
ASSEMBLY BILL NO. 354—ASSEMBLYWOMAN GIUNCHIGLIANI

MARCH 17, 2003

Referred to Committee on Education

SUMMARY—Revises provisions governing employees of a school district. (BDR 34-686)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to employees of a school district; prescribing a time by which hearings must be commenced for licensed and unlicensed employees of a school district; providing that employees must not be required to seek alternative employment and mitigate damages during the pendency of proceedings; requiring an administrator to provide notice to an employee of a complaint against the employee by a parent or pupil; revising provisions governing the contents of a notice of admonition issued to a licensed employee; revising provisions governing the selection of hearing officers and conduct of hearings for licensed employees; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** Chapter 391 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 5, inclusive, of this
3 act.
4 **Sec. 2. 1.** *Except as otherwise provided in subsection 3, an*
5 *unlicensed employee of a school district who is dismissed,*
6 *suspended without pay or demoted is entitled to a hearing within*
7 *90 days after he is notified of his dismissal, suspension or*
8 *demotion if:*



1 (a) *The employee is governed by a collective bargaining*
2 *agreement negotiated pursuant to chapter 288 of NRS;*
3 (b) *The collective bargaining agreement establishes a*
4 *grievance procedure that includes the right to a hearing before an*
5 *arbitrator in such a case; and*
6 (c) *The employee demands such a hearing and otherwise*
7 *complies with the requirements of the grievance procedure.*
8 2. *The commencement of a hearing within the 90-day period*
9 *shall be deemed to comply with subsection 1, regardless of*
10 *whether the hearing is concluded within that period.*
11 3. *Compliance with the 90-day limitation prescribed by*
12 *subsection 1 is not required if:*
13 (a) *The superintendent of schools of the school district, or his*
14 *designee, and the employee agree in writing to waive the*
15 *limitation; or*
16 (b) *The arbitrator excuses compliance with the limitation*
17 *pursuant to a motion supported by an affidavit and for good cause*
18 *shown. For the purposes of this paragraph, the workload or*
19 *schedules of an attorney or the vacation schedule of a witness does*
20 *not constitute good cause except in extreme and unforeseeable*
21 *circumstances.*
22 4. *If an employee, through no fault of his own, is not*
23 *afforded a hearing within the time prescribed by subsection 1 and*
24 *the 90-day limitation period has not been waived or excused*
25 *pursuant to subsection 3, the employee is entitled forthwith to be*
26 *reinstated by the school district and made whole for any loss of*
27 *pay and benefits, plus interest, without any deduction or setoff and*
28 *without any requirement that the employee had to seek alternative*
29 *employment or otherwise attempt to mitigate his damages.*
30 *However, if the employee seeks alternative employment, he is*
31 *entitled to recover the expenses, if any, reasonably incurred by*
32 *him in attempting to secure the alternative employment. In*
33 *addition, the school district shall immediately remove from the*
34 *personnel records of the employee any reference to the dismissal,*
35 *suspension or demotion.*
36 **Sec. 3.** *In any proceeding governed by section 2 of this act, if*
37 *the arbitrator determines that the dismissal, demotion or*
38 *suspension of an unlicensed employee should be modified or*
39 *overturned, the employee is entitled to be made whole for any pay*
40 *and benefits lost during the pendency of the proceeding, without*
41 *any deduction or setoff and without any requirement that the*
42 *employee had to seek alternative employment or otherwise attempt*
43 *to mitigate his damages. However, if the employee seeks*
44 *alternative employment, he is entitled to recover the expenses, if*



1 any, reasonably incurred by him in attempting to secure the
2 alternative employment.

3 **Sec. 4. 1.** *If an administrator receives a written complaint*
4 *from a parent, legal guardian or pupil regarding a teacher or*
5 *other licensed or unlicensed employee of a school district, the*
6 *administrator shall provide the employee a copy of the complaint.*
7 *If the administrator decides to pursue the matter by making*
8 *inquiries or conducting an investigation, the administrator shall*
9 *provide written notice to the employee at least 3 days before he*
10 *makes the inquiries or conducts the investigation. The employee is*
11 *entitled to:*

12 (a) *Have a representative present while the inquiries are made*
13 *or the investigation is conducted;*

14 (b) *Make his own inquiries or conduct his own investigation,*
15 *or both; and*

16 (c) *Respond to the results of the inquiries or investigation*
17 *obtained by the administrator.*

18 2. *The written notice provided pursuant to subsection 1 must*
19 *include the rights of the employee set forth in paragraphs (a), (b)*
20 *and (c) of that subsection.*

21 3. *Upon resolution of a complaint, any reference to the*
22 *complaint or the inquiries or investigation related to the complaint*
23 *must be removed from the personnel records of the employee*
24 *within 6 months after the resolution.*

25 **Sec. 5.** *If a hearing officer determines that a*
26 *recommendation to demote, dismiss or not reemploy a licensed*
27 *employee should be modified or overturned, the employee is*
28 *entitled to be made whole for any pay and benefits lost, plus*
29 *interest, during the pendency of the proceeding, without any*
30 *deduction or setoff and without any requirement that the employee*
31 *had to seek alternative employment or otherwise attempt to*
32 *mitigate his damages. However, if the employee seeks alternative*
33 *employment, he is entitled to recover the expenses, if any,*
34 *reasonably incurred by him in attempting to secure the alternative*
35 *employment.*

36 **Sec. 6.** NRS 391.311 is hereby amended to read as follows:

37 391.311 As used in NRS 391.311 to 391.3197, inclusive, *and*
38 *section 5 of this act*, unless the context otherwise requires:

39 1. "Administrator" means any employee who holds a license as
40 an administrator and who is employed in that capacity by a school
41 district.

42 2. "Board" means the board of trustees of the school district in
43 which a licensed employee affected by NRS 391.311 to 391.3197,
44 inclusive, *and section 5 of this act* is employed.



1 3. *“Collective bargaining agreement” means a collective*
2 *bargaining agreement negotiated pursuant to chapter 288 of NRS*
3 *between a board and an employee organization representing*
4 *licensed employees of the school district.*

5 4. “Demotion” means demotion of an administrator to a
6 position of lesser rank, responsibility or pay and does not include
7 transfer or reassignment for purposes of an administrative
8 reorganization.

9 ~~[4.]~~ 5. “Immorality” means an act forbidden by NRS 200.366,
10 200.368, 200.400, 200.508, 201.180, 201.190, 201.210, 201.220,
11 201.230, 201.265 or 207.260.

12 ~~[5.]~~ 6. “Postprobationary employee” means an administrator or
13 a teacher who has completed the probationary period as provided in
14 NRS 391.3197 and has been given notice of reemployment.

15 ~~[6.]~~ 7. “Probationary employee” means an administrator or a
16 teacher who is employed for the period set forth in NRS 391.3197.

17 ~~[7.]~~ 8. “Superintendent” means the superintendent of a school
18 district or a person designated by the board or superintendent to act
19 as superintendent during the absence of the superintendent.

20 ~~[8.]~~ 9. “Teacher” means a licensed employee the majority of
21 whose working time is devoted to the rendering of direct
22 educational service to pupils of a school district.

23 **Sec. 7.** NRS 391.3116 is hereby amended to read as follows:

24 391.3116 ~~[The]~~

25 1. *Except as otherwise provided in this section, the* provisions
26 *of NRS 391.311 to 391.3197, inclusive, and section 5 of this act* do
27 *not apply to a teacher, administrator, or other licensed employee*
28 ~~*[who has entered into a contract with the board negotiated pursuant*~~
29 ~~*to chapter 288 of NRS]*~~ *whose employment is governed by a*
30 *collective bargaining agreement* if the ~~[contract]~~ agreement
31 contains separate provisions relating to the board’s right to *demote,*
32 *suspend,* dismiss or refuse to reemploy the employee . ~~[or demote~~
33 ~~*an administrator.]*~~

34 2. *Except as otherwise provided in subsection 3 of this section*
35 *and subsection 3 of NRS 391.318, the parties to a collective*
36 *bargaining agreement may by that agreement modify, adopt or*
37 *incorporate by reference, in whole or in part, the provisions of*
38 *NRS 391.311 to 391.3197, inclusive, and section 5 of this act.*

39 3. *The time limitations set forth in NRS 391.311 to 391.3197,*
40 *inclusive, and section 5 of this act, relating to the conduct of a*
41 *hearing before a hearing officer are applicable to a teacher,*
42 *administrator or other licensed employee of a school district,*
43 *regardless of whether his employment is governed by a collective*
44 *agreement. If such a collective bargaining agreement provides for*
45 *a hearing before an arbitrator in any case involving the demotion,*



1 *suspension, dismissal or refusal to reemploy a licensed employee,*
2 *the arbitrator shall comply with the time limitations set forth in*
3 *NRS 391.311 to 391.3197, inclusive, and section 5 of this act as*
4 *they apply to a hearing officer.*

5 **Sec. 8.** NRS 391.313 is hereby amended to read as follows:

6 391.313 1. Whenever an administrator charged with
7 supervision of a licensed employee believes it is necessary to
8 admonish the employee for a reason that he believes may lead to
9 demotion, dismissal or cause the employee not to be reemployed
10 under the provisions of NRS 391.312, he shall:

11 (a) Except as otherwise provided in subsection 2, *within 7 days*
12 bring the matter to the attention of the employee involved, in
13 writing, stating the ~~reasons~~ :

14 (1) *Reasons* for the admonition and that it may lead to his
15 demotion, dismissal or a refusal to reemploy him ~~and make~~ ; and

16 (2) *Standards the employee must meet to improve.*

17 (b) *Make* a reasonable effort to assist the employee to correct
18 whatever appears to be the cause for his potential demotion,
19 dismissal or a potential recommendation not to reemploy him . ~~and~~
20 ~~and~~

21 ~~—(b)—~~ *The administrator shall keep a written record of the*
22 *reasonable efforts made to assist the employee.*

23 (c) Except as otherwise provided in NRS 391.314, allow
24 reasonable time for improvement, which must not exceed 3 months
25 for the first admonition.

26 An admonition issued to a licensed employee who, within the time
27 granted for improvement, has met the standards set for him by the
28 administrator who issued the admonition must be removed from the
29 records of the employee together with all notations and indications
30 of its having been issued. The admonition must be removed from
31 the records of the employee not later than 3 years after it is issued.

32 2. An administrator need not admonish an employee pursuant
33 to paragraph (a) of subsection 1 if his employment will be
34 terminated pursuant to NRS 391.3197. If by February 15 of the first
35 or second year of his probationary period a probationary employee
36 does not receive a written notice pursuant to subsection 4 of NRS
37 391.3125 of a potential decision not to reemploy him, he must
38 receive an admonition before any such decision is made.

39 3. A licensed employee is subject to immediate dismissal or a
40 refusal to reemploy according to the procedures provided in NRS
41 391.311 to 391.3197, inclusive, *and section 5 of this act* without the
42 admonition required by this section, on grounds contained in
43 paragraphs (b), (f), (g), *and* (h) ~~and (p)~~ of subsection 1 of
44 NRS 391.312.



1 **Sec. 9.** NRS 391.314 is hereby amended to read as follows:
2 391.314 1. If a superintendent has reason to believe that
3 cause exists for the dismissal of a licensed employee and he is of the
4 opinion that the immediate suspension of the employee is necessary
5 in the best interests of the pupils in the district, the superintendent
6 may suspend the employee without notice and without a hearing.
7 Notwithstanding the provisions of NRS 391.312, a superintendent
8 may suspend a licensed employee who has been officially charged
9 but not yet convicted of a felony or a crime involving moral
10 turpitude or immorality. If the charge is dismissed or if the
11 employee is found not guilty, he must be reinstated with back pay,
12 plus interest, and normal seniority. The superintendent shall notify
13 the employee in writing of the suspension.
14 2. Within 5 days after a suspension becomes effective, the
15 superintendent shall begin proceedings pursuant to the provisions of
16 NRS 391.312 to 391.3196, inclusive, to effect the employee's
17 dismissal. The employee is entitled to continue to receive his salary
18 and other benefits after the suspension becomes effective until the
19 date on which the dismissal proceedings are commenced. The
20 superintendent may recommend that an employee who has been
21 charged with a felony or a crime involving immorality be dismissed
22 for another ground set forth in NRS 391.312.
23 3. ~~If sufficient grounds for dismissal do not exist, the~~
24 ~~employee must be reinstated with full compensation, plus interest.~~
25 ~~—4.]~~ A licensed employee who furnishes to the school district a
26 bond or other security which is acceptable to the board as a
27 guarantee that he will repay any amounts paid to him pursuant to
28 this subsection as salary during a period of suspension is entitled to
29 continue to receive his salary from the date on which the dismissal
30 proceedings are commenced until the decision of the board or the
31 report of the hearing officer, if the report is final and binding. The
32 board shall not unreasonably refuse to accept security other than a
33 bond. An employee who receives salary pursuant to this subsection
34 shall repay it if he is dismissed or not reemployed as a result of a
35 decision of the board or a report of a hearing officer.
36 ~~5.]~~ 4. A licensed employee who is convicted of a crime which
37 requires registration pursuant to NRS 179D.200 to 179D.290,
38 inclusive, or 179D.350 to 179D.550, inclusive, or is convicted of an
39 act forbidden by NRS 200.508, 201.190 or 201.265 forfeits all rights
40 of employment from the date of his arrest.
41 ~~6.]~~ 5. A licensed employee who is convicted of any crime and
42 who is sentenced to and serves any sentence of imprisonment
43 forfeits all rights of employment from the date of his arrest or the
44 date on which his employment terminated, whichever is later.



1 ~~[7.]~~ 6. A licensed employee who is charged with a felony or a
2 crime involving immorality or moral turpitude and who waives his
3 right to a speedy trial while suspended may receive no more than 12
4 months of back pay and seniority upon reinstatement if he is found
5 not guilty or the charges are dismissed, unless proceedings have
6 been begun to dismiss the employee upon one of the other grounds
7 set forth in NRS 391.312.

8 ~~[8.]~~ 7. A superintendent may discipline a licensed employee
9 by suspending the employee with loss of pay at any time after a
10 hearing has been held which affords the due process provided for in
11 this chapter. The grounds for suspension are the same as the grounds
12 contained in NRS 391.312. An employee may be suspended more
13 than once during the employee's contract year, but the total number
14 of days of suspension may not exceed 20 in 1 contract year. Unless
15 circumstances require otherwise, the suspensions must be
16 progressively longer.

17 **Sec. 10.** NRS 391.3161 is hereby amended to read as follows:

18 391.3161 1. There is hereby created a list of hearing officers
19 comprised of residents of this state who are attorneys at law. The
20 State Board shall make appointments to the list after nominations
21 have been made by the State Bar of Nevada and the Nevada Trial
22 Lawyers Association. Each nominee appointed to the list must have
23 completed a course of instruction in administrative law, relating to
24 the provisions of this chapter, offered by the State Board. This
25 course must consist of at least 4 hours of instruction in a classroom.

26 2. Each appointment to the list is for a term of 6 years or until
27 resignation or removal for cause by the State Board. Vacancies must
28 be filled in the same manner as original appointments.

29 3. Hearing officers may be selected from a list provided by the
30 American Arbitration Association of arbitrators who are available
31 upon request, if:

32 (a) The number of names on the list of qualified, trained hearing
33 officers falls below 10; ~~[and]~~ *or*

34 (b) The employee and the superintendent have so agreed in
35 writing at least 5 school days before the list is requested.

36 Selection of a hearing officer through the services of the American
37 Arbitration Association must be accomplished in the same manner
38 as described in subsection 2 of NRS 288.200. The employee and the
39 board shall each pay half of the costs of a hearing held before a
40 hearing officer selected from a list provided by the American
41 Arbitration Association.



1 4. A hearing officer shall conduct hearings in cases of
2 demotion, dismissal or a refusal to reemploy based on the grounds
3 contained in subsection 1 of NRS 391.312.

4 5. This section does not preclude the employee and the
5 superintendent from mutually selecting an attorney who is a resident
6 of this state to serve as a hearing officer to conduct a particular
7 hearing.

8 **Sec. 11.** NRS 391.318 is hereby amended to read as follows:

9 391.318 1. If a request for a hearing is not made within the
10 time allowed, the superintendent shall file his recommendation with
11 the board. The board may, by resolution, act on the recommendation
12 as it sees fit.

13 2. If a request for a hearing is made ~~and~~ *and the matter is to be*
14 *heard by a hearing officer selected from the list of hearing officers*
15 *created pursuant to NRS 391.3161, the superintendent shall*
16 *immediately forward a copy of the request for a hearing to the*
17 *Superintendent of Public Instruction for designation of a hearing*
18 *officer pursuant to NRS 391.31915. The superintendent shall not*
19 *file his recommendation with the board until a report of the hearing*
20 *officer is filed with him.*

21 3. *If a request for a hearing is made and the matter is to be*
22 *heard by a hearing officer selected in accordance with a collective*
23 *bargaining agreement or otherwise agreed upon between the*
24 *superintendent and the employee, the hearing officer must be*
25 *selected as agreed within 15 days after the request for a hearing is*
26 *received by the superintendent. The hearing officer shall comply*
27 *with the applicable time limitations set forth in NRS 391.311 to*
28 *391.3197, inclusive, and section 5 of this act.*

29 **Sec. 12.** NRS 391.31915 is hereby amended to read as
30 follows:

31 391.31915 1. Within 10 days after he receives a request for a
32 hearing ~~and~~ *pursuant to subsection 2 of NRS 391.318,* the
33 Superintendent of Public Instruction shall designate seven attorneys
34 from the list of hearing officers. *The Superintendent of Public*
35 *Instruction shall immediately provide written notice of the*
36 *designation to the licensed employee and the superintendent.*

37 2. ~~After~~ *Within 10 days after the* designation of the
38 attorneys, the licensed employee and superintendent shall challenge
39 peremptorily one of the seven at a time, alternately, until only one
40 remains, who shall serve as hearing officer for the hearing. The
41 superintendent and licensed employee shall draw lots to determine
42 first choice to exercise a challenge.



1 ~~[3. The State Board shall prescribe procedures for exercising~~
2 ~~challenges to the hearing officer and set time limits in which the~~
3 ~~challenges may be exercised by the licensed employee and~~
4 ~~superintendent.]~~

5 **Sec. 13.** NRS 391.3192 is hereby amended to read as follows:
6 391.3192 1. ~~[As soon as possible after the time of his~~
7 ~~designation.]~~ *Except as otherwise provided in subsection 2, within*
8 *120 days after the date on which the recommendation is made to*
9 *demote, dismiss or not reemploy a licensed employee,* the hearing
10 officer shall hold a hearing to determine whether the grounds for the
11 recommendation are substantiated. *The commencement of a*
12 *hearing within the 120-day period shall be deemed to comply with*
13 *this subsection, regardless of whether the hearing is concluded*
14 *within that period.*

15 2. *Compliance with the 120-day limitation prescribed by*
16 *subsection 1 is not required if:*

17 (a) *The superintendent, or his designee, and the licensed*
18 *employee agree in writing to waive the limitation; or*

19 (b) *The hearing officer excuses compliance with the limitation,*
20 *pursuant to a motion supported by an affidavit and for good cause*
21 *shown. The workload or schedules of an attorney or the vacation*
22 *schedule of a witness does not constitute good cause except in*
23 *extreme and unforeseeable circumstances.*

24 3. The Superintendent of Public Instruction shall furnish the
25 hearing officer with any assistance which is reasonably required to
26 conduct the hearing, and the hearing officer may require witnesses
27 to give testimony under oath and produce evidence relevant to the
28 investigation.

29 ~~[3.]~~ 4. The licensed employee and superintendent are entitled
30 to be heard, to be represented by an attorney and to call witnesses in
31 their behalf.

32 ~~[4.]~~ 5. The hearing officer is entitled to be reimbursed for his
33 reasonable actual expenses and to receive compensation for actual
34 time served at a rate of \$60 per hour.

35 ~~[5.]~~ 6. If requested by the hearing officer, an official transcript
36 must be made.

37 ~~[6.]~~ 7. The board and the licensed employee are equally
38 responsible for the expense of and compensation for the hearing
39 officer and the expense of the official transcript.

40 ~~[7.]~~ 8. The State Board shall develop a set of uniform
41 standards and procedures to be used in such a hearing. The technical
42 rules of evidence do not apply to this hearing.

43 9. *If a licensed employee, through no fault of his own, is not*
44 *afforded a hearing within the time prescribed by subsection 1 and*
45 *the 120-day limitation period has not been waived or excused*



1 *pursuant to subsection 2, the employee is entitled forthwith to be*
2 *reinstated by the school district and made whole for any loss of*
3 *pay and benefits, plus interest, without any deduction or setoff and*
4 *without any requirement that the employee had to seek alternative*
5 *employment or otherwise attempt to mitigate his damages.*
6 *However, if the employee seeks alternative employment, he is*
7 *entitled to recover the expenses, if any, reasonably incurred by*
8 *him in attempting to secure the alternative employment. In*
9 *addition, the school district shall immediately remove from the*
10 *personnel records of the employee any reference to the*
11 *recommendation.*

12 **Sec. 14.** NRS 391.3193 is hereby amended to read as follows:
13 391.3193 1. Except as otherwise provided in ~~subsection 3,~~
14 ~~within 30 days after the time of his designation,] this section,~~ the
15 hearing officer shall ~~complete the hearing and shall~~ prepare and
16 file a written report with the superintendent and the licensed
17 employee involved not later than ~~15~~ 30 days after the conclusion
18 of the hearing. *If the hearing officer directs that a transcript of the*
19 *hearing be prepared, the hearing officer shall prepare and file his*
20 *report not later than 30 days after he receives the transcript.*

21 2. The report must contain an outline of the scope of the
22 hearing, findings of fact and conclusions of law, and recommend a
23 course of action to be taken by the board. The report of the hearing
24 officer is final and binding on the employee and the board if the
25 employee and the superintendent have so agreed before the selection
26 of the hearing officer was begun.

27 3. If it appears that the report cannot be prepared within ~~15~~ 30
28 days, the licensed employee and the superintendent shall be so
29 notified before the end of that period, and the hearing officer may
30 take the time necessary not exceeding ~~30 days following~~ 45 days
31 *after the conclusion of the hearing or receipt of the transcript of the*
32 *hearing, as applicable,* to file the written report and
33 recommendation.

34 4. The licensed employee and the superintendent or his
35 designee may mutually agree to waive any of the time limits
36 ~~applicable to the hearing procedure.] set forth in this section.~~

37 **Sec. 15.** NRS 391.3191 is hereby repealed.

38 **Sec. 16.** This act becomes effective on July 1, 2003.



TEXT OF REPEALED SECTION

391.3191 Submission of request for appointment of hearing officer; challenge of members of list of hearing officers before designation.

1. Each request for appointment of a person from the list of hearing officers to serve as a hearing officer must be submitted to the Superintendent of Public Instruction.

2. The licensed employee and the superintendent may each challenge not more than five members of the list of hearing officers, and the Superintendent of Public Instruction shall not appoint any challenged person.

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