

ENROLLED ACT NO. 89, SENATE

SIXTY-FIRST LEGISLATURE OF THE STATE OF WYOMING
2011 GENERAL SESSION

AN ACT relating to teacher contracts; establishing the teacher accountability act; requiring school district teacher performance evaluations to be based in part upon student achievement; directing the state board of education to establish performance criteria based upon educational accountability measures to be established by law; establishing performance as a basis for contract determinations; modifying grounds for teacher suspension, dismissal and termination; clarifying suspension with and without pay; repealing authority of districts to provide continuing contract status without regard to years of service; requiring office of administrative hearings to preside over teacher dismissal, suspension and termination hearings; specifying application; providing intent; requiring studies; and providing for effective dates.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 21-2-304(b)(xv), 21-3-110(a)(xvii) through (xix) and by creating a new subsection (b), 21-7-102(a)(intro), (ii)(A) and (B) and (vi), 21-7-104(a), 21-7-106(a), 21-7-110(a), (c), (d) and (e), 21-7-112 and 21-7-113 are amended to read:

21-2-304. Duties of the state board of education.

(b) In addition to subsection (a) of this section and any other duties assigned to it by law, the state board shall:

(xv) Promulgate rules and regulations for the development, assessment and approval of annual school district teacher performance evaluation systems based in part upon defined student academic growth measures as prescribed by law and upon longitudinal data systems

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linking student achievement with teachers of record, clearly prescribing standards for satisfactory and unsatisfactory performance. Rules and regulations adopted under this paragraph shall ~~allow each~~ to the extent student achievement measures are not compromised, provide district ~~flexibility in developing~~ ability to include a portion of an evaluation system ~~which meets~~ designed to address the individual needs of the district. The performance evaluation system shall also include reasonable opportunity for district provision of mentoring and other professional development activities made available to teachers performing unsatisfactorily, which are designed to improve instruction and student achievement;

21-3-110. Duties of boards of trustees.

(a) The board of trustees in each school district shall:

(xvii) Require the performance of each initial contract teacher to be evaluated in writing at least twice annually based in part upon student achievement measures as prescribed by rule and regulation of the state board under W.S. 21-2-304(b)(xv). The teacher shall receive a copy of each evaluation of his performance;

(xviii) Establish a teacher performance evaluation system and require the performance of each continuing contract teacher to be evaluated in writing at least once each year based in part upon student achievement measures as prescribed by rule and regulation of the state board under W.S. 21-2-304(b)(xv). The teacher shall receive a copy of each evaluation of his performance;

(xix) Based upon student achievement measures established by the state board of education under W.S.

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21-2-304(b)(xv), performance evaluations ~~required~~ shall serve as a basis for improvement of instruction, enhancement of curriculum program implementation, measurement of both individual teacher performance and professional growth and development and the performance level of all teachers within the school district, and as documentation for unsatisfactory performance for dismissal, suspension and termination proceedings under W.S. 21-7-110;

(b) On or before April 15 of each school year, each school district superintendent shall provide a report to the board of trustees identifying all teachers within the district whose performance, through evaluations conducted under paragraphs (a)(xvii) through (xix) of this section, has been determined inadequate or unsatisfactory for that school year. The report shall include a summary of mentoring and other professional development activities made available to the identified teachers to improve instruction and student achievement. Not later than June 1 of each school year, the board shall file a report with the department of education certifying compliance with this subsection.

21-7-102. Definitions.

(a) As used in ~~the~~ this article the following definitions shall apply:

(ii) "Continuing Contract Teacher":

(A) Any initial contract teacher who has been employed by the same school district in the state of Wyoming for a period of three (3) consecutive school years, has performed satisfactorily on performance evaluations implemented by the district under W.S. 21-3-110(a)(xvii)

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during this period of time and has had his contract renewed for a fourth consecutive school year; or

(B) A teacher who has achieved continuing contract status in one (1) district, and who without lapse of time has taught two (2) consecutive school years and has had his contract renewed for a third consecutive school year by the employing school district, and has performed satisfactorily on performance evaluations conducted by both districts under W.S. 21-3-110(a)(xvii) during this period of time.

(vi) "Suspension" ~~with pay~~ means the removal of a teacher from the classroom during the school year. Unless otherwise agreed to by the teacher and the district superintendent or board, suspension shall be with, or without, termination of salary pay as follows:

(A) By the superintendent "with pay"
pending:

(I) The investigation of an allegation of misconduct which investigation shall not exceed thirty (30) days; and

(II) The final action of the board following completion of the investigation under subdivision (I) of this subparagraph and, if requested, the outcome of a hearing in accordance with W.S. 21-7-110.

(B) By the board "without pay" for a period not to exceed one (1) calendar year following the outcome of a hearing in accordance with W.S. 21-7-110.

21-7-104. Employment of continuing contract teachers on continuing basis; salary increases.

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(a) Subject to satisfactory performance evaluation under W.S. 21-3-110(a)(xviii), a continuing contract teacher shall be employed by each school district on a continuing basis from year to year without annual contract renewal at a salary determined by the board of trustees of each district, said salary subject to increases from time to time as provided for in the salary provisions adopted by the board.

21-7-106. Notice of recommendation of termination to teacher; when termination effective.

(a) A continuing contract teacher shall be notified of a recommendation of termination by the superintendent or any member of the board designated by the superintendent or designated by the board pursuant to a majority vote of the board by giving the teacher written notice together with written reasons for termination on or before April 15 of any year. Upon receipt of notice, the teacher may request a hearing on the recommendation before an independent hearing officer through the office of administrative hearings as provided under W.S. 21-7-110.

21-7-110. Suspension or dismissal of teachers; notice; hearing; independent hearing officer; board review and decision; appeal.

(a) The board may suspend or dismiss any teacher, or terminate any continuing contract teacher, for any of the following reasons:

(i) Incompetency;

(ii) Neglect of duty;

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(iii) Immorality including, without limitation, engaging in conduct with a student which would be a violation of W.S. 6-2-314 through 6-2-318, 12-6-101(a) or 35-7-1036;

(iv) Insubordination; ~~unsatisfactory performance or any other good or just cause.~~

(v) Physical incapacity to perform job duties even with reasonable accommodation;

(vi) Failure to perform duties in a satisfactory manner;

(vii) Inadequate performance as determined through annual performance evaluation tied to student academic growth completed in accordance with W.S. 21-3-110(a)(xvii) through (xix);

(viii) Conviction of a felony; and

(ix) Any other good or just cause relating to the educational process.

(c) Any continuing contract teacher receiving notice of a recommendation of termination under W.S. 21-7-106(a), or any teacher against whom dismissal or suspension proceedings are instituted, is entitled to a hearing before an independent hearing officer provided through the office of administrative hearings on the recommendation for termination or the reasons for dismissal or suspension, upon submission of a written request to the superintendent. The request for hearing shall be given within seven (7) days after receipt of notice of termination under W.S. 21-7-106(a) or after receiving notice of dismissal or suspension under subsection (b) of this section. ~~The~~

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~~independent hearing officer shall insofar as possible, be impartial, experienced in education, labor and employment matters and in the conduct of hearings. Within five (5) days following receipt of the hearing request, the superintendent and the teacher shall jointly select a hearing officer. If they fail to agree upon selection, the district judge of the judicial district in which the school district is located shall upon request select a hearing officer.~~ Expenses of the hearing officer shall be paid equally by the school district and the teacher by the school district in accordance with W.S. 9-2-2202(b)(ii).

(d) Within five (5) days after selection, the hearing officer shall set the date for hearing and notify the teacher and superintendent of the hearing date, time and location. In no event shall the hearing commence on a date later than forty-five (45) days after notice under W.S. 21-7-106(a) or subsection (b) of this section, as applicable. The hearing shall be conducted in accordance with ~~the Wyoming Administrative Procedure Act and the hearing officer may accordingly receive or reject evidence and testimony, administer oaths and if necessary, subpoena witnesses~~ contested case procedures specified under W.S. 9-2-2202(b). All school district records pertaining to the teacher shall be made available to the hearing officer.

(e) At the hearing, ~~the teacher has the right to appear in person with or without counsel, to be heard, to present testimony or witnesses and all evidence bearing upon proposed termination, dismissal or suspension and to cross-examine witnesses.~~ the superintendent shall have the burden of proving that the recommendation for termination is based upon reasons provided in the notice of termination submitted pursuant to W.S. 21-7-106(a) or that suspension or dismissal is based upon reasons specified in the notice given under subsection (b) of this section, as applicable.

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21-7-112. Effect on existing contracts.

The contracts of all teachers in the state of Wyoming from and after ~~the effective date of this act~~ July 1, 2012, shall be subject to the policies, rules, and regulations of the school district not in conflict with this law or the other laws of the state of Wyoming.

21-7-113. Application to teachers presently employed.

The provisions of this article shall apply to all teachers who are teaching in Wyoming on ~~the effective date hereof, provided, however, the status of teachers covered under this act will be determined by their original date of employment as a teacher in the state of~~ and after July 1, 2012, and shall apply regardless of whether the teacher was employed prior to July 1, 2012 as a teacher in Wyoming.

Section 2. W.S. 21-7-102(a)(ix), 21-7-110(f), 21-7-111(b) and 21-7-114 are repealed.

Section 3.

(a) If 2011 Senate File 70 is enacted into law, the select committee on statewide educational accountability established under 2011 Senate File 70 shall study the use of the statewide accountability system for use in annual teacher evaluations. The select committee shall be assisted by the advisory committee created under 2011 Senate File 70 to provide information to the select committee as it deems necessary to carry out this section.

(b) The select committee created under 2011 Senate File 70 shall, if 2011 Senate File 70 is enacted, recommend changes to the teacher accountability act established under

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Section 1 of this act which will provide a consistent, reliable and clearly defined evaluation process to measure teacher performance based upon growth in student performance.

Section 4.

(a) This act shall be cited as the teacher accountability act.

(b) The Wyoming legislature finds:

(i) That under current law, teachers achieve continuing contract status after three (3) continuous years of employment with a Wyoming school district, giving teachers tenure. A fundamental premise of tenure is to protect competent teachers from arbitrary termination for reasons unrelated to teaching performance;

(ii) In the absence of clear, coherent criteria to measure job performance to terminate teachers determined to be inadequately performing their duties, tenure has become a guarantee of employment;

(iii) Wyoming school districts have expressed frustration with the difficulty in removing nonperforming teachers from the classroom, describing the process as complex, time consuming and legally challenging;

(iv) The Wyoming teacher contract law should provide protection to performing teachers and ensure that a struggling teacher has a fair opportunity to improve performance;

(v) Current law goes beyond the intended purpose of tenure and provides an obstacle to removing

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nonperforming teachers and thereby serves to protect jobs for nonperforming teachers at the expense of student performance. This, in turn, creates higher demands on performing teachers to remediate lagging student performance.

(b) Based upon these findings, the Wyoming teacher accountability act places emphasis on a teacher performance evaluation system based upon student achievement for use by school district boards of trustees in determining teacher contract performance and status. The basis for the performance evaluation system shall be built upon the educational accountability system and the assessments and measures within the accountability system identified by law to measure student achievement and the effectiveness of classroom teachers in improving student achievement.

Section 5. Prior to November 1, 2011, the joint appropriations interim committee shall review the fiscal impact of this act upon the office of administrative hearings and develop necessary recommendations to the legislature for funding the requirements of this act in establishing the 2013-2014 biennial budget for this office. Not later than September 1, 2011, the office of administrative hearings shall report to the committee on its analysis of the placement of teacher dismissal, suspension and termination hearings under this office, and evaluate the placement of this function as a responsibility for this office.

Section 6.

(a) Except as provided by subsection (b) of this section this act is effective July 1, 2012.

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(b) Notwithstanding subsection (a) of this section, sections 3, 4 and 5 of this act are effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the Senate.

Chief Clerk