

LEGISLATIVE BILL 259

Approved by the Governor March 24, 1982

Introduced by Newell, 13; Wesely, 26; Beutler, 28; Labeledz, 5; Fowler, 27; Wiitala, 31; Kilgarin, 7; DeCamp, 40; Hoagland, 6; Koch, 12

AN ACT relating to education; to change provisions relating to tenure as prescribed; to provide for notice and a hearing; to define terms; to eliminate school districts from certain contract provisions; to eliminate certain existing tenure and employment provisions; to amend section 79-1254.02, Revised Statutes Supplement, 1980; to provide an operative date; and to repeal the original section, and also sections 79-1254, 79-1254.04, and 79-1255 to 79-1262, Reissue Revised Statutes of Nebraska, 1943.

Be it enacted by the people of the State of Nebraska,

Section 1. As used in sections 1 to 15 of this act unless the context otherwise requires:

(1) Certificated employee shall mean and include all teachers and administrators as defined in section 79-101, other than substitute teachers, who are employed four-fifths time or more by any class of school district;

(2) School board shall mean the governing board or body of any class of school district;

(3) Probationary certificated employee shall mean a teacher or administrator who has served under a contract with the school district for less than three successive school years in any school district, unless extended one or two years by a majority vote of the board in a Class IV or V school district, except that after September 1, 1983, in Class IV and V school districts the requirement shall be three successive school years, and shall also mean superintendents, regardless of length of service;

(4) Just cause shall mean: (a) Incompetency; (b) neglect of duty; (c) unprofessional conduct; (d) insubordination; (e) immorality; (f) physical or mental incapacity; (g) failure to give evidence of professional growth as required in section 7 of this act; or (h) other conduct which interferes substantially with the continued performance of duties;

(5) Permanent certificated employee shall mean a teacher or administrator who has served the probation period as defined in this section; and

(6) School year, for purposes of employment, shall mean three-fourths of the school year or more on duty, exclusive of summer school.

A certificated employee who has been hired to fulfill the duties of another certificated employee who is on leave of absence shall not accrue rights under sections 1 to 15 of this act during the period that the employee is fulfilling such duties.

Sec. 2. (1) Part-time certificated employees shall become permanent certificated employees based upon the following formula:

(a) For certificated employees employed four-fifths time or more each such year of employment shall count as a full successive school year; and

(b) For certificated employees employed more than one half time but less than four-fifths time, each such year of employment shall be credited against the three-year requirement for acquiring permanent certificated employee status in an amount proportionate to the term of such employment for each year. Such certificated employees shall become eligible for permanent certificated status at the beginning of the school year next succeeding the year in which they attain the proportionate amount of time.

(2) Any certificated employee who achieves permanent certificated employee status shall not lose such permanent certificated employee status because of reduction in force resulting in a contract amendment which would reduce such certificated employee to any part-time employment position.

Sec. 3. The superintendent or the superintendent's designee may take action with regard to a certificated employee's performance or conduct which is deemed reasonably necessary to assist the certificated employee and further school purposes including: (1) Counseling; (2) oral reprimand; (3) written reprimand; and (4) suspension without pay for not to exceed thirty working days.

Prior to taking any action under subdivision (3) of this section, the certificated employee shall be advised of the alleged reasons for the proposed action and provided the opportunity to present the certificated

employee's version of the facts. The certificated employee may proceed under the school district's grievance procedure if the school district has such a grievance procedure which provides for a review of such action or within seven calendar days after the superintendent or superintendent's designee takes such action, may challenge the decision through the administrative chain of command.

Prior to taking any action under subdivision (4) of this section, the certificated employee shall be advised in writing of the alleged reasons for the proposed action and provided the opportunity to present the certificated employee's version of the facts. Within seven calendar days of receipt of such notice the certificated employee may make a written request to the secretary of the school board or the superintendent or superintendent's designee for formal due process hearing under section 9 of this act. If such a request is not delivered within such time, the action of the superintendent or the superintendent's designee shall become final.

Sec. 4. (1) The contract of any certificated employee, including a superintendent, associate superintendent, or assistant superintendent may be canceled or amended by a majority of the members of the school board during the school year for any of the following reasons: (a) Upon cancellation, termination, revocation, or suspension of a teacher's certificate, by the State Board of Education, or of the Nebraska Administrative and Supervisory Certificate or the Nebraska Professional Administrative and Supervisory Certificate of any certificated employee whose duties require such a certificate; (b) breach of any of the material provisions of the teacher's or administrator's contract; (c) for any of the reasons set forth in the employment contract; (d) incompetency; (e) neglect of duty; (f) unprofessional conduct; (g) insubordination; (h) immorality; or (i) physical or mental incapacity.

(2) In the event that the school board or the superintendent or the superintendent's designee of any school district should determine that it is appropriate to consider cancellation of a certificated employee's contract during the school year for the reasons set forth in subsection (1) of this section, the certificated employee shall be notified in writing of the alleged grounds for cancellation of the contract and that such certificated employee's contract may be canceled. Within seven calendar days of receipt of such notice, the certificated employee may make a written request to the secretary of the school board or to the superintendent or

superintendent's designee for a hearing.

(3) Prior to scheduling of action or the hearing, if requested, the notice of possible cancellation and the reasons supporting possible cancellation shall be considered a confidential employment matter subject to the provisions of sections 84-1410 and 79-4,156 to 79-4,158, and shall not be released to the public or any news media.

(4) Nothing contained in this section shall prevent the suspension from duty with pay of a certificated employee pending a decision on the cancellation of the contract.

Sec. 5. (1) The contract of a probationary certificated employee shall be deemed renewed and remain in full force and effect unless amended or not renewed in accordance with the provisions of sections 1 to 15 of this act.

(2) It shall be the purpose of the probationary period to allow the employer an opportunity to evaluate, assess, and assist the employee's professional skills and work performance prior to the employee obtaining permanent status.

All probationary certificated employees employed by Class I, II, III, and VI school districts shall, during each year of probationary employment, be evaluated at least once each semester in accordance with the procedures outlined below:

The probationary employee shall have been observed and evaluation shall have been based upon actual classroom observations for an entire instructional period. Should deficiencies be noted in the work performance of any probationary employee, the evaluator shall provide the teacher or administrator at the time of the observation with a list of deficiencies, a list of suggestions for improvement and assistance in overcoming the deficiencies, and follow up evaluations and assistance when deficiencies remain.

Any certificated employee, employed prior to the operative date of this act, by the school board of any Class I, II, III, or VI school district shall serve the probationary period required by law prior to such date and shall not be subject to any extension of probation.

(3) In the event that the school board or superintendent or superintendent's designee should determine that it is appropriate to consider whether the

contract of a probationary certificated employee or the superintendent should be amended or not renewed for the next school year, such certificated employee shall be given written notice that the school board will consider the amendment or nonrenewal of such certificated employee's contract for the ensuing school year. Upon request of the certificated employee, notice shall be provided which shall contain the written reasons for such proposed amendment or nonrenewal and shall be sufficiently specific so as to provide such employee the opportunity to prepare a response and the reasons set forth in the notice shall be employment related.

(4) The school board may elect to amend or not renew the contract of a probationary certificated employee for any reason it deems sufficient if such nonrenewal shall not be for constitutionally impermissible reasons and such nonrenewal shall be in accordance with the provisions of sections 1 to 15 of this act. Amendment or nonrenewal for reason of reduction in force shall be subject to the provisions of sections 1 to 15 of this act and sections 79-1254.05 to 79-1254.08.

(5) Within seven calendar days after receipt of the notice, the probationary certificated employee may make a written request to the secretary of the school board or the superintendent or the superintendent's designee for a hearing before the school board.

(6) Prior to scheduling of action or a hearing on the matter, if requested, the notice of possible amendment or nonrenewal and the reasons supporting possible amendment or nonrenewal shall be considered a confidential employment matter as provided in sections 84-1410 and 79-4,156 to 79-4,158, and shall not be released to the public or any news media.

(7) At any time prior to the holding of a hearing or prior to final determination by the school board to amend or not renew the contract involved, the probationary certificated employee may submit a letter of resignation for the ensuing year, which resignation shall be accepted by the school board.

(8) The probationary certificated employee shall be afforded a hearing which shall not be required to meet the requirements of a formal due process hearing as set forth in section 9 of this act, but shall be subject to the provisions of section 10 of this act.

Sec. 6. The contract of a permanent certificated employee shall be deemed continuing and

shall be renewed and remain in full force and effect unless amended or terminated in accordance with the provisions of sections 1 to 15 of this act. The school board by a vote of the majority of its members may determine that such permanent certificated employee's contract shall be amended or terminated for any of the following reasons: (1) Just cause as defined in section 1 of this act; (2) reduction in force as set forth in sections 79-1254.05 to 79-1254.08, or change of leave of absence policies; (3) failure of the certificated employee upon written request of the school board or the administrators of the school district to accept employment for the next school year within the time designated in the request, except that the certificated employee shall not be required to signify such acceptance prior to March 15 of each year; (4) revocation, cancellation, suspension, or termination of the certificated employee's certificate, by the State Board of Education, or of a Nebraska Administrative and Supervisory Certificate or Nebraska Professional Administrative and Supervisory Certificate of a certificated employee whose duties require such a certificate.

Sec. 7. Every six years permanent certificated employees shall give evidence of professional growth. Six semester hours of college credit shall be accepted as evidence of professional growth or, in the alternative, such other activities as are approved by the school board, which may include, but are not limited to, educational travel, professional publications, or work on educational committees.

Sec. 8. Any probationary or permanent certificated employee whose contract of employment may be amended, terminated, or not renewed for the next school year shall be notified in writing on or before April 15 of each year of such possible action on the contract. If the certificated employee wishes a hearing, a written request shall be sent to the secretary of the school board or the superintendent of schools or the superintendent's designee within seven calendar days after receipt of the written notice. Unless continued by written agreement between the parties or their representatives as provided in this section, final action by the school board must be taken on or before May 15 of each year. If a hearing on amendment, nonrenewal, cancellation, or termination is not requested within the time provided for in sections 1 to 15 of this act, the school board shall make a final determination. With regard to all hearings provided for under sections 1 to 15 of this act, either formal due process hearings or informal hearings, the certificated employee shall be

advised in writing at least five days prior to the date of hearing of the date, time, and place of the hearing. All such hearings shall be held within thirty days of the date of the request for hearing. The parties or their representatives by mutual agreement, confirmed in writing, may extend the times for hearings or final determinations by the board under sections 1 to 15 of this act.

Sec. 9. (1) A formal due process hearing for the purposes of sections 4 and 6 of this act shall mean a hearing procedure adopted by the board which contains at least the following: (a) Notification to the certificated employee in writing at least five days prior to the hearing of the grounds alleged for action, cancellation, termination, or nonrenewal of the teacher's contract; (b) upon request of the certificated employee a notification, at least five days prior to the hearing, of the names of any witnesses who will be called to testify against the certificated employee and an opportunity to examine any documents that will be presented at the hearing; (c) the right to be represented; and (d) an opportunity to cross-examine all witnesses and to examine all documents and to present evidence material to the issues.

(2) Due and proper notice of the hearing shall be given in accordance with sections 84-1408 to 84-1414. Upon an affirmative vote of a majority of the school board's members present and voting and upon specific request of the certificated employee or the certificated employee's representative, the hearing shall be conducted in a closed session but the formal action of the board shall be taken in open session.

(3) A majority of the members of the school board shall render its decision to amend, cancel, terminate, or not renew a certificated employee's contract, based solely upon the evidence produced at the hearing, shall reduce its findings and determinations to writing, and shall deliver a written copy thereof to the certificated employee.

Sec. 10. Hearings involving the question of the nonrenewal of a probationary certificated employee's contract or the nonrenewal of a superintendent shall not be due process hearings and shall not be required to meet the requirements of section 9 of this act, but shall be informal hearings before the school board at which the probationary certificated employee or superintendent involved or his or her representative shall be afforded the opportunity to discuss and explain to the school board his or her position with regard to continued

employment, to present information, and to ask questions of those appearing on behalf of the school district. Such hearings shall be held in closed session at the request of the certificated employee or superintendent involved, or his or her representative, and upon affirmative vote of a majority of the board members present and voting, but the formal action of the school board for nonrenewal shall be in open session.

Sec. 11. The hearing for a probationary certificated employee, except a superintendent, provided in section 10 of this act, may be held before a committee of the board consisting of not less than three of the board's total members. Notice of such a hearing shall be sent to all board members five days prior to such hearing. If a hearing is held before such a committee, the majority opinion of the committee shall constitute a recommendation to the school board with the final determination being made by a majority vote of the members of the board without additional hearing. The hearing for a superintendent, provided in section 10 of this act, shall be held before the school board. Notice shall be given to all parties at least five days prior to such a hearing. A vote of the majority of the members of the board shall determine final action relative to the contract of the superintendent.

Sec. 12. (1) After providing the opportunity for a hearing on cancellation, termination, or nonrenewal as provided for in sections 5, 6, and 9 of this act, and except when reduction in force is the reason given for possible termination, and when just cause can be shown, the school board may impose such other sanctions, other than termination, cancellation, or nonrenewal of the contract, as may be agreed upon by the parties.

(2) The fact that action has been taken under this section in the past may be taken into consideration in determining appropriate action in future hearings with regard to the certificated employee for a period of five years following the date of such action.

Sec. 13. The board may, on its own behalf, or shall upon the request of the certificated employee or his or her representative, or at the request of the school district administration or the superintendent or the superintendent's designee, (1) subpoena and compel the attendance of witnesses residing either within or without the state for the purpose of appearing and testifying at any hearing provided for in this act and for the purpose of having such witnesses' depositions taken, in the manner prescribed by law for the taking of depositions in civil actions in the district court, and

(2) issue subpoenas for the production of any papers, books, accounts, and documents.

Sec. 14. Any school board, upon written request, may grant a leave of absence to a permanent certificated employee for such reasons as the school board deems appropriate, including, but not limited to, study, military service, professional improvement, or because of physical disability or sickness, or as otherwise required by law, subject to such rules and regulations governing leaves of absence as may be adopted by the school board. A school board may require a permanent certificated employee, because of physical disability or sickness, to take a leave of absence for a period not exceeding one year. In any such case, the procedure to be followed and the rights of the permanent certificated employee shall be the same as those prescribed in sections 1 to 15 of this act for termination of a permanent certificated employee.

Sec. 15. Nothing contained in sections 1 to 15 of this act shall be construed to provide any certificated employee a right to a specific assignment so long as such certificated employee is assigned to duties for which he or she is qualified by reason of certification, endorsement, or college preparation.

Sec. 16. That section 79-1254.02, Revised Statutes Supplement, 1980, be amended to read as follows:

79-1254.02. The contracts of the teaching staff and school nurses employed by the governing board of any state technical community college, educational service unit, or any educational program administered by the State Department of Education, the Department of Public Institutions, or any political subdivision of the state, except a ~~Class I, II, III, or VI~~ school district, those colleges governed by the Board of Trustees of the Nebraska State Colleges, and any university governed by the Board of Regents of the University of Nebraska, shall require the sanction of a majority of the members of such governing board. Except as provided in section 79-1254.09, each such contract shall be deemed renewed and in force and effect until a majority of the board votes, sixty days before the close of the contract period, to amend or terminate the contract for just cause. The secretary of the board shall notify each teacher or school nurse in writing at least ninety days before the close of the contract period of any conditions of unsatisfactory performance or a reduction in teaching staff or nursing staff that the board considers may be just cause to either amend or terminate the contract for the ensuing year. Any teacher or school nurse so

notified shall have the right to file within five days of receipt of such notice a written request with the board for a hearing before the board. Upon receipt of such request, the board shall order the hearing to be held within ten days, and shall give written notice of the time and place of the hearing to the teacher or school nurse. At the hearing, evidence shall be presented in support of the reasons given for considering amendment or termination of the contract, and the teacher or school nurse shall be permitted to produce evidence related thereto. The board shall render the decision to amend or terminate a contract based on the evidence produced at the hearing.

Sec. 17. This act shall be operative on September 1, 1982.

Sec. 18. That original section 79-1254.02, Revised Statutes Supplement, 1980, and also sections 79-1254, 79-1254.04, and 79-1255 to 79-1262, Reissue Revised Statutes of Nebraska, 1943, are repealed.