

**MINUTES OF THE  
SENATE COMMITTEE ON EDUCATION**

**Seventy-sixth Session  
March 9, 2011**

The Senate Committee on Education was called to order by Chair Mo Denis at 6:02 p.m. on Wednesday, March 9, 2011, in Room 1214 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Moises (Mo) Denis, Chair  
Senator Ruben J. Kihuen, Vice Chair  
Senator Valerie Wiener  
Senator Sheila Leslie  
Senator Barbara K. Cegavske  
Senator Don Gustavson  
Senator Greg Brower

**STAFF MEMBERS PRESENT:**

Pepper Sturm, Policy Analyst  
Sandra Small, Committee Secretary

**OTHERS PRESENT:**

Craig Hulse, Washoe County School District  
Joyce Haldeman, Clark County School District  
Sharla Hales, Past President, Nevada Association of School Boards  
Mary Pierczynski, Nevada Association of School Superintendents  
Samuel McMullen, Las Vegas Chamber of Commerce  
Craig Stevens, Nevada State Education Association  
James Penrose, Nevada State Education Association  
Mark Coleman, Clark County Association of School Administrators and  
Professional Technical Employees  
Rebecca Gasca, American Civil Liberties Union of Nevada  
Bart Mangino, Clark County School District

Senate Committee on Education  
March 9, 2011  
Page 2

Keith Rheault, Ph.D., Superintendent of Public Instruction, Department of Education  
Dane Watson, Clark County Education Association

CHAIR DENIS:

The Committee will hear testimony on Senate Bill (S.B.) 39, a bill requested by the Washoe County School District (WCSD).

**SENATE BILL 39**: Revises provisions governing educational personnel.  
(BDR 34-257)

CRAIG HULSE (Washoe County School District):

Currently, postprobationary status can be attained by teachers or administrators after one year if they have received three consecutive satisfactory evaluations. Two other states, Hawaii and Mississippi, allow this. The probationary period is extended to three years in S.B. 39, as in 34 other states. In Ohio, it takes seven years to achieve postprobationary or tenured status. This bill clarifies the difference between the postprobationary status and the probationary status and adds the term "gross misconduct" as a reason for dismissal. Gross misconduct is purposely not defined in the bill.

The WCSD has provided a proposed amendment (Exhibit C) which is an effort to meet the concerns presented by a roundtable of stakeholders. The proposed amendment creates an appeal process to the superintendent, or a designee, if a probationary employee is to be dismissed during the contract year, page 1, Exhibit C. A definition of gross misconduct is included in this amendment and is also included in Assembly Bill (A.B.) 229. The WCSD's proposed amendment, page 3, Exhibit C, removes section 3, subsection 4, and is in line with A.B. 229.

**ASSEMBLY BILL 229**: Revises provisions governing the accountability and performance of public schools and educational personnel. (BDR 34-515)

SENATOR CEGAVSKE:

Why was a three-year period chosen for the probationary period? Has the WCSD had any conversation with the Office of the Governor regarding S.B. 39?

Senate Committee on Education  
March 9, 2011  
Page 3

MR. HULSE:

Yes, we have. The WCSD is attempting to bring Nevada in line with 34 other states and set a clear separation between probationary and postprobationary status.

SENATOR LESLIE:

What is the driving force behind S.B. 39?

MR. HULSE:

There is a lot of pressure at the district level to perform three teacher or administrator evaluations within one year to determine if the person has earned postprobationary status. One year is not long enough.

SENATOR BROWER:

Why three years rather than removing tenure?

MR. HULSE:

We have discussed education reform "with people" rather than "to people." Three years with the at-will language provides a good opportunity to evaluate and determine whether a person is career-ready.

JOYCE HALDEMAN (Clark County School District):

The Clark County School District (CCSD) supports S.B. 39 which provides the opportunity to evaluate personnel fairly and correctly and to move administratively on those who have chosen the wrong profession.

SHARLA HALES (Past President, Nevada Association of School Boards):

The Nevada Association of School Boards (NASB) supports a three-year probationary period and the addition of gross misconduct included in S.B. 39 ([Exhibit D](#)). The NASB supports a three-year probationary period for three reasons, [Exhibit D](#), pages 1 and 2: taxpayers can be assured they will have a fair return on their investment when teachers achieve postprobationary status; it takes at least three years to get a reliable read on the effectiveness of a teacher; and a true probationary period is needed to alleviate the procedural restrictions to which an administrator must adhere. A missed deadline could mean a \$2 million mistake, resulting in decades of ineffective teaching to the detriment of the district, the taxpayers and students. The NASB believes passage of S.B. 39 would bring greater esteem to Nevada's teachers.

Senate Committee on Education  
March 9, 2011  
Page 4

SENATOR BROWER:

Did the NASB discuss elimination of tenure? What are the pros and cons of eliminating tenure?

MS. HALES:

The NASB did not have a lengthy discussion on elimination of tenure because it did not appear to be a realistic possibility.

MARY PIERCZYNSKI (Nevada Association of School Superintendents):

The Nevada Association of School Superintendents supports S.B. 39.

SAMUEL McMULLEN (Las Vegas Chamber of Commerce):

The Las Vegas Chamber of Commerce supports S.B. 39. Some of the due process concerns have been addressed in the amendment.

CRAIG STEVENS (Nevada State Education Association):

The Nevada State Education Association (NSEA) opposes S.B. 39. The NSEA is proud of its record on reform, including pushing for empowerment schools, enhanced compensation and other important proposals which have positively changed kindergarten through Grade 12 education. The NSEA representatives have worked with the WCSD on S.B. 39. Those discussions were met with a steadfast unwillingness to provide any form of fairness or minimum due process. Making all probationary employees "at-will" is not a magic bullet to improve Nevada's schools. To the contrary, it will demoralize educators and make it difficult for our school districts to recruit the best and brightest. Educators go through several years of intensive training and a rigorous licensing procedure before beginning their careers. They should be given the basic level of fairness when it comes to their job security. The NSEA believes probationary employees should be provided with a streamlined, fair and expedited process should an employee be dismissed. The NSEA is committed to ensuring school districts can quickly identify poor educators and provide them the support to develop and improve professionally. Should these efforts fail, the educator should seek a new profession.

All professionals deserve the right to defend themselves before someone decides their teaching career is over. Senate Bill 39 takes away a probationary educator's right to a fair process; it creates a circumstance where educators may not be notified their performance is substandard, that their jobs are in jeopardy and that they need to improve to continue in their positions.

The NSEA would support extending the probationary period from two to three years if there were some form of just due process. If the WCSD believes one more year of intensive evaluations is appropriate, the NSEA is prepared to accommodate that desire. Costly and time-consuming litigation can be the result of arbitrary, capricious or discriminatory decisions. Due process helps ensure good educators are not punished by principals who may make poor decisions and that good administrators do not suffer similar fates for similar reasons. Employment decisions should not be based upon personality clashes about performance or a school district's desire to cut costs by bringing in cheaper and less-experienced replacements. To save money, school districts have encouraged experienced educators to leave the classroom and be replaced by less experienced replacements or full-time substitutes. This practice could become the norm in Nevada if S.B. 39 is passed.

The NSEA has considerable faith in our school districts.

SENATOR CEGAVSKE:

Does S.B. 39 include substitutes? How long is fair in the life of a student? The days, weeks, months and years spent without a good educator is a loss to the child. We need the best educators in the classrooms.

MR. STEVENS:

Probationary employees do not have to be rehired at the end of the year. They simply must be given a letter within a certain time stating they will not be employed by that school district. The NSEA is not asking to change that process. If an educator is unfit for the profession, the NSEA believes the person should not be reemployed. Senate Bill 39 takes away any notification or right to know the person is not being reemployed.

SENATOR CEGAVSKE:

Does the proposed amendment satisfy any of the NSEA's concerns? Have you ever seen a second-year teacher who should be removed from the classroom?

MR. STEVENS:

The NSEA is not satisfied with the amendment. The amendment removes the "Hey, Jack" notification letter. If the educator has not improved by the second year, S.B. 39 allows removal without notification. During the third year, the educator should be given the support to improve. The probationary period should provide support for the educator.

Senate Committee on Education  
March 9, 2011  
Page 6

SENATOR CEGAVSKE:  
Do you believe in the status quo?

MR. STEVENS:  
No. The NSEA has proposed compromises which have been turned down by the WCSD.

JAMES PENROSE (Nevada State Education Association):  
My law firm is the general counsel for the NSEA. We handle 90 percent to 95 percent of the teacher dismissal and termination cases statewide. In discussion with the proponents of S.B. 39, the NSEA attempted to define gross misconduct, set forth an expedited due-process procedure for the dismissal of probationary employees and modify the "Hey, Jack" requirement. We also made other proposals. There was no favorable response.

Probationary teachers can be terminated in one of two ways. First, nonrenewal is a notice received on or before May 1 stating the teacher will not be hired next year. This notice includes the reasons for the termination decision. Before receiving the notice, the teacher must have received an admonition, as provided in *Nevada Revised Statute* (NRS) 391.313, which would be eliminated in S.B. 39 for probationary employees. Second, the "Hey, Jack" letter is a notice, NRS 391.3125, stating that performance is deficient, apparently you will not be reemployed next year and this is what can be done to help you. Senate Bill 39 makes the "Hey, Jack" letter applicable only during the third year of probation. The proposed amendment to S.B. 39 eliminates the "Hey, Jack" letter. Assembly Bill 229 eliminates the "Hey, Jack" requirement, but provides another notice for employee's deficiencies. Senate Bill 39 eliminates any requirement that probationary employees be told their performance is deficient. The first required notice a deficient employee would receive would be the notice received on May 1 for the ensuing school year. It makes no sense to invest in teachers yet not let them know they are not doing an adequate job.

The proposed S.B. 39 eliminates any requirement for due process even for a teacher charged by a child with sexual misconduct, for example. The proposed amendment to S.B. 39 is a step forward, but it is vague. Usually, the ultimate decision to terminate someone's employment is made by the superintendent. Probationary employees could be terminated for any reason or no reason. The process set forth in the amendment is unclear as to the hearing notice, the information to be provided and the opportunity to respond.

My office sees between 25 and 50 cases annually for probationary teachers who were not renewed. Nonrenewals automatically are reviewed by our office. If the process has been complied with, there is nothing more to be done. We may take one or two probationary nonrenewal cases to court annually for noncompliance with the required process. There is no burden on the districts. Postprobationary employees are affected by the gross misconduct language in S.B. 39. The definition in the proposed amendment is inadequate. To limit the definition because it is impossible to foresee situations is an invitation to ad hoc, arbitrary and erroneous dismissals.

The NSEA attempted to determine the origination of S.B. 39. The WCSD described an instance where an employee had placed a recording device in a bathroom; the WCSD was unable to terminate the employee under current statute. Over the past 4 years, there have been 11 teacher termination cases in WCSD, of which 3 have been arbitrated. I do not believe the problems in Nevada are similar to those in New York City and other places where teachers sit for years going through the dismissal process. The average dismissal in Nevada takes four to six months from start to finish, except in the instance of a criminal case. Through agreements with the CCSD, the NSEA has been able to expedite the process of dismissal and arbitration. The statutory process in Nevada is not onerous. A teacher notified of dismissal is typically suspended immediately without pay.

The proponents of A.B. 229 appear to be interested in hearing NSEA's concerns.

SENATOR BROWER:

In the nongovernment world, none of this exists. If an employee is not working out, dismissal occurs. Eliminating tenure is not on the table at this time. Senate Bill 39 appears to be a reasonable approach.

MR. PENROSE:

At a bare minimum, a discussion process should occur with an underperforming employee. The hiring process is cumbersome and time-consuming. It is worth the investment to help the employee improve. If an accusation against an employee occurs, there is an opportunity for the employee to respond.

SENATOR BROWER:

Once an initial investment is made in a teacher, the administration must want the investment to work. Occasionally, an abhorrent situation occurs; there is not going to be an unfair or illogical decision to terminate a person without good reasons. The opposition to S.B. 39 does not seem to believe administrators act reasonably and in the best interest of the students.

MR. PENROSE:

I am not suggesting that is the case. Occasionally, there are cases that make the legal process necessary. There was a CCSD teacher who had taught for 15 years; had a licensing issue; fixed the licensing issue, and then nine days later was told he was probationary. Another CCSD teacher with a licensing issue was told she had that day to fix it. She went to the licensing office that day, but the fingerprinting office was closed. The license was fixed the next morning, but she was then told she had resigned and needed to reinterview for her job. She reinterviewed, was rejected and told she had to wait three years to reapply. After three years, \$120,000 in back pay and attorney's fees, she got her job back. The process is not onerous and protects against these types of cases.

SENATOR BROWER:

The cases you describe are not typical. I would like to see reform in this area. Senate Bill 39 does not go too far. I need time to digest what we have heard today.

SENATOR LESLIE:

Is the notice in the Assembly bill adequate?

MR. PENROSE:

Yes, it is. The NSEA proposes a deficient evaluation include written notice of the statutory assistance available.

SENATOR LESLIE:

I encourage the NSEA and the WCSD to continue discussions. The differences you have discussed do not appear to be insurmountable.

SENATOR BROWER:

I urge NSEA to embrace some reform.



CHAIR DENIS:

I appreciate cooperation and have seen people involved with education work together. We will be able to make reforms this Session because of this joint effort.

MR. STEVENS:

The NSEA has been a full partner with reform. We have been full partners in Nevada's Promise. The NSEA wants the evaluation process to do what it is supposed to do. We want to make sure empowerment is an option for every school. We believe in reform with employee rights.

MARK COLEMAN (Clark County Association of School Administrators and Professional Technical Employees):

The Clark County Association of School Administrators (CCASA) does not support S.B. 39. The CCASA does not want to interfere with what needs to be done when employees do not deserve to be teachers or administrators. We understand WCSD's concerns. There are also three bills in the Assembly. The CCASA believes we can get closer to some of the reform suggested. We need to be careful not to create new laws addressing one or two instances. When the CCASA goes into an investigatory conference, we are there to ensure the contract is being enforced. During orientation for teachers or people entering administration, we make it clear that if an unsatisfactory evaluation is received within the first year, the person can expect not to come back the next year. We make it clear that if you miss one on-time report or miss one deadline, your supervisor has the right to write you up, issue a document and rate you unsatisfactory. We make it clear when you leave the classroom for administration, the standards are high. We do not want to create an environment where supervisors are ineffective evaluators. It should never be a snap of a finger to eliminate a person's livelihood, but there ought to be an effective process in place to remove people who are not up to standard.

Nevada moved from a three-year probation to two years and then to a one-year probation and is now considering three years again. The CCASA supports the three-year probation. The CCASA is not against the undefined language for gross misconduct and supports Mr. Penrose's definition for gross misconduct.

SENATOR LESLIE:

Does the Committee have Mr. Penrose's definition of gross misconduct?

Senate Committee on Education  
March 9, 2011  
Page 10

MR. COLEMAN:

I will provide that information.

REBECCA GASCA (American Civil Liberties Union of Nevada):

The American Civil Liberties Union of Nevada (ACLUN) opposes S.B. 39 and would like time to review the proposed amendments. The ACLUN has some due-process concerns. The State uses licensing boards to review the conduct of licensees. Those boards have due process built into their reviews. If people are at risk of losing a license, there is an opportunity to go before the board to speak in their own defense. Currently, public education employees have a similar situation giving them due-process rights. These types of protections, particularly for teachers, were put in place as a result of issues including racial, ethnic and religious discrimination. The NRS 391.312 contains many reasons a person may be dismissed, some of which are undefined, such as inefficiency. The ACLUN appreciates a definition of gross misconduct, but without additional language for due process, S.B. 39 is problematic.

CHAIR DENIS:

The hearing on S.B. 39 is closed. The Committee will hear testimony on S.B. 196.

**SENATE BILL 196**: Revises provisions governing empowerment schools.  
(BDR 34-86)

SENATOR WIENER:

Ex-Senator Joyce Woodhouse, who served on the Legislative Committee on Education during the 2009-2010 interim, has asked me to read her testimony in support of S.B. 196 ([Exhibit E](#)). The purpose of S.B. 196 is to provide additional time for the operation of empowerment schools for evaluation and to provide financial incentives and possible future expansion.

PEPPER STURM (Policy Analyst):

Senate Bill 196 contains four significant provisions governing empowerment schools. Section 1, page 2, lines 14 through 17, removes the statutory cap of 100 empowerment schools statewide. Section 2, page 5, lines 10 through 16 allows empowerment schools to carry forward State funds from one fiscal year to the next. Section 3, page 5, removes the sunset on empowerment school statutes adopted by the 2007 Session of the Nevada Legislature. Section 4, page 5, requires that each school must provide the Superintendent of Public

Senate Committee on Education  
March 9, 2011  
Page 11

Instruction, Department of Education, (SPI) with a timetable and process to convert all of its public schools to empowerment schools before July 1, 2013. The SPI must compile these reports and submit them to the 2013 Legislature.

SENATOR CEGAVSKE:

Without the change to section 3, page 5, line 20, would the contracts expire on June 30, 2011?

MR. STURM:

Everything in the statutes, NRS 386.720 and NRS 386.740, would be removed. If the sunset is not removed, the statutory section on empowerment schools disappears. Another expiration date could be inserted.

SENATOR CEGAVSKE:

The empowerment schools could be framed differently if we choose.

BART MANGINO (Clark County School District):

The CCSD supports S.B. 196 which is consistent with the CCSD goal of decentralizing and transferring more responsibilities and autonomy to the schools, allowing the school stakeholders the flexibility to meet the identified needs of the students. Carrying forward grant funds would enable schools to maintain continuity of programs. Senate Bill 196 is a strategic step in redesigning education in Nevada.

MR. HULSE:

The WCSD is neutral on S.B. 196. The WCSD supports most of the provisions, but section 4 requires a written plan changing all schools to empowerment schools and takes away local control. The WCSD has an earned empowerment model. The idea that every school is ready to be an empowerment school or that failing schools can simply become successful because they are an empowerment school is a dangerous thing to place in State law. The WCSD's goal is to make every school an empowerment school. We are comfortable with less support from the central office and the school district as the schools earn that confidence.

SENATOR WIENER:

Are sections 1, 2 and 3 in S.B. 196 satisfactory?

MR. HULSE:  
Yes, they are.

KEITH RHEAULT, PH.D. (Superintendent of Public Instruction, Department of Education):

The Department of Education supports S.B. 196, sections 1 through 3. Speaking for the entity which will receive the reports, I am not sure section 4 is realistic. Section 1 of S.B. 196 states districts in counties under 100,000 may have empowerment schools; this language is permissive. Section 4 states "the board of trustees of each school district shall submit" the report. There are 20 empowerment schools in Clark County. The 660 schools in the State would be required to convert by 2013. That is not going to happen. This report would be a waste of time for districts without empowerment schools.

SENATOR CEGAVSKE:

The schools and the administration have an opportunity at this time to come forward with changes to the empowerment schools legislation. We should get feedback from the teachers, principals and parents about how the empowerment schools are going and reconsider what we are doing. The main goal was to empower the teachers, principals, parents and students. There are restrictions with bargaining rights. This is an opportunity to renegotiate or get rid of this section.

DANE WATSON (Clark County Education Association):

The Clark County Education Association supports S.B. 196, sections 1, 2 and 3. However, requiring all schools to be empowerment schools is troublesome.

CHAIR DENIS:

The hearing on S.B. 196 is closed. There being no public comment, the Committee will begin its work session. The Committee will not hear S.B. 95 which was on the agenda.

**SENATE BILL 95**: Authorizes the establishment of a policy to allow tenured professors to pursue entrepreneurial business opportunities under certain circumstances. (BDR 34-577)

CHAIR DENIS:

The Committee will hear S.B. 35.

Senate Committee on Education  
March 9, 2011  
Page 13

**SENATE BILL 35**: Revises provisions governing the automated system of accountability information for Nevada and the reporting of test scores by charter schools. (BDR 34-440)

MR. STURM:

As Legislative staff, I cannot advocate or oppose legislation. I can only summarize Committee activities and provide information on proposed amendments. The Committee heard S.B. 35 on February 18, 2011. This bill makes two major changes to existing law ([Exhibit F](#)). It removes the requirement that paraprofessionals be linked in the database to individual pupils and requires the report of achievement and proficiency exams and other information contained in a charter school's report be submitted to the Department of Education through the sponsor. There are no amendments to S.B. 35.

SENATOR CEGAVSKE MOVED TO DO PASS S.B. 35.

SENATOR LESLIE SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR BROWER WAS ABSENT FOR THE VOTE.)

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CHAIR DENIS:

The Committee will hear S.B. 96.

**SENATE BILL 96**: Revises provisions governing the Governor Guinn Millennium Scholarship Program. (BDR 34-586)

MR. STURM:

Senator Joe Hardy proposed an amendment to S.B. 96 ([Exhibit G](#)) to encourage rather than require 20 hours of volunteer work during each year of college.

SENATOR CEGAVSKE MOVED TO AMEND AND DO PASS AS AMENDED S.B. 96.

SENATOR WIENER SECONDED THE MOTION.

Senate Committee on Education  
March 9, 2011  
Page 14

THE MOTION CARRIED. (SENATOR BROWER WAS ABSENT FOR THE  
VOTE.)

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CHAIR DENIS:

There being no further business to come before this Committee, we are  
adjourned at 7:29 p.m.

RESPECTFULLY SUBMITTED:

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Sandra Small,  
Committee Secretary

APPROVED BY:

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Senator Mo Denis, Chair

DATE: \_\_\_\_\_

<b><u>EXHIBITS</u></b>			
<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
S.B. 39	C	Craig Hulse	Amendment
S.B. 39	D	Sharla Hales	Testimony
S.B. 196	E	Joyce Woodhouse	Empowerment Schools
S.B. 35	F	Pepper Sturm	Work Session Document
S.B. 96	G	Pepper Sturm	Work Session Document