

Regular Session, 2012

HOUSE BILL NO. 879

BY REPRESENTATIVE JONES

TEACHERS: Provides relative to the removal of a teacher having "regular & permanent" status (tenure)

1 AN ACT

2 To amend and reenact R.S. 17:443 and to enact R.S. 17:443.1, 443.2, 443.3, 443.4, 443.5,  
3 relative to the removal of permanent teachers; to provide for the procedure for  
4 removal of permanent teachers; to provide for appeals; to provide for the  
5 qualifications for arbitrators for appeals from the removal of permanent teachers; and  
6 to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 17:443 is hereby amended and reenacted and R.S. 17:443.1, 443.2,  
9 443.3, 443.4, 443.5 are hereby enacted to read as follows:

10 §443. Removal of permanent teachers; ~~procedure; right to appeal~~

11 ~~A.~~ A permanent teacher shall not be ~~removed from office~~ discharged,  
12 demoted, or otherwise disciplined except upon the written and signed  
13 recommendation ~~charges of the superintendent alleging~~ willful neglect of duty, ~~or~~  
14 incompetency, dishonesty, ~~or~~ immorality, or of being a member of or contributing  
15 to any group, organization, movement, or corporation that is by law or injunction  
16 prohibited from operating in the state of Louisiana, and then only if that  
17 recommendation is accepted. ~~found guilty after a hearing by the school board of the~~  
18 ~~parish or city, as the case may be, which hearing may be private or public, at the~~  
19 ~~option of the teacher. At least twenty days in advance of the date of the hearing, the~~  
20 ~~superintendent with approval of the school board shall furnish the teacher with a~~

1        ~~copy of the written charges. Such statement of charges shall include a complete and~~  
2        ~~detailed list of the specific reasons for such charges and shall include but not be~~  
3        ~~limited to the following: date and place of alleged offense or offenses, names of~~  
4        ~~individuals involved in or witnessing such offense or offenses, names of witnesses~~  
5        ~~called or to be called to testify against the teacher at said hearing, and whether or not~~  
6        ~~any such charges previously have been brought against the teacher. The teacher shall~~  
7        ~~have the right to appear before the board with witnesses in his behalf and with~~  
8        ~~counsel of his selection, all of whom shall be heard by the board at said hearing. For~~  
9        ~~the purpose of conducting hearings hereunder, the board shall have the power to~~  
10       ~~issue subpoenas to compel the attendance of all witnesses on behalf of the teacher.~~  
11       ~~Nothing herein contained shall impair the right of appeal to a court of competent~~  
12       ~~jurisdiction.~~

13                ~~B. If a permanent teacher is found guilty by a school board, after due and~~  
14        ~~legal hearing as provided herein, on charges of willful neglect of duty, or of~~  
15        ~~incompetency, dishonesty, or immorality, or of being a member of or contributing~~  
16        ~~to any group, organization, movement, or corporation that is by law or injunction~~  
17        ~~prohibited from operating in the state of Louisiana, and ordered removed from office,~~  
18        ~~or disciplined by the board, the superintendent with approval of the board shall~~  
19        ~~furnish to the teacher a written statement of recommendation of removal or~~  
20        ~~discipline, which shall include but not be limited to the exact reason(s), offense(s),~~  
21        ~~or instance(s) upon which the recommendation is based. Such teacher may, not more~~  
22        ~~than one year from the date of the said finding, petition a court of competent~~  
23        ~~jurisdiction for a full hearing to review the action of the school board, and the court~~  
24        ~~shall have jurisdiction to affirm or reverse the action of the school board in the~~  
25        ~~matter. If the finding of the school board is reversed by the court and the teacher is~~  
26        ~~ordered reinstated and restored to duty, the teacher shall be entitled to full pay for~~  
27        ~~any loss of time or salary he or she may have sustained by reason of the action of the~~  
28        ~~said school board.~~

1           ~~€~~ For the purposes of this Section, immorality shall mean any conviction  
2 of a felony offense affecting the public morals enumerated in Part V of Chapter 1 of  
3 Title 14 of the Louisiana Revised Statutes of 1950.

4 §443.1. Removal of permanent teachers; procedure

5           A.(1) A superintendent may recommend the discharge, demotion, or other  
6 discipline of a permanent teacher for any of the offenses set forth in R.S. 17:443.  
7 The recommendation shall be in writing and include specifics relating to the reason  
8 or reasons for the proposed discharge, demotion, or other discipline including, but  
9 not limited to, the following:

10           (a) The date and place of alleged offense or offenses.

11           (b) The names of individuals involved in or witnessing such offense or  
12 offenses.

13           (c) The proposed discipline if the teacher is found guilty of the offense or  
14 offenses; and

15           (d) Copies of any and all documents that support the charges.

16           (2) The copy of the recommendation shall be provided to the permanent  
17 teacher not less than seven days prior to the school board meeting during which the  
18 allegations and proposed discipline are to be considered by the school board.

19           B. The school board shall either accept or reject the allegations by a majority  
20 vote at a regular meeting of the school board. The permanent teacher against whom  
21 the allegations have been made shall have the right to appear before the school board  
22 to refute the allegations.

23           C. If the school board rejects the allegations, the matter shall be deemed  
24 resolved in favor of the permanent teacher and no disciplinary action arising from  
25 the same allegations shall be made against the permanent teacher in the future.

26           D.(1) If the school board accepts the allegations, the school board shall then  
27 either accept, reject, or modify the proposed discipline by a majority vote at a regular  
28 meeting of the school board. The permanent teacher against whom the discipline is

1 proposed shall have the right to appear before the school board to contest the  
2 proposed discipline.

3 (2) If the school board rejects the proposed discipline and determines that no  
4 discipline is appropriate, the matter shall be deemed resolved in favor of the  
5 permanent teacher and no disciplinary action arising from the same allegations shall  
6 be made against the permanent teacher in the future.

7 (3) If the school board rejects the proposed discipline but determines that a  
8 measure of discipline different than that recommended by the superintendent is  
9 appropriate, the school board may fashion such discipline as it deems appropriate,  
10 after considering all of the facts and circumstances surrounding the allegations, by  
11 majority vote.

12 (4) If the school board accepts the proposed discipline, the discipline shall  
13 be imposed upon the permanent teacher subject to the right of appeal set forth in R.S.  
14 17:443.2.

15 E. The superintendent shall provide the teacher, by certified mail, return  
16 receipt requested, with a copy of the written recommendation and an extract of the  
17 minutes of the school board's action on that recommendation no later than seven days  
18 following the school board meeting at which the recommendation was considered  
19 by the school board.

20 §443.2. Removal of permanent teachers; appeal from school board decision

21 A. A permanent teacher aggrieved by any discipline imposed by a school  
22 board pursuant to R.S. 17:443 and R.S. 17:443.1 may appeal within ten days of  
23 receipt of the information set forth in R.S. 17:443.1(E) by filing a Notice of Appeal  
24 with the New Orleans regional office of the American Arbitration Association.

25 B. If a Notice of Appeal is not timely filed by the permanent teacher, the  
26 permanent teacher shall be considered to have waived any right to contest the  
27 allegations or discipline and the action of the school board shall be final, definitive  
28 and not subject to further review.

1           C. If a notice of Appeal is timely filed by a permanent teacher, the appeal  
2           shall be conducted pursuant to R.S. 17:443.3.

3           §443.3 Removal of permanent teachers; binding arbitration

4           A. Appeals from discipline imposed upon a permanent teacher by a school  
5           board shall be subject to mandatory binding arbitration.

6           B. The parties to the arbitration will be the permanent teacher and the school  
7           board.

8           C.(1) The parties shall select a panel of arbitrators from a qualified list of  
9           eligible persons maintained by the American Arbitration Association.

10           (2) Each party shall select an arbitrator, and the two arbitrators selected by  
11           the parties shall select a third arbitrator, who shall serve as the chairperson.

12           (3) The arbitrators shall be selected by the parties as follows: the permanent  
13           teacher shall select an arbitrator from the "Employee List of Arbitrators" and the  
14           school board shall select an arbitrator from the "Employer List of Arbitrators."

15           (4) The third arbitrator shall be selected from the "Neutral List of  
16           Arbitrators."

17           D. To the extent not inconsistent with this Section, the arbitration shall be  
18           conducted in accordance with Louisiana Binding Arbitration Law, R.S. 9:4201 et  
19           seq. In the event of a conflict between the Labor Arbitration Rules of the American  
20           Arbitration Association and the Louisiana Binding Arbitration Law, the Labor  
21           Arbitration Rules of the American Arbitration Association shall control.

22           §443.4. Removal of permanent teachers; issues to be determined in arbitration

23           A. The panel of arbitrators shall determine both of the following issues from  
24           the facts presented at the arbitration:

25           (1) Whether the school board proved by a preponderance of the evidence that  
26           the permanent teacher was guilty of willful neglect of duty, incompetency,  
27           dishonesty, immorality, or of being a member of or contributing to any group,  
28           organization, movement, or corporation that is by law or injunction prohibited from  
29           operating in the state of Louisiana.

1           (2) Whether any discipline imposed by the school board on the permanent  
2           teacher was commensurate with the offense or offenses.

3           B. After consideration of all of the evidence, the panel of arbitrators may  
4           make any award that a majority of them deem to be just and appropriate under the  
5           circumstances.

6           C. There shall be no appeal from any order confirming, modifying,  
7           correcting, or vacating an arbitration award, or from a judgment entered upon an  
8           arbitration award.

9           §443.5. Removal of permanent teachers; qualifications of arbitrators

10           A. Persons eligible to be on any list of arbitrators shall be residents of  
11           Louisiana and have attended no less than eight hours of training in the field of  
12           employment arbitration sponsored by the American Bar Association or the American  
13           Arbitration Association.

14           B.(1) Persons eligible to be on the "Employee List of Arbitrators" must also  
15           have no less than ten years experience as a classroom teacher.

16           (2) Persons eligible to be on the "Employer List of Arbitrators" must also  
17           have no less than five years experience as a classroom teacher and five years  
18           experience as a superintendent of schools and no less than ten years experience in the  
19           field of education law.

20           Section 2. This Act shall become effective upon signature by the governor or, if not  
21 signed by the governor, upon expiration of the time for bills to become law without signature  
22 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
23 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
24 effective on the day following such approval.

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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Jones

HB No. 879

**Abstract:** Provides for the procedure for discharging, demoting, or disciplining a permanent teacher.

Present law prohibits the removal from office of any permanent teacher except upon written and signed charges of willful neglect of duty, incompetency, dishonesty, immorality or of being a member of or contributing to any group, organization, movement, or corporation that is prohibited from operating in Louisiana. Specifies that such removal shall occur only if the teacher has been found guilty after a hearing by the employing school board. Specifies certain procedures regarding such removal and hearing including providing the teacher with a copy of the written charges and the right of the teacher to bring witnesses and counsel to be heard by the board at the hearing. Provides for the right to appeal to a court of competent jurisdiction.

Present law defines immorality as any conviction of a felony offense affecting the public morals enumerated in Part V of Chapter 1 of Title 14 of the Louisiana Revised Statutes of 1950. (Article 933 of the Code of Criminal Procedure defines felony to mean an offense that may be punished by death or by imprisonment at hard labor.)

Present law provides that if a permanent teacher is found guilty of any charges as specified in existing law and ordered to be removed from office or disciplined by the school board, the superintendent shall furnish to the teacher a written statement of recommendation of removal or discipline. Specifies certain information to be included in such statement and allows the teacher to petition a court of competent jurisdiction for a full hearing to review the action of the school board and to affirm or reverse such action. Provides that if the finding of the school board is reversed and the teacher is ordered reinstated, the teacher shall be entitled to full pay for any loss of time or salary the teacher may have sustained by reason of the action of the school board.

Proposed law provides that a permanent teacher shall not be discharged, demoted, or otherwise disciplined except upon the written and signed recommendation of the superintendent alleging willful neglect of duty, incompetency, dishonesty, immorality or of being a member of or contributing to any group, organization, movement, or corporation that is prohibited from operating in Louisiana.

Proposed law provides that a superintendent may recommend the discharge, demotion or other discipline of a permanent teacher for any of the offenses set forth in present law.

Proposed law provides that the writing include the specific reasons for the proposed discharge, demotion, or other discipline including the date and place of alleged offense or offenses; the names of individuals involved in or witnessing such offense or offenses; the proposed discipline if the teacher is found guilty of the offense or offenses; and copies of any and all documents that support the charges.

Proposed law provides that the copy of the recommendation shall be provided to the permanent teacher not less than seven days prior to the school board meeting during which the allegations and proposed discipline are to be considered by the school board.

Proposed law provides that the school board shall either accept or reject the allegations by a majority vote at a regular meeting of the school board and the permanent teacher against

whom the allegations have been made shall have the right to appear before the school board to refute the allegations.

Proposed law provides that if the school board rejects the allegations, the matter shall be deemed resolved in favor of the permanent teacher and no disciplinary action arising from the same allegations shall be made against the permanent teacher in the future.

Proposed law provides that if the school board accept the allegations, the school board shall then either accept, reject or modify the proposed discipline by a majority vote at a regular meeting of the school board. The permanent teacher against whom the discipline is proposed shall have the right to appear before the school board to contest the proposed discipline.

Proposed law provides that if the school board rejects the proposed discipline and determines that no discipline is appropriate, the matter shall be deemed resolved in favor of the permanent teacher and no disciplinary action arising from the same allegations shall be made against the permanent teacher in the future.

Proposed law provides that if the school board rejects the proposed discipline but determines that a measure of discipline different than that recommended by the superintendent is appropriate, the school board may fashion such discipline as it deems appropriate, after considering all of the facts and circumstances surrounding the allegations, by majority vote.

Proposed law provides that if the school board accepts the proposed discipline, said discipline shall be imposed upon the permanent teacher subject to the right of appeal set forth in proposed law.

Proposed law provides that the superintendent shall provide the teacher, by certified mail, return receipt requested, with a copy of the written recommendation and an extract of the minutes of the school board's action no later than 7 days following the school board meeting at which the recommendation was considered by the school board.

Proposed law provides that a permanent teacher aggrieved by any discipline imposed by a school board may appeal within 10 days of receipt of the notice sent by the superintendent by filing a Notice of Appeal with the New Orleans regional office of the American Arbitration Association.

Proposed law provides that if a notice of appeal is not timely filed, the permanent teacher shall be considered to have waived any right to contest the allegations or discipline and the action of the school board shall be final, definitive and not subject to further review.

Proposed law provides that appeals from discipline imposed upon a permanent teacher by a school board shall be subject to mandatory binding arbitration and that there shall be no appeal from any order confirming, modifying, correcting, or vacating an arbitration award, or from a judgment entered upon an arbitration award.

Proposed law provides that the permanent teacher and the school board shall select a panel of arbitrators from a qualified list of eligible persons maintained by the American Arbitration Association. Each party selecting an arbitrator, and the two arbitrators selected shall select a third arbitrator, who shall serve as the chairperson.

Proposed law provides that the list from which arbitrators shall be selected and the qualifications of the arbitrators on each list.

Proposed law provides that the arbitration shall be conducted in accordance with the Labor Arbitration Rules of the American Arbitration Association and the Louisiana Arbitration Law, R.S. 9:4201-4217. In the event of a conflict between the Labor Arbitration Rules of



the American Arbitration Association and the Louisiana Arbitration Law, the Labor Arbitration Rules of the American Arbitration Association shall control.

Proposed law provides that the arbitrators shall determine the following issues from the facts presented at the arbitration:

- (1) Whether the school board proved by a preponderance of the evident that the permanent teacher was guilty of willful neglect of duty, incompetency, dishonesty, immorality, or of being a member of or contributing to any group, organization, movement, or corporation that is by law or injunction prohibited from operating in the state of Louisiana.
- (2) Whether any discipline imposed by the school board on the permanent teacher was commensurate with the offense or offenses.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 17:443, Adds R.S. 17:443.1, 443.2, 443.3, 443.4, 443.5)