

CHAPTER IV

SUMMARY AND CONCLUSIONS

I. SUMMARY

The purpose of this study was to research the law of evidence as it relates to employment termination hearings for public school teachers. Teachers are defined to include all regularly employed instructional personnel. The major questions considered were: (1) What are the standards for the admission or the exclusion of evidence at a hearing? (2) What evidence which has been admitted may be used to support the findings made by the hearing tribunal?

Related literature from the areas of educational management, administrative law, and evidence law was reviewed. The nature of the employment relationship, some general principles of personnel administration, and the legal basis for a teacher's employment security were considered. The elements of a trial-type administrative agency hearing and some pertinent concepts of evidence law were examined. The function of judicial review and its impact on the administrative process were studied.

The research consisted primarily of a review of the state statutes and case law which relate specifically to the termination of employment of public school teachers. However, it must be noted that school districts are administrative agencies, and in some states termination hearings are subject to the provisions of an administrative

procedures act. The reader is cautioned to be aware of both the legislative enactments and the judicial decisions which constitute a state's general administrative law.

A. Evidence Law

The rules of evidence which are applied to determine whether evidence should be admitted or excluded at a judicial trial are not utilized in the same manner at an administrative agency proceeding such as a teacher employment termination hearing. However, this is not to say that the basic principles of evidence law are totally disregarded.

Two axioms of evidence law are that (1) only facts having rational probative value are admissible, and (2) all facts having probative value are admissible, unless some specific rule forbids. From these fundamentals, three categories of rules of evidence have been developed. The first involves rules which define probative value (rules of relevancy); the second sets out artificial rules or safeguards which do not profess to define probative value but aim to protect it (rules of exclusion); and the third includes rules which invoke extrinsic policies that override probative value (rules of privilege).

The results of this study of evidence law for teacher employment termination hearings indicate that these proceedings conform to the generally informal procedures followed at most administrative agency hearings. When the evidence is offered and an objection is

made, the tribunal must determine whether to admit or to exclude. At this point, the rules relating to relevancy are generally applied and the rules of privilege are recognized, but the rules of exclusion are usually not followed.

However, that is not the end of the matter. If the dispute finds its way into the judicial system, a court may examine the hearing record to determine if there is an adequate evidentiary basis for the tribunal's findings. The most common standard of review is the substantial evidence test, which means that the court will determine whether on the basis of the evidence in the record, the tribunal could have reasonably made the findings it did. As a part of this process, a court might also apply the "legal residuum" rule, which requires that an administrative finding must be based at least in part on evidence that would be admissible under the formal or technical rules of evidence used in jury trials. Therefore, the "rules of evidence" do have a significant impact on what evidence can in fact be used to support a finding.

The statutes that provide for the termination of the employment relationship between public school teachers and boards of education vary considerably from state to state, but with only a few exceptions the legislatures have required little formality in the evidentiary procedures at termination hearings. Furthermore, both the federal and state courts have allowed a liberal approach to the admission of evidence. However, the matter of what evidence can actually be used to support a finding is viewed differently. There are frequent judicial references

to the general requirement that a decision to terminate a teacher's employment must be based on relevant, competent evidence.

B. Rules of Relevancy

Only relevant evidence should be admitted at the hearing and used in support of a termination decision. That fundamental rule has been clearly expressed in many judicial opinions, and in some states it has been set out in the statutes.

The standard of relevancy is generally established by the notice to the teacher that termination is being considered. Only evidence that is relevant to the charges of which the teacher has been notified should be admitted and used in support of a decision to terminate. Even the very conduct and characteristics which a teacher exhibits at the hearing, if unrelated to the charges of which the teacher has had prior notice, have been considered by the courts to be an improper evidentiary basis for a decision.

The question of whether evidence of a teacher's prior conduct or of activities not directly involved in teaching duties can be admitted and used to support a finding has sometimes arisen. Although such questions are often expressed as evidentiary issues, they may in fact be more a question of what reasons can be used as a substantive justification for termination.

There have been two major evidentiary issues involved in reduction in force (RIF) hearings. The initial question of whether there should be any reduction in the teaching staff has generally been

considered to be a policy matter for the board, and usually teachers have not been allowed to produce either evidence or argument relative to that decision. However, the purpose of the hearing is to determine whether a particular teacher is to be "riffed," and that teacher does have the right to introduce evidence and make arguments relative to whether his or her specific employment should be terminated.

C. Rules of Exclusion

The rules of exclusion are generally not enforced in teacher employment termination hearings, and most evidence is allowed to be admitted. However, these same rules may be applied when the evidence is examined to determine whether it is "competent" and can be used to support a finding.

The rule against the admission and use of hearsay is perhaps the most frequently invoked exclusionary rule. Generally, hearsay may be admitted if it does not unduly prejudice the interests of the teacher. However, in the absence of some statutory or judicial authority, the use of hearsay as evidentiary support for a finding is a questionable practice. Board decisions which appear to have been based on hearsay have been overturned by the courts.

The question of whether a witness is competent to testify has been raised in a few instances. The case law indicates that such matters as whether a young child is capable of testifying or whether a witness has had first-hand knowledge of the facts are issues that should be resolved before the witness actually begins to testify.

D. Rules of Privilege

There are only a very few cases in which the use of rules of privilege at a teacher termination hearing has been an issue. It would appear that both the constitutional and common law privileges are generally recognized, although there are indications that some of the constitutional protections relate only to unreasonable searches and seizures by the police and might not apply to these proceedings. Apparently there is seldom an occasion to invoke the rules of privilege in this kind of administrative hearing.

E. The Tribunal

It is clearly recognized that a fair tribunal is necessary for a meaningful hearing. This is not to say that board members can have no prior knowledge of the facts, but only that they must be able to make an objective decision based on the evidence in the record. The courts have upheld the right of a teacher to introduce evidence at the hearing which would tend to show that the members of the board were so biased that they were unable to render a fair and objective decision.

The courts have also indicated that a teacher must be allowed to introduce evidence to the effect that the actual reasons for the proposed termination are not those set forth in the notice of charges. If any of the teacher's constitutionally protected activities appear to be involved as a motivating factor, then it is important that the

record be adequately developed to determine whether there is in fact any permissible basis for a termination.

F. Burden of Proof

If the teacher has acquired substantive employment rights, then the burden is on the school officials to produce evidence at the hearing which will establish the necessary justification for the termination of those rights. If the teacher has only limited statutory procedural protections prior to the nonrenewal of his or her contract for the ensuing year, then the burden may be on the teacher to show why the employment relationship should not be terminated, and the teacher should be allowed to produce evidence and argument for that purpose. There might also be instances where a termination action has damaged the reputation of the teacher, thereby impinging on a constitutionally protected liberty interest. There would then be a right to a due process hearing for the purpose of giving the teacher an opportunity to clear his or her good name. It might be that the only relevant evidence at such a hearing would be that presented for just that limited purpose.

Even if in the particular circumstances a board of education is not required by law to give reasons for the termination, it would seem appropriate that a board would do so in the interests of fairness and as a good educational management practice. Furthermore, providing a proper justification for the decision would tend to preclude a termination that would in fact be based on an impermissible reason.

G. Findings and Reasons

Perhaps one of the most effective means to insure that a board of education has made a good decision and has acted within the bounds of the law is to require that a termination decision made after an evidentiary hearing be accompanied by written findings and reasons. However, both the statutes and case law vary considerably from state to state in the recognition of such a requirement.

H. Nebraska Law

The Nebraska law relating to the two basic issues considered in this study has not been clearly established. There are few indications either in general administrative law or in the statutes and the case law involving teacher employment terminations as to whether formal rules of evidence should be used at a termination hearing. It is also unclear whether the residuum rule is involved in the judicial review of these board decisions, and if so, how it would be applied. Although it appears to be permissible to admit "illegal" evidence at the hearing, a prudent board should be certain that any termination decision is based solidly on evidence that would be admissible under the formal rules.

II. CONCLUSIONS

There is a law of evidence for teacher employment termination hearings. These proceedings are usually conducted in the somewhat informal matter generally associated with administrative agency hearings,

and this informality extends to some extent to the admission and use of evidence. However, even though the formal "rules of evidence" used in judicial trials are not generally invoked, those rules do have implications for the teacher termination process and they cannot be totally disregarded.

A. Evidence Law

There are at least two distinct points of control regarding the evidence which actually becomes a factor in the decision-making process. The first is when the evidence is offered at the hearing, and a decision must be made as to whether it should be admitted. The second is when evidence, which has been admitted at the hearing, is examined to determine whether it may be used in support of a finding.

There are also at least two general standards that might be applied at either or both of these points of control. One would be the formal rules of evidence used in the judicial system for jury trials. The other would be the more informal rules usually followed in administrative agency hearings, which generally require that evidence be relevant and that the rules of privilege be recognized, but do not require that the rules of exclusion be applied.

It is difficult to assess the implications of the residuum rule. Even if it is established that the courts will apply that rule when reviewing the record of a termination decision, just how cautious a board should be in admitting and using "illegal" evidence is not

clear. The general thrust of the residuum rule seems to be that while a finding cannot be based only on evidence which would be inadmissible under the formal rules, such evidence can be admitted and used if there is also some relevant, competent evidence supporting that finding in the record. However, there would seem to be a real danger in a board of education basing a finding, even in part, on evidence which would be inadmissible under the formal rules. Furthermore, there would also seem to be some hazards associated with allowing such evidence to even be admitted on the record. The record could appear to be so contaminated with "illegal" evidence that a court would simply believe that the findings were not adequately based upon relevant, competent evidence and therefore, that the decision was unjustified. It should be noted, however, that there may be either statutory or judicial authority for the admission and use of certain kinds of "incompetent" evidence, such as relevant hearsay.

The nature of the hearing tribunal would seem to be a major factor in the determination of what evidentiary procedures should be followed. The formal rules of evidence are said to be an outgrowth of the jury system, made necessary to protect against the inability of lay jurors to discriminate among the various items of evidence as to validity and reliability. One reason given for the use of more informal rules in administrative hearings is that the hearing examiner(s) might be an expert on the subject in question and therefore quite able to understand the value of the evidence. Yet, in the majority of termination hearings, the tribunal consists of a lay board of education,

which in most instances will have no particular expertise as to the issues to be resolved.

Another justification offered for the use of more informal procedures is that a lay board cannot be expected to cope with the technical rules of evidence and make the necessary decisions regarding admissibility. The same argument could be made on behalf of the individual teacher or administrator. However, there seems to be a trend toward the use of three attorneys at these hearings--one to advise the board, one to make the administration's case for termination, and one to represent the teacher. Under such circumstances the parties should be able to follow the formal rules. Furthermore, the board should have some sense of the "legality" of the evidence that has been admitted when it considers the evidentiary support for its ultimate decision. Whether a more formalized approach to the admission and use of evidence would be of any real benefit is another question.

B. A Possible Approach

If the law of evidence for teacher employment termination hearings in a given state has been the subject of either legislation or judicial decision, then there may be some general principles for the guidance of educational management. However, in the absence of any such statement of the law, school officials, with the assistance of competent legal counsel, will have to determine the evidentiary procedures to be followed.

If a state's law is unclear it might be most prudent to

generally follow the formal rules of evidence used in the trial courts. This would seem to be especially important in regard to the evidence presented by the school officials and subsequently used to justify a decision to terminate. If only evidence that would be admissible in a jury trial was presented by the administration and admitted at the hearing, then there would be little question that the decision was based on relevant, competent evidence. On the other hand, the tribunal might be somewhat more liberal in permitting the teacher to introduce evidence which might not be admissible under the technical rules of exclusion, if it is relevant to the issues under consideration. This would tend to preclude the possibility that the teacher would be unable to conduct an effective defense because of overly restrictive rulings on evidence.

Such an approach should not be particularly burdensome for the school district. In most situations the evidence necessary to justify a termination can consist primarily of the testimony of the administrators who have the responsibility of supervising and evaluating the teaching staff and of the documents from the teacher's personnel file which the administrative staff has developed and maintained. There should be few problems with either the admission or the use of such evidence. The administrator would be testifying as to his or her personal knowledge regarding the basic facts. Furthermore, such an individual would be qualified as an expert witness to give an opinion as to the ultimate facts. Documents from the teacher's personnel file, if developed and maintained in the course

of a regular program of personnel administration activities, would be admissible in most instances.

There would be exceptions to this scenario when it might be necessary to base a termination on evidence that was not generated internally by the school's supervision and evaluation procedures. For example, a teacher might have been involved in some incident that occurred apart from the regular school program, but that might be justification for dismissal, and the testimony of parents or students could be necessary to develop the facts. More difficult evidentiary questions might arise in such situations.

C. A Rational and Just Decision

What is really crucial in these proceedings is that any decision to terminate must be rationally based on the evidence actually produced at the hearing. There is always a concern that a hearing may be nothing more than a meaningless procedure that merely formalizes a decision already made. Perhaps the best protection for all the parties directly involved--the teacher, the board, and the administration--is a clearly developed record that indicates a rational and adequate justification for any decision to terminate.

The evidence in the record should provide a logical nexus between the charges set out in the notice and the findings upon which the decision rests. The notice should specify the charges upon which the contemplated termination would be based. These grounds would be the "findings of ultimate fact" or the "conclusions of law," and

they should be expressed in the statutory language--neglect of duty, insubordination, etc. Either the notice or a subsequent bill of particulars should identify specific instances of unsatisfactory performance, as well as the names of witnesses and the nature of the evidence relating to the charges. Only evidence which is relevant to those charges or to the teacher's defense should be admitted.

At the conclusion of the hearing, a transcript of the record should be made available for the members of the hearing tribunal to examine. Although this would take a certain amount of time to prepare, it does not seem either necessary or appropriate that a decision of such importance should be based mostly upon the recollection of oral testimony.

The tribunal should make specific findings of both basic facts and ultimate facts, and these findings should be related to the supporting evidence. The findings of basic fact would generally be a statement of phenomena with no "legal" connotations. The findings of ultimate fact would be equivalent to a conclusion of law, which is the application of the statutory standard to the basic facts.

A written decision set out according to this format should further a number of important interests. First, a more carefully reasoned decision is likely to result if the tribunal follows a logical approach in analyzing the evidence. Also, such a record would verify the relationships that should exist between specific items of evidence and the findings which are the bases for the decision. Furthermore, regardless of either what rules of evidence were used or

at what point in the proceedings that standard was applied, a reviewing court can determine how a particular item of evidence entered into the decision-making process. Finally, such a record would enable a court to apply the appropriate standard of review and determine the legality of the decision without encroaching on the judgmental prerogatives of the agency tribunal.

Ultimately, the issue of whether a certain item of evidence should be taken into account is of less importance than the question of how much of a factor that evidence will be in the findings and decision. The reasoning of the agency tribunal cannot be controlled, and rightly so insofar as that process remains within the law. However, procedures can be developed and implemented that will focus the thinking of the tribunal on the issues being considered.

III. IMPLICATIONS

The evidence law for teacher employment termination hearings does involve the two major questions considered in the study--what are the standards for the admission of evidence and what evidence may be used in support of a finding. However, the legal rules applicable to the resolution of these issues are not always clearly defined. Although the informal procedures common to most administrative hearings are generally followed, the formal rules of evidence used in judicial trials are often invoked in some manner and must be taken into account by educational management.

Evidentiary considerations are significant concerns for school administrators who are responsible for the supervision and

evaluation of teachers. These individuals are likely to be major witnesses at termination hearings, and the oral testimony and written records which they produce will be essential evidence. However, if such evidence is to be a factor in the decision, then it must be developed and presented in such a way that it will meet the legal criteria for both admission at the hearing and use in support of a finding.

As a general rule, administrators should personally supervise and evaluate teachers and develop and maintain written records as part of a regular program of personnel administration. If such administrative procedures are followed, administrators will be able to testify on the basis of their personal knowledge, and the records they have prepared are likely to be admissible and useable under an exception to the rule against hearsay. It is also important that the teacher's behavior and performance be analyzed in terms of the possible bases for dismissal. A rational relationship which involves charges in the notice, the evidence produced, and the ultimate grounds for termination must be established. The administrative staff should utilize the services of an attorney as needed to develop procedures for personnel administration that will avoid as many evidentiary problems as possible.

The hearing tribunal must also be cognizant of these evidentiary matters. A major concern is that the decision be based only on the evidence actually adduced at the hearing and that other information and biases not be allowed to influence the process. Although the evidence

can be presented in a rather informal manner at the hearing, it is probably prudent to generally follow the formal rules of evidence as to admissibility. This tends to focus the proceedings on the issues being considered and promotes the development of a hearing record of adequate, legally admissible evidence needed to justify a decision. Legal counsel should be used as necessary to assist the tribunal with the management of the hearing procedures and the process of decision.

Whether certain evidence is to be a factor in the decision is certainly significant; however, perhaps it is more important that whatever evidence is considered will be used in a rational way to support the findings of the charges. A written explanation of the decision to be available for judicial scrutiny is perhaps one of the more effective means of maintaining the balance between the rights of the teacher and the authority of the board. The objective for both educational management and the legal system should be to structure the procedures so that a teacher employment termination hearing will be a meaningful process leading to a rational and just decision.

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APPENDIX I

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APPENDIX II

Revised Statutes of Nebraska
(Reissue 1976 & Supp. 1980)

Sec. 79-1254. BOARD OF EDUCATION: EMPLOYMENT OF ADMINISTRATORS AND TEACHERS; RENEWAL OF CONTRACTS; TERMINATION OF CONTRACTS; JUST CAUSE; EXCEPTIONS; PROCEDURE; NEPOTISM PROHIBITED - The original contract of employment with an administrator or a teacher and a board of education of a Class I, II, III, or VI district shall require the sanction of a majority of the members of the board. Except for the first two years of employment under any contract entered into after the effective date of this act, any contract of employment between an administrator or a teacher who holds a certificate which is valid for a term of more than one year and a Class I, II, III, or VI district shall be deemed renewed and shall remain in full force and effect until a majority of the members of the board vote on or before May 15 to amend or to terminate the contract for just cause at the close of the contract period. The first two years of the contract shall be a probationary period during which it may be terminated without just cause. Any superintendent or associate superintendent may have his contract of employment terminated without just cause at the close of the contract period. The secretary of the board shall, not later than April 15, notify each administrator or teacher in writing of any conditions of unsatisfactory performance or other conditions because of a reduction in staff members or change of leave of absence policies of the board of education which the board considers may be just cause to either terminate or amend the contract for the ensuing school year. Any teacher or administrator so notified shall have the right to file within five days of receipt of such notice a written request with the board of education for a hearing before the board. Upon receipt of such request the board shall order the hearing to be held within ten days, and shall give written notice of the time and place of the hearing to the teacher or administrator. At the hearing evidence shall be presented in support of the reasons given for considering termination or amendment of the contract, and the teacher or administrator shall be permitted to produce evidence relating thereto. The board shall render the decision to amend or terminate a contract based on the evidence produced at the hearing. As used in this section and section 79-1254.02, the term just cause shall mean incompetency, neglect of duty, unprofessional conduct, insubordination, immorality, physical or mental incapacity, other conduct which interferes substantially with the continued performance of duties or a change in circumstances necessitating a reduction in the number of administrators or teachers to be employed by the board of education. No member of the board of education may cast a vote in favor of the election of any teacher when such member of the board is related by blood or marriage to such teacher. (Laws 1949; 1959; 1965; 1971; 1975.)

Sec. 79-1254.04. SUPERINTENDENT; ASSOCIATE SUPERINTENDENT; CONTRACT; TERMINATION; HEARING: - The board of education of a Class I, II, III, or VI school district shall give notice in writing, not later than April 15, of its intention to terminate the contract of any superintendent or associate superintendent. Any superintendent or

associate superintendent receiving such notice shall have the right to file within five days of receipt of such notice a written request for a hearing before the board. Upon receipt of such request, the board shall order the hearing to be held within ten days, and shall give written notice of the time and place of the hearing to the superintendent or associate superintendent. At the hearing, evidence shall be presented in support of the reasons given for considering termination of the contract, and the superintendent or associate superintendent shall be permitted to produce evidence related thereto. The board shall render its final decision within ten days following the hearing. If no request for a hearing is received, the board may proceed to terminate the contract. (Laws 1975.)

Sec. 79-1254.05. BOARD OF EDUCATION; ADOPT; REDUCTION IN FORCE POLICY; REQUIREMENT. - Prior to January 1, 1979, every board of education or governing board of any educational institution in Nebraska covered by the provisions of sections 79-1254 to 79-1262, Reissue Revised Statutes of Nebraska, 1943, and amendments thereto, shall adopt a reduction in force policy covering employees subject to such statutory provisions to carry out the intent of this act. No such policy shall allow the reduction of a permanent or tenured employee while a probationary employee is retained to render a service which such permanent employee is qualified by reason of certification and endorsement to perform or where certification is not applicable, by reason of college credits in the teaching area. If employee evaluation is to be included as a criterion to be used for reduction in force, specific criteria, such as frequency of evaluation, evaluation forms, and number and length of classroom observations shall be included as part of the reduction in force policy. (Laws 1978.)

Sec. 79-1254.06. REDUCTION IN FORCE; BOARD OF EDUCATION AND SCHOOL DISTRICT ADMINISTRATION; DUTIES. - Before a reduction in force shall occur, it shall be the responsibility of the board of education and school district administration to present competent evidence demonstrating that a change in circumstances has occurred necessitating a reduction in force. Any alleged change in circumstances must be specifically related to the teacher or teachers to be reduced in force, and the board, based upon evidence produced at the hearing required by sections 79-1254 to 79-1262, Reissue Revised Statutes of Nebraska, 1943, and amendments thereto, shall be required to specifically find that there are no other vacancies on the staff for which the employee to be reduced is qualified by endorsement or professional training to perform. (Laws 1978.)

Sec. 79-1254.07. REDUCTION OF FORCE; EMPLOYEE CONTRACT TERMINATED; EFFECT; RECALL; RIGHTS. - Any employee whose contract shall be terminated because of reduction in force shall be considered to have been dismissed with honor and shall upon request be provided a letter to that effect. Such employee shall have preferred rights to reemployment for a period of twenty-four months commencing at the end of the contract

year and the employee shall be recalled on the basis of length of service to the school to any position for which he or she is qualified by endorsement or college preparation to teach. The employee shall, upon reappointment, retain any benefits which had accrued to said employee prior to termination, but such leave of absence shall not be considered as a year of employment by the district. An employee under contract to another educational institution may waive recall but such waiver shall not deprive the employee of his or her right to subsequent recall. (Laws 1978.)

Sec. 79-1254.08. REDUCTION IN FORCE; NONCOMPLIANCE WITH FEDERAL OR STATE LAW; HOW TREATED. - Notwithstanding sections 79-1254.05 to 79-1254.08, if the reduction of an employee based upon the provisions of this act would place a district in noncompliance of any federal or state law or regulations requiring affirmative action employment practices, the district may vary from these provisions as necessary to comply with such laws or regulations. (Laws 1978.)

(c) Tenure in Class IV and V School Districts

Sec. 79-1255. DEFINITIONS: "TEACHER"; "SCHOOL BOARD". As used in sections 79-1255 to 79-1262; (1) The term "teacher" shall mean and include all full time certificated educational employees of any fourth or fifth class school districts, except substitute teachers; and shall include full time school nurses duly licensed by the State of Nebraska; and (2) the term "school board" shall mean the governing board or body of any fourth or fifth class school district. (C.S. 1954, s. 79-1250; Laws 1949.)

Sec. 79-1256. TEACHERS; PROBATIONARY PERIOD; CONTINUING CONTRACT. - All teachers, as defined in section 79-1255, in the public schools in fourth and fifth class school districts shall, upon first employment, be classified as probationary teachers and be deemed to be in a probationary period, during which period any annual contract with any such teacher may or may not be renewed as the employing school board shall see fit. After a probationary teacher has once been elected to a position by the school board, such person shall be deemed to be re-elected under the same contract until a majority of the members of the school board vote, on or before April 1 of any year, to terminate the contract at the close of the contract period or until the contract is superseded by a new contract mutually agreed to by the school board and the teacher. Any such probationary teacher whose contract is automatically renewed according to the aforesaid provision shall file written notice with the secretary of the board within fifteen days thereafter of his acceptance of the renewed contract, and failure to file such notice shall be regarded as conclusive evidence of his non-acceptance of the contract. (C.S. 1943, s. 79-2151; Laws 1949.)

Sec. 79-1257. TEACHERS; THREE YEARS SERVICE; PERMANENT TEACHERS. - Any person who has served or who shall serve under a contract as a teacher for three successive school years in a fourth or fifth class school district, and who begins a fourth year of service under a contract with such school board shall thereupon become a permanent teacher unless, by a majority vote of the school board, the time be extended one or two years before such teacher becomes a permanent teacher. (C.S. 1943, s. 79-2152; Laws 1949.)

Sec 79-1258. TEACHERS; INDEFINITE CONTRACTS; CONTENTS; REDUCTION OF SALARY. - The contract issued the teacher in a fourth or fifth class school district at the time he accepts permanent status shall be known as an indefinite contract and remain in force until the teacher reaches the age of sixty-five years, unless it is succeeded by a new contract signed by both parties or is canceled, as hereinafter provided in section 79-1259 and 79-1260; Provided, that contracts of all permanent teachers shall provide for the annual determination of the date of beginning and length of school terms by the school board; and provided, further, that such contracts may contain provisions for the fixing of the amount of annual compensation from year to year by the school board in each individual case or by a salary schedule adopted by the school district which schedule shall be deemed to be a part of such contract, but no teacher's salary may be reduced unless the same percentage reduction be applicable to a majority of the teachers in the system. (C.S. 1943, s. 79-2153; Laws 1949.)

Sec. 79-1259. TEACHERS; INDEFINITE CONTRACT; CANCELLATION: PROCEDURE. - Any indefinite contract with a permanent teacher in a fourth or fifth class school district may be canceled only by the school board, by a majority vote, evidenced by a signed statement in the minutes of the school board, in the following manner: No contract shall be canceled until the data for consideration of the cancellation of such contract nor until, in the case of teachers, supervisor, and principals, the superintendent of schools shall have given the school board his recommendations thereon and it shall be the duty of such superintendent to present such recommendations, to the school board, within the time fixed by the board. Not less than thirty days nor more than forty days before consideration by the school board of the cancellation of contract, the teacher in question shall be notified in writing of the exact date, time when, and place where such consideration is to take place. If the teacher desires, he must be furnished a written statement of the reasons for such consideration within five days after filing with the board a written request for such a statement. If the teacher requests a hearing before the school board, the request must be granted. Such hearing must be held within twenty days after the request is filed and the teacher shall be given at least ten days' notice of the time and place of the hearing. Such teacher shall have the right to respond to the reasons for the proposed cancellation of his contract and to be accompanied at the hearing by someone qualified to speak for him. (C.S. 1943, s. 79-2155; Laws 1949.)

Sec. 79-1260. TEACHERS; INDEFINITE CONTRACT; CANCELLATION; GROUNDS; TIME OF TAKING EFFECT. - Nothing contained in this section shall present the suspension from duty of a permanent teacher in a fourth or fifth class school district, pending a decision on the cancellation of his contract. Cancellation of an indefinite contract may be made for (1) incompetency; (2) physical disability or sickness of any type which interferes with the performance of duty; (3) insubordination, which shall be deemed to mean a willful refusal to obey the school laws of this state, the rulings of the Commissioner of Education, or any reasonable rules and regulations prescribed for the government of the school of the district, by the school board; (4) neglect of duty; (5) immorality; (6) failure to give evidence of professional growth; or (7) justifiable decrease in the number of teaching positions or other good and just cause, but may not be made for political or personal reasons. When the cause of cancellation of an indefinite contract is for immorality or insubordination, the cancellation shall go into effect immediately. For all other causes cancellation shall take effect at the end of the current school term. The decision of a school board to cancel an indefinite contract shall be final. (C.S. 1943, s. 72-2156; Laws 1949.)

Sec. 79-1261. PERMANENT TEACHERS; EVIDENCE OF PROFESSIONAL GROWTH. Every six years permanent teachers in a fourth or fifth class school district shall give such evidence of professional growth as is approved by the school board in order to remain eligible to the benefits of section 79-1255 to 79-1262. Educational travel, professional publications, work on educational committees, six semester hours of college work, or such other activity approved by the school board, may be accepted as evidence of professional growth. (C.S. 1943, s. 79-2157; Laws 1949.)

Sec. 79-1262. SAME; LEAVE OF ABSENCE; PROCEDURE. - Any school board in a fourth or fifth class school district, upon written request, may grant a leave of absence to a permanent teacher for study, military service, professional improvement, or because of physical disability or sickness, subject to such rules and regulations governing leaves of absence as may be adopted by the board. A school board may require a permanent teacher, because of physical disability or sickness, to take a leave of absence for a period not exceeding one year. In any such case, the procedure to be followed and the rights of the teacher shall be the same as those heretofore prescribed for cancellation of an indefinite contract. (C.S. 1943, s. 79-2158; Laws 1949.)

Sec. 79-1263 to 79-1266. Repealed 1971.