

# DUE PROCESS & TENURE

The concept of “due process of law” has long been a basic part of our legal system. “Due process” serves to ensure that before a person can be deprived of certain rights, those seeking to deprive him of such rights or to limit such rights must proceed in a way that is fundamentally fair.

The right to due process is an essential element of a fair and just disciplinary system. When any system or organization is required to treat all of its members or employees fairly, each person who is a part of that system or organization benefits from that requirement. Missouri law currently does not extend the full suite of due process protections to teachers, leaving them subject to processes that are unfair and unpredictable.

## General Elements of Due Process

1. The person in a particular case must be advised in advance of his alleged wrongdoing or deficiencies and must be advised of the consequences that will occur if he fails to correct the situation.
2. The person has the right to prior notice of all charges and notice as to the time and place of the hearing.
3. The person has the right to be present before the decision-maker who is passing judgment.
4. There must be a hearing at which the person is afforded the opportunity to submit relevant evidence and to cross-examine witnesses produced in opposition to his/her position.
5. The person must be afforded the right to be represented at said hearing by counsel.
6. The standards of conduct and performance to which the person is being held must be generally known, and the person must not be held to any greater or different standards than are other persons in similar circumstances. The standard to which the person is being held must be reasonable.
7. The decision-maker must base this decision on the facts as presented at the hearing and give the reasons for his decision.

## Tenure Law Fails to Meet Due Process Needs

After many years of experience with Missouri’s Teacher Tenure Act, some of the act’s problems become clear, and a movement toward due process merits consideration.

One underlying deficiency in the tenure law is that tenure provisions only protect teachers after their sixth consecutive contract; whereas, due process and just cause should be available to all employees.

To meet due process needs for all education employees, Missouri NEA advocates changes in the law that would meet the need for due process.

For Missouri’s tenure law to meet the need for due process, it would require the following: (1) a shorter probationary period; (2) an impartial hearing officer; (3) dismissal only for “just cause”; (4) appeal on substance (faulty judgment), not just appeal on procedure; and (5) application for all education employees. (See chart below.)

All employees of the state of Missouri have access to the “Merit System,” which provides them with the five areas that are lacking in the current tenure law. Education employees,

on the other hand, are not provided with these protections.

Two misconceptions are common among people unfamiliar with the details of due process and tenure provisions. First, some people believe that advocates of due process rely on “loopholes.” Due process critics suggest that only those who have done something wrong will benefit from due process. A closer look at the process and its history will reveal that when any system is required to treat all of its members or employees fairly, each person who is a part of that system benefits from that requirement.

The second common public misconception about tenure is that it protects “bad” teachers. On the contrary, the law protects evaluators and supervisors who may not be doing their jobs correctly. As long as they follow the proper procedures in a tenure case, their judgment is never questioned.

MNEA’s government relations and legal programs reflect the position that due process and just cause must be provided for all education employees.

## What's the Difference?

| Substantive Due Process   | Missouri Teacher Tenure Act   | Missouri Teacher Tenure Act— Probationary Teachers                         |
|---|---|--|
| Provides advance notice of any deficiencies and consequences if not corrected                     | Provides for performance-based evaluation, job targets and 30-day letter  | Provides for performance-based evaluation, job targets and 90-day letter   |
| Provides reasonable time and opportunity to improve   | May or may not provide time to improve  | May or may not provide time to improve                                     |
| Provides notice of time and place of hearing  | Provides opportunity to request hearing   | No right to a hearing when contract is not renewed                         |
| Provides hearing where charged person and counsel can submit evidence and cross-examine witnesses | If requested, provides hearing where charged person and counsel can submit evidence and cross-examine witnesses | Provides discipline or non-renewal based on judgment of board of education |
| Provides hearing by impartial hearing officer   | Provides hearing by district board of education   | No right to appeal non-renewal   |
| Provides for discipline or termination only for just cause  | Provides for discipline or termination based on judgment of board of education                                  |  |
| Provides appeal for both substance and procedure  | Provides appeal for procedure only  |  |