
SENATE BILL 6005

State of Washington 56th Legislature 1999 Regular Session

By Senators Benton, Zarelli and Hochstatter

Read first time 02/22/1999. Referred to Committee on Education.

1 AN ACT Relating to contracts for certificated school personnel; and
2 amending RCW 28A.400.010, 28A.400.300, 28A.405.100, 28A.405.210,
3 28A.405.220, 28A.405.230, 28A.405.240, 28A.405.300, 28A.405.310,
4 28A.405.320, 28A.405.350, and 28A.405.380.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 28A.400.010 and 1990 c 33 s 376 are each amended to
7 read as follows:

8 In all districts the board of directors shall elect a
9 superintendent who shall have such qualification as the local school
10 board alone shall determine. The superintendent shall have supervision
11 over the several departments of the schools thereof and carry out such
12 other powers and duties as prescribed by law. (~~Notwithstanding the~~
13 ~~provisions of RCW 28A.400.300(1),~~) The board may contract with such
14 superintendent for a term not to exceed three years when deemed in the
15 best interest of the district. The right to renew a contract of
16 employment with any school superintendent shall rest solely with the
17 discretion of the school board employing such school superintendent.
18 Regarding such renewal of contracts of school superintendents the

1 provisions of RCW 28A.405.210, 28A.405.240, and 28A.645.010 shall be
2 inapplicable.

3 **Sec. 2.** RCW 28A.400.300 and 1997 c 13 s 10 are each amended to
4 read as follows:

5 Every board of directors, unless otherwise specially provided by
6 law, shall:

7 (1)(a) Employ for not more than ~~((one))~~ three years, and for
8 sufficient cause discharge all certificated ~~((and—classified))~~
9 employees, except provisional certificated employees as defined in RCW
10 28A.405.220;

11 (b) Employ for not more than one year, and for sufficient cause
12 discharge all provisional employees as defined in RCW 28A.405.220; and

13 (c) Employ for not more than one year, and for sufficient cause
14 discharge all noncertificated employees;

15 (2) Adopt written policies granting leaves to persons under
16 contracts of employment with the school district(s) in positions
17 requiring either certification or classified qualifications, including
18 but not limited to leaves for attendance at official or private
19 institutes and conferences and sabbatical leaves for employees in
20 positions requiring certification qualification, and leaves for
21 illness, injury, bereavement and, emergencies for both certificated and
22 classified employees, and with such compensation as the board of
23 directors prescribe: PROVIDED, That the board of directors shall adopt
24 written policies granting to such persons annual leave with
25 compensation for illness, injury and emergencies as follows:

26 (a) For such persons under contract with the school district for a
27 full year, at least ten days;

28 (b) For such persons under contract with the school district as
29 part time employees, at least that portion of ten days as the total
30 number of days contracted for bears to one hundred eighty days;

31 (c) For certificated and classified employees, annual leave with
32 compensation for illness, injury, and emergencies shall be granted and
33 accrue at a rate not to exceed twelve days per year; ~~((provisions of~~
34 ~~any contract in force on June 12, 1980, which conflict with~~
35 ~~requirements of this subsection shall continue in effect until contract~~
36 ~~expiration; after expiration, any new contract executed between the~~
37 ~~parties shall be consistent with this subsection;))~~

1 (d) Compensation for leave for illness or injury actually taken
2 shall be the same as the compensation such person would have received
3 had such person not taken the leave provided in this proviso;

4 (e) Leave provided in this proviso not taken shall accumulate from
5 year to year up to a maximum of one hundred eighty days for the
6 purposes of RCW 28A.400.210 and 28A.400.220, and for leave purposes up
7 to a maximum of the number of contract days agreed to in a given
8 contract, but not greater than one year. Such accumulated time may be
9 taken at any time during the school year or up to twelve days per year
10 may be used for the purpose of payments for unused sick leave.

11 (f) Sick leave heretofore accumulated under section 1, chapter 195,
12 Laws of 1959 (former RCW 28.58.430) and sick leave accumulated under
13 administrative practice of school districts prior to the effective date
14 of section 1, chapter 195, Laws of 1959 (former RCW 28.58.430) is
15 hereby declared valid, and shall be added to leave for illness or
16 injury accumulated under this proviso;

17 (g) Any leave for injury or illness accumulated up to a maximum of
18 forty-five days shall be creditable as service rendered for the purpose
19 of determining the time at which an employee is eligible to retire, if
20 such leave is taken it may not be compensated under the provisions of
21 RCW 28A.400.210 and 28A.310.490;

22 (h) Accumulated leave under this proviso shall be transferred to
23 and from one district to another, the office of superintendent of
24 public instruction and offices of educational service district
25 superintendents and boards, to and from such districts and such
26 offices;

27 (i) Leave accumulated by a person in a district prior to leaving
28 said district may, under rules and regulations of the board, be granted
29 to such person when the person returns to the employment of the
30 district.

31 When any certificated or classified employee leaves one school
32 district within the state and commences employment with another school
33 district within the state, the employee shall retain the same
34 seniority, leave benefits and other benefits that the employee had in
35 his or her previous position: PROVIDED, That classified employees who
36 transfer between districts after July 28, 1985, shall not retain any
37 seniority rights other than longevity when leaving one school district
38 and beginning employment with another. If the school district to which
39 the person transfers has a different system for computing seniority,

1 leave benefits, and other benefits, then the employee shall be granted
2 the same seniority, leave benefits and other benefits as a person in
3 that district who has similar occupational status and total years of
4 service.

5 **Sec. 3.** RCW 28A.405.100 and 1997 c 278 s 1 are each amended to
6 read as follows:

7 (1) The superintendent of public instruction shall establish and
8 may amend from time to time minimum criteria for the evaluation of the
9 professional performance capabilities and development of certificated
10 classroom teachers and certificated support personnel. For classroom
11 teachers the criteria shall be developed in the following categories:
12 Instructional skill; classroom management, professional preparation and
13 scholarship; effort toward improvement when needed; the handling of
14 student discipline and attendant problems; and interest in teaching
15 pupils and knowledge of subject matter.

16 Every board of directors shall, in accordance with procedure
17 provided in RCW 41.59.010 through 41.59.170, 41.59.910 and 41.59.920,
18 establish evaluative criteria and procedures for all certificated
19 classroom teachers and certificated support personnel. The evaluative
20 criteria must contain as a minimum the criteria established by the
21 superintendent of public instruction pursuant to this section and must
22 be prepared within six months following adoption of the superintendent
23 of public instruction's minimum criteria. The district must certify to
24 the superintendent of public instruction that evaluative criteria have
25 been so prepared by the district.

26 Except as provided in subsection (5) of this section, it shall be
27 the responsibility of a principal or his or her designee to evaluate
28 all certificated personnel in his or her school. During each school
29 year all classroom teachers and certificated support personnel,
30 hereinafter referred to as "employees" in this section, shall be
31 observed for the purposes of evaluation at least twice in the
32 performance of their assigned duties. Total observation time for each
33 employee for each school year shall be not less than sixty minutes.
34 Following each observation, or series of observations, the principal or
35 other evaluator shall promptly document the results of the observation
36 in writing, and shall provide the employee with a copy thereof within
37 three days after such report is prepared. New employees shall be

1 observed at least once for a total observation time of thirty minutes
2 during the first ninety calendar days of their employment period.

3 At any time after October 15th, an employee whose work is judged
4 unsatisfactory based on district evaluation criteria shall be notified
5 in writing of the specific areas of deficiencies along with a
6 reasonable program for improvement. During the period of probation,
7 the employee may not be transferred from the supervision of the
8 original evaluator. Improvement of performance or probable cause for
9 (~~nonrenewal~~) discharge must occur and be documented by the original
10 evaluator before any consideration of a request for transfer or
11 reassignment as contemplated by either the individual or the school
12 district. A probationary period of sixty school days shall be
13 established. The establishment of a probationary period does not
14 adversely affect the contract status of an employee within the meaning
15 of RCW 28A.405.300. The purpose of the probationary period is to give
16 the employee opportunity to demonstrate improvements in his or her
17 areas of deficiency. The establishment of the probationary period and
18 the giving of the notice to the employee of deficiency shall be by the
19 school district superintendent and need not be submitted to the board
20 of directors for approval. During the probationary period the
21 evaluator shall meet with the employee at least twice monthly to
22 supervise and make a written evaluation of the progress, if any, made
23 by the employee. The evaluator may authorize one additional
24 certificated employee to evaluate the probationer and to aid the
25 employee in improving his or her areas of deficiency; such additional
26 certificated employee shall be immune from any civil liability that
27 might otherwise be incurred or imposed with regard to the good faith
28 performance of such evaluation. The probationer may be removed from
29 probation if he or she has demonstrated improvement to the satisfaction
30 of the principal in those areas specifically detailed in his or her
31 initial notice of deficiency and subsequently detailed in his or her
32 improvement program. Lack of necessary improvement during the
33 established probationary period, as specifically documented in writing
34 with notification to the probationer and shall constitute grounds for
35 a finding of probable cause under RCW 28A.405.300 (~~or 28A.405.210~~).

36 Immediately following the completion of a probationary period that
37 does not produce performance changes detailed in the initial notice of
38 deficiencies and improvement program, the employee may be (~~removed~~
39 ~~from his or her assignment and placed into an alternative assignment~~

1 for the remainder of the school year. This reassignment may not
2 displace another employee nor may it adversely affect the probationary
3 employee's compensation or benefits for the remainder of the employee's
4 contract year. If such reassignment is not possible, the district may,
5 at its option, place the employee on paid leave for the balance of the
6 contract term)) discharged.

7 (2) Every board of directors shall establish evaluative criteria
8 and procedures for all superintendents, principals, and other
9 administrators. It shall be the responsibility of the district
10 superintendent or his or her designee to evaluate all administrators.
11 Such evaluation shall be based on the administrative position job
12 description. Such criteria, when applicable, shall include at least
13 the following categories: Knowledge of, experience in, and training in
14 recognizing good professional performance, capabilities and
15 development; school administration and management; school finance;
16 professional preparation and scholarship; effort toward improvement
17 when needed; interest in pupils, employees, patrons and subjects taught
18 in school; leadership; and ability and performance of evaluation of
19 school personnel.

20 (3) Each certificated employee shall have the opportunity for
21 confidential conferences with his or her immediate supervisor on no
22 less than two occasions in each school year. Such confidential
23 conference shall have as its sole purpose the aiding of the
24 administrator in his or her assessment of the employee's professional
25 performance.

26 (4) The failure of any evaluator to evaluate or supervise or cause
27 the evaluation or supervision of certificated employees or
28 administrators in accordance with this section, as now or hereafter
29 amended, when it is his or her specific assigned or delegated
30 responsibility to do so, shall be sufficient cause for (~~the nonrenewal~~
31 ~~of any such evaluator's contract under RCW 28A.405.210, or~~) the
32 discharge of such evaluator under RCW 28A.405.300.

33 (5) After an employee has four years of satisfactory evaluations
34 under subsection (1) of this section, a school district may use a short
35 form of evaluation, a locally bargained evaluation emphasizing
36 professional growth, an evaluation under subsection (1) of this
37 section, or any combination thereof. The short form of evaluation
38 shall include either a thirty minute observation during the school year
39 with a written summary or a final annual written evaluation based on

1 the criteria in subsection (1) of this section and based on at least
2 two observation periods during the school year totaling at least sixty
3 minutes without a written summary of such observations being prepared.
4 However, the evaluation process set forth in subsection (1) of this
5 section shall be followed at least once every three years unless this
6 time is extended by a local school district under the bargaining
7 process set forth in chapter 41.59 RCW. The employee or evaluator may
8 require that the evaluation process set forth in subsection (1) of this
9 section be conducted in any given school year. No evaluation other
10 than the evaluation authorized under subsection (1) of this section may
11 be used as a basis for determining that an employee's work is
12 unsatisfactory under subsection (1) of this section or as probable
13 cause ~~((for the nonrenewal of an employee's contract under RCW~~
14 ~~28A.405.210))~~ to discharge an employee under RCW 28A.405.300 unless an
15 evaluation process developed under chapter 41.59 RCW determines
16 otherwise.

17 **Sec. 4.** RCW 28A.405.210 and 1996 c 201 s 1 are each amended to
18 read as follows:

19 No teacher, principal, supervisor, superintendent, or other
20 certificated employee, holding a position as such with a school
21 district, hereinafter referred to as "employee", shall be employed
22 except by written order of a majority of the directors of the district
23 at a regular or special meeting thereof, nor unless he or she is the
24 holder of an effective teacher's certificate or other certificate
25 required by law or the state board of education for the position for
26 which the employee is employed.

27 The board shall make with each employee employed by it a written
28 contract, which shall be in conformity with the laws of this state, and
29 except as otherwise provided by law, limited to a term ~~((of not more~~
30 ~~than one year))~~ as prescribed in RCW 28A.400.300. For those employees
31 with three-year maximum contract terms, the board may annually extend
32 the term of each employee's contract for the maximum term permitted by
33 law. Every such contract shall be made in duplicate, one copy to be
34 retained by the school district superintendent or secretary and one
35 copy to be delivered to the employee. No contract shall be offered by
36 any board for the employment of any employee who has previously signed
37 an employment contract for that same term in another school district of
38 the state of Washington unless such employee shall have been released

1 from his or her obligations under such previous contract by the board
2 of directors of the school district to which he or she was obligated.
3 Any contract signed in violation of this provision shall be void.

4 The right to renew a contract of employment with any employee rests
5 solely with the discretion of the school board employing the employee.
6 Regarding such renewal of contracts of employees, RCW 28A.405.240 and
7 28A.645.010 are inapplicable. In the event it is determined that
8 (~~there is probable cause or causes that~~) the employment contract of
9 an employee (~~should~~) will not be renewed by the district for the next
10 ensuing term such employee shall be notified in writing on or before
11 (~~May 15th~~) June 30th preceding the commencement of such term of that
12 determination(~~, or if the omnibus appropriations act has not passed~~
13 ~~the legislature by May 15th, then notification shall be no later than~~
14 ~~June 1st, which notification shall specify the cause or causes for~~
15 ~~nonrenewal of contract~~). Such determination of (~~probable cause~~)
16 nonrenewal for certificated employees, other than the superintendent,
17 shall be made by the superintendent. Such notice shall be served upon
18 the employee personally, or by certified or registered mail, or by
19 leaving a copy of the notice at the house of his or her usual abode
20 with some person of suitable age and discretion then resident therein.
21 Every such employee so notified, at his or her request made in writing
22 and filed with the (~~president, chair or secretary of the board of~~
23 ~~directors~~) superintendent of the district within ten days after
24 receiving such notice, shall be granted opportunity for (~~hearing~~
25 ~~pursuant to RCW 28A.405.310 to determine whether there is sufficient~~
26 ~~cause or causes for nonrenewal of contract: PROVIDED, That any~~
27 ~~employee receiving notice of nonrenewal of contract due to an~~
28 ~~enrollment decline or loss of revenue may, in his or her request for a~~
29 ~~hearing, stipulate that initiation of the arrangements for a hearing~~
30 ~~officer as provided for by RCW 28A.405.310(4) shall occur within ten~~
31 ~~days following July 15 rather than the day that the employee submits~~
32 ~~the request for a hearing. If any such notification or opportunity for~~
33 ~~hearing is not timely given, the employee entitled thereto shall be~~
34 ~~conclusively presumed to have been reemployed by the district for the~~
35 ~~next ensuing term upon contractual terms identical with those which~~
36 ~~would have prevailed if his or her employment had actually been renewed~~
37 ~~by the board of directors for such ensuing term~~) an informal meeting
38 with the superintendent for the purpose of requesting that the
39 superintendent reconsider his or her decision. The meeting shall be

1 held no later than ten days following receipt of such request, and the
2 employee shall be given written notice of the date, time, and place of
3 the meeting at least three days before the meeting. At the meeting the
4 employee shall be given the opportunity to refute any facts on which
5 the superintendent's determination was based and to make any argument
6 in support of his or her request for reconsideration.

7 ~~((This section shall not be applicable to "provisional employees"~~
8 ~~as so designated in RCW 28A.405.220;))~~ Within ten days following the
9 meeting with the employee, the superintendent shall either reinstate
10 the employee or submit to the school district board of directors for
11 consideration at its next regular meeting a written report recommending
12 that the employment contract of the employee be nonrenewed. A copy of
13 the report shall be delivered to the employee at least three days
14 before the scheduled meeting of the board of directors. In taking
15 action on the recommendation of the superintendent, the board of
16 directors shall consider any written communication that the employee
17 may file with the superintendent at any time before that meeting. The
18 board of directors shall notify the employee of its final decision
19 within ten days following the meeting at which the superintendent's
20 recommendation was considered. The decision of the board of directors
21 to nonrenew the contract of an employee is final and not subject to
22 appeal. This section provides the exclusive means for nonrenewing the
23 employment contract of an employee and no other provision of law shall
24 be applicable thereto, including without limitation, RCW 28A.645.010.

25 Transfer to a subordinate certificated position as that procedure
26 is set forth in RCW 28A.405.230 shall not be construed as a nonrenewal
27 of contract for the purposes of this section.

28 **Sec. 5.** RCW 28A.405.220 and 1996 c 201 s 2 are each amended to
29 read as follows:

30 ~~((Notwithstanding the provisions of RCW 28A.405.210,))~~ Every person
31 employed by a school district in a teaching or other nonsupervisory
32 certificated position shall be subject to nonrenewal of employment
33 contract on or before June 30th of each school year as provided in
34 ~~((this section))~~ RCW 28A.405.210 during the first two years of
35 employment by such district, unless the employee has previously
36 completed at least two years of certificated employment in another
37 school district in the state of Washington, in which case the employee
38 shall be subject to nonrenewal of employment contract pursuant to this

1 section during the first year of employment with the new district.
2 Employees as defined in this section shall hereinafter be referred to
3 as "provisional employees".

4 ~~((In the event the superintendent of the school district determines
5 that the employment contract of any provisional employee should not be
6 renewed by the district for the next ensuing term such provisional
7 employee shall be notified thereof in writing on or before May 15th
8 preceding the commencement of such school term, or if the omnibus
9 appropriations act has not passed the legislature by May 15th, then
10 notification shall be no later than June 1st, which notification shall
11 state the reason or reasons for such determination. Such notice shall
12 be served upon the provisional employee personally, or by certified or
13 registered mail, or by leaving a copy of the notice at the place of his
14 or her usual abode with some person of suitable age and discretion then
15 resident therein. The determination of the superintendent shall be
16 subject to the evaluation requirements of RCW 28A.405.100.~~

17 ~~Every such provisional employee so notified, at his or her request
18 made in writing and filed with the superintendent of the district
19 within ten days after receiving such notice, shall be given the
20 opportunity to meet informally with the superintendent for the purpose
21 of requesting the superintendent to reconsider his or her decision.
22 Such meeting shall be held no later than ten days following the receipt
23 of such request, and the provisional employee shall be given written
24 notice of the date, time and place of meeting at least three days prior
25 thereto. At such meeting the provisional employee shall be given the
26 opportunity to refute any facts upon which the superintendent's
27 determination was based and to make any argument in support of his or
28 her request for reconsideration.~~

29 ~~Within ten days following the meeting with the provisional
30 employee, the superintendent shall either reinstate the provisional
31 employee or shall submit to the school district board of directors for
32 consideration at its next regular meeting a written report recommending
33 that the employment contract of the provisional employee be nonrenewed
34 and stating the reason or reasons therefor. A copy of such report
35 shall be delivered to the provisional employee at least three days
36 prior to the scheduled meeting of the board of directors. In taking
37 action upon the recommendation of the superintendent, the board of
38 directors shall consider any written communication which the~~

1 provisional employee may file with the secretary of the board at any
2 time prior to that meeting.

3 The board of directors shall notify the provisional employee in
4 writing of its final decision within ten days following the meeting at
5 which the superintendent's recommendation was considered. The decision
6 of the board of directors to nonrenew the contract of a provisional
7 employee shall be final and not subject to appeal.

8 This section applies to any person employed by a school district in
9 a teaching or other nonsupervisory certificated position after June 25,
10 1976. This section provides the exclusive means for nonrenewing the
11 employment contract of a provisional employee and no other provision of
12 law shall be applicable thereto, including, without limitation, RCW
13 28A.405.210 and chapter 28A.645 RCW.)

14 **Sec. 6.** RCW 28A.405.230 and 1996 c 201 s 3 are each amended to
15 read as follows:

16 Any certificated employee of a school district employed as an
17 assistant superintendent, director, principal, assistant principal,
18 coordinator, or in any other supervisory or administrative position,
19 hereinafter in this section referred to as "administrator", shall be
20 subject to transfer, ((at the expiration of the term of his or her
21 employment contract)) for the next school term, to any subordinate
22 certificated position within the school district. "Subordinate
23 certificated position" as used in this section, shall mean any
24 administrative or nonadministrative certificated position for which the
25 annual compensation is less than the position currently held by the
26 administrator.

27 Every superintendent determining that the best interests of the
28 school district would be served by transferring any administrator to a
29 subordinate certificated position shall notify that administrator in
30 writing on or before ((May 15th)) June 30th preceding the commencement
31 of such school term of that determination, ((or if the omnibus
32 appropriations act has not passed the legislature by May 15th, then
33 notification shall be no later than June 1st,)) which notification
34 shall state the reason or reasons for the transfer, and shall identify
35 the subordinate certificated position to which the administrator will
36 be transferred. Such notice shall be served upon the administrator
37 personally, or by certified or registered mail, or by leaving a copy of

1 the notice at the place of his or her usual abode with some person of
2 suitable age and discretion then resident therein.

3 Every such administrator so notified, at his or her request made in
4 writing and filed with the president or chair, or secretary of the
5 board of directors of the district within ten days after receiving such
6 notice, shall be given the opportunity to meet informally with the
7 board of directors in an executive session thereof for the purpose of
8 requesting the board to reconsider the decision of the superintendent.
9 Such board, upon receipt of such request, shall schedule the meeting
10 for no later than the next regularly scheduled meeting of the board,
11 and shall notify the administrator in writing of the date, time and
12 place of the meeting at least three days prior thereto. At such
13 meeting the administrator shall be given the opportunity to refute any
14 facts upon which the determination was based and to make any argument
15 in support of his or her request for reconsideration. The
16 administrator and the board may invite their respective legal counsel
17 to be present and to participate at the meeting. The board shall
18 notify the administrator in writing of its final decision within ten
19 days following its meeting with the administrator. No appeal to the
20 courts shall lie from the final decision of the board of directors to
21 transfer an administrator to a subordinate certificated position:
22 PROVIDED, That in the case of principals such transfer shall be made at
23 the expiration of the contract year and only during the first three
24 consecutive school years of employment as a principal by a school
25 district; except that if any such principal has been previously
26 employed as a principal by another school district in the state of
27 Washington for three or more consecutive school years the provisions of
28 this section shall apply only to the first full school year of such
29 employment.

30 This section applies to any person employed as an administrator by
31 a school district on June 25, 1976 and to all persons so employed at
32 any time thereafter. This section provides the exclusive means for
33 transferring an administrator to a subordinate certificated position
34 (~~(at the expiration of the term of his or her employment contract)~~) for
35 the next school term.

36 **Sec. 7.** RCW 28A.405.240 and 1990 c 33 s 393 are each amended to
37 read as follows:

1 No certificated employee shall be required to perform duties not
2 described in the contract unless a new or supplemental contract is made
3 for a term not to exceed one year, except that in an unexpected
4 emergency the board of directors or school district administration may
5 require the employee to perform other reasonable duties on a temporary
6 basis.

7 No supplemental contract shall be subject to the continuing
8 contract provisions of this title.

9 **Sec. 8.** RCW 28A.405.300 and 1990 c 33 s 395 are each amended to
10 read as follows:

11 In the event it is determined that there is probable cause or
12 causes for a teacher, principal, supervisor, superintendent, or other
13 certificated employee, holding a position as such with the school
14 district, hereinafter referred to as "employee", to be discharged or
15 otherwise adversely affected in his or her contract status, such
16 employee shall be notified in writing of that decision, which
17 notification shall specify the probable cause or causes for such
18 action. Such determinations of probable cause for certificated
19 employees, other than the superintendent, shall be made by the
20 superintendent. Such notices shall be served upon that employee
21 personally, or by certified or registered mail, or by leaving a copy of
22 the notice at the house of his or her usual abode with some person of
23 suitable age and discretion then resident therein. Every such employee
24 so notified, at his or her request made in writing and filed with the
25 president, chair of the board or secretary of the board of directors of
26 the district within ten days after receiving such notice, shall be
27 granted opportunity for a hearing pursuant to RCW 28A.405.310 to
28 determine whether or not there is sufficient cause or causes for his or
29 her discharge or other adverse action against his or her contract
30 status.

31 In the event any such notice or opportunity for hearing is not
32 timely given, or in the event cause for discharge or other adverse
33 action is not established by a preponderance of the evidence at the
34 hearing, such employee shall not be discharged or otherwise adversely
35 affected in his or her contract status for the causes stated in the
36 original notice for the duration of his or her contract.

1 If such employee does not request a hearing as provided herein,
2 such employee may be discharged or otherwise adversely affected as
3 provided in the notice served upon the employee.

4 Transfer to a subordinate certificated position as that procedure
5 is set forth in RCW 28A.405.230 shall not be construed as a discharge
6 or other adverse action against contract status for the purposes of
7 this section. Nonrenewal of a contract as that procedure is set forth
8 in RCW 28A.405.210 shall not be construed as a discharge or other
9 adverse action against contract status for the purposes of this
10 section.

11 **Sec. 9.** RCW 28A.405.310 and 1990 c 33 s 396 are each amended to
12 read as follows:

13 (1) Any employee receiving a notice of probable cause for discharge
14 or adverse effect in contract status pursuant to RCW 28A.405.300(~~(, or~~
15 ~~any employee, with the exception of provisional employees as defined in~~
16 ~~RCW 28A.405.220, receiving a notice of probable cause for nonrenewal of~~
17 ~~contract pursuant to RCW 28A.405.210,)) shall be granted the
18 opportunity for a hearing pursuant to this section.~~

19 (2) In any request for a hearing pursuant to RCW 28A.405.300 (~~or~~
20 ~~28A.405.210)), the employee may request either an open or closed~~

21 hearing. The hearing shall be open or closed as requested by the
22 employee, but if the employee fails to make such a request, the hearing
23 officer may determine whether the hearing shall be open or closed.

24 (3) The employee may engage counsel who shall be entitled to
25 represent the employee at the prehearing conference held pursuant to
26 subsection (5) of this section and at all subsequent proceedings
27 pursuant to this section. At the hearing provided for by this section,
28 the employee may produce such witnesses as he or she may desire.

29 (4) In the event that an employee requests a hearing pursuant to
30 RCW 28A.405.300 (~~or 28A.405.210)), a hearing officer shall be~~
31 appointed in the following manner: Within fifteen days following the
32 receipt of any such request the board of directors of the district or
33 its designee and the employee or employee's designee shall each appoint
34 one nominee. The two nominees shall jointly appoint a hearing officer
35 who shall be a member in good standing of the Washington state bar
36 association or a person adhering to the arbitration standards
37 established by the public employment relations commission and listed on
38 its current roster of arbitrators. Should said nominees fail to agree

1 as to who should be appointed as the hearing officer, either the board
2 of directors or the employee, upon appropriate notice to the other
3 party, may apply to the presiding judge of the superior court for the
4 county in which the district is located for the appointment of such
5 hearing officer, whereupon such presiding judge shall have the duty to
6 appoint a hearing officer who shall, in the judgment of such presiding
7 judge, be qualified to fairly and impartially discharge his or her
8 duties. Nothing herein shall preclude the board of directors and the
9 employee from stipulating as to the identity of the hearing officer in
10 which event the foregoing procedures for the selection of the hearing
11 officer shall be inapplicable. The district shall pay all fees and
12 expenses of any hearing officer selected pursuant to this subsection.

13 (5) Within five days following the selection of a hearing officer
14 pursuant to subsection (4) of this section, the hearing officer shall
15 schedule a prehearing conference to be held within such five day
16 period, unless the board of directors and employee agree on another
17 date convenient with the hearing officer. The employee shall be given
18 written notice of the date, time, and place of such prehearing
19 conference at least three days prior to the date established for such
20 conference.

21 (6) The hearing officer shall preside at any prehearing conference
22 scheduled pursuant to subsection (5) of this section and in connection
23 therewith shall:

24 (a) Issue such subpoenas or subpoenas duces tecum as either party
25 may request at that time or thereafter; and

26 (b) Authorize the taking of prehearing depositions at the request
27 of either party at that time or thereafter; and

28 (c) Provide for such additional methods of discovery as may be
29 authorized by the civil rules applicable in the superior courts of the
30 state of Washington; and

31 (d) Establish the date for the commencement of the hearing, to be
32 within ten days following the date of the prehearing conference, unless
33 the employee requests a continuance, in which event the hearing officer
34 shall give due consideration to such request.

35 (7) The hearing officer shall preside at any hearing and in
36 connection therewith shall:

37 (a) Make rulings as to the admissibility of evidence pursuant to
38 the rules of evidence applicable in the superior court of the state of
39 Washington.

1 (b) Make other appropriate rulings of law and procedure.

2 (c) Within ten days following the conclusion of the hearing
3 transmit in writing to the board and to the employee, findings of fact
4 and conclusions of law and final decision. If the final decision is in
5 favor of the employee, the employee shall be restored to his or her
6 employment position and shall be awarded reasonable attorneys' fees.

7 (8) Any final decision by the hearing officer to (~~nonrenew the~~
8 ~~employment contract of the employee, or to~~) discharge the employee, or
9 to take other action adverse to the employee's contract status, as the
10 case may be, shall be based solely upon the cause or causes specified
11 in the notice of probable cause to the employee and shall be
12 established by a preponderance of the evidence at the hearing to be
13 sufficient cause or causes for such action.

14 (9) All subpoenas and prehearing discovery orders shall be
15 enforceable by and subject to the contempt and other equity powers of
16 the superior court of the county in which the school district is
17 located upon petition of any aggrieved party.

18 (10) A complete record shall be made of the hearing and all orders
19 and rulings of the hearing officer and school board.

20 **Sec. 10.** RCW 28A.405.320 and 1990 c 33 s 397 are each amended to
21 read as follows:

22 Any teacher, principal, supervisor, superintendent, or other
23 certificated employee, desiring to appeal from any action or failure to
24 act upon the part of a school board relating to the discharge or other
25 action adversely affecting his or her contract status(~~(, or failure to~~
26 ~~renew that employee's contract for the next ensuing term,)~~) within
27 thirty days after his or her receipt of such decision or order, may
28 serve upon the chair of the school board and file with the clerk of the
29 superior court in the county in which the school district is located a
30 notice of appeal which shall set forth also in a clear and concise
31 manner the errors complained of.

32 **Sec. 11.** RCW 28A.405.350 and 1990 c 33 s 399 are each amended to
33 read as follows:

34 If the court enters judgment for the employee, and if the court
35 finds that the probable cause determination was made in bad faith or
36 upon insufficient legal grounds, the court in its discretion may award
37 to the employee a reasonable attorneys' fee for the preparation and

1 trial of his or her appeal, together with his or her taxable costs in
2 the superior court. If the court enters judgment for the employee, in
3 addition to ordering the school board to reinstate (~~(or issue a new~~
4 ~~contract to)~~) the employee, the court may award damages for loss of
5 compensation incurred by the employee by reason of the action of the
6 school district.

7 **Sec. 12.** RCW 28A.405.380 and 1990 c 33 s 401 are each amended to
8 read as follows:

9 In the event that an employee, with the exception of a provisional
10 employee as defined in RCW 28A.405.220, receives a notice of probable
11 cause pursuant to RCW 28A.405.300 (~~(or 28A.405.210)~~) stating that by
12 reason of a lack of sufficient funds or loss of levy election the
13 employment contract of such employee should (~~(not)~~) be (~~(renewed)~~)
14 terminated for the next ensuing school term or that the same should be
15 adversely affected, the employee may appeal any said probable cause
16 determination directly to the superior court of the county in which the
17 school district is located. Such appeal shall be perfected by serving
18 upon the secretary of the school board and filing with the clerk of the
19 superior court a notice of appeal within ten days after receiving the
20 probable cause notice. The notice of appeal shall set forth in a clear
21 and concise manner the action appealed from. The superior court shall
22 determine whether or not there was sufficient cause for the action as
23 specified in the probable cause notice, which cause must be proven by
24 a preponderance of the evidence, and shall base its determination
25 solely upon the cause or causes stated in the notice of the employee.
26 The appeal provided in this section shall be tried as an ordinary civil
27 action: PROVIDED, That the board of directors' determination of
28 priorities for the expenditure of funds shall be subject to superior
29 court review pursuant to the standards set forth in RCW 28A.405.340:
30 PROVIDED FURTHER, That the provisions of RCW 28A.405.350 and
31 28A.405.360 shall be applicable thereto.

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