

CHAPTER 97-310

Committee Substitute for Senate Bill No. 340

An act relating to school district personnel; amending s. 231.29, F.S.; revising performance assessments of school district instructional staff; requiring notice of unsatisfactory performance; requiring corrective action; providing for hearings; specifying district school board authority; requiring certain evaluations; amending s. 231.36, F.S.; revising provisions relating to contracts with instructional staff, supervisors, and principals; providing for a probationary period and for dismissal; requiring performance assessments; revising hearing procedures; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 231.29, Florida Statutes, is amended to read:

231.29 Assessment procedures and criteria.—

(1) For the purpose of improving the quality of instructional, administrative, and supervisory services in the public schools of the state, the superintendent shall establish procedures for assessing the performance of duties and responsibilities of all instructional, administrative, and supervisory personnel employed by the school in his or her district. The Department of Education must approve each district's instructional personnel assessment system.

(2) The following conditions must be considered in the design of the district's instructional personnel assessment system:

(a) The system must be designed to support district and school level improvement plans.

(b) The system must provide appropriate instruments, procedures, and criteria for continuous quality improvement of the professional skills of instructional personnel ~~beginning, probationary, and nonprobationary stages of a teaching career.~~

(c) The system must include a mechanism to give parents an opportunity to provide input into employee performance assessments when appropriate.

(d)(e) In addition to addressing generic teaching competencies, districts must determine those teaching fields for which special procedures and criteria will be developed.

(e) Each school board may establish a peer assistance process. The plan may provide a mechanism for assistance of persons who are placed on performance probation as well as offer assistance to other employees who request it.

(f)(d) The school board shall provide training programs that ~~which~~ are based upon guidelines provided by the Department of Education to ensure

that all individuals with evaluation responsibilities understand the proper use of the assessment criteria and procedures. ~~Such training programs may be provided under s. 231.087.~~

(3)(2) The assessment procedure for instructional personnel shall comply with, but shall not be limited to, the following requirements:

(a) ~~An assessment relating to the criteria specified in subsection (3) shall be conducted for each employee at least once a year. The~~ Such assessment shall be based upon sound educational principles and contemporary research in effective educational practices. The assessment must use data and indicators of improvement in student performance and may consider results of peer reviews in evaluating the employee's performance. The assessment criteria must include, but are not limited to, indicators that relate to the following:

1. Ability to maintain appropriate discipline.
2. Knowledge of subject matter. The district school board shall make special provisions for evaluating teachers who are assigned to teach out-of-field.
3. Ability to plan and deliver instruction.
4. Ability to evaluate instructional needs.
5. Ability to communicate with parents.
6. Other professional competencies, responsibilities, and requirements as established by rules of the State Board of Education and policies of the district school board.

(b) All personnel shall be fully informed of the criteria and procedures associated with the assessment process before the assessment takes place.

(c) The individual responsible for supervising the employee must assess the employee's performance. The evaluator must submit a written report of the assessment to the superintendent for the purpose of reviewing the employee's contract. The evaluator must submit the ~~A written report of each assessment shall be made and a copy thereof shall be given to the employee no later than 10 days after the assessment takes place. The evaluator must discuss the written report of assessment shall be discussed with the employee by the person responsible for preparing the report. The employee shall have the right to initiate a written response to the assessment, and the response shall become a permanent attachment to his or her personnel file.~~

(d) ~~If In the event that~~ an employee is not performing his or her duties in a satisfactory manner, the evaluator shall notify the employee in writing of such determination. The notice must and describe such unsatisfactory performance and include notice of the following procedural requirements:

1. Upon delivery of a notice of unsatisfactory performance, the evaluator must confer with the employee, make recommendations with respect to

specific areas of unsatisfactory performance, and provide assistance in helping to correct deficiencies within a prescribed period of time.

2. The employee shall be placed on performance probation and governed by the provisions of this section for 90 calendar days from the receipt of the notice of unsatisfactory performance to demonstrate corrective action. School holidays and school vacation periods are not counted when calculating the 90-calendar-day period. During the 90 calendar days, the employee must be evaluated periodically and apprised of progress achieved and must be provided assistance and inservice training opportunities to help correct the noted performance deficiencies. At any time during the 90 calendar days, the employee may request a transfer to another appropriate position with a different supervising administrator; however, a transfer does not extend the period for correcting performance deficiencies.

3. Within 14 days after the close of the 90 calendar days, the evaluator must assess whether the performance deficiencies have been corrected and forward a recommendation to the superintendent. Within 14 days after receiving the evaluator's recommendation, the superintendent must notify the employee in writing whether the performance deficiencies have been satisfactorily corrected and whether the superintendent will recommend that the school board continue or terminate his or her employment contract. If the employee wishes to contest the superintendent's recommendation, the employee must, within 15 days after receipt of the superintendent's recommendation, submit a written request for a hearing. Such hearing shall be conducted at the school board's election in accordance with one of the following procedures:

a. A direct hearing conducted by the school board within 60 days after receipt of the written appeal. The hearing shall be conducted in accordance with the provisions of ss. 120.569 and 120.57. A majority vote of the membership of the school board shall be required to sustain the superintendent's recommendation. The determination of the school board shall be final as to the sufficiency or insufficiency of the grounds for termination of employment; or

b. A hearing conducted by an administrative law judge assigned by the Division of Administrative Hearings of the Department of Management Services. The hearing shall be conducted within 60 days after receipt of the written appeal in accordance with chapter 120. The recommendation of the administrative law judge shall be made to the school board. A majority vote of the membership of the school board shall be required to sustain or change the administrative law judge's recommendation. The determination of the school board shall be final as to the sufficiency or insufficiency of the grounds for termination of employment. ~~The evaluator shall thereafter confer with the employee, make recommendations with respect to specific areas of unsatisfactory performance, and provide assistance in helping to correct such deficiencies within a reasonable, prescribed period of time.~~

~~(3) A complete statement of the assessment criteria shall include, but shall not be limited to, observable indicators that relate to the following:~~

~~(a) Ability to use appropriate classroom management techniques, including ability to maintain appropriate discipline.~~

~~(b) Knowledge of subject matter. The district school board shall make special provisions for evaluating teachers who are assigned to teach out-of-field.~~

~~(c) Ability to plan and deliver instruction.~~

~~(d) Ability to evaluate instructional needs.~~

~~(e) Other professional competencies, responsibilities, and requirements as determined by the local district.~~

~~(4) The individual responsible for the supervision of the employee shall make the assessment of the employee and forward such assessment to the superintendent for the purpose of reviewing the employee's contract.~~

~~(4)(5) The superintendent shall notify the department of any instructional personnel who receive two consecutive unsatisfactory annual evaluations and who have been given written notice by the district that their employment is being terminated or is not being renewed or that the school board intends to terminate, or not renew, their employment. The department shall conduct an investigation to determine whether action shall be taken against the certificateholder pursuant to s. 231.28(1)(b).~~

(5) The superintendent shall develop a mechanism for evaluating the effective use of assessment criteria and evaluation procedures by administrators who are assigned responsibility for evaluating the performance of instructional personnel. The use of the assessment and evaluation procedures shall be considered as part of the annual assessment of the administrator's performance. The system must include a mechanism to give parents and teachers an opportunity to provide input into the administrator's performance assessment, when appropriate.

(6) Nothing in this section shall be construed to grant a probationary employee a right to continued employment beyond the term of his or her contract.

(7) The district school board shall establish a procedure annually reviewing instructional personnel assessment systems to determine compliance with this section. All substantial revisions to an approved system must be reviewed and approved by the school board before being used to assess instructional personnel. Upon request by a school district, the department shall provide assistance in developing, improving, or reviewing an assessment system.

Section 2. Section 231.36, Florida Statutes, 1996 Supplement, is amended to read:

231.36 Contracts with instructional staff, supervisors, and principals.—

(1)(a) Each person employed as a member of the instructional staff in any district school system shall be properly certificated pursuant to s. 231.17 or

employed pursuant to s. 231.1725 and shall be entitled to and shall receive a written contract as specified in chapter 230. All such contracts, except continuing contracts as specified in subsection (4), shall contain provisions for dismissal during the term of the contract only for just cause. Just cause includes, but is not limited to, misconduct in office, incompetency, gross insubordination, willful neglect of duty, or conviction of a crime involving moral turpitude.

(b) A supervisor or principal shall be properly certified and shall receive a written contract as specified in chapter 230. Such contract may be for an initial period not to exceed 3 years, subject to annual review and renewal. The first 97 days of an initial contract is a probationary period. During the probationary period, the employee may be dismissed without cause or may resign from the contractual position without breach of contract. After the first 3 years, the contract may be renewed for a period not to exceed 3 years and shall contain provisions for dismissal during the term of the contract only for just cause, in addition to such other provisions as are prescribed by the school board.

(2) Any person so employed on the basis of a written offer of a specific position by a duly authorized agent of the school board for a stated term of service at a specified salary, and who accepted such offer by telegram or letter or by signing the regular contract form, who violates the terms of such contract or agreement by leaving his or her position without first being released from his or her contract or agreement by the school board of the district in which the person is employed shall be subject to the jurisdiction of the Education Practices Commission. The school board shall take official action on such violation and shall furnish a copy of its official minutes to the Commissioner of Education.

(3)(a) The school board of each district shall provide a professional service contract as prescribed herein. Each member of the instructional staff who completes the following requirements prior to July 1, 1984, shall be entitled to and shall be issued a continuing contract in the form prescribed by rules of the state board pursuant to s. 231.36, Florida Statutes 1981. Each member of the instructional staff who completes the following requirements on or after July 1, 1984, shall be entitled to and shall be issued a professional service contract in the form prescribed by rules of the state board as provided herein:

1. The member must hold a professional certificate as prescribed by s. 231.17 and rules of the State Board of Education.;

2. The member must have completed 3 years of probationary service in the district, ~~1 year of which must be the professional orientation program where required,~~ during a period not in excess of 5 successive years, except for leave duly authorized and granted.;

3. The member must have been recommended by the superintendent for such contract and reappointed by the school board based on successful performance of duties and demonstration of professional competence.

4. For any person newly employed as a member of the instructional staff after June 30, 1997, the initial annual contract shall include a 97-day probationary period during which time the employee's contract may be terminated without cause or the employee may resign without breach of contract.

(b) The professional service contract shall be effective at the beginning of the school fiscal year following the completion of all requirements therefor.

(c) The period of service provided herein may be extended to 4 years when prescribed by the school board and agreed to in writing by the employee at the time of reappointment.

(d) A school board may issue a continuing contract prior to July 1, 1984, and may issue a professional service contract subsequent to July 1, 1984, to any employee who has previously held a professional service contract or continuing contract in the same or another district within this state. Any employee who holds a continuing contract may, but is not required to, exchange such continuing contract for a professional service contract in the same district.

(e) A professional service contract shall be renewed each year unless the superintendent, after receiving the recommendations required by s. 231.29(4), charges the employee with unsatisfactory performance and notifies the employee of performance deficiencies as required by s. 231.29. An employee who holds a professional service contract on July 1, 1997, is subject to the procedures set forth in paragraph (f) during the term of the existing professional service contract. The employee is subject to the procedures set forth in s. 231.29(3)(d) upon the next renewal of the professional service contract; however, if the employee is notified of performance deficiencies before the next contract renewal date, the procedures of s. 231.29(3)(d) do not apply until the procedures set forth in paragraph (f) have been exhausted and the professional service contract is subsequently renewed.

(f) The superintendent shall notify an employee who holds a professional service contract on July 1, 1997, as determined under the provisions of s. 231.29 and notifies the employee in writing, no later than 6 weeks prior to the end of the postschool conference period, of performance deficiencies which may result in termination of employment, if not corrected during the subsequent year of employment (which shall be granted for an additional year in accordance with the provisions in subsection (1)). Except as otherwise hereinafter provided, this action shall not be subject to the provisions of chapter 120, but the following procedures shall apply:

1. On receiving notice of unsatisfactory performance, the employee, on request, shall be accorded an opportunity to meet with the superintendent or the superintendent's designee for an informal review of the determination of unsatisfactory performance.

2. An employee notified of unsatisfactory performance may request an opportunity to be considered for a transfer to another appropriate position, with a different supervising administrator, for the subsequent year of employment.

3. During the subsequent year, the employee shall be provided assistance and inservice training opportunities to help correct the noted performance deficiencies. The employee shall also be evaluated periodically so that he or she will be kept apprised of progress achieved.

4. Not later than 6 weeks prior to the close of the postschool conference period of the subsequent year, the superintendent, after receiving and reviewing the recommendation required by s. 231.29(4), shall notify the employee, in writing, whether the performance deficiencies have been corrected. If so, a new professional service contract shall be issued to the employee. If the performance deficiencies have not been corrected, the superintendent may notify the school board and the employee, in writing, that the employee shall not be issued a new professional service contract; however, if the recommendation of the superintendent is not to issue a new professional service contract, and if the employee wishes to contest such recommendation, the employee will have 15 days from receipt of the superintendent's recommendation to demand, in writing, a hearing. In such hearing, the employee may raise as an issue, among other things, the sufficiency of the superintendent's charges of unsatisfactory performance. Such hearing shall be conducted at the school board's employee's election in accordance with one of the following procedures:

a. A direct hearing conducted by the school board within ~~60~~ 45 days of receipt of the written appeal. The hearing shall be conducted in accordance with the provisions of ss. 120.569 and 120.57. A majority vote of the membership of the school board shall be required to sustain the superintendent's recommendation. The determination of the school board shall be final as to the sufficiency or insufficiency of the grounds for termination of employment; or

b. A hearing conducted by an administrative law judge assigned by the Division of Administrative Hearings of the Department of Management Services. The hearing shall be conducted within ~~60~~ 45 days of receipt of the written appeal in accordance with chapter 120. The recommendation of the administrative law judge shall be made to the school board. A majority vote of the membership of the school board shall be required to sustain or change the administrative law judge's recommendation. The determination of the school board shall be final as to the sufficiency or insufficiency of the grounds for termination of employment.

(4)(a) An employee who has continuing contract status prior to July 1, 1984, shall be entitled to retain such contract and all rights arising therefrom in accordance with existing laws, rules of the State Board of Education, or any laws repealed by this act, unless the employee voluntarily relinquishes his or her continuing contract.

(b) Any member of the district administrative or supervisory staff and any member of the instructional staff, including any principal, who is under continuing contract may be dismissed or may be returned to annual contract status for another 3 years in the discretion of the school board, at the end of the school year, when a recommendation to that effect is submitted in writing to the school board on or before April 1 of any school year, giving

good and sufficient reasons therefor, by the superintendent, by the principal if his or her contract is not under consideration, or by a majority of the school board. The employee whose contract is under consideration shall be duly notified in writing by the party or parties preferring the charges at least 5 days prior to the filing of the written recommendation with the school board, and such notice shall include a copy of the charges and the recommendation to the school board. The school board shall proceed to take appropriate action. Any decision adverse to the employee shall be made by a majority vote of the full membership of the school board. Any such decision adverse to the employee may be appealed by the employee pursuant to s. 120.68.

(c) Any member of the district administrative or supervisory staff and any member of the instructional staff, including any principal, who is under continuing contract may be suspended or dismissed at any time during the school year; however, the charges against him or her must be based on immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, drunkenness, or conviction of a crime involving moral turpitude. Whenever such charges are made against any such employee of the school board, the school board may suspend such person without pay; but, if the charges are not sustained, he or she shall be immediately reinstated, and his or her back salary shall be paid. In cases of suspension by the school board or by the superintendent, the school board shall determine upon the evidence submitted whether the charges have been sustained and, if the charges are sustained, shall determine either to dismiss the employee or fix the terms under which he or she may be reinstated. If such charges are sustained by a majority vote of the full membership of the school board and such employee is discharged, his or her contract of employment shall be thereby canceled. Any such decision adverse to the employee may be appealed by the employee pursuant to s. 120.68, provided such appeal is filed within 30 days after the decision of the school board.

(5) Should a school board have to choose from among its personnel who are on continuing contracts or professional service contracts as to which should be retained, such decisions shall be made pursuant to the terms of a collectively bargained agreement, when one exists. If no such agreement exists, the district school board shall prescribe rules to handle reductions in workforce.

(6)(a) Any member of the instructional staff, excluding an employee specified in subsection (4), may be suspended or dismissed at any time during the term of the contract ~~for; however, the charges against him or her must be based on~~ just cause as provided in paragraph (1)(a). ~~Whenever such charges are made against any such employee of the school board,~~ The school board must notify the employee in writing whenever charges are made against the employee and may suspend such person without pay; but, if the charges are not sustained, the employee shall be immediately reinstated, and his or her back salary shall be paid. If the employee wishes to contest the charges, the employee must, within 15 days after receipt of the written notice, submit a written request for a hearing. Such hearing shall be conducted at the school board's election in accordance with one of the following procedures:

1. A direct hearing conducted by the school board within 60 days after receipt of the written appeal. The hearing shall be conducted in accordance with the provisions of ss. 120.569 and 120.57. A majority vote of the membership of the school board shall be required to sustain the superintendent's recommendation. The determination of the school board shall be final as to the sufficiency or insufficiency of the grounds for termination of employment; or

2. A hearing conducted by an administrative law judge assigned by the Division of Administrative Hearings of the Department of Management Services. The hearing shall be conducted within 60 days after receipt of the written appeal in accordance with chapter 120. The recommendation of the administrative law judge shall be made to the school board. A majority vote of the membership of the school board shall be required to sustain or change the administrative law judge's recommendation. The determination of the school board shall be final as to the sufficiency or insufficiency of the grounds for termination of employment. ~~When an employee is notified in writing of such charges, he or she will have 15 days from receipt of the notice to demand, in writing, a hearing to be conducted at the employee's election in accordance with either sub-subparagraph a. or sub-subparagraph b. of subparagraph (3)(c)4.~~

Any such decision adverse to the employee may be appealed by the employee pursuant to s. 120.68, provided such appeal is filed within 30 days after the decision of the school board.

(b) Any member of the district administrative or supervisory staff, including any principal but excluding an employee specified in subsection (4), may be suspended or dismissed at any time during the term of the contract; however, the charges against him or her must be based on immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, drunkenness, or conviction of any crime involving moral turpitude. Whenever such charges are made against any such employee of the school board, the school board may suspend the employee without pay; but, if the charges are not sustained, he or she shall be immediately reinstated, and his or her back salary shall be paid. In cases of suspension by the school board or by the superintendent, the school board shall determine upon the evidence submitted whether the charges have been sustained and, if the charges are sustained, shall determine either to dismiss the employee or fix the terms under which he or she may be reinstated. If such charges are sustained by a majority vote of the full membership of the school board and such employee is discharged, his or her contract of employment shall be thereby canceled. Any such decision adverse to the employee may be appealed by him or her pursuant to s. 120.68, provided such appeal is filed within 30 days after the decision of the school board.

(7) The school board of any given district shall grant continuing service credit for time spent performing duties as a member of the Legislature to any district employee who possesses a professional service contract, multi-year contract, or continuing contract.

(8) Notwithstanding any other provision of law, any member who has retired may interrupt retirement and be reemployed in any public school. Any member so reemployed by the same district from which he or she retired may be employed on a probationary contractual basis as provided in subsection (1); however, no regular retirement employee shall be eligible to renew membership under a retirement system created by chapter 121 or chapter 238.

Section 3. This act shall take effect July 1, 1997.

Became a law without the Governor's approval June 14, 1997.

Filed in Office Secretary of State June 13, 1997.