

## **TEACHERS' TENURE ACT**

**(This copy of the Teachers' Tenure Act was compiled from the Michigan Legislature Website – Michigan Compiled Laws Complete Through PA Act 257-264 & included 266, 268, 270-272, 274-282, 284-291, 293-296, 299-301, 303-304 & 315-323 of 2011.)**

### **Act 4 of 1937 (Ex. Sess.)**

AN ACT relative to continuing tenure of office of certificated teachers in public educational institutions; to provide for probationary periods; to regulate discharges or demotions; to provide for resignations and leaves of absence; to create a state tenure commission and to prescribe the powers and duties thereof; and to prescribe penalties for violation of the provisions of this act.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- Am. 1964, Act 2, Eff. Aug. 28, 1964

### **Article I DEFINITIONS.**

#### **38.71 "Teacher" defined.**

Sec. 1.

(1) The term "teacher" as used in this act means a certificated individual employed for a full school year by any board of education or controlling board.

(2) An individual who is not certificated but is employed for a full school year pursuant to section 1233b of the revised school code, Act No. 451 of the Public Acts of 1976, being section 380.1233b of the Michigan Compiled Laws, or is employed pursuant to an annual vocational authorization or a temporary approval, as defined in state board rule, is considered to be a teacher for the purpose of serving the probationary period under article II, but such an individual is not considered a teacher for the purpose of continuing tenure under article III until he or she becomes certificated.

(3) An individual employed as a teacher in a public school academy established under Act No. 451 of the Public Acts of 1976, being sections 380.1 to 380.1852 of the Michigan Compiled Laws, is not considered a teacher during that employment for the purpose of continuing tenure under article III. However, an individual described in section 1(4) of article III is a teacher for the purpose of retaining continuing tenure as described in that section.

(4) Teacher does not include an individual whose teaching certificate has expired or has been suspended or revoked.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.71 ;-- Am. 1967, Act 216, Imd. Eff. July 10, 1967 ;-- Am. 1993, Act 59, Imd. Eff. June 11, 1993 ;-- Am. 1993, Act 337, Imd. Eff. Dec. 31, 1993 ;-- Am. 1996, Act 282, Imd. Eff. June 17, 1996

### **38.72 "Certificated" defined.**

#### **Sec. 2.**

The term "certificated" means holding a valid teaching certificate, as defined by the state board of education. For the purpose of this section, an individual is considered to be holding a valid teaching certificate if the individual has on file with his or her employing school district either an appropriate teaching certificate issued by the state board of education or, if the individual's application for a teaching certificate has not been confirmed or rejected by the state board, written evidence from the individual's teacher education college that he or she meets the requirements described in section 1535 of the school code of 1976, Act No. 451 of the Public Acts of 1976, being section 380.1535 of the Michigan Compiled Laws.

### **38.73 "Controlling board" defined.**

#### **Sec. 3.**

As used in this act, "controlling board" means all boards having the care, management, or control over public school districts and public educational institutions other than a public school academy established under the revised school code, Act No. 451 of the Public Acts of 1976, being sections 380.1 to 380.1852 of the Michigan Compiled Laws.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.73 ;-- Am. 1993, Act 337, Imd. Eff. Dec. 31, 1993 ;-- Am. 1996, Act 282, Imd. Eff. June 17, 1996

### **38.74 "Demote" defined.**

#### **Sec. 4.**

The word "demote" means to suspend without pay for 15 or more consecutive days or reduce compensation for a particular school year by more than an amount equivalent to 30 days' compensation or to transfer to a position carrying a lower salary. However, demote does not include discontinuance of salary pursuant to section 3 of article IV, the discontinuance or reduction of performance-based compensation paid

pursuant to section 1250 of the revised school code, 1976 PA 451, MCL 380.1250, or a reduction in personnel, including, but not limited to, a reduction in workweeks or workdays.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.74 ;-- Am. 1993, Act 60, Eff. Oct. 1, 1993 ;-- Am. 2005, Act 124, Eff. Jan. 1, 2006 ;-- Am. 2011, Act 100, Imd. Eff. July 19, 2011

### **38.75 School year; definition.**

Sec. 5.

The "school year" shall be defined as the legal school year at the time and place where service was rendered.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.75

## **Article II PROBATIONARY PERIOD.**

### **38.81 Teachers' probationary period; continuing tenure.**

Sec. 1.

(1) Subject to subsections (2) and (3) and section 3b of this article, a teacher is in a probationary period during his or her first 5 full school years of employment.

(2) Subject to section 3b of this article, a teacher under contract but not on continuing tenure as of the effective date of the 2011 amendatory act that amended this subsection is in a probationary period during his or her first 4 full school years of employment.

(3) A teacher on continuing tenure as of the effective date of the 2011 amendatory act that amended this subsection continues to be on continuing tenure even if the teacher has not served for at least 5 full school years of employment.

### **38.82 Probationary period.**

Sec. 2.

A teacher shall not be required to serve more than 1 probationary period in any 1 school district or institution.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.82 ;-- Am. 1993, Act 59, Imd. Eff. June 11, 1993 ;-- Am. 2011, Act 101, Imd. Eff. July 19, 2011

### **38.82a Probationary teacher rated as effective or highly effective; displacement.**

Sec. 2a.

A probationary teacher who is rated as effective or highly effective on his or her most recent annual year-end performance evaluation under section 1249 of the revised school code, 1976 PA 451, MCL 380.1249, is not subject to being displaced by a teacher on continuing tenure solely because the other teacher has continuing tenure.

**History:** Add. 2011, Act 101, Imd. Eff. July 19, 2011

### **38.83 Controlling board; statements of performance and notices of dismissal; issuance to probationary teachers.**

Sec. 3.

(1) Before the end of each school year, the controlling board shall provide the probationary teacher with a definite written statement as to whether or not his or her work has been effective. Subject to subsection (2), a probationary teacher or teacher not on continuing contract shall be employed for the ensuing year unless notified in writing at least 15 days before the end of the school year that his or her services will be discontinued.

(2) A teacher who is in a probationary period may be dismissed from his or her employment by the controlling board at any time.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.83 ;-- Am. 1967, Act 216, Imd. Eff. July 10, 1967 ;-- Am. 2011, Act 101, Imd. Eff. July 19, 2011

**38.83a Teacher in probationary period; individualized development plan; performance evaluation; basis.**

Sec. 3a.

The controlling board of a probationary teacher's employing school district shall ensure that the teacher is provided with an individualized development plan developed by appropriate administrative personnel in consultation with the individual teacher and that the teacher is provided with at least an annual year-end performance evaluation each year during the teacher's probationary period. The annual year-end performance evaluation shall be based on classroom observations and shall include at least an assessment of the teacher's progress in meeting the goals of his or her individualized development plan. The controlling board shall determine the format and number of the classroom observations in consultation with teachers and school administrators. A performance evaluation shall be conducted in accordance with section 1249 of the revised school code, 1976 PA 451, MCL 380.1249.

**History:** Add. 1993, Act 59, Imd. Eff. June 11, 1993 ;-- Am. 2011, Act 101, Imd. Eff. July 19, 2011

**38.83b Successful completion of probationary period; conditions.**

Sec. 3b.

(1) Except as otherwise provided in subsection (2), a teacher shall not be considered to have successfully completed the probationary period unless the teacher has been rated as effective or highly effective on his or her 3 most recent annual year-end performance evaluations under section 1249 of the revised school code, 1976 PA 451, MCL 380.1249, and has completed at least 5 full school years of employment in a probationary period.

(2) If a teacher has been rated as highly effective on 3 consecutive annual year-end performance evaluations under section 1249 of the revised school code, 1976 PA 451, MCL 380.1249, and has completed at least 4 full school years of employment in a probationary period, the teacher shall be considered to have successfully completed the probationary period.

**History:** Add. 2011, Act 101, Imd. Eff. July 19, 2011

**38.84 Probationary period; portions of act inapplicable.**

Sec. 4.

Articles 4, 5 and 6 shall not apply to any teacher deemed to be in a period of probation.

**History:** Add. 1963, Act 242, Eff. Sept. 6, 1963

**Article III  
CONTINUING TENURE.**

**38.91 Teacher on continuing tenure; program operated by consortium of districts; teacher employed in public school academy; adult education; contracts of employment in other than classroom; salary; extra duty for extra pay.**

Sec. 1.

(1) After the satisfactory completion of the probationary period, a teacher is considered to be on continuing tenure under this act. A teacher on continuing tenure shall be employed continuously by the controlling board under which the probationary period has been completed and shall not be dismissed or demoted except as specified in this act. Continuing tenure is held only in accordance with this act.

(2) If a teacher employed in a program operated by a consortium of school districts was previously on continuing tenure in a school district that participates in the consortium, the teacher shall be considered to be on continuing tenure only in that school district.

(3) If a teacher employed in a program operated by a consortium of school districts was not previously on continuing tenure in a school district that participates in the consortium and satisfactorily completes the probationary period, the teacher shall be considered to be on continuing tenure only in the school district that is the fiscal agent for the consortium. However, if there is a written agreement between the teacher and another participating school district that provides that the teacher will have continuing tenure in that school district, the teacher shall be considered to be on continuing tenure only in that school district and shall not be considered to be on continuing tenure in the school district that is the fiscal agent for the consortium.

(4) If a teacher employed in a public school academy established under the revised school code, 1976 PA 451, MCL 380.1 to 380.1852, is on leave of absence from a school district and was on continuing tenure in the school district at the time he or she began the leave of absence, the teacher retains continuing tenure in that school district during the period he or she is employed in the public school academy.

(5) If a teacher satisfactorily completes the probationary period as an adult education teacher, the teacher shall be considered to be on continuing tenure in the school district only for adult education and shall not by virtue of completing the probationary period as an adult education teacher be considered to be on continuing tenure in the school district for elementary and secondary education.

(6) If a teacher satisfactorily completes the probationary period as an elementary or secondary education teacher, the teacher shall be considered to be on continuing tenure in the school district only for elementary and secondary education and shall not by virtue of completing the probationary period as an elementary or secondary education teacher be considered to be on continuing tenure in the school district for adult education.

(7) For a teacher employed in a capacity other than as a classroom teacher, including but not limited to, a superintendent, assistant superintendent, principal, department head or director of curriculum, under a contract of employment made with the teacher after the completion of the probationary period, a controlling board shall not provide in the contract of employment that the teacher will be considered to be granted continuing tenure in that other capacity by virtue of the contract of employment. Such a teacher shall be considered to have been granted continuing tenure only as an active classroom teacher in the school district. Upon the termination of such a contract of employment, if the controlling board does not reemploy the teacher under contract in the capacity covered by the contract, the teacher shall be continuously employed by the controlling board as an active classroom teacher. Failure of a controlling board to reemploy a teacher in any such capacity upon the termination of any such contract of employment described in this subsection shall not be considered to be a demotion under this act. The salary in the position to which the teacher is assigned shall be the same as if the teacher had been continuously employed as an active classroom teacher.

(8) Continuing tenure does not apply to an annual assignment of extra duty for extra pay.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- Am. 1941, Act 119, Imd. Eff. May 23, 1941 ;-- CL 1948, 35.91 ;-- Am. 1963, Act 242, Eff. Sept. 6, 1963 ;-- Am. 1993, Act 59, Imd. Eff. June 11, 1993 ;-- Am. 1993, Act 337, Imd. Eff. Dec. 31, 1993 ;-- Am. 1996, Act 282, Imd. Eff. June 17, 1996 ;-- Am. 2011, Act 101, Imd. Eff. July 19, 2011

**38.92 Teacher on continuing tenure; employment by another controlling board.**

Sec. 2.

If a teacher on continuing tenure is employed by another controlling board, the teacher is not subject to another probationary period of more than 2 years beginning with the date of employment, and may at the option of the controlling board be placed immediately on continuing tenure. A notice provided under section 3 of article 2 shall be given not later than 60 days before the completion of the probationary period. If a teacher on continuing tenure becomes an employee of another controlling board as a result of school district annexation, consolidation or other form of school district reorganization, the teacher shall be placed on continuing tenure within 30 days unless the controlling board, by a 2/3 vote on an individual basis, places the teacher on not more than 2 years' probation. However, if such a teacher is under contract but not on continuing tenure with the employing board as of the effective date of the amendatory act that added this sentence, the teacher is not subject to another probationary period of more than 1 year beginning with the date of employment.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.92 ;-- Am. 1967, Act 216, Imd. Eff. July 10, 1967 ;-- Am. 1993, Act 59, Imd. Eff. June 11, 1993

**38.93 Teacher on continuing tenure; annual year-end performance evaluation; individualized development plan.**

Sec. 3.

The controlling board of the school district employing a teacher on continuing tenure shall ensure that the teacher is provided with an annual year-end performance evaluation in accordance with section 1249 of the revised school code, 1976 PA 451, MCL 380.1249. If the teacher has received a rating of ineffective or minimally effective on an annual year-end performance evaluation, the school district shall provide the teacher with an individualized development plan developed by appropriate administrative personnel in consultation with the individual teacher. The individualized development plan shall require the teacher to make progress toward individual development goals within a specified time period, not to exceed 180 days. The annual year-end performance evaluation shall be based on multiple classroom observations conducted during the period covered by the evaluation and shall include, in addition to the factors required under section 1249 of the revised school code, 1976 PA 451, MCL 380.1249, at least an assessment of the teacher's progress in meeting the goals of his or her individualized

development plan. The controlling board shall determine the format and number of the classroom observations in consultation with teachers and school administrators.

**History:** Add. 1993, Act 59, Imd. Eff. June 11, 1993 ;-- Am. 2011, Act 101, Imd. Eff. July 19, 2011

#### **Article IV DISCHARGE, DEMOTION OR RETIREMENT.**

##### **38.101 Teacher on continuing tenure; discharge, demotion, or retirement; continuation of contracts of teachers over retirement age.**

Sec. 1.

(1) Except as otherwise provided in section 1a of this article, discharge or demotion of a teacher on continuing tenure may be made only for a reason that is not arbitrary or capricious and only as provided in this act.

(2) This act does not prevent any controlling board from establishing a reasonable policy for retirement to apply equally to all teachers who are eligible for retirement under the public school employees retirement act of 1979, 1980 PA 300, MCL 38.1301 to 38.1437, or, having established a reasonable retirement age policy, from temporarily continuing on a year-to-year basis on criteria equally applied to all teachers the contract of any teacher whom the controlling board might wish to retain beyond the established retirement age for the benefit of the school system.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- Am. 1941, Act 119, Imd. Eff. May 23, 1941 ;-- CL 1948, 38.101 ;-- Am. 1966, Act 15, Imd. Eff. Apr. 6, 1966 ;-- Am. 1993, Act 60, Eff. Oct. 1, 1993 ;-- Am. 2005, Act 136, Eff. Jan. 1, 2006 ;-- Am. 2011, Act 100, Imd. Eff. July 19, 2011

##### **38.101a Teacher rights subject to MCL 380.1230d and 380.1535a.**

Sec. 1a.

The rights of a teacher on continuing tenure under this article are subject to sections 1230d(4) and 1535a(4) and (5) of the revised school code, 1976 PA 451, MCL 380.1230d and 380.1535a. For the purposes of this article, a conviction of a violation of section 1230d of the revised school code, 1976 PA 451, MCL 380.1230d, or a violation of 1 of the crimes listed in section 1535a(1) of the revised school code, 1976 PA 451, MCL 380.1535a, is

considered to be reasonably and adversely related to the ability of the person to serve in an elementary or secondary school and is sufficient grounds to support the discharge or demotion of a teacher on continuing tenure.

**History:** Add. 2005, Act 124, Eff. Jan. 1, 2006

**38.102 Charges against teacher; filing with controlling board; decision to proceed upon charges; written statement of charges and teacher's rights.**

Sec. 2.

All charges against a teacher shall be made in writing, signed by the person making the charges, and filed with the secretary, clerk, or other designated officer of the controlling board, and a copy of the charges shall be provided to the teacher. The charges shall specify a proposed outcome of either discharge or a specific demotion of the teacher. The controlling board shall decide whether or not to proceed upon the charges, or may modify the charges and decide to proceed upon the charges as modified, not later than 10 days after the charges are filed with the controlling board. A decision to proceed upon the charges shall not be made except by a majority vote of the controlling board and shall be reduced to writing. The controlling board, if it decides to proceed upon the charges, shall furnish the teacher not later than 5 days after deciding to proceed upon the charges with the written decision to proceed upon the charges, a written statement of the charges and a statement of the teacher's rights under this article.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.102 ;-- Am. 1967, Act 216, Imd. Eff. July 10, 1967 ;-- Am. 1993, Act 60, Eff. Oct. 1, 1993

**38.103 Suspension of teacher pending certain conditions; compensation.**

Sec. 3.

(1) On the filing of charges in accordance with this article, the controlling board may suspend the accused teacher from active performance of duty until 1 of the following occurs:

(a) The teacher fails to contest the decision to proceed upon the charges within the time period specified in section 4(1) of this article.

(b) A preliminary decision and order discharging or demoting the teacher is issued by the administrative law judge under section 4(5)(i) of this article.

(c) If the preliminary decision and order is to reinstate the teacher, a final decision and order is rendered by the tenure commission under section 4(5)(m) of this article.

(2) Except as otherwise provided in subsections (3) and (4), if a teacher is suspended under subsection (1), the teacher's salary shall continue during the suspension.

(3) If criminal charges have been filed against a teacher, a controlling board may place the teacher's salary in an escrow account during a suspension under subsection (1). Before placing the teacher's salary in an escrow account as described in this subsection, the controlling board shall provide to the teacher notice of the charges, an explanation of the employer's evidence, and an opportunity for the teacher to respond, either in writing or in person. Health or life insurance benefits, or both, may be continued during the suspension at the option of the controlling board. If the administrative law judge issues a preliminary decision and order under section 4(5)(i) of this article to reinstate the teacher or for payment for salary lost by the teacher during the suspension, the controlling board shall release the money in the escrow account to the teacher to the extent necessary to effectuate the order. If the teacher fails to timely contest the decision to proceed upon the charges or if the administrative law judge issues a preliminary decision and order under section 4(5)(i) of this article discharging or demoting the teacher, the controlling board is entitled to the money in the escrow account.

(4) If a teacher who is suspended under subsection (1) is convicted of a felony that is not a listed offense or of a misdemeanor that is a listed offense, the controlling board may discontinue the teacher's salary effective upon the date of the conviction. If the teacher is convicted of a felony that is a listed offense, the controlling board shall discontinue the teacher's salary effective upon the date of conviction. As used in this subsection, "listed offense" means that term as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

(5) If a preliminary decision and order discharging a teacher is issued by the administrative law judge and the tenure commission subsequently reverses the preliminary decision and order of the administrative law judge, the tenure commission may order back pay.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.103 ;-- Am. 1993, Act 60, Eff. Oct. 1, 1993 ;-- Am. 2005, Act 124, Eff. Jan. 1, 2006 ;-- Am. 2011, Act 100, Imd. Eff. July 19, 2011

**38.104 Decision to proceed upon charges; appeal with tenure commission; filing; notice; conduct of hearing; dismissal of appeal or denial of discharge or demotion; appeal to court of appeals.**

Sec. 4.

(1) A teacher on continuing tenure may contest the controlling board's decision to proceed upon the charges against the teacher by filing a claim of appeal with the tenure commission and serving a copy of the claim of appeal on the controlling board not later than 20 days after receipt of the controlling board's decision. The controlling board shall file its answer with the tenure commission and serve a copy of the answer on the teacher not later than 10 days after service of the claim of appeal. If the teacher does not contest the controlling board's decision in the time and manner specified in this subsection, the discharge or demotion specified in the charges takes effect and the teacher shall be considered to have waived any right to contest the discharge or demotion under this act.

(2) An administrative law judge described in subsection (3) shall furnish to each party without undue delay a notice of hearing fixing the date and place of the hearing. The hearing date shall not be less than 10 days after the date the notice of hearing is furnished and shall not be more than 45 days after service of the controlling board's answer unless the tenure commission grants a delay for good cause shown by the teacher or controlling board.

(3) The hearing shall be conducted by an administrative law judge who is an attorney licensed to practice law in this state and is employed by the department of education. An administrative law judge who conducts hearings under this section shall not advise the tenure commission or otherwise participate in a tenure commission review of an administrative law judge's preliminary decision and order under this section.

(4) Except as otherwise provided in this section, the hearing shall be conducted in accordance with chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287, and in accordance with rules promulgated by the tenure commission.

(5) The hearing and tenure commission review shall be conducted in accordance with the following:

(a) The hearing shall be public or private at the option of the teacher.

(b) The hearing shall be held at a convenient place in the county in which all or a portion of the school district is located or, if mutually agreed by the parties, at the tenure commission offices in Lansing. The administrative law judge's necessary travel expenses associated with conducting the hearing outside Lansing shall be borne equally by the tenure commission and the controlling board.

- (c) Both the teacher and the controlling board may be represented by legal counsel.
- (d) Testimony at the hearing shall be on oath or affirmation.
- (e) A stenographer shall make a full record of the proceedings of the hearing. The cost of employing the stenographer and of providing the record shall be borne equally by the tenure commission and the controlling board.
- (f) The administrative law judge may subpoena witnesses and documentary evidence on his or her own motion, and shall do so at the request of the controlling board or the teacher. If a person refuses to appear and testify in answer to a subpoena issued by the administrative law judge, the party on whose behalf the subpoena was issued may file a petition in the circuit court for the county in which the hearing is held for an order requiring compliance. Failure to obey such an order of the court may be punished by the court as contempt.
- (g) The hearing shall be concluded not later than 75 days after the teacher's claim of appeal was filed with the tenure commission.
- (h) The administrative law judge shall make the necessary orders to ensure that the case is submitted for decision not later than 50 days after the hearing is concluded.
- (i) Not later than 60 days after submission of the case for decision, the administrative law judge shall serve a preliminary decision and order in writing upon each party or the party's attorney and the tenure commission. The preliminary decision and order shall grant, deny, or modify the discharge or demotion specified in the charges.
- (j) Not later than 20 days after service of the preliminary decision and order, a party may file with the tenure commission a statement of exceptions to the preliminary decision and order or to any part of the record or proceedings, including, but not limited to, rulings on motions or objections, along with a written brief in support of the exceptions. The party shall serve a copy of the statement of exceptions and brief upon each of the other parties within the time limit for filing the exceptions and brief. If there are no exceptions timely filed, the preliminary decision and order becomes the tenure commission's final decision and order.
- (k) Not later than 10 days after being served with the other party's exceptions and brief, a party may file a statement of cross-exceptions responding to the other party's exceptions or a statement in support of the preliminary decision and order with the tenure commission, along with a written brief in support of the cross-exceptions or of the preliminary decision and order. The party shall serve a copy of the statement of cross-exceptions

or of the statement in support of the preliminary decision and order and a copy of the brief on each of the other parties.

(l) A matter that is not included in a statement of exceptions filed under subdivision (j) or in a statement of cross-exceptions filed under subdivision (k) is considered waived and cannot be heard before the tenure commission or on appeal to the court of appeals.

(m) If exceptions are filed, the tenure commission, after review of the record and the exceptions, may adopt, modify, or reverse the preliminary decision and order. The tenure commission shall not hear any additional evidence and its review shall be limited to consideration of the issues raised in the exceptions based solely on the evidence contained in the record from the hearing. The tenure commission shall issue its final decision and order not later than 60 days after the exceptions are filed.

(6) After giving the party notice and an opportunity to comply, the administrative law judge or the tenure commission may dismiss an appeal or deny a discharge or demotion for a party's lack of progress or for a party's repeated failure to comply with the procedures specified in this section or the tenure commission's rules.

(7) A party aggrieved by a final decision and order of the tenure commission may appeal the decision and order to the court of appeals in accordance with the Michigan court rules within 20 days after the date of the decision and order.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.104 ;-- Am. 1993, Act 60, Eff. Oct. 1, 1993 ;-- Am. 2011, Act 101, Imd. Eff. July 19, 2011

**38.104 Decision to proceed upon charges; appeal with tenure commission; filing; notice; conduct of hearing; dismissal of appeal or denial of discharge or demotion; appeal to court of appeals.**

Sec. 4.

(1) A teacher on continuing tenure may contest the controlling board's decision to proceed upon the charges against the teacher by filing a claim of appeal with the tenure commission and serving a copy of the claim of appeal on the controlling board not later than 20 days after receipt of the controlling board's decision. The controlling board shall file its answer with the tenure commission and serve a copy of the answer on the teacher not later than 10 days after service of the claim of appeal. If the teacher does not contest the controlling board's decision in the time and manner specified in this subsection, the discharge or demotion specified in the charges takes effect

and the teacher shall be considered to have waived any right to contest the discharge or demotion under this act.

(2) An administrative law judge described in subsection (3) shall furnish to each party without undue delay a notice of hearing fixing the date and place of the hearing. The hearing date shall not be less than 10 days after the date the notice of hearing is furnished and shall not be more than 60 days after service of the controlling board's answer unless the tenure commission grants a delay for good cause shown by the teacher or controlling board.

(3) The hearing shall be conducted by an administrative law judge who is an attorney licensed to practice law in this state and is employed by the department of education. An administrative law judge who conducts hearings under this section shall not advise the tenure commission or otherwise participate in a tenure commission review of an administrative law judge's preliminary decision and order under this section.

(4) Except as otherwise provided in this section, the hearing shall be conducted in accordance with chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws, and in accordance with rules promulgated by the tenure commission.

(5) The hearing and tenure commission review shall be conducted in accordance with the following:

(a) The hearing shall be public or private at the option of the teacher.

(b) The hearing shall be held at a convenient place in the county in which all or a portion of the school district is located or, if mutually agreed by the parties, at the tenure commission offices in Lansing. The administrative law judge's necessary travel expenses associated with conducting the hearing outside Lansing shall be borne equally by the tenure commission and the controlling board.

(c) Both the teacher and the controlling board may be represented by legal counsel.

(d) Testimony at the hearing shall be on oath or affirmation.

(e) A stenographer shall make a full record of the proceedings of the hearing. The cost of employing the stenographer and of providing the record shall be borne equally by the tenure commission and the controlling board.

(f) The administrative law judge may subpoena witnesses and documentary evidence on his or her own motion, and shall do so at the request of the controlling board or the teacher. If a person refuses to appear and testify in

answer to a subpoena issued by the administrative law judge, the party on whose behalf the subpoena was issued may file a petition in the circuit court for the county in which the hearing is held for an order requiring compliance. Failure to obey such an order of the court may be punished by the court as contempt.

(g) The hearing shall be concluded not later than 90 days after the teacher's claim of appeal was filed with the tenure commission.

(h) The administrative law judge shall make the necessary orders to ensure that the case is submitted for decision not later than 50 days after the hearing is concluded.

(i) Not later than 60 days after submission of the case for decision, the administrative law judge shall serve a preliminary decision and order in writing upon each party or the party's attorney and the tenure commission. The preliminary decision and order shall grant, deny, or modify the discharge or demotion specified in the charges.

(j) Not later than 20 days after service of the preliminary decision and order, a party may file with the tenure commission a statement of exceptions to the preliminary decision and order or to any part of the record or proceedings, including, but not limited to, rulings on motions or objections, along with a written brief in support of the exceptions. The party shall serve a copy of the statement of exceptions and brief upon each of the other parties within the time limit for filing the exceptions and brief. If there are no exceptions timely filed, the preliminary decision and order becomes the tenure commission's final decision and order.

(k) Not later than 10 days after being served with the other party's exceptions and brief, a party may file a statement of cross-exceptions responding to the other party's exceptions or a statement in support of the preliminary decision and order with the tenure commission, along with a written brief in support of the cross-exceptions or of the preliminary decision and order. The party shall serve a copy of the statement of cross-exceptions or of the statement in support of the preliminary decision and order and a copy of the brief on each of the other parties.

(l) A matter that is not included in a statement of exceptions filed under subdivision (j) or in a statement of cross-exceptions filed under subdivision (k) is considered waived and cannot be heard before the tenure commission or on appeal to the court of appeals.

(m) If exceptions are filed, the tenure commission, after review of the record and the exceptions, may adopt, modify, or reverse the preliminary decision and order. The tenure commission shall not hear any additional evidence and its review shall be limited to consideration of the issues raised in the exceptions based solely on the evidence contained in the record from the

hearing. The tenure commission shall issue its final decision and order not later than 60 days after the exceptions are filed.

(6) After giving the party notice and an opportunity to comply, the administrative law judge or the tenure commission may dismiss an appeal or deny a discharge or demotion for a party's lack of progress or for a party's repeated failure to comply with the procedures specified in this section or the tenure commission's rules.

(7) A party aggrieved by a final decision and order of the tenure commission may appeal the decision and order to the court of appeals in accordance with the Michigan court rules within 20 days after the date of the decision and order.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.104 ;-- Am. 1993, Act 60, Eff. Oct. 1, 1993

**38.104a Definitions; hearing where witness testifies as alleged victim of sexual, physical, or psychological abuse; use of dolls or mannequins; support person; notice; ruling on objection; exclusion of persons not necessary to proceeding; section additional to other protections or procedures.**

Sec. 4a.

(1) As used in this section:

(a) "Developmental disability" means that term as defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a except that, for the purposes of implementing this section, developmental disability includes only a condition that is attributable to a mental impairment or to a combination of mental and physical impairments, and does not include a condition attributable to a physical impairment unaccompanied by a mental impairment.

(b) "Witness" means an alleged victim under subsection (2) who is either of the following:

(i) A person under 16 years of age.

(ii) A person 16 years of age or older with a developmental disability.

(2) This section only applies to a hearing held under this article in which a witness testifies as an alleged victim of sexual, physical, or psychological abuse. As used in this subsection, "psychological abuse" means an injury to the witness's mental condition or welfare that is not necessarily permanent

but results in substantial and protracted, visibly demonstrable manifestations of mental distress.

(3) If pertinent, the witness shall be permitted the use of dolls or mannequins, including, but not limited to, anatomically correct dolls or mannequins, to assist the witness in testifying on direct and cross-examination.

(4) A witness who is called upon to testify shall be permitted to have a support person sit with, accompany, or be in close proximity to the witness during his or her testimony. A notice of intent to use a support person shall name the support person, identify the relationship the support person has with the witness, and give notice to all parties to the proceeding that the witness may request that the named support person sit with the witness when the witness is called upon to testify during any stage of the proceeding. The notice of intent to use a named support person shall be served upon all parties to the proceeding. The controlling board shall rule on any objection to the use of a named support person prior to the date at which the witness desires to use the support person.

(5) In a hearing under this section, all persons not necessary to the proceeding shall be excluded during the witness's testimony.

(6) This section is in addition to other protections or procedures afforded to a witness by law or court rule.

**History:** Add. 1987, Act 47, Eff. Jan. 1, 1988 ;-- Am. 1998, Act 326, Imd. Eff. Aug. 3, 1998

**38.105 Repealed. 2011, Act 101, Imd. Eff. July 19, 2011.**

**Compiler's Notes:** The repealed section pertained to appointment of teacher on continuing tenure to first vacancy in school district.

## **Article V RESIGNATION AND LEAVE OF ABSENCE.**

**38.111 Resignation or leave of absence; notice required.**

Sec. 1.

No teacher on continuing tenure shall discontinue his services with any controlling board except by mutual consent, without giving a written notice to said controlling board at least 60 days before September first of the ensuing school year. Any teacher discontinuing his services in any other manner than

as provided in this section shall forfeit his rights to continuing tenure previously acquired under this act.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.111

**38.112 Leave of absence; physical or mental disability; reinstatement.**

Sec. 2.

(1) Any controlling board upon written request of a teacher may grant leave of absence for a period not to exceed 1 year, subject to renewal at the will of the board. Additionally, a controlling board may grant a leave of absence because of physical or mental disability without receiving a written request from a teacher for a period not to exceed 1 year, subject to renewal at the will of the controlling board. A teacher who is placed on an unrequested leave of absence has the right to a hearing on the unrequested leave of absence in accordance with the provisions for a hearing in section 4 of article IV. A leave of absence does not serve to terminate continuing tenure previously acquired under this act.

(2) As a condition to reinstating the teacher at the expiration of the leave of absence, a controlling board may require a teacher who is on an unrequested leave of absence due to physical or mental disability to furnish verification acceptable to the controlling board of the teacher's ability to perform his or her essential job functions.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.112 ;-- Am. 2011, Act 100, Imd. Eff. July 19, 2011

**Article VI  
RIGHT TO APPEAL.**

**38.121 Appeal to state tenure commission; notice; hearing.**

Sec. 1.

A teacher who has achieved continuing tenure status may appeal to the tenure commission any decision of a controlling board under this act, other than a decision governed by article IV on discharge or demotion of a teacher on continuing tenure, within 20 days from the date of the decision. The tenure commission shall provide for a hearing on the appeal. Notice and conduct of the hearing shall be the same as provided in article IV and in rules promulgated by the tenure commission.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.121 ;-- Am. 1963, Act 242, Eff. Sept. 6, 1963 ;-- Am. 1993, Act 60, Eff. Oct. 1, 1993  
**Admin Rule:** R 38.131 et seq. of the Michigan Administrative Code.

## **Article VII STATE TENURE COMMISSION.**

### **38.131 State tenure commission; creation, membership; superintendent as ex-officio secretary; legal advisor.**

Sec. 1.

There is hereby created a state tenure commission of 5 members: 2 of whom shall be classroom instructors, 1 a member of a board of education of a graded or city school district, 1 a person not a member of a board of education or a teacher, and 1 a superintendent of schools. The superintendent of public instruction shall be ex officio secretary of the commission, and the attorney general shall assign to the commission an assistant who shall be legal advisor to the commission.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.131 ;-- Am. 1963, Act 242, Eff. Sept. 6, 1963

### **38.132 Tenure commission; members, appointment, terms, vacancies.**

Sec. 2.

Within 30 days after the effective date of this act, the governor shall appoint the members of the tenure commission for the following terms: One for a term of 3 years, 1 for a term of 2 years and 1 for a term of 1 year. Each term shall begin on the first day of September. Immediately preceding the expiration of their respective terms the governor shall appoint succeeding members of the tenure commission for terms of 5 years. In the event of a vacancy on the tenure commission the governor shall immediately appoint a successor to complete the unexpired term.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.132

### **38.133 Tenure commission; geographical qualifications of members.**

Sec. 3.

Not more than 1 member of the tenure commission shall be appointed from any 1 school district.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.133

**38.134 Tenure commission; qualifications of teacher member.**

Sec. 4.

Any teacher appointed to the tenure commission after September 1, 1938, must be on continuing tenure.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.134

**38.135 Tenure commission; membership of teacher not to affect tenure.**

Sec. 5.

Membership on the state tenure commission shall not adversely affect the status of the teacher's tenure with a controlling board.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.135

**38.136 Tenure commission; times and places of meetings; conducting business at public meeting; notice of meeting.**

Sec. 6.

(1) The tenure commission shall meet twice a year at stated times in the city of Lansing, and at other times and in other places as determined by the commission.

(2) The business which the commission may perform shall be conducted in compliance with Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.136 ;-- Am. 1977, Act 252, Imd. Eff. Dec. 6, 1977

**38.137 Tenure commission; powers.**

Sec. 7.

The tenure commission is hereby vested with such powers as are necessary to carry out and enforce the provisions of this act.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.137

**38.138 Tenure commission; compensation and expenses.**

Sec. 8.

The per diem compensation of the state tenure commission and the schedule for reimbursement of expenses shall be established annually by the legislature.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.138 ;-- Am. 1965, Act 8, Imd. Eff. Apr. 8, 1965 ;-- Am. 1975, Act 56, Imd. Eff. May 20, 1975

**38.139 Tenure commission; board of review for cases appealed from decision of controlling board; location of records; availability of certain writings to public.**

Sec. 9.

(1) The tenure commission shall act as a board of review for all cases appealed from the decision of a controlling board. All records of the tenure commission shall be kept in the office of the superintendent of public instruction.

(2) A writing prepared, owned, used in the possession of, or retained by the commission in the performance of an official function shall be made available to the public in compliance with the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.139 ;-- Am. 1963, Act 242, Eff. Sept. 6, 1963 ;-- Am. 1977, Act 252, Imd. Eff. Dec. 6, 1977 ;-- Am. 1993, Act 60, Eff. Oct. 1, 1993

**38.140 Tenure commission; organizational meeting, election of officers, rules and regulations.**

Sec. 10.

Within 30 days after the effective date of this act, the tenure commission shall hold a meeting in the city of Lansing for the purpose of organization and the election of a chairman and secretary, both of whom shall be members of the commission. The tenure commission shall draw up rules and regulations and shall have the power to amend same and to provide for the conduct of its affairs in such manner as shall be consistent with the provisions of this act.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.140  
**Admin Rule:** R 38.131 et seq. of the Michigan Administrative Code.

**38.141 Repealed. 1965, Act 8, Imd. Eff. Apr. 8, 1965.**

**Compiler's Notes:** The repealed section provided two-year appropriation for expenses of the tenure commission.

**Article VIII  
DISTRICTS.**

**38.151 Application of act.**

Sec. 1.

This act shall apply to all school districts of the state.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.151 ;-- Am. 1964, Act 2, Eff. Aug. 28, 1964

**38.152 Repealed. 1964, Act 2, Eff. Aug. 28, 1964.**

**Compiler's Notes:** The repealed section provided that school district board shall notify the superintendent of public instruction of results of election.

**Article IX  
PENALTY.**

**38.161 Violation of act; penalty.**

Sec. 1.

Failure of any member of a controlling board to comply with any provisions of this act shall be deemed a violation of the law and shall subject said member to the same penalty as prescribed for a violation of the general school law.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.161

**Article X  
INCONSISTENT ACTS.**

**38.172 Teachers; waiver of rights in contracts prohibited.**

Sec. 2.

No teacher may waive any rights and privileges under this act in any contract or agreement made with a controlling board. In the event that any section or sections of a contract or agreement entered into between a teacher and a controlling board make continuance of employment of such teacher

contingent upon certain conditions which may be interpreted as contrary to the reasonable and just causes for dismissals, provided by this act, such section or sections of a contract or agreement shall be invalid and of no effect in relation to determination of continuance of employment of such teacher.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.172

**Article XI  
Severing Clause.**

MCL 38.181 (Repealed by Pub Acts 1945, No. 267, IMD. Eff. May 25. THIS WAS A SEVERING CLAUSE SECTION.)

**Article XII  
Effective Date.**

**MCL 38.91 Effective date.**

Sec. 1.

This act shall take effect and be in force from and after September first, 1937.

**History:** 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937 ;-- CL 1948, 38.191