public governmental bodies” in the definition of public governmental bodies subject to the Sunshine Law.

A quasi-public governmental body is an organization that either (a) primarily contracts with or handles activities agreed upon with public governmental bodies, or (b) by statute allocates or issues tax credits, tax abatement, public debt, tax-exempt debt, rights of eminent domain or leaseback agreements. It also includes associations that directly accept appropriated money from a public body, but only when they have meetings, records or votes that relate to the appropriations.

Examples of organizations covered by the Sunshine Law are area agencies on aging (Attorney General’s Opinion No. 27-87), Missouri School Boards Association (Attorney General’s Opinion No. 103-88), Convention

and Visitors Bureau of Greater St. Louis (*Champ v. Poelker*, 755 S.W.2d 383 (Mo. App. E.D. 1988)), and a sheltered workshop established by a nonprofit corporation (Attorney General's Opinion No. 100-2001).

### **Are advisory committees, boards and commissions subject to the Sunshine Law?**

Yes. See Section 610.010(4), RSMo.

### **When a public governmental body forms a committee or subcommittee from its own membership, is that group also subject to the Sunshine Law?**

Yes. See Section 610.010(4), RSMo.

## **Types of records and meetings**

### **How does the Sunshine Law apply to electronic records?**

The Sunshine Law encourages public governmental bodies to maintain records in electronic formats that are accessible to the public (Section 610.029.1). Public governmental bodies are obligated to provide records in the format requested, if available (Section 610.023.3). However, when a requester demands records in a format beyond the scope of staff expertise, a body may charge for the actual rate of programming necessary to comply with the request (Section 610.026.1(2)).

Section 610.025 creates a new requirement for certain e-mails among members of a public body. The new requirement is triggered when a member of a public body sends an electronic message dealing with public business to two or more members so that, when counting the sender, a majority of the body's members are copied on the message. When this section applies, the message must be copied to the body's custodian of records or the member's public office computer and then made

available as a public record, unless it is subject to an exception in Section 610.021 allowing it to be treated as a closed record.

Meetings conducted via the Internet are subject to the Sunshine Law (Section 610.010(5)). Notices of meetings that are to take place by Internet chat, message board or computer link must explain to the public how it may access the meeting. The public body also must post a notice of the meeting on its Web site (Section 610.020.1).

### **Does the Sunshine Law apply to luncheon meetings of members of a public governmental body where public business is discussed?**

Yes. A public meeting is any meeting of a public governmental body where public business is discussed or decided or public policy is formulated (Section 610.010(5)). Public business is defined in Section 610.010(3) as all matters that relate in any way to the performance of the public governmental body's functions or the conduct of its business.

In *The Kansas City Star v. Shields*, 771 S.W.2d 101 (Mo. App. W.D. 1989), the chairman and two members of the Kansas City City Council Finance Committee, city manager and city budget director held a luncheon meeting without notice in a private dining room of a Kansas City restaurant. The following day, the committee unanimously adopted a budget agreement. This meeting, where public business was discussed, constituted a public meeting, and notice should have been posted. (See Attorney General's Opinion No. 10-75.)

Informal gatherings of members of a public governmental body for social or ministerial purposes where there is no intent to avoid the Sunshine Law are not public meetings.

## Meetings

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### **What are the notice requirements of the Sunshine Law?**

Section 610.020.1 requires a public governmental body to give notice of the time, date and place of each meeting and its tentative agenda in a manner reasonably calculated to advise the public of the matters to be considered. The notice must state if the meeting is to take place by telephone, the Internet or other electronic means, and the location where the public may observe and attend the meeting, or the Internet message board the body will be using.

Section 610.020.2 states this notice must be given at least 24 hours (excluding weekends and holidays) before the meeting, unless such notice is impossible. The notice must be posted prominently in the principal office of the body holding the meeting, or, if there is no such office, in the building where the meeting will be held. If the body is meeting via the Internet, it also is required to post a notice on its Web site with information on how to access the meeting. Reasonable notice includes making copies of the notice available upon request to representatives of the news media at the same time notice is posted.

If a meeting must be held on less than 24 hours' notice, minutes of the meeting should state the reasons why it was not possible to give such notice.

### **Must members of a public governmental body be physically present at a meeting to vote?**

The Sunshine Law generally allows members of a public governmental body to participate in a meeting and vote without being physically present, for example, by telephone. But if a public governmental body consists of members

who are all elected, Section 610.015 requires that members be physically present and in attendance at a meeting when votes are to be taken by roll call. In an emergency, less than a quorum of the body may participate by phone, Internet or other means, but only if a quorum of the members are physically present at the meeting location.

The physical presence requirement does not apply to any committee established by a public governmental body or to members of the General Assembly.

### **Can citizens videotape public governmental body meetings?**

Public bodies are required to allow recordings by audiotape, videotape or any other electronic means at open meetings. The public body may establish guidelines to minimize disruption.

Recording a properly closed meeting without the permission of the public body, however, is not permitted, and is a class C misdemeanor (Section 610.020.3).

### **Are public governmental bodies required to take minutes of meetings?**

Yes. Minutes of open and closed meetings should include, at a minimum, date, time, place, members present and members absent, and votes attributed to each member (Section 610.020.7). It also is advisable for bodies to keep minutes of the discussion that takes place during meetings, especially of closed meetings. These minutes are useful for internal purposes and for creating a record to justify the proper closure of a meeting under Section 610.021.

## **Closed meetings and/or the closing of meetings**

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### **What procedures must be followed to close meetings, records or votes?**

It is the public policy of this state that all public meetings and records shall be open unless otherwise provided by law (Section 610.011.1). The public governmental body must follow the procedures set out in Section 610.022 if a public meeting is related to one or more of the statutory exceptions and may be closed under Section 610.021.

Section 610.022.3 requires that the meeting be closed only to the extent necessary to discuss the specific announced exception. No other business should be discussed during the closed meeting. Also, the public governmental body may only close a portion of the meeting facility, allowing space for the public to remain and attend any subsequent open session.

A public governmental body planning to hold a vote must follow the notice procedures for a regular meeting set out in Section 610.020, adding that the meeting will be closed and citing the specific exception allowing the closure (Section 610.022.2). Notice of a closed meeting is not required to include a tentative agenda (Attorney General's Opinion No. 97-90).

Section 610.022.1 provides that before a meeting or a vote is closed, there must be an affirmative public vote to close the meeting made by a majority of a quorum of the public governmental body. The specific reason for closing the meeting must be announced publicly, with reference to the proper statutory section, in open session and entered into the minutes.

Minutes of the closed meeting must be taken. The minutes must include, but

are not limited to, the time, date, place, members present and absent and a record of votes taken during the closed session (Section 610.020.7)

### **Can a public governmental body close a meeting to discuss possible litigation with its attorney where a cause of action has not been filed?**

Section 610.021.1 permits a meeting to be closed to discuss legal actions, causes of action or litigation involving the public governmental body and confidential or privileged communications between the public governmental body and its attorneys. Attorney General's Opinion No. 59-76 concluded a meeting could be closed to discuss causes of action where the public governmental body is a potential plaintiff or defendant, whether or not litigation already had commenced.

However, under Section 610.021.1, any minutes, vote or settlement agreement relating to legal actions, causes of action or litigation must be made public upon final disposition of the matter voted upon or upon the signing of the settlement agreement. A court can, however, order that a settlement agreement be kept confidential if it finds that the adverse impact on the plaintiff outweighs the policy of openness. Even then, the governmental body must disclose the amount paid under the agreement.

In matters concerning the exercise of the power of eminent domain, the vote must be made public immediately following action on the motion to authorize the legal action.

### **Can a meeting be closed to allow a public governmental body to discuss whether public employees will participate in seminars or training programs?**

Section 610.021.3 allows a meeting to be

closed for discussion of hiring, firing, disciplining or promoting a particular employee. Because participation in a seminar does not fit these specific categories, the discussion should occur in an open meeting.

### **Can a public governmental body close a meeting to discuss the purchase of real estate?**

Section 610.021.2 provides a meeting may be closed to discuss leasing, purchasing or selling of real estate by a public governmental body where public knowledge of the transaction could adversely affect the amount paid in the transaction. However, any minutes or vote approving a contract relating to such matters must be made public upon execution of the transaction.

### **Can disciplinary action be taken against a particular public employee in a closed meeting, and can the public find out what action was taken?**

Under Section 610.021.3 of the Sunshine Law, a public governmental body can close a meeting to consider hiring, firing, disciplining or promoting an employee when personal information about the employee is discussed or recorded. Personal information relates to the performance or merit of that employee. But the vote on any final decision to hire, fire, discipline or promote an employee must be made available to the public within 72 hours after the closed meeting in which such action occurred and must include how each member voted. The employee must be given notice of the decision during the 72-hour period before the decision is made available to the public.

### **What is involved in making a vote taken in a closed meeting available to the public as required in sections 610.021.1, .2 and .3, relating to**

### **litigation, real estate transactions and hiring, firing, disciplining and promoting employees?**

After a closed meeting, the public governmental body must disclose the vote of each member — not just the vote total or results (Section 610.021.3; Attorney General’s Opinion No. 129-97). The “vote” also includes the proposition voted on and matters or materials referred to within the proposition (Attorney General’s Opinion No. 30-88). For example, disclosure of a vote according to Section 610.021.1 would include disclosing agreements made to settle litigation. Thus, making a personnel-related vote available to the public included disclosure of a severance agreement (*Librach v. Cooper*, 778 S.W.2d 351 (Mo. App. E.D. 1989)).

### **Who is an employee for purposes of the hiring, firing, disciplining or promoting exception set out in Section 610.021.3?**

Generally, an employee receives wages or a salary from the government. For example, a physician on staff at a public hospital who renders service on behalf of and is paid by the hospital district is an employee (*Paskon v. Salem Memorial Hospital District*, 806 S.W.2d 417 (Mo. App. S.D. 1991)). But independent contractors, members of volunteer citizen boards and elected officials are not employees for purposes of Section 610.021(3). (See Attorney General’s Opinions Nos. 48-88, 184-89 and 77-92; and *Hawkins v. City of Fayette*, 604 S.W.2d 716 (Mo. App. W.D. 1980)). Therefore, discussions about these individuals must be conducted in open session.

### **Sunshine requests**

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#### **What are the procedures for obtaining access to public records?**

Each public governmental body must

appoint a custodian of records responsible for maintaining the body's records and for handling requests (Section 610.023.1). All public records must be made available for public inspection and copying, unless there is a statute that either permits or requires them to be closed.

When a request is made for access to a public record, the records custodian must allow access as quickly as possible, but no later than the end of the third business day following the date of the request. Records must be provided in the format requested, when available.

If access to a public record is not granted immediately, the records custodian must explain why the record cannot be produced without delay and give the place and time the record will be made available (Section 610.023.3). There may be times when, for example, a request is made for an old record that is stored in a different location or will take time to research, locate or reproduce. In such instances, when reasonable cause for delay is explained, the period for producing the record may exceed three business days.

If a request for access is denied, the custodian shall provide, on request, the reasons for the denial, including the statute that authorizes the denial. The denial must be furnished to the requester within three business days after the request is received (Section 610.023.4).

**How much can a public governmental body charge for producing copies of public records, and can the records custodian require the person requesting the record to make copies?**

The amount to be charged for copies depends on the types of records to be

produced and the time and expenses associated with the duplication.

For paper copies that are 9 by 14 inches and smaller, the custodian may charge up to 10 cents per page. In addition, the custodian may charge for time spent duplicating the records and for research time spent fulfilling the request. The charges for time spent on duplication cannot exceed the average hourly rate of pay for clerical staff, and the charges for research cannot exceed the actual cost of research time (Section 610.026.1(1)).

For all other types of records, including paper larger than 9 by 14 inches, tapes, disks, pictures, maps and slides, the custodian may charge for the cost of the materials used for duplication and staff time, which cannot exceed the average rate of pay for the body's staff. Fees for maps, blueprints or plats requiring special expertise to duplicate may include the actual rate of pay for the trained personnel making the copies. In addition, if programming is required, fees may include the actual cost of the programming (Section 610.026.1(2)).

The public governmental body may waive or reduce its fees when it is in the public interest to do so.

Under Section 610.023.2, a public governmental body is required to make the body's public records "available for inspection and copying by the public." Therefore, the public governmental body may require requesters to photocopy for themselves records made available by the custodian.

**Do minutes retained in "draft" form have to be provided to the public within three business days of the request?**

Yes. A draft of minutes is a “public record” under Section 610.010(6) and must be provided as soon as possible and no later than the end of the third business day after the request is received (Section 610.023.3). A public body that provides draft minutes should inform the requestor that the minutes are in draft form and will not be “official” until approved at the next regularly scheduled meeting of that public body.

## **Sunshine Law violations**

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### **Who can bring an action charging a public governmental body or its members with a violation of the Sunshine Law?**

Section 610.027.1 provides that an action seeking judicial enforcement of the Sunshine Law may be brought by any aggrieved person, taxpayer, or citizen of this state, by the prosecuting attorney or by the Attorney General. The suit must be filed in the circuit court in the county where the public governmental body has its principal place of business.

### **How can a public governmental body, its members and employees demonstrate they have acted in compliance with the Sunshine Law?**

Under Section 610.027.2, once a party seeking judicial enforcement of the Sunshine Law has established the entity involved is a public governmental body and has held a closed meeting, record or vote, the burden is on the body and its members to demonstrate compliance with the Sunshine Law. To avoid penalties, the public governmental body should strictly comply with the Sunshine Law and carefully record its compliance. Thus, for example, the public governmental body should maintain in its records the notices of meetings posted in accordance with Section 610.020. Its minutes should reflect the reasons

why a meeting was held on less than 24 hours’ notice or at a time or place that was not reasonably convenient and accessible to the public (Section 610.020.3).

The minutes should also include the vote of each member of a public governmental body to close a meeting, vote or record and the specific statutory exception relied upon to close (Section 610.022.1). And during a closed session, copious notes of the discussion should be taken to demonstrate, if necessary, that the discussion was limited to the reason announced for closing the meeting.

Employees of public governmental bodies are subject to a slightly different standard. Under Section 610.028.2, public governmental bodies are required to establish and provide for public inspection a reasonable written policy concerning the release of information concerning any meeting, record or vote. Because an employee acting in compliance with this written policy will not be subject to civil liability, employees should carefully follow both the law itself and their employer’s policy.

### **What procedures may be followed if a member of a public body thinks a meeting, record or vote is closed in violation of the Sunshine Law?**

The member must state an objection at or before the time the vote on the improper motion is made, and the objection will be entered into the minutes. Any member making an objection will be allowed to continue to participate in the meeting, record or vote.

This objection, accompanied by a vote against closing the meeting, record or vote in question, acts as an absolute defense in any claim for violations of the Sunshine Law brought under Section 610.027 (Section 610.022.6).

**If a court finds a public governmental body has violated the Sunshine Law, what happens?**

Under Section 610.027.5, if a court finds that any provision of the Sunshine Law has been violated by a public governmental body, the court may void any action taken in violation of the law. But the court will do so only if it concludes the public interest in enforcing the Sunshine Law outweighs the public interest in allowing the action to stand.

**What other remedies exist when a public governmental body or its members violate the Sunshine Law?**

If a court finds that a public governmental body or its members have “knowingly” violated the Sunshine Law, it shall order the body or members to pay a civil fine of up to \$1,000. The court also may order the body or members to pay all costs incurred in the suit and reasonable attorney fees to any party successfully establishing a violation of the Sunshine Law (Section 610.027.3).

If a court finds that a public governmental body or its members have “purposely” violated the Sunshine Law, it shall order the body or its members to pay a civil fine of up to \$5,000. If the court finds a purposeful violation, it shall order the body or its members to pay all costs incurred in the suit and reasonable attorney fees to any party successfully establishing a violation of the Sunshine Law (Section 610.027.4).

The amount of penalties in all cases depends on the size of the jurisdiction, the seriousness of the offense and whether the governmental body or its members have previously violated the Sunshine Law.

**Has anyone been ordered to pay a fine or attorney fees?**

Yes. For example, in *Tipton v. Barton*, 747 S.W.2d 325 (Mo. App. E.D. 1988), upon finding a purposeful violation of the Sunshine Law, the court ordered an award of \$750 for attorney fees. Civil fines were ordered in *The Kansas City Star Company v. Shields*, 771 S.W.2d 101 (Mo. App. W.D. 1989). In *Charlier v. Corum*, 794 S.W.2d 676 (Mo. App. W.D. 1990), the court ordered payment of a civil fine and attorney fees of \$5,219.91.

## APPENDIX

**Note:** The 2009 Missouri General Assembly did not enact any changes to the following statutes.

### **Missouri Revised Statutes Chapter 168 Personnel — Teachers and Others**

#### **Section 168.071 Revocation, suspension or refusal of certificate or license, grounds--procedure--appeal.**

**168.071. 1.** The state board of education may refuse to issue or renew a certificate, or may, upon hearing, discipline the holder of a certificate of license to teach for the following causes:

- (1) A certificate holder or applicant for a certificate has pleaded to or been found guilty of a felony or crime involving moral turpitude under the laws of this state, any other state, of the United States, or any other country, whether or not sentence is imposed;
- (2) The certification was obtained through use of fraud, deception, misrepresentation or bribery;
- (3) There is evidence of incompetence, immorality, or neglect of duty by the certificate holder;
- (4) A certificate holder has been subject to disciplinary action relating to certification issued by another state, territory, federal agency, or country upon grounds for which discipline is authorized in this section; or
- (5) If charges are filed by the local board of education, based upon the annulment of a written contract with the local board of education, for reasons other than election to the general

assembly, without the consent of the majority of the members of the board that is a party to the contract.

**2.** A public school district may file charges seeking the discipline of a holder of a certificate of license to teach based upon any cause or combination of causes outlined in subsection 1 of this section, including annulment of a written contract. Charges shall be in writing, specify the basis for the charges, and be signed by the chief administrative officer of the district, or by the president of the board of education as authorized by a majority of the board of education. The board of education may also petition the office of the attorney general to file charges on behalf of the school district for any cause other than annulment of contract, with acceptance of the petition at the discretion of the attorney general.

**3.** The department of elementary and secondary education may file charges seeking the discipline of a holder of a certificate of license to teach based upon any cause or combination of causes outlined in subsection 1 of this section, other than annulment of contract. Charges shall be in writing, specify the basis for the charges, and be signed by legal counsel representing the department of elementary and secondary education.

**4.** If the underlying conduct or actions which are the basis for charges filed pursuant to this section are also the subject of a pending criminal charge against the person holding such certificate, the certificate holder may request, in writing, a delayed hearing on advice of counsel under the fifth amendment of the Constitution of the United States. Based upon such a request, no hearing shall be held until after a trial has been completed on this criminal charge.

**5.** The certificate holder shall be given not less than thirty days' notice of any hearing held pursuant to this section.

**6.** Other provisions of this section notwithstanding, the certificate of license to teach shall be revoked or, in the case of an applicant, a certificate shall not be issued, if the certificate holder or applicant has pleaded guilty to or been found guilty of any of the following offenses established pursuant to Missouri law or offenses of a similar nature established under the laws of any other state or of the United States, or any other country, whether or not the sentence is imposed:

- (1) Any dangerous felony as defined in section 556.061, RSMo, or murder in the first degree;
- (2) Any of the following sexual offenses: rape; statutory rape in the first degree; statutory rape in the second degree; sexual assault; forcible sodomy; statutory sodomy in the first degree; statutory sodomy in the second degree; child molestation in the first degree; child molestation in the second degree; deviate sexual assault; sexual misconduct involving a child; sexual misconduct in the first degree; sexual abuse; enticement of a child; or attempting to entice a child;
- (3) Any of the following offenses against the family and related offenses: incest; abandonment of child in the first degree; abandonment of child in the second degree; endangering the welfare of a child in the first degree; abuse of a child; child used in a sexual performance; promoting sexual performance by a child; or trafficking in children; and
- (4) Any of the following offenses involving child pornography and related offenses: promoting obscenity in the first degree; promoting obscen-

ity in the second degree when the penalty is enhanced to a class D felony; promoting child pornography in the first degree; promoting child pornography in the second degree; possession of child pornography in the first degree; possession of child pornography in the second degree; furnishing child pornography to a minor; furnishing pornographic materials to minors; or coercing acceptance of obscene material.

**7.** When a certificate holder pleads guilty or is found guilty of any offense that would authorize the state board of education to seek discipline against that holder's certificate of license to teach, the local board of education or the department of elementary and secondary education shall immediately provide written notice to the state board of education and the attorney general regarding the plea of guilty or finding of guilty.

**8.** The certificate holder whose certificate was revoked pursuant to subsection 6 of this section may appeal such revocation to the state board of education. Notice of this appeal must be received by the commissioner of education within ninety days of notice of revocation pursuant to this subsection. Failure of the certificate holder to notify the commissioner of the intent to appeal waives all rights to appeal the revocation. Upon notice of the certificate holder's intent to appeal, an appeal hearing shall be held by a hearing officer designated by the commissioner of education, with the final decision made by the state board of education, based upon the record of that hearing. The certificate holder shall be given not less than thirty days' notice of the hearing, and an opportunity to be heard by the hearing officer, together with witnesses.

**9.** In the case of any certificate holder who has surrendered or failed to renew his or her certificate of license to teach, the state board of education may refuse to issue or renew, or may suspend or revoke, such certificate for any of the reasons contained in this section.

**10.** In those cases where the charges filed pursuant to this section are based upon an allegation of misconduct involving a minor child, the hearing officer may accept into the record the sworn testimony of the minor child relating to the misconduct received in any court or administrative hearing.

**11.** Hearings, appeals or other matters involving certificate holders, licensees or applicants pursuant to this section may be informally resolved by consent agreement or agreed settlement or voluntary surrender of the certificate of license pursuant to the rules promulgated by the state board of education.

**12.** The final decision of the state board of education is subject to judicial review pursuant to sections 536.100 to 536.140, RSMo.

**13.** A certificate of license to teach to an individual who has been convicted of a felony or crime involving moral turpitude, whether or not sentence is imposed, shall be issued only upon motion of the state board of education adopted by a unanimous affirmative vote of those members present and voting.

## Teacher Tenure Act

### **Section 168.101 Employment of certificated teachers ineligible for permanent status under the teacher tenure act (all districts except metropolitan)**

**1.** In addition to the employment of teachers as provided in section 168.104, the school board or board of directors of a school district, except a metropolitan school district, may, at any regular or special meeting, contract and employ legally certificated teachers not employed as superintendent of the district and not eligible under section 168.104 to gain permanent status or tenure in the position held within the school system. The contract shall be made by the order of the board, shall specify the number of months the employee is to work and the wages per month to be paid, shall be signed by the employee and the president of the board, or a facsimile signature of the president may be affixed at his direction, and the contract shall be attested by the secretary of the board by signature or facsimile.

**2.** After the original employment of a certificated employee not employed as superintendent of the district under this section, his employment shall continue in the same staff position from year to year subject to the regulations hereinafter set forth.

**3.** Each school board having one or more certificated employees as described in subsection 1 of this section under contract shall notify each such certificated employee in writing concerning his reemployment in his present staff position or lack thereof on or before the 15th day of April of

the year in which the contract then in force expires. Failure on the part of a board to give the notice constitutes reemployment on the same terms and in the same staff position as those provided in the contract of the current fiscal year; and not later than the 15th day of May of the same year the board shall present a contract to each such certificated employee notified of reemployment by the district.

**4.** Any motion regarding reemployment of such certificated employee shall include only one person and a motion to reemploy shall be made in the positive sense and a majority of the elected members voting in the affirmative shall constitute reemployment.

**5.** Any such certificated employee not employed as superintendent of the district who receives a contract shall within 15 days thereafter present to the employing board a written acceptance or rejection of the employment tendered and his failure to present the acceptance within such time constitutes a rejection of the board's offer.

**6.** If such certificated employee has been reemployed five times within the district, the school board, if requested in writing by such certificated employee within 10 days after receipt of notice of demotion or lack of reemployment on the same terms and in the same staff position, shall make available in writing a statement of reasons for demotion or lack of reemployment within 10 days after receipt of the request. The board shall grant such certificated employee a hearing if requested in writing by him within 10 days after the receipt of statement of reasons, the hearing to be held within 10 days after the request therefor, and to be open at the request of the certificated employee. The certificated employee may have counsel at the hearing,

may testify and offer testimony of witnesses as well as other evidence sustaining his defense and may cross-examine adverse witnesses.

**7.** A contract between the board of education and such certificated employee may be terminated at any time by mutual consent of the certificated employee and the board.

**8.** This section shall not affect the employment or reemployment of the superintendent of schools by a board of education.

(L. 1973 H.B. 151 § 1, A.L. 1990 S.B. 740, A.L. 1992 S.B. 470 & 497)

## **Section 168.104** **Definitions**

**168.104.** The following words and phrases when used in sections 168.102 to 168.130, except in those instances where the context indicates otherwise, mean:

- (1) "Board of education" — the school board or board of directors of a school district, except a metropolitan school district, having general control of the affairs of the district;
- (2) "Demotion" — any reduction in salary or transfer to a position carrying a lower salary, except on request of a teacher, other than any change in salary applicable to all teachers or all teachers in a classification;
- (3) "Indefinite contract" — every contract heretofore or hereafter entered into between a school district and a permanent teacher;
- (4) "Permanent teacher" — any teacher who has been employed or who is hereafter employed as a teacher in the same school district for five successive years and who has continued or who thereafter continues to be employed as a teacher by the school

district or any supervisor of teachers who was employed as a teacher in the same school district for at least five successive years prior to becoming a supervisor of teachers and who continues thereafter to be employed as a certificated employee by the school district; except that, when a permanent teacher resigns or is permanently separated from employment by a school district, and is afterwards reemployed by the same school district, reemployment for the first school year does not constitute an indefinite contract but if he is employed for the succeeding year, the employment constitutes an indefinite contract; and except that any teacher employed under a part-time contract by a school district shall accrue credit toward permanent status on a prorated basis. Any permanent teacher who is promoted with his consent to a supervisory position including principal or assistant principal, or is first employed by a district in a supervisory position including principal or assistant principal, shall not have permanent status in such position but shall retain tenure in the position previously held within the district, or, after serving two years as principal or assistant principal, shall have tenure as a permanent teacher of that system;

(5) “Probationary teacher” — any teacher as herein defined who has been employed in the same school district for five successive years or less. In the case of any probationary teacher who has been employed in any other school system as a teacher for two or more years, the board of education shall waive one year of his probationary period;

- (6) “School district” — every school district in this state, except “metropolitan school district” as defined in section 162.571, RSMo;
- (7) “Teacher” — any employee of a school district, except a metropolitan school district, regularly required to be certified under laws relating to the certification of teachers, except superintendents and assistant superintendents but including certified teachers who teach at the pre-kindergarten level in a non-metropolitan public school within a pre-kindergarten in which no fees are charged to parents or guardians.

(L. 1969 p. 275 § 168.102, A.L. 1983 H.B. 815, A.L. 1990 S.B. 740)

**Section 168.106**  
**Indefinite contract, what affects**

**168.106.** The contract between a school district and a permanent teacher shall be known as an indefinite contract and shall continue in effect for an indefinite period, subject only to:

- (1) Compulsory or optional retirement when the teacher reaches the age of retirement provided by law, or regulation established by the local board of education;
- (2) Modification by a succeeding indefinite contract or contracts in the manner hereinafter provided;
- (3) The death of the teacher;
- (4) Resignation of the teacher with the written consent of the school board;
- (5) Termination by the board of education after a hearing as hereinafter provided; and
- (6) The revocation of the teacher’s certificate.

(L. 1969 p. 275 § 168.103)

## **Section 168.108**

### **Contract, form of — requirements**

**168.108. 1.** Every indefinite contract shall contain the following provisions in substantially the following form: “It is hereby agreed by and between ....., the teacher, and the Board of Education of ..... School District, the employer, that the teacher, beginning on the .... day of ....., 20..., shall serve in the employ of the Board of Education and its successors for a term of ..... months (the number of school months of the school year in the school district) for an annual compensation of \$ ....., to be paid to the teacher in equal installments according to local school board regulations less the contributions required by law.”

“It is further agreed by the parties hereto that this contract shall continue in force from year to year, until modified or terminated in accordance with the provisions of sections 168.102 to 168.130, RSMo, and any amendments thereto prior to the date of this contract.”

**2.** Every indefinite contract shall be made by the order of the board of education, shall be in writing and shall be signed by the permanent teacher and the president of the board of education, or a facsimile signature of the president may be affixed at his direction, and the contract shall be attested by the secretary of the board of education by signature or facsimile.

(L. 1969 p. 275 § 168.104, A.L. 1992 S.B. 470 & 497)

### **Section 168.110 Contract modification, when — what provisions**

**168.110.** The board of education of a school district may modify an indefinite

contract annually on or before the 15th day of May in the following particulars:

- (1) Determination of the date of beginning and length of the next school year;
- (2) Fixing the amount of annual compensation for the following school year as provided by the salary schedule adopted by the board of education applicable to all teachers.

The modifications shall be effective at the beginning of the next school year. All teachers affected by the modification shall be furnished written copies of the modifications within 30 days after their adoption by the board of education.

(L. 1969 p. 275 § 168.105, A.L. 1990 S.B. 740)

### **Section 168.112 Modification or termination, how**

168.112. An indefinite contract between a permanent teacher and a board of education may be terminated or modified at any time by the mutual consent of the parties thereto. Any teacher who desires to terminate his contract at the end of a school term shall give written notice of his intention to do so and the reasons therefor not later than June 1 of the year in which the term ends.

(L. 1969 p. 275 § 168.106, A.L. 1990 S.B. 740)

### **Section 168.114 Board may terminate, grounds for**

**168.114. 1.** An indefinite contract with a permanent teacher shall not be terminated by the board of education of a school district except for one or more of the following causes:

- (1) Physical or mental condition unfitting him to instruct or associate with children;

- (2) Immoral conduct;
- (3) Incompetency, inefficiency or insubordination in line of duty;
- (4) Willful or persistent violation of, or failure to obey, the school laws of the state or the published regulations of the board of education of the school district employing him;
- (5) Excessive or unreasonable absence from performance of duties; or
- (6) Conviction of a felony or a crime involving moral turpitude.

**2.** In determining the professional competency of or efficiency of a permanent teacher, consideration should be given to regular and special evaluation reports prepared in accordance with the policy of the employing school district and to any written standards of performance which may have been adopted by the school board.

(L. 1969 p. 275 § 168.107)

**Section 168.116**  
**Termination by board — notice — charges**

**168.116. 1.** The indefinite contract of a permanent teacher may not be terminated by the board of education until after service upon the teacher of written charges specifying with particularity the grounds alleged to exist for termination of such contract, notice of a hearing on charges and a hearing by the board of education on charges if requested by the teacher.

**2.** At least 30 days before service of notice of charges of incompetency, inefficiency, or insubordination in line of duty, the teacher shall be given by the school board or the superintendent of schools warning in writing, stating specifically the causes which, if not removed, may result in charges. Thereafter, both the superintendent, or

his designated representative, and the teacher shall meet and confer in an effort to resolve the matter.

**3.** Notice of a hearing upon charges, together with a copy of charges, shall be served on the permanent teacher at least 20 days prior to the date of the hearing. The notice and copy of the charges may be served upon the teacher by certified mail with personal delivery addressed to him at his last known address. If the teacher or his agent does not within 10 days after receipt of the notice request a hearing on the charges, the board of education may, by a majority vote, order the contract of the teacher terminated. If a hearing is requested by either the teacher or the board of education, it shall take place not less than 20 nor more than 30 days after notice of a hearing has been furnished the permanent teacher.

**4.** On the filing of charges in accordance with this section, the board of education may suspend the teacher from active performance of duty until a decision is rendered by the board of education but the teacher's salary shall be continued during such suspension. If a decision to terminate a teacher's employment by the board of education is appealed, and the decision is reversed, the teacher shall be paid his salary lost during the pending of the appeal.

(L. 1969 p. 275 § 168.108)

**Section 168.118**  
**Termination hearing, procedure, costs**

**168.118.** If a hearing is requested on the termination of an indefinite contract it shall be conducted by the board of education in accordance with the following provisions:

- (1) The hearing shall be public;

- (2) Both the teacher and the person filing charges may be represented by counsel who may cross-examine witnesses;
- (3) Testimony at hearings shall be on oath or affirmation administered by the president of the board of education, who for the purpose of hearings held under sections 168.102 to 168.130 shall have the authority to administer oaths;
- (4) The school board shall have the power to subpoena witnesses and documentary evidence as provided in section 536.077, RSMo, and shall do so on its own motion or at the request of the teacher against whom charges have been made. The school board shall hear testimony of all witnesses named by the teacher; however, the school board may limit the number of witnesses to be subpoenaed on behalf of the teacher to not more than 10;
- (5) The board of education shall employ a stenographer who shall make a full record of the proceedings of the hearings and who shall, within 10 days after the conclusion thereof, furnish the board of education and the teacher, at no cost to the teacher, with a copy of the transcript of the record, which shall be certified by the stenographer to be complete and correct. The transcript shall not be open to public inspection, unless the hearing on the termination of the contract was an open hearing or if an appeal from the decision of the board is taken by the teacher;
- (6) All costs of the hearing shall be paid by the school board except the cost of counsel for the teacher;
- (7) The decision of the board of education resulting in the demotion of a permanent teacher or the termination of an indefinite contract shall

be by a majority vote of the members of the board of education and the decision shall be made within seven days after the transcript is furnished them. A written copy of the decision shall be furnished the teacher within three days thereafter.

(L. 1969 p. 275 § 168.109)

### **Section 168.120 Appeal by teacher, procedure**

**168.120. 1.** The teacher shall have the right to appeal from the decision of the board of education to the circuit court of the county where the employing school district is located. The appeal shall be taken within 15 days after service of a copy of the decision of the board of education upon the teacher, and if an appeal is not taken within the time, then the decision of the board of education shall become final.

**2.** The appeal may be taken by filing notice of appeal with the board of education, whereupon the board of education, under its certificate, shall forward to the court all documents and papers on file in the matter, together with a transcript of the evidence, the findings and the decision of the board of education, which shall thereupon become the record of the cause. Such appeal shall be heard as provided in chapter 536, RSMo.

**3.** Appeals from the circuit court shall be allowed in the same manner as in civil actions, except that the original transcript prepared and filed in the circuit court by the board of education, together with a transcript of the proceedings had in the circuit court, shall constitute the transcript on appeal in the appellate court. The board of education shall make available, to the parties, copies of any transcript prepared and

filed by it in the circuit court and upon final determination of the cause in the appellate court the original record of the board of education filed as a part of the transcript on appeal shall be certified back to the board of education by the appellate court. In all appeals from the board of education or circuit court the costs thereof shall be assessed against the losing party as provided by law in civil cases. All appeals to the circuit court and appellate courts shall have precedence over all cases except election contests.

**4.** If the circuit court finds for the teacher, he shall be restored to permanent teacher status and shall receive compensation for the period during which he may have been suspended from work, and such other relief as may be granted by the court.

(L. 1969 p. 275 § 168.110)

### **Section 168.122** **Leaves of absence, board may establish policy — retention of permanent status**

**168.122.** A board of education may establish policies for granting leave of absence including sabbatical leave, maternity leave, sick leave, and military leave. The board of education of a school district may, upon the written request of a teacher, and for good cause shown, grant a leave of absence or place him on a part-time teaching schedule for a period of one year, subject to renewal from year to year. Leaves and military service shall not be counted as continuous full-time service in computing tenure but shall not impair the tenure previously acquired by teacher under sections 168.102 to 168.130 nor affect any credit toward tenure previously earned. Any teacher under sections 168.102 to 168.130 who is called into active military service with the armed forces of the United States is eligible

for reinstatement upon his discharge from said service without loss of tenure. Any permanent teacher employed on a part-time basis, whether at his request or not, shall retain permanent status. Any probationary teacher employed on a part-time basis, whether at his request or not, shall retain all credit earned toward permanent status and shall continue to earn credit on a pro rata basis toward permanent status.

(L. 1969 p. 275 § 168.111, A.L. 1990 S.B. 740)

### **Section 168.124** **Board may place on leave — provisions governing**

**168.124. 1.** The board of education of a school district may place on leave of absence as many teachers as may be necessary because of a decrease in pupil enrollment, school district reorganization or the financial condition of the school district. In placing teachers on leave, the board of education shall be governed by the following provisions:

- (1) No permanent teacher shall be placed on leave of absence while probationary teachers are retained in positions for which a permanent teacher is qualified;
- (2) Permanent teachers shall be retained on the basis of performance-based evaluations and seniority (however, seniority shall not be controlling) within the field of specialization;
- (3) Permanent teachers shall be reinstated to the positions from which they have been given leaves of absence, or if not available, to positions requiring like training and experience, or to other positions in the school system for which they are qualified by training and experience;
- (4) No appointment of new teachers shall be made while there are avail-

able teachers on unrequested leave of absence who are properly qualified to fill such vacancies;

- (5) A teacher placed on leave of absence may engage in teaching or another occupation during the period of such leave;
- (6) The leave of absence shall not impair the tenure of a teacher;
- (7) The leave of absence shall continue for a period of not more than three years unless extended by the board.

**2.** Should a board of education choose to utilize the mechanism for reducing teacher forces as provided in subsection 1 of this section in an attempt to manage adverse financial conditions caused at least partially by a withholding of, or a decrease or less than expected increase in, education appropriations, then the district additionally shall follow the provisions of subsection 3 of this section.

**3.** If a school district has an unrestricted combined ending fund balance of more than ten percent of current expenditures in its teachers' and incidental funds, and in the subsequent fiscal year such district, because of state appropriations, places a contracted teacher on leave of absence after forty days subsequent to the governor signing the elementary and secondary education appropriation bill, the district shall pay the affected teacher the greater of his or her salary for any days worked under the contract, or a sum equal to three thousand dollars.

**Section 168.126**  
**Probationary teachers, how terminated — notice, contents — reemployed, how**

**168.126. 1.** A board of education at a regular or special meeting may contract

with and employ by a majority vote legally qualified probationary teachers for the school district. The contract shall be made by order of the board; shall specify the number of months school is to be taught and the wages per month to be paid; shall be signed by the probationary teacher and the president of the board, or a facsimile signature of the president may be affixed at his discretion; and the contract shall be attested by the secretary of the board by signature or facsimile. The board shall not employ one of its members as a teacher; nor shall any person be employed as a teacher who is related within the fourth degree to any board member, either by consanguinity or affinity, where the vote of the board member is necessary to the selection of the person.

**2.** If in the opinion of the board of education any probationary teacher has been doing unsatisfactory work, the board of education, through its authorized administrative representative, shall provide the teacher with a written statement definitely setting forth his alleged incompetency and specifying the nature thereof, in order to furnish the teacher an opportunity to correct his fault and overcome his incompetency. If improvement satisfactory to the board of education has not been made within ninety days of the receipt of the notification, the board of education may terminate the employment of the probationary teacher immediately or at the end of the school year. Any motion to terminate the employment of a probationary teacher shall include only one person and must be approved by a majority of the members of the board of education. A tie vote thereon constitutes termination. On or before the fifteenth day of April in each school year, the board of education shall notify in

writing a probationary teacher who will not be retained by the school district of the termination of his employment. Upon request, the notice shall contain a concise statement of the reason or reasons the employment of the probationary teacher is being terminated. If the reason for the termination is due to a decrease in pupil enrollment, school district reorganization, or the financial condition of the school district, then the district shall in all cases issue notice to the teacher expressly declaring such as the reason for such termination. Nothing contained in this section shall give rise to a cause of action not currently cognizant at law by a probationary teacher for any reason given in said writing so long as the board issues the letter in good faith without malice, but an action for actual damages may be maintained by any person for the deprivation of a right conferred by this act.

**3.** Any probationary teacher who is not notified of the termination of his employment shall be deemed to have been appointed for the next school year, under the terms of the contract for the preceding year. A probationary teacher who is informed of reemployment by written notice shall be tendered a contract on or before the fifteenth day of May, and shall within fifteen days thereafter present to the employing board of education a written acceptance or rejection of the employment tendered, and failure of such teachers to present the acceptance within such time constitutes a rejection of the board's offer. A contract between a probationary teacher and a board of education may be terminated or modified at any time by the mutual consent of the parties thereto.

## **Section 168.128** **Teacher records, how maintained** **— evaluations, how performed** **and maintained**

**168.128.** The board of education of each school district shall maintain records showing periods of service, dates of appointment, and other necessary information for the enforcement of sections 168.102 to 168.130. In addition, the board of education of each school district shall cause a comprehensive, performance-based evaluation for each teacher employed by the district. Such evaluations shall be ongoing and of sufficient specificity and frequency to provide for demonstrated standards of competency and academic ability. All evaluations shall be maintained in the teacher's personnel file at the office of the board of education. A copy of each evaluation shall be provided to the teacher and appropriate administrator. The state Department of Elementary and Secondary Education shall provide suggested procedures for such an evaluation.

(L. 1969 p. 275 § 168.114, A.L. 1983 H.B. 38 & 783)

## **Metropolitan School Information** **St. Louis City only:**

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Missouri Revised Statutes §§ 168.221 et seq. You may find the entire text of Missouri statutes at [www.moga.mo.gov](http://www.moga.mo.gov).



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