

Teacher Tenure FAQ

Please note that the Kentucky Department of Education (KDE) cannot provide inquirers, even school districts and their employees, legal advice. Pursuant to KRS 156.240, the following is only general information on education laws.

KRS Chapter 161 Tenure Requirements

Who is eligible for continuing status (“tenure”) in Kentucky pursuant to KRS Chapter 161?

- “Teachers,” defined as “any person for whom certification is required as a basis of employment...with the exception of the superintendent.” (KRS 161.740; 161.720); and
- Vocational education teachers meeting the certification standards established by the EPSB and employed by a public school district.

This means that a properly certified individual working in a position that requires certification in a public school district will be eligible for tenure, including classroom teachers and principals. This does not include superintendents, classified employees, or certified employees working in a position that does not require certification.

What are the basic requirements to obtain or regain tenure in Kentucky?

According to KRS 161.740, a “teacher” shall attain continuing service status, either for the first time or will regain it, so long as the certified individual has worked:

- Four (4) years out of the last six (6);
- in the same district; and
- is renewed for a fifth year while currently employed; and
- assumes his/her duties in the fifth year.

What counts as a “year” of teaching?

To constitute a year, an individual must work a minimum of 140 days as a full-time teacher (the equivalent of seven (7) months as required by KRS 161.720). Each day for a full-time teacher must be at least six (6) hours in length and must be one for which the teacher was

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paid to work; however, what constitutes full-time employment is a local district determination. Many districts require teachers to work no less than seven-and-a-half (7.5) hours per contract day. (Kentucky Attorney General Opinion 76-278.)

If a teacher does not work a total of one hundred and forty (140) days in a single school year, that year does not count toward attaining tenure. Days from different school years may not be combined to determine credit toward tenure.

Must the four years of teaching required for tenure be consecutive?

No. While a teacher can earn tenure by working four (4) consecutive years in the same district and meeting the above tenure requirements, pursuant to KRS 161.740(1)(b), a teacher can work four (4) of the last six (6) years in the same district to be eligible for tenure.

What does it mean to “assume his/her duties” during the fifth year?

KRS 161.740 requires that a teacher “assume his or her duties” during the fifth year of employment in the district in order for tenure to become attached or vested. This means that tenure will attach once the teacher completes the first full-time day the teacher is required to show up for work (it does not have to be a teaching day).

Does time spent as a student teacher count towards tenure?

No, under KRS 161.740(1)(d), credit toward tenure shall only begin once a teacher is properly certified as defined in KRS 161.720(6) or, in the case of a vocational education teacher employed by a local school district, when the required Education Professional Standards Board certification standards have been met.

Does time spent teaching with an emergency or temporary/provisional certificate count toward tenure?

Yes, as long as the teacher taught at least one hundred forty (140) days as a full-time teacher in a position requiring certification, the year will count towards attainment of tenure.

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Does time spent working in a district as a substitute teacher count toward tenure?

In some instances if a teacher is employed by the district (i.e., has a contract with the district for work as a full-time substitute) and has taught at least one hundred forty (140) days as a full-time teacher in a position requiring certification, the year will count towards attainment of tenure. Substitutes not employed pursuant to a full-time contract or who do not complete 140 days in a school year will not have their time counted toward tenure attainment.

Does time spent as a classified employee count toward tenure?

No, per KRS 161.740, only teachers are eligible for tenure status. KRS 161.720 defines “teacher” as “any person for whom certification is required as a condition of employment in the public schools of the state, with the exception of the superintendent.” Aids and classified employees are not required to hold certificates offered by the Education Professional Standards Board for their position and are therefore not considered “teachers” eligible for teachers’ tenure.

Do part-time days or years count toward requirements for tenure?

Part-time employment does not count toward service requirements to obtain tenure. A teacher must work a minimum of one hundred forty (140) six (6) hour days for a year to count toward tenure requirements. However, the local district has the authority to determine what constitutes a full-time day, and many districts require teachers to work no less than seven-and-a-half (7.5) hours per contract day.

Does an already tenured teacher maintain tenure status if they are reduced to part-time?

Once a teacher has attained continuing contract status, that teacher will maintain that status even if he or she is reduced to part-time employment. The district must also comply with the reduction of duty notice requirements of KRS 161.760.

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If a teacher has worked four years as a full-time teacher in the same district, will they receive tenure status if they are reduced to part-time or a substitute for the fifth year of teaching in that district?

In order to attain tenure, a teacher must work the first day of the fifth year pursuant to a full-time contract renewal. If a teacher is nonrenewed after four (4) years and later reemployed in the district in a different part-time or substitute teacher position, such a scenario does not confer tenure because the teacher was not “reemployed” in year five.¹ Districts, however, should not reduce responsibilities to subvert the legal tenure requirements set forth in KRS Chapter 161.

If a tenured teacher accepts a non-teaching position in their current district, and that position requires certification (e.g., administrator, guidance counselor, curriculum coordinator) will they retain their tenure status?

Yes, tenure is connected with a person rather than a position, so moving to another position requiring certification within the same district will not affect tenure status.

Is there a separate tenure for administrators?

No, although KRS 161.765 is colloquially referred to as “administrative tenure.”. An administrator cannot be granted a continuing service contract for administrator status. KRS 161.765 provides administrators who have three (3) years of administrative service in the same district with procedural protections a district must follow prior to demoting an administrator.

Prior to demoting an administrator with three years of administrative service, the district must give the administrator written notice of the demotion and, if the administrator provides a written appeal of the demotion within ten (10) days, provide the administrator a written statement, signed by the superintendent, of the grounds for the demotion and a hearing before the local board of education. The hearing must be set not less than twenty

¹ *Compton v. Johnson*, No. 2021-CA-0295-MR, 2022 WL 496008, at *3 (Ky. Ct. App. Feb. 18, 2022).

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(20) not more than thirty (30) days from the date of service of the statement of grounds for demotion upon the administrator. The local board of education will then have five (5) days from the close of the hearing to provide the superintendent and administrator with the decision of whether to uphold or deny the demotion.

Leaves of Absence and Tenure

Does time on professional advancement or military leave count toward tenure?

Yes, under KRS 161.740(1)(b), a limited status employee on approved military leave shall be awarded credit toward tenure for each year of military service or each year of combined military and school service. However, if the leave time will qualify the teacher for tenure, then the local district may require the teacher to complete a one year probationary period upon return to the district. Pursuant to KRS 161.720(2), a board of education may also grant a leave of absence for professional advancement with full credit towards school service.

Does maternity leave or time on medical leave count toward tenure?

No, the only leaves of absence that can be counted towards attaining tenure are professional advancement (KRS 161.720) and military leave (KRS 161.740). The teacher must appear for and work a full day, with the exceptions of professional advancement and military leave, for years employed with the district to count towards tenure. If a teacher does not work the minimum number of 140 days in a school year, then that year will not count toward the attainment of tenure. If a teacher already has tenure and then takes maternity leave or an extended medical leave, the teacher will return from leave with the same status held when they began the leave period.

Transferring Tenure

Can a teacher with tenure transfer their tenure to another public school district?

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Pursuant to KRS 161.740(1)(c), a teacher who has attained tenure status in one Kentucky school district “shall retain that status” when they become employed by another Kentucky public school district. For the teacher to have their tenure status “transferred,” the statute requires that there cannot be greater than seven (7) months between ending employment in the first district and beginning employment in the second district. Further, the teacher may not automatically be granted tenure status in the second district; the second district may require the teacher to complete a one-year probationary period prior to attaining tenure in the second district. If the district requires a probationary year, tenure will accrue after the one-year probationary period and the first day of work on the second year. Moreover, Kentucky case law holds that, to the extent the second district does not reemploy the teacher following the probationary year and the teacher becomes employed in a third district, tenure will accrue after the one-year probationary period and the first day of work on the second year in the third district and so on; however, lapse in employment of more than seven months will sever tenure.² While resignation usually ends tenure, the transfer provision also applies to a teacher that resigns from a district where they have tenure and then obtains a new position in a second district within seven (7) months.

Can tenure be transferred to a new district for a part-time position?

If a district requires a probationary period, then a tenured teacher wishing to transfer to that district in a part-time position must work the first year in the new district on a full-time basis, and the first full day of the second year, before working in a part-time teaching position. If the district does not require a probationary period, the teacher could attain tenure after working only the first full day of the first year before working in a part-time teaching position. (Kentucky Attorney General Opinion 76-278, 82-614)

² *Smith v. Bennett*, 644 S.W.3d 516, 522 (Ky. Ct. App. 2021), *review denied* (June 8, 2022).

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Can a teacher who has transferred tenure from one district to a second district then transfer tenure to a third school district?

Yes, Kentucky case law interprets KRS 161.740 to hold that, to the extent the second district does not reemploy the teacher following the initial probationary year and the teacher becomes employed in a third district, tenure will accrue after the one-year probationary period and the first day of work on the second year in the third district and so on; however, lapse in employment of more than seven months will sever tenure.³**Does tenure transfer from Kentucky to another state?**

Kentucky does not currently have any tenure reciprocity agreements with other states. A teacher interested in teaching in another state will need to review the tenure requirements of the state in which they are hoping to teach to determine if their Kentucky tenure status will transfer to that state.

I have tenure in another state; will my tenure transfer to Kentucky?

Kentucky currently does not have any tenure reciprocity agreements with other states; therefore, a teacher's out-of-state teaching experience will not count toward attaining tenure in Kentucky.

Loss of Tenure

Under what circumstances can tenure be lost?

Tenure may be lost through:

- retirement,
- resignation, and
- termination “for cause” under KRS 161.790.

³ *Smith v. Bennett*, 644 S.W.3d 516, 522 (Ky. Ct. App. 2021), *review denied* (June 8, 2022).

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Does a “reduction in force” result in a loss of tenure for teachers affected by the reduction?

Under KRS 161.800, superintendents are provided the authority to reduce the number of teachers in the district for reasons of decreased pupil enrollment or the suspension of schools or territorial changes affecting the district. The statute requires that, in making determinations on retaining teachers, the superintendent give preference to teachers on continuing contracts and to teachers with greater seniority. A tenured teacher who is affected by the reduction is considered to have their contract “suspended” and does not lose their tenure status with the district.

Tenured teachers who have had their contracts suspended due to a reduction in force have a right to be rehired in the district in the same tenured status. If teaching positions become vacant or are created for which any of the teachers are or become qualified, the tenured teachers will be hired back by the district in the “order of seniority of service in the district.”

Will teachers lose tenure status if they work in a school or district that is annexed or consolidated?

Pursuant to KRS 161.800, if all or part of a school district is transferred to another school district (“annexed”), teachers with tenure status will retain that status in the district to which the original district was transferred. Employment in the new district is subject to the limitations of a reduction in force under KRS 161.800.

Further, pursuant to KRS 161.810, if schools in an independent or county school district are consolidated or centralized, the tenured teachers of the consolidated or centralized schools will retain their tenure status in the newly centralized or consolidated school. Employment in the new school is subject to the limitations of a reduction in force under KRS 161.800.

Will a loss of certification result in a loss of tenure?

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Yes, a teacher's ability to attain tenure is contingent upon his or her certification status. A loss of certification means a teacher cannot hold a certified teaching position under KRS 161.020 and therefore the teacher loses his or her right to a continuing contract.

Does taking maternity or extended medical leave end tenure?

A teacher taking medical or maternity leave from a district under KRS 161.770(3) returns to the district with the same contract status he or she had when he or she took the leave. It is also important to note that time on medical or maternity leave does not count as time served for accruing tenure; the teacher will simply return to the district with the same status he or she had at the point of taking the leave.

If a teacher returns from disability retirement under KTRS, does the teacher retain the tenure status they held prior to disability retirement?

A teacher who has retired with KTRS under disability retirement has certain rights to re-employment as outlined in KRS 161.662.

Generally, a tenured teacher who is approved for disability retirement retains tenure status in the school district from which they retired for up to twenty-four (24) months from the date of retirement. If the teacher recovers from the disability, he or she can provide written verification of that recovery, with the supporting statement of a licensed physician, to the superintendent (before April 15th prior to the year the teacher wishes to return) and will be able to return to the district as a tenured teacher. It is important to note that the teacher wishing to return to the district as a tenured teacher only needs to provide the written notice of recovery within the twenty four (24) month period since the date of his or her disability retirement to retain his or her tenure status; the teacher does not have to return to work within that twenty four (24) month period to retain his or her tenure status. If the teacher does not provide the written notice within twenty-four (24) months, the teacher's continuing service contract will end.

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If the teacher recovers from the disability and wishes to return to the district after twenty-four (24) months, the teacher can provide the same written notice to the district and will be given priority consideration for reemployment in a position for which the teacher is qualified and certified. To qualify for priority consideration, the teacher must provide the notice within twenty-five to forty-two (25 to 42) months from the initial date of retirement.

A tenured teacher who applies for disability retirement retains their tenure during the period the application for disability retirement is being processed. If the application for disability retirement is not approved, the teacher may return to the contract, employment, or leave status held prior to submitting the application for disability retirement.