

REFERENCE TITLE: schools; certificated employees; due process

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

SB 1431

Introduced by
Senator Johnson

AN ACT

AMENDING SECTIONS 15-536, 15-538, 15-539, 15-540, 15-541, 15-542 AND 15-547,
ARIZONA REVISED STATUTES; RELATING TO SCHOOL EMPLOYEES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 15-536, Arizona Revised Statutes, is amended to
3 read:

4 15-536. Offer of contract to certificated teacher who has not
5 been employed more than three consecutive school
6 years; acceptance; notice to teacher of intention not
7 to reemploy

8 A. Subject to ~~the provisions of~~ sections 15-539, 15-540, 15-541,
9 15-544 and 15-549, the governing board ~~shall~~, between March 15 and May 15,
10 SHALL offer a teaching contract for the next ensuing school year to each
11 certificated teacher who has not been employed by the school district for
12 more than the major portion of three consecutive school years and who is
13 under a contract of employment with the school district for the current
14 school year, unless, on or before April 15, the governing board, a member of
15 the board acting on behalf of the board or the superintendent of the school
16 district gives notice to the teacher of the board's intention not to offer a
17 teaching contract, unless such teacher has been dismissed pursuant to section
18 15-538, 15-539, 15-541 or 15-544. The teacher's acceptance of the contract
19 for the ensuing year must be indicated within thirty days from the date of
20 the written contract or the offer is revoked. The teacher accepts the
21 contract by signing the contract and returning it to the governing board or
22 by making a written instrument which accepts the terms of the contract and
23 delivering it to the governing board. If the written instrument includes
24 terms in addition to the terms of the contract offered by the board, the
25 teacher fails to accept the contract.

26 B. Notice of the board's intention not to reemploy the teacher shall
27 be by delivering it personally to the teacher or by sending it by registered
28 or certified mail bearing a postmark of on or before April 15, directed to
29 the teacher at ~~his~~ THE TEACHER'S place of residence as recorded in the school
30 district records. The notice shall incorporate a statement of reasons for
31 not reemploying the teacher. If the reasons are charges of inadequacy of
32 classroom performance as defined by the governing board pursuant to section
33 15-539, subsection D, the board, or its authorized representative, ~~shall~~, at
34 least ninety days prior to such notice, SHALL give the teacher written
35 preliminary notice of ~~his~~ inadequacy, specifying the nature of the inadequacy
36 with such particularity as to furnish the teacher an opportunity to correct
37 ~~his~~ THE inadequacies and overcome the grounds for such charge. The governing
38 board may delegate to employees of the governing board the general authority
39 to issue preliminary notices of inadequacy of classroom performance to
40 teachers pursuant to this subsection without the need for prior approval of
41 each notice by the governing board. In all cases in which an employee of the
42 governing board issues a preliminary notice of inadequacy of classroom
43 performance without prior approval by the governing board, the employee shall
44 report its issuance to the governing board within five school days. The

1 written notice of intention not to reemploy shall include a copy of any
2 evaluation pertinent to the charges made and filed with the board.

3 C. Nothing in this section shall be construed so as to provide a
4 certificated teacher who has not been employed by the school district for
5 more than the major portion of three consecutive school years and who has
6 received notice of the board's intention not to offer a teaching contract
7 with the right to a hearing pursuant to ~~the provisions of~~ section 15-539,
8 subsection G.

9 D. THE OFFER AND ACCEPTANCE OF A TEACHING CONTRACT BY THE SCHOOL
10 DISTRICT GOVERNING BOARD PURSUANT TO THIS SECTION SHALL NOT BE CONSTRUED TO
11 ELIMINATE OR RESTRICT THE RIGHT OF THE SCHOOL DISTRICT GOVERNING BOARD TO
12 INITIATE DISMISSAL PROCEEDINGS AGAINST THAT TEACHER DURING THE PERIOD OF TIME
13 THAT THE CONTRACT IS IN EFFECT.

14 Sec. 2. Section 15-538, Arizona Revised Statutes, is amended to read:

15 15-538. Preliminary notice of inadequacy of classroom
16 performance

17 A. The governing board of any school district shall give any
18 certificated teacher who has not been employed by the school district for
19 more than the major portion of three consecutive school years notice of
20 intention to dismiss or not to reemploy if such intention is based on charges
21 of inadequacy of classroom performance as defined by the governing board
22 pursuant to section 15-539, subsection D. The governing board, or its
23 authorized representative, ~~shall,~~ at least ~~ninety~~ FORTY-FIVE days prior to
24 such notice, SHALL give the teacher written preliminary notice of ~~his~~
25 inadequacy, specifying the nature thereof with such particularity as to
26 furnish the teacher an opportunity to correct ~~his~~ THE inadequacies and
27 overcome the grounds for such charge. The governing board may delegate to
28 employees of the governing board the general authority to issue preliminary
29 notices of inadequacy of classroom performance to teachers pursuant to this
30 section without the need for prior approval of each notice by the governing
31 board. ~~In all cases in which an employee of the governing board issues a~~
32 ~~preliminary notice of inadequacy of classroom performance without prior~~
33 ~~approval by the governing board, the employee shall report its issuance to~~
34 ~~the governing board within five school days.~~ The written notice of intention
35 to dismiss or not to reemploy shall include a copy of any evaluation
36 pertinent to the charges made and filed with the governing board.

37 B. If the preliminary notice required in subsection A of this section
38 is issued as a result of an intention to dismiss, such preliminary notice
39 shall be given at least ~~ninety~~ FORTY-FIVE days prior to service of notice of
40 the intention to dismiss. If the preliminary notice is issued as a result of
41 an intention not to reemploy, such preliminary notice shall be given no later
42 than January 15.

1 Sec. 3. Section 15-539, Arizona Revised Statutes, is amended to read:
 2 15-539. Dismissal of certificated teacher; due process; written
 3 charges; notice; hearing on request

4 A. Upon a written statement of charges presented by the
 5 superintendent, charging that there exists cause for the suspension without
 6 pay for a period of time greater than ten school days or dismissal of a
 7 certificated teacher of the district, the governing board ~~shall~~, except as
 8 otherwise provided in this article, **SHALL** give notice to the teacher of its
 9 intention to suspend without pay or dismiss the teacher at the expiration of
 10 thirty days from the date of the service of the notice.

11 B. Whenever the superintendent presents a statement of charges wherein
 12 the alleged cause for dismissal constitutes immoral or unprofessional
 13 conduct, the governing board may adopt a resolution that a complaint be filed
 14 with the department of education. Pending disciplinary action by the state
 15 board of education, the certificated teacher may be reassigned by the
 16 superintendent or placed on administrative leave by the board pursuant to
 17 section 15-540.

18 C. The governing board shall give a certificated teacher who has been
 19 employed by the school district for more than the major portion of three
 20 consecutive school years notice of intention to dismiss if its intention to
 21 dismiss is based on charges of inadequacy of classroom performance as defined
 22 by the governing board pursuant to subsection D of this section. The
 23 governing board or its authorized representative shall give the teacher a
 24 written preliminary notice of inadequacy of classroom performance at least
 25 ten instructional days prior to the start of the period of time within which
 26 to correct the inadequacy and overcome the grounds for the charge. The
 27 governing board may delegate to employees of the governing board the general
 28 authority to issue preliminary notices of inadequacy of classroom performance
 29 to teachers pursuant to this section without the need for prior approval of
 30 each notice by the governing board. ~~In all cases in which an employee of the~~
 31 ~~governing board issues a preliminary notice of inadequacy of classroom~~
 32 ~~performance without prior approval by the governing board, the employee shall~~
 33 ~~report its issuance to the governing board within five school days.~~ The
 34 written preliminary notice of inadequacy of classroom performance shall
 35 specify the nature of the inadequacy of classroom performance with such
 36 particularity as to furnish the teacher an opportunity to correct the
 37 teacher's inadequacies and overcome the grounds for the charge. The written
 38 preliminary notice of inadequacy of classroom performance shall be based on a
 39 valid evaluation according to school district procedure, shall include a copy
 40 of any evaluation pertinent to the charges made and shall state the date by
 41 which the teacher has to correct the inadequacy and overcome the grounds for
 42 the charge. That evaluation shall not be conducted within two instructional
 43 days of any school break of one week or more. The written preliminary notice
 44 of inadequacy of classroom performance shall allow the teacher not less than
 45 ~~eighty-five instructional~~ **FORTY-FIVE** days within which to correct the

1 inadequacy and overcome the grounds for the charge. If within the time
2 specified in the written preliminary notice of inadequacy of classroom
3 performance the teacher does not demonstrate adequate classroom performance,
4 the governing board shall dismiss the teacher either within thirty days of
5 the service of a subsequent notice of intention to dismiss or by the end of
6 the contract year in which the subsequent notice of intention to dismiss is
7 served unless the teacher has requested a hearing as provided in subsection G
8 of this section. If the teacher demonstrates adequate classroom performance
9 during the period allowed to correct such deficiencies as specified in the
10 written preliminary notice of inadequacy of classroom performance, the
11 governing board may not dismiss the teacher for the reasons specified in the
12 written preliminary notice of inadequacy of classroom performance. If the
13 governing board of a school district has received approval to budget for a
14 career ladder program, the governing board may define inadequacy of classroom
15 performance by establishing a single level of performance which is required
16 of all teachers or by establishing more than one required level of
17 performance. If more than one level is established, the same level of
18 performance for minimum adequacy shall be required of all teachers who have
19 completed the same number of years of teaching in the district.

20 D. The governing board shall develop a definition of inadequacy of
21 classroom performance that applies to notices issued pursuant to section
22 15-536, section 15-538 and this section. The governing board shall develop
23 its definition of inadequacy of classroom performance in consultation with
24 its certificated teachers. The consultation may be accomplished by holding a
25 public hearing, forming an advisory committee, providing teachers the
26 opportunity to respond to a proposed definition or obtaining teacher approval
27 of a career ladder program which defines inadequacy of classroom performance.

28 E. Any written statement of charges alleging unprofessional conduct,
29 conduct in violation of the rules or policies of the governing board or
30 inadequacy of classroom performance shall specify instances of behavior and
31 the acts or omissions constituting the charge so that the certificated
32 teacher will be able to prepare a defense. If applicable, it shall state the
33 statutes, rules or written objectives of the governing board which the
34 certificated teacher is alleged to have violated and set forth the facts
35 relevant to each occasion of alleged unprofessional conduct, conduct in
36 violation of the rules or policies of the governing board or inadequacy of
37 classroom performance.

38 F. The notice shall be in writing and shall be served upon the
39 certificated teacher personally or by United States registered or certified
40 mail addressed to the teacher's last known address. A copy of the charges,
41 together with a copy of this section and sections 15-501, 15-538.01, 15-540,
42 15-541, 15-542 and 15-544 through 15-547, shall be attached to the notice.

43 G. The certificated teacher who receives notice that there exists
44 cause for dismissal or suspension without pay shall have the right to a
45 hearing if the teacher files a written request with the governing board

1 within ~~thirty~~ FIFTEEN days of service of notice. The filing of a timely
2 request shall suspend the imposition of a suspension without pay or a
3 dismissal pending completion of the hearing.

4 H. THE OFFER AND ACCEPTANCE OF A TEACHING CONTRACT BY THE SCHOOL
5 DISTRICT GOVERNING BOARD PURSUANT TO THIS SECTION SHALL NOT BE CONSTRUED TO
6 ELIMINATE OR RESTRICT THE RIGHT OF THE SCHOOL DISTRICT GOVERNING BOARD TO
7 INITIATE DISMISSAL PROCEEDINGS AGAINST THAT TEACHER DURING THE PERIOD OF TIME
8 THAT THE CONTRACT IS IN EFFECT.

9 Sec. 4. Section 15-540, Arizona Revised Statutes, is amended to read:

10 15-540. Suspension prior to dismissal of a certificated
11 teacher; written charges; salary

12 A. Upon a written statement of charges adopted by the governing board
13 charging a certificated teacher of the school district with cause for
14 suspension without pay or dismissal, the governing board may immediately
15 place the teacher on administrative leave of absence and give ~~him~~ THE TEACHER
16 notice of the administrative leave of absence.

17 B. The notice of administrative leave of absence shall be in writing
18 and be served upon the teacher personally or by United States registered mail
19 addressed to the teacher at his last known address.

20 C. Any teacher who is placed on administrative leave of absence
21 pursuant to this section shall continue to be paid regular salary during the
22 period of administrative leave of absence.

23 D. THIS SECTION SHALL NOT BE CONSTRUED TO REQUIRE AN ADMINISTRATOR TO
24 OBTAIN THE APPROVAL OF THE SCHOOL DISTRICT GOVERNING BOARD TO PLACE A
25 CERTIFICATED TEACHER ON ADMINISTRATIVE LEAVE OF ABSENCE WITH PAY.

26 Sec. 5. Section 15-541, Arizona Revised Statutes, is amended to read:

27 15-541. Hearing on dismissal

28 A. The governing board shall decide whether to hold a hearing on the
29 dismissal or suspension without pay for a period of time longer than ten days
30 of a certificated teacher as provided in this article. If the governing
31 board decides not to hold a hearing, the governing board shall designate a
32 hearing officer to hold the hearing, hear the evidence, prepare a record and
33 issue a recommendation to the governing board for action. The governing
34 board may provide by policy or vote at its annual organizational meeting that
35 all hearings conducted pursuant to this section ~~will~~ SHALL be conducted
36 before a hearing officer. ~~The hearing officer will be mutually agreed upon~~
37 ~~by the parties to the hearing. If the parties cannot mutually agree on a~~
38 ~~hearing officer, a hearing officer will be selected by the governing board~~
39 ~~from a list provided by the department of education or the American~~
40 ~~arbitration association. A CERTIFICATED TEACHER MAY CHALLENGE THE~~
41 ~~APPOINTMENT OF A HEARING OFFICER ONLY FOR CAUSE.~~ The hearing shall be held
42 not less than ten nor more than twenty-five days after the request is filed
43 unless all parties to the hearing mutually agree to a different hearing date,
44 and notice of the time and place of the hearing shall be given to the teacher
45 not less than three days before the date of the hearing. The teacher may

1 request that the hearing be conducted in public or private. At the hearing
 2 the teacher may appear in person and by counsel, if desired, and may present
 3 any testimony, evidence or statements, either oral or in writing, in the
 4 teacher's behalf. The governing board or the hearing officer shall prepare
 5 an official record of the hearing, including all testimony recorded manually
 6 or by mechanical device, and exhibits. The teacher who is the subject of the
 7 hearing may not request that the testimony be transcribed unless the teacher
 8 agrees in writing to pay the actual cost of the transcription. Within ten
 9 days after a hearing conducted by the governing board, the board shall
 10 determine whether there existed good and just cause for the notice of
 11 dismissal or suspension and shall render its decision accordingly, either
 12 affirming or withdrawing the notice of dismissal or suspension. Within ten
 13 days after a hearing conducted by a hearing officer, the hearing officer
 14 shall deliver a written recommendation to the governing board that includes
 15 findings of fact and conclusions. Parties to the hearing have the right to
 16 object to the findings of the hearing officer and present oral and written
 17 arguments to the governing board.

18 B. A hearing held pursuant to this section may not be conducted by
 19 any hearing officer having a personal interest which would conflict with ~~his~~
 20 ~~or her~~ THE HEARING OFFICER'S objectivity in the hearing. The governing board
 21 has an additional ten days to determine whether good and just cause existed
 22 for the notice of dismissal or suspension and shall render its decision
 23 accordingly, either affirming or withdrawing the notice of suspension or
 24 dismissal. Good and just cause does not include religious or political
 25 beliefs or affiliations unless they are in violation of the oath of the
 26 teacher.

27 Sec. 6. Section 15-542, Arizona Revised Statutes, is amended to read:

28 15-542. Hearing costs; counsel; limitations on evidence;
 29 reinstatement

30 A. The governing board shall pay all expenses of the hearing. ~~The~~
 31 ~~certificated teacher and the governing board shall pay their own attorney and~~
 32 ~~witness fees, except if the governing board does not suspend the teacher~~
 33 ~~without pay or dismiss the teacher, the governing board shall pay all~~
 34 ~~reasonable attorney and witness fees incurred by the teacher. THE PREVAILING~~
 35 ~~PARTY SHALL BE AWARDED REASONABLE ATTORNEY FEES AND WITNESS FEES.~~

36 B. No witness shall be permitted to testify at the hearing except upon
 37 oath or affirmation. No testimony shall be given or evidence introduced
 38 relating to adequacy of classroom performance which occurred more than four
 39 years prior to the date of the service of the notice. Evidence of records
 40 regularly kept by the governing board concerning the teacher may be
 41 introduced, but no decision relating to the suspension without pay or
 42 dismissal of any teacher shall be made based on charges or evidence relating
 43 to adequacy of classroom performance occurring more than four years prior to
 44 service of the notice. The four-year time limit shall not apply to the

1 introduction of evidence in any area except that relating to adequacy of
2 classroom performance.

3 C. If a certificated teacher who has been employed by the school
4 district for more than the major portion of three consecutive school years is
5 placed on administrative leave of absence pending the hearing, ~~he~~ THE TEACHER
6 shall be reinstated within five days after the governing board renders a
7 decision not to suspend ~~him~~ THE TEACHER without pay or dismiss ~~him~~ THE
8 TEACHER.

9 Sec. 7. Section 15-547, Arizona Revised Statutes, is amended to read:
10 15-547. Preservation of years of employment; exceptions

11 A. The years of employment of a certificated teacher who has been
12 employed by a school district for more than the major portion of three
13 consecutive school years shall be preserved if such teacher transfers from a
14 common school district to a high school district or from a high school
15 district to a common school district if the governing board recognizes the
16 previously established years of employment of the transferred teacher,
17 provided such districts have coterminous boundaries and have a common
18 governing board.

19 B. THE YEARS OF EMPLOYMENT OF A CERTIFICATED TEACHER WHO HAS BEEN
20 EMPLOYED BY A SCHOOL DISTRICT FOR MORE THAN THE MAJOR PORTION OF THREE
21 CONSECUTIVE SCHOOL YEARS SHALL NOT BE PRESERVED IF THE TEACHER ACCEPTS A
22 NON-TEACHING ADMINISTRATIVE POSITION WITH THAT SCHOOL DISTRICT.

23 C. ANY PERIOD OF TIME DURING WHICH A TEACHER IS EMPLOYED BY A SCHOOL
24 DISTRICT UNDER AN EMERGENCY TEACHING CERTIFICATE SHALL NOT BE CONSIDERED
25 EMPLOYMENT BY THAT SCHOOL DISTRICT FOR MORE THAN THE MAJOR PORTION OF THREE
26 CONSECUTIVE SCHOOL YEARS FOR THE PURPOSES OF THIS ARTICLE.

27 D. ANY PERIOD OF TIME DURING WHICH A CERTIFICATED TEACHER WHO HAS BEEN
28 GIVEN A PRELIMINARY NOTICE OF INADEQUACY OF CLASSROOM PERFORMANCE PURSUANT TO
29 SECTION 15-538 IN THE THIRD CONSECUTIVE SCHOOL YEAR OF EMPLOYMENT WITH THE
30 SAME SCHOOL DISTRICT AND DURING WHICH THE CERTIFICATED TEACHER HAS TAKEN
31 FAMILY MEDICAL LEAVE SHALL NOT BE CONSIDERED EMPLOYMENT BY THAT SCHOOL
32 DISTRICT FOR MORE THAN THE MAJOR PORTION OF THREE CONSECUTIVE SCHOOL YEARS
33 FOR THE PURPOSES OF THIS ARTICLE.