

ASSEMBLY BILL NO. 108—COMMITTEE ON EDUCATION

FEBRUARY 21, 2005

Referred to Committee on Education

SUMMARY—Revises provisions governing appointment of hearing officers in certain cases involving licensed educational personnel. (BDR 34-378)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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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 educational personnel; revising provisions governing the appointment of a hearing officer in cases involving the demotion, dismissal or refusal to reemploy licensed educational personnel and in cases involving the suspension or revocation of an educational license; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law prescribes the process for the appointment of hearing officers to preside over disciplinary proceedings involving licensed school district employees. Under existing law, the Department of Education must maintain a list of hearing officers composed of attorneys. The State Board of Education creates the list after receiving nominations from the State Bar of Nevada and the Nevada Trial Lawyers Association. (NRS 391.3161)

Existing law requires hearing officers in disciplinary proceedings and license revocation proceedings to be selected from a list provided by the American Arbitration Association. (NRS 391.3161, 391.322) Existing law also allows an employee and a superintendent to mutually agree upon a hearing officer who is an attorney in this State for the disciplinary proceedings. (NRS 391.3161)

This bill removes the requirement that hearing officers be appointed from a list provided by the American Arbitration Association. This bill requires that appointments be made by the Hearings Division of the Department of Administration. In addition to allowing the parties to select an attorney to serve as a hearing officer in disciplinary proceedings, this bill allows the employee and the superintendent to mutually agree upon an arbitrator provided by the American Arbitration Association or a representative of an agency or organization that provides alternative dispute resolution services.



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

Section 1. NRS 391.3161 is hereby amended to read as follows:

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

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

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

~~—(a) The number of names on the list of qualified, trained hearing officers falls below 10; and~~

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

~~↪ Selection of a hearing officer through the services of the American Arbitration Association must be accomplished in the same manner as described in subsection 2 of NRS 288.200. The employee and the board shall each pay half of the costs of a hearing held before a hearing officer selected from a list provided by the American Arbitration Association.]~~ *Each request for the appointment of a person to serve as a hearing officer must be submitted to the Superintendent of Public Instruction.*

2. Within 10 days after receipt of such a request, the Superintendent of Public Instruction shall request that the Hearings Division of the Department of Administration appoint a hearing officer.

3. The State Board shall prescribe the procedures for exercising challenges to a hearing officer, including, without limitation, the number of challenges that may be exercised and the time limits in which the challenges must be exercised.



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 , *an arbitrator provided by the American Arbitration*
7 *Association or a representative of an agency or organization that*
8 *provides alternative dispute resolution services* to serve as a
9 hearing officer to conduct a particular hearing.

10 **Sec. 2.** NRS 391.317 is hereby amended to read as follows:

11 391.317 1. At least 15 days before recommending to a board
12 that it demote, dismiss or not reemploy a postprobationary
13 employee, or dismiss or demote a probationary employee, the
14 superintendent shall give written notice to the employee, by
15 registered or certified mail, of his intention to make the
16 recommendation.

17 2. The notice must:

18 (a) Inform the licensed employee of the grounds for the
19 recommendation.

20 (b) Inform the employee that, if a written request therefor is
21 directed to the superintendent within 10 days after receipt of the
22 notice, the employee is entitled to a hearing before a hearing officer.

23 (c) ~~Inform the employee that he may request appointment of a~~
24 ~~hearing officer from a list provided by the American Arbitration~~
25 ~~Association and that one will be appointed if the superintendent~~
26 ~~agrees in writing.~~

27 ~~—(d)—~~ Refer to chapter 391 of NRS.

28 **Sec. 3.** NRS 391.3192 is hereby amended to read as follows:

29 391.3192 1. As soon as possible after the time of his
30 designation, the hearing officer shall hold a hearing to determine
31 whether the grounds for the recommendation are substantiated.

32 2. The Superintendent of Public Instruction shall furnish the
33 hearing officer with any assistance which is reasonably required to
34 conduct the hearing, and the hearing officer may require witnesses
35 to give testimony under oath and produce evidence relevant to the
36 investigation.

37 3. The licensed employee and superintendent are entitled to be
38 heard, to be represented by an attorney and to call witnesses in their
39 behalf.

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



5. If requested by the hearing officer, an official transcript must be made.

6. The board and the licensed employee are equally responsible for the expense of and compensation for the hearing officer and the expense of the official transcript.

7. The State Board shall develop a set of uniform standards and procedures to be used in such a hearing. The technical rules of evidence do not apply to this hearing.

Sec. 4. NRS 391.322 is hereby amended to read as follows:

391.322 1. If the board of trustees of a school district or the Superintendent of Public Instruction or his designee submits a recommendation to the State Board for the suspension or revocation of a license issued pursuant to this chapter, the State Board shall give written notice of the recommendation to the person to whom the license has been issued.

2. A notice given pursuant to subsection 1 must contain:

(a) A statement of the charge upon which the recommendation is based;

(b) A copy of the recommendation received by the State Board;

(c) A statement that the licensee is entitled to a hearing before a hearing officer if the licensee makes a written request for the hearing as provided by subsection 3; and

(d) A statement that the grounds and procedure for the suspension or revocation of a license are set forth in NRS 391.320 to 391.361, inclusive.

3. A licensee to whom notice has been given pursuant to this section may request a hearing before a hearing officer selected pursuant to subsection 4. Such a request must be in writing and must be filed with the Superintendent of Public Instruction within 15 days after receipt of the notice by the licensee.

4. Upon receipt of a request filed pursuant to subsection 3, the Superintendent of Public Instruction shall request from the ~~{American Arbitration Association a list of seven potential arbitrators to act as hearing officers.}~~ *Hearings Division of the Department of Administration a list of potential hearing officers.* The licensee requesting a hearing and the Superintendent of Public Instruction shall select a person to serve as hearing officer from the list provided by *the Hearings Division of the Department of Administration* by alternately striking one name until the name of only one ~~arbitrator~~ *hearing officer* remains. The Superintendent of Public Instruction shall strike the first name.



1 5. If no request for a hearing is filed within the time specified
2 in subsection 3, the State Board may suspend or revoke the license
3 or take no action on the recommendation.

4 **Sec. 5.** The provisions of this act apply to all cases involving
5 the demotion, dismissal or refusal to reemploy licensed educational
6 personnel in which a request for a hearing is made on or after July 1,
7 2005, and to all cases involving the suspension or revocation of a
8 license issued pursuant to chapter 391 of NRS in which a request for
9 a hearing is made on or after July 1, 2005.

10 **Sec. 6.** NRS 391.3191 and 391.31915 are hereby repealed.

11 **Sec. 7.** This act becomes effective on July 1, 2005.

TEXT OF REPEALED SECTIONS

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.

391.31915 Designation of hearing officers; peremptory challenges of designated officers.

1. Within 10 days after he receives a request for a hearing, the Superintendent of Public Instruction shall designate seven attorneys from the list of hearing officers.

2. After designation of the attorneys, the licensed employee and superintendent shall challenge peremptorily one of the seven at a time, alternately, until only one remains, who shall serve as hearing officer for the hearing. The superintendent and licensed employee shall draw lots to determine first choice to exercise a challenge.

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



