



YOUR RIGHTS AS A PTS TEACHER FACING DISMISSAL
Questions & Answers

Which laws apply to dismissal of public school teachers with Professional Teacher Status?

The statute that most commonly applies to dismissal of teachers with Professional Teacher Status (PTS) is Massachusetts General Laws, Chapter 71, § 42. This law sets specific requirements that a school district must follow when terminating PTS teachers. Other laws also may apply, such as those prohibiting retaliation for union activity and employment discrimination based upon race, gender, sexual orientation, religion, national origin and age.

Who can dismiss a PTS teacher?

The superintendent can dismiss any school employee, including teachers with PTS. The principal may dismiss a teacher with PTS subject to the review and approval of the superintendent. The school committee has no role in the initial decision to dismiss a PTS teacher.

What procedural rights does the statute give you as a PTS teacher before you can be dismissed?

- **Notice and documents.** Under the statute, a PTS teacher is entitled to receive at least 10 days' prior written notice of intent to dismiss, with an explanation of the grounds for dismissal in sufficient detail to permit the teacher to respond. The notice must be accompanied by copies of all documents relating to the dismissal.
- **Opportunity to Meet and Present Information.** *Within 10 school days of receiving the notice of intent to dismiss, you may request an opportunity "to review the decision with the principal or superintendent" and "to present information pertaining to the basis for the decision and to the teacher's status."*
- **Representation.** You are entitled to be represented at the meeting with the superintendent or principal. Under current MTA Legal Services policy, an MTA attorney will be assigned to represent you at this meeting if you are an MTA member.
- **Final Notice of Dismissal.** If you have requested a meeting with the principal or superintendent, and after the meeting the school district decides to dismiss you, the school district must send you a written notice informing you of that decision.

Note: Your collective bargaining agreement may provide you with additional procedural rights beyond those set forth in the statute.

What if the employer fails to follow these predissmissal procedures?

If the employer has violated your procedural rights in a meaningful way, you may be able to argue at arbitration that the dismissal should be overturned.

What if I am accused of criminal misconduct on the job?

Under M.G.L. c. 268A, § 25, an employee who is indicted for misconduct on the job may be suspended without pay and without some benefits while the criminal proceedings continue. That statute requires the employee to be reinstated with retroactive pay and benefits "if proceedings are terminated without a finding or verdict of guilty."

Do I have a right to contest my dismissal?

Yes. You have a right to "statutory arbitration" and you may also have a right to "contractual arbitration."

What is “statutory arbitration” and what do I have to do to invoke it?

As a dismissed teacher with PTS, you have a right to arbitrate your dismissal under procedures set forth in M.G.L. c. 71, § 42. Under that arbitration procedure, the employer must demonstrate “just cause” for dismissing you. To assert this right, *you must file a written request for arbitration within 30 days of receiving notice of the dismissal*. The request for arbitration must be filed with the Commissioner of Education, c/o Massachusetts Department of Elementary and Secondary Education, 75 Pleasant St., Malden, MA 02148-4906.

When does the 30-day filing period begin?

Your written request for arbitration must be filed within a 30-day period to be valid, so you should consult with your attorney about the deadlines in light of your individual situation. Generally, the 30-day filing period begins on the date you receive notice of your dismissal. If you have received the written notice of intent to dismiss and you have not requested a meeting to discuss the reasons for your dismissal, then the 30-day period may begin on the date of that written notice. If you have requested a meeting to review the decision and provide information, the school district should send you another written notice after the meeting informing you of the final decision on your dismissal. You would then have 30 days from receipt of the final notice of dismissal to file for arbitration.

On what grounds can I be dismissed?

Under the statute, PTS teachers can only be dismissed for “inefficiency, incompetency, incapacity, conduct unbecoming a teacher, insubordination or failure on the part of the teacher to satisfy teacher performance standards ... or other just cause.” Under the statute, the arbitrator must also consider “the best interests of the pupils in the district and the need for elevation of performance standards.” The burden of proof is on the employer.

What is “contractual arbitration?”

Some collective bargaining agreements allow your local teachers’ association to grieve your dismissal under the contractual grievance procedure and, if it is not resolved at earlier steps of the grievance procedure, to submit your dismissal to grievance arbitration. This is called “contractual arbitration.”

Can my dismissal be arbitrated in both places?

No. The law permits you to have only one arbitration proceeding about the merits of your dismissal. Therefore, a decision must be made about which arbitration procedure to use. Usually it is not possible to make this choice within the 30-day filing period for statutory arbitration. Therefore, we generally recommend that you file a petition with the Department of Elementary and Secondary Education (DESE) for statutory arbitration within 30 days but request that the DESE hold the petition in abeyance until a final selection is made. If you are an MTA member, your association in conjunction with the MTA can assist you in this process.

Who decides which procedure to use?

If you want assistance from the association, then the association, the MTA consultant, and the assigned MTA attorney will work with you to decide whether to use *statutory arbitration* or *contractual arbitration*. If you prefer not to have the assistance of the association, then you must use the statutory procedure. Also note that some collective bargaining agreements do not provide for contractual arbitration of PTS dismissals.

Should I file a grievance even if I intend to use the statutory procedure?

In most cases, the answer is yes. Filing a grievance provides an opportunity for administrators and the School Committee to review and perhaps resolve the situation without having to arbitrate it.

Do I have to arbitrate my dismissal through the association?

If you want to use *contractual arbitration*, you generally must do so through the association. However, *statutory arbitration* is available to you as an individual. Therefore, if you choose to proceed without the assistance of the association, you can and must use the statutory procedure.

In which ways are the two arbitration proceedings similar?

In *statutory arbitration*, the arbitrators are selected through the American Arbitration Association (the AAA). The AAA also supplies arbitrators for many *contractual arbitrations*. Either way, the AAA would send a list of possible arbitrators to both parties to the dispute and each party may participate in choosing an arbitrator from the list. The list generally includes arbitrators who are established and experienced in handling labor relations cases. In either type of arbitration, the employer has the burden of proof to justify dismissing you.

What are the differences between the two procedures?

- In a statutory arbitration, the AAA sends a list of only three arbitrators and one of them will be appointed. In contractual arbitration, the AAA sends a list that may contain as many as 15 names and the parties may mutually eliminate arbitrators until they reach agreement. Therefore, there is usually a larger selection pool for contractual arbitrations.
- If there are contractual provisions (for example, evaluation procedures or provisions on personnel files) that are useful to your case, there might be opposition to consideration of these claims in statutory arbitration. It may be easier to assert those claims in a contractual arbitration. On the other hand, the dismissal statute includes some procedural rights that your employer may have violated when dismissing you and it may be slightly easier to assert such statutory violations if you are in statutory arbitration.
- Statutory arbitration decisions are public records and are widely distributed. Hence, you may have more privacy in a contractual arbitration.
- Until recently, arbitrators have applied essentially the same “just cause” standards in both contractual and statutory dismissal arbitrations. However, a 2001 decision by the Supreme Judicial Court (*School District of Beverly v. Geller*, 435 Mass. 223) has called this into question. Three justices interpreted statutory “just cause” as providing less protection to dismissed teachers than has been provided in contractual “just cause.” Three justices directly disagreed on this issue and the fourth justice voiced no opinion. Only future litigation is likely to resolve the question.

What if the association and I disagree about how to handle my arbitration and whether to settle it?

In a statutory arbitration, you as an individual are a party to the proceeding. In a contractual arbitration, it is the association that is the party to the proceeding. In either forum, if you request association representation and the association agrees, the association in consultation with the assigned MTA attorney will be involved in deciding the best strategy for the case, including settlement strategies. The attorney will remain alert to any conflict that may arise between you and the association. You will be continually consulted and actively involved in decisions affecting your case.

It is very unusual for irreconcilable conflicts to occur among the association, the assigned MTA attorney and the individual regarding dismissal arbitration or settlement. If that should happen, however, the association and the assigned MTA attorney may withdraw from representing you in connection with the arbitration. *If the arbitration is contractual*, the association’s withdrawal will terminate the arbitration. *If the arbitration is statutory*, you will have the option of continuing the arbitration on your own or retaining private counsel to represent you.

How much does arbitration cost?

The cost of arbitration is split between the parties. Arbitrating a dismissal case usually costs each party from \$2,000 to \$5,000 for arbitrators’ fees, administrative costs and other expenses, not including attorney’s fees.

Will it cost more to proceed in one forum than in the other?

There is no reason why costs and fees would be greater in one forum than in the other.

Who pays these costs?

If you proceed with association assistance, the MTA will provide an attorney to represent you and will pay all administrative fees as well as the arbitrator's fees, in accordance with the MTA Legal Services Policy. If you choose to proceed under the statute without the assistance of the association or if the association does not support your arbitration case, you would be fully responsible for all costs and fees, including your own attorney's fees.

Can the arbitrator's decision be appealed to court?

The dismissal statute states that the arbitration award is subject to judicial review on the traditional grounds for appealing an arbitrator's decision. Generally, these grounds are very narrow. However, the public employer may have grounds for appeal that are unique to public-sector employment. A court may review an arbitral award that it views as interfering with certain powers that can only be exercised by the public entity. This area of law is extraordinarily complex, but it essentially means that, for the union or the individual teacher, the grounds for appeal are exceedingly narrow, although the employer may have grounds for appeal that are not available to the individual or to the union.

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