

CORRECTED COPY

LEGISLATIVE BILL 177

Approved by the Governor February 15, 1993

Introduced by Hartnett, 45

AN ACT relating to schools; to amend sections 79-12,114, 79-12,116, and 79-12,117, Reissue Revised Statutes of Nebraska, 1943; to authorize the appointment of a hearing officer; to provide duties for the State Department of Education; to harmonize provisions; and to repeal the original sections.

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

Section 1. That section 79-12,114, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-12,114. 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 (1) continued by written agreement between the parties or their representatives as provided in this section or (2) a hearing officer is utilized as provided in sections 4 to 6 of this act, 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 79-12,107 to 79-12,121, the school board shall make a final determination. With regard to all hearings provided for under sections 79-12,107 to 79-12,121, 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~~ Except as provided in section 4 of this act, 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 79-12,107 to 79-12,121.

Sec. 2. That section 79-12,116, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-12,116. 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 79-12,115; 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. 3. That section 79-12,117, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-12,117. The hearing for a probationary certificated employee, except a superintendent, provided in section 79-12,116, 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 79-12,116, shall not be held before a committee of 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. 4. Any school board of a Class IV or V school district or certificated employee thereof may require that hearings held pursuant to sections 79-12,107 to 79-12,121 and such other hearings as designated by the school board be conducted by a hearing officer as specified in sections 5 and 6 of this act. If a hearing is held before such a hearing officer, the requirements of section 79-12,114 that final action must be taken by the school board on or before May 15 of each year and that a hearing must be held within thirty days of the date of the request for a hearing shall not apply.

Sec. 5. If the school board of a Class IV or V school district or certificated employee thereof determines that a hearing shall be conducted by a hearing officer, the parties to the hearing or their representatives shall select a hearing officer. Any person selected as a hearing officer pursuant to this section shall be an attorney admitted to practice in Nebraska and shall be knowledgeable in the rules of civil procedure and evidence applicable to the district courts. If the parties cannot agree on the selection of a hearing officer within seven days of the filing of the request for a hearing, the secretary of the school board shall immediately request a list of hearing officers from the State Department of Education. The department shall at all times maintain a list of at least five qualified hearing officers and shall provide a copy of the list within five days of receipt of a written request from the secretary of a school board. The parties or their representatives shall select the hearing officer by alternately removing a name from the list until only one name remains. The person whose name remains shall be the hearing officer. The parties

shall determine by lot which party shall remove the first name from the list. Such selection shall be completed within seven days of the receipt of the list from the department. The secretary of the school board shall inform the department of the name of the hearing officer selected.

Sec. 6. The hearing officer selected pursuant to section 5 of this act shall conduct the hearing, hear and receive evidence, and make recommended findings of fact and conclusions of law. The hearing shall be held in private if the employee so requests, otherwise the hearing shall be conducted in public. Within thirty days following the hearing, the hearing officer shall transmit to the school board the original or a certified copy of the record of the hearing, which shall include the transcribed testimony from the hearing and the recommended findings of fact and conclusions of law. The certified record filed by the hearing officer shall be the record upon which the school board shall make its decision, and no additional evidence shall be heard by the school board. The school board shall give each party an opportunity for oral argument and briefing prior to making its decision. If a hearing is requested, no one shall contact or be contacted by the school board or individual school board members regarding the subject matter of the hearing in order to obtain or provide information to be considered in making the decision or in an attempt to persuade the school board regarding the decision to be made, except that the school board may receive advice and counsel from an attorney hired to represent the school board in making the decision. In making its decision, the school board shall give weight to the findings of fact of the hearing officer but shall not be bound by them. The school board shall make its decision within twenty days of receipt of the record from the hearing officer. All expenses and fees of the hearing officer in connection with the hearing shall be paid for by the school board.

Sec. 7. That original sections 79-12,114, 79-12,116, and 79-12,117, Reissue Revised Statutes of Nebraska, 1943, are repealed.