

Amendment No. 500

Senate Amendment to Senate Bill No. 273	(BDR 34-582)
Proposed by: Senate Committee on Education	
Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION		Initial and Date	SENATE ACTION		Initial and Date
Adopted	<input type="checkbox"/>	Lost <input type="checkbox"/>	Adopted	<input type="checkbox"/>	Lost <input type="checkbox"/>
Concurred In	<input type="checkbox"/>	Not <input type="checkbox"/>	Concurred In	<input type="checkbox"/>	Not <input type="checkbox"/>
Receded	<input type="checkbox"/>	Not <input type="checkbox"/>	Receded	<input type="checkbox"/>	Not <input type="checkbox"/>

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

CSL/RBL



Date: 4/22/2017

S.B. No. 273—Revises provisions relating to the dismissal of a probationary employee of a school district. (BDR 34-582)



SENATE BILL NO. 273—SENATOR GOICOECHEA (BY REQUEST)

MARCH 15, 2017

JOINT SPONSOR: ASSEMBLYMAN ELLISON

Referred to Committee on Education

SUMMARY—Revises provisions relating to the dismissal of a probationary employee of a school district. (BDR 34-582)

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 school personnel; revising provisions relating to the dismissal of a probationary employee of a school district; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law defines “probationary employee,” for provisions relating to educational personnel, as a licensed administrator or teacher who is employed by a school district on a contract basis for a specified period and who has no right to employment after the specified period. (NRS 391.650) Existing law makes the board of trustees of a school district the employing authority for all licensed employees of the district and only the board is authorized to dismiss a licensed employee. (NRS 391.100) If a probationary employee receives notice that he or she will be dismissed before the end of the current school year, existing law authorizes the employee to request an expedited arbitration hearing before dismissal. (NRS 391.820)

Sections 4-6 of this bill provide additional procedures for the dismissal of a probationary employee of a school district. **Section 4** requires the superintendent of a school district to provide certain written notice to a probationary employee not less than 15 business days before the superintendent intends to file a recommendation to dismiss the employee with the board of trustees of the school district. **Section 4** also authorizes a probationary employee to request an expedited, nonbinding arbitration hearing before a recommendation to dismiss is filed by the superintendent with the board of trustees. **Section 5** of this bill provides certain procedures for such an expedited hearing and requires an arbitrator in such a hearing to consider ~~exclusively~~ whether the dismissal of the probationary employee would violate ~~any common law or statutory provisions relating to the dismissal of the probationary employee.~~ the legal rights of the probationary employee provided by federal or state law or the dismissal would be arbitrary or capricious. **Section 5** further requires the superintendent to either: (1) file the written report of the arbitrator and a recommendation to dismiss the probationary employee with the board of trustees; or (2) provide written notice to the employee that dismissal will not be recommended to the board of trustees. If the superintendent files a recommendation to dismiss the employee, **section 6** requires the board of trustees to determine whether to accept this recommendation at its next regularly scheduled meeting and provide written notice of its decision to the probationary employee. Finally,

section 6 provides that the decision of the board of trustees relating to dismissal of the probationary employee is final and not subject to judicial review or appeal.

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

Section 1. NRS 388A.533 is hereby amended to read as follows:

388A.533 1. All employees of a charter school shall be deemed public employees.

2. The governing body of a charter school may make all decisions concerning the terms and conditions of employment with the charter school and any other matter relating to employment with the charter school. In addition, the governing body may make all employment decisions with regard to its employees pursuant to NRS 391.650 to 391.830, inclusive, *and sections 4, 5 and 6 of this act*, unless a collective bargaining agreement entered into by the governing body pursuant to chapter 288 of NRS contains separate provisions relating to the discipline of licensed employees of a school.

3. Upon the request of the governing body of a charter school, the board of trustees of a school district shall, with the permission of the licensed employee who is seeking employment with the charter school, transmit to the governing body a copy of the employment record of the employee that is maintained by the school district. The employment record must include, without limitation, each evaluation of the licensed employee conducted by the school district and any disciplinary action taken by the school district against the licensed employee.

Sec. 2. NRS 388B.410 is hereby amended to read as follows:

388B.410 1. All employees of an achievement charter school shall be deemed public employees and are not employees of the Department.

2. Except as otherwise provided in a collective bargaining agreement entered into by the governing body of an achievement charter school pursuant to chapter 288 of NRS, the principal of an achievement charter school may make:

(a) All decisions concerning the terms and conditions of employment with the achievement charter school and any other matter relating to employment with the achievement charter school; and

(b) All employment decisions with regard to the employees of the achievement charter school pursuant to NRS 391.650 to 391.830, inclusive *H*, *and sections 4, 5 and 6 of this act*.

3. Upon the request of the governing body of an achievement charter school, the board of trustees of a school district shall, with the permission of the licensed employee who is seeking employment with the achievement charter school, transmit to the governing body a copy of the employment record of the employee that is maintained by the school district. The employment record must include, without limitation, each evaluation of the licensed employee conducted by the school district and any disciplinary action taken by the school district against the licensed employee.

Sec. 3. Chapter 391 of NRS is hereby amended by adding thereto the provisions set forth as sections 4, 5 and 6 of this act.

Sec. 4. 1. *If the superintendent intends to recommend the dismissal of a probationary employee to the board before the end of a contract year, the superintendent must provide written notice to the employee, by registered or certified mail, not less than 15 business days before making the recommendation to the board.*

2. The written notice required pursuant to subsection 1 must:
(a) Include a statement of the reasons for the recommendation to dismiss the probationary employee;

(b) Inform the probationary employee that he or she may request an expedited hearing pursuant to the Expedited Labor Arbitration Procedures established by the American Arbitration Association or its successor organization, by filing a written request with the superintendent not later than 10 business days after receiving notice from the superintendent pursuant to subsection 1; and

(c) Include notice of the laws which govern the employment of a probationary employee of a school district which are contained in this chapter.

3. If a written request for an expedited hearing is not filed by the probationary employee pursuant to subsection 2, the superintendent may recommend the dismissal of the probationary employee to the board.

Sec. 5. 1. If a timely request for an expedited hearing is made pursuant to section 4 of this act, the superintendent must not take any further action relating to the recommendation to dismiss the probationary employee until the written report from the arbitrator is filed with the superintendent and the probationary employee pursuant to subsection 2.

2. An arbitrator shall hold an expedited hearing and file a written report with the superintendent and the probationary employee who requested the hearing pursuant to section 4 of this act in the manner prescribed by the Expedited Labor Arbitration Procedures established by the American Arbitration Association or its successor organization. The only ~~issue~~ issues the arbitrator may consider ~~is~~ are whether the dismissal of the probationary employee would violate any common law or statutory provisions relating to the dismissal of the probationary employee.

(a) Violates the legal rights of the probationary employee provided by federal law or the laws of this State; or

(b) Be arbitrary or capricious.

3. At the expedited hearing, the superintendent must provide evidence of at least one reason to recommend the dismissal of the probationary employee, which must include, without limitation, at least one reason provided in the written notice required pursuant to paragraph (a) of subsection 2 of section 4 of this act. To rebut such evidence, the probationary employee must prove that each reason:

(a) Violates the legal rights of the probationary employee provided by federal law or the laws of this State; or

(b) Is arbitrary or capricious.

4. The written report filed by the arbitrator pursuant to subsection 2 is not binding upon the superintendent or the board.

~~4.4~~ 5. The provisions of NRS 38.206 to 38.248, inclusive, do not apply to an expedited hearing, the written report of an arbitrator or any other portion of an arbitration conducted pursuant to this section.

~~5.4~~ 6. Not later than 5 business days after the superintendent receives the written report from the arbitrator pursuant to subsection 2, the superintendent shall:

(a) If the superintendent intends to recommend the dismissal of the probationary employee, file with the board the report and a written recommendation to dismiss, and provide to the employee, by registered or certified mail, written notice of the filing of the recommendation and the date, time and location of the next regularly scheduled meeting of the board at which the recommendation to dismiss the employee will be considered; or

(b) If the superintendent does not intend to recommend the dismissal of the probationary employee, provide to the employee, by registered or certified mail, written notice that dismissal of the employee will not be recommended to the board and that no further action will be taken against the employee.

Sec. 6. *1. If the superintendent files with the board a written recommendation to dismiss a probationary employee pursuant to section 4 or 5 of this act, the board shall determine whether to accept the recommendation at the next regularly scheduled meeting of the board and provide to the employee, by registered or certified mail, written notice of its decision not later than 5 business days after the meeting.*

2. The decision of the board relating to the dismissal of a probationary employee is final and binding and is not subject to judicial review or appeal.

Sec. 7. NRS 391.650 is hereby amended to read as follows:

391.650 As used in NRS 391.650 to 391.830, inclusive, *and sections 4, 5 and 6 of this act*, unless the context otherwise requires:

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

2. "Board" means the board of trustees of the school district in which a licensed employee affected by NRS 391.650 to 391.830, inclusive, *and sections 4, 5 and 6 of this act* is employed.

3. "Demotion" means demotion of an administrator to a position of lesser rank, responsibility or pay and does not include transfer or reassignment for purposes of an administrative reorganization.

4. "Immorality" means:

(a) An act forbidden by NRS 200.366, 200.368, 200.400, 200.508, 201.180, 201.190, 201.210, 201.220, 201.230, 201.265, 201.540, 201.560, 207.260, 453.316 to 453.336, inclusive, except an act forbidden by NRS 453.337, 453.338, 453.3385 to 453.3405, inclusive, 453.560 or 453.562; or

(b) An act forbidden by NRS 201.540 or any other sexual conduct or attempted sexual conduct with a pupil enrolled in an elementary or secondary school. As used in this paragraph, "sexual conduct" has the meaning ascribed to it in NRS 201.520.

5. "Postprobationary employee" means an administrator or a teacher who has completed the probationary period as provided in NRS 391.820 and has been given notice of reemployment. The term does not include a person who is deemed to be a probationary employee pursuant to NRS 391.730.

6. "Probationary employee" means:

(a) An administrator or a teacher who is employed for the period set forth in NRS 391.820; and

(b) A person who is deemed to be a probationary employee pursuant to NRS 391.730.

7. "Superintendent" means the superintendent of a school district or a person designated by the board or superintendent to act as superintendent during the absence of the superintendent.

8. "Teacher" means a licensed employee the majority of whose working time is devoted to the rendering of direct educational service to pupils of a school district.

Sec. 8. NRS 391.660 is hereby amended to read as follows:

391.660 Excluding the provisions of NRS 391.730, 391.825 and 391.830, the provisions of NRS 391.650 to 391.830, inclusive, *and sections 4, 5 and 6 of this act* do not apply to a teacher or other licensed employee who has entered into a contract with the board negotiated pursuant to chapter 288 of NRS if the contract contains separate provisions relating to the board's right to dismiss or refuse to reemploy the employee.

1 **Sec. 9.** NRS 391.755 is hereby amended to read as follows:

2 391.755 1. Whenever an administrator charged with supervision of a
3 licensed employee believes it is necessary to admonish the employee for a reason
4 that the administrator believes may lead to demotion or dismissal or may cause the
5 employee not to be reemployed under the provisions of NRS 391.750, the
6 administrator shall:

7 (a) Except as otherwise provided in subsection 3, bring the matter to the
8 attention of the employee involved, in writing, stating the reasons for the
9 admonition and that it may lead to the employee's demotion, dismissal or a refusal
10 to reemploy him or her, and make a reasonable effort to assist the employee to
11 correct whatever appears to be the cause for the employee's potential demotion,
12 dismissal or a potential recommendation not to reemploy him or her; and

13 (b) Except as otherwise provided in NRS 391.760, allow reasonable time for
14 improvement, which must not exceed 3 months for the first admonition.

15 ↪ The admonition must include a description of the deficiencies of the ~~teacher~~
16 *employee* and the action that is necessary to correct those deficiencies.

17 2. An admonition issued to a licensed employee who, within the time granted
18 for improvement, has met the standards set for the employee by the administrator
19 who issued the admonition must be removed from the records of the employee
20 together with all notations and indications of its having been issued. The
21 admonition must be removed from the records of the employee not later than 3
22 years after it is issued.

23 3. An administrator need not admonish an employee pursuant to paragraph (a)
24 of subsection 1 if ~~this or her employment will be terminated pursuant to NRS~~
25 ~~391.820.~~ *the administrator has been informed by the superintendent that the*
26 *superintendent intends to recommend the dismissal of the employee to the board*
27 *in the manner set forth in sections 4, 5 and 6 of this act.*

28 4. A licensed employee is subject to immediate dismissal or a refusal to
29 reemploy according to the procedures provided in NRS 391.650 to 391.830,
30 inclusive, *and sections 4, 5 and 6 of this act* without the admonition required by
31 this section, on grounds contained in paragraphs (b), (f), (g), (h), (p), (s) and (t) of
32 subsection 1 of NRS 391.750.

33 **Sec. 10.** NRS 391.820 is hereby amended to read as follows:

34 391.820 Except as otherwise provided in NRS 391.825:

35 1. A probationary employee is employed on a contract basis for three 1-year
36 periods and has no right to employment after any of the three probationary contract
37 years.

38 2. The board shall notify each probationary employee in writing during the
39 first, second and third school years of the employee's probationary period whether
40 the employee is to be reemployed for the second or third year of the probationary
41 period or for the fourth school year as a postprobationary employee. Such notice
42 must be provided:

43 (a) On or before May 1; or

44 (b) On or before May 15 of an odd-numbered year so long as the board notifies
45 the employee of the extension by April 1.

46 3. Failure of the board to notify the probationary employee in writing on or
47 before May 1 or May 15, as applicable, in the first or second year of the
48 probationary period does not entitle the employee to postprobationary status.

49 4. The employee must advise the board in writing during the first, second or
50 third year of the employee's probationary period of the employee's acceptance of
51 reemployment. Such notice must be provided:

52 (a) On or before May 10 if the board provided its notice on or before May 1; or

(b) On or before May 25 if the board provided a notice of an extension pursuant to paragraph (b) of subsection 2.

5. If a probationary employee is assigned to a school that operates all year, the board shall notify the employee in writing, in the first, second and third years of the employee's probationary period, no later than 45 days before his or her last day of work for the year under his or her contract whether the employee is to be reemployed for the second or third year of the probationary period or for the fourth school year as a postprobationary employee. Failure of the board to notify a probationary employee in writing within the prescribed period in the first or second year of the probationary period does not entitle the employee to postprobationary status. The employee must advise the board in writing within 10 days after the date of notification of his or her acceptance or rejection of reemployment for another year. Failure to advise the board of the employee's acceptance of reemployment pursuant to this subsection constitutes rejection of the contract.

6. A probationary employee who:

(a) Completes a 3-year probationary period;

(b) Receives a designation of "highly effective" or "effective" on each of his or her performance evaluations for 2 consecutive school years; and

(c) Receives a notice of reemployment from the school district in the third year of the employee's probationary period,

is entitled to be a postprobationary employee in the ensuing year of employment.

7. If a probationary employee is notified that the employee will not be reemployed for the school year following the 3-year probationary period, his or her employment ends on the last day of the current school year. The notice that the employee will not be reemployed must include a statement of the reasons for that decision.

8. A new employee who is employed as an administrator to provide primarily administrative services at the school level and who does not provide primarily direct instructional services to pupils, regardless of whether the administrator is licensed as a teacher or administrator, including, without limitation, a principal and vice principal, or a postprobationary teacher who is employed as an administrator to provide those administrative services shall be deemed to be a probationary employee for the purposes of this section and must serve a 3-year probationary period as an administrator in accordance with the provisions of this section. If:

(a) A postprobationary teacher who is an administrator is not reemployed as an administrator after any year of his or her probationary period; and

(b) There is a position as a teacher available for the ensuing school year in the school district in which the person is employed,

the board of trustees of the school district shall, on or before May 1 or May 15, as applicable, offer the person a contract as a teacher for the ensuing school year. The person may accept the contract in writing on or before May 10 or May 25, as applicable. If the person fails to accept the contract as a teacher, the person shall be deemed to have rejected the offer of a contract as a teacher.

9. An administrator who has completed his or her probationary period pursuant to subsection 8 and is thereafter promoted to the position of principal must serve an additional probationary period of 2 years in the position of principal. If an administrator is promoted to the position of principal before completion of his or her probationary period pursuant to subsection 8, the administrator must serve the remainder of his or her probationary period pursuant to subsection 8 or an additional probationary period of 2 years in the position of principal, whichever is longer. If the administrator serving the additional probationary period is not reemployed as a principal after the expiration of the probationary period or additional probationary period, as applicable, the board of trustees of the school

1 district in which the person is employed shall, on or before May 1 or May 15, as
2 applicable, offer the person a contract for the ensuing school year for the
3 administrative position in which the person attained postprobationary status. The
4 person may accept the contract in writing on or before May 10 or May 25, as
5 applicable. If the person fails to accept such a contract, the person shall be deemed
6 to have rejected the offer of employment.

7 ~~{10. If a probationary employee receives notice that he or she will be~~
8 ~~dismissed before the completion of the current school year, the probationary~~
9 ~~employee may request an expedited hearing pursuant to the Expedited Labor~~
10 ~~Arbitration Procedures established by the American Arbitration Association or its~~
11 ~~successor organization.}~~

12 **Sec. 11.** This act does not apply to a probationary employee who, before July
13 1, 2017, received notice pursuant to subsection 10 of NRS 391.820, as that section
14 existed before July 1, 2017, that the superintendent of the school district intends to
15 recommend the dismissal of the employee to the board of trustees of the school
16 district.

17 **Sec. 12.** This act becomes effective on July 1, 2017.