

REFERENCE TITLE: school district personnel; decisions

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2010

SB 1299

Introduced by
Senators Lopez, Aguirre, Burton Cahill; Aboud, Alvarez, Hale, Landrum
Taylor, McCune Davis; Representatives Bradley, Heinz

AN ACT

AMENDING SECTION 15-502, ARIZONA REVISED STATUTES; REPEALING SECTION 15-504, ARIZONA REVISED STATUTES; AMENDING SECTIONS 15-536, 15-538.01, 15-539, 15-541 AND 15-544, ARIZONA REVISED STATUTES; RELATING TO SCHOOL EMPLOYEES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 15-502, Arizona Revised Statutes, is amended to
3 read:

4 15-502. Employment of school district personnel: payment of
5 wages of discharged employee

6 A. The governing board at any time may employ and fix the salaries and
7 benefits of employees necessary for the succeeding year. The contracts of
8 all certificated employees shall be in writing, and all employees shall be
9 employed subject to section 38-481. The governing board may obtain the
10 services of any employee, including teachers, substitute teachers and
11 administrators, by contracting with a private entity that employs personnel
12 required by the school district.

13 B. A teacher shall not be employed if the teacher has not received a
14 certificate for teaching granted by the proper authorities. If a teacher has
15 filed an application and completed all of the requirements for a certificate
16 but time does not allow a teacher to receive a certificate before the
17 commencement of employment, the conditional certificate shall serve as a
18 certificate for the payment of wages, provided that the teacher files the
19 conditional certificate with the county school superintendent and the
20 certificate is issued within three months of the date of commencing
21 employment. In order to be paid wages beyond the three month period
22 prescribed in this subsection, the teacher shall file the certificate with
23 the county school superintendent. Any contract issued to a teacher who has
24 completed certificate requirements but has not received a certificate shall
25 be specifically contingent upon receipt of such a certificate. The governing
26 board of a school district that is subject to section 15-914.01 shall adhere
27 to the duties described in section 15-302, subsection A, paragraph 9 for
28 purposes of this subsection.

29 C. No dependent, as defined in section 43-1001, of a governing board
30 member may be employed in the school district in which the person to whom
31 such dependent is so related is a governing board member, except by consent
32 of the board.

33 D. The governing board may employ certificated teachers under contract
34 as part-time classroom teachers. Notwithstanding any other statute, a
35 certificated teacher who has been employed by the school district for more
36 than the major portion of three consecutive school years does not lose the
37 entitlement to the procedures prescribed in sections 15-538.01, 15-539
38 through 15-544 and 15-547 if the teacher is employed under contract on a
39 part-time basis for at least forty per cent time. For the purposes of this
40 subsection, "forty per cent time" means employed for at least forty per cent
41 of the school day required of full-time teachers of the same grade level or
42 for at least forty per cent of the class load assigned to full-time teachers
43 of the same grade level, as determined by the governing board.

1 E. The governing board may employ a business manager who has expertise
2 in finance. For the purposes of this subsection, "expertise in finance"
3 means one or more of the following:

4 1. A baccalaureate degree in accounting, finance, school finance or
5 public finance.

6 2. A graduate degree in accounting, finance, school finance or public
7 finance.

8 3. Other finance training or finance experience that the governing
9 board determines is sufficient to qualify the person to administer the
10 business operations of the school district.

11 F. Notwithstanding sections 23-351 and 23-353, if an employee is
12 discharged from the service of a school district, the school district shall
13 pay the wages due to the employee within ten calendar days from the date of
14 discharge.

15 G. Each school district shall establish policies and procedures to
16 provide teachers with personal liability insurance.

17 ~~H. Notwithstanding any other law, a school district shall not adopt~~
18 ~~policies that provide employment retention priority for teachers based on~~
19 ~~tenure or seniority.~~

20 Sec. 2. Repeal

21 Section 15-504, Arizona Revised Statutes, is repealed.

22 Sec. 3. Section 15-536, Arizona Revised Statutes, is amended to read:

23 15-536. Offer of contract to certificated teacher who has not
24 been employed more than three consecutive school
25 years; acceptance; notice to teacher of intention not
26 to reemploy

27 A. Subject to sections 15-539, 15-540, 15-541, 15-544 and 15-549, the
28 governing board, BETWEEN MARCH 15 AND MAY 15, shall offer a teaching contract
29 for the next ensuing school year to each certificated teacher who has not
30 been employed by the school district for more than the major portion of three
31 consecutive school years and who is under a contract of employment with the
32 school district for the current school year, unless ON OR BEFORE APRIL 15 the
33 governing board, a member of the board acting on behalf of the board or the
34 superintendent of the school district gives notice to the teacher of the
35 board's intention not to offer a teaching contract or unless such teacher has
36 been dismissed pursuant to section 15-538, 15-539, 15-541 or 15-544. The
37 teacher's acceptance of the contract for the ensuing year must be indicated
38 within thirty days from the date of the written contract or the offer is
39 revoked. The teacher accepts the contract by signing the contract and
40 returning it to the governing board or by making a written instrument which
41 accepts the terms of the contract and delivering it to the governing board.
42 If the written instrument includes terms in addition to the terms of the
43 contract offered by the board, the teacher fails to accept the contract.

44 B. Notice of the board's intention not to reemploy the teacher shall
45 be by delivering it personally to the teacher or by sending it by registered

1 or certified mail BEARING A POSTMARK OF ON OR BEFORE APRIL 15, DIRECTED to
2 the teacher at the teacher's place of residence as recorded in the school
3 district records. The notice shall incorporate a statement of reasons for
4 not reemploying the teacher. If the reasons are charges of inadequacy of
5 classroom performance as defined by the governing board pursuant to section
6 15-539, subsection D, the board or its authorized representative, at least
7 ninety days prior to such notice, shall give the teacher written preliminary
8 notice of inadequacy, specifying the nature of the inadequacy with such
9 particularity as to furnish the teacher an opportunity to correct the
10 inadequacies and overcome the grounds for such charge. The governing board
11 may delegate to employees of the governing board the general authority to
12 issue preliminary notices of inadequacy of classroom performance to teachers
13 pursuant to this subsection without the need for prior approval of each
14 notice by the governing board. In all cases in which an employee of the
15 governing board issues a preliminary notice of inadequacy of classroom
16 performance without prior approval by the governing board, the employee shall
17 report its issuance to the governing board within five school days. The
18 written notice of intention not to reemploy shall include a copy of any
19 evaluation pertinent to the charges made and filed with the board.

20 C. Nothing in this section shall be construed to provide a
21 certificated teacher who has not been employed by the school district for
22 more than the major portion of three consecutive school years and who has
23 received notice of the board's intention not to offer a teaching contract
24 with the right to a hearing pursuant to section 15-539, subsection G.

25 Sec. 4. Section 15-538.01, Arizona Revised Statutes, is amended to
26 read:

27 15-538.01. Offer of contract to certificated teacher employed
28 more than three consecutive school years

29 A. Subject to sections 15-539, 15-540, 15-541, 15-544 and 15-549, the
30 governing board, BETWEEN MARCH 15 AND MAY 15, shall offer to each
31 certificated teacher who has been employed by the school district for more
32 than the major portion of three consecutive school years and who is under
33 contract of employment with the school district for the current year a
34 contract renewal for the next ensuing school year unless ON OR BEFORE MAY 15
35 the governing board, a member of the board acting on behalf of the board or
36 the superintendent of the school district gives notice to the teacher of the
37 board's intent not to offer a contract and to dismiss the teacher as provided
38 in section 15-539.

39 B. The teacher's acceptance of the contract must be indicated within
40 thirty days from the date of the written contract or the offer of a contract
41 is revoked. The teacher accepts the contract by signing the contract and
42 returning it to the governing board or by making a written instrument which
43 accepts the terms of the contract and delivering it to the governing board.
44 If the written instrument includes terms in addition to the terms of the
45 contract offered by the board, the teacher fails to accept the contract.

1 C. IF DISMISSAL PROCEEDINGS IN REFERENCE TO THE TEACHER CONTRACT
2 CANNOT BE COMPLETED BY MAY 15 THROUGH NO FAULT OF THE GOVERNING BOARD OR THE
3 SUPERINTENDENT, OR IF THE INCIDENTS RELIED ON IN WHOLE OR IN PART OCCURRED
4 AFTER MAY 15, DISMISSAL PROCEEDINGS MAY CONTINUE OR BE INITIATED.

5 Sec. 5. Section 15-539, Arizona Revised Statutes, is amended to read:
6 15-539. Dismissal of certificated teacher; due process; written
7 charges; notice; hearing on request

8 A. On a written statement of charges presented by the superintendent,
9 charging that there exists cause for the suspension without pay for a period
10 of time greater than ten school days or dismissal of a certificated teacher
11 of the district, the governing board, except as otherwise provided in this
12 article, shall give notice to the teacher of its intention to suspend without
13 pay or dismiss the teacher at the expiration of ~~ten~~ THIRTY days from the date
14 of the service of the notice.

15 B. Whenever the superintendent presents a statement of charges wherein
16 the alleged cause for dismissal constitutes immoral or unprofessional
17 conduct, the governing board may adopt a resolution that a complaint be filed
18 with the department of education. Pending disciplinary action by the state
19 board of education, the certificated teacher may be reassigned by the
20 superintendent or placed on administrative leave by the board pursuant to
21 section 15-540.

22 C. The governing board shall give a certificated teacher who has been
23 employed by the school district for more than the major portion of three
24 consecutive school years notice of intention to dismiss if its intention to
25 dismiss is based on charges of inadequacy of classroom performance as defined
26 by the governing board pursuant to subsection D of this section. The
27 governing board or its authorized representative shall give the teacher a
28 written preliminary notice of inadequacy of classroom performance at least
29 ten instructional days before the start of the period of time within which to
30 correct the inadequacy and overcome the grounds for the charge. The
31 governing board may delegate to employees of the governing board the general
32 authority to issue preliminary notices of inadequacy of classroom performance
33 to teachers pursuant to this section without the need for prior approval of
34 each notice by the governing board. In all cases in which an employee of the
35 governing board issues a preliminary notice of inadequacy of classroom
36 performance without prior approval by the governing board, the employee shall
37 report its issuance to the governing board within five school days. The
38 written preliminary notice of inadequacy of classroom performance shall
39 specify the nature of the inadequacy of classroom performance with such
40 particularity as to furnish the teacher an opportunity to correct the
41 teacher's inadequacies and overcome the grounds for the charge. The written
42 preliminary notice of inadequacy of classroom performance shall be based on a
43 valid evaluation according to school district procedure, shall include a copy
44 of any evaluation pertinent to the charges made and shall state the date by
45 which the teacher has to correct the inadequacy and overcome the grounds for

1 the charge. That evaluation shall not be conducted within two instructional
2 days of any school break of one week or more. The written preliminary notice
3 of inadequacy of classroom performance shall allow the teacher not less than
4 ~~sixty~~ EIGHTY-FIVE instructional days within which to correct the inadequacy
5 and overcome the grounds for the charge. If within the time specified in the
6 written preliminary notice of inadequacy of classroom performance the teacher
7 does not demonstrate adequate classroom performance, the governing board
8 shall dismiss the teacher either within ~~ten~~ THIRTY days of the service of a
9 subsequent notice of intention to dismiss or by the end of the contract year
10 in which the subsequent notice of intention to dismiss is served unless the
11 teacher has requested a hearing as provided in subsection G of this section.
12 If the teacher demonstrates adequate classroom performance during the period
13 allowed to correct such deficiencies as specified in the written preliminary
14 notice of inadequacy of classroom performance, the governing board may not
15 dismiss the teacher for the reasons specified in the written preliminary
16 notice of inadequacy of classroom performance. If the governing board of a
17 school district has received approval to budget for a career ladder program,
18 the governing board may define inadequacy of classroom performance by
19 establishing a single level of performance that is required of all teachers
20 or by establishing more than one required level of performance. If more than
21 one level is established, the same level of performance for minimum adequacy
22 shall be required of all teachers who have completed the same number of years
23 of teaching in the district.

24 D. The governing board shall develop a definition of inadequacy of
25 classroom performance that applies to notices issued pursuant to section
26 15-536, section 15-538 and this section. The governing board shall develop
27 its definition of inadequacy of classroom performance in consultation with
28 its certificated teachers. The consultation may be accomplished by holding a
29 public hearing, forming an advisory committee, providing teachers the
30 opportunity to respond to a proposed definition or obtaining teacher approval
31 of a career ladder program that defines inadequacy of classroom performance.

32 E. Any written statement of charges alleging unprofessional conduct,
33 conduct in violation of the rules or policies of the governing board or
34 inadequacy of classroom performance shall specify instances of behavior and
35 the acts or omissions constituting the charge so that the certificated
36 teacher will be able to prepare a defense. If applicable, it shall state the
37 statutes, rules or written objectives of the governing board that the
38 certificated teacher is alleged to have violated and set forth the facts
39 relevant to each occasion of alleged unprofessional conduct, conduct in
40 violation of the rules or policies of the governing board or inadequacy of
41 classroom performance.

42 F. The notice shall be in writing and shall be served on the
43 certificated teacher personally or by United States registered or certified
44 mail addressed to the teacher's last known address. A copy of the charges,

1 together with a copy of this section and sections 15-501, 15-538.01, 15-540,
2 15-541, 15-542 and 15-544 through 15-547, shall be attached to the notice.

3 G. The certificated teacher who receives notice that there exists
4 cause for dismissal or suspension without pay shall have the right to a
5 hearing if the teacher files a written request with the governing board
6 within ~~ten~~ THIRTY days of service of notice. The filing of a timely request
7 shall suspend the imposition of a suspension without pay or a dismissal
8 pending completion of the hearing.

9 Sec. 6. Section 15-541, Arizona Revised Statutes, is amended to read:

10 15-541. Hearing on dismissal

11 A. The governing board shall decide whether to hold a hearing on the
12 dismissal or suspension without pay for a period of time longer than ten days
13 of a certificated teacher as provided in this article. If the governing
14 board decides not to hold a hearing, the governing board shall designate a
15 hearing officer to hold the hearing, hear the evidence, prepare a record and
16 issue a recommendation to the governing board for action. The governing
17 board may provide by policy or vote at its annual organizational meeting that
18 all hearings conducted pursuant to this section shall be conducted before a
19 hearing officer. The hearing officer shall be mutually agreed upon by the
20 parties to the hearing. If the parties cannot mutually agree on a hearing
21 officer, a hearing officer shall be selected by the governing board from a
22 list provided by the department of education or the American arbitration
23 association. The hearing shall be held not less than ~~fifteen~~ TEN nor more
24 than ~~thirty~~ TWENTY-FIVE days after the request is filed unless all parties to
25 the hearing mutually agree to a different hearing date, and notice of the
26 time and place of the hearing shall be given to the teacher not less than
27 three days before the date of the hearing. The teacher may request that the
28 hearing be conducted in public or private. At the hearing the teacher may
29 appear in person and by counsel, if desired, and may present any testimony,
30 evidence or statements, either oral or in writing, in the teacher's behalf.
31 The governing board or the hearing officer shall prepare an official record
32 of the hearing, including all testimony recorded manually or by mechanical
33 device, and exhibits. The teacher who is the subject of the hearing may not
34 request that the testimony be transcribed unless the teacher agrees in
35 writing to pay the actual cost of the transcription. Within ten days after a
36 hearing conducted by the governing board, the board shall determine whether
37 there existed good and just cause for the notice of dismissal or suspension
38 and shall render its decision accordingly, either affirming or withdrawing
39 the notice of dismissal or suspension. Within ten days after a hearing
40 conducted by a hearing officer, the hearing officer shall deliver a written
41 recommendation to the governing board that includes findings of fact and
42 conclusions. Parties to the hearing have the right to object to the findings
43 of the hearing officer and present oral and written arguments to the
44 governing board.

1 B. A hearing held pursuant to this section may not be conducted by any
2 hearing officer having a personal interest which would conflict with the
3 hearing officer's objectivity in the hearing. The governing board has an
4 additional ten days to determine whether good and just cause existed for the
5 notice of dismissal or suspension and shall render its decision accordingly,
6 either affirming or withdrawing the notice of suspension or dismissal. Good
7 and just cause does not include religious or political beliefs or
8 affiliations unless they are in violation of the oath of the teacher.

9 Sec. 7. Section 15-544, Arizona Revised Statutes, is amended to read:

10 15-544. Limitations on reduction of salaries or personnel

11 A. A governing board may reduce salaries or eliminate certificated
12 teachers in a school district in order to effectuate economies in the
13 operation of the district or to improve the efficient conduct and
14 administration of the schools of the school district, **BUT NO REDUCTION IN THE**
15 **SALARY OF A CERTIFICATED TEACHER WHO HAS BEEN EMPLOYED BY THE SCHOOL DISTRICT**
16 **FOR MORE THAN THE MAJOR PORTION OF THREE CONSECUTIVE SCHOOL YEARS SHALL BE**
17 **MADE EXCEPT IN ACCORDANCE WITH A GENERAL SALARY REDUCTION IN THE SCHOOL**
18 **DISTRICT BY WHICH THE TEACHER IS EMPLOYED, AND IN SUCH CASE THE REDUCTION**
19 **SHALL BE APPLIED EQUITABLY AMONG ALL SUCH TEACHERS.**

20 B. Notice of a general salary reduction shall be given each
21 certificated teacher affected **NOT LATER THAN MAY 15 BEFORE THE FISCAL YEAR IN**
22 **WHICH THE REDUCTION IS TO TAKE EFFECT.**

23 C. **A CERTIFICATED TEACHER DISMISSED FOR REASONS OF ECONOMY OR TO**
24 **IMPROVE THE EFFICIENT CONDUCT AND ADMINISTRATION OF THE SCHOOLS OF THE SCHOOL**
25 **DISTRICT SHALL HAVE A PREFERRED RIGHT OF REAPPOINTMENT IN THE ORDER OF**
26 **ORIGINAL EMPLOYMENT BY THE GOVERNING BOARD IN THE EVENT OF AN INCREASE IN THE**
27 **NUMBER OF CERTIFICATED TEACHERS OR THE REESTABLISHMENT OF SERVICES WITHIN A**
28 **PERIOD OF THREE YEARS.**

29 ~~C.~~ D. The provisions of this section do not apply to reductions in
30 salary from monies from the classroom site fund pursuant to section 15-977.