

STATE OF TENNESSEE
OFFICE OF THE
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Opinion No. 04-004

Termination of teachers in “corrective action” schools under the federal No Child Left Behind Act

QUESTION

Does the federal No Child Left Behind Act of 2001 (“NCLB”) supersede state law or the negotiated contract between teachers and a Local Education Agency (LEA) when it comes to removing faculty from “corrective action” schools? Does the federal legislation give an LEA the authority to dismiss bad teachers without going through the long process of documentation in those schools that are in “corrective action”?

OPINION

The NCLB does not affect rights of teachers under state law or collective bargaining agreements.

ANALYSIS

The federal No Child Left Behind Act of 2001¹ requires states to determine if each school and Local Education Agency (“LEA”) make adequate yearly progress. If a school fails to make adequate progress for several consecutive years, the school is placed on probation and may subsequently be subject to a corrective action plan composed by the LEA.² Consistent with state law, the LEA must implement one of the following “alternative governance arrangements” for the school: reopen it as a public charter school, replace all or most of the staff (including the principal) “who are relevant to the failure to make adequate yearly progress,” turn operation of the school over to the State or contract with a private entity to manage the school or make “[a]ny other major restructuring of the school's governance arrangement that makes fundamental reforms”³

¹PL 107-110, January 8, 2002, 115 Stat 1425.

²20 U.S.C.A. § 6316 (2003).

³20 U.S.C.A. § 6316 (2003).

When removing teachers from schools failing to make adequate yearly progress, including teachers in schools targeted for or undergoing “corrective action,” state or LEA officials are not authorized to waive any of the procedural protections provided by state law or collective bargaining agreements. State law does not provide exceptions to the laws governing termination of teacher contracts⁴ or collective bargaining agreements.⁵ And the NCLB specifically states:

Nothing in this section shall be construed to alter or otherwise affect the rights, remedies, and procedures afforded school or school district employees under Federal, State, or local laws (including applicable regulations or court orders) or under the terms of collective bargaining agreements, memoranda of understanding, or other agreements between such employees and their employers.⁶

Therefore, it is the opinion of this office that teachers in “corrective action” schools may not be removed without complying with all of the notice, hearing and other procedural rights afforded teachers by state law or collective bargaining agreements.

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⁴TENN. CODE ANN. § 49-5-409 (termination of teacher contracts); TENN. CODE ANN. §§ 49-5-511-513 (notice requirement, teachers’ right to a hearing and judicial review of termination decisions).

⁵TENN. CODE ANN. § 49-5-601 *et seq.*

⁶20 U.S.C.A. § 6316 (2003).

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Requested by:

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