

UNCERTAINTIES SURROUNDING CREDIT FOR PRIOR TEACHING EXPERIENCE UNDER MISSOURI'S TEACHER TENURE LAWS

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I. INTRODUCTION

Teaching has long been a popular choice for those seeking a second career. Although the Missouri Department of Elementary and Secondary Education does not keep statistics of the ages of newly hired teachers, in 2010 teachers over the age of 50 made up 18.2% of all the teachers in Missouri public schools.¹ It is safe to assume that a decent number of these older teachers came to the profession later in life. Teaching is an attractive option for those seeking a second career for several reasons. Teaching may not be the highest paying career in the world, but the job provides attractive benefits, including a shortened work period and access to a magnificent retirement system. Teaching is also a sensible career option during an economic recession. Compulsory education laws guarantee that there will always be children to educate, no matter what the state of the economy.² Perhaps the most appealing aspect of teaching for those concerned about the future is the job security the profession provides.

In Missouri, public school teachers receive job security by obtaining tenure status. Missouri's Teacher Tenure Act, codified in Mo. Rev. Stat. §§ 168.102 to 168.130, provides that any teacher who has been employed as a teacher in the same school district for five successive years and who thereafter continues to be employed as a teacher by the school district obtains the status of "permanent teacher."³ Permanent teachers enjoy perks such as indefinite contract renewal⁴ and protection from termination by the school board.⁵ While enduring job security after five years is appealing, second career teachers would undoubtedly prefer to achieve tenure status sooner, if possible.

Missouri's tenure laws contain an interesting provision that cuts down on the amount of time it takes to reach tenure status for teachers "who [have] been employed in any other school system as a teacher for two or more years."⁶ This

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¹ The Missouri Department of Elementary and Secondary Education, *Recruitment and Retention of Teachers in Missouri Public Schools: A Report to the Missouri General Assembly* 3, (December 2011), available at http://dese.mo.gov/divteachqual/teachrecruit/documents/Recruit_report.pdf.

² *Teaching: No Fallback Career*, N.Y. TIMES, April 19, 2009 <http://roomfordebate.blogs.nytimes.com/2009/04/19/teaching-no-fallback-career/>.

³ See MO. REV. STAT. § 168.104(4) (2012) (definition of "permanent teacher").

⁴ See MO. REV. STAT. § 168.106 (2012) ("The contract between a school district and a permanent teacher shall be known as an indefinite contract and shall continue in effect for an indefinite period, subject only to [various defined conditions]").

⁵ See MO. REV. STAT. § 168.114 (2012) (An indefinite contract with a permanent teacher cannot be terminated by the board of education of a school district except for one or more of the causes defined in this statute).

⁶ See MO. REV. STAT. § 168.104(5) (2012) (definition of "probationary teacher").

seemingly straightforward provision can quickly become an issue of confusion for both teachers and school administrators. What type of prior teaching experience counts under this provision? Does teaching experience in a private school or at a university count? What about tutoring or mentoring? Must the years of prior experience be consecutive? While these questions might seem to be of little importance to most of us, the answers could be potentially life-changing for those who begin teaching in a public school later in life. The reason why the answers to these questions are important is quite simple: while a tenured teacher in Missouri enjoys substantial job security, a non-tenured or “probationary” teacher has basically no job security.⁷

This article will explore the ambiguities and potential issues surrounding the shortened tenure track for educators with prior teaching experience under Missouri’s teacher tenure laws. The article will first examine the phenomena of choosing teaching as a second career, and how the job security provided by Missouri’s teacher tenure laws fosters this trend. The article will then briefly explain how Missouri’s teacher tenure laws work, focusing particularly on how the laws affect those who wish to teach as a second career. The focus will then shift to the central issue of the uncertainties surrounding the shortened tenure track for those with prior teaching experience. The article will conclude with a look into the future of teacher tenure in Missouri.

II. WHY IS TEACHING SUCH A POPULAR SECOND CAREER OPTION?

Many people view teaching in the public school setting as a viable second career path because the parameters of the job seem somewhat familiar. Teaching in a public school is a unique occupation because nearly everyone has spent thousands of hours in school learning from teachers. In this sense, teaching seems “comfortable.” Nostalgia and familiarity with the work environment are not the only draws to the profession, however.

The average salary of a public school teacher is notoriously low in comparison to other occupations.⁸ This is especially true in Missouri, where in 2011 teacher compensation ranked 45th out of 50 states and was not competitive

⁷ Jacquie Shipma, *Heads Up for Probationary Teachers*, MISSOURI NATIONAL EDUCATION ASSOCIATION, http://www.mnea.org/Missouri/News/Heads_up_for_probationary_teachers_27.aspx (last visited Jan. 11, 2013) (“A probationary [teacher’s] contract is good for one year only. It expires at the end of the school year. At that time, the district has complete discretion in deciding whether to hire the teacher back for another year.”).

⁸ See Dave Eggers & Ninive Calegari, *The High Cost of Low Teacher Salaries*, N.Y. TIMES, April 30, 2011, available at http://www.nytimes.com/2011/05/01/opinion/01eggers.html?_r=0 (“The average teacher’s pay is on par with that of a toll taker or bartender. Teachers make 14 percent less than professionals in other occupations that require similar levels of education.”).

with surrounding states.⁹ Despite the low salaries, teaching is still appealing because of the benefits the profession offers.

For example, the average length of a teaching contract in Missouri is only 181.4 days of employment, compared to an average of 261 days of employment for full-year positions in other fields.¹⁰ Having summers off gives teachers the opportunity to supplement their income by taking another job. Teachers can also take time to enjoy the summer with their family, take a vacation, or simply relax. Regardless of how the time is spent, having summers off is definitely a perk that is unique to teaching.

Another draw to the profession is the retirement system. Missouri schoolteachers enjoy access to one of the best public-sector retirement systems in the country. The Public School and Education Employee Retirement Systems of Missouri (PSRS/PEERS) provide retirement, disability, and survivor benefits to active and retired Missouri public school teachers, school employees, and their families.¹¹ Under the system, Missouri teachers pay a set percentage of their total compensation (salary and board-paid benefits) into the Missouri Public School Retirement System during their careers.¹² The board of education then matches that contribution.¹³ Thus, an individual teacher's retirement plan is equally funded throughout that teacher's professional career by contributions from the teacher and from his or her employer.¹⁴ The Missouri teacher retirement system is, by all accounts, one of the premier retirement systems in the country for public sector employees. "The total assets of both PSRS and PEERS were approximately \$31 billion as of April 30, 2011, making the [combined system] larger than all other public retirement plans in the state [of Missouri] combined."¹⁵

⁹ Chris Belcher, *Wisconsin vs. MO: Teacher compensation much different in Show-Me State*, COLUMBIA BUSINESS TIMES, (April 29, 2011), available at <http://columbiabusiness.com/11513/2011/04/29/wisconsin-vs-mo-teacher-compensation-much-different-in-show-me-state-superintendent%E2%80%99s-view/>.

¹⁰ Teacher Education, *Salary Comparisons for Beginning Teachers*, UNIVERSITY OF MISSOURI COLLEGE OF EDUCATION, (August 2009), available at http://education.missouri.edu/TDP/resources/beginning_teachers_salaries.php. (The average length of a teaching contract in Missouri is 181.49 days, however, individual districts vary. The 261 day estimate was obtained by subtracting 52 Saturdays and 52 Sundays from a total of 365 days in a year.).

¹¹ See generally Public School & Education Employee Retirement Systems of Missouri, PSRS.MO.ORG (last visited Nov. 28, 2012).

¹² See Belcher, *supra* note 9.

¹³ *Id.* (In 2011, Missouri teachers paid 14 percent of their total compensation to the Missouri Public School Retirement System. The Board of Education matched that contribution. The contribution rate for teachers has risen in recent years, and will continue to increase 0.5 percent per year to maintain adequate funding in the retirement system.).

¹⁴ *Id.*

¹⁵ PSRS/PEERS Investment Expertise Nationally Recognized for a Third Time in 2011 with Nomination for Hedge Fund Industry Award, PSRS.MO.ORG, (May 3, 2011), available at <https://www.psrsmo.org/News/PSRSPEERS-NominatedThirdTime2011.html> (noting also that the plan is "the 42nd largest defined benefit plan in the United States").

Familiarity with the profession, a consistent salary, a shortened work period and access to a wonderful retirement system make teaching in Missouri an attractive option for those who are approaching retirement age. For those that choose teaching as a second career, protecting these benefits is vital. Protection comes in the form of tenure. As the Missouri Court of Appeals for the Southern District has said, the purpose of Missouri's teacher tenure laws "is to protect competent and qualified teachers in the security of their positions."¹⁶ Application of the tenure laws has a dramatic impact on those who choose teaching as a second career.

III. THE MISSOURI TEACHER TENURE ACT

Missouri Statutes §§ 168.102 to 168.130 are collectively known as the "Teacher Tenure Act."¹⁷ The current teacher tenure system in Missouri has been in effect since July 1, 1970.¹⁸ Under the current system, a teacher becomes tenured once he or she has been employed as a teacher for five successive years in the same school district and thereafter remains employed in the same district.¹⁹ Thus, a teacher generally obtains tenure status on the first day of their sixth consecutive year in the same district.²⁰

A. Benefits of Tenure

Once a teacher is tenured, he or she is considered a "permanent teacher" and is employed pursuant to an indefinite contract that continues from year to year. A non-tenured, or "probationary teacher," on the other hand, typically receives a one-year contract that may simply not be renewed at the end of the school year upon timely notice to the teacher.²¹ Automatic contract renewal may be the most noteworthy perk to achieving tenure status, but other valuable protections are provided to tenured teachers as well.

For example, permanent teachers are deemed to have a property interest in continued employment that is protected by both procedural and substantive

¹⁶ See *Howard v. Mo. State Bd. of Educ.*, 913 S.W.2d 887, 891 (Mo. App. S.D. 1995) (quoting *Hirbe v. Hazelwood School District*, 532 S.W.2d 848, 850 (Mo. App.1975)).

¹⁷ MO. REV. STAT. § 168.102 (2012).

¹⁸ See *id.*

¹⁹ See MO. REV. STAT. § 168.104 (2012) (A "permanent teacher" is "any teacher who has been employed or who is hereafter employed as a teacher in the same school district for five successive years and who has continued or who thereafter continues to be employed as a teacher by the school district.").

²⁰ Fred Wickham & Brian Wood, *Know Your Rights Part 1: State's Teacher Tenure Law*, AMERICAN FEDERATION OF TEACHERS, (December 2006), <http://mo.aft.org/resources/know-your-rights-part-1-states-teacher-tenure-law>.

²¹ See MO. REV. STAT. § 168.104(5) (2012) (A "Probationary teacher" is "any teacher as herein defined who has been employed in the same school district for five successive years or less.").

due process.²² If a school district wants to terminate a tenured teacher's contract, a number of procedural steps must be taken. First, the indefinite contract of a permanent teacher may not be terminated until the teacher is provided with written charges specifying with particularity the grounds alleged to exist for termination.²³ Permanent teachers are also entitled to a hearing in front of the school board before they can be terminated.²⁴ If the board of education's decision to terminate a permanent teacher's employment is appealed and the decision is reversed, the teacher must be paid his or her salary that was lost during the period pending the appeal.²⁵

In addition, the Missouri Tenure Act limits the reasons for which a tenured teacher's indefinite contract may be terminated to the following: (1) physical or mental condition unfitting him to instruct or associate with children; (2) immoral conduct; (3) incompetency, inefficiency or insubordination in the line of duty; (4) willful or persistent violation of, or failure to obey, the school laws of the state or the published regulations of the board of education of the school district; (5) excessive or unreasonable absence from performance of duties; or (6) conviction of a felony or a crime involving moral turpitude.²⁶

B. Credit for Prior Teaching

The Missouri Tenure Act contains a provision that allows teachers with prior teaching experience to "fast-track" the tenure process. Mo. Rev. Stat. § 168.104(5) states that "in the case of any probationary teacher who has been employed in any other school system as a teacher for two or more years, the board of education shall waive one year of his probationary period."²⁷ On its face, this provision seems straightforward: if a teacher comes to a district having more than two years of teaching experience, then he or she can achieve tenure status sooner than a teacher with no prior teaching experience. In practice, however, applying this provision of the Tenure Act can be difficult. Because it becomes significantly harder to remove teachers once they reach tenure status, defining exactly what "counts" as prior teaching under the tenure laws is a matter of great importance for school administrators. Unfortunately, the Missouri legislature and the Missouri courts have provided little guidance.

²² *Thompson v. Southwest School Dist.*, 483 F. Supp. 1170, 1183 (W.D. Mo. 1980) (Permanent teacher entitled to protection under the Missouri Teacher Tenure Act had developed a property interest in continued employment protected by both procedural and substantive due process.).

²³ MO. REV. STAT. § 168.116.1 (2012).

²⁴ MO. REV. STAT. § 168.116.3 (2012) ("If a hearing is requested by either the teacher or the board of education, it shall take place not less than twenty nor more than thirty days after notice of a hearing has been furnished the permanent teacher.").

²⁵ *See id.*

²⁶ *See* MO. REV. STAT. § 168.114.1 (2012).

²⁷ MO. REV. STAT. § 168.104(5) (2012).

IV. WHAT COUNTS AS PRIOR TEACHING?

Approaching the question of what “counts” as prior teaching under the Missouri Tenure Act is a difficult proposition. Authority on the subject is scarce. The authority that is available deals with relatively narrow factual scenarios, and may not be helpful in guiding teachers and administrators facing unique issues that have not yet been specifically addressed under the law.

A. *Lopez v. Vance*: The Importance of Teaching Full-Time

In 1974 the Missouri Court of Appeals, St. Louis District, decided the case *Lopez v. Vance*.²⁸ In *Lopez*, a Missouri court dealt with the issue of who qualifies as a permanent teacher under Missouri’s teacher tenure laws for the first time. The case centered on issues regarding the tenure status of Mr. Lopez, a teacher in Perryville School District No. 32.²⁹ Mr. Lopez taught electronics in the vocational and technical education program for the Perryville district for six hours (a full day) for five years.³⁰ In his sixth year, Mr. Lopez taught on a 5/6 basis (taking one period off).³¹ In his seventh year, Mr. Lopez started teaching only two periods a day but eventually began to teach five periods a day as the year progressed.³²

Mr. Lopez’s contract was not renewed after his seventh year, and he challenged the non-renewal under the Teacher Tenure Act.³³ The circuit court upheld the district’s decision to not renew Mr. Lopez’s contract, reasoning that Mr. Lopez was not a permanent tenured teacher when his contract was not renewed. Mr. Lopez appealed the trial court’s decision.³⁴

The Missouri Court of Appeals, St. Louis District affirmed the circuit court ruling and held that a teacher who was not a full-time teacher during his sixth and seventh years of teaching was not a permanent teacher and thus was not entitled to benefits of the Act.³⁵ The *Lopez* court emphasized the importance of teaching full-time when analyzing tenure issues under Mo. Rev. Stat. § 168.104:

“Under our statutes the critical point in time at which a teacher achieves a permanent teacher status is reemployment for or failure to notify the teacher of his reemployment for the sixth successive year by the same school district. He does not achieve the status of a permanent teacher unless the statutory conditions are fulfilled, i.e. he is a full-time

²⁸ *Lopez v. Vance*, 509 S.W.2d 197 (Mo. App. 1974).

²⁹ *Id.* at 199.

³⁰ *See id.*

³¹ *See id.*

³² *See id.*

³³ *See id.*

³⁴ *See id.*

³⁵ *Id.* at 204.

teacher for five successive years and ‘thereafter continues to be employed as a full-time teacher by the school district.’”³⁶

The court in *Lopez* held that under Mo. Rev. Stat. § 168.104 Mr. Lopez would need to be employed consecutively for five years before the 1971 academic school year, and then reemployed for the next year for him to be considered a permanent teacher and be entitled to tenure.³⁷

Although *Lopez* did not directly deal with the issue of awarding credit toward tenure for prior teaching experience, the case does serve as a starting point for how courts may look at prior teaching positions. The *Lopez* court placed great emphasis on the distinction between full-time teaching and part-time teaching. In the court’s view, achieving tenure status was contingent on full-time teaching service. Thus, under the *Lopez* framework, prior part-time teaching experience likely would not count toward tenure credit.

B. Attorney General Opinion No. 116: Teaching Is Teaching, Regardless of the Context

On May 28, 1975 Missouri Attorney General **John C. Danforth** issued a formal Attorney General Opinion interpreting the phrase “in any other school system,” used in Mo. Rev. Stat. § 168.104 as it pertains to tenure credit for prior teaching experience.³⁸ Mr. Danforth opined that employment “in any other school system,” includes any full-time teaching position, whether inside or outside the state of Missouri.³⁹ The phrase also encompasses prior teaching service in both public and private schools, as well as teaching service in junior colleges, four-year colleges, universities, and bona fide early childhood or preschool programs.⁴⁰ The Attorney General reasoned that employment in any of these positions would allow a subsequent school district to evaluate the teacher’s earlier work, which was essentially the purpose of allowing prior teaching service to count toward tenure.⁴¹

This Attorney General’s opinion seems to answer the question of what *type* of prior teaching should qualify for tenure credit. So long as a person has been employed as a fulltime teacher for two years, it appears that it does not matter whether the school system was public or private, in Missouri, or in the context of higher education or early childhood education.

³⁶ *Id.* at 203. (Emphasis in original).

³⁷ *Id.* at 203.

³⁸ Mo. Att’y. Gen. Op. No. 116-75, (May 28, 1975) available at <http://ago.mo.gov/opinions/1975/116-75.htm>.

³⁹ *See id.*

⁴⁰ *See id.*

⁴¹ *See id.*

C. *Hudson v. Marshall*: Tenure Credit Requires Teaching Students

In *Hudson v. Marshall*, the Missouri Court of Appeals heard a case involving a plaintiff teacher who was employed by the same school district from 1966 to 1972.⁴² He had signed the district's standard teaching contract for those years, but he did not serve as a traditional classroom teacher.⁴³ In 1966 the superintendent of the district assigned the plaintiff, under the authority of the board, "to become familiar with the various federal education programs under the Civil Rights Act of 1964, and to prepare proposals for the school district under Title I through Title VI of the Civil Rights Act."⁴⁴ The plaintiff's duties included discussing the various programs with the Superintendent, filling out forms for the programs, submitting them for corrections, and thereafter submitting them to governmental authorities.⁴⁵ When the plaintiff's contract was not renewed he sued the district, claiming a violation of the tenure laws.⁴⁶ The circuit court entered judgment in favor of school district.⁴⁷

On appeal, the Court of Appeals held that the plaintiff was not "regularly required to be certified under laws relating to the certification of teachers" and, therefore, was not a "teacher" within meaning of statutes.⁴⁸ The court further held that the plaintiff failed to demonstrate that the school board's failure to reemploy him violated of any of his constitutional rights or had any effect on his efforts to obtain other employment.⁴⁹

The *Hudson* decision appears to stand for the notion that in order to qualify for tenure credit, teachers must actually be engaged in teaching students, and not merely engaged in research or administrative tasks.

D. *Iven v. Hazelwood School Dist.*: The Power of Permanency

In *Iven v. Hazelwood School Dist.*, a math teacher had taught full time in the same middle school for nineteen years.⁵⁰ After several performance evaluations, the superintendent of the school district wrote the teacher a letter notifying him that his performance was unsatisfactory, and that his contract would not be renewed.⁵¹ The teacher argued that the letter was insufficient to satisfy the statutory requirement that a tenured teacher be provided with written

⁴² See *Hudson v. Marshall*, 549 S.W.2d 147 (Mo. Ct. App. 1977).

⁴³ *Id.*

⁴⁴ *Id.* at 150.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.* at 148.

⁴⁸ *Id.* at 153.

⁴⁹ *Id.* at 156.

⁵⁰ See *Iven v. Hazelwood School Dist.*, 710 SW2d 462, 463 (Mo. Ct. App. 1986).

⁵¹ *Id.* at 464-466.

charges specifying with particularity grounds alleged to exist for termination.⁵² The circuit court sided with the teacher, ordering that he be reinstated with back pay and benefits.⁵³ The school board appealed.⁵⁴

The Missouri Court of Appeals for the Eastern District affirmed, holding that although the superintendent's letter to the teacher may have satisfied the statutory requirement that a teacher be provided with warning, the superintendent failed to comply with the statutory requirement that a teacher be given a chance to remedy any defects in his performance.⁵⁵ The letter notifying the teacher of formal charges was also insufficient to satisfy the statutory requirement that the teacher be provided with written charges specifying, with particularity, the grounds alleged to exist for termination.⁵⁶ The *Iven* court noted that:

“The Teacher Tenure Act evidences a legislative intent to provide substantive and procedural safeguards with respect to tenured teachers. As we view the Act, its purpose is to establish strictly defined grounds and procedures for removing a permanent teacher which may not be evaded or other procedures substituted therefor.”⁵⁷

The *Iven* case illustrates how important and powerful the statutory procedural safeguards are to tenured teachers. Had the teacher in *Iven* not have been tenured, he would not have been entitled to the same procedural safeguards.

E. *Sadler v. Board of Education*: Coaching Does Not Count

In 1993, the Missouri Court of Appeals for the Southern District examined how the tenure laws intertwine with the extra-curricular duties that teachers undertake. In *Sadler v. Board of Education*, a tenured teacher who also served as a football and basketball coach was relieved from his coaching duties, but was kept on as a full-time teacher.⁵⁸ The teacher sued the school board, claiming that the board's nonrenewal of his extracurricular coaching duties violated the teacher tenure laws.⁵⁹ The circuit court found that the board had lawfully relieved teacher of his extra-curricular duties and denied the teacher's claim for compensation.⁶⁰ The teacher appealed.⁶¹

The Court of Appeals for the Southern District affirmed the circuit court ruling, holding that the Teacher Tenure Act did not prevent the school board

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.* at 463.

⁵⁵ *Id.* at 465.

⁵⁶ *Id.*

⁵⁷ *Id.* at 464.

⁵⁸ See *Sadler v. Bd. of Educ.*, 851 S.W.2d 707, 709 (Mo. App. 1993).

⁵⁹ *Id.* at 710.

⁶⁰ *Id.* at 708.

⁶¹ *Id.*

from unilaterally eliminating nontenure compensation provisions from teacher's contract.⁶² The court also held that a formal vote of the board was not necessary to relieve a teacher of extra duties like coaching.⁶³

The *Sadler* case further illustrates that only the actual teaching of students counts toward achieving tenure status under Missouri law. Under this logic, it appears very likely that prior coaching experience, camp counseling, volunteer service, etc. should not count toward tenure credit.

**F. *Mitchell v. Board of Education of Normandy School District.*
Public School Experience Only?**

The Missouri Court of Appeals for the Eastern District further defined the term “teacher” in the case *Mitchell v. Board of Education of Normandy School Dist.*⁶⁴ In *Mitchell*, the plaintiff was employed as a “Vocational Program Coordinator” at Normandy High School in St. Louis.⁶⁵ Each year from 1985 through 1988, the plaintiff signed a one-page “teacher's contract” that was required for probationary teachers in the district.⁶⁶ In 1989 and again in 1990, the plaintiff signed a one-page “teacher's contract” that was required for permanent tenured teachers.⁶⁷ Despite signing these contracts, the plaintiff was not a traditional classroom teacher.⁶⁸ The plaintiff's duties mainly consisted of gathering and verifying data regarding student involvement in vocational education programs for which the district received federal funds through the state department of education, and “on occasion” he would go into vocational educational classrooms and talk to students regarding interviewing or employment opportunities.⁶⁹ After a round of budget cuts, the plaintiff's contract was not renewed.⁷⁰ The plaintiff sued the district, claiming a violation of the tenure laws.⁷¹

The circuit court held that the plaintiff could not be considered a tenured teacher.⁷² The Court of Appeals for the Eastern District affirmed, holding that a vocational program coordinator was not a “teacher” protected by Teacher Tenure Act, and thus the district's non-renewal of his contract was appropriate.⁷³ In so holding, the court discussed the definition of “teacher”: “A ‘teacher’ as defined in § 168.104(7) is ‘an employee holding a position of the type mentioned in §

⁶² *Id.* at 713.

⁶³ *Id.* at 714.

⁶⁴ *See Mitchell v. Bd. of Educ. of Normandy Sch. Dist.*, 913 S.W.2d 130 (Mo. App. E.D. 1996).

⁶⁵ *See id.* at 131.

⁶⁶ *See id.* at 132.

⁶⁷ *See id.*

⁶⁸ *See id.*

⁶⁹ *See id.*

⁷⁰ *Id.* at 132-33.

⁷¹ *Id.* at 133.

⁷² *Id.* at 134.

⁷³ *Id.*

168.011, that is, a public school position in which the person was employed to teach.”⁷⁴

On its surface, the *Mitchell* decision appears to merely reiterate that in order to receive tenure credit a teacher must actually be engaged in the teaching of students, as opposed to doing other things for a school district. However, by including the phrase “public school position” in its analysis of what is considered teaching for tenure purposes, the Court of Appeals for the Eastern District arguably altered the precedent set by the 1975 attorney general opinion formally mentioned, which held that prior teaching experience in private schools should also count toward tenure. If the *Mitchell* decision is strictly interpreted, only public school teaching experience should count toward tenure credit.

G. *Sealy v. Board of Education.*: Certification Required

In *Sealy v. Board of Education*, a preschool instructor was terminated from her position.⁷⁵ The instructor, who held a valid teaching certificate, brought action against the school board, claiming that she was wrongfully terminated under the tenure laws.⁷⁶ The circuit court entered summary judgment against the instructor.⁷⁷ On appeal, the Court of Appeals held that: (1) a preschool instructor is not a “teacher” entitled to protection of the Teacher Tenure Act, and (2) she was not a “legally certified teacher” entitled to protection of the statute governing employment of certificated teachers ineligible for permanent status under the Teacher Tenure Act.⁷⁸ The reasoning was that, although it was undisputed that the school board required the instructor to have a valid teaching certificate as a condition of her employment, to come within the purview of the tenure laws the certification requirement for the position had to be statutory, and not merely a requirement of the local school board.⁷⁹ Thus, because there is no statutory requirement that preschool teachers in Missouri must obtain a teaching certificate, the Teacher Tenure Act did not apply to the instructor in the case.⁸⁰

The *Sealy* decision appears to strike another blow to the notion that any prior teaching experience should count towards tenure credit. Arguably, *Sealy* adds the requirement that a prior teaching position must have required certification pursuant to a statute in order to count toward tenure credit. This decision further blurs the lines of what type of teaching satisfies the requirements for tenure credit. Some “teaching” positions, such as preschool instruction, require no certification under Missouri law. Furthermore, teacher certification

⁷⁴ *Id.* at 133 (quoting *Sadler v. Bd. of Educ.*, 851 S.W.2d 707, 711 (Mo. App. 1993) (quoting *Hudson v. Marshall*, 549 S.W.2d 147, 153 (Mo. App. 1977))).

⁷⁵ See *Sealy v. Bd. of Educ.*, 14 S.W.3d 597, 598 (Mo. Ct. App. 1999).

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.* at 600.

⁷⁹ *Id.*

⁸⁰ *Id.*

requirements vary from state to state, making it difficult to determine whether prior teaching experience in another state should count toward tenure credit in Missouri.

V. ADDRESSING PRIOR TEACHING CREDIT - THE FUTURE OF TEACHER TENURE IN MISSOURI

As the above referenced case law indicates, determining what type of prior teaching experience counts toward tenure credit under Missouri's Teacher Tenure Act is a difficult task. The policy behind tenure credit makes sense: districts should reward experienced teachers for their prior service because such service allows the district to evaluate the teacher's abilities before they hire the teacher. In practice, however, applying the credit system can be confusing and burdensome. In order to clear up the ambiguity, the legislature should specifically define what type of prior teaching experience should count toward tenure credit. This would be much more efficient than letting individual cases trickle through the Missouri courts as various issues arise.

Recently, various bills have been introduced in the Missouri legislature proposing to overhaul some or all of the teacher tenure system in Missouri. These bills call for radical changes to the longstanding tenure system. For instance, some proposals seek to add "unsatisfactory performance" to the list of reasons for which a tenured teacher may be terminated.⁸¹ Another proposal would require teachers to be routinely evaluated to determine if they are professionally competent enough to keep their jobs.⁸² Another seeks to extend the probationary period for teachers from five to ten years.⁸³

None of these proposals specifically addresses the issue of rewarding prior teaching experience. To the contrary, the proposed bills call for increased teacher evaluation and decreased job security. These proposals are flawed in that they do not reward experienced teachers. Instead, they seek to increase professional performance through the fear of potential contract non-renewal.

VI. CONCLUSION

Newly hired educators with prior teaching experience will undoubtedly wonder whether their prior experience will qualify for tenure credit under Missouri's teacher tenure system. This question is difficult to answer, in light of the limited statutory guidance and the piecemeal case law on the subject. The Missouri legislature should consider clearing up the ambiguities that make determining what type of prior teaching experience counts toward tenure credit so difficult. Overhauling the entire teacher tenure system is not the answer. The

⁸¹ See S.B. 372, 96th Gen. Assemb., Reg. Sess. (Mo. 2011).

⁸² See *id.*

⁸³ See S.B. 806, 96th Gen. Assemb., Reg. Sess. (Mo. 2012).

current tenure system might be flawed, but it is not broken. Experienced teachers should be rewarded for their years of service – the legislature simply needs to explicitly define what type of prior teaching experience should count toward tenure credit.

